

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9039 of 2021

Satindra Kumar Yadav

....

Petitioner

Mr. A. P. Mishra. Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. Sunil Mishra, Standing Counsel CT & GST

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF HEARING : 10.12.2021 DATE OF ORDER : 11.01.2022

1. Instant application under Section 439 Cr.P.C. read with Sections 69 and 132 of OGST Act, 2017 is filed by the petitioner seeking an order of bail in connection with 2(C) CC Case No.275 of 2021 arising out of P.R. No.01 of 2021-22 dated 25.08.2021 pending in the file of learned S.D.J.M., Jharsuguda assailing rejection order dated 30.09.2021 passed in BLAPL No.389 of 2021 by the learned Sessions Judge, Jharsuguda on the grounds described therein.

2. Prosecution allegation in brief is that CT and GST Enforcement Unit, Sambalpur initiated an action against the petitioner and other accused persons for having committed offences under Section 132(1)(b),(c)&(l) the OGST Act, 2017 punishable under Section 132 thereof for having facilitated issue of invoices and bills without physical supply of materials and availed ITC without accompanying goods and receipt of the same, as no information and documents could be supplied with respect to the alleged transactions, whereupon, the petitioner was arrested and forwarded to the learned court below on 03.09.2021.

3. After being satisfied with the investigation report, the petitioner was arrested in terms of Section 69 of OGST Act and was forwarded to the learned court below on 02.09.2021 and since then, he is in judicial custody. According to the opposite party State, the petitioner in collusion with others forged certain documents for obtaining GST registration in respect of 13 fictitious business entities and in course of investigation, it was revealed that such establishments were not in existence. It is further claimed that the so called proprietors of some firms were traced in Kolkata and interrogated but all were found to be individuals of no means and are daily wage earners. It is alleged that the petitioner misutilised the identity documents of said persons for the purpose of registration and in respect of remaining firms, the proprietors are not traceable and the residential addresses declared found to be fake and therefore, steps are currently being taken to trace them out to ascertain the extent of tax fraud committed.

4. The learned counsel appearing for the petitioner, in reply to the charges, contended that services have been provided to the clients and all transactions are maintained in the bank accounts, details of which have been submitted to the department but without examining the same properly, action has been taken. It is further contended that other accused persons are also involved yet the petitioner has been roped in without any basis being the proprietor of the firm and in so far as bogus ITC is concerned, it is an inflated figure and that apart, there is no material on record to suggest that he is directly involved. It is lastly contended that the offence even if assumed to have been committed is punishable with imprisonment for a maximum term which may extend to five years where the amount of tax evaded or ITC wrongly availed or utilized etc. exceeds Rs.5 crore and considering the fact that the petitioner is an local resident and has a business establishment with roots in

society, he should be enlarged on bail as he is unlikely to abscond and avoid trial.

5. Learned counsel for the opposite party State would contend that the petitioner has availed and passed on bogus ITC in respect of M/s. S.S. Syndicate on the strength of fake invoices in the names of 14 fictitious suppliers without actual physical movement of goods and the investigation further revealed that he and other accused persons including a Chartered Accountant created and operated non-existent business entities for trading without physical receipt and supply of goods with an ulterior motive to avail ITC wrongfully which resulted in commission of offences under Section 132 (1)(b),(c)&(l) of OGST Act. The details of the transactions with the names of the fake firms have been brought to the notice of this Court by the learned counsel appearing for the CT and GST by stating that availment and passing of bogus ITC on the strength of fake invoices exceeds Rs.5 crore. While advancing an argument against release of the petitioner on bail, number of citations of the Supreme Court as well as other High Courts including *N. Prasad Vs. CBI* reported in (2013) 7 SCC 466 is cited, wherein, it has been held and observed that economic offences do form a separate class and therefore, needs a different approach in the matters of bail as it involves huge loss of public funds crippling the economy of the country as a whole thereby posing a serious threat to its financial health and stability.

6. There is no tenebrosity in the settled position of law that while considering the bail plea of an accused, detailed examination of evidence and decision based thereon to be avoided and the materials on record are only to be gone through for a limited purpose to find out if prima facie an offence is made out and then, the next consideration would be, whether, in a given case, bail should be granted or not. In *P.Chidambaram* case (supra), the

Supreme Court discussed the well established principles which are to be kept in mind, while considering bail being conscious of the following factors, such as, (i) the nature of accusation and severity of punishment in case of conviction and nature of materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with evidence; (iii) possibility of securing the presence of accused at the time of trial or the likelihood of his abscondance etc. besides larger interest of the State and similar other considerations and as such, there is no hard and fast rule for grant or refusal of bail which always depends on the facts and circumstances of each particular case and in that regard, discretion has to be exercised judiciously and not in an arbitrary manner. In *Kalyan Chandra Sarkar Vs. Rajesh Ranjan and another* reported in (2004) 7SCC 528, the Supreme Court held and observed that though an exercise of detailed examination of evidence and elaborate documentation on merits of the case is not to be resorted to, but a responsibility is cast upon the courts to indicate in such orders reasons for concluding why bail was being granted especially when the accused is charged of a serious offence. From the side of the opposite party, learned Senior Standing Counsel appearing for them relied upon equally a good number of citations to convince that the Supreme Court stressed upon a different standard and approach vis-à-vis the economic offences which constitute a class apart, as it destabilizes the economy of the State.

