

C.R. Case No. 79/2023
CIS Reg. no. 71/2023

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Clerk-In-Charge
A.C.J.M's Court
SILIGURI

16/12/24

Order dt. 07.02.2023

Today is fixed for production and EO's report.

Accused person namely Rajesh Kumar Sarda is produced from JC and is remanded to further JC till 21.02.2023.


Ld Counsel for the UOI is present. Ld Advocate for the accused is also present and has filed a petition seeking bail. An objection to such has been filed by the Ld Counsel for the UOI.

Heard both sides. Perused the materials on record and as placed before this Court by the Ld Advocates.

The allegation against the accused is that he was operating various firms in a manner so as to avail fake input tax credit and that the 7 firms of the accused had clandestinely supplied goods involving tax amounting to Rs. 12/- crores approximately. Therefore, the allegations simplicitor against the accused is evasion of tax. Ld Advocate for the accused first submitted that the purpose of the Act was not to seek punishment of the accused but to recover the tax which stands unpaid. It was further submitted that detaining the accused in the correctional home would serve no good to the process of investigation. It does appear that the accused is in custody since 24.01.2023. The offences alleged requires supply of documents and documents of transaction. The accused would be in a better position to aid the process of investigation by not being detained in the correctional home. Therefore, I find myself in consonance with such a line of submission that the detention of the accused in the correctional home would serve no purpose to the investigating agency.

Ld Advocate for the accused also submitted that even though it is not disputed that the offence alleged is an economical offence but each and every economical offence should not be regarded as a ground cogent enough to refuse the prayer for bail. Ld Advocate for the accused relied upon a judgment passed in the case of Tarun Jain..vs... Directorate General of GST Intelligence (Criminal M.A. 16552 of 2021) by the Hon'ble High Court at Delhi in order to assert upon such ground. I have respectfully perused such and it appears that in such case the petitioner had sought anticipatory bail and the allegation was that the petitioner was a Director of a Company which along with other firms had been involved in fraudulently availing and passing on fake input tax credit amounting to Rs.72/- crores. It has been opined by the Hon'ble High Court as thus "however it is to be reiterated that the offence does not contemplate punishment for more than 5 years for commission of any serious offence along with the economic offence as it is usually the case in offences under Special statute dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature, yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view the offences under the Act are not grave to an extent where the custody of the accused can be held to be sine quo non." It would also appear that the Hon'ble High Court has relied upon several judgments to press upon the principle that the bail is the rule and jail is the exception. It also appears that the custody during the process of investigation should not be equated as being a mode of punishment. The Court is bound to presume the innocence of the accused until he is proved guilty through a proper trial. Ld Advocate for the accused also submitted that the view of the Hon'ble Supreme Court as expressed in 2013 Cri L J 2734 should not be extended to offences under the CGST Act as the instant Act is of the year 2017 and the maximum punishment which can be imposed is of five years. Therefore, at this stage it does appear that even though the offences relates to evasion of tax to considerable amount yet the offence as alleged does not extend to more than 5 years and also that the instant Act has been framed basically to recover the unpaid tax.

Ld Advocate for the accused next relied upon section 74 of the CGST Act. Ld Advocate for the accused submitted that the complainant himself has stated that the accused had evaded GST by way of issuing under valued invoices and for which the accused was required to be served with a notice to show cause. As regards this line of contention, Ld Advocate for the accused relied upon a judgment passed by the Hon'ble High Court in CRM 3100 of 2021 (Pawan Kumar Bansal..vs.. Union of India). I have respectfully perused such and it appears that the offences alleged was punishable under section 132 (1) (a)(b) of the CGST Act and the Hon'ble High Court was pleased to opine that "relying on the decision of

APPLICATION NO.	SIGNATURE OF H.C.C	DATE
X-3272		16/12/24



TRUE COPY

Contd.. Order dt. 07.02.2023

the Hon'ble Supreme Court in C. Pradip (Supra) and in view of the fact that final assessment has not been made under section 74 of the said Act, the petitioner is entitled to be released on bail of Rs.5,00,000/- with five sureties of Rs. 1,00,000/- each with further condition that within 15 days from the date of his release on bail, the petitioner shall deposit a sum of Rs. 91,00,000/- with the appropriate officer. It would appear that in the case it was alleged that invoices and bills were issued without supply of goods or services or both in violation of the provisions of the Act or the Rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax." In the instant case, the primary allegation pertains to availing and passing of ineligible input tax credit by way of circular trading. It is alleged that through multiple transactions through dummy firms, the input tax credit was used again by the same firm for discharging output GST liability. Therefore, it appears that the primary allegation in the case as cited and that in the instant case are similar. Therefore at this stage, I find myself in consonance with such line of assertion by the Ld Advocate for the accused.


