

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**BLAPL Nos.9319, 9835 & 9836 of 2022**

(In the matter of applications under Section 439 of the Code of Criminal Procedure).

**BLAPL No. 9319 of 2022**

**Chhatar Singh @ Niku Singh .... Petitioner**

**-versus-**

**State of Odisha ... Opposite Party**

**For Petitioner : Mr. B.Nayak, Advocate**

**For Opposite Party : Mr. S.Mishra, Advocate  
for CT-GST, Orissa**

**BLAPL No. 9835 of 2022**

**Dhanman Shaw .... Petitioner**

**-versus-**

**State of Odisha ... Opposite Party**

**For Petitioner : Mr. B.Mansinga, Advocate**

**For Opposite Party : Mr. S.Mishra, Advocate  
for CT-GST, Orissa**

**BLAPL No. 9836 of 2022**

**Ram Bharose Shaw .... Petitioner**

**-versus-**

**State of Odisha ... Opposite Party**

**For Petitioner : Mr. B.Mansinga, Advocate**

**For Opposite Party : Mr. S.Mishra, Advocate  
for CT-GST, Orissa**

**CORAM:**

**JUSTICE G. SATAPATHY**

**DATE OF JUDGMENT:05.04.2023**

**G. Satapathy, J.**

**1.** Since all these three bail applications arise out of one and same case in 2(c) CC Case No. 27 of 2022, for convenience, the same are heard together and disposed of by this common order with consent of the learned counsel for the respective parties.

**2.** These are the bail applications U/S. 439 of Cr.P.C. by the Petitioners for grant of bail in connection with CT & GST Enforcement Unit, Rourkela Case No. 3/2022-23 corresponding to 2(c) CC Case No. 27 of 2022 of the Court of learned S.D.J.M., Panposh at Rourkela for commission of offence U/Ss. 132(1)(b)(c) & (l) of the OGST Act.

**3.** The allegations as set out in the prosecution report which eventually led to institution of complaint by the

Additional Commissioner of CT & GST, Rourkela, are that on the basis of confidential information of involvement of Directors as well as Ex-Directors of three companies namely, M/S. Sairam Ingot Private Limited, M/S. Swastik Ingot Private Limited and M/S. Sunayana Metal Industries Limited and others for wrongfully claiming, utilizing and passing bogus input tax credit on the strength of forged documents purportedly issued in the name of non-existent and ghost business entities created and operated by them, without physical receipt and supply of goods, the local Authorities under GST Act started investigation, in the course of which, the petitioners Dhanman Shaw, Ram Bharose Shaw, Niku Singh and others were found to have committed the offences U/Ss. 132(1)(b)(c)(f) & (l) of the OGST Act for individually as well as jointly and severally in collusion with each other by issuing invoices or bills without physical supply of goods or services leading

to wrongful availment or utilization of input tax credit by using such invoices or bills or fraudulently availing input tax credit without any invoices or bills and falsification of financial records including books of account and thereby, the petitioners and others have wrongfully gained huge financial benefits. It is claimed in the investigation that M/S. Sairam Ingot Private Limited is a physically non-existent company having no business activities in operation at its registered place of location, but the petitioner Dhanman Shaw and his family members continued to control its activities and utilized the said company for passing of bogus input tax credit to two others existing companies under the seal and signature of Directors, and the petitioner Dhanman Shaw was alleged to have operated the activities of said non-existent company and caused evasion of GST running to crores of Rupees. It is also alleged that the remaining two existing companies M/S. Swastik Ingot

Private Limited and M/S. Sunayana Metal Industries Limited are primarily being manufacturing units for producing iron and steel goods and petitioner Ram Bharose Shaw and his brother petitioner-Dhanwan Shaw, although stated to be resigned as Directors with effect from 01.06.2019, but it is claimed that documentary evidence reveals that petitioner Dhanwan Shaw and his family members continue to act as de-facto Directors/operators of the companies and the three petitioners along with others have used false tax invoices issued in the name of non-existent and ghost business entities for wrongfully passing of bogus input tax credit and for that purpose, the petitioners have collected identity documents such as Pan, Aadhar and Passport from different innocent persons and obtained registration under GST Act fraudulently by misusing the said documents and wrongfully obtained financial benefits accrued out of trading with the help of such fake invoices by using

