

(2024) 07 JH CK 0117

**Jharkhand High Court**

**Case No:** Bail Application No.4764 Of 202

Sumit Gupta @ Sumit Kumar  
Gupta

APPELLANT

Vs

Union Of India

RESPONDENT

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**Date of Decision:** July 31, 2024

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 167
- Indian Penal Code, 1860 - Section 201(3), 204, 420, 465, 467, 468, 471
- Central Goods and Services Tax Act, 2017 - Section 74, 122(1)(ii), 132, 132(1)(b), 132(1)(c), 132(1)(i), 132(1)(ii), 132(1)(iii), 132(1)(iv), 132(4), 132(5)

**Hon'ble Judges:** Subhash Chand, J

**Bench:** Single Bench

**Advocate:** Nitin Kumar Pasari, Parth S.A. Swaroop Pati, Anurag Vijay

**Final Decision:** Dismissed

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**Judgement**

Subhash Chand, J

1. This bail application has been filed on behalf of the petitioner, namely, Sumit Gupta @ Sumit Kumar Gupta with prayer to release him on bail in connection with Complaint Case No.1280 of 2024 registered under sections 132(1)(b), 132(1)(c) and Section 132(5) of the Central Goods and Services Tax Act, 2017, pending in the Court of learned Additional Chief Judicial Magistrate, Special Court, Economic Offences, Jamshedpur.

2. Mr. Nitin Kumar Pasari, learned counsel appearing on behalf of the petitioner has submitted that as per the allegations made in the prosecution report under Section 167 of the Code, the petitioner being an individual is involved in creating fake companies/ firms and appointing their Directors/ Partners/ Proprietors, who is further involved in

passing on the inadmissible Input Tax Credit and for which almost Rs.522.91 crores has illegally been passed on as inadmissible Input Tax Credit of Goods and Services Tax making huge loss to the Government Exchequer and the petitioner has been declared to be the mastermind in creating the same.

2.1 It is further contended that indeed the petitioner has been made an scapegoat for the acts of the Officers of the Directorate General of Goods and Services Tax (Prosecuting Agency). The petitioner was arrested on 08.04.2024 from his residential house at Kolkata and was produced before the learned Additional Chief Judicial Magistrate, Alipore at Kolkata and a transit remand was sought for, from the learned Trial Court at Kolkata for alleged offences of inadmissible/ irregular ITC extended to the end-availleurs, leading to the loss of Rs.303.47 crores to the Government Exchequer and in terms of the chart appended to the transit remand petition, the name of the petitioner's company was mentioned at Sr. No.10 (M/s Navya Commercial Pvt. Ltd.). Based upon the application made for transit remand, the petitioner was allowed to be taken to the State of Jharkhand by the officers of Directorate General of GST Intelligence, Regional Unit, Jamshedpur, to be produced before the Civil Court of Competent Jurisdiction at Jharkhand.

2.2 Surprisingly, on 09.04.2024, Complaint Case No.1280 of 2024 was filed with these allegations that the inadmissible irregular ITC leading to loss to Government Exchequer is now at Rs.522.91 crores, however, keeping the figure of the petitioner's company intact at Rs.4.87 crores and based upon the same, the petitioner was sent to judicial custody vide order dated 09.04.2024.

2.3 Indeed, the petitioner is the Director in M/s Navya Commercial Pvt. Ltd. to which, show cause notice under Section 74 has already been issued as far back as on 01.06.2023 and the petitioner has also filed his reply to the said show cause notice, which is yet to be adjudicated upon and in which the alleged amount is Rs.4.87 crores.

3. Aggrieved and dissatisfied by the aforesaid action of the respondent, the petitioner has preferred Bail Petition No.318 of 2024 before the learned Principal District & Sessions Judge, East Singhbhum, Jamshedpur, which has been rejected vide order dated 13.05.2024.

3.1 The Central Board of Indirect Taxes and Customs, GST Policy Wing issued a Circular No.171/03/2022-GST dated 06.07.2022, whereby clarification on various issues relating to applicability of demand and penalty provision under the CGST Act in respect of transactions invoking fake invoices was provided. It is pertinent to mention here that when the aforesaid circular read with Section 122(1)(ii) of the CGST Act, 2017 the petitioner could not have been arrested and could not have been prosecuted under Section 132 of the Act, inasmuch as neither the petitioner has retained the benefits nor any adjudication proceedings could be carried out as against the present petitioner.

The prosecution itself is not sure as to what is the quantum inasmuch as different figure would emerge at different stages. When Shiv Kumar Devra was arrested the figure was Rs.131.12 crores, when the petitioner along with his brother was arrested at Kolkata the figure was Rs.303 Crores as on 08.04.2022, when the petitioner and his brother was produced before the learned Trial at Jamshedpur, the figure reached to Rs.522.91 crores on 09.04.2024.

