



UPME010097172023

IN THE COURT OF SESSIONS JUDGE, MEERUT.

Present: Rajat Singh Jain, H.J.S

Bail application No. 3779 of 2023

Rajnish Jain

...Applicant/accused.

Versus

Directorate General of GST Intelligence

Complainant Meerut Zone Unit, Ghaziabad

...Complainant.

**Crime No.2415 of 2021
Under Section 132(1)(b)&(c), 132(1)
(i)CGST Act,
DGGI, Ghaziabad/Meerut.**

Date-03.07.2023

1. The present bail application has been moved by the applicant Rajnish Jain son of Late Shri Neminath Jain, resident 1413, C-Block, Palam Vihar, Near Palam Vyapar Kendra, Gurugram Haryana, in Case (Crime) No.2415 of 2021 Under Section 132(1)(b)&(c), 132(1)(i) CGST Act, DGGI, Ghaziabad.
2. I have heard the Special prosecutor for the department Shri Lakshay Kumar Singh and the learned counsel for the applicant/accused Shri Ritesh Kumar Jaiswal at length and perused the record.
3. According to prosecution an intelligence was gathered by the officers of Directorate General of Goods & Services Tax Intelligence (DGGI), Meerut Zonal Unit, that M/s Sanraj Metals Pvt. Ltd., Manesar (M/s SMPL) have availed and passed on ineligible input tax credit (ITC) fraudulently without supply of goods or services. The firms issuing bogus invoices to M/s. SMPL are either found to be non-existent or non-operational. During investigation M/s SMPL was found to have availed fake ITC of Rs. 79.12 Crore and passing on of same, fraudulently, on the strength of bogus invoices without supply of concomitant goods. On the basis

of the above facts, searches were conducted at the registered premises of the supplier firms/companies of M/s Sanraj Metals Pvt. Ltd. namely, M/s Ovnil Trademart Pvt. Ltd., Delhi, M/s Vivrak Impex Pvt. Ltd., M/s Indoden Tradex Pvt. Ltd., M/s Town Standards Pvt. Ltd., M/s Yrofame Exim Pvt. Ltd., M/s Solared Pvt. Ltd. and M/s Rekwel Trademart Pvt. Ltd. Which were found to be non-existent/non-operational. These non-existent firms were found to have issued bogus invoices involving fake/ineligible ITC of Rs. 79.12 Crore to M/s Sanraj Metals Pvt. Ltd. without supply of any goods during the period Jan' 21 to March' 23. M/s Sanraj Metals Pvt. Ltd. have further passed on ineligible ITC or have issued bogus invoices involving fake ITC of Rs. 79.12 Crore (Upto Jan' 23) without supply of concomitant goods. The directors and proprietors of these supplier entities were summoned on more than one occasion to put forth their views. Most of them failed to comply despite being given many chances. However, directors of M/s Ovnil Trademart Pvt. Ltd. have appeared and stated that their documents have been misused for creation of the said company and they have no knowledge of its operations. Statement of Accountant of M/s Sanraj Metals, Sh. Ram Niwas Pandey was recorded on 19-05-2023 wherein he *inter alia* stated that though Ms. Nivita Jain is one of the directors of the company, but Sh. Rajnish Jain is the Controller of the company. He further stated in his statement that he as well as other director of company Sh. Sanjiv Kadyan gets salary from Sh. Rajnish Jain only. Sh. Rajnish Jain emerges to be Controller of M/s SMPL. He is also Authorised signatory for banking purpose in M/s SMPL. From the WhatsApp chats recovered during the forensic of mobile phone of Sh. Amit Gupta, Director in M/s Brilliant Metals Pvt. Ltd. and M/s Progressive Metal Alloys (India) Pvt. Ltd., with Sh. Rajnish Jain it was revealed that Sh. Rajnish Jain in alliance with Sh. Amit Gupta manages all the monetary and accounts related matters of M/s SMPL. From the aforesaid chats, it is revealed that Sh. Amit Gupta is informing Sh. Jain about the payments made into M/s SMPL from his companies which has further been forwarded Sr. Rajnish Jain is being asked by Sh. Amit Gupta to update account of M/s Solarex Pvt. Ltd., one of the non-existent supplier

companies of M/s SMPL. From the analysis of bank statements of M/s SMPL, it emerges that as soon as they get payments from M/s Brilliant Metals Pvt. Ltd. the same have been forwarded to other accounts including the accounts of non-existent suppliers without any profit margin. Most of these payments are being done on the directions of Sh. Amit Gupta as revealed from the chats recovered.