these documents. It is also alleged that the petitioners and others have operated as many as 25 numbers of non-existent and fictitious business entities in the name of men of no means by misusing their personal identity documents without their knowledge and consent. The petitioners were alleged to have issued forged tax invoices in the name of these fictitious business entities disclosing fake supply of iron and steel goods which have been mostly used by the existing companies M/S. Swastik Ingot Private Limited and M/S. Sunayana Metal Industries Limited. It is also alleged that petitioner Dhanman Shaw was the creator and operator of 19 numbers of non-existent ghost business entities and have effected purchase of goods from different registered and un-registered tax payers without obtaining purchase invoices from them and without payment of tax and he by arranging forged invoices from non-existing and dummy firms availed bogus

input tax credit worth Rs.96.26 crores on the strength of fake invoices and defrauded the State Exchequer and similarly, petitioner-Ram Bharose Shaw by allegedly creating and operating 17 numbers of non-existent and ghost business entities has secured bogus input tax credit worth Rs.78.87 crores on the strength of fake invoices and thereby, defrauded the State Exchequer and petitioner-Niku Singh allegedly by creating and operating 10 numbers of non-existent and ghost business entities could manage to avail bogus input tax credit worth Rs.49.09 crores and defrauded the State Exchequer. It is also alleged in the prosecution report that petitioner Dhanwan Shaw, Ram Bharose Shaw and along with others have managed to secure bogus input tax credit of Rs.212.88 crores, whereas petitioner Niku Singh in collusion with others could manage to get bogus input tax credit of Rs.105.77 crores and all the three petitioners and another were

accordingly arrested on 06.07.2022 and produced before the learned S.D.J.M., Panposh on the same day and in the meantime, prosecution report was submitted before the Court.

**4.** In the course of hearing of bail application, Mr. Biswajit Nayak, learned counsel for the petitioner- Niku Singh in BLAPL No. 9319 of 2022 by taking this Court through the allegations against the petitioner has submitted that the petitioner is no way connected in this case and all the allegations are directed against the Directors of three companies, but the allegation against the petitioner for collecting personal identity documents of 10 numbers of person and creating ghost firms in the name of said persons by misusing the documents appears to be incorrect. It is further submitted that the offence alleged against the petitioner are triable by Magistrate First Class and the punishment prescribed therein may extend to five years and with fine, but the petitioner

having detained in custody more than seven months and in the meantime final P.R. having already been submitted resulting in taking cognizance of offences, no fruitful purpose would be served for detaining the petitioner in custody any further. It is also submitted that when fictitious transactions, which means no transaction has taken place as alleged by the Department, where is the question of availing input tax credit/evasion of tax by the petitioner. In relying upon the decisions in (i) **Ajaj Ahamad Vrs. State of Odisha(CGST); (2022) 86 OCR 624**, (ii) **Rohit Berlia Vrs. Intelligence Officer, Director General of Goods & Service Tax Intelligence, Bhubaneswar** in **BLAPL No. 8831 of 2021** disposed of on 11.01.2022 and (iii) **Pramod Kumar Sahoo Vrs. State of Odisha in BLAPL No. 4125 of 2020** disposed of on 23.12.2020, learned counsel for the petitioner-Niku Singh prays for grant of bail to the petitioner.

**4.1** Mr.B.Mansinga, learned counsel for the petitioners Dhanman Shaw in BLAPL No. 9835 of 2022 and Ram Bharose Shaw in BLAPL No. 9836 of 2022 has submitted that the petitioners were neither Directors of M/S. Swastik Ingot Private Limited nor M/S. Sunayana Metal Industries Limited and admittedly, they having resigned as Directors of said two companies with effect from 31.03.2018, they cannot be saddled with any liability for fraud or for offences committed by the said companies after their resignation, but the prosecution being overzealous has registered this case against the petitioners. It is further submitted that the offence alleged against the petitioners are triable by Magistrate First Class and prescribes punishment up to five years, but the petitioners having detained in custody for more than seven months, no further detention would be useful in view of the fact that the prosecution has already submitted PR basing upon which, cognizance has

been taken and there is hardly any chance of tampering of prosecution evidence by the petitioners. It is further submitted that the petitioners have cooperated the Authorities in the course of investigation and thereby, all the three petitioners are entitled to bail on that score. Mr.B.Mansinga by relying upon the decision in ***Smruti Ranjan Mohanty Vrs. State of Odisha; 2022 SCC OnLine Ori 743*** prays to grant bail to the petitioners on any stringent conditions.

