

# Madhav Gopaldas Shah vs State Of Gujarat on 5 March, 2019

**Author: A.Y. Kogje**

**Bench: A.Y. Kogje**

R/CR.MA/1665/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 1665 of 2019

=====

MADHAV GOPALDAS SHAH

Versus

STATE OF GUJARAT

=====

Appearance:

MR ND NANAVALY, LEARNED SENIOR ADVOCATE WITH MR CHETAN K

PANDYA(1973) for the Applicant(s) No. 1

MR DM DEVNANI, APP for the Respondent(s) No. 1

RULE SERVED BY DS(65) for the Respondent(s) No. 2

=====

CORAM: HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 05/03/2019

ORAL ORDER

1. This application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 for regular bail in connection with File No. CCST/ADENF/FSU-7/MadhavArrest/2018-19/B.4 & AC/U- 6/Arrest/2018-19/B.5811 of the office of the Chief Commissioner of State Tax, Flying Squad Unit-7, Gujarat State Ahmedabad for the offence punishable under Sections 69(1) of the Gujarat Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017.

2. Learned advocate appearing on behalf of the applicant submits that considering the nature of offence, the applicant may be enlarged on regular bail by imposing suitable conditions.

3. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State has opposed grant of regular bail looking to the nature and gravity of the offence.

R/CR.MA/1665/2019 ORDER

4. Learned Advocates appearing on behalf of the respective parties do not press for a further reasoned order.

5. I have heard the learned advocates appearing on behalf of the respective parties and perused the papers. Following aspects are considered :-

I) The applicant is in custody since 30.12.2018; II) Submission of learned senior advocate for the applicant that the applicant is a young person pursuing studies in Chartered Accountancy and was employed under the co-accused Hitendra Shah;

III) Submission of learned advocate for the applicant that the applicant was acting under the instruction of the said Hitendra Shah and has not derived any financial gain;

IV) Considering the role emerging against the applicant as narrated in the case papers, which can be recorded as under:

" Involvement of Applicant Mr. Prakashsinh Udavat obtained GST number in the name of Om Enterprise in March, 2018 and bogus bills amounting to Rs. 106.40 crores have been issued till July, 2018. As per the statement of Mr. Prakashsinh, only bogus bills have been issued in this entire case. No actual physical transfer of goods or transaction has been carried out. He has stated in the statement u/s 70 that this scam has been committed by Mr. Hitendra Shah and Madhav Shah. Thus, active involvement of Mr. Madhav Shah and Hitendra Shah has been found in this scam. Hitendra Chandrakant Shah has been arrested on 26.12.2018 and produced R/CR.MA/1665/2019 ORDER before this Ld. Court with production memo vide file no. AC/U-6/ARREST/2018-19/B and presently, accused Hitendra Shah is under judicial custody.

Mr. Hitendra Shah obtained registration no. 24075605012 under the VAT Act as the partner in Pashwanath Engineering. This registration number was cancelled with effect from 31.3.2017. Om Enterprise has not shown any supply provided to Shri Pashwanath Engineering Industries. Despite this, Pashwanath Engineering (Hitendra Shah) has deposited Rs. 3,36,18,402/- in the bank account of Om Enterprise. In the same way, Om Enterprise has also paid Rs. 3,70,01,000/- to Pashwanath Engineering (Hitendra Shah). In fact, it is found that transfer of this huge amount has been done as consideration of only billing transaction without any actual sale or purchase. Under such circumstances, it is found that Mr. Hitendra Shah and Madhav Shah are the masterminds of this entire scam.

Further, Prakashsinh Udavat has stated that Hitendra Shah and Madhav Shah have trapped him in this case by alluring and made a bogus billing. Thus, as statement of the accused is admissible under section 70, there is no reason to disbelieve it. In view of the same also, Mr. Madhav Shah and Hitendra Shah are involved as master mind in this case.

