



2025:DHC:5144



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 04th March, 2025
Pronounced on: 27th June, 2025*

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CRL.M.C. 631/2021

DIRECTORATE GENERAL OF GST INTELLIGENCE

Headquarters,
New Delhi

.....Petitioner

Through: Mr. Satish Aggarwala Sr. Standing Counsel
with Mr. Gagan Vaswani, Adv.

versus

RAKESH KUMAR GOYAL

S/o Late Sh. Sat Prakash Goyal
R/o 2-C, Sarabha Nagar
Ludhiana

.....Respondent

Through: Mr. Shadman Ahmed Sidiiqui, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed to seek recall of the Order dated 23.12.2020 *vide* which **Bail has been granted** to the Respondent/Rakesh Kumar Goyal, in the Complaint filed against him for offences punishable under Section 132(1)(c) of the Central Goods and Services Tax Act, 2017 (*hereinafter referred to as CGST Act, 2017*), on account of evasion of CGST running into crores of rupees.

2. ***Briefly stated***, the officers of Directorate General of GST Intelligence (DGGI) developed an intelligence that (i) M/s Aastha Apparels Pvt. Ltd., (ii)



M/s JBB Apparels Pvt. Ltd., (iii) M/s JBN Apparels Pvt. Ltd., and (iv) M/s Nautilus Metal Craft Pvt. Ltd., were engaged in fraudulent availment of Input Tax Credit (ITC) on the Invoices of non-existing and fictitious Firms or such Firms which apparently did not make any purchases themselves.

3. It was also gathered that they were also utilizing this fraudulently availed ITC for payment of Integrated Goods and Services Tax (IGST) on export of goods (*also termed as zero rated supply under IGST Act, 2017*) and taking refund of such IGST from the Department. Most of such Suppliers' Companies were owned or controlled by the Respondent/Rakesh Kumar Goyal.

4. Detailed investigations were carried out which included searches at the business premises of the aforesaid four companies and it was found that the Respondent along with other co-accused persons, had been involved in the acts amounting to offences under Section 132 CGST Act, 2017.

5. ***The Respondent was granted Bail by the learned CMM vide Order dated 23.12.2020.***

6. ***The Order of grant of Bail has been challenged by way of present Petition. The first ground of challenge is that the first Bail was rejected on 26.10.2020 by learned ACMM and the second Bail was rejected on 17.11.2020 by learned ASJ. Merely after an interval of just about one month, Bail was finally granted upon the third Application on 23.12.2020. It is asserted by the Petitioner that the Bail was granted by the learned CMM, even though there was no change of circumstances.***



7. Reliance has been placed on *Shahzad Hasan Khan vs. Ishtiaq Hasan Khan and another*, 1987 AIR (SC) 1613 wherein it was observed that the dismissal of the Application by one Judge and grant of Bail by another Judge, is contrary to judicial propriety.
8. Furthermore, in *State of Maharashtra vs. Captain Buddhikota Subha Rao*, 1989 AIR (SC) 2292, it was held that once the Application is rejected, there is no question of granting a similar prayer as it amounts to virtually overruling the earlier decision without there being a change in the fact-situation.
9. The ***second ground is that the Respondent's Companies and his accomplices had remained non-cooperative.*** Summons were issued to the sons of the Respondent for their appearance on 05.11.2020, but they remained unanswered. Likewise, summons had been issued to his sons namely, Kanav Goyal and Rajat Goyal for their appearance on various dates, but again they failed to appear.
10. The Respondent not only consistently disobeyed the summons issued to him, but he also failed to join the investigations. He, till date, has not provided the *Tally Data* as asked through repeated summons, to enable the Investigating Agency to carry forward the investigation. However, no documents have been produced to show that the Tax obligation has been discharged at the time of import as part of Customs Duty.
11. Respondent has continued to evade investigations and has remained uncooperative. In fact, his non-cooperative attitude continued even after grant of Bail. Because of such non-cooperative attitude, investigations



against other three Companies of Vikas Chowdhary, is still underway as offences by these three Companies spread over a much longer period.

