

Allahabad High Court

Nitin Verma vs Union Of India And Another on 3 August, 2022

Bench: Subhash Vidyarthi

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved on 21.07.2022

Delivered on 03.08.2022

Court No. - 79

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 54497 of 2021

Applicant :- Nitin Verma

Opposite Party :- Union of India And Another

Counsel for Applicant :- Kaustubh Srivastava, Kandarp Srivastava

Counsel for Opposite Party :- A.S.G.I., Dhananjay Awasthi

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ashish Deep Verma and Sri Azad Khan, Advocates, the learned counsel for the applicant and Sri Dhananjay Awasthi, the learned counsel for the C.G.S.T. and Customs.
2. The instant application has been filed seeking release of the applicant on bail in Case No. IV - CE (9) CP / Agra / Nitin / 25119 251/2019, under Sections 132 (1) (B) (I), Central Goods & Services Tax Act, 2017 (which will hereinafter be referred to as "the CGST Act"), Police Station Hari Parvat, District Agra during pendency of trial in the Court below.
3. As per the prosecution case, the officials of Central Goods & Services Tax & Central Excise, Commissionerate Agra were investigating a case of huge evasion of GST on the basis of an intelligence input that the applicant is indulging in issuing bogus invoices without supply of goods, in the name of fake firms created by him. On 20.12.2019, a team of certain officers of Anti Evasion Branch, CGST & Central Excise, Commissionerate Agra conducted a search at four different

locations belonging to the applicant.

4. It is stated that during search of the residential premises of the applicant, a mobile phone alongwith a SIM card, 6 PAN cards, 5 Voter Identity Cards, 10 debit/credit cards, 8 cheque-books and several other documents were recovered. An analysis of the data contained in the aforesaid mobile phone revealed several fake tax invoices, ledgers, a list of 38 bank accounts and Form GSTR-3B etc. Analysis of the mobile data revealed communication of the applicant with other persons directing them to issue invoices, e-way bills etc. and hundreds of invoices issued in the name of various firms, were found in the mobile phone. In a laptop computer recovered from another premises of the applicant, tax calculations of various firms were there, the mention whereof was found in the mobile phone data. A person present at the location had introduced himself as Chandra Prakash Kriplani and he stated that he was an employee of the applicant and he produced the electricity bill of the building in the name of the applicant. Two laptop computers, 10 mobile phones and some rough papers having details of many fake firms viz, the name of the proprietor and GSTIN addresses etc. were also recovered. It is said that the mobile phones were used to receive one time password (OTP) at the time of GST registration and the aforesaid details matched with the data available in the mobile phone of the applicant, indicating the applicant's control over the fake firms. A currency note counting machine, a printer and a router were also recovered from the premises of the applicant.

5. As a result of the simultaneous searches conducted at 4 locations of the applicant on 20.12.2019 and also upon investigation, it was found that 126 fake firms have been created by the applicant and Chandra Prakash Kriplani and bogus invoices were issued by the aforesaid firms for passing on inadmissible input tax credit to various purchasers, without any actual supply of goods.

6. As per the prosecution case, it has been revealed during investigation that the total invoice value of the fake supplies made by the aforesaid 126 bogus firms is Rs. 691.35 Crores and the total GST evasion involved in it is Rs. 100.30 Crores.

7. In his statement recorded on 20.12.2019, the aforesaid Chandra Prakash Kriplani stated that he was working as an employee of the applicant for the past 6-7 months and the applicant used to pay him Rs. 20,000/- per month as salary; that he had studied upto class-X only and that he used to generate e-way bills on the directions of the applicant. In his further statement recorded on 24.12.2019 and 27.01.2020, Chandra Prakash Kriplani has stated that all the firms were created by the applicant and a forged PAN and a Voter Identity Card had been prepared by the applicant in the name of one Pushpendra Kumar Gupta and on both the aforesaid documents, Kriplani's photographs had been used.

8. Out of the 126 bogus firms, proprietors of two such firms were examined and their statements were recorded, who gave statements implicating the applicant.