Ld Advocate for the accused also relied upon the judgment as cited in (2022) 10 Supreme Court Cases 51 (Satender Kumar Antil.vs. CBI and another). Ld Advocate for the accused submitted that personal liberty is a constitutional mandate and the occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or therein possibility of influencing the witnesses or the accused may abscond. Ld Advocate relied upon such citation to assert that merely because an arrest can be made because it is lawful does not mandate that arrest must be made. In the instant case, it would appear that the allegations are of such a nature which basically pertains to evasion of tax. As already held, the punishment is not of such a nature to hold that the offence is a heinous one. Furthermore, the proof of the offence alleged depends on a large extent to documents and such would not be deciphered by detaining the accused in a correctional home. As regards the possibility of absconding, the accused is quite aged and it appears that he has a permanent residence within the State. As regards influencing of witnesses it appears that the process of investigation had commenced way back in the year 2020. It is only in the year 2023 that the accused has been brought under arrest. Therefore, it would palpably appear that there is no reasonable apprehension that during the course of investigation the accused would influence witnesses.

As regards the grounds of objection to the prayer for bail, it would appear that this court has already dealt with the question of possibility of influencing the witnesses or intimidating them. Furthermore, it would appear that the accused ~~dealt~~ obeyed the summons and had tendered his statement which the investigating agency has characterized as being contradictory. Ld Advocate for the accused submitted that in the process of an investigation the accused cannot be pressurized to bring forth self incriminating documents and simply because the statement rendered by him was not equal to the expectation of the investigating agency, such statements cannot be regarded as contradictory or as bring forth evidence of non cooperation. As regards the other grounds that the investigation officer has reasoned to believe that the accused will disobey the summons and would not cooperate in the investigation, such is only an apprehension and only upon such, the liberty of a person which is sacrosanct should not be curtailed.

Therefore on all such considerations, I am inclined to hold that the further detention of the accused by curtailing his right to personal liberty would not aid the investigation. This Court is aware of the amount of transaction which has been asserted to have been made by the accused with an intent to evade tax but such alone is not ground enough to refuse the prayer for bail especially where the maximum punishment extends only to 05 years. ☐

Considering all such, I find it proper to allow the prayer for bail but with conditions so as to ensure that the investigation into the alleged offence is not jeopardized in any manner. The accused Rajesh Kumar Sarda be enlarged on bail on furnishing bond of Rs.50,000/- with 02 sureties of equal Rs.25,000/- each, one of whom must be local, residing within the jurisdiction of this Court. The accused is also put to the following conditions :

Clerk-In-Charge
A.C.J.M's Court
SILIGURI
16/12/24

APPLICATION NO.	SIGNATURE OF H.C.C	DATE
X-3272		16/12/24



C.R. Case No. 79/2023

TRUE COPY

Clerk-In-Charge
A.C.J.M's Court
SILIGURI

16/12/24

Contd. Order dt. 07.02.2023

1. To prevent his absconding, he shall surrender his passport if any before the investigating officer and would not leave the country without prior permission of the investigating officer, and if he does not possess such, he shall swear an affidavit and shall file such before the investigating officer;
2. He shall appear before the investigating officer once in a week without fail and would aid the process of the ongoing investigation;
3. He shall not make any inducement, threat or promise to any person who may be acquainted with the facts of the instant case.

The accused shall be released only upon fulfillment of the conditions of bail and on furnishing the necessary bail bonds.

If on bail, to 28.03.2023 for appearance.

To date for the report of the enquiry officer.

D & C by me,

ACJM, Siliguri

ACJM, Siliguri

C.R. Case No. 79/2023

Order dt. 08.02.2023

Bond of Rs. 25,000/- has been furnished by the surety Prasenjit Singha Sarkar (Book no. 1311) for the accused Rajesh Kumar Sarda. Such is found fit and is accepted.

Kaushik Sinha Sarkar has also filed an affidavit seeking to stand as local surety for the accused Rajesh Kumar Sarda and has filed a KVP of Rs.25,000/- in his name. Such be kept with the record. The surety Kaushik Sinha Sarkar shall not withdraw such deposit or deal in any manner with such without orders of this Court. The accused Rajesh Kumar Sarkar be released, if not wanted in any other case. Issue release order.

D & C by me,

ACJM, Siliguri

ACJM, Siliguri

APPLICATION NO.	SIGNATURE OF H.C.C	DATE
X-3272		16/12/24