The businessman Prakashsinh Udavat has obtained other registration number in the name of Avi Enterprise at the same address of the business wherein also bills worth huge amount of 79.15 crores have been issued. There is a full possibility of involvement of Madhav Shah and Hitendra Shah therein also. All the facts can be exposed only at the end of complete investigation.

R/CR.MA/1665/2019 ORDER In the case of Om Enterprise, registration number was obtained on 28/03/2018, and Prakashsinh Udavat, Madhav Shah and Hitendra Shah have generated bogus bills for crores of rupees on the same day. Upon examination of entries of bank accounts, after obtaining registration number and generating billing for crores of rupees on the same day, Rs. 49,44,000/- has been transferred to J. Jitendrakumar & Company by Om Enterprise on 29/03/2018 on the next day. Om Enterprise has not supplied anything to J. Jitendrakumar. It is noteworthy that proprietor of J. Jitendrakumar was Mr. Hitendra Shah. Its registration number was 24080101042 under VAT law. In the said case also, as bogus billing was found, registration number of J. Jitendrakumar was revoked ab-initio. As per GST law, the said number is not active. Despite that, huge amount has been paid by Om Enterprise. It appears that payment has been made to Hitendra Shah for the consideration of the said billing. Hitendra Shah and Madhav Shah are associated with each other. Thus, Hitendra Shah is involved in the entire scam.

On 21/12/2018, inspection of the site was carried out by Shri S.V. Karwal, Assistant State Tax Commissioner at the residential address of the accused Hitendra Shah. During that investigation, bank statements of four other firms apart from Om and Avi Enterprise were found out from the residence of Hitendra Shah. In this regard, statement dated 26/12/2018 of Hitendra Shah under the provisions of The Gujarat Goods and Service Tax Act, 2017 and Section-70 of Central Goods and Service Tax Act, 2017 was recorded, wherein he has stated that bank statements of all these four firms were obtained by R/CR.MA/1665/2019 ORDER Madhav Shah for reversing the entries from S.K. Enterprise to Parshwanath Engineering. Moreover, upon asking Hitendra Shah as to whose proprietary firm this S.K. Enterprise is, he stated that management of this firm was being done by the accused Madhav Shah. Thus, the accused Madhav Shah is doing management of proprietary firm of third person for billing activity. Moreover, in respect of the above-stated four firms, whose bank statements were found from the place of Hitendra Shah, the said Hitendra Shah further accepts that the accused Madhav Shah was doing management of the said four firms. Thus, it is proved from the statement of Hitendra Shah that Madhav Shah was associated with billing of above-stated four firms.

Out of the four bank statements found from the house of Hitendra Shah, one is of Shivay Enterprise. Besides aforesaid cases, direct involvement of accused Madhav Shah has been revealed in case of this businessman. Shri Tushar Rajubhai Makwana is proprietor of Shivay Enterprise, On interrogating after serving summons under Section-70 by Shri H.K. Joshiyara, Assistant State Tax Commissioner, he has

admitted that he drives school vardhi van. He is working as a driver. Further he states that, the bank account was opened by Samkitbhai Shah at the instance of Hitendra Shah and Madhav Shah. Both the accused persons were paying Rs.8000/- per month to Tusharbhai and for that, they used his documents and obtained G.S.T. Number and obtained his signature in many blank cheque books. As he needed money for buying car, he got trapped in the allurements given by the aforesaid accused persons to pay the installment of the car. It is noteworthy here that, at the time of obtaining G.S.T. Number of Shivay R/CR.MA/1665/2019 ORDER Enterprise, the mobile number of Mr. Hitendra Shah was provided and the E-mail ID of Madhav Shah was provided. As all the process of G.S.T. was online, it is obvious that, any type of notice or messages would be sent to the said mobile number and E-mail ID. The G.S.T. Number of Shivay Enterprise was obtained by two accused persons Hitendra Shah and Madhav Shah on 07/12/2017. And in the aforesaid case, the turnover of sale of Rs.173.58 crores was mentioned by both these accused persons in the G.S.T.R-1 Statements for the period of total ten months from December-2017 to September-2018. In which the amount of due tax is 21.12 crores. Thus, the loss of Rs.21.12 crores has been caused to the Government treasury by Madhav Shah in the case of Shivay Enterprise in addition to the previously mentioned cases.

