

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL NO.7484 OF 2021

Sujay Maitra

....

Petitioner.

Mr. Devashis Panda, Advocate

-Versus-

State of Odisha

....

Opposite Party.

Mr. Sunil Mishra, SC (OGST)

CORAM:

JUSTICE D. DASH

ORDER

30.09.2021

Order No.

- 02.
1. The matter is taken up through hybrid arrangement (virtual/physical) mode.
 2. The Petitioner being in custody in connection with Case No.02 of 2021-22 dated 09.07.2021 of the CT & GST Enforcement Unit, Rourkela, corresponding to 2(C) CC Case No.32 of 2021 pending on the file of learned S.D.J.M., Panposh-Rourkela, registered for commission of offences punishable under section 132 (1)(b)(c) and (1) of OGST Act, 2017, has filed this application under Section-439 of the Code of Criminal Procedure for his release on bail.
 3. Heard Mr. D.Panda, Learned Counsel for the Petitioner submits that on the allegations that the Petitioner had claimed, utilized and passed on bogus Input Tax Credit (ITC) without lawful physical movement of the goods and on the strength of fake invoices issued in the name of fake business entities which were also operated by this Petitioner, the complaint has been filed and that further reveals that the Petitioner with accused Gurdit

Dang and other accused persons had created and operated several fictitious firms by obtaining basic personal identity documents from the proprietors of the firms by misutilizing those documents as registered of those firms under the GST Act and wrongfully availed ITC and with other co-accused persons. He also committed similar offences and defrauded the revenue of huge extent.

He further submits that the allegation is also to the effect that the Petitioner with adopting similar methodology created several fictitious Firms and wrongfully availed ITC and thus has committed similar offences and defrauded the State causing loss of Revenue of huge extent. It is submitted that the Petitioner is in no way involved in commission of the offences alleged and he has been arrested in the case on frivolous ground without determining the tax liability and by erroneously calculating the ITC availed by the Petitioner, which according to him has been exaggerated only to put gravity to the charge. He further submitted that the materials on record do not show the indulgement of the Petitioner in the business affairs of all those Firms. With all these above, when the prosecution is based on documentary evidence which by now have already been seized and when the complaint has already been filed, the Petitioner being in custody since 16.07.2021; he urges for grant of bail to the Petitioner as further detention of the Petitioner in custody would not serve any useful purpose since there remains no scope for him to flee from justice and the question of tampering with the evidence now does not arise.

4. Mr. Sunil Mishra, learned Addl. Standing Counsel for the State opposes the move. He submits that the Petitioner is involved in commission of economic offences and the materials collected so far reveal that the Petitioner had all the role in defrauding the State Exchequer to the tune of huge sum by availing the ITC simply by managing to have the transactions reflected in the papers by sitting at home without physical movement of the goods or services and in the process has created numerous fake documents such as invoices, bills etc., besides having the hand in creating and operating the fake Firms and opening Bank accounts in the name of those entities which have no existence in reality in the Commercial World. He submits that the investigation is under way and the materials collected so far reveal that the Petitioner and others booked were actively involved in the matter with the intention to defraud the State Exchequer in respect of creation and operation of such fictitious business entities including those existing; such as M/s. Rayal Steel, M/s. Smartageis Trade Venture Pvt. Ltd. and M/s. Hariom Traders, have also proceeded in that mission. According to him, the materials on record so far collected reveal that the Petitioner has availed or cause to have availed the bogus ITC worth of Rs.14,39,57,464.39 (Rupees fourteen crore thirty nine lakh fifty seven thousand four hundred and sixty four) and passed on bogus ITC of Rs.18,06,13,606.57 (Rupees eighteen crore six lakh thirteen thousand six hundred six). It is submitted that the investigation on the business activities and the recipients of all such bogus ITC passed on by the Petitioner is still going on and new facts are still coming in when the process of verification of the Bank transactions finding mention in the Bank statements of

those fictitious business entities as well as the existing business entities are under progress so as to ascertain the amount of illegal financial benefit actually reaped by the Petitioner in scheming such GST fraud and it has not yet reached the finality. He therefore, submits that the stage has not reached to say that further materials are not likely to surface and within this short period of detention of the Petitioner; although it's not an upheaval task to ascertain and verify all possible angles of such fraudulent activities against all odds still it is on. At this stage, he also raises strong apprehension that in the event of the Petitioner is enlarged on bail; he would tampering the evidence and sabotage the investigation by influencing witnesses in bringing the same to a complete halt.

5. Keeping in view the submissions made; I have gone through the complaint petition as well as the documents annexed thereto as also the brief note on submission submitted by the learned Additional Standing Counsel. The documents filed by the learned counsel for the Petitioner are also perused.

The present Petitioner, one Gurdit Dang and another are said to have committed the offences under Section-132(1)(b)(c) and (l) of the OGST Act and to have retained the financial benefit out of commission of such offences in remaining in a loop through extensive networking and homework in tandem with one another. It is stated that upon investigation, it has come to light that the Petitioner, accused-Gurdit Dang and another having colluded had created fictitious business activities as also has created and operated other agencies. Allegations stand that they have issued fake invoices in the name of eight non-existent and

fictitious business entities without physical movement of goods and both being defacto operators have lodged claim of wrongful utilization of bogus ITC on the strength of fake invoices without physical receipt of goods and passed on the same. The quantum till now in total is yet to be ascertained and for the present the computation stands around Rs.32.5 crores.

6. The Petitioner has been arraigned in the case for his involvement in the above economic offences of quite significant magnitude which are serious and grave said to have been committed with cool calculation and deliberate design affecting the economy of the country. Such dubious roles alleged to have been played by the Petitioner stand in the direction of making hefty unlawful financial gain by putting up the show that for such sincere involvement in the business and carrying out the same, his entitlement to the huge sum as incentive in the form of Input Tax Credit (ITC) flowed which he received having the tendency of foiling the entire move in introducing this new Tax Regime for achieving the avowed objectives in speeding up the march to stand as the forerunner as having a key position in economic map of the globe.

7. For all these aforesaid, the present move for grant of bail to the Petitioner is rejected.

8. Accordingly, the BLAPL stands dismissed.

Issue urgent certified copy as per rules.

**(D. Dash),
Judge.**