IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 21st OF JULY, 2026

MISC. CRIMINAL CASE No. 32219 of 2026

VIKASH GUPTA

Versus

UNION OF INDIA

Appearance:

Shri Arun Kumar Paterya with Shri Shivam Gupta - Advocate for the applicant.

Shri Praveen Surange- Advocate for respondent/Union of India.

ORDER

1. The instant second bail application has been filed by the applicant under Section 483 of the BNSS. The applicant has been arrested in connection with Crime No.156/2026, registered at Police Station- The Principal Commissioner, Central GST & Excise Headquarters, Bhopal, Branch- Gwalior for the offence punishable under Sections 9(1)(B) of the Central Excise Act, 1944, Section 174(2) of the Central Goods and Services Act, 2017 and Rule 22 of Chewing Tobacco Zarda, Sentenced Tobacco and Gutkha Packing Machines (Determination and Collection of Duty) Rules, 2006. The applicant is under custody since 21.03.2026.

2. As per the prosecution case, acting upon intelligence received by the C.G.S.T. Department, a search was conducted on 19.03.2026 at the business premises of M/s Hunka Traders, a proprietorship concern of the applicant

situated at AB Road, Purani Chhawani, Shankarpur Tal, Industrial Area Motijheel, Gwalior, Madhya Pradesh, in exercise of powers under Section 67(2) of the C.G.S.T. Act read with Section 12F of the Central Excise Act, 1944.

3. During search proceedings conducted in the presence of independent *panch* witnesses, it was found that the applicant, while portraying himself as a trader of detergent and scented tobacco, was engaged in illegal manufacture and packing of chewing tobacco, zarda and scented tobacco pouches through packing machines installed in the premises. It is alleged that two electricity-operated single-track packing machines were found installed in the premises. One machine bearing Motor No. PGD 65315 was operational having packing capacity of approximately 105 pouches per minute and the second machine, though claimed by the applicant to be non-functional, was installed with electric panel switch VFD-L RS-485 and allegedly capable of production at 115-120 pouches per minute.

4. The raw tobacco, perfume/flavour and menthol were mixed in a mixer machine to manufacture scented tobacco which was thereafter packed and supplied in local markets as well as outside districts. It is alleged that pouches bearing MRP of Rs.2 and Rs.5 were found during the search and that manual packing activities were also being carried out.

5. Though the applicant had obtained registration under the Central Excise Act in the year 2020 bearing Registration No. BODPG3070AEM001, he had failed to pay central excise duty in terms of Notification No. 04/2025-Central Excise dated 31.12.2025 and the provisions of the Chewing Tobacco,

Zarda, Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection of Duty) Rules, 2026 effective from 01.02.2026. This is a deliberate evasion of central excise duty and cess by non-disclosure of packing machines and clandestine manufacture and removal of goods. Accordingly, the offence was registered against the present applicant and he is under custody since 21.03.2026.

6. Learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in this case on hyper technical grounds only. The alleged duty liability is hypothetical, inflated and based merely upon presumed machine capacity and not actual production. At the time of inspection, only one machine was operational and the second machine was non-functional, which fact is recorded in the Panchnama itself. Despite the said fact, the department has arbitrarily computed liability for both machines and thereby inflated the alleged duty demand to Rs.3.32 Crores. The liability under the notification and rules is a matter of adjudication and disputed questions of fact and cannot justify custodial detention. The applicant was illegally detained from 20.03.2026 and formal arrest was shown only on 21.03.2026, thereby violating statutory safeguards and Article 21 of the Constitution of India. The applicant cooperated during search proceedings and custodial interrogation is no longer required. The prosecution never sought police custody remand after judicial custody. The offences are punishable with maximum sentence of seven years and therefore liberal approach in bail jurisprudence ought to apply. The applicant does not bear any criminal antecedents and is a law abiding citizen along with a reputed trader. The applicant is sole breadwinner of the family and has dependent wife and minor child. The investigation is substantially documentary in nature and all relevant documents, machinery and goods have already been seized, therefore, there is no requirement of custodial interrogation and also there is no possibility of tampering with evidence or influencing witnesses.

