

IF ITC WRONGLY AVAILED EXCEEDS RS.5 CRORES IT WOULD BE COGNIZABLE AND NON-BAILABLE OFFENCE: BOMBAY HC DISMISSES BAIL APPLICATION

Fact of the Case

- The petitioner, Yogesh Jagdish Kanodia has approached the Court claiming that his arrest under the provisions of the Central Goods and Services Tax Act, 2017 is illegal as he has been kept in custody in a bailable offense.
- On this basis, the petitioner seeks a direction for his release forthwith. The petitioner was arrested and he was produced before the Additional Chief Metropolitan Magistrate, Mumbai, who remanded the petitioner to magisterial custody.
- The Respondent authority proceeded against the petitioner on the basis that he had committed an offence under section 132 (1) (b) (c) of the CGST Act and that since the input tax credit wrongly availed by the petitioner exceeded Rs.5 crores and the offence was punishable with imprisonment for a term, which could extend to five years and with fine under section 132 (1)(i) of the CGST Act, it was a cognizable and non-bailable offence under sub-section (5) thereof. The power to arrest the petitioner was exercised by respondent No.2 under Section 69 of the CGST Act.
- The respondent authority submitted that the petitioner was effectively operating four business establishments that had indulged in fake purchase invoices and sale invoices whereby bogus input tax credit was claimed to the tune of at least Rs.11.54 crores and the amount of wrongful input tax credit passed on through fake sale invoices was not less than Rs.9.29 crores.

The whole endeavour of the petitioner in the present petition is to demonstrate that the figure of Rs.5 crores is not exceeded, even if the facts as claimed to have been discovered by respondent during investigation are to be accepted.

Decision of the Case

- The court said "Taking any other view at this stage would amount to accepting the claim of the petitioner and preventing the Commissioner from exercising power under Section 69 (1) of the CGST Act, despite sufficient material and reasons to believe that offences had been committed warranting arrest, only because multiple entities are created and run by a single individual for carrying out activities, which prima facie indicate wrong availing of input tax credit exceeding Rs. 5 crores,".
- The division judge bench noted that the petitioner has not been able to make out a case for exercising jurisdiction of this court under Article 226 of the Constitution of India. Therefore, the prayers made in the present writ petition cannot be granted. Accordingly, the writ petition is dismissed.

The Bombay High Court while dismissing the bail application of the Yogesh Jagdish Kanodia held that if the Input Tax Credit (ITC) has been wrongly availed exceeds Rs.5 crores it would amount to a cognizable and non-bailable offense.