

IN THE HIGH COURT OF ORISSA AT CUTTACK

BLAPL No.9043 of 2021

Amit Kumar Agarwal @ Amit Agarwal .... Petitioner  
Mr. A. Mohanty, Sr. Advocate

*-Versus-*

State of Odisha and another .... Opposite Parties  
Mr. Sunil Mishra, Standing Counsel CT & GST

CORAM:  
JUSTICE R.K. PATTANAIK

DATE OF HEARING : 07.12.2021    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 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 challenging rejection order dated 30.09.2021 passed in BLAPL No.384 of 2021 by the learned Sessions Judge, Jharsuguda on the grounds inter alia that it is not tenable in law and therefore, appropriate direction should be made for his release from judicial custody on such terms and conditions, as deemed just and proper, in the fact and circumstances of the case.

2. The petitioner is a Chartered Accountant and is alleged of utilizing and passing bogus ITC of Rs.3,19,64,16,609.16/- that included claim and availment of bogus ITC on the basis of fake invoices by creating and operating 13 fictitious firms. It is made to reveal from the record that on the basis of a confidential information and investigation concluded by the Deputy Commissioner of Sales Tax and Enforcement Unit, Sambalpur, report was submitted against the petitioner for having committed

offences under Sections 132(1)(b),(c)&(l) of the OGST Act which was registered as P.R. No.01 of 2021-22 corresponding to 2(C) CC Case No.275 of 2021.

3. With the satisfaction being arrived at during investigation, the petitioner was arrested in terms of Section 69 of OGST Act and was forwarded to the court concerned 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 ascertained that such establishments were not in existence. It is alleged that the so called proprietors of the fake firms never issued any authorization to anyone or the petitioner, who misutilised their identity documents for the purpose of registration and in respect of 10 remaining firms, the proprietors are still untraceable and the residential addresses declared found to be fake and therefore, steps are presently being taken to trace them out to ascertain the extent of tax fraud.

4. It is contended by the petitioner that the action of the authority concerned is clearly motivated one without any substance and that apart, the allegation of siphoning off huge amount of money by creating and operating fictitious firms to be completely false and fabricated and without any merit and being a Chartered Accountant, he is totally innocent and has been subjected to unnecessary harassment. It is contended that being a Chartered Accountant, he only registered the alleged firms based on documents supplied to him which is also reflected in the investigation report submitted by the CT and GST Enforcement Unit, Sambalpur. The petitioner contends that he is neither a registered dealer nor duly authorized under the OGST Act as a registered person but was only engaged in registration of the firms

and therefore, nowhere remotely associated with the business conducted by the firms, inasmuch as, as a licensed Chartered Accountant has only rendered professional service vis-à-vis registration of the alleged firms.

5. Learned counsel for the opposite party State contends that the petitioner though a Chartered Accountant was well aware of the procedural aspects but then never obtained proper authorization from the so called 13 fictitious business entities, while obtaining registration, filing of returns and fulfilling other statutory requirements under the OGST Act which clearly proved his involvement in the creation and operation of said fake firms and such deliberate and intentional move was only to defraud the State and therefore, he is individually and severally liable under Section 132(1)(b),(c)&(l) of OGST Act which is punishable under Section 132(1)(i) thereof. In support of such contention, the learned counsel for the opposite party State referred to the materials one by one while countering the replies of the petitioner and also cited number of decisions of Supreme Court and other High Courts and orders passed rejecting the plea of bail highlighting upon the seriousness of the economic offences which constitute a class apart.

6. Learned Senior counsel appearing for the petitioner contended that the accused have never operated the so called business entities in collusion with others and as such, only maintained the professional relationship with the business establishment and in that respect, received remuneration. It is contended that the petitioner was never paid the amount by M/s. Radha Krishna Sales Corporation but only encashed the cheque amounts and handed it to over to the proprietor concerned. It is claimed that the petitioner merely created the firms in the capacity of a Chartered Accountant and was not involved with the operation of the accounts, in any manner whatsoever and was

neither aware about the availing of fake ITC nor was involved in availing and passing on of ITC and being a Chartered Accountant has not committed or caused to commit or retained any benefit or issued or received any invoice or goods and that apart, Section 132(1) and other relevant provisions of the OGST Act could not have been attracted for the period in question as it had come into force on and from 01.01.2021 and while contending so, the learned Senior counsel relied upon number of orders of this Court and other High Courts and claimed that the petitioner, who is merely a Chartered Accountant should be enlarged on bail with any conditions as the settled principle of law is that pending enquiry and trial unnecessary incarceration should be avoided unless and until it is justified.

7. In *P.Chidambaram Vs. CBI* and 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 observed that the jurisdiction to grant bail has to be exercised on the basis of well established principles having regard to the facts and circumstances of each particular case being alive to 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 above all, the larger interest of the State and as such, there is no hard and fast rule to be in place, while considering such a question and each case has to be individually and independently 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 ruin the economic conditions of the State and therefore, the offenders are to be strictly dealt with keeping in view the

interest of the society which has repeatedly been observed as early as in a decision of the Supreme Court in *State of Gujarat Vs. Mohan Lal Jitmalaji Porwal* reported in AIR 1987 SC 1321.

8. As far as the allegation is concerned, the petitioner being the Chartered Accountant was involved in creating and making of fake business entities operational in order to facilitate availing bogus ITC. As per the materials on record, the petitioner allegedly obtained GST registration vis-à-vis the fake business concerns in collusion with other accused persons by utilizing and forging the personal identity documents of the so called proprietors. The nature and extent of involvement of the petitioner with regard to the alleged transactions is clearly evident and figured out from the materials on record. In so far as the offence under Section 132 OGST Act is concerned, it is in relation to GST fraud alleged to be for an amount of Rs.319.64 crore, wherein, the petitioner is said to be involved by creating and operating fictitious business entities in the names of persons having no means. As a consequence, bogus ITC was availed by the business establishment for whom he worked as a Chartered Accountant with the allegation of joint liability. As regards the plea for release on bail vis-à-vis the petitioner, the relevant factors are to be examined as to if in the event, it is being allowed, what repercussion it would have for the purpose of enquiry and trial. The petitioner happens to be a Chartered Accountant and his service was availed by the alleged business concern. Whether, it is a case of petitioner facilitating the bogus ITC being availed is to be dealt with and adjudicated upon during and in course of trial. The GST authorities have managed to find out the alleged fraud being perpetrated towards availing fake ITC by creating bogus business entities and it appears to be an act which apparently makes all the accused persons jointly and severally liable. TAs to the offence punishable under Section 132

(1)(i) GST Act, it prescribes a substantive sentence of five years in the maximum. Having regard to the nature of involvement and the specific role which is claimed being a Chartered Accountant and his period of detention of four months and the fact that sufficient materials have already been collected and as the prosecution now primarily depends on documentation and related evidence and for that, tampering with the evidence seems to be remotely possible, the Court, being aware of the settled position of law applying to the subject matter, is inclined to release the petitioner on bail subject, however, to stringent conditions as stipulated herein below.

9. Accordingly, it is ordered.

10. In the result, application under Section 439 Cr.P.C. stands allowed. As a consequence, 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 exercise 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 collected evidence, in any manner whatsoever; shall not involve or indulge in any such similar kinds of nefarious activities; shall surrender his passport, if he has any, before the learned court below and shall not leave the jurisdiction of the court without its prior permission.

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

12. The BLAPL is accordingly disposed of.

13. 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 15<sup>th</sup> April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7<sup>th</sup> January, 2022.

**(R.K. Pattanaik)**  
Judge

TUDU

