

Qamar Ahmed Kazmi v. State Of Up

CRIMINAL MISC. BAIL APPLICATION No. 2329 of 2024 | Decision: 2024-03-01 | Allahabad High Court

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Reserved on 27.2.2024

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Court No. - 70

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 2329 of 2024

Applicant :- Qamar Ahmed Kazmi Opposite Party :- State of U.P. Counsel for Applicant :- Mr. Anoop Trivedi, Sr. Avocate and Mr. Ankit Shukla Counsel for Opposite Party :- G.A., Mr. Manish Goel, A.A.G. and Mr. Nitesh Kumar Srivastava

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Anoop Trivedi, learned Senior Advocate, assisted by Shri Ankit Shukla, learned counsel for the applicant and Shri Manish Goel, learned Additional Advocate General, assisted by Shri Nitesh Kumar Srivastava, for the State - opposite party.

2. The instant bail application has been filed on behalf of the applicant in Case Crime No. 394/2023, under Sections 419, 420, 467, 468, 471 & 120-B IPC, Police Station – Civil Lines, District – Meerut with the prayer to release him on bail during pendency of trial.

3. The prosecution story as set up in the FIR filed by the Incharge Inspector, Special Task Force (S.T.F.) is that the applicant has availed the input tax credit of more than Rs. 4,28,37,362/- for the period of 2017-18 to 2022-23 without actual movement of goods on the basis of forged and fictitious documents of supplies were procured from various non-existing firms i.e. Santosh Enterprises, Sandip Metal, Honey Metal and Rajpal & sons. Further after implementation of e-way bill system on the portal from the year 2018-19 till the month of May, 2023, e-way bills worth Rs. 17,33,83,966 have been cancelled by the applicant's firm without

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any valid reasons or reasonable explanation. It has been further averred that on verification of all those selling firms, either the firms were found non-existing or have not doing any business. It

has been further averred that the details of the trucks which were used for transportation of goods, have not been found in toll plazas situated on the alleged route of transportation.

4. Mr. Anoop Trivedi, learned Senior Counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present crime. He further submitted that the applicant is a proprietor of a registered firm which has been duly registered under the GST Act and registration is still valid and same has not been cancelled so far. He further submitted that all purchases have been made from registered parties such as M/s Santosh Enterprises, Sandip Metal, Honey Metal and Rajpal & sons, after checking their credentials from the G.S.T. portal. All the aforesaid firms were found duly registered under the G.S.T. Act and there was no red-flag against them as such in the normal course of business, the purchases were made on genuine tax invoices and admissible G.S.T. was deposited by the concerned parties. It is not in dispute that to the best of knowledge, the registration of selling dealers has neither been cancelled at the time of transaction nor till date i.e. selling dealer are still duly registered under the G.S.T. Act. He further stated that specific pleadings have been made in this respect in paragraph nos. 11 to 20 of this bail application and same has not specifically been denied in the counter affidavit filed by the State.

5. Mr. Trivedi further submitted that survey was conducted at the business premises of the applicant on 12.6.2023 in which no discriminating material was found against the firm of the applicant; however, some shortcomings were found which were duly explained and requisite tax thereof was accordingly deposited. He further submitted that thereafter notice dated

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3.1.2024 was issued under Section 74 of the Act of which detailed reply was submitted.

6. Mr. Trivedi further submitted that adjudication proceeding is still pending and no authority as contemplated under the GST Act has passed any quantification order for quantifying the excess claim of input tax credit or any order has been passed reversing the claim of input tax credit.

7. Mr. Trivedi has further averred that GST Act is a complete Code itself; the Act further contemplates all situation to be taken care of. He submitted that in the event, the G.S.T. Commissioner has reason to believe that any registered person has committed any offense or wrongly claim any input tax credit and retain any benefits in violation of the provisions of the Act or with intention to evade the tax or issue any invoice or bill without supply of goods or service in violation of provisions of the Act as well as Rules framed thereunder, which is reasonable violation of input tax credit or refund of tax, he can authorize any officer of State to arrest such person. The said power has been contemplated under Section 69 read with Section 132 of the GST Act. He further submitted that on the one hand neither any adjudication order has been passed for quantifying the excess claim of input tax credit, nor any adjudication order nor reversal of input tax credit nor any power has been exercised under Section 69 read with Section 132 of the Act.