The two probable addresses of Mr. Madhav Shah which have been available are (1) 1, Green City, Bopal and (2) Kirtisagar Apartment. On both these addresses, the inspection of the site was conducted on 21/12/2018. But, during the inspection, the above addresses were not found correct. During the above search, as we contacted Mr. Madhav Shah through mobile, he replied in an evasive manner and did not remain present. Moreover, he did not mention his correct address. Therefore, on 28/12/2018, the site inspection was conducted on two other probable addresses. As both those two addresses were not found correct, the investigation was continued and as his address was found secretly on the next day, the police reached at the residence of Mr. Madhav Shah on 29/12/2018 at: 133, Iskon Green Bungalows, Ghuma village, Bopal where the accused persons were found. They were served summons u/s 70 and R/CR.MA/1665/2019 ORDER asked to submit their statements. Pursuant to the same, facts regarding this entire billing scam, concerned evidence and statements of concerned persons were produced before the accused Madhav Shah and his detailed interrogation was carried out and thereafter, he admitted having been involved in the said scam. Moreover, he stated about the role of other accomplices in the said scam. Further, he also stated modus operandi of the entire scam. As per the same, in order to commit the scam, Hitendra Shah, Prakashsinh Udavat and present accused namely Madhav Shah in collusion with other persons set up firms in the name of economically backward persons, obtained GST number, misused the said numbers and obtained input credit illegally for invoices of stock worth crores of rupees without actual physical transaction and caused huge loss to government revenues. Wherein, aforementioned three firms namely Om Enterprise, Avi Enterprise and Shivay Enterprise are included. Moreover, accused Madhav Shah has admitted in his statement that he has also committed billing scam in Parshvanath Engineering and

S.K. Enterprise besides aforementioned three firms.

Further, accused Madhav Shah has stated detailed facts about commission he had received in lieu of billing scam."

V) Considering the aforesaid, the role of the applicant appears to be restricted to a limited extent as compared to the co-accused; VI) Considering the period of incarceration and the maximum sentence that can be imposed;

VII) Learned Additional Public Prosecutor under the instructions of R/CR.MA/1665/2019 ORDER the Investigating Officer is unable to bring on record any special circumstances against the applicant.

This Court has taken into consideration the law laid down by the Hon'ble Apex Court in the case of Sanjay Chandra v. Central Bureau of Investigation reported in [2012] 1 SCC 40.

6. In the facts and circumstances of the case and considering the nature of the allegations made against the applicant in the First Information Report, without discussing the evidence in detail, prima facie, this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail.

7. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with File No. CCST/ADENF/FSU-7/MadhavArrest/2018-19/B.4 & AC/U-6/Arrest/2018-19/B.5811 of the office of the Chief Commissioner of State Tax, Flying Squad Unit-7, Gujarat State Ahmedabad on executing a personal bond of Rs.10,000/= (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the trial Court and subject to the conditions that he shall;

- (a) not take undue advantage of liberty or misuse liberty;
- (b) not act in a manner injurious to the interest of the prosecution;
- (c) surrender passport, if any, to the lower Court within a week;
- (d) not leave the State of Gujarat without prior permission of the Sessions Judge concerned;

R/CR.MA/1665/2019 ORDER

(e) mark presence before the concerned Police Station once of every English calendar month for a period of six months between 11.00 a.m. and 2.00 p.m.;

(f) furnish the present address of his residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

8. The authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

9. Bail bond to be executed before the lower Court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions, in accordance with law.

10. At the trial, the trial Court shall not be influenced by the observations of preliminary nature qua the evidence at this stage made by this Court while enlarging the applicant on bail.

11. The application is allowed in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(A.Y. KOGJE, J) URIL RANA