9. The prosecution also claims that during investigation and examination of the documents recovered from the applicant's premises, it has been found that he had invested huge amounts in purchasing properties either in his own name or in the name of his wife - Jyoti Verma. The applicant

had booked two flats in Anthela Project of M/s Bharat Nagar Housing, Agra and he had paid a sum of Rs. 42,25,656/- for the said flat during February 2019 to November 2019 from the third party bank accounts belonging to M/s Moon Stars Traders and M/s Kamal Trading Company. In respect of a flat booked in the name of the applicant's wife Jyoti Verma, the payments were made by M/s New India Pesticide, M/s R. S. Trading and M/s Moon Stars Traders.

10. During investigation, it has also come to light that while booking his flat in Bharat Nagar Housing, Agra, the applicant had given his mobile number as 9319709362 and it was found that four bogus firms, namely, Moon Star Traders, Arihant Corporation, JES Trading Company, R. S. Steel Trading Company are registered in GST department with the aforesaid mobile number. Rovin Sharma the proprietor of M/s R. S. Steel Company had stated in his statement recorded on 03.01.2020 that the applicant had taken his PAN card and Aadhar card etc. and that he had registered the firm.

11. As per the prosecution case, the applicant is the main master-mind behind issuance of bogus invoices without supply of goods, only to pass on inadmissible / fraudulent input tax credit, because of which the Government exchequer has suffered a huge loss of Revenue to the tune of more than Rs. 100 Crores. On 22.11.2021, the Investigating Officer, Central Goods & Services Tax & Central Excise, Commissionerate Agra has filed a complaint in the Court of Special Chief Judicial Magistrate, Agra against the applicant under Sections 132 (1) (b) of the CGST Act, 2017.

12. In the affidavit filed in support of the bail application, it has been stated that the applicant was engaged in the business of property dealing through his firm Shri Shanti Associates. On 31.12.2019, a summons under Section 70 read with Section 174 of CGST, 2017 was issued against the applicant directing him to appear at the Anti Evasion Branch, Central Goods & Services Tax & Central Excise, Commissionerate Agra on 03.01.2020. A similar notice was issued against the applicant's wife and her statement was also recorded. The applicant claims that Chandra Prakash Kriplani was his tenant and a copy of an affidavit dated 14.01.2020 of Chandra Prakash Kriplani has been annexed with the affidavit filed in support of the bail application wherein he has stated that he was a tenant of the applicant, that he could not pay rent of the house for the past two months because of which a quarrel took place between him and the applicant, that on 16.12.2019 when the applicant had come to recover the rent, the dispute escalated and the applicant had taken away a bag of Kriplani which contained some documents and Kriplani's mobile phone and the documents and the mobile phone recovered by the officers of CGST on 20.12.2019 were the aforesaid documents and the mobile phone. He also stated that his landlord (the applicant) is engaged in property dealing and finance business.

13. In the affidavit filed in support of the bail application, it has been claim that the applicant is involved in business of property dealing for a long time and that he has been falsely implicated in the present case by his tenant Chandra Prakash Kriplani.

14. A counter affidavit has been filed on behalf of the Union of India, wherein it has inter-alia been stated that the applicant was not engaged in the business of property dealing and the certificate of registration of Shri Shanti Associates, proprietor Nitin Verma, issued under Section 69 of the

Finance Act, 1994, a copy where of has been filed alongwith the affidavit filed in support of the bail application on behalf of the applicant himself, mentions the services "Franchise Services". Another document annexed with the affidavit filed in support of the bail application is a welcome letter / ID card dated 27.02.2009 issued by TLC Insurance (India) Pvt. Ltd., which reads thus - "We are happy to welcome you to be a part and parcel of the TLC family. Please find enclosed your TLC Membership ID Card. We are extremely confident that you will expand and promote your business to newer horizons." It has been averred in the counter affidavit that the aforesaid documents belie the applicant's claim of being engaged in the business of property dealing.