8. Mr. Trivedi further submitted that the present FIR has not been lodged by any officers of G.S.T. department but by the Incharge Inspector, Special Tax Force rendering G.S.T. Act as redundant. He further submitted that on perusal of the FIR, it clearly shows that all contents of notice issued under Section 70 of the Act and notice issued under Section 74 of the Act are almost replica of the contents of the FIR. Basis of initiation of the proceedings as well as arrest of the applicant is almost similar to the facts mentioned

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in the notices under Section 70 and 74 of the Act. Copy of the notices issued under Section 70 and Section 74 of the Act has been annexed as Annexure No. 7 and 9 respectively, to this bail application.

9. In support of his contention, Mr. Trivedi has relied upon the bail orders passed by this Court in Criminal Misc. Bail Application No. 21848 of 2022 (Paras Jain @ Rohan Jain Vs. Union of India) decided on 29.7.2022, Criminal Misc. Bail Application No.26376 of 2023 (Ravinder Nath Sharma @ Ravubder Sharma Vs. Union of India) decided on 10.7.2023, Criminal Misc. Bail Application No. 48631 of 2021 (Vishwajeet Verma

Vs. State of UP) decided on 16.11.2021.

10. He further submitted that the applicant is old age person suffering from coronary artery disease and doctor has advised him for surgery and in support thereof he has annexed some prescription in this bail application as well as in the rejoinder affidavit. It is also submitted that there is no apprehension that after being released on bail, the applicant may flee from the course of law or may, otherwise, misuse the liberty of bail. The applicant is in jail since 22.12.2023; he has no such previous criminal history; the possibility of conclusion of trial in near future is very bleak. He prays that the applicant be enlarged on bail.

11. Rebutting to the said submission, Mr. Manish Goel, learned Additional Advocate General vehemently opposed the prayer of bail and submitted that present case is a glaring example of economic offense and criminal proceedings can be initiated against the applicant. He further submitted that there was no actual movement of goods from one place to another. The present case of excess claim of input tax credit is based on fake transaction which has been shown by the applicant. He further submitted that applicant used to show purchases/ supply from bogus firm and instead of actual supply only forged tax invoices

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have been exchanged. He further submitted that purchases have been shown from M/s Santosh Enterprises, Sandip Metal, Honey Metal and Rajpal & sons and said firms were either closed or non-existing. He submitted that at the time of inspection the said firms was either not found at the place of registration or found closed or other firms were found under operation at the registered place. In support of his contention, he has relied upon the detailed inquiry report made from the toll plazas situated at the alleged rout of transportation of goods in which no details were found for movement of goods from the truck numbers mentioned by the applicant at the given date and time. He further submitted that the said information shows that purchases shown by the applicant were bogus. He further submitted that it was mandatory for the transporters to get RFID tag affixed on the windscreen of the truck during movement of goods. The said RFID tags were not

being used by the transporters on their trucks which has been allegedly shown for use of transportation of goods of the applicant firm.

12. On a pointed query put to Mr. Goel whether there is any notification issued by the GST department for mandatory use of RFID tag, he refers para 13 of counter affidavit as well as Annexure no. CA-3 where notification dated 7.9.2018 has been filed making it compulsory to get the RFID tag affixed on the windscreen of the vehicle used for transportation of goods. He further submitted that once the trucks allegedly used for transportation of goods do not have RFID tag, the supply of goods cannot be treated to be genuine and correct. He further submitted that various statements were recorded and copy of few statements have been annexed as Annexure no. CA-2 of the counter affidavit showing that at the time of survey selling firms were non-existing.

