2026:AHC:231809

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. BAIL APPLICATION No. - 39336 of 2026

Gautam Sharma

.....Applicant(s)

Versus

Union of India

.....Opposite Party(s)

Counsel for Applicant(s)	:	Shashi Dhar Shukla
Counsel for Opposite Party(s)	:	Dhananjay Awasthi

Court No. - 55

HON'BLE VIKRAM D. CHAUHAN, J.

1. Learned counsel for DGGI submits that instructions have been received and has no objection in case the bail application is heard on merits.

2. Heard Sri Harpreet Singh, learned counsel appeared through Video Conference along with Sri Pranay Jain, Sri Jitin Singhal and Si Shashi Dhar Shukla, learned counsel for applicant as well as Sri Dhananjay Awasthi, learned counsel for DGGI and perused the record.

3. It is submitted by learned counsel for applicant that applicant is partner of Aarti Industry. The allegation is that nine suppliers of Aarti Industry were found to have been incorrectly availed fake ITC of Rs.38 crores. It is submitted by learned counsel for applicant that applicant was arrested and complaint has already been filed. The applicant has no previous criminal history. Applicant is languishing in jail since 26.7.2026 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in the trial.

4. Learned counsel for DGGI opposed the prayer for bail and submits that input tax credit of Rs.38 crores have been violated, however, he could not dispute the circular dated 30th October 2026, which provides recommendation of withdrawal of arrest power under the G.S.T. provision and have further directed that no arrest may be made.

5. The liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also

access to justice and a speedy trial. There is a presumption of innocence in favour of accused pending trial. The ultimate justification for such deprivation of liberty can only be, the accused being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary. Timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice. No material has been shown by State to demonstrate that the conduct of applicant while in jail would disentitle the applicant to be released on bail.

6. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention (pending trial) is not supposed to be punitive. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time.

7. In **Sanjay Chandra Vs. CBI, (2012) 1 SCC 40** Hon'ble Supreme Court has held that accused cannot be in jail during trial as a punitive measure for his conduct, In this respect paragraph 21, 22 and 23 of **Sanjay Chandra (Supra)** is quoted herein below:-

*"**21.** In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

***22.** From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such*

cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."*

8. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws, a person accused of offences which are non-bailable is liable to be detained in custody during pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of existence of prima facie case there is a need to release such person on bail where fact situations require it to do so.

9. Article 21 of Constitution provides that no person will be deprived of his life or liberty except by procedure established by law. The procedure established by law should be just, fair and reasonable. The presumption of innocence is applicable to under trial accused. Even if prima facie case is made out, the constitutional Court while considering the bail application are required to examine whether it is reasonable to keep the accused in custody during trial and in only exceptional cases (like heinous crime) the

bail can be denied.

10. In **Special Leave to Appeal (Criminal) No 20996 of 2025 (Atul Mehra Vs. Union of India)** by order dated 12.1.2026, Hon'ble Supreme Court while granting bail to the accused under Section 132(i) of GST Act, 2017 and Section 20(xv) of IGST Act, 2017 (who was under detention for eight months) has observed as under:-

"4. We do not undermine the gravity of the alleged offence. However, at the same time, we should not overlook the fact that the petitioner is in judicial custody as an under-trial prisoner past 8 months. The Trial Court is yet to commence. Charge is yet to be framed. Even if the trial commences in near future, it would not conclude within next one year. The offences are triable by Magistrate. The maximum punishment that the trial court may be in a position to impose upon the petitioner if held guilty would be upto 5 years."

11. The Supreme Court in **Criminal Appeal No 2269 of 2025 (Vineet Jain Vs. Union of India)** (Arising out of SLP (Criminal) No 4349 of 2025) decided on 28.4.2025 while grating bail to accused Clauses (c), (f) and (h) of Section 132(1) of the Central Goods and Services Tax Act, 2017 has observed as under:-

"The offences alleged against the appellant are under Clauses (c), (f) and (h) of Section 132(1) of the Central Goods and Services Tax Act, 2017. The maximum sentence is of 5 years with fine. A charge-sheet has been filed. The appellant is in custody for a period of almost 7 months. The case is triable by a Court of a Judicial Magistrate. The sentence is limited and in any case, the prosecution is based on documentary evidence. There are no antecedents.