4. Learned counsel for the applicant submitted that this bail application is filed against the order dated 29.05.2023 of Ld. Special CJM, Meerut rejecting the application filed under Section 437 of code of criminal procedure for grant of bail on the grounds that the offence allegedly committed by the applicant/accused is an economic offence which is serious in nature. The contents of the Application filed under Section 437 of code of criminal procedure filed before Ld. Special CJM for grant of bail on behalf of applicant are reiterated and reaffirmed as correct. In the present matter, the Respondent also filed rejoinder to the bail application filed before the Ld. Special CJM. In the present matter the applicant/ accused has been illegally arrested by the officers of complainant on 19.5.2023 from Manipal Hospital, Palam Vihar, Gurugram, Haryana where the applicant had gone for his physical checkup because of uneasiness during the search operations carried by the Complainant u/s 67 of the Central Goods and Services Tax Act, 2017 (in short "the Act") on 19.05.2023 at 1413, C Block, Palam Vihar, Near Vyapar Kendra, Gurugram, Haryana which is the residence of Ms. Nivita Jain (the daughter of the applicant) who happens to be the sleeping director because of her medical condition of M/s Sanraj Metals Pvt. Ltd. ('Sanraj'). During the search, a panchnama was also drawn. Sanraj is registered under the Act with the State Tax Authorities at Gurugram, 73/8, IMT Manesar, Gurugram, Haryana, 122052 with GSTN No.-06ABECS9793E1ZW. Shri Sanjeev Kumar is the executive Director/ Authorized Signatory of Sanraj. Based on intelligence, the action is already underway by the State Tax Authorities of Haryana, beginning from 21.12.2021. Thereafter, the DGGI Authorities at Gurugram caused search at the business premises of Sanraj on 12.7.2022. Thereafter a panchnama was drawn for documents

related to sale and purchase during the period 2021-22 till 12.7.2022 were also collected. As per provisions of sec 6 (2) (b) of the Act, where the proper officer under the State Goods & Services Tax Act has initiated any proceedings on a subject matter, no proceeding shall be initiated by the proper officer, on the same subject matter. Sanraj filed a CWP No.15452/2022 (O&M) before Hon'ble Punjab and Haryana High Court on 15.7.2022 in the said petition, cognizance was taken on 20.7.2022 where after a notice was issued by the High Court on 22.8. 2022 asking the respondents to file a reply. Thereafter the matter stood adjourned for 09.01.2023 and then again adjourned on 20.04.2023. The contention of the complainant that the investigation initiated by State Tax Authority has been transferred to the complainant is not tenable in view of the Central Board of Indirect Taxes and Customs (CBIC) clarification LETTER D.O.F. NO. CBEC/20/43/01/2017-GST (FT.) dated 05.10.2018. Further there is no provision in the Act to transfer the investigation from State Tax Authorities to Central Tax Authority or vice versa. During the pendency of the above writ petition, the complainant searched the premises of Sanraj on 01.02.2023 which led to drawl of a panchnama and seizure of records through INS-02. Simultaneously summon was also issued to Ms. Ayushi Tyagi assistant to Director on 1.2.2023 asking her to appear on the very same day. As the matter was pending before the High Court Sanraj filed a CM No.3126-CWP-2023 in the above writ petition for impleadment of the complaint, the said CM was listed on 21.2.2023 on which the counsel Mr. Tej Bahadur accepted notice on behalf of Mr. Saurabh Goyal and sought time to seek instruction. On 20.4.2023, DGGI Gurugram filed a reply in CWP No.15452/2022 (O&M) before Hon'ble Punjab and Haryana High Court where after the matter stood adjourned for 19.7.2023. The whole case of the Complainant is that the applicant has availed input tax credit on the basis of invoices, without concomitant supply of goods/services, issued by such Companies/firms as are non- existent and passed on the same to respective buyers of M/s Sanraj Metals Pvt. Ltd. ('Sanraj') which is an offence u/s 132(1)(b) & (c) of the Act. The maximum punishment prescribed for the offence us 132(1)(i) is five

