

(2021) 04 GUJ CK 0072

In the Gujarat High Court

Case No : R/Special Criminal Application No. 156 Of 2021

Pundrik Ravindrabhai Trivedi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 23-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 226
Code Of Criminal Procedure, 1973 — Section 167, 439
Gujarat Goods And Services Act, 2017 — Section 132(1)(b)(c)(f)(k)(l)

Citation : (2021) 04 GUJ CK 0072

Hon'ble Judges : A.J.Desai, J

Bench : Single Bench

Advocate : Shalin Mehta, Hemang M Shah, Mitesh Amin

Final Decision : Allowed

Judgement

A.J.Desai, J

1. By way of the present application, which has been filed under Articles 14, 21 and 226 of the Constitution of India as well as under Sections 167 and

439 of the Code of Criminal Procedure, 1973, the applicant has initially prayed to release him on bail, during the pendency of the trial on the ground

that charge sheet was not filed.

2. Today, when the matter is called out, learned Senior Counsel Mr. Shalin Mehta appearing with learned advocate Mr. Hemang Shah for the

applicant would submit that the complaint was already filed on 24.03.2020 by the respondent no.2 — the State Tax Officer under sections 132(1)(b)

(c)(f)(k)(l) of the Gujarat Goods and Services Act, 2017 and Central Goods and Services Act, and therefore, the matter was argued on merits.

3. Affidavit in reply has been filed on behalf of the respondent authorities, who

have been represented by the learned Public Prosecutor Mr. Mitesh

Amin with learned Additional Public Prosecutor Mr. L.B. Dabhi.

4. Learned Senior Counsel Mr. Shalin Mehta for the applicant would submit that the applicant is facing the charges under sections 132(1)(b)(c)(f)(k)

(l) of the Gujarat Goods and Services Act, 2017 and Central Goods and Services Act, for which the maximum sentence is of five years. The applicant

is behind bar since 26.01.2020 i.e. for around 15 months. He would further submit that all the co-accused have been enlarged on bail by the trial

Court. Mr. Mehta has also taken the Court to the orders of the trial Court, wherein, it is alleged that all the accused have evaded tax by creating fake

invoices, however, all the co-accused have been released by the trial Court. He would further submit that, the case of the applicant was not

considered by the trial Court on the ground that the investigation is going on. He would further submit that even the applicant has also preferred an

application for releasing him on regular bail being under Section 439 of the Code being Criminal Misc. Application NO. 10480 of 2020 before this

Court. However, the same was withdrawn on 07.10.2020 on the ground that the investigation was not completed. However, it was observed in the

order that it would be open for the applicant to file application, if investigation is not completed within a period of three months. Even, as per the

affidavit of the respondent authorities, the investigation is yet not completed. He would further submit that the entire case is relied upon the

documentary evidence and therefore the applicant be released on appropriate terms and conditions.

5. On the other hand, learned Public Prosecutor Mr. Mitesh Amin has opposed this application. However, on a query, he would submit that out of

about 70 crores of tax evasion, the agency is able to recover an amount of Rs. 47 to 48 crores (approx.) from various persons. However, he would

submit that appropriate order may be passed.

6. Learned advocates appearing on behalf of the respective parties do not press for further reasoned order.

7. Having heard the learned advocates appearing for the respective parties, following facts are emerged from the record:

(I) the maximum punishment of the offence, which the applicant is being tried is of five years;

(II) Undoubtedly, applicant is behind bar since 26.01.2020;

(III) Co-accused have been enlarged on bail by the trial Court in the last year i.e. in the year 2020;

(IV) The order dated 07.10.2020 passed by the Coordinate Bench in Criminal Misc. Application No. 10480 of 2020 makes it amply clear that the

investigating agency was directed to complete the investigation within a period of three months, However, it appears from the the affidavit of the

respondent authorities, till date the the investigation is not completed, though, more than seven months have been passed.

Considering the above aspects of the matter, I am of the opinion that the application requires consideration.

8. In the facts and circumstances of the case and considering the nature of allegations made in the complaint and without discussing the evidence in

details as well as without going into details, prima-facie, this Court is of the opinion that this is a fit case to exercise the discretion to enlarge the

applicant on bail. Hence, the application is allowed and the applicant is ordered to be released on bail in connection with the complaint being

ACST/FSU-11/PUNDRIK TRIVEDI/2019-20/B-64 dated 27.01.2020 and complaint dated 24.03.2020 filed in Criminal Case No. 30267 of 2020 on

executing a bond of Rs.50,000 (Rupees Fifty Thousand only) with two local sureties of Rs.25,000 (Rupees Twenty Five Thousand only) each to

the satisfaction of the trial Court and subject to the conditions that he shall;

[a] not take undue advantage of liberty or misuse liberty;

[b] not act in a manner injurious to the interest of the prosecution;

[c] surrender passport, if any, to the lower court within a week;

[d] not leave the territory of India without prior permission of the Sessions Judge concerned;

[e] shall remain present before the concerned authority as and when called for and cooperate in the investigation;

[f] furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence

without prior permission of this Court;

9. The Authorities will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the

above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be

executed before the lower court having jurisdiction to try the case. It will be open for the concerned Court to delete, modify and/or relax any of the

above conditions in accordance with law. At the trial, the trial court shall not be influenced by the observations of preliminary nature, qua the evidence

at this stage, made by this Court while enlarging the applicant on bail.

10. Rule made absolute to the aforesaid extent. Direct service is permitted. Registry is directed to communicate this order to the concerned jail

authority by fax / email message forthwith.