

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 6221 of 2022

With

R/CRIMINAL MISC.APPLICATION NO. 6268 of 2022

With

R/CRIMINAL MISC.APPLICATION NO. 8660 of 2022

With

R/CRIMINAL MISC.APPLICATION NO. 8722 of 2022

=====

AVESH AFROZ LOKHANDWALA

Versus

STATE OF GUJARAT

=====

Appearance:

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

MR MANAN MEHTA, APP for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3,4

=====

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 15/07/2022

COMMON ORAL ORDER

1. All the above bail applications arise out of one and same proceedings, they were heard together and are hereby decided by this common order.
2. The applicants have filed present applications under Section 439 of the Code of Criminal Procedure seeking regular bail in connection with the File No.ACST/U-10/EXPIFT IMPEX/2021-22, for the offences punishable under Sections 132(1)(b), 132(1)(c) of the Gujarat Goods and Service Tax Act, 2017 and Central Goods and Services Tax Act, 2017 read with Section 120B of the Indian Penal Code. The applicants Janak Panchal and Arfanabanu Shaikh have been arrested on 27.12.2021, whereas, applicant Amit Devani arrested on 31.12.2021 and applicant Avesh Afroz arrested on 04.01.2022. The regular bail applications filed before the concerned Judicial Magistrate Court and Sessions Court concerned came

to be rejected.

3. Aggrieved by the order of the Courts below, present applications have been preferred before this Court.
4. Heard learned Senior Counsel N.D.Nanavaty assisted by Mr. Rahul Dholakia and Mr. Chetan Pandya, learned counsel for and on behalf of the applicants and Mr. Manan Mehta, learned APP for the State respondent.
5. Mr. N.D.Nanavaty, learned Senior Counsel and Mr. Chetan Pandya, learned counsel for the applicants urged the following contentions:-
 - (i) Authorization of arrest by the Addl. Commissioner of State Tax is ex facie illegal, and therefore, arrest of the applicants are otiose. It is in this context, it was submitted that, the arrest is ex facie illegal for want of exercise of powers by the Commissioner as mandatory under Section 69(1) of the Act.
 - (ii) The department without serving show-cause notice either under Section 61 or Section 73 or under section 74 of the Act straightway arrested the applicants on the basis of statement recorded under Section 70 of the Act, which is inadmissible and is hit by Article 20(3) of the Constitution of India and Sections 25 and 26 of the Evidence Act.
 - (iii) While arresting the applicants, no sufficient reasons for subjective satisfaction were being assigned by the authority and therefore, the power under Section 69 of the Act used in mechanical and arbitrary manner;
 - (iv) Prosecution should normally be launched only after the adjudication is completed and therefore, arrest would arise on launching the prosecution;
 - (v) Complaint for the alleged offence has already been filed before the Court concerned and therefore, when investigation is virtually over, detaining the applicants for further period is

unwarranted.

(vi) the applicants do not have criminal history and having deep roots in the society.

(vii) The applicants are in custody since long and the case is triable by magistrate and maximum punishment for the offence is upto 5 years.

(viii) on instructions, it was submitted that, the applicants are individually willing to deposit Rs.1 crore without prejudice to their rights and contentions, within one month from their release;

(ix) Ld. Counsel Mr. Chetan Pandya, for and on behalf of the applicant Avesh Afroz Lokhandwala submitted that, the applicant is neither an importer nor an exporter under the Scheme of EPCG and had acted as an agent between the importer - manufacturer defined under the scheme and therefore, considering the role attributed to the applicants herein, there is no prima facie evidence involving the applicant herein in the alleged offence.

6. In view of the aforesaid contentions, learned counsels for the applicants submitted that, discretion may kindly be exercised by enlarging the applicants on bail.
7. Countering to the contentions raised by learned counsel for the applicants, learned APP Mr. Manan Mehta, reiterating the facts of the affidavit filed by the officer of the department contended that, the applicants have played vital role to avail ineligible input tax credit and also fraudulently obtained refund amount by creating 9 bogus firms and thereby, availed input tax credit of Rs.42.53 crore wrongfully and claimed fraudulent refund to the tune of Rs.29 crore. It is in this context, learned APP submitted that, the offence alleged is economic offence and considering the law laid down time and

again by the Apex Court in its various judgments that socio economic offences constitute class apart and need to be visited with a different approach in matter of bail as the economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm which needs to be considered seriously.