12. The *third ground is that there is no parity with the other co-accused*. It is asserted that the Respondent had been arrested in relation to fraudulent availment of ITC and claim of refund of IGST to the tune of Rs. 61.02 crores (approx.) by M/s Aastha Apparels Pvt. Ltd., M/s JBB Apparels Pvt. Ltd., M/s JBN Apparels Pvt. Ltd. and M/s Nautilus Metal Craft Pvt. Ltd. which are controlled and owned by Vikas Chowdhary to whom Companies of the Respondent had provided goods through Invoices without payment of ITC. *There was no question of parity with the co-accused Vikas Chowdhary who had been granted Bail on 23.03.2020.*

13. The question of law on parity has been well settled. In any case, the order of grant of Bail to Vikas Chowdhary has already been challenged by the Petitioner before this Court.

14. Even otherwise, the ground of parity was not available to the Respondent for the reason that Vikas Chowdhary had appeared before the IO for tendering his statement in response to the summons while the Respondent had failed to do so. Vikas Chowdhary had offered to reverse ITC in his application for Bail which was recorded by the learned CMM, New Delhi. The antecedents of Vikas Chowdhary are not as poor as that of the Respondent, who is a habitual offender and is involved in a number of cases. In addition, various other cases against the Respondent and his Companies have been booked by other agencies.

15. He was summoned as an accused in a case under Customs Act, 1962 and the prosecution is pending before the learned CMM, New Delhi. He has



been involved in various cases of tax evasion and fraud and has been booked by DRI at least in five cases from 2012-13.

16. The Complaint against the Respondent was filed before the learned CMM, New Delhi on 16.07.2009 under Sections 132 and 135 of the Customs Act, 1962 for fraudulent availment of drawback in M/s. CIS Exports Pvt. Ltd.

17. Reliance was also placed on Neera Yadav vs. State of UP and Anr., Supreme Court, Crl. Appeal No. 1272/2015 and Ajay Sagar and Anr. vs. DRI, Delhi High Court, 2009 (3) JCC 1726.

18. The **fourth ground is that the Respondent was a beneficiary of the evasion**, though he **had asserted that he** was not a beneficiary, which is factually incorrect. GST is a simple tax. At the first level of supplier, GST is required to be paid in cash (**i.e. through bank payment**). This GST paid in cash, is admissible to his buyer at second level as ITC. The buyer when further sells its goods to third level, he is required to pay GST on the value addition. In this manner, the Government gets full tax in cash at level 1 and thereafter, on the value addition only.

19. In the present case, most of the Companies of the Respondent fell under Level 1 or Level 2, but did not pay any tax in cash though it was so reflected in their Returns. These Companies show supply of goods amongst themselves in the Invoices even though there was no genuine purchases of goods or raw material by these Companies.

20. Further, a few Firms like Jeet Globle, from which the Companies claimed to have purchased goods, were found to be non-existing. These



Companies further issued Invoices to Companies of Vikas Chowdhary, in which GST is mentioned which was taken by his Companies and ultimately he got refund from the Government by showing Exports. However, no actual cash payment of GST at any stage was made by the Companies of Vikas Chowdhary who also took refund in cash from Government. Few of the Companies of the Respondent have already received such refund which was till date computed to the tune of Rs.9.35 crore. It is claimed that there is a circular trading amongst these Companies which was used to pass on ITC, without actual payment of GST at any stage. ***Thus, Respondent was the direct beneficiary.***

21. It is therefore, submitted that it is an economic offence committed deliberately by the Respondent with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. Such disregard for the interest of the community, can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner, without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as observed by the Apex Court in State of Gujarat vs. Mohanlal Jitamalji Porwal, (1987) 2 SCC 364.

22. *It is, therefore, submitted that the Bail granted to the Respondent by learned CMM vide Order dated 23.12.2020, be set aside.*

23. The ***Respondent in his detailed Reply*** has stated that all the grounds raised in the present Application are baseless and liable to be rejected. In the case of Laxman Irappa Hatti and Suresh vs State of Maharashtra, (2004)



CRILJ 3802, it was observed that the powers of Sessions Court and the High Court under Section 439 Cr.P.C are wide enough to grant Bail.

