

DGGI/INV/ GST/ 911/ 2024-Gr-H-O/ 0 ADG- DGGI- ZU- Jaipur for the offence punishable under section 132(1)(a), (f) (h) and (l) of the Act of 2017 was registered. The gist of the complaint is as under:-

विभाग को सूचना मिली कि कुछ लोग राजस्थान के मण्डी में मार्बल, ग्रेनाइट, सैण्ड स्टोन, कोटा स्टोन की सप्लाई के लिए फर्जी फर्मों से बिल और ई-वे बिल जारी करने का कार्य कर रहे हैं, जिसमें मनोज जैन का नाम सामने आने पर परिवाद विभाग के अधिकारियों ने आगे की जांच शुरू की तथा जांच के दौरान अभियुक्त के निवास स्थान पर तलाशी की कार्यवाही कर अभियुक्त के परिसर से दो नोट बुक, कच्ची पर्चीयां, जिसमें मार्बल और ग्रेनाइट की बिक्री से संबंधित विवरण एवं कुछ संदिग्ध फर्मों के रबर स्टाम्प मैसर्स कृष्णा मार्बल टेडर्स और रामेश्वरम स्टोनेक्स के ई-वे बिल की फाईल व कुछ आपत्तिजनक उपकरण जब्त किये। अभियुक्त का मुख्य पर्वेसर श्री बालाजी मार्बल है। ऑर्डर आने पर माल की खरीद बिना जीएसटी बिल के कैश में करता, उसके उपरान्त अभियुक्त इस माल का बिल किसी भी फर्जी फर्म मैसर्स ग्लोबल मार्बल एण्ड ग्रेनाइट, मैसर्स निखिल मार्बल, मैसर्स ग्रेनाइट वर्ल्ड आदि से जारी करता और ई-वे बिल आदि दस्तावेज तैयार करके देता। अभियुक्त बिना जीएसटी बिल के माल की खरीद कर फर्जी फर्मों से उन फर्मों का बिल बनाकर आगे बेच देता। बिल बनाते समय जो कैल्कुलेशन कर उतना ही अमाउन्ट का इनवॉइस जारी किया जाता ताकि जीएसटी का इनपुट टैक्स क्रेडिट लेने के बाद मार्बल व ग्रेनाइट का प्रभावी मूल्य उतना ही हो जाता, जितने की बिना जीएसटी जोडे टैक्सेबल वैल्यू है। मनोज जैन ने स्वयं बताया कि इन फर्जी फर्मों का प्रयोग अभियुक्त अपने मित्र मनोज के साथ मिलकर फर्जी बिल इनवॉइस जारी करने का कार्य करते हैं। इन फर्मों को मनोज द्वारा ऑपरेट किया जाना और इसकी एवज में मिले कमीशन को आपस में 2:1 अनुपात में बंटवारा करना बताया। मनोज ने अपने बयानों में स्वीकार किया कि उसने 9 फर्जी फर्मों के 20,81,31,977 /- रुपये के जीएसटी फर्जी बिल बनाये जाना एवं इसकी एवज में माल की **clandestine** सप्लाई की है। इस प्रकार अभियुक्त द्वारा बिना माल की आपूर्ति के 9 फर्जी फर्मों से बिल/इनवॉइस एवं ई-वे बिल की आड़ में अन्य वास्तविक सप्लायर फर्मों के लिए माल

की नकद में **clandestine** सप्लाई करके 20,81,31,977 /- रुपये की जीएसटी चोरी की गई। इस प्रकार अभियुक्त द्वारा भारी मात्रा में टैक्स चोरी कर केन्द्रीय वस्तु एवं सेवाकर अधिनियम, 2017 की धारा 132(1)(ए)(एफ)(एच)(एल) का दण्डनीय अपराध किया गया है।

3. Counsel appearing for the accused petitioner submitted that the offence alleged to have been committed by the accused petitioner is triable by First Class Magistrate and the maximum punishment is 5 years. Counsel also submitted that the offences in regard to evasion of tax upto Rs.5 crores is bailable and the person against whom there are allegations of creating fake firms has not been arrested so far and the investigation has been kept pending against him. In such circumstances, keeping the accused petitioner in custody for an indefinite period is unjustified. Counsel also submitted that the actual culprit in this case has been saved by the complainant- Union of India. Counsel also submitted that the accused petitioner has been made as an accused only on the basis of his own statement recorded under section 70 of the Act of 2017. It is also submitted that no any amount, as alleged by the respondent- Union of India, has been ever credited in the bank account of the petitioner.

