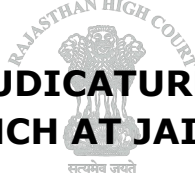


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Bail Cancellation Application No. 110/2024

Union Of India, Through Pr. Additional Director General Of GST Intelligence Jaipur Zonal Unit, C-62 Sarojini Marg, C-Scheme, Jaipur.

-----Petitioner

Versus

Lovkesh Kumar S/o Shri Guruvax Rai, Aged About 47 Years, R/o Shop No.20, New Dhan Mandi, Hanumangarh, 335513, Rajasthan.

-----Respondent

For Petitioner(s) : Mr. Kinshuk Jain, Senior Standing counsel
For Respondent(s) : Mr. Jitendra Mitrucka, Adv.
Mr. Avi Airun, Adv.

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

Reserved on :: **29/01/2025**

Pronounced on :: **10/02/2025**

1. The instant cancellation bail application has been filed under Section 483(3) Bhartiya Nagrik Suraksha Sanhita, 2023, preferred by the Union of India through Pr. Additional Director General Of GST Intelligence, Jaipur Zonal Unit against the order dated 05.04.2024 passed by learned Additional Sessions Judge No.1, Jaipur Metropolitan-II whereby, bail application No.115/2024 (CIS No.849/2024) in File No.DGGI/INV/GST/3480/2023/-Gr.H-O/o ADG-DGGI-ZU-Jaipur registered at DGGI Jaipur under Section 132(1)(c) and 132(1)(f) of Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act') was accepted.

2. Learned counsel for the petitioner submits that the learned court below committed an error while granting bail to the present respondent-Lovkesh Kumar. The court below has observed that respondent Lovkesh Kumar's statement was not recorded under normal circumstances. The Court also recorded that the proprietor of M/s. Guruvax Rai Praveen Kumar is Sushil Kumar, and no evidence is available on the record indicating that respondent Lovkesh Kumar is the operator of the firm M/s. Guruvax Rai Praveen Kumar. The court below also recorded the finding that the department unintentionally did not arrest the M/s Guruvax Rai Praveen Kumar proprietor to shift the liability on respondent Lovkesh Kumar. The Court observed that the respondent is the proprietor of two firms, M/s. Guruvax Rai Cotton Industries and M/s. Guruvax Rai & Sons have deposited the amount of Rs.65,00,000/-. Therefore, the remaining GST liability of the respondent is less than Rs.5,00,000,00/-, and the case comes under the category of a bailable offence. The said observation of the Court is misconceived and against the settled law canon. The provisions of Section 122 of the CGST and Section 132 of the CGST are entirely different from those of Section 122 of the CGST.

3. Under Section 132 of the CGST Act, if any person causes to effect to claim Input Tax Credit based on wrong information or fraudulently, then the department can prosecute such person under Section 132 of the CGST Act. The provisions of Section 132 of the CGST Act are for procuring punishment for the offences. It is vehemently argued that by depositing the Input Tax Credit, the respondent cannot be absolved from the proceedings initiated under Section 132 of the CGST Act, and the amount deposited

cannot be taken into consideration for determining the offence committed by an accused. The court below has wrongly deducted the amount of Rs.65,00,000/- deposited by the respondent and observed that the offence of respondent's is bailable. It is also argued that the respondent's bail application was allowed by the Court below, considering that the other co-accused, Gautam Garg, has been granted bail by ADJ Court No.2, Jaipur Metropolitan-II. It is also argued that the bail granted to respondent Gautam Garg was cancelled by this Court in S.B. Criminal Misc. Cancellation Bail Application No.168/2023, vide order dated 03.12.2024.

4. Learned counsel for the petitioner further submits that the above observations in the bail application contradict the facts. It is contended that the Directorate General of Goods and Services Tax Intelligence, Jaipur Zonal Unit, after receiving the information that M/s. Gurbax Rai Cotton Industries, M/s. Gurbax Rai and Sons and M/s. Gurbax Rai Praveen Kumar was fraudulently availing Input Tax Credit based on invoices without actually receiving the goods, conducted the inquiry and searches were made at the premises of M/s. Gurbax Rai Cotton Industries, residential premises of the Respondent-Lovkesh Kumar, (proprietor of M/s. Gurbax Rai Cotton Industries and M/s. Gurbax Rai Praveen Kumar) and during search proceedings, fake Input Tax Credit taken by the firms M/s. Gurbax Rai Cotton Industries, M/s. Gurbax Rai and Sons and M/s. Gurbax Rai Praveen Kumar was found. It was also revealed that out of 27 firms, 24 based in Sirsa, Haryana, were not in existence, and their registered addresses were found to be incorrect. It is contended that the total fake Input Tax Credit availed by these firms was found to be 9.42 crores. It was also revealed that the

