

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

C482 Application No. 1000 of 2024

Mohd. Shahnawaz Hussain ...Applicant
Vs.
State of Uttarakhand and Another ...Respondents

Advocates:

Mr. Lalit Sharma, learned counsel for the applicant.
Mr. G.S. Sandhu, learned Additional Government Advocate assisted by
Mr. Bhaskar Chandra Joshi, learned A.G.A. for the State.

Hon'ble Rakesh Thapliyal, J. (Oral)

1. The instant Criminal Miscellaneous Application has been preferred by the applicant under Section 482 CrPC assailing the order dated 27.05.2024, passed by the learned District and Sessions Judge, Rudrapur, District Udham Singh Nagar in Miscellaneous Application No. 87 of 2024, preferred on behalf of the State Tax Department under Section 439 (2) CrPC, whereby, the bail granted to the applicant by order dated 05.03.2024 in Second Bail Application No. 359 of 2024 was cancelled and the applicant was directed to surrender.

2. Brief facts of the case are that the Deputy Commissioner, Special Investigation Branch (GST-State) being a "proper officer" under the provisions of Uttarakhand Goods and Services Act, 2017 and authorized to file the complaint preferred a complaint on 18.12.2023 in the Court of Chief Judicial Magistrate, Udham Singh Nagar, which was registered as a Complaint Case No. 818/STB/RDP /03/03/2023, against the present applicant for the offences punishable under Sections 132(1)(b), 132(1)(c) and 132(1) of Uttarakhand Goods and Service Tax Act/The Central Goods and Service Tax Act, 2017.

3. Before filing the said complaint, the competent authority, Commissioner State Tax, Uttarakhand in exercise of powers conferred upon him under Section 132(6) of the Uttarakhand GST Act, has accorded sanction for prosecution.

4. The allegations as alleged in the complaint is that two complaints were received on 26.02.2021 and 12.08.2021 with the allegation that huge number of shell firms have been registered and operated by various persons in Jaspur area of District Udham Singh Nagar and these persons have been indulged in issuance and selling of fake invoices of 'wood swan'/'timber' to different buyers within the State as well as outside the State on commission basis without causing actual supply of goods, due to which they caused loss of revenue of Uttarakhand Goods and Services Tax and Central Goods and Services Tax to the State Government as well as to the Government of India.

5. On the said complaint, a preliminary investigation was launched by Special Investigation Branch (SIB), State Tax, Rudrapur and an extensive data analysis was done using E-way bill portal and GST back office portal and simultaneously a secret intelligence network was also activated to gather all necessary field information related to the issue. The Field Intelligence gathered certain informations from different sources, which reveals that some persons have been running a nexus of selling of GST invoices and fraudulent generation of e-way bills, fake bilties, Forest (Transit Pass) & Mandi passes without getting actual sale-purchase of wood by using shell firms registered in the name of dummy persons.

6. The investigation reveals that the nexus was started somewhere in July 2019 by a person namely Mohd. Shahnawaz Hussain (present applicant), resident of Jaspur,

District Udham Singh Nagar. It also reveals from the SIB that Mohd. Shahnawaz Hussain (present applicant) operates various shell firms registered by him under the GST law using name by fake I.D.s and fake documents of other persons like truck driver, relatives, labour, unknown person, women etc.

7. The investigation further reveals that the said person also operates various other shell firms and he has been indulged in creation, operation and handling of fictitious/shell/fake firms in the name of other persons and using these firms to issue fake invoices without conducting actual movements of goods to pass on fake Input Tax Credit (ITC) to the beneficiary dealers located in Uttarakhand as well as in the State of Haryana, Uttar Pradesh, Delhi etc. The investigation further reveals that this person running many shell firms registered under the GST and MSME also in the name of third person and he kept all documents at his residence and hired some youth for this purpose including for generation of fake invoices, making of e-way bills, transportation of cash, formation of fake firms, debit-credit transaction, cash withdrawal from bank etc.

8. The investigation further reveals that he operates entire nexus of shell firms through android phones and lap tops. The Special Investigation Branch also investigated into the financial records of such shell firms formulated, operated and purchased by this person, namely, Mohd. Shahnawaz Hussain, the applicant herein.

