

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA
REFERENCE NO- SKKA/103/2022**

BASIC INFORMATION

IN THE MATTER OF	Paresh Nathalal Chauhan
NAME OF Authority	SUPREME COURT OF INDIA
Petition/Appeal No.	CRIMINAL APPEAL Nos.164-165 /2022
Link to	2022-TIOL-09-SC-GST
Date of Order	01-02-2022
Relevant Section/Rule	Bail under GST

FACTS IN BRIEF

The Petitioner has been alleged to be involved in availment of Input Tax Credit of Rs. 60 crores from Fictitious firms and was thereby arrested under the provisions of section 132 of CGST Act, 2017. Petitioner approached Hon'ble Gujarat HC stating that search was conducted at his residence and search party stayed back therein day and night confining his family members. Hon'ble HC came heavily on the act of departmental officer for the manner in which investigation was conducted confining family member in their house for several days stating that the action like the present one which is not contemplated under any statutory provision and which infringes the fundamental rights of citizens under article 21 of the Constitution of India may not be protected under law. But, HC didn't grant bail to the petitioner stating that placing the petitioner out of Jail may be potential threat to the Investigation. Pending investigation, the petitioner approached for bail the Apex court stating he has been in custody for 25 months out of a total period of five years for which he can be sentenced.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court while admitting the petition averred :-
 -We are of the view that the appellant cannot be indefinitely detained in custody more so having already undergone a period of 25 months of custody when he can be sent behind bars for maximum five years. It is almost 50% of the sentence
 -We do believe the stand of the respondent was also coloured by the proceedings taken out by the appellant/family members qua the conduct of the officers which has visited them with some adverse consequences though certain proceedings are still pending qua the same.
 -In view of the aforesaid facts and circumstances, we are inclined to grant bail to the appellant on terms and conditions to the satisfaction of the Trial Court. We have put to learned counsel for the appellant that the appellant must be careful not to indulge in any such activities in the future.

OUR COMMENTS

Strict provisions in relation to imprisonment for cases of fake ITC is a must to keep a check on revenue leakages and thereby to protect interest of exchequer. But concern lies on the fact that how long can a person be kept in jail pending investigation against him and what if he spends the entire term in jail and is finally found to be innocent. This remind of the phrase "Justice delayed is Justice denied". Apex court in the case of State of Rajasthan V/S Balchand laid an important principle that "The basic rule may perhaps be tersely put as bail, not jail". In the present case, the Apex court has rightly granted bail to the petitioner as the investigation against him is pending even after him being in jail for 25 months which is almost half of the period of sentence envisaged by law. Therefore, the judgment is a welcome one and department should expedite its investigation so that such circumstances do not occur and any person is not kept in jail for such long period before being proved to be guilty.