respondent, Lovkesh Kumar, in collaboration with the other co-accused, Gautam Garg, procured the fake bills from fake and non-existent firms. It is also contended that the respondent-Lovkesh Kumar, in his statement rendered under Section 70 of Goods and Services Sale Tax Act, has admitted that the entire work of collecting the fake bills from the fake and non-existent firm based in Sirsa, Haryana, was done by him and his nephew, the other co-accused Gautam Garg. The investigation also revealed that the raw slips related to the M/s Gurbax Cotton Industries, M/s. Gurbax Rai and Sons and M/s. Gurbax Rai Praveen Kumar was recovered from the residence of the present respondent, Lovkesh Kumar, and the other co-accused, Gautam Garg. The investigation also revealed that the two groups were found on the Mobile Whatsapp of the present Respondent, of which Lovkesh Kumar was also a member, and evidence of GST evasion by the said firms was found in the said Whatsapp group during the search of the premises of Gautam Garg, blank pre-signed chequebooks of M/s. New Gupta Traders were also found, and on confronting the respondent Lovkesh Kumar, he accepted that he used to withdraw the amount paid by the aforesaid three firms based on fake firms in lieu of receipt of counterfeit bills. The respondent, Lovkesh Kumar, also admitted that the amount was transferred to M/s. New Gupta Traders by these 24 fake firms were subsequently withdrawn in cash by the respondent using his relatives, Gautam Garg, Siddarth Garg, Rahul Garg and Jatin Garg. The respondent was operating M/s. Gurbax Rai Cotton Industries and M/s. Gurbax Rai and Sons. In the statement rendered under Section 70 of the GST Act, the respondent also informed us that he and the other

co-accused, Gautam Garg, are looking after all the work, including the sale-purchase accounts of the said firms. The accused has also admitted that no goods arrived from the firms in his two firms and the firms of M/s. Gurbax Rai Praveen Kumar.

5. Thus, enlarging the respondent on regular bail by the impugned order was wrong; it is also argued in the matter of ***Y.S. Jagmohan Reddy Vs. CBI 2013 (7) SCC 439***, the Hon'ble Apex Court categorically held that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment with a conviction which entails, the character of the accused, circumstances etc. Therefore, the application for cancelling the respondent's bail application may be allowed, and the respondent may be directed to be taken into custody.

6. Learned counsel for the respondent justifies the order passed by the court below about granting bail to the respondent. It is contended by learned counsel for the respondent that the evidence collected by the prosecution explicitly suggests that the respondent, Lovkesh Kumar, is not the Director of M/s. Gurbax Rai Praveen Kumar, and the firm's proprietor is Sushil Kumar. The department has not proceeded against the proprietor of the M/s. Gurbax Rai Praveen Kumar. It is further contended that during enquiry, the respondent has deposited the amount of Rs.3.66 crore. The respondent has neither committed nor been involved in any offence, and the S.B. Criminal Miscellaneous Petition No.97/2025 for quashing the complaint is pending adjudication. It is also argued that vide order dated 03.12.2024, the bail granted to the other co-accused, Gautam Garg, was cancelled, and the

present cancellation bail application has been filed based on the cancellation of the Bail Application of the other co-accused, Gautam Garg. The Hon'ble Apex Court, by way of Special Leave to Appeal Criminal No.17270/2024, has granted interim relief to the co-accused Gautam Garg and directed that no coercive steps shall be taken against the co-accused Gautam Garg. It is also contended that the complainant has incorrectly moved under Section 132(1)(c), 132(1)(f) of the CGST Act. The Act of 2017 provides a penalty for certain offences under Section 122 and case respondent falls under Section 122 of the CGST Act. It is also argued that the respondent has failed to produce credible and substantial evidence that the respondent fraudulently availed any Input Tax credit or falsified financial records. The investigation is primarily based on voluntary statements that lack corroboration by the director. These statements cannot be the sole basis invoking serious charges under Section 132(1)(c) without directly linking the respondent for committing the said activities. It is also argued that the remand and the arrest issued under Section 59 of the CGST Act against the respondent were also illegal. The department has also failed to record the "necessity to arrest in the arrest memo".

7. Learned counsel for the petitioner has relied on the judgment of Union of India Vs. Ashish Agarwal, (2023) 1 SCC 617, Issardas Daulat Ram Vs. Union of India, 1961 SCC OnLine SC 363, Peeyush Kumar Jain Vs. Union of India, 2022 SCC OnLine All 592, Satender Kumar Antil Vs. CBI, (2022) 10 SCC 51.