9. A search and seizure operation was also conducted on 04.03.2023, but before the search this person ran away after locking his house. Subsequently, the house was sealed in the presence of Sub Divisional Magistrate (SDM), Jaspur and then he approached to this Court and preferred writ

petition being WPMS No. 730 of 2023 through his father against the sealing order but the same was dismissed by the High Court on 17.03.2023 with a direction to the applicant to present before the Special Investigation Branch within 48 hours.

10. Thereafter, the house of the applicant was searched on 15.05.2023 and during search huge number of documents, and devices relating to fake firms which includes: cell phones, SIM cards, blank and filled invoices, pre-signed cheque books, unsigned cheque books and cheque leafs, bank pass book, bank letters, sign boards of different fake firms, stamp of fake firms, E-way bills, IDs of different person, copy & booklets of fake firms, Mandi samiti passes along with some digital instruments like credit cards, ATM cards, currency counting machine etc were recovered and seized. The seizure includes, 5 cell phones, 01 currency counting machine, 17 stamps of shell firms, various GST tax invoices issued from fake/ shell firms, PAN cards, copy of 789 loose e-way bills related to different shell firms etc., operated by applicant in the name of dummy persons i.e. Roshan Enterprises, RS Timber, Himalayan Trading Company etc., Bilty booklets of GT road lines & Bright road lines.

11. Apart from this, certain copies of summons issued under Section 70 of the Act to the owner of the shell firms including letters sent by the banks to the account holder & proprietor of the firm were also recovered from his house during search operation. The Special Investigation Branch has gathered evidence relating to 28 such fake firms, which were created, managed and operated by the accused/applicant to issue fake invoices of evaded tax of INR 20,29,42,026.58 (Rupees Twenty Crores Twenty Nine Lacs, Forty Two Thousand and Twenty Six Point Fifty Eight Paisa Only) on the fake supply of wood swan / timber of

HSN amounts turnover of INR 113,09,88,049.89 (Rupees One Hundred Thirteen Crore, Nine Lakh, Eighty Eight Thousand And Forty Nine Point Eighty Nine Paisa only).

12. It is alleged in the complaint that, the said person Shahnawaz Husain (present applicant) has been found involve in availment, utilization and pass on fraudulent ITC exceeding Rs. 5 Cr and caused a huge revenue losses to the state and central government exchequer by violating provisions of Section 16 (2) of UKGST/ CGST Act, 2017 by availing/ utilizing and pass on fraudulent Input Tax credit of GST, which is an offence as per provisions of Section 132 (1) (b) and 132 (1) (c) of CGST & UKGST Act, 2017 & is punishable with imprisonment for a term which may extend to five years and with fine under the provision of section 132 (1) (1) of CGST & UKGST act, 2017.

13. The applicant was arrested on 22.10.2023 and sent to judicial custody for 14 days up to 03.11.2023 and the judicial remand was extended up to 13.12.2023. Thereafter, the present applicant, moved an Application under Section 439(2) of CrPC for seeking regular bail on 05.02.2024, wherein detailed objections were filed by the department on 07.02.2024 disclosing past criminal history of the present applicant, as well as the fact that the present applicant has been convicted with rigorous imprisonment of 3 years for keeping and using of fake stamp of different department i.e. Mandi Sales Tax, Forest department etc., fake bills, fake bilties to evade value added tax for the offences punishable under Sections 420, 467, 468 & 472 IPC by judgment and order dated 11.12.2013 passed by trial Court in Criminal Case No. 1774 of 2012, which was confirmed by Additional District and Sessions Judge on 06.07.2018 which has been assailed in Criminal Appeal No. 287 of 2013.

14. After receiving the objection, the said application was withdrawn by the applicant on 22.02.2024. Thereafter, Second Bail Application No. 359 of 2024 was preferred by the applicant on 27.02.2024 before the learned Sessions Judge, Udham Singh Nagar for seeking regular bail and the same was allowed on 05.03.2024.

15. Thereafter, the complainant/respondent No. 2 preferred a Miscellaneous Application, registered as Miscellaneous Application No. 87 of 2024 for the purposes of seeking cancellation of bail of the applicant which was granted to him by order dated 05.03.2024.