15. A copy of an affidavit dated 04.08.2021 affirmed by Chandra Prakash Kriplani has been annexed with the counter affidavit wherein he has inter-alia stated that he had signed his earlier affidavit dated 27.01.2020 under influence of the applicant's wife and because of the aforesaid affidavit, he had to suffer incarceration for one full year. It is further stated in his affidavit that the applicant's wife had assured that if Kriplani would act as per her directions, she will get her absolved of the present case and for this reason, he had signed a pre-typed affidavit, without having read the same.

16. The learned counsel for the applicant has submitted that the alleged offence under Section 132 (I) (b) CGST Act, 2017 is triable by a Magistrate and the maximum prescribed punishment is 5 years' imprisonment and, therefore, the applicant ought not to have been arrested for the aforesaid offence and that he is entitled to be released on bail on this ground also.

17. The learned Counsel for the applicant has further submitted that earlier, this Court had granted anticipatory bail to the applicant by means of an order dated 05-01-2021 passed in Anticipatory Bail Application No. 4116 of 2020, for a period of six weeks or till conclusion of the enquiry under Section 70 (1) of the CGST Act, whichever was earlier.

18. The Learned counsel for the applicant has also submitted that the co-accused Chandra Prakash Kriplani, from whose possession the alleged incriminating material was recovered, has already been released on bail and, therefore, the applicant is also entitled to be released on bail on the ground of parity.

19. The learned Counsel for the applicant has further submitted that in para 2.3 of the complaint, it has been alleged that a currency note counting machine, a printer and a router were also recovered from the premises of the applicant, where the co-accused Chandra Prakash Kriplani was found present and from the aforesaid recovery the Prosecution assumed that black money generated from the alleged fake firms was counted by the note counting machine and the printer was used to print bogus e-way bills and invoices. He has submitted that neither any bogus invoice nor any bogus e-way bill has been recovered from the applicant's possession. Moreover, as per the averments made in complaint itself, the applicant had booked two flats and he had paid a sum of Rs. 42,25,656/- for the flat during February 2019 to November 2019 from bank accounts belonging to M/s Moon Stars Traders and M/s Kamal Trading Company. His submission is when the payment has been made through banking channel, no black money was involved in the transactions. He has further submitted that no alleged fake invoice claiming input tax credit has been placed on record and no such invoice has been verified so as to prove that it is fake. Based on the aforesaid submissions, the

learned Counsel for the applicant claims that the applicant has been falsely implicated in the present case and he is entitled to be released on bail.

20. Opposing the prayer for grant of bail, the learned counsel appearing for the Union of India has submitted that the applicant is an economic offender and he has caused a loss of Government Revenue to the tune of more than Rs. 100 Crores by creating fake firms and by issuing bogus invoices and by wrongly claiming input tax credit.

21. The learned counsel for the Union of India has submitted that from the material recovered from the premises of the applicant during the search conducted on 20.12.2019 and from the analysis of the data available on the mobile phone recovered during the search, it is established that the applicant was the master-mind behind the large scale evasion of GST by issuing fake invoices and thereby wrongly claiming Input Tax Credit and that he was in control of 126 bogus firms that had been created by him for issuing fake invoices.

22. The learned counsel for the Union of India has placed reliance upon a judgment of Hon'ble Supreme Court in the case of State of Bihar Vs. Amit Kumar, 2017 (13) SCC 751 in which the Hon'ble Supreme Court has held that "socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously."

23. The learned counsel for the Union of India has placed reliance on a judgment in the case of Chhaya Devi Vs. Union of India, 2021 (52) GSTL 390 (All.), wherein a coordinate Bench of this Court held as follows: -

"14. The offence alleged against the applicant is economic offence in which the evasion of duty amounting Rs. 62,10,28,165/- is made against the applicant. Although the offence is punishable with imprisonment of five years yet the evasion of huge amount of duty is a great loss to the Government Exchequer. As such the alleged offence is economic.

