

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 22400 of 2018****With****R/CRIMINAL MISC.APPLICATION NO. 22026 of 2018****With****R/CRIMINAL MISC.APPLICATION NO. 22014 of 2018**

=====

NIRAV RATILAL RUPARELIYA

Versus

STATE OF GUJARAT

=====

Appearance:

MR. JIT P PATEL(6994) for the Applicant(s) No. 1

DS AFF.NOT FILED (R)(71) for the Respondent(s) No. 2

MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the

Respondent(s) No. 1

=====

CORAM: **HONOURABLE MS. JUSTICE GITA GOPI****Date : 30/06/2020****ORAL ORDER**

1. All these applications arise out of the same first information report and involve identical questions on facts and hence, they are decided by this common order.

2. After arguing the matter at length, Mr. Jit Patel, learned advocate appearing for the applicants in all the three matters, has stated that he does not press Criminal Misc. Application No.22400 of 2018 preferred by applicant - Nirav Ratilal Rupareliya, who is original accused no.5.

3. In view of the above statement made by learned advocate Mr. Jit Patel, Criminal Misc. Application No.22400 of 2018 stands disposed of as not pressed. Rule is discharged qua the

said application.

4. Both these applications have been preferred under section 438 of the Cr.P.C. in connection with the first information report being C.R. No.I-4 of 2017 registered with CID Crime, Ahmedabad Zone Police Station for the offences punishable under sections 120B, 406, 409, 465, 467, 468, 471, 474 and 477A of IPC read with sections 85(1)(b), (c), (e), (f), 85(2)(j) and 85(4) of the Value Added Tax Act, 2003.

5. Mr. Jit Patel, learned advocate appearing for the applicants in Criminal Misc. Applications No.22026/2018 and 22014/2018, submitted that the alleged offence is said to have been committed during the period between 2002 to 31.05.2017; however, the impugned first information report was filed on 24.09.2017. Thus, there is a delay of about four months in filing the impugned complaint.

5.1 It was further submitted that there is no evidence to show that any of the two applicants had prepared false and / or bogus bills with the intention to evade payment of tax or to derive illegal benefits. No recovery or discovery of any incriminating article or substance has been effected from any of the two applicants. By referring to the order granting bail to co-accused – Mahendra Shantilal Patel (original accused no.8), it was submitted that both the applicants deserve to be granted bail on the ground of parity. It was, accordingly, urged that both the applications may be allowed.

6. Mr. Pranav Trivedi, learned Additional Public Prosecutor,

submitted that the case of the applicants herein could not be equated with that of co-accused – Mahendra Shantilal Patel inasmuch as both the applicants herein have played a major role in the commission of the alleged offence. It was submitted that bogus bills to the tune of Rs.779.56 crores were generated and benefit of tax credit to the tune of Rs.42.42 crores were claimed, which was then illegally transferred in the names of third parties. Further, the applicants had generated false purchase bills to the tune of Rs.780.62 crores and had, thereby, claimed Input Tax Credit to the tune of Rs.49.68 crores. It was submitted that with their illegal acts, the applicants had caused loss of Rs.67.42 to the public exchequer.

6.1 While referring to the contents of the impugned first information report, the learned Additional Public Prosecutor drew attention of the Court to the specific roles played by each of the accused persons. It was submitted that the case of none of the applicants could be equated with that of co-accused – Mahendra Shantilal Patel, who has been granted bail by this Court. It was, accordingly, urged that since the applicants have played a pivotal role in a big scam spanning 15 years, no discretion may be exercised in their favour as they may tamper with the evidence / witnesses.

7. Heard learned advocates on both the sides and perused the documents on record. From the record of the case and more particularly, from the impugned first information report, prima facie, none of the applicants (viz. the applicants in Criminal Misc. Applications No.22026/2018 and 22014/2018) appear to have played any major role in the alleged offence. As per the

averments made in the impugned first information report itself, prima facie, prominent roles in the commission of the alleged offence appears to have been played by original accused no.1-Nilesh Swarupchandra Mali and original accused no.5-Nirav Ratilal Thakkar. Though certain allegations have been made against original accused no.7 (applicant in Criminal Misc. Application No.22014 of 2018), but the said accused only appears to have recovered commission amount from original accused no.5-Nirav Ratilal Thakkar. Prima facie, the main role played by applicant-original accused no.7 is of preparing the bills and as per the averments in the impugned first information report, the original accused no.1-Nilesh Swarupchandra Mali and original accused no.5-Nirav Ratilal Thakkar had lured the applicant-original accused no.7 for doing the billing activity. Other than this, no other allegations have been made against the applicant-original accused no.7 and original accused no.11. Taking into consideration the facts of the case, nature of allegations and the gravity of offence, this Court is inclined to grant anticipatory bail to the applicants.

8. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.**, reported at [2011] 1 SCC 694, wherein the Hon'ble Apex Court reiterated the law laid down by the Constitution Bench in the case of **Shri Gurubaksh Singh Sibbia & Ors. Vs. State of Punjab** reported at (1980) 2 SCC 565.

9. In the result, both the applications are allowed. The applicants of Criminal Misc. Applications No.22026/2018 and

22014/2018 are ordered to be released on bail in the event of their arrest in connection with the first information report being **I-C.R. No.4 of 2017 registered with CID Crime, Ahmedabad Zone Police Station** on executing personal bonds of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount by each of the applicants and on the following conditions:

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
- (b) shall remain present at concerned Police Station on 10.07.2020 between 11.00 a.m. and 2.00 p.m.;
- (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;
- (f) shall not leave India without the permission of the concerned trial court and if having passport shall deposit the same before the concerned trial court within a week; and
- (g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

10. Despite this order, it would be open for the Investigating

Agency to apply to the competent Magistrate for police remand of the applicants. The applicants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a request in accordance with law. It is clarified that the applicants, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

11. At the trial, the concerned trial Court shall not be influenced by the prima facie observations made by this Court in the present order. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

Vfahid