24. There is no hard and fast rule and no inflexible principle governing the exercise of discretion conferred by Section 439 Cr.PC. However, once the Chargesheet is filed, the Court can examine the evidence from the point of view to consider lacunas, if any, in the investigation, which could be fatal to the case of prosecution or which are sufficient to convince the Court that there exists reasonable grounds for *prima facie* believing that the Applicant is not guilty of an offence.

25. Until filing of the Chargesheet, one of the important factor that weigh on the mind of a Judge, is the continuity of investigation and whether it would be hampered by the accused if released on Bail. However, once a Chargesheet is filed, this approach changes and apart from merits of the case, the Court is required to consider whether there is need to keep the accused in custody even after the investigations. This filing of Chargesheet is, therefore, a substantial change in circumstances.

26. **In the present case**, a case Complaint has already been filed against the Complainant on 04.12.2020 and the grant of Bail on third Application was because of this changed circumstance.

27. It is further asserted that the Respondent had fully complied with the summons issued by the Petitioner. The Petition has been filed by the Petitioner on the allegations which purely lack the merit.

28. The ground of parity was also applicable to the Respondent.



29. Though it was not the sole basis for grant of Bail, the main allegations as reflected in the Criminal Complaint against the Respondent, is centered around M/s Nautilus Metal Crafts Pvt. Ltd. The bare perusal of the allegations reflected that he is not a beneficiary of fraudulent ITC, as alleged by the Petitioner.

30. The Respondent has further explained that the *Detention Order dated 19.09.2013* passed by the Joint Secretary (COFEPOSA), was challenged and later quashed by the *High Court of Punjab & Haryana vide Order dated 20.03.2014 in CRWP No.1967/2013*.

31. The Respondent has filed a Complaint dated 29.06.2020 against the two IRS Officers of the rank of ADG in the Directorate of Revenue Intelligence for harassing him by attempting to usurp Rs.300 crores and indulging in corrupt malpractices.

32. The Respondent asserts that he has already furnished the Tally Data along with other important documents to the Petitioner.

33. *It is submitted that there are no grounds for quashing of the Bail Order.*

34. **Submissions heard and record perused.**

35. The *main contention* of the Petitioner/DGGI to seek recall of the Bail Order was that it was granted *on the third Bail Application* merely after a month of rejection of second Bail Application, when there was no change of circumstances.

36. The Respondent has sufficiently explained that the Complaint got filed against him on 04.12.2020 and filing of the Chargesheet in itself was a



complete change in circumstances. As held in the case of Laxman Irappa Hatti, (supra) the considerations for grant of Bail at the stage of investigation which are material is whether the accused would present himself for investigation and cooperate in the investigations and that he would not hamper the investigations or tamper with the evidence of witnesses.

37. However, once **Chargesheet gets filed**, these considerations fade into the background and what is now material is to consider *the gravity of the offence* along with the *Triple Test viz. whether he is a flight risk or he would be influence the witnesses or tamper with the evidence.*

38. **In the present case**, it cannot be overlooked that the evidence in the present case, is essentially documentary and there is no likelihood of the same being *tampered* by the Respondent after having been admitted to Bail. There is nothing to show that he is a *flight Risk* or there is any likelihood of his *influencing the witnesses*. The discretion has been rightly exercised by the learned CMM, while granting the Bail.

39. It has been rightly contended that parity was only one of the various other grounds that were duly considered while granting Bail.

40. It cannot be ignored that the Bail was granted *vide* Order dated 23.12.2020 and since then there is no averment of any misuse or abuse of the liberty of Bail as granted to the Respondent.

41. In the present case, there is no ground which is existing to show that the discretion of grant of Bail has not been exercised judiciously by the learned CMM or that there is any misuse or abuse of liberty so granted by



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the Respondent. There is also nothing on record to show that the trial has been hampered on account of grant of Bail.

42. There is no merit in the present Petition for recall of the Bail Order dated 23.12.2020.

43. The Petition is hereby dismissed along with pending Applications(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 27, 2025/pp