Counsel further submitted that the petitioner has not committed any offence whatsoever. Counsel further submitted that as regards the claim of the Department that the alleged offence in the present case falls in the category of

economic offences in this regard it is submitted that the Hon'ble Apex Court in ***Sanjay Chandra vs. Central Bureau of Investigation, reported in 2016 2 DLT (CRI) 210*** has held that the gravity of offence cannot be decisive grounds to deny bail and that the protection of personal liberty has to be weighed with the object of securing attendance of the accused at trial. While granting bail it has further been held that a balanced approach must be taken and that it is preferable to grant bail with stringent conditions rather than keeping an individual in detention for an indefinite period, as has been held by the Hon'ble Apex Court in ***H.B. Chaturvedi vs. Central Bureau of Investigation [Bail Appl. No.572/2010 & 459/2010]***.

Counsel further submitted that grant of bail is the rule and jail is the exception as has been held by the Hon'ble Apex Court in ***Dataram Singh vs. State of Uttar Pradesh & Anr.***, reported in (2018) 3 SCC 22.

Counsel also submitted that it is a well settled law that mere gravity of the offence is no ground to deny bail and even if the allegation (assuming for the sake of arguments) is of a grave economic offence, there is no rule that bail should be denied in every such case. In this regard, reliance is placed on ***P. Chidambaram vs. Directorate of Enforcement, reported in (2020) 13 SCC 791***

Counsel further submitted that no useful purpose would be served in keeping the petitioner in custody. Counsel also submitted that the merits of the case ought not to be gone into at the time of adjudication of the bail application as has been held in the case of ***Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote & Ors., reported in (1980) 2 SCC 559.***

Counsel further submitted that the petitioner is an innocent person and he has been falsely implicated in this case and no case is made out against the petitioner.

Counsel further submitted that the petitioner has fully co-operated with the investigation in the subject matter from the very beginning. The fact that the petitioner is in judicial custody sine 14.01.2022, makes it clear that the petitioner's custodial interrogation is no longer required.

Counsel further submitted that the entire evidence in the present case is based on documents. As such, there arises no question of tampering with evidence or influencing any witnesses. Even otherwise, the petitioner undertakes not to tamper with any evidence or influence any witness and further undertakes to join investigation as and when directed. Therefore, as per the dictum of the Delhi High Court latest in the case of **P. Chidambaram (supra)**, the accused petitioner deserves to be released on bail in as much as,

neither he is a flight risk, nor there is apprehension that he will tamper with evidence.

Counsel further submitted that no further recovery is to be made from the possession of the accused petitioner. Counsel also submitted that the investigation of the case is likely to take long time and trial is also likely to take considerable time.

Counsel further submitted that the conditions precedent to order arrest are not satisfied, as the satisfaction of the Commissioner with regard to having reasons to believe that the person has committed an offence under the GST Act is a sine qua none, before an arrest is made. Thus, the arrest of the petitioner is without any authority of law and the consequent judicial custody of the petitioner is also illegal. Moreover, the mandatory provisions contained in Section 74 of the Act, before an arrest is made, have also not been followed.

Counsel further submitted that assessment and determination of the amount must be fixed and is a prerequisite before any coercive steps are taken.

Counsel further submitted that the respondents have acted against the law laid down in "**Make My Trip Vs. Union of India**", *reported in (2016) 233 DLT 484* affirmed by the Hon'ble Supreme Court vide its order dated **23.01.2019 in Civil Appeal No.8080/2018** thereby

establishing that the law relating to arrest i.e. prior to determination of tax, evaded under Finance Act, 1997 (Service Tax) as well as CGST Act, 2017, the two being pari-materia to each other. Thus Make My Trip (supra) is squarely applicable to the investigation under CGST Act.

Counsel further submitted that even the Hon'ble Madras High Court in the judgment and order dated 04.04.2019 passed in the matter of **M/s Jayachandran Alloys (P) Ltd. Vs. Superintendent of GST and Central Excise and others reported as 2019 (25) GSTL 321 (Mad.)** has taken a similar view under CGST Act, 2017 which has been taken by the Delhi High Court and confirmed by the Hon'ble Supreme Court in the matter of Makemytrip (India) Pvt. Ltd. (Supra).