We are surprised to note that in a case like this, the appellant has been denied the benefit of bail at all levels, including the High Court and ultimately, he was forced to approach this Court. These are the cases where in normal course, before the Trial Courts, the accused should get bail unless there are some extra ordinary circumstances"

12. In **Ratnambar Kaushik Vs. Union of India, (2023) 2 SCC 621**,

Hon'ble Supreme Court while granting bail to an accused under Sections 132(1)(a), (h), (k) and (l) read with Section 132(5) of the Central Goods and Services Tax Act, 2017 has observed as under:-

"8. In considering the application for bail, it is noted that the petitioner was arrested on 21-7-2022 and while in custody, the investigation has been completed and the charge-sheet has been filed. Even if it is taken note that the alleged evasion of tax by the petitioner is to the extent as provided under Section 132(1)(l)(i), the punishment provided is, imprisonment which may extend to 5 years and fine. The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time. Needless to mention that the petitioner if released on bail, is required to adhere to the conditions to be imposed and diligently participate in the trial. Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing. Therefore, keeping all these aspects in perspective, in the facts and circumstances of the present case, we find it proper to grant the prayer made by the petitioner."

13. Under Section 132 of CGST Act, maximum punishment provided is 5 years. The prosecution is triable by Magistrate. Applicant is in jail since 26.7.2026. Investigation is completed against applicant and complaint is filed before Special Chief Judicial Magistrate, Meerut. It has not been shown by opposite party that charge has been framed against applicant. Even if the trial commences in near future, it would not conclude within next one year. Applicant has no previous criminal history.

14. In **Manish Sisodia Vs. Enforcement Directorate, (2024) 12 SCC 660,** Hon'ble Supreme Court has recognised the principle that "Bail is a Rule and jail is exception"

*"**52.** The Court in Javed Gulam Nabi Shaikh case [Javed Gulam Nabi Shaikh v. State of Maharashtra, (2024) 9 SCC 813 : (2025) 1 SCC (Cri) 222] further observed that, over a period of time, the trial courts and the*

High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open-and-shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that "bail is rule and jail is exception"."

15. Learned counsel for opposite parties has not brought any fact or circumstances to indicate criminal history or antecedents of the applicant which would disentitle the applicant for bail.

16. Learned counsel for opposite parties has not shown any exceptional circumstances which would warrant denial of bail to the applicant. No material, facts or circumstances has been shown by learned counsel for opposite party that accused may tamper with the evidence or witnesses or the accused is of such character that his mere presence at large would intimidate the witnesses or that accused will use his liberty to subvert justice or tamper with the evidence.

17. It is settled principle of law that the object of bail is to secure the attendance of accused at the trial. No material particulars or circumstances suggestive of the applicant fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like have been shown. Further the trial is by Magistrate and maximum punishment for offence is five years and applicant is in jail since 26.7.2026. Investigation against applicant completed and complaint filed and there is no chance that trial is completed in near future.

18. Considering the facts and circumstances of the case, nature of offence, evidence, complicity of the accused, submissions of learned counsel for the parties, period of detention and in view of circular dated 30th October 2026 and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The

bail application is **allowed.**

19. Let the applicant **-Gautam Sharma** involved in Case No.1361 of 2025 under Sections 132(1)(b), 132(1)(c), 132(1)(i) & 132(1)(f) of the C.G.S.T Act, 2017, P.S. DGGI, District Ghaziabad**,** be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to the following conditions:-

i. The applicant will not tamper with the evidence during the trial.

ii. The applicant will not pressurize/intimidate the prosecution witness.

iii. The applicant will appear before the trial court on the date fixed, unless personal presence is exempted and/or the applicant shall make himself available for interrogation by a police officer as and when required.

iv. The applicant shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

v. The applicant 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

vi. The applicant shall not leave India without the previous permission of the Court.

vii. In the event, the applicant changes residential address, the applicant shall inform the court concerned about new residential address in writing.

20. In case of breach of any of the above condition, the prosecution shall be at liberty to move bail cancellation application before this Court.

(Vikram D. Chauhan,J.)

November 6, 2026
D. Tamang

Digitally signed by :-
DHIRENDRA TAMANG
High Court of Judicature at Allahabad