16. In the said application several grounds have been taken and one of the ground which is reflected from para 6 of the application is that the applicant was earlier convicted in the same nature of allegations i.e. a frequent tax evader and is a habitual offender of tax frauds and convicted for rigorous imprisonment of 3 yrs for keeping and using of fake stamp of different departments for the offences punishable under Sections 420, 467, 468 & 472 of IPC pursuant to the order dated 11.12.2013 passed in Criminal Case No. 1774 of 2012. Apart from this, it is also contended in the application that the offences as committed by the applicant relates to economic offences which are grave in nature and that aspect has not been dealt with while granting bail.

17. It is also contended in the application that the accused/applicant has threatened the witnesses and in this regard a complaint was made to Police Station, Kotwali Jaspur.

18. Thereafter, the learned District and Sessions Judge allowed the said Application, moved by the respondent/complaint on 27.05.2024 and cancelled the bail of the applicant with a direction to the applicant to surrender before the Court of Chief Judicial Magistrate,

Udham Singh Nagar, within a week from the date of passing of the order.

19. Now, by the instant Application, preferred under Section 482 CrPC, the applicant is challenging the order dated 27.05.2024, whereby the bail granted to the applicant on 05.03.2024 has been cancelled.

20. Learned counsel for the applicant submits that though in the Second Bail Application he has not disclosed the fact about the criminal history, but in paragraph-4 of the order dated 05.03.2024; there is a reference that the present applicant was convicted in another criminal case and, therefore, he submits that this aspect cannot be looked into by the learned Sessions Judge while cancelling the bail of the present applicant.

21. Learned counsel for the applicant placed reliance on a judgment rendered by the Hon'ble Apex Court in the case of **'Abdul Basit @ Raju and others etc. vs. Md. Abdul Kadir Chaudhary and Another'** reported in **2014 (4) Crimes SC 561**.

22. By referring the aforesaid judgment, learned counsel for the applicant submits that the learned Sessions Judge committed a manifest illegality while cancelling the bail granted to the present applicant as the same is barred by Section 362 of Cr.P.C. Apart from this, learned counsel for the applicant submits that the same Court cannot cancel the bail as the same is barred by Section 362 of Cr.P.C. and only the superior Court can cancel the bail.

23. In response to this, Mr. G.S. Sandhu, learned Additional Advocate General/Senior Counsel assisted by Bhaskar Chandra Joshi, learned A.G.A. vehemently argued that in the First Bail Application there was no disclosure about the criminal history as well as the disclosure about the order passed by the Trial Court in which the present

applicant was convicted and this fact was disclosed by way of an objection in the First Bail Application on 07.02.2024. He further submits that after withdrawal of the First Bail Application on 22.02.2024 immediately after five days on 27.02.2024 the Second Bail Application has been moved but again he has not disclosed about criminal history and procured the bail by suppressing the material facts by withholding the same intentionally and also by misleading the Court.

24. Learned Additional Advocate General submits that admittedly at the time of filing of Second Bail Application, again the applicant has not disclosed about the criminal history though this fact was very well within his knowledge since the criminal history of the applicant was disclosed by the department in first bail application. He submits that, in fact without disclosure of the material as well as facts about the criminal history the present applicant procured the bail; therefore, since the bail was obtained by way of misrepresentation and by concealing material facts, therefore, the learned Sessions Judge rightly cancelled the bail of the present applicant.

25. The learned Additional Advocate General for the State placed reliance on a judgment of Hon'ble Supreme Court in the case of **Himanshu Sharma vs. State of Madhya Pradesh** 2024 1 NSC 139 decided on 20.02.2024 and he particularly placed reliance in paragraph no. 12 of the judgment, which is being reproduced herein as below:

"12. Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail, (a) the accused has misused the liberty granted to him; (b) flouted the conditions of bail order; (c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail; (d) or that the bail was procured by misrepresentation or fraud. In the present case, none of these situations existed."

26. The another judgment, which has been relied upon by the learned Additional Government Advocate is in the case of **Ajwar vs. Waseem and Another** reported in **2024 SCC Online SC 974** decided on 17.05.2024 and he particularly placed reliance in paragraph-27 of the said judgment, which is being reproduced herein as below:

"27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh and Another(supra) decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

"24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."

27. As per the arguments, as advanced by the learned counsel for the parties, two issues are required to be decided. The first issue is whether the present applicant procured the bail by way of misrepresentation and suppression of material facts, and the second issue is whether the learned Sessions Judge is right in cancelling the bail of the applicant after gone through with the merit of the case.