7. Additionally, it is further argued that at this stage, private complaint has already been filed and charges thereupon have already been framed. None of the offences, alleged against the present applicant, are punishable more than seven years of imprisonment. The applicant has already suffered four months' pretrial detention. It is further contended that all the prosecution witnesses are official witnesses, therefore, there is no possibility of winning over the prosecution witnesses. The co-accused namely- Ramu Gupta, has already been enlarged on bail by this court vide order dated 25.06.2026 passed in M.Cr.C. No.21372 pf 2026, under the similar facts and circumstances, therefore, applicant seeks parity also.

8. Learned counsel for the applicant relied upon certain judgements which have been passed from time to time and the same are reproduced herein for ready reference:-

9. This Court has gone into all the aspect of the arguments and has perused the spirit of all these judgements,but for the sake of concise order, the relevant parts are reproduced herein;-

(i) **P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791,** the applicant relied upon the judgment to contend that even in economic offences bail cannot be denied as a rule and that gravity of offence is only one factor in addition to the "triple test" namely flight risk, tampering of evidence and influencing witnesses.

(ii) **Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40** - relied upon to submit that grant of bail is the rule and refusal is the exception, particularly where maximum punishment is seven years.

(iii) **Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565**- relied upon for the principle that personal liberty must be protected and bail should not be withheld as punishment before conviction.

(iv) **Praveen Kumar Agarwal v. CBI 2022 SCC OnLine Del 1963**- relied upon to contend that even in economic offences involving large amounts, bail may be granted after considering the triple test.

(v) **Mohan Kumar Jha v. State (NCT of Delhi) 2023 SCC OnLine Del 5164** - relied upon for the proposition that magnitude of offence alone cannot be sole ground for denial of bail.

(vii) **D.K. Shivakumar v. Directorate of Enforcement 2019 SCC OnLine Del 10764**- Relied upon concerning the applicability of the triple test in bail matters.

(vii) **Amarendra Dhari Singh v. Directorate of Enforcement 2024 SCC OnLine Del 1208** - Relied upon to contend that bail consideration primarily rests upon flight risk, tampering and influencing witnesses.

(viii) **Vipul Chitalia v. CBI 2022 SCC OnLine Bom 1348** - Relied upon to contend that after seizure of documents and completion of substantial investigation, continued incarceration becomes unnecessary.

(ix) **Gautam Khaitan v. Central Bureau of Investigation 2023 SCC OnLine Del 6508**- Relied upon to submit that economic offences do not automatically justify denial of bail.

Learned counsel for the applicant also relied upon the judgement passed in the case of ***Babu Singh and Ors Vs. The State of U.P. 1978 AIR 527.***

10. *Per contra*, learned counsel for the respondent department opposed the prayer and prayed for its rejection by submitting that the applicant was illegally manufacturing and packing tobacco products through undeclared packing machines in violation of Rule 6 and Rule 22 of the Chewing Tobacco, Zarda, Scented Tobacco and Gutkha Packing Machines (Capacity Determination and Collection of Duty) Rules, 2026. The applicant intentionally concealed existence and use of the machines from the department. He also evaded central excise duty and cess. The Notification No. 04/2025-Central Excise dated 31.12.2025 clearly prescribed fixed monthly duty liability based upon installed machine capacity. The offence is serious economic offence affecting public revenue and national economy. The statements recorded under Section 70 of the CGST Act establish involvement of the applicant. The applicant failed to disclose supplier details, purchaser details and source of raw materials. If the applicant is enlarged on bail, the applicant may tamper with evidence or influence witnesses. The offence under Section 9 read with Section 9A(1A) of the Central Excise Act is of non-bailable nature. Even, the applicant failed to cooperate during interrogation even while in judicial custody.

11. It is further argued that the present applicant is accused of not only tax evasion, but some other offences like obtaining license for manufacturing some other goods and is preparing some other goods, this act of the applicant also comes under the ambit of offence punishable under relevant Sections of IPC.

12. Learned counsel for the the respondent/Department relied upon the following judgements- Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation *(2013) 7 SCC 439*; State of Gujarat v. Mohanlal Jitamalji Porwal *(1987) 2 SCC 364*, Amal Mubarak Salim Al Rayami v. Union of India *2022 SCC OnLine Del 2254*, Rajesh Goyal v. Union of India *2023 SCC OnLine P&H 3202*.