**5.** Mr.Sunil Mishra, learned counsel for the CT & GST has submitted that the petitioners are not merely fraudsters, but are accused of committing economic offence upon the State by defrauding approximately an amount of Rs.316.33 crores, out of which the ill-gotten share of petitioner-Niku Singh is Rs.105 crores and the rest amount is the ill-gotten share of Dhanman Shaw and Ram Bharose Shaw. Mr.Mishra has further submitted that the petitioner-Niku Singh

by creating and operating ten numbers of ghost business entities has availed more than Rs.100 crores input tax credit and thereby defrauded the State to the tune of such amount and the manner of commission of the offences is by claiming, utilizing and passing bogus input tax credit through fake transaction of non-existent and fictitious business entities. It is also submitted that the petitioners are influential persons and have the capacity to influence the witnesses in case they are being released on bail and they also pose flight risks. It is further submitted that the petitioners were operating through one fictitious company M/S. Sairam Ingot Private Limited and two other existing companies with 25 numbers of ghost business entities and the petitioners thereby in collusion with other were alleged to have availed input tax credit to the tune of Rs.316 crores and some odd amount on the strength of fake invoices purportedly issued in the name of ghost entities

without physical receipt and supply of goods during the period of July, 2017 to November, 2019 and the modus of operation of all the petitioners are same. It is also submitted that although the petitioners Ram Bharose Shaw and Dhanman Shaw had claimed to have tendered resignation as Directors of company with effect from 31.03.2018, but they were operating these companies surreptitiously in the name of other directors. It is also submitted that since witnesses are yet to be examined in this case, it would not be proper to grant bail to the petitioners as the petitioners can influence the witnesses in the course of trial. Mr.Mishra by relying upon certain decisions has prayed to reject the bail application of the petitioners.

**6.** After having heard the rival submissions for the parties, this Court clarifies that for the limited purpose of considering the bail application of a person accused of an offence, neither it is desirable nor is it

necessary to weigh the evidence meticulously, rather it is to be considered whether there exists any prima facie materials or accusations against the accused person and the accused has otherwise made out a case for grant of bail in his favour. The broad principles governing grant or refusal of bail has been laid down by the Apex Court in a plethora of decisions and the same has to be considered in the facts and circumstance of each case. While considering bail application, amongst other factors, the severity and magnitude of allegation has to be taken into consideration. On coming back to the materials placed on record, it appears that the authority under GST after making a detailed investigation has submitted prosecution report against the petitioners for commission of offences U/Ss. 132(1)(b)(c)(f) & (l) of the OGST Act which are punishable U/S. 132(1)(a to l)(i) of OGST Act, 2017 in this case.

**7.** In the course of hearing of bail applications, learned counsel for CT & GST, Orissa has produced the prosecution report in which the manner and circumstance of evasion of tax in the form of bogus input tax credit amounting to little more than Rs.316 crores has been alleged against the petitioners and the manner of commission of such tax evasion has been minutely described. In such prosecution report it is alleged against the petitioner Niku Singh that he being one of the associate of petitioner Dhanman Shaw was involved in creation and operation of ten numbers of fictitious and non-existent business entities and has issued fake invoices in the name of such non-existence business entities and consequently, such business entities had availed bogus input tax credit on the strength of fake invoices without physical receipt & supply of goods and he, thereby, was alleged for defrauding the State Exchequer for an amount of Rs.105.77 crores. In the

course of hearing of bail application, although learned counsel for the petitioner Niku Singh has tried to impress upon the Court that the petitioner is no way involved in this case, but the prosecution report so produced on behalf of the CT & GST discloses some prima facie materials against the petitioner Niku Singh for creating and operating ten numbers of non-existent business entities for issuing fake invoices of these business entities to company M/S. Swastik Ingot Private Limited and M/S. Sunayuna Metal Industries Limited and one non-existent company M/S. Sairam Ingot Private Limited and in the process, these companies have claimed and utilized bogus input tax credit and allegedly availed bogus input tax credit amounting Rs.105.77 crores on the strength of fake invoices without physical receipt and supply of goods. Similarly, there is allegation against the petitioner Dhanman Shaw for operating companies in the name of M/S. Swastik Ingot Private Limited and