8. Therefore, the application for seeking cancellation of bail has no merit and deserves to be dismissed.

9. The law enunciated for cancelling the bail granted is synthesised as follows:-

(i) If there are serious allegations against the accused and he has not misused the bail granted to him. In that case, such an order can be revoked by the Court if the Courts below have ignored the relevant material available on record or have not looked into the gravity of the offence or the impact on society resulting from such an order.

(ii) The Court can cancel bail if a change in circumstances justifies it.

(iii) If the accused is arrested for committing a new offence while on bail for a previous one, this can be grounds for bail cancellation.

(iv) If the accused poses a significant risk to public safety or threatens the community, the Court may cancel bail to protect society.

(v) If the accused repeatedly fails to appear in Court when required, the Court may cancel bail due to his non-appearance

(vi) Courts have the authority to cancel bail if it is deemed necessary in the interests of justice. This discretion should be exercised judiciously and not arbitrarily.

(vii) If the accused tries to obstruct the legal process or interferes with how justice is served.

(viii) When the accused attempts to escape or avoid facing the legal consequences of his actions.

(ix) If the person misuses the freedom granted to him by bail for unlawful activities.

(x) If it becomes evident that the accused is planning to flee the jurisdiction to avoid prosecution, the Court may cancel his bail.

(xi) If the individual uses his freedom on bail for unlawful activities, such as committing another crime or engaging in activities that undermine the legal process.

(xii) If evidence suggests that the accused is attempting to intimidate or influence witnesses, his bail can be cancelled.

(xiii) If there is reason to believe that the accused is trying to destroy or manipulate evidence crucial to the case, this can lead to bail cancellation.

(xiv) The Court granting bail disregards relevant evidence while considering irrelevant material and trivial details.

(xv) If bail has been granted on untenable or unsustainable grounds.

(xvi) When the bail order is marred by serious flaws that result in a miscarriage of justice.

On the touchstone of the above-stated tenets, the Court must analyse whether the impugned order dated 05.04.2024 granting bail needs interference. The learned Court below observed that the respondent is entitled to bail as the memo of arrest lacks grounds for arrest. The learned Court below placed reliance upon the Judgment Hon'ble Allahabad High Court. The provisions of arrest are described explicitly under section 69 of the CGST Act below:-

“Where a person is arrested under Sub-Section (1) for an offence specified under Sub-Section (5) of Section 132, the officer authorised to arrest the

person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.”

(xvii) If the bail order appears to be arbitrary, whimsical, or perverse given the case's specific facts.

10. The Court also analysed that no material is available on the record to suggest that the accused respondent was operating the business of M/s Gurbax Rai Praveen Kumar.

11. The analysis of the court below suffers from perversity as it is not the conditions precedent for prosecuting a person under Section 132 of the CGST Act that the person involved in the offence should be the proprietor or manager of the firm only. The provisions explicitly suggest that whosoever commits or causes to commit and retains the benefits from any supplied goods or both, without the issuance of any invoices or without providing the goods avails input tax credit, is liable to prosecution. The Department has placed enough material for prosecuting the respondent under Section 132 of the CGST Act as the chats in the WhatsApp group show that the respondent was operating the business of firm Gurbax Rai Praveen Kumar. The trial court has not taken into consideration the material collected against the respondent by the concerned CGST Department, and therefore, the analogy of the trial court that the respondent is not the manager or proprietor of the said firm and hence cannot be liable for fraudulently availing input tax credit is not based on facts. The trial court has ignored the impact of Section 132 of the CGST Act, which explicitly encompassed that the person whosoever commits or causes to commit and retain the benefit arrived from any

supplies, without supplying the goods avails input tax credit is liable for prosecution. The court below did not assess the consequence and spirit of provisions under Section 132 of the CGST Act.

12. The legislature purportedly amended section 132 of the CGST Act in the Finance Act 2020 after adding the phraseology "causes to commit" just after "Whoever commits" to take hold of the actual offender who enables the company or companies by generating fake invoices or aiding such companies in availing the input credit illegally. The earlier provisions lacked the provision regarding catching hold of the persons behind the curtains, enabling the companies to avail of the input credit by falsifying and maneuvering the documents. Such unethical offenders were free from the clutches of the law-enforcing agencies.