years' imprisonment and fine. The allegations levelled against the applicant are not sustainable in law when the applicant is not a registered person and is not connected with day-to-day operation of Sanraj, he is only associated with the banking operations for the company on behalf of his daughter (Sleeping partner) who gave him the rights. As per the order of Ld. Special CJM dated 30.05.2023, the applicant was sent to the complainant's custody where his statement was recorded as per the rules laid down in the said order. It is clear that the applicant's part was completed in the investigation after recording the applicant's statement on 31.05.2023. As the Applicant is not involved in daily operations of the business as he is not the director of Sanraj. As per panchnama drawn on 19.05.2023, nothing incriminating documents/material has been recovered from the possession of the applicant/accused. During search operation on 19.5.2023, the applicant requested to deliver the summon u/S. 70 of the Act mentioning the date of appearance without insisting upon to accompany to them. Whereas the complainant wanted the applicant to accompany with them to their office outrightly without giving any time to him. But instead of delivering the summons, the complaint alleged that the applicant refused to accept the summon. In fact, at 4:39 PM on 19.5.2023, a mail also sent the Addl. Director General of the complainant wherein he sought some time to participate in the investigation, reason for seeking time was that he himself was not feeling well because of which he was rushed to the hospital. During the search operation on 19.5.2023, the officers of the complaint tried to pick and forcibly take the applicant to their office. For this reason, the applicant called the Gurugram police by dialling number 100. With a view to use their power, the complainant wrongly arrested the applicant to harass him. Because unwarranted abuse of process and power should not be allowed to impugn upon life and liberty of the applicant as given in Article 21 of the Constitution of India. The alleged offence is not punishable with death or imprisonment for life. The applicant is innocent and has not committed any offence whatsoever. The Applicant is a respectable citizen of India and there is no likelihood of his running away from an unbiased trial

and the Applicant is willing to cooperate and there is no need for his further detention as well. The Applicant is ready to abide by the orders passed by this Hon'ble Court and is also ready to furnish adequate security. There is no likelihood of Applicant absconding or tampering with the evidence and the Applicant also undertaken to assist the prosecution in whatever best manner they could possibly do at their end. The Applicant is willing to abide by any condition that may be imposed by the Hon'ble Court while granting bail. Hence, he prayed for bail.

5. Per-contra Shri Lakshya Kumar Singh learned counsel for the C.G.S.T. Department reiterated that the applicant is running M/s. SMPL by using other persons including his bedridden daughter as directors but retaining all control. Instead of doing any actual business, the applicant has been procuring and supplying fake invoices with sole view of availing and passing on fraudulent ITC and thus, succeeded in availing and passing off ITC of Rs. 79.12 crores.

6. Shri Lakshay Kumar further relied on **Radheyshyam Kejriwal Vs. State of West Bengal reported in 2011 (3) SCC 581**, it was held by the Hon'ble Supreme Court that adjudicating proceeding and criminal prosecution can be launched simultaneously. Decision in adjudication proceeding is not necessary before initiating criminal prosecution. The adjudication proceeding and criminal proceedings are independent in nature to each other. The finding against the person facing prosecution in adjudication proceeding is not binding on the proceeding for criminal prosecution. He further relied on **Ram Narayan Popli versus CBI reported in 2003 (3) SCC 641**, **Nimmagadda Prasad Versus CBI reported in AIR 2013 SC 283**, **Serious Fraud Investigation versus Nittin Johri reported in AIR 2019 SC 4380**, wherein it was held that economic offence constituted a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country. In **Govind Aggarwal versus State of U.P. bail application under**

Section 438 of the Criminal Procedure Code No. 1337 of 2020, the Hon'ble Allahabad High court has held that power of arrest should be exercised where:- (i) A person is involved in evasion of huge amount of tax and is having no permanent place of business, (ii)

A person is not appearing in spite of repeated summons and is involved in huge amount of evasion of tax, (iii) A person is habitual offender and he has been prosecuted or convicted on earlier occasion. (iv) A person is likely to flee from country, (v) A person is originator of fake invoice i.e., invoices without payment of tax, (vi) When direct documentary or otherwise concrete evidence is available on file/record of active involvement of a person in tax evasion. He prayed rejection of the bail of the applicant.