4. Mr. Ajatshatru Mina, learned Special Public Prosecutor submitted that the trial court dismissed the bail application of the accused petitioner after taking into consideration the entire material available on record and also taking into consideration nature and seriousness of allegations levelled against him. He also submitted that the present accused petitioner- Manoj Kumar Jain has evaded the GST in connivance with co-accused Manoj Kumar Sharma. He also submitted that the total input tax credit claimed on the basis of the fake invoices by the accused is about Rs. 5 Crores. He also submitted that if the accused petitioner is

released on bail, the investigation going on against other co-accused Manoj Kumar Sharma will be deeply hampered. He further submitted that the evasion of tax not only affects the economy of the State but also causes a serious threat to the Nation. He also submitted that from the business premises of the petitioner, the evidence in regard to his mobile phone, rubber stamp seal of M/s. A2Z Granite & Marble & M/s. Balaji Marble and Granite, Blank bilty book, note-book containing details related to marble and granite sales, loose estimate slips related to marble and granite sales, made up file containing e-way bills of fake firms M/s. Krishna Marble Traders and M/s. Rameshwaram Stonex, Printouts of Screenshots of Whatsapp Chatts etc., have been recovered. He further submitted that on the basis of above evidences, nine firms have been operated by the petitioner. He further submitted that out of nine firms, seven have no inward supply and in the remaining two firms, the inward supply is negligible in comparison to the outward supply and these firms have not been found in existence on their registered premises, which proves that all these firms are bogus and have been created only for giving transportation a genuine color which ultimately resulted in GST evasion of Rs.20,81,31,977/-. He further submitted that the same was caused by the petitioner through the fake firms operated by him by issuing fake bills/ e-way bills. The aforesaid facts are

corroborated by the documents recovered from the premises of Jain Bhojanalay of the petitioner and the data recovered from his mobile phone. He also submitted that in some of the matters which are having similar issue, this High Court already dismissed the bail applications of those accused.

5. Considered the submissions made at Bar and also perused the averments made in the complaint filed by the respondent- department under section 190 of the Code of Criminal Procedure.

6. From the complaint it is revealed that the allegation against the accused petitioner is of issuing fake invoices in the names of nine fake firms which led to evasion of GST by claims of input tax credit on the basis of such fake invoices. In the complaint the respondent-Department has asserted that there are nine fake firms and in para 13.1 of the complaint they have given the details of the firms and the reasons for declaring them to be fake. It has been stated in the complaint that the addresses as mentioned in the GST registration of such firms is non-traceable and the proprietor of the firms could not be traced. The respondent- Department has only stated that the proprietors of these firms are non-traceable but there is no conclusion by them that these firms are not in existence after making a proper verification and also they have not come out with a fact that the GST registration of these firms have been cancelled. From the

averments of the complaint it has also come out that the accused petitioner was receiving 1% of the taxable value of the alleged fake bills for creating such fake invoices and 2% of the taxable value of such fake bills was received by other person named; Manoj Kumar Sharma. The investigation as regards Manoj Kumar Sharma is still not concluded and no complaint has been filed against him so far and the counsel for the respondent- Department was also not in a position to say that in how much period the investigation against that person will be concluded.

7. After completion of investigation, the complaint was submitted against the accused petitioner on the basis of evidence collected so far during investigation. There is nothing on record that who claimed how much input tax credit on the basis of alleged fake invoices said to have been issued by the accused petitioner.

8. The maximum punishment for the offences alleged against the accused petitioner is five years and the present accused petitioner has already suffered the custody of more than seven months as he was arrested on 16.03.2024 in the matter. The alleged offences as per the provisions of law are compoundable and triable by Magistrate. The trial of the case is likely to take considerable time.

9. Taking into consideration over all the facts and circumstances of the case and the findings and the

observations stated above, this Court without expressing any opinion on the merits and demerits of the case deems just and proper to release the accused-petitioner on bail.

10. Accordingly, bail application of accused-petitioner namely; **Manoj Kumar Jain S/o Late Shri Anil Kumar Jain** is allowed and it is directed that the accused-petitioner shall be released on bail provided he furnishes a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) together with two sureties in the sum of Rs.50,000/- (Rupees Fifty Thousand only) each to the satisfaction of the trial Court with the stipulation that he shall appear before the trial Court or any other Court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

11. The accused petitioner shall not leave India without prior permission of this Court.

(GANESH RAM MEENA),J

SHARMA N.K., Dy. Registrar