

**Granted bail to the accused alleged of fraudulently availing, utilizing and passing on ineligible ITC of INR 314.25 Cr.**

The Hon'ble Bombay High Court, in *Daulat Samirmal Mehta v. UOI and Ors. [Writ Petition No. 471 of 2021, decided on February 15, 2021]* granted bail to the accused arrested for committing offence of fraudulently availing, utilizing and passing on ineligible Input Tax Credit ("ITC") amounting to INR 314.25 crores, on strength of bogus invoices without actual receipt of goods or services as mentioned in respective invoices, and held that, at the pre-trial stage of the case, continuing the detention may not at all be justified.

**Facts:**

Daulat Samirmal Mehta ("**the Petitioner**") is the Director of two companies namely Twinstar Industries Limited and Orignet Technologies Limited.

In the year 2018, the Principal Additional Director General ("**Respondent**") initiated an investigation on the basis of intelligence inputs regarding alleged fraudulent availment and utilization of ITC by one M/s. Al Fara's Infraprojects Private Limited ("**AFIPL**") on the basis of bogus invoices without actual receipt of goods or services. During the course of the investigation, summons were also issued to the Petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") and the Petitioner's statements were recorded by investigating officer.

After recording of the last statement on January 21, 2021, the Petitioner was arrested by the Respondent, thereafter the Petitioner was produced before the Additional Chief Metropolitan Magistrate, Mumbai along with remand application. By the said remand application, the arresting authority sought for judicial custody of the Petitioner for a period of 14 days seeking liberty to interrogate the Petitioner in jail custody.

It has been alleged that the Petitioner as the director of the companies has created a cartel in active collaboration with the officials of AFIPL wherein they have indulged in circular transactions of goods without actual supply of the same and has committed offence under Section 132(1)(c) CGST Act for fraudulently availing and utilizing ITC amounting to INR 122.59 crores approximately and under Section 132(1)(b) of the CGST Act for fraudulently issuing bogus invoices and passing on ineligible ITC to various companies amounting to INR 191.66 crores approximately to the recipient companies.

This petition filed challenges constitutional validity of section 132(1)(b) CGST Act and seeks a declaration that the power under Section 69 of the CGST Act can only be exercised upon determination of the liability.

**Issue:**

Whether bail can be granted, where even formal accusation in the form of a first information or a complaint has not been made against the Petitioner?

**Held:**

The Hon'ble Bombay High Court, in ***Writ Petition No .471 of 2021, decided on February 15, 2021*** held as under:

- The requirement under Section 69(1) of the CGST Act is reasons to believe that not only a person has committed any offence as specified but also as to why such person needs to be arrested. From a perusal of the reasons recorded by the Respondent, the Court found that other than paraphrasing the requirement of Section 41 of Code of Criminal Procedure, 1973 ("**Cr.P.C.**"), no concrete incident has been mentioned therein recording any act of tampering of evidence by the Petitioner or threatening / inducing any witness besides not co-operating with the investigation, not to speak of fleeing from investigation. In such circumstances, the Court was of view that Respondent could not have formed a reason to believe that the Petitioner should be arrested.
- Observed that, Respondent has not lodged any first information before the police under Section 154 Cr.P.C. Respondent has also not filed any complaint before the competent magistrate under Section 200 Cr.P.C. In fact, there was no formal accusation against the Petitioner prior to arrest. The first time such accusation has been placed on record was after arrest that too in the form of remand application. A remand application by its very nature cannot be construed to be a first information or a complaint as is understood in law. If the remand application is excluded, then till today after 26 days of custody of the Petitioner, there is still no formal accusation against the Petitioner.
- Referred to the judgment of the Hon'ble Supreme Court in *Arnab Manoranjan Goswami v. State of Maharashtra [AIR 2021 SC 1, decided on November 27, 2020]* and stated that Supreme Court has once again reminded that the basic rule of our criminal justice system is '**bail not jail**'. In cases at the under-trial stage not involving heinous

offences like rape, murder, terrorism etc., it is bail and not jail which is the norm. In present case, notwithstanding the allegation of serious financial impropriety against the Petitioner, the case is not even at the under-trial stage, it is at the pre-trial stage i.e., at a stage where even formal accusation in the form of a first information or a complaint has not been made.

- Held that, continuing the detention of the Petitioner may not at all be justified. In a case of this nature, it is the duty of the constitutional Court to strike a fine balance between the need for custodial interrogation and the right of an accused to personal liberty.
- Directed that the Petitioner shall be enlarged on bail subject to the following conditions:-
  - The Petitioner shall be released on bail on furnishing cash surety of INR 5,00,000/-before the Additional Chief Metropolitan Magistrate, and within two weeks of his release, to furnish two solvent sureties of the like amount before the said authority;
  - The Petitioner shall co-operate in the investigation and shall not make any attempt to interfere with the ongoing investigation;
  - The Petitioner shall not tamper with any evidence or try to influence or intimidate any witness;
  - The Petitioner shall also deposit his passport before the Additional Chief Metropolitan Magistrate.
  - Within 15 days of his release, Petitioner or any of the companies in which he has a substantial interest, and which are under investigation, shall deposit a sum of INR 10 crores , and after the said amount is deposited, a further amount of INR 15 crores shall be deposited within 30 days which shall be without prejudice to his rights and contentions;
  - However, the last two conditions shall be executed by the Petitioner upon his release which shall not be a ground for delaying his release.
  - Any default by the Petitioner may compel the court to take an adverse view of the matter.
- Listed the matter on April 20, 2021 for hearing.

**Relevant Provisions:**

**Section 69 of the CGST Act:**

*“Power to arrest-*

*69. (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.*

*(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.*

*(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—*

*—*

*(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;*

*(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”*

### **Section 132(1) (b) and (c) of the CGST Act:**

*“Punishment for certain offences-*

*132. (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-*

*(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

*(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;*

*shall be punishable—*

*(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;*

*(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;*

*(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*

*(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”*

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