28. So far as the first issue is concerned, i.e. whether the bail has been procured by the present applicant by way of

misrepresentation and suppression of material facts. To examine this issue, one fact is undisputed that earlier the applicant filed a First Bail Application and admittedly, there was no disclosure about the criminal history as well as the fact that he was already convicted in another case of similar nature. About the criminal history and the fact that the applicant was convicted, the detailed objections were filed in the First Bail Application by disclosing the criminal history as well as the fact about the conviction of the present applicant in another case of similar nature.

29. What the applicant has done, instead of filing the response to the objection, the First Bail Application was withdrawn. The most surprising part is that after withdrawal of the First Bail Application, Second Bail Application was preferred just after 5 days; but again he has not disclosed about the criminal history as well as the fact about his conviction in another case of similar nature.

30. As per the argument of the learned Additional Government Advocate, in the Second Bail Application, deliberately, the present applicant have not disclosed the facts again about the criminal history as well as the fact about his conviction which itself reveals that the applicant procured his bail by way of misrepresentation which was intentional and deliberate on his part. It appears that when this fact came to the knowledge of the applicant about his criminal history as disclosed in the objections filed in the First Bail Application, the applicant should disclose in the Second Bail Application about his criminal history as well as the facts about his conviction in the case of similar nature. In the opinion of this Court, the conduct of the applicant itself reveals and establishes that the present applicant procured the bail by way of misrepresentation as well as by suppression of material facts.

31. Though, in response to this, the argument of the learned counsel for the applicant was that about the past conduct and the fact about the conviction of the present applicant was dealt with by the Court while granting the bail and therefore, this ground is not available for the prosecution to move an application for cancellation of bail.

32. This Court is not convinced with the argument as advanced by the learned counsel for the applicant, particularly, when the applicant has not approached with clean hands to the trial Court while seeking bail. The question is if he has moved the First Bail Application, wherein the objections were called and the objections were filed by disclosing the criminal history of the applicant, then why he has not pressed the First Bail Application. Furthermore, even if he has not pressed First Bail Application, why he has not disclosed the criminal history in the Second Bail Application. Thus, this aspect clearly reveals that the present applicant made all possible efforts to procure the bail by misrepresenting as well as by suppressing material facts. Such a conduct of the applicant, seeking regular bail without disclosing the material facts, about the criminal history and the facts about his conviction clearly reveals that he procured the bail by way misrepresentation and in such an eventuality, the same Court was right in cancelling the bail.

33. So far as the next issue is concerned that while cancelling the bail of the present applicant, whether the same Court can touch the merit of the case. To examine this issue, this Court also examined the allegation which appears to be serious in nature and the present applicant is certainly indulged in committing the economic offences due to which he caused a huge revenue and tax losses to the government exchequer, amounting to more than Rs. 20,00,00,000/- (Rupees Twenty Crores Only).

34. Now-a-days, the economic offences are serious in nature. Since there are serious allegations against the applicant/accused, therefore, in the opinion of this Court, the Court of District and Sessions Judge, Udhham Singh Nagar, rightly touched also the merit of the case to examine the seriousness of the allegation. Therefore, this Court is of the view that there is no any illegality in the order under challenge, particularly when the applicant suppressed the material facts.

35. Thus, the argument as advanced by the learned counsel for the applicant that the learned Sessions Judge was wrong in cancelling the bail and the same is barred by Section 362 of CrPC, is not acceptable, keeping in view of the seriousness of the allegation.

36. Apart from this, there is one more aspect, which has been argued by the learned State counsel that the present applicant has also misused the bail since he was threatening to the witnesses and this aspect is also one of the relevant factor for cancelling the bail. Mr. G.S. Sandhu, learned Additional Government Advocate submits that if the applicant released on bail there are chances that he may temper with the evidence, therefore the applicant is not entitle for bail particularly taking into consideration the past history of the applicant. I found force on the submission of Mr. G.S. Sandhu, learned Assistant Government Advocate. Thus, this Court is of the firmed opinion that the learned Sessions Judge rightly cancelled the bail of the applicant.

37. Accordingly, I do not find any merit in the present Application preferred under Section 482 of CrPC, and the same is, dismissed being devoid of merit.

38. No order as to costs.

(Rakesh Thapliyal, J.)

08.07.2024