M/S. Sunayana Metal Industries Limited as well as in the name of one non-existent company M/S. Sairam Ingot Private Limited for fictitious business activity with 19 numbers of ghost and non-existent business entities allegedly created by him in collusion with other accused persons for availing and passing bogus input tax credit amounting to Rs.212.88 crores on the strength of fake invoices purportedly issued in the name of these ghost business entities without physical receipt and supply of goods. It is also alleged against the petitioner Ram Bharose Shaw that he being the brother of petitioner Dhanman Shaw was also operating the business activity of the companies such as, M/S. Swastik Ingot Private Limited and M/S. Sunayana Metal Industries Limited with 17 numbers of ghost and non-existent business entities and in order to avail bogus input tax credit, he had arranged fake purchase invoices for non-existing and dummy firms for an amount of Rs.78.78 crores and for

passing bogus input tax credit worth Rs.99.19 crores to the recipient inside and outside the State of Orissa without physical dispatch of goods in the name of fictitious firms created and operated by him. It, therefore, appears that there is prima facie allegations against these three petitioners and other for operating numbers of fictitious and ghost business entities for fake transaction with existing companies as well as non-existing company and by means of fake invoices, allegedly availed crores of input tax credit without physical purchase and supply of goods, which according to the GST Department has resulted fraud upon the State Exchequer to the tune of Rs.316 crores and some odd which is a serious allegation against these petitioners for commission of economic offences.

**8.** Albeit, the petitioners have relied upon the decisions of this Court in ***Ajaj Ahamad, Rohit Berlia, Pramod Kumar Sahoo and Smruti Ranjan***

***Mohanty (supra)***, but the magnitude of allegation of tax evasion in each case therein appears to be small as compared to the amount alleged in the present case to the tune of little more than Rs.316 crores and therefore, in the peculiar facts and circumstance together with the manner of alleged commission of economic offence involving huge amount of tax evasion leveled against the petitioners makes the present case quite distinguishable from the facts of the cases relied on by the petitioners. While considering the bail application of a person accused of economic offences of huge magnitude on prima facie accusations, no liberal approach should be adopted, especially when the extent of economic offence runs to more than hundreds of crores and the law on this point has been more or less explained by the Apex Court in following decisions in ***State of Gujarat Vrs. Mohanlal Jitamalji Porwal; AIR 1987 SC 1321, Y.S.Jagamohan Reddy Vrs.***

**Central Bureau of Investigation; (2013) 7 SCC 450 and Nimmagada Prasad Vrs. Central Bureau of Investigation; (2013) 7 SCC 466.**

**8.1.** In **Mohanlal Jitamalji(supra)**, the Apex Court in Paragraph-5 has held as follows:-

*"The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. 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."*

**8.2** In **Y.S.Jagan Mohan Reddy(supra)**, the Apex Court at Paragraphs- 34 and 45 has 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 offence having deep rooted conspiracies and involving huge loss of*

*public funds needs 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.*

*35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

**8.3** In ***Nimmagadda Prasad (supra)***, the Apex court at Paragraph-24 has held as under:-

*"24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead*

*of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*

**9.** It is true that the petitioners are in custody for little more than seven months and charge sheet has already been filed in the meantime, but considering the allegation of huge amount of financial fraud being leveled against the petitioners by itself in the facts and circumstance of the case not entitle them for grant bail at this stage. Besides, the alleged manner and method of commission of offence involving such huge amount of tax evasion by way of issuing fake invoices and availing input tax credit without physical purchase and supply of goods in the guise of business of non-existing entities with existing and non-existing companies and thereby, resulting in defraud of State Exchequer for such a huge amount, would by itself

constitute prima facie materials against the petitioners for not considering their bail applications positively. In such circumstance and taking into consideration the availability of prima facie allegations against the petitioners for their involvement in commission of economic offences to the tune of Rs.316 crores and some odd and keeping in mind the fact that some of the co-accused are still at large avoiding their apprehension, this Court does not consider it proper to extend the benefit of bail to the petitioners.

Hence, the bail applications of the petitioners stand rejected. Since cognizance has already been taken as stated at the Bar, trial be expedited, if there is no other legal impediment.

Accordingly all the three BLAPLs stand disposed of.

**(G. Satapathy)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 5<sup>th</sup> of April, 2023/Kishore*