15. The Hon'ble Apex Court in State of Gujrat Vs. Mohanlal Jitmalji porwal and others (1987) 2 SCC 364 in para-5 held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest ..... "

16. The Hon'ble Apex Court in Y.S. Jagan Mohan reddy Vs. CBI (2013) 7 SCC 439 held: the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of

public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country ....."

24. In *Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439, relied upon by this Court in *Chhaya Devi (Supra)*, the Hon'ble Supreme Court was dealing with an application for grant of bail in a case under Section 120-B read with Sections 420, 409 and 477-A of the Penal Code, 1860 and Section 13 (2) read with Sections 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988 against Y. S. Jagan Mohan Reddy, Member of Parliament and 73 others, the Hon'ble Supreme Court held as follows: -

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. 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 which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

25. In *Y. S. Jagan Mohan Reddy (supra)*, the Hon'ble Supreme Court was dealing with allegations of offences which were punishable with upto life imprisonment, but in the present case, the maximum punishment that can be imposed upon the applicant is five years' imprisonment. Moreover, the offence is compoundable as per the provision contained in Section 138 of the CGST Act, sub-Section (1) whereof provides that "Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed".

26. The learned counsel for the applicant has placed reliance on a judgment of the Hon'ble Supreme Court in the case of *Dataram Singh Vs. State of Uttar Pradesh and another*, (2018) 3 SCC 22, wherein the Hon'ble Supreme Court was pleased to reiterate the law of bail in the following words: -

"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

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5. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v. Union of India* [(2018) 11 SCC 1] going back to the days of the Magna Carta. In that decision, reference was made to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] in which it is observed that it was held way back in *Nagendra v. King-Emperor* [AIR 1924 Cal 476] that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. Hutchinson* [AIR 1931 All 356] wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days. "

27. In a recent decision in the case of *Satender Kumar Antil versus Central Bureau of Investigation*, 2022 Scc OnLine SC 825, the Hon'ble Supreme Court has summarized and reiterated the law regarding grant of bail in economic offences, as laid down in its earlier decisions, in the following words: -

"66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:--

#### Precedents

- *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the

allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

- Sanjay Chandra v. CBI, (2012) 1 SCC 40:

"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI." (emphasis supplied)

28. Analyzing the facts of the case in light of the law laid explained in the case of Y.S. Jagan Mohan Reddy, Dataram Singh and Satender Kumar Antil (Supra), it has to be taken into consideration that (1) the applicant has been implicated on the basis of the statement of a co-accused Chandra Prakash



Kriplani, who has already been granted bail by this Court; (2) earlier, the applicant himself had been granted anticipatory bail by this Court; (3) the applicant has no criminal history; (4) the department had initiated proceedings on 31.12.2019 by issuing a summons under Section 70 of CGST Act and after completion of the investigation, on 22.11.2021 the department has filed a complaint in the Court of Special Chief Judicial Magistrate, Agra and, therefore, it cannot be said that now the applicant is in a position to influence the investigation of the case; (5) the applicant is languishing in jail since 26-09-2021; (6) the maximum punishment that can be imposed upon the applicant is five years' imprisonment and (7) the offence is compoundable as per the provision contained in Section 138 of the CGST Act, I am of the considered view that the applicant is entitled to be released on bail.

29. In light of the preceding discussion and without making any observation on the merits of the case, the instant bail application is allowed.

30. Let the applicant Nitin Verma be released on bail in Case No. IV - CE (9) CP / Agra / Nitin / 25119 251/2019, under Sections 132 (1) (B) (I), Central Goods & Services Tax Act, 2017, Police Station Hari Parvat, District Agra on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below, subject to the following conditions:-

(i) The applicant will not tamper with the evidence during the trial.

(ii) The applicant will not influence any witness.

(iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

(iv) The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court to any police officer or tamper with the evidence.

31. In case of breach of any of the above condition, the prosecution shall be at liberty to move an application before this Court seeking cancellation of the bail.

Order Date :- 03.08.2022 Jaswant