

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO.1724 of 2021

=====
==

SUPRIMKUMAR JITENDRABHAI PATEL

Versus

STATE OF GUJARAT

=====
==

Appearance:

MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1

MR MITESH AMIN, PUBLIC PROSECUTOR with MR.J.K.SHAH, APP (2) for
the Respondent(s) No. 1

RULE SERVED(64) for the Respondent(s) No. 2

=====
==

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 03/05/2021

ORAL ORDER

1. Heard the learned advocates for the respective parties through video conferencing.
2. The present application is filed under Section 439 of the Code of Criminal Procedure, 1973 in connection with File No.CCST/STO/ENF/FSU9/SUPRIM PATEL/202021/B.1 registered with the Office of Chief Commissioner of State Tax, Gujarat State, Dist.Ahmedabad for the offences punishable under Section 132(1)(a) of the Central Goods and Service Tax Act, 2017 (CGST Act) and Gujarat Goods and Services Tax Act, 2017 (GST Act).
3. The applicant was taken into custody on 04.12.2020 at Unjha and then taken to GST Office at Rajyakar Bhawan, Ashram Road, Ahmedabad and has been shown arrested on 07.12.2020 by the State Tax Officer, Flying Squad Unit9, Gujarat State, Ahmedabad, in connection with the alleged offence R/CR.MA/1724/2021 ORDER punishable under sections 132(1)(a) of the CGST Act and the CGST Act by exercising powers under section 69 of the CGST Act and the GST Act. It is alleged that the applicant had generated away bills of 16 firms by concealing the identity of the real purchaser and real seller and has caused huge revenue loss to the tune of Rs.9.60 corers by evading tax.
- 3.1 Learned advocate Mr.Pandya appearing for the applicant has submitted that the offence is triable by the Court of Magistrate under Section 138 of the CGST and the maximum

imprisonment punishable is for five years. He has invited attention of this Court to the complaint being Case No.11282 of 2021 filed before the Court of Additional Chief Metropolitan Magistrate on 04.02.2021. He has referred to the various contents of the complaint and has submitted that in fact it reveals that the applicant is wrongly roped in all 16 firms, whereas prima facie it appears that the name of the applicant is only disclosed in 04 firms. It is also submitted that the total amount of evasion of tax of such firms would come to around Rs.1,60,00,000/ and the applicant is ready and willing to deposit some amount as determined by this court. It is submitted that now the investigation is over and hence, the applicant may be released on bail.

R/CR.MA/1724/2021

ORDER

4. Vehemently opposing the present application, learned Public Prosecutor Mr. Mitesh Amin has submitted that in fact this is a huge scam running into crores of rupees. He has submitted that there are 63 firms connected with the applicant which have forged 1511 bills running into Rs.1,44,00,000/. He has submitted that there is no cooperation of the applicant in the investigation. Learned Public Prosecutor has also invited attention of this court to the investigation papers and has submitted that though various questions were put to the applicant, no satisfactory answers are given. It is submitted that the FSL had also extracted the data from the mobile of the applicant, wherein the names of various fictitious firms have been revealed, however, the applicant has not given any satisfactory answer to the investigating authority with regard to his involvement with the aforesaid firms. Thus, he has submitted that looking to the role of the applicant and the loss of the tax revenue, he may not be released on bail.

5. Heard the learned advocates of the respective parties and also perused the papers of investigation and complaint.

6. The case of the prosecution is that the applicant has operated 16 fictitious firms and a tax liability to the tune of Rs.9,60,47,253/ had R/CR.MA/1724/2021 ORDER been evaded by misusing the registration numbers of various firms. The investigation culminated in complaint Case No.11282 of 2021 which was filed before the Additional Chief Metropolitan Magistrate, Ahmedabad on 04.02.2021. A close perusal of the complaint prima facie reveals that there are 16 firms, which were part of scrutiny by the investigating agency. As per the case of the prosecution, the applicant is involved in misusing the registration numbers of these 16 firms and the total tax evasion by generating away bill without revealing the true identity of the real purchaser or real seller is stated to be Rs.96,047,253/. The court has also examined the role and names connected with such firms and prima facie it appears that the applicant is involved in four firms viz: Meet Traders(Rs.39,39,864/ tax evaded), Ravi Enterprise (Rs.40,14,306/ tax evaded), V.S.Trading (Rs.38,06,024/ tax evaded) and Vikas Enterprise (Rs.38,99,983/ tax evaded). Except these four firms nothing is pointed to this Court with regard to the complicity of the applicant in generating away bills of other firms. The total tax evasion of these four firms comes to Rs.1,60,00,000/ approx. The applicant is also ready and willing to deposit some of the amount as per the instructions received by learned advocate Mr.Pandya from the applicant.

7. Under the circumstances, having perused the Materials placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail, at this stage, this Court is inclined to grant regular bail to the applicant. This Court has considered following aspects;

- (i) The role attributed to the accused;
- (ii) The applicant is aged around 30 years;
- (iii) The applicant is under the judicial custody since 07.12.2020.
- (iv) Prima facie, it appears that the complicity of the applicant in generating away bills for evading the tax by misusing registration number is in four firms instead of 16 firms, and total tax evasion comes to Rs.1,60,0000/ aprox.
- (v) the investigation is over as the complaint is already filed apropos the applicant;
- (vi) The offence is punishable with maximum of 5 years imprisonment.

8. This Court has also taken into consideration the law laid down by the Apex Court in the case of Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40.

9. In the result, the present application is allowed and the applicant is ordered to be released R/CR.MA/1724/2021 ORDER on regular bail in connection with a File No.CCST/STO/ENF/FSU9/SUPRIM PATEL/202021/B.1 registered with the Office of Chief Commissioner of State Tax, Gujarat State, Dist.Ahmedabad, on executing a personal bond of Rs.10,000/ (Rupees Ten Thousand Only) with one local surety of the like amount to the satisfaction of the learned 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 his passport, if any, to the lower court within a week;
- (d) not leave the State of Gujarat without prior permission of the concerned Trial Court;
- (e) mark presence before the concerned Police Station on alternate every Monday for initial six months and thereafter, on alternate Monday of every English calendar month, for a period of six months, between 10:00 a.m. and 2:00 p.m.;
- (f) furnish latest address of 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 the Trial Court;

(g) deposit an amount of Rs.10,00,000/ (Rupees Ten lacs) within a period of 10 (ten) days before R/CR.MA/1724/2021 ORDER the trial Court from the date of receipt of writ of this order.

On depositing the aforesaid amount, the applicant shall be released on bail. The applicant shall file an undertaking that the remaining amount of Rs.30,00,000/ (Rupees Thirty lacs) shall be deposited within a period of 12 (twelve) weeks. It goes without saying that if the applicant does not abide by the conditions imposed by this Court, the bail will stand automatically cancelled.

10. 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 concerned Trial Court will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the Trial Court having jurisdiction to try the case.

11. It will be open for the concerned Court to delete, modify and/or relax any of the above conditions in accordance with law. At the trial, learned 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. Rule is made absolute accordingly.

R/CR.MA/1724/2021 ORDER

12. Registry is directed to intimate the concerned jail authority and the concerned Sessions Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

13. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned jail authority and the concerned Sessions Court through Fax message, email and/or any other suitable electronic mode. Direct service is permitted.

Sd/-

(A. S. SUPEHIA, J) NVMEWADA