3.2 It is further submitted that the allegation is that the petitioner acted as master mind in order to cheat the Government from genuine revenue, however, a bare perusal of the three complaint cases appended to the present application would transpire that in verbatim the allegation against Shiv Kumar Deora vis-à-vis Sumit Gupta vis-à-vis Amit Gupta is one and the same. The petitioner neither holds any position in any of the named/ listed companies in the complaint petition nor is having any control over them. The baseless allegations are made against the petitioner that he is running fake/ bogus companies.

3.3 It is also submitted that the petitioner is ready and willing to furnish adequate sureties to the satisfaction of this Hon'ble Court for being released on bail. It is further submitted that similarly situated co-accused, namely, Amit Gupta has been granted bail by a Co-ordinate Bench of this Court in B.A. No.5472 of 2024 vide order dated 18.07.2024. The petitioner is having no criminal antecedent, to this effect he has filed supplementary affidavit. 3.4 Learned counsel for the petitioner has further submitted that the petitioner was arrested on 08.04.2024 and after that the petitioner is in judicial custody since 09.04.2024 and the trial of the case is not likely to be concluded in near future. It is further submitted that maximum punishment provided for the offence under Section 132 of the GST Act is five years. In view of the above, contended to enlarge the petitioner on bail. Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Apex Court in the case of **Ratnambar Kaushik Vs. Union of India** reported in (2023) 2 SCC 621.

**4. At the very outset, Mr. Parth S.A. Swaroop Pati, learned Sr. Standing Counsel appearing on behalf of the opposite party-CGST has submitted that the cognizance against the petitioner has been taken by the Court of learned Presiding Officer, Special Court Economic Offences, Jamshedpur in Complaint Case No.1280 of 2024 vide order dated 04.06.2024 for the offences under Sections 132(1)(i) to (iv) read with 132(4) and (5) of the CGST Act, 2017 as well as under Sections 201 (Part-3), 204, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860. The certified copy of the said cognizance order has been produced before this Court, which is taken on record. Further the said fact has also been deposed in paragraph No.23 of the counter affidavit filed on behalf of the opposite party-CGST.**

4.1 Further, learned Sr. Standing Counsel for the opposite party-CGST has submitted that the counter affidavit has been filed wherein it has been deposed that the prosecution report has already been filed before the learned Court of Economic Offences, Jamshedpur, Jharkhand vide Complaint Case No.1280 of 2024. **As per prosecution report, the petitioner is the mastermind of creating, operating and managing 135 fake firms engaged in issuance of bogus GST invoices valuing approx. Rs. 5122 crores without actual supply of goods for availing and passing on inadmissible/ irregular ITC to the end-availleurs leading to loss of more than Rs. 781.39 crores to the Government Exchequer.** The prosecution report is annexed as Annexure-A to the counter affidavit.

4.2 The petitioner is the proprietor of M/s Excal Enterprises (GSTIN 36AWTPG9837A1Z7) and the Director in M/s Navya Commercial Pvt. Ltd. (GSTIN 20AAGCN8951Q1ZW) in which total loss to the government exchequer is Rs.9.63 Crores by issuance of bogus GST invoices by the accused. The same is described in detail in prosecution report.

4.3 The present petitioner Sumit Kumar Gupta used to manage ground level office work taking offices on rents and making digital signature of the directors etc. The multiple offices were opened in Kolkata as well as in Jharkhand and recruited needy/ poor/ gullible persons offering job in his office. For the purpose of hiring staffs they arranged fake interview of the economically poor people/ needy people (mainly during the time of COVID pandemic and thereafter) in the name of offering job of accountant/ receptionist/ data entry/ post man etc. and called for their credential like PAN card, Aadhar Card and photo etc. He engaged numbers of agent through which job-less boys/ girls were contacted by him. He also used online platform like workindia job, linkdin etc. for that purpose. Whoever, contacted him, he offered job after taking false interview and trapped as many boys and girls as possible enticing them to increase salary and promote them by getting KYC details, opening bank accounts of them for creation of bogus firms/ companies and paying them small pecuniary benefits during the creation of firms. The petitioner operates these firms for a few months and thereafter get them cancelled by submitting letter to GST Department.

4.4 The circular as mentioned in the bail petition is not relevant because the loss was of Rs.781.39 crore to the government exchequer. The petitioner is the mastermind of creating/ operating/ managing 135 fake firms engaged in issuance of bogus GST invoices valuing approximate Rs.5122 crores without actual supply of goods for availing and passing on inadmissible/ irregular ITC to the end availleurs leading to loss of more than Rs.781.39 crore to the Government Exchequer. The investigation is still in process so that the amount of loss to the government exchequers is likely to increase.

