

**Manish & Anr. Vs. DGGI, Gurugram Zonal unit
u/s 132(1)(b) of the GST Act, 2017
(Through Cisco Webex Video Conferencing)**

04.05.2021

Present:- Sh. Harpreet, Ld. SPP for DGGI, Gurugram Zonal Unit through VC.
Sh. Harsh Sethi, Ld. Counsel for applicants/accused persons Manish and Vikas through VC.

This is a joint application for bail under Section 437 Cr.P.C. moved on behalf of applicants/accused persons namely Manish and Vikas through Ld. Counsel.

It is argued by Ld. Counsel for applicants/accused persons that applicants/accused persons had been arrested in this case on 08.03.2021 and are in custody for the last 57 days and are not habitual offenders. It is argued that applicants/accused persons were allegedly working for main accused Kabir Kumar and on whose directions they were allegedly issuing good less invoices. However, not even a single invoice of any firm/company belonging to said Kabir Kumar is on record which bears the signatures of the applicants/accused persons. It is further argued that other than the self-incriminatory statements of applicants/accused persons, there is no other evidence to point that both accused persons were working for Kabir Kumar. It is argued that statements recorded before department had already retracted by the applicants/accused persons and same cannot be read against them in terms of Article 20 (3) of Constitution. It is

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also argued that main accused Kabir Kumar was arrested in this case on 29.10.2020 and already released on bail vide order dated 05.12.2020 and application for cancellation of his bail was moved by the department which was also dismissed. It is submitted that both applicants/accused persons are in JC for about 57 days and till date they have not been once interrogated. It is further submitted that they are no more required for custodial interrogation and both are real brothers of young age. Their parents are aged and mother of the accused persons is bedridden as she has undergone Interlock Nailing surgery of her right tibia. It is prayed that both applicants/accused persons may be released on bail.

Vide separate reply to the present joint bail application, Ld. SPP for the Department has strongly opposed the bail of the present applicants/accused persons on the ground that total number of 156 firms had been created by co-accused Kabir Kumar and issued invoices of Rs. 4,814 crores all across the country and passed on 697 crores of fake/inadmissible ITC on the strength of such fake invoices. It is further alleged that present applicants/accused persons are the main associates of co-accused Kabir Kumar in this racket of creating fake firms, issuing fake bills and passing on inadmissible ITCs. It is submitted that cheque book and debit cards of M/s JR

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Enterprises and M/s Vansh Enterprises and multiple stamps of JR Enterprises in which present applicants/accused persons are proprietors were found during search of co-accused Kabir Kumar at Patel Nagar, New Delhi which clearly shows that all these fake firms were created and operated by Kabir Kumar with association with both the present applicants/accused persons.

I have heard the arguments on behalf of Ld. Counsel for applicants/accused persons as well as Ld. SPP for the Department and also carefully perused the material available on record.

On specific query raised by the Court during course of arguments regarding filing of complaint/ charge-sheet in the present case, it is submitted by Ld. SPP for Department that admittedly 57 days are already passed since arrest of the applicants/accused persons and as per information received from IO Sudhir, Department is still not in a position to precisely tell as to whether the complaint/charge-sheet would be filed within statutory period of 60 days.

At this stage, Ld. Counsel for applicants/accused persons relied upon one order of Hon'ble Delhi High Court in **Bail application No. 168/2021 in Mukul Mittal v. Directorate General of GST Intelligence**, where in similar offence under Section 132(1)(i) of CGST Act, 2017, bail was granted to the accused person by Hon'ble Delhi High Court on the ground that

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accused had already spent 56 days in custody and Department was still not forthcoming in filing complaint/charge-sheet within statutory period of 60 days.

The grant of bail depends upon complex of facts and factors considered in the light of golden principles laid down from time to time by the Higher Courts. In **Dipak Subhash Chandra Mehta v. CBI, (2012) 4 SCC 134**, Hon'ble Apex Court held that:-

"... The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted..."

Keeping in view the totality of circumstances, the fact that main accused Kabir Kumar is already released on bail,

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period of incarceration of both the accused persons coupled with the fact that the Department is still not forthcoming in filing complaint/charge-sheet in this case, the observations of Hon'ble High Court in the **Bail application No. 168/2021 (supra)** and prevailing pandemic situation, both applicants/accused persons namely Manish and Vikas are admitted to bail on furnishing bail bonds in the sum of Rs.50,000/- each with one surety of like amount, subject to following conditions:

- (1) Accused persons/applicants shall not leave India without prior permission of the Court;
- (2) Accused persons/applicants shall attend court in accordance with the conditions of the bonds executed;
- (3) Accused persons/applicants shall not commit an offence similar to the offence of which they are accused or suspected;
- (4) Accused persons shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him / her from disclosing such facts to the Court or to any police officer or tamper with the evidence;

Bail bonds have not been furnished. Copy of this order be sent to Ld. Counsel for the applicants/accused persons as well as to Ld. SPP for Department through email/what's app.

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*It is certified that no disturbance was faced during
virtual hearing and virtual hearing was carried out to
satisfaction of all the stakeholders.*

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**ACMM-01/NEW DELHI DISTRICT
PATIALA HOUSE COURTS/NEW DELHI
04.05.2021
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