

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 14368 of 2022**

=====

MUNAVVER ISMAIL MEMON

Versus

STATE OF GUJARAT

=====

Appearance:

MR N.D. NANAVATY, LD. SENIOR COUNSEL ASSISTED BY MR VARIS V ISANI(3858) for the Applicant(s) No. 1

MR MANAN MAHETA, APP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

=====

**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 12/09/2022****ORAL ORDER**

1. The applicant, by way of this application filed under Section 439 of the Code of Criminal Procedure, seeks regular bail in connection with the **File No.CHIEF CST/ENF-CO/EOW/STO-1/2021-22 registered with office of the Chief Commissioner of State Tax, Enforcement Co-Ordination, Gujarat State, Ahmedabad and State Tax Officer-1, (EOW), office of the Chief Commissioner of State Tax, Enforcement Co-Ordination, Gujarat State, Ahmedabad** for the offences punishable under Sections 132(1)(a) and 132(1)(i) of Central Goods and Services Tax Act (hereinafter referred to as 'CGST Act') and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as 'GST Act').

2. The applicant was arrested on 24.03.2022 and produced on the same day before the Court of learned Metropolitan

Magistrate and since then, he is in judicial custody. His bail applications filed before the Court of Magistrate & City Sessions Court, came to be rejected vide orders dated 20.06.2022 and 20.07.2022 respectively. The complaint as contemplated under the provisions of the Act is filed on 20.05.2022 by the Authority concerned. Feeling aggrieved by the refusal to grant bail by the Court concerned, the applicant has preferred present application to grant him regular bail.

3. This Court has heard Mr. N.D. Nanavaty, learned Senior Counsel assisted by Mr. Varis Isani, learned counsel for and on behalf of the applicant and Mr. Manan Maheta, learned APP for the respondent-State and Department.

4. The brief facts leading to filing of the present application are that:

4.1 The applicant is proprietor of M/s. N R Beauty World and doing his business of cosmetic items at Surat City, State of Gujarat. The firm was under surveillance and pursuant to the analysis made by the authority and based on intelligence, it came to the notice of the Department that the applicant is involved in tax evasion activities. The modus was supplying goods without issuance of any invoice for which the applicant has created software that was used for tax evasion and showing less sales of business items. It is alleged that the applicant has made hidden (unaccounted sales) in cash as well as formed kachcha invoices which were not included in accounts, which he has to maintain as per the law. During the

course of investigation, various documents in the form of electronic gadgets have been seized and recovered and it was found that he has caused loss to the Government Exchequer to the tune of Rs.10.94 crore, whereby he has violated the provisions of the G.S.T. Act and committed the offences punishable under Section 132(1)(a) of The Gujarat Goods and Services Tax Act and The Central Goods and Services Tax Act.

5. Mr. N.D. Nanavaty, learned Senior Counsel urged the following contentions:

- (i) The respondent authority has mainly relied on the computer data found from the business premises of the applicant wherein it is alleged that, details of such sales are not recorded in regular books of accounts as record indicates that, there was kachcha entry (unaccounted transaction). It is in this context, it was submitted that, there is no corroborative evidence found during the course of search and therefore, the entire allegations are based on certain entries. However, adjudication process has not been finalized and entire working has been made on assumptions and presumptions.
- (ii) The applicant regularly uploaded on the web portal the transaction of sales and purchase and had filed return under the GST regularly. In such circumstances, it is on record that, the case is based on documentary evidence and necessary materials have already been seized by the department and now, further custody of the applicant is

not necessary.

- (iii) In order to determine the liability, no any show cause notice either under Section 61 or Section 73 or Section 74 have been issued. However, on instructions, it is submitted that, without prejudice to his rights and contentions, the applicant herein, willing to deposit 10% of the amount within a period of six months from the date of his release before department and he will also file an undertaking to this effect.
- (iv) Complaint as contemplated under the Act has been filed by the department. Investigation is over. Applicant is permanent resident of Surat and he having roots in the society. The maximum punishment is up to five years and case is triable by Magistrate and the offence is compoundable one and case would not likely to conclude in a reasonable time.