13. Learned counsel for the respondent/Department further pointed out the judgement dated 09.04.2019, passed in the case of M.Cr.C. No.13019/2019 (Nitin Nikhra Vs.State of M.P.) and contended that heavy conditions must be imposed on the applicant to secure his presence and cooperation during investigation. While relying to the judgement passed by the High Court of *Himanchal Pradesh, Shimla, in the case of Kushal Singh alias Kushal Samrat Vs. State of Himanchal Pradesh [Cr. MP (MP) No. 2939 of 2025]*, the learned counsel for the respondent submitted that this bail application is not maintainable as the first bail application was dismissed on merits and without any change in circumstances and in absence of any new ground, this second bail application has been filed, which is not maintainable as mere filing of charge-sheet is not the change of circumstance.

14. Heard learned counsel for the parties and perused the case diary.

15. The applicant has relied upon the decisions in **Arnesh Kumar v. State of Bihar**, *(2014) 8 SCC 273*, **Satender Kumar Antil v. CBI**, *(2022) 10 SCC 51*, **P. Chidambaram v. Directorate of Enforcement**, *(2020) 13 SCC 791*, **P. Chidambaram v. CBI**, (2020) 13 SCC 337, **Amarendra Dhari Singh v. Directorate of Enforcement (Supra)**, **D.K. Shivakumar v. Directorate of Enforcement (supra)**, **Gautam Khaitan v. CBI (supra)**, **CGST Delhi West v. Vishal Goyal (supra)** and **Directorate of Revenue Intelligence v. Khushant Nagpal (supra)** to contend that in offences punishable up to seven years, continued incarceration should not be resorted to unless custodial interrogation is necessary or the accused fails to satisfy the triple test.

16. On the other hand, the respondent has relied upon the judgments of the Hon'ble Supreme Court in **Y.S. Jagan Mohan Reddy v. CBI**, *(2013) 7 SCC 439*, and **State of Gujarat v. Mohanlal Jitamalji Porwal**, *AIR 1987 SC 1321*, as well as the decisions of the Rajasthan High Court in **Rajesh Goyal v. Union of India (supra)** and **Amal Mubarak Salim Al Rayami v. Union of India(supra)**, to contend that economic offences stand on a different footing and deserve a stricter approach while considering bail.

17. There cannot be any quarrel with the proposition laid down in **Y.S. Jagan Mohan Reddy (supra)** that economic offences are serious in nature and affect the economy of the country. Similarly, the observations made in **Mohanlal Jitamalji Porwal (supra)** emphasise that deliberate tax evasion adversely affects public interest.

18. However, it is equally well settled that neither of the aforesaid judgments lays down an absolute proposition that bail must invariably be

refused in every economic offence irrespective of the facts of the individual case.

19. The Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**, (**supra**), while dealing with offences punishable up to seven years, has held that arrest is not to be made routinely and deprivation of liberty must be justified by compelling reasons.

20. The principles governing arrest and bail in offences punishable up to seven years have thereafter been comprehensively reiterated by the Hon'ble Supreme Court in **Satender Kumar Antil v. CBI**, (**supra**), wherein emphasis has been laid upon preservation of personal liberty, particularly where investigation can proceed without continued incarceration. Thus, the statutory framework governing the present case itself requires the Court to examine whether continued detention of the applicant is genuinely necessary.

21. Hence, considering the facts and circumstances of the case, <u>along with the facts that the offences are punishable with imprisonment up to five years, the case is triable by the JMFC, the complaint has already been filed, charges have already been framed, co-accused has already been granted bail and most importantly, the witnesses are official witnesses and there is no chance of winning over them, but without expressing any opinion on merits of the case,</u> this application is **allowed** and it is directed that the applicant be released on bail on furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lakh only)** along with one **solvent surety** in the like amount to the satisfaction of the trial Court/Committal Court.

22. This order will remain operative subject to compliance of the

following conditions by the applicant:-

i) The applicant will comply with all the terms and conditions of the bond executed by him/her;

ii) The applicant will cooperate in the investigation /trial, as the case may be;

iii) The applicant will not indulge himself /herself in extending inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such acts to the Court or to the Police Officer, as the case may be;

iv) The applicant will not commit any other offence or will not repeat the offence in future. In case offence of same nature is repeated, this bail order shall automatically stand cancelled;

v) The applicant will not seek unnecessary adjournments during the trial; and

vi) The applicant will not leave India without previous permission of the trial Court/Investigating Officer, as the case may be.

23. E- copy of this order be sent to the trial Court concerned for compliance.

24. Certified copy as per rules.

(RAJESH KUMAR GUPTA)
JUDGE

Vishal