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13. Mr. Goel further submitted that huge amount / value of e-way bill has been cancelled by the applicant's firm but no explanation whatsoever has been submitted by them till date, which itself shows that no movement of goods has been taken place and merely paper work has been done for availing excess input tax credit, which is not permissible under the Act. He further submitted that the documentary evidence as well as inspection revealed that it was not a case of simple evasion of GST but of creating forged and fabricated documents as well as various acts and omission for cheating; the applicant was continuously deceiving the State, and fraudulently and dishonestly usurp huge money and cause losses to the State exchequer.

14. In support of his contention, Mr. Goel has relied upon the judgment of Delhi High Court in the case of Tahir Husain Vs. Assistant Director E.D., 2022 SCC online Del 4038, which has been affirmed by Supreme Court in the case of Tahir Hussain Vs. Assistant Director E.D. (Special Leave Petition Criminal Diary No. 606 2023) decided on 20.2.2023. He further relied upon the judgement of Supreme Court in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another

(2004) 7 SCC 528.

15. He further placed reliance upon the judgments of this Court passed in the cases of Shahzad Alam Vs. State of U.P., 2020 SCC OnLine All (DB) and Govind Agarwal Vs. State of U.P., 2020 SCC OnLine All, on the point that the GST Act does not impliedly or explicitly repeal the provisions of the Indian Penal Code, 1860, or the Code of Criminal Procedure, 1973.

16. He further placed reliance upon the judgment of Bombay High Court passed in the case of Yogesh Jagdish Kanodiya Vs. State of Maharashtra, 2021 SCC OnLine BOM (DB); Madhya Pradesh High Court in the cases of Ajay Khanna Vs. State Tax Anti Evasion Bureau, Jabalpur, 2019 SCC OnLine MP and 7

Jagdish Kanani Vs. Commissioner of CGST, 2019 SCC OnLine All; Delhi High Court in the case of Rajesh Jindal Vs. Commissioner of Central Tax GST, Delhi, 2018 SCC OnLine Del; and this Court in the case of Ranjeet Vs. Union of India; 2018 SCC OnLine All, in which it has been categorically held that bail can be rejected in respect of the offences of G.S.T. Act.

17. He further placed reliance upon the judgments of Hon'ble the Apex Court passed in the cases of Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, 2013 (7) SCC; Central Bureau of Investigation Vs. Ramendu Chattopadhyay; 2020 (14) SCC; Tarun Kumar Vs. Assistant Director, Directorate of Enforcement, 2023 SCC OnLine SC; State of Bihar and another Vs. Amit Kumar Alias Bachcha Rai; 2017 (13) SCC; Nimmagadda Vs. Central Bureau of Investigation; 2013 (7) SCC; Serious Fraud Investigation Office Vs. Nitin Johari and Another; 2019 (9) SCC; State of Gujarat Vs. Mohanlal Jitamali Porwal and Another; 1987 (2) SCC, on the point of rejection of bail relating to economic offenses.

18. He further placed reliance upon the judgment of the Hon'ble Apex Court in the cases of Pawan Alias Tamatar Vs. Ram Prakash Pandey and another; 2002 (9) SCC; Ram Pratap Yadav Vs. Mitra Sen Yadav and another; 2003 (1) SCC; P. Chidambaram Vs. Directorate of Enforcement; 2019 (9) SCC, Munni Lakshmi Vs. Narendra Babu and another; 2023 SCC

OnLine SC; Sunil Kumar Vs. State of Bihar and another;
2022 (3) SCC, in which it has been held that entire material collected by the Investigating Agency to be considered at the time of consideration of bail application.

19. Rebutting to the aforesaid submissions, Mr. Anoop Trivedi, learned Senior Counsel appearing on behalf of applicant has relied upon the judgment of Hon'ble the Apex Court in the case of P. Chidambaram Vs. C.B.I. (2020) 13 SCC 337 in which it has

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been held that while deciding the bail application an elaborate examination of evidence and detailed reasons touching upon the merits of the case, which may prejudice the accused should be avoided and each case should be looked into independently.