7. In *Satender Kumar Antil (supra)* the Hon'ble Supreme Court has held that

“The suggestions of learned ASG which we have adopted have categorized a separate set of offences as “economic Offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in *Sanjay Chandra vs. CBI, (2012) 1 SCC 40* has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- a) seriousness of the charge and
- b) severity of punishment.

8. Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.”

9. A perusal of demand papers sent case diary a relives that there are two directors in M/s Sanraj Metals Private Limited namely, Shri Sanjeev Kadiyan and Miss Nivita Jain. Nivita Jain is bedridden due to her medical conditions and she is not looking after any affairs of a said company and her father Shri Rajneesh Jain (applicant herein) is conducting day to day affairs in the garb of Signing Authority for banking. He is also paying salary to another

director Sanjeev Kadiyan. Data retrieved from his phone confirms that he is actually running the company. It has also been confirmed that some of companies/firms were created by misusing documents of unsuspecting persons, who denied opening any company. Thus, although, the applicant is neither director or any officer in the said company but, he is running the affairs of the said company and dealing with various persons. It also transpires that Directorate General of G.S.T Intelligence (DGGI) Meerut was probing matter of one Amit Gupta in connection with case No. 2415 of 2022 who was running several companies and receiving fake invoices from non-existent firms. The State G.S.T. Haryana also registered a case against the present applicant and thereafter, transferred the same to the Central G.S.T. Department, Gurugram Office, Haryana. DGGI Meerut took over investigation against the applicant in connection with case No. 2415 of 2021, which falls in its jurisdiction, and it has been found that M/s Sanraj Metals Private Limited supplied fake invoices to Amit Gupta and on the basis of fake invoices received from several non-existent/non-operational firms, and thus, claimed fake/ineligible ITC of Rs. 79.12 crores during the period from January 2021 to March 2023. M/s SMPL further passed on ineligible ITC to the tune of Rs. 79.12 crores up to January 2023 and till date this amount has been found 96 crores which has been passed on as ITC by SMPL to M/s Brilliance Metals Private Limited. Thus, the purpose of applicant was to enrich himself through receiving and issuing fake invoiced which were used for commission of offence. The applicant did not co-operate with the investigation and refused to give his statement and showed himself ill and he was rushed to hospital where he was found stable as per discharge summary dated 19-05-2023 of Manipal Hospital. Due to the acts of the applicant, the appropriate authority authorized his arrest and he was arrested. Investigation is still going on and there is strong possibility that if the applicant is released on bail, he will temper with the evidence and try to influence the witnesses.

10. Considering the gravity of offence involving multiple crime partners and huge amount involved in availing and passing off fake ITC, which is 96 crores, the seriousness of charges is grave in

nature and therefore, in the case of the applicant, this Court is not inclined to enlarge the applicant on bail. It is true that co-accused Amit Gupta has been granted bail by the Hon'ble High Court but the offence of the present applicant, although connected with the offence of Amit Gupta, is distinct and separate and therefore no parity can be extended to the applicant. Apart from that, this Court can only granted parity of its own orders and cannot equate its powers with that of the Hon'ble High Court.

ORDER

The bail application of the applicant/accused Rajnish Jain son of Late Shri Neminath Jain, resident 1413, C-Block, Palam Vihar, Near Palam Vyapar Kendra, Gurugram Haryana, in Case (Crime) No.2415 of 2021 Under Section 132(1)(b)&(c), 132(1)(i) CGST Act, DGGI, Meerut is hereby rejected.

Dated: 03-07-2023

(Rajat Singh Jain)
Sessions Judge,
Meerut.