13. Thus, the arguments raised by the respondent's counsel are misconceived and against the express provisions of section 132 of the CGST Act. The arguments that only the individuals engaged in the company's management are accountable for the prosecution are unsustainable. Likewise, the Court completely ignored the incriminating material collected against the respondent. The factual aspects show that many documents and electronic evidence were collected, and the respondent was found to be directly involved in generating the false and fabricated goodless invoices. Also, the Court failed to appreciate that the respondent had wrongly availed ITC by generating fake invoices, causing wrongful gain to the three companies and wrongful loss to the Government. The ITC availed by the respondent amounts to

Rs.8.59 crores. While granting bail to economic offenders, the Hon'ble Apex Court has reiterated that economic offences are class apart and need to be visited with different approaches in bail. While considering the bail application of the respondent, the Court did not consider the gravity of the offences and enlarged the respondent's bail, misconstruing the facts and the legal position. It is also pertinent to mention here that while considering the bail application, the Court shouldn't enter into the question of the legality of the arrest; the legitimacy of the arrest can be questioned only if there is a gross violation of any provision of the Act. In the present case, the respondent was duly informed regarding the grounds of arrest before arresting the respondent.

14. The other argument is that the statement recorded by the concerned authority under section 70 of the CGST could not be utilised and read at the time of enquiry or for bringing out the prima facie opinion for indulgence in the crime is likewise not conceivable as, firstly, the authority recording the statement under section 70 is not a police officer, thus not hit by section 25 of the Evidence Act; secondly, section 136 (2) of the CGST applies to the court regarding admitting the statement under section 70 of the witness or witnesses who aspired to be examined by the prosecution in the trial.

15. The contention of learned counsel for the respondent that the respondent has deposited the amount of Rs.3.66 crores during enquiry and the respondent cannot be prosecuted under Section 132 of the CGST Act has also been misplaced and misconceived. Section 122 of the CGST Act reads as follows:-

“122. Penalty for certain offences.-

- (1) Where a taxable person who--(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
- (vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
- (vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the

provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

1[(1B)2[Any electronic commerce operator, who is liable to collect tax at source under section 52,]—

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher]

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised—

(a) for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who--

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to

believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.”

Under Section 122 (viii) and (x), where a taxable person who fraudulently obtains refund of tax or falsifies or substitutes final records or produces fake accounts or documents or furnishes any false information or return to evade payment of tax due under this Act shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, thus the provisions contained under Section 122 of the CGST Act only

provides a penalty. The scheme of Section 132 is entirely different from Section 122 of the CGST Act.

16. Section 132(1)(a)(b)(c)(l) and 132(5) of the CGST Act reads as under:-

"Sec.132-Punishment for certain offences.-

(1) Whoever commits any of the following offences, namely:— (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b); or fraudulently avails input tax credit without any invoice or bill]

(l) attempts to commit, or abets the commission of any of the offences mentioned in ³[clause (a) to (f) and clauses (h) and (i)] of this section, shall be punishable-

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable."

17. Thus, it is apparent from the bare perusal of Section 132 (1) (c) that whoever avails input tax credit using the invoice or bill and fraudulently availed input tax credit without receiving any goods, shall be punishable under Clause (l) with imprisonment for a term which may extend to 5 years. The offences committed under Clause a, b or c shall be cognizable or non-bailable under the provisions contained under Section 132(5) of the CGST Act.

18. Sections 122 (viii) and 122 (x) explicitly address the unlawful acquisition of refunds and falsifying final records or creating fake accounts. Under Section 132 (c), it is mandated that invoices or bills cannot be utilised without the corresponding supply of goods or services. In this case, the respondent wrongfully availed of input tax credit without receiving any goods, relying on forged bills from non-existent companies. The evidence unmistakably establishes that the respondent was the proprietor of M/s Gurbax Rai & Sons and M/s Gurbax Rai Cotton Industries. Investigative materials have further revealed that the respondent fraudulently availed input tax credit amounting to Rs. 8.59 crores.

19. The learned counsel for the petitioner has incorrectly relied on the judgments of Union of India Vs. Ashish Agarwal, Issardas Daulat Ram Vs. Union of India, Peeyush Kumar Jain Vs. Union of India, and Satender Kumar Antil Vs. CBI. However, the facts in this case significantly differ from those in the above-mentioned cases before this Court.

20. Upon reviewing the entire record, it is evident that the learned trial court erred egregiously and displayed a lack of accuracy by granting bail to the accused respondent, Lovkesh

Kumar. The argument that a similar matter received an interim order of no coercive action from the Hon'ble Apex Court does not justify dismissing the plea for cancellation of bail.

21. In light of the thorough review, this Court firmly decides to cancel the bail granted to respondent Lovkesh Kumar S/o Shri Guruvax Rai. This order stands canceled. The application for the cancellation of bail is allowed, and the order permitting bail from 05.04.2024 issued by the learned Additional Sessions Judge No.1, Jaipur Metropolitan-II, is hereby nullified. The respondent, Lovkesh Kumar S/o Shri Guruvax Rai, is required to surrender before the trial court on or before 07.03.2024. A copy of this order will be sent to the learned trial court immediately. The trial court is directed to take appropriate steps to ensure the accused's presence.

(PRAVEER BHATNAGAR),J