20. Mr. Trivedi further submitted that it is incorrect on the part of the opposite party to submit that there was no actual movement of goods. He further submitted that applicant has furnished in detail the list of truck numbers which were used for transportation of goods and along with the same, the applicant has given details of payment made through fast tag, which is connected with the vehicle number & chassis number. He further submitted that neither any inquiry nor any order nor any material has been brought on record to suggest that the amount was not deducted nor number of trucks used for transportation of goods found fictitious; in other words, there was actual movement of goods, which is un-rebutted till date.

21. After hearing the rival submissions, this Court finds that there is no dispute that prima facie, applicant is involved in availing excess input tax credit as well as cancellation of e-way bill of the huge value by the proprietorship of his firm without any reasonable reason. The department has already issued notice under Section 70 and 74 of the GST Act against the firm of the applicant. Further the record reveals that till date no adjudication order has been passed by the competent authority quantifying the excess availing the input tax credit. The record further reveals that neither any order has been passed by the competent authority cancelling the registration of selling dealer in question nor the registration of the applicant's firm has been cancelled.

22. The Hon'ble Supreme Court in case of Sanjay Chandra Vs. CBI, [2012 1 SCC 40], has referred the case of State of Kerala Vs. Raneef, [(2011) 1 SCC 784], to observe that in deciding the bail applications an important factor which should certainly be taken
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into consideration by the court is the delay in concluding the trial. Here, taking into consideration the course of investigation adopted by the Department, the evidence, so collected, the trial will take considerable time and it may happen, if denied bail, the judicial custody of applicant can be prolonged beyond the statutory period of punishment which is five years.

23. Section 69 read with section 132 of the Act provides for punishment of wrong availment of input tax credit with imprisonment for a term which may extend to five years and fine. It further provides that every second or thereof all the offense committed by the registered person shall be punishable. Further Section 138 of GST Act provides the compounding all the offense committed by the registered person being caused after payment of tax and interest to the amount of such wrong availment of input tax credit.

24. Taking into consideration the provisions of law and the fact that the Commissioner is empowered to recover the due amount and propose for abating the proceedings and as the trial will take its own time to conclude, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

25. Hon'ble the Supreme Court in the case of Sanjay Chandra Vs. C.B.I. (2012) 1 SCC 40 has held that seriousness of the offenses alone is not conclusive of the applicant's entitlement to bail.

26. Keeping in view the nature of the offence, argument advanced on behalf of the parties, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of Dataram Singh Vs. State of U.P. and another reported in (2018)3 SCC 22 and recent judgement dated 11.7.2022 of the Apex Court in the case of Satendra Kumar Antil Vs. C.B.I., passed in S.L.P. (CRL.) No. 5191 of 2021 and without expressing any opinion on
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the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.

27. Let the applicant namely Qamar Ahmed Kazmi be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the court concerned subject to following conditions and further, before issuing the release order, the sureties be verified:-

(i). The applicant will surrender his passport, if any, and not to leave the country without permission of the trial court concerned. In case, he has no passport he will file an affidavit to this effect before the trial court prior to release him on bail.

(ii). The applicant will deposit of Rs. 25 lacs before the trial court prior to release him on bail and same shall be kept in an interest bearing account of some nationalized bank and shall be forfeited in case of violation of any of conditions imposed by this order.

(iii). The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial.

(iv). The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail.

(v). That the applicant shall not, directly or indirectly, make any 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 or to any police officer;

(vi). The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as

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abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant.

(vii). The applicant shall personally appear before the trial court fortnightly in every calendar month.

28. In case of breach of any of the above conditions, the bail of the applicant shall be deemed to be cancelled without any further reference of this Court and State shall forfeit of the amount of Rs.

25 lacs deposited by the applicant.

Order Date :- 01/03/2024 Rahul Dwivedi

[Piyush Agrawal, J.]

2024-03-01T16:16:02+0530 High Court of Judicature at Allahabad