7. Grant of bail or refusal is always a discretionary exercise which is to be guided by judicial application of mind. No inexorable formula is in place for considering a plea of bail which depends on variety of factors as has been propounded by the Supreme Court on number of occasions. In so far as economic offences are concerned, definitely, a different approach is to be adopted but then, the basic principles of bail shall have to be borne

in mind. It is well known that there is no straight jacket formula for considering the matters of bail which varies from individual case to case.

8. In fact, in *P.Chidambaram Vs. CBI* case decided in Criminal Appeal No.1603 of 2019 and disposed of on 22.10.2019, the Supreme Court, while referring to one of its earlier decision in *Niranjan Singh and another Vs. Prabhakar Rajaram Kharote and others* reported in (1980) 2 SCC 559 has been pleased to observe that the jurisdiction to grant bail has to be exercised on the basis of well established principles having regard to the facts and circumstances each particular case keeping an eye over certain factors, such as, nature of accusation; severity of punishment; reasonable apprehension of tampering with evidence; possibility of securing the attendance of the accused at the time of trial or likelihood of his abscondance, and of course, the larger interest of the State and while considering such a question, each case has to be individually taken up and examined on its own merits without indulging in detailed examination of evidence and elaborate scrutiny of the same. It is no doubt true that economic offences dismantles the economic condition of the State and therefore, the offenders are to be sternly dealt with keeping in view the interest of the society which has been reiterated quite often ever since the decision of the Supreme Court in *State of Gujarat Vs. Mohan Lal Jitmalaji Porwal* reported in AIR 1987 SC 1321.

9. In the instant case, the petitioner was arrested on 02.09.2021 for offences under Section 132(1)(b),(c)&(l) of OGST Act, 2017 having availed fake ITC by a firm M/s. S.S. Syndicate during the period under consideration. As is made to understand, the petitioner being the proprietor of a fictitious firm availed passed on bogus ITC without physical receipt and supply of goods on the strength of fake invoices issued in the name of non-existing

suppliers which could be revealed after extensive investigation. The allegation is also to the effect that the petitioner in collusion with other accused persons were involved in operation of fictitious firms and availed bogus ITC of Rs. 4.16 crore and passed on ITC for an amount of Rs. 47.99 crore. The details of the documentation regarding the alleged transactions have been unearthed during investigation. The conclusion which has been drawn by the investigating agency is entirely based on documents which are shown to have been seized during and in course of investigation. No doubt, the materials on record prima facie suggest the involvement of the petitioner and others in engaging themselves in activities whereby bogus ITC was claimed on the strength of fake invoices without physical receipt and supply of goods and also passed on to others. In other words, all the necessary materials which are required to prosecute the petitioner can be said to have been substantially collected during investigation. The petitioner happens to be a local inhabitant of Bhubaneswar. Being a permanent resident of Bhubaneswar, the Court is of the view that there is a less chance of petitioner absconding or fleeing from justice. The extent of illegality in availing ITC as against the plea of the petitioner is certainly to be examined during and at the end of trial. Since reasonably sufficient material evidence appears to have been gathered and taking into account the period of detention and the fact that the alleged offences are punishable with a maximum imprisonment of five years and as the accused not being an outsider but a local of Baliauta situate within the jurisdiction of Bhubaneswar, the Court is of the humble view that the petitioner, who has remained in judicial custody for four months, should be enlarged on bail with stringent conditions which are as follows.

10. Accordingly, it is ordered.

11. In the result, application under Section 439 Cr.P.C. stands allowed. As a necessary corollary, the petitioner is directed to be released on bail on furnishing a bail bond of Rs.50,00,000/-(rupees fifty lac) with two solvent sureties for the like amount to the satisfaction of the learned court below in seisin over the matter with conditions, such as, he shall not induce, threat or terrorize any of the material witnesses, while on bail; shall not wield any kind of influence or pressure vis-à-vis the prosecution witnesses to be examined during the trial and thus, not to tamper with the evidence, in any manner whatsoever; shall not involve or indulge in any such similar kinds of nefarious activities, while on bail; shall surrender his passport, if it has been issued to him, before the learned court below and shall not leave the jurisdiction of the court without its prior permission.

12. In case, any of the above conditions is/are violated, it shall forthwith entail cancellation of bail granted to the petitioner.

13. The BLAPL is accordingly disposed of.

14. As the restrictions due to the COVID-19 situation are continuing, learned counsel for the parties may utilize a soft copy of this order available in the High Court's website or print out thereof at par with certified copy in the manner prescribed, vide Court's Notice No.4587, dated 25 March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(R.K. Pattanaik)
Judge