8. Learned APP further submitted that, the alleged offence is a part of organized tax fraud which needs proper investigation which still underway and therefore, if bail is granted, it may hamper the investigation and the applicants may manipulate or destroy the evidences to derail the investigation. Thus, therefore, learned APP submitted that, considering the gravity of the offence and its impact on the society, no case is made out for exercising discretion in favour of the applicants.
9. Heard at length learned counsel for the respective parties and perused the material placed on record.
10. In order to appreciate the rival submissions, following facts of the case are required to be recorded:-

The applicant Arfanabanu Shaikh is a Director of Expifit Impex Pvt. Ltd and Seam Globus Pvt. Ltd, whereas, the applicant Janak Panchal is a Director of Profusion Traders Pvt. Ltd. Applicant Nos.1 to 3 have created 9 different non-existing companies either in the name of office boy or in the name of third party by obtaining their necessary proofs like Aadhar Card etc. The applicants are engaged in the business of export - import ready made clothes. In order to avail fraudulent credit, goods were procured without invoices and supplied as export or to SEZ as zero rated supply and to substantiate such export and zero rated supply, fake invoices inward supply have been obtained without receiving goods and as claimed fraudulent ITC to the tune of Rs.19,80,26,020/-. The whole scam came into

light when the respondent department scrutinized a refund application of Expift Impax Pvt. Ltd and the supplier M/s. Saifee Enterprise and Kanchan Global. The officers searched the business premises of the applicants and large number of documentary evidence were seized and recovered and during the investigation, it was revealed that, 9 bogus companies registered in Gujarat have shown inward supply on the basis of fake invoices without receiving actual supply of goods and have claimed input tax credit and also claimed refunds of either tax paid through ITC or accumulated ITC for their export and zero rated supply.

In the aforesaid facts, after following mandatory provisions of the Act, the applicants have been arrested and thereafter, the complaint as contemplated under the Act has been filed before the Court concerned.

11. Having considered the facts and circumstances of the present case, this is a case where the applicants need to be enlarged on bail for the following reasons:-

(i) In the matter of bail, there is no straitjacket formula for consideration of bail to an accused as it all depends upon the facts and circumstances of each case. In the facts of present case, the offence under the Act are compoundable and maximum punishment is upto 5 years. The applicants are in custody since December, 2021 and investigation part is concerned, it is virtually over. It is an admitted fact that, still adjudication proceedings is not commenced and no notice as provided under the Act is issued. Even after adjudication of liability, the applicants can challenge it before the appellate authority subject to deposit of 10 % and the maximum amount of deposit is upto Rs.2 crore. Considering the alleged fraudulent ITC, the applicants herein willing to deposit Rs.1

crore individually before the authority concerned within stipulated time. In such circumstances, this Court is of view that, when in near future, there is no chance to conclude the case proceedings, detaining the applicants for an indefinite period would certainly violate their fundamental rights as enshrined under Article 21 of the Constitution of India and therefore, applications require consideration;

(ii) Entire documentary evidence and computer gadgets have been seized and they are in custody of the department;

(iii) Department failed to point out that, further custody of the applicants is necessary.

(iv) Applicants do not have criminal record.

(v) The contention about economic offence raised, has been dealt with by the Apex Court in case of P. Chidambaram Vs. Director of Enforcement, (2020) 13 SCC 791, wherein the Apex Court, observed that even if the allegation 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, irrespective of nature and gravity of charge, whether bail is granted or not, 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. In the facts of present case and reasons as discussed, (i) to (v), the applications deserve consideration.

12. For the foregoing reasons, applications are allowed on a condition that the applicants shall deposit Rs.1 crore individually before the respondent office at Ahmedabad, within a period of

one month from their release. Accordingly, the applicants are ordered to be released on regular bail in connection with the **File No.ACST/U-10/EXPIFT IMPEX/2021-22**, on executing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousands only) each with one surety of the like amount to the satisfaction of the learned Trial Court and subject to the conditions that they shall;

Nos.	Conditions
(a)	not take undue advantage of liberty or misuse liberty;
(b)	not act in a manner injuries to the interest of the prosecution;
(c)	surrender passport, if any, to the lower court within a week;
(d)	not leave India without prior permission of the Sessions Judge concerned;
(e)	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;

13. The Authorities will release the applicants only if they are 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. Bail bond to be executed before the learned 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. 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 applicants on bail. Rule is made absolute to the aforesaid extent. Direct service is permitted.

SUCHIT

(ILESH J. VORA,J)

