

MHCC020068072024



**IN THE COURT OF SESSION FOR GREATER BOMBAY**  
**ANTICIPATORY BAIL APPLICATION No.886 OF 2024**



... Applicant

- Versus -

**M.G.S.T.**

... Respondent

**Appearance :-**

Advocate Bharat Raichandani a/w Adv Ravi Hirani for the applicant.  
SPP Pathak for the respondent / State

**CORAM : V. M. PATHADE**  
**ADDITIONAL SESSIONS JUDGE,**  
**COURT ROOM No. 30.**  
DATED : 16/07/2024

**ORDER**

The applicant accused would seek anticipatory bail in connection to File No. INV No. [REDACTED] pending before Id. Addl. Chief Metropolitan Magistrate, 19<sup>th</sup> Court of M.G.S.T. Department.

2. It is stated that the applicant is permanent resident of [REDACTED]. He is innocent. He is falsely implicated in the subject crime. He has cooperated with the department / investigating agency and furnished all the documents. He attended before the investigating agency on 09.02.2024. He informed the department that



conditions that may be imposed by this court while granting him bail. He has preferred no other application seeking anticipatory bail before any other court. Hence, the application.

4. The department / respondent vide its reply below Ex. 3 strongly opposed the application. It is stated that Mr. Dadasaheb K. Shinde, an Asst. Commissioner of State Tax is a proper officer under the Maharashtra Goods and Services Tax Act, 2017 for the purposes of administration and enforcement of the provisions of the said Act. He having convinced and having reason to believe that said [REDACTED] and [REDACTED] have committed offences punishable under sub Section (1) of Section 132 of MGST Act 2017 / CGST Act 2017 as the amount of Input Tax Credit (ITC) wrongly utilized and tax credit passed is Rs. 6.40 crores and as the offences are cognizable and non bailable, the Joint Commissioner of State Tax, Investigation – A, Mumbai has authorized the officer to arrest the offenders i.e. the said Directors of [REDACTED] u/s. 69 of the said Act vide order dated 16.04.2024. Accordingly said [REDACTED] and [REDACTED] were arrested and came to be released on bail vide order dated 20.04.2024 passed by the Id. ACMM, 19<sup>th</sup> Court, Esplanade, Mumbai. The said Directors committed the offences by using invoices from [REDACTED] ([REDACTED]) who issued only the invoices or bills without supply of goods or services or both in violation of the provisions of the said Act or the rules made there under leading to wrongful availment or utilization of ITC and passing on tax credit to [REDACTED]s. The tax payer has effected inward supplies of net Rs. 64.64 crores without actual movement of goods or services, leading to wrongful availment or utilization of non genuine

ITC at Rs. 3.23 crores and outward supplies of 62.42 crores, leading to wrongful passing and utilization of tax credit at Rs. 3.17 crores. Thus the quantum of ITC and tax involved is Rs. 6.40 crores, causing thereby loss to the government revenue. Thus said [REDACTED] [REDACTED] has been involved in fraudulent activity of wrongfully availing or utilizing ITC using invoices from said [REDACTED] [REDACTED]s. The said Directors and the applicant being the persons in-charge of said [REDACTED] are responsible for all the acts of the said company. The tax payer however, could not offer any satisfactory clarification with regard to the huge amount of ITC availed using the invoices issued by said [REDACTED] without supply of goods or services or both to said [REDACTED]. As per the statements of said Directors [REDACTED] and [REDACTED] the applicant accused [REDACTED] is the person in charge of and responsible for the conduct of the business of the said [REDACTED]. Thus they all are deemed to be guilty of the offence in question and liable to be proceeded against and punished accordingly.

5. It is further claimed that the department needs to record the statement of the applicant accused with respect to the said statement made by the directors about his role in the conduct of the business of the company in general and transactions with [REDACTED] in particular. The investigation is still in progress. The offences involve tax fraud of the amount exceeding Rs. 500 lacs. If the applicant is granted bail, there is possibility of his tampering the evidence and sabotaging the ongoing investigation. Custodial interrogation of the applicant accused is necessary for smooth and fair investigation. Ultimately, the bail application is sought to be rejected.

6. By way of additional reply Ex.4 the department would further contend that on 07.05.2024 this Court had directed the applicant to attend the office of the respondent department on 10.05.2024, 14.05.2024 and 17.05.2024 so as to cooperate in the ongoing investigation. The applicant had appeared before the respondent department as directed by this court and his statement has been recorded. The applicant though made submission on 22.05.2024 pertaining to year-wise ledger of ■■■ and stock register for the year 2019-20, stock register for other period and co-relation of movement of goods with stock register is still pending along with other verifications.

7. The applicant accused filed his rejoinder vide Ex.5. It is contended that he has cooperated in the investigation. His statement is recorded by the department. He furnished all the documents to the department. The demand of Rs. 6.43 crores was raised on ■■■ only due to cancellation of the GST registration of its supplier ■■■ with retrospective effect. The said supplier ■■■ has preferred an appeal against the said cancellation of GST registration well before 16.04.2024 on which the said directors of ■■■ were arrested. The respondent department in the remand application dated 16.04.2024 has confirmed that during the period from 2019 to 2023, total 26 inward E-way bills have been observed on BO portal wherein the assessable value is at Rs. 18,48,45,450/- and tax valued is at Rs. 92,42,273/- (0.92 crore) which claimed to be in sharp contrast to the ■■■ claim that 93 inward supply invoices have been reported with supply value of Rs. 64,64,39,738/- and tax valued at Rs. 3,23,21,987/-. Hence, the department could have at the most alleged wrongful availment of ITC of Rs. 3.23 crores minus Rs.0.92 crores, making a total of Rs. 2.31 crores.