6. In the aforesaid contentions, learned Senior Counsel urged that, the constitutional right of liberty must be protected, unless further custody of the applicant is necessary as the basic jurisprudence of bail is that, bail is a rule and jail is an exception. Thus, therefore, considering the facts and circumstances of the present case, discretion may kindly be exercised in favour of the applicant.

7. Mr. Manan Maheta, learned APP for the respondent-State reiterating the contents of the sworn affidavit contended that

the applicant had acted contrary to the provisions of the Act and did not declare the business transaction in his GST Returns. Thus, investigation is still going on to understand the mode of physical delivery of goods issued against unaccounted transactions and therefore, if he is released on bail, the investigation would adversely affected and considering the background facts of the applicant, he can temper with the evidence and influence the witnesses. It is in this context, learned APP submitted that, the applicant defrauded the State Exchequer to the tune of Rs.10.94 crore and offence committed is grave economic offence which need to be viewed with a different approach so far bail is concerned. Thus, he prays that, the applicant should not be enlarged so as to ensure the proper investigation.

8. Hear at length the learned counsel for the respective parties and perused the material placed on record.

9. Before advertng to the contentions raised by learned advocates appearing for the respective parties, it is necessary to refer to the judgment delivered by the Apex Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement, (2020) 13 SCC 791***, i.e. *“even allegations of grave economic offence, it is not a rule that bail should be denied in every case and whether bail is granted or not, will have to be on the case to case basis of the facts involved therein and securing the presence of the accused to stand trial.”* I deem it fit to exercise the discretion in favour of the applicant.

10. In the facts of the present case, based on the unaccounted transactions, the evasion of tax has been unearthed by the department. The department has already filed the complaint before the Court concerned. The department objected the bail application mainly on the ground that investigation is still under way. This Court is of considered view that, merely raising the contention that investigation is still going on is not enough, but, department should have point out that the further custody of the applicant is necessary. It is on record that, no liability is fixed or determined as per the statutory provisions of the Act. It is the right of the assessee to file an appeal against the assessment subject to deposit of the 10% disputed liability which may not exceed Rs.2 crore. In the facts of the present case, Rs.39,88,318/-, has been recovered during the course of investigation from the applicant. In such circumstances, when trial of the case would not likely to conclude in a reasonable time and the applicant is in custody since 24.03.2022 and considering the bonafide shown by the applicant to deposit the amount, I am inclined to release the applicant on bail subject to deposit of Rs.60 lakhs, before the Office of Chief Commissioner of State Tax, Ashram Road, Ahmedabad within a period of six months in six equal installments from the date of his release. It is to be noted that, Rs.39,88,318/- has already been recovered from the applicant. The department is directed to accept the amount. The applicant shall file an undertaking to the this effect before the Court concerned and this Court within a period of 15 days from the date of his release. If the applicant fails to comply with the condition, the bail granted to the applicant shall stands

cancelled automatically.

11. Hence, present application is allowed and the applicant is ordered to be released on regular bail in connection with the **File No.CHIEF CST/ENF-CO/EOW/STO-1/2021-22** registered with office of the Chief Commissioner of State Tax, Enforcement Co-Ordination, Gujarat State, Ahmedabad and State Tax Officer-1, (EOW), office of the Chief Commissioner of State Tax, Enforcement Co-Ordination, Gujarat State, Ahmedabad, on executing a personal bond of Rs.10,000/- (Rupees Ten thousands only), with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that he shall;

No.	Conditions
(a)	not take undue advantage of liberty or misuse liberty; सत्यमेव जयते
(b)	not act in a manner injuries to the interest of the prosecution; THE HIGH COURT
(c)	surrender passport, if any, to the lower court within a week; OF GUJARAT
(d)	not leave India without prior permission of the Sessions Judge concerned; WEB COPY
(e)	furnish latest address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the trial Court;

12. The Authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the learned Lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law. At the trial, learned Trial Court shall not be influenced by the observations of preliminary nature, qua the evidence at this stage, made by this Court while enlarging the applicant on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

TAUSIF SAIYED

**(ILESH J. VORA,J)**