5. From the very perusal for the complaint, it is found that the allegation is made against the petitioner-accused is the proprietor of Excal Enterprises and the Director of

M/s Navya Commercial Private Limited. The rest of 133 business entities whose name along with GSTIN are shown in the table of the complaint, the petitioner is mastermind of creating all these fake business entities/ firms engaged in issuance of bogus GST invoices valuing approx. Rs.5122 crores without actual supply of goods for availing and passing on inadmissible/ irregular ITC to the end-avilers leading to loss of more than Rs.781.39 crores to the Government Exchequer as shown in the prosecution report, which is Annexure-A to the counter affidavit filed on behalf of the opposite party-Union of India.

5.1 Further, investigation was carried out in respect of various firms reveals that these firms had fraudulently availed fake input credit and further passed on to the various firms. The details of input tax credit are shown in para-6 of the prosecution report in Table-1 of each 133 firms + 2 firms. The petitioner is the proprietor and director of two firms, namely, Excal Enterprises and M/s Navya Commercial Private Limited.

5.2 There is verified materials on record in view of the statements of the persons available at the registered premises/ proprietors/ partners/ directors to these bogus companies which reveal that no business activities are carried at the said premises. No transactions were done personally by the proprietor, partner or director or the office staff of these bogus companies, who were appointed by the mastermind Sumit Kumar Gupta having forged the documents without knowledge of the proprietors/ directors/ partners and the staff of these fake firms/ companies. The statement of various directors of many firms floated by the petitioner were recorded in which they stated that they were not aware of the companies floated on their names and even they did not know that GST registration had been taken in their names and directorship and also not aware of severity of the illegal activities having been done by the petitioner.

5.3 On showing the transaction done by these bogus companies and firms GSTR-2A-GSTR1 returns summary, they stated that they have absolutely no idea of these transaction or GST filed in these companies all transaction were done in these companies beyond their knowledge. They have never done any business or trading activity in any company and they nowhere related to these firms even remotely.

5.4 As such, it is evident that Sumit Gupta without knowledge of so- called directors, proprietors and other staff of company had used to pass inadmissible and indelible input tax credit to various firms without supply of underlying goods/ services. The irregular input tax credit on the basis of invoices were issued by fictitious/ fake suppliers without actual supply of goods for services, leading to the wrongful availment or utilization of input tax credit and passing thereof which resulted in huge loss in revenue to the government.

5.5 Learned counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court in the case of Ratnambar Kaushik (supra) the same is not applicable in the facts

and circumstances of the case in hand. Particularly in that case, there was no allegation against the accused in regard to committing forgery as is alleged against the present petitioner. The offence of forgery being punishable with life imprisonment, plea raised by the learned counsel for the petitioner of the period of three months' judicial custody and conclusion of trial not likely to be concluded, cannot be accepted.

5.6 So far as the parity of co-accused, namely, Amit Gupta, who has been granted bail by a Co-ordinate Bench of this Court in B.A. No.5472 of 2024 vide order dated 18.07.2024 is concerned, the same cannot be given to the present petitioner because the role of present petitioner is altogether different to that of co-accused Amit Gupta. The petitioner, Sumit Kumar Gupta is the mastermind of creating 133 fake firms by committing forgery and fraud.

6. Even an ordinary person of country is paying CGST & SGST of central and state government for the building and development of nation and state but the persons like petitioner who is white-collar criminals impede and obstruct the development of nation and state as well by creating fake and bogus firm committing forgery in well planned manner in cool calculation and dishonest design with a vulture eye on personal profit causing huge loss of public funds, affects economy of nation and state, should be dealt with different approach to send the eye opening message to such white-collar criminals of society.

6.1 The Hon'ble Apex Court in the case of Y.S. Jagan Mohan Reddy Vs. CBI reported (2013) 7 SCC 439 at paragraph No.34 held as under:

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

6.2 The Hon'ble Apex Court in the case of State of Gujarat v. Mohanlal Jitmalji Porwal, reported (1987) 2 SCC 364 at paragraph No.34 held as under:

**"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A 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. ....”**

7. In view of the allegations made in the complaint, verified materials on record and also taking into consideration the cognizance order dated 04.06.2024 passed by the learned Presiding Officer, Special Court Economic Offences, Jamshedpur, whereby the cognizance has been taken against the petitioner for the offences under Sections 132(1)(i) to (iv) read with 132(4) and (5) of the CGST Act, 2017 as well as under Sections 201 (Part-3), 204, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860, I am of the considered view that the petitioner is not entitled for bail. Accordingly, the bail application of the petitioner is, hereby, rejected.