Similarly, with respect to the output tax of total sum of Rs. 3.17 crores, the department having confirmed total 27 outwards E-way bills which are observed on BO Portal wherein assessable value is at Rs. 18,35,34,650/- and tax valued at Rs. 90,06,733/- (0.90 crore) and it claimed that this is in sharp contrast to the [REDACTED] claim of outward supply invoices with supply value at Rs. 62,43,22,978/- and tax valued at Rs. 3,17,16,149/-, the tax amount of Rs. 0.90 crores as mentioned in said remand application is liable to be deducted from the alleged wrongful availment of output credit of Rs. 3.17 crores, which can be quantified to Rs. 2.27 crores. Thus according to the applicant the maximum claim of the respondent-department could be Rs. 2.31 crores (input) + Rs. 2.27 crores (output) which comes to total Rs. 4.58 crores which is below amount of Rs. 5 crores, which makes the offence bailable one. Though the applicant has made exhaustive submissions for the period under investigation i.e. FY 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24, on 21<sup>st</sup> June 2024 the respondent department asked the applicant to make further submissions in respect of the transactions at earliest. But due to the fact that furnishing such information was a lengthy process and time consuming, he requested to consider selecting and informing random sample transactions with [REDACTED] for every year in order to enable the applicant to prepare and submit the report for the same immediately. The response of the respondent department is awaiting. The applicant is ready and willing to cooperate with the respondent department. Ultimately, the applicant would seek pre-arrest bail.

8. Heard Mr. Hirani, the ld. counsel for the applicant accused and Mr. Pathak the ld. SPP appearing for the respondent department.

They would make their submissions on the lines of the contentions made in the application, rejoinder and the reply, additional reply thereon respectively. In support of the bail application Mr. Hirani would seek to rely upon an order passed by the *Hon'ble Bombay High Court on 3<sup>rd</sup> October 2023 in Anticipatory Bail Application No. 3635 of 2022 Neha Agrawal and Anr. Vs. The Commissioner of CGST and Central Excise Mumbai Central and Ors.* Mr. Pathak on the other hand would place his reliance on the decision of the Hon'ble Supreme Court dated 17<sup>th</sup> July 2023 in *Criminal Appeal Nos. Of 2023 (arsing out of SLP (Crl.) No. 4212-4213 of 2019), The State of Gujarat etc. Vs. Choodamania Parmeshwaran Iyer and Anr. etc.*

9. After having considered the respective submissions advanced by the ld. counsels appearing for the applicant accused and for the respondent department, the decisions relied upon by them, the facts and the circumstances emerging from the record including the facts that the applicant accused has cooperated in the ongoing investigation as directed by this court and he is ready and willing to cooperate further in the investigation, he is permanent inhabitant of [REDACTED] ai, he is a [REDACTED] in said [REDACTED] of which the directors namely [REDACTED] and [REDACTED] have been already released on bail by the Jurisdictional Magistrate vide order dated 20.04.2024, I am of the view that discretion can be exercised in favour of grant of bail subject to suitable conditions. Hence, I proceed to allow the application by following order -

#### **ORDER**

1. The Anticipatory Bail Application No. 886 of 2024 stands allowed.

2. In the event of the arrest of the applicant accused namely [REDACTED] [REDACTED] aged about 38 years resident of [REDACTED] - [REDACTED] in connection to File No. [REDACTED] [REDACTED] of MGST Department for the offence u/s. 132 of the CGST Act 2017, he is directed to be released on bail on his executing PR Bond in the sum of rupees one lac with one or more surety/sureties in the like amount subject to following conditions -

- i) The applicant shall co-operate with the investigation and appear before the investigating agency i.e. the respondent department as and when directed.
- ii) He shall not tamper with the prosecution evidence and give any threat, promise or inducement directly or indirectly to the persons acquainted with the facts of the case.
- iii) The applicant shall regularly attend the proceeding before the Jurisdictional Court.
- iv) The applicant shall not leave India without prior permission of the Jurisdictional Court and prior intimation to the investigating agency.
- v) He shall keep the investigating agency and the Jurisdictional Court updated of any change in his contact details, residential address etc. within 15 days of such change or alteration.

3) The application stands disposed of accordingly.



Date : 16/07/2024

( V. M. Pathade )  
Additional Sessions Judge,  
Gr. Mumbai.

Direct Dictated on : 16/07/2024  
Signed by HHJ on : 18/07/2024



“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
18/07/2024	5.25 p.m.	J.S. Chavan
UPLOAD DATE	TIME	NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H. H. Additional Sessions Judge Shri. V. M. Pathade, Court Room No. 30.
Date of Pronouncement of ORDER	16/07/2024
ORDER signed by P.O. on	18/07/2024
ORDER uploaded on	18/07/2024