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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DIPANKAR DATTA; J., SHEEL NAGU; J.
SLP (CRL.) NO. 12535 OF 2026; AUGUST 12, 2026
UNION OF INDIA versus SUNIL BIYANI

Criminal Procedure — Anticipatory Bail / Pre-arrest Bail — Grant of interim protection while dismissing non-maintainable application — Impermissibility - An interim relief can only be granted in aid of and as ancillary to the main relief - While dismissing an application seeking pre-arrest bail on the ground that it is not maintainable (whatever be the ground therefor), neither the High Court nor the Sessions Court can extend or grant protection against arrest in the nature of interim relief that could otherwise be granted during the pendency of the application. [Relied On *State of Orissa v. Madan Gopal Rungta*, 1951 SCC 1024; *Hema Mishra v. State of U.P.*, (2014) 4 SCC 453; *Mangal Rajendra Kamthe v. Tahsildar, Purandhar*, 2026 SCC OnLine SC 297; Paras 8 - 11]

Central Goods and Services Tax Act, 2017 — Section 70 — Summons — Status of a Summoned Person - Mere issuance of summons under Section 70 of the CGST Act does not per se make the person summoned an accused - The prohibitive sweep of Article 20(3) of the Constitution does not go back to the stage of interrogation, and in the absence of an order under Section 69, there can be no apprehension of arrest to maintain an application for anticipatory bail. [Relied on *Radhika Agarwal v. Union of India*, (2025) 6 SCC 545; *Deepak Mahajan*, (1994) 3 SCC 440; *Poolpandi v. CCE*, (1992) 3 SCC 259; *Dukhishyam Benupani v. Arun Kumar Bajoria*, (1998) 1 SCC 52; *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1; *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; Paras 15-22]

Central Goods and Services Tax Act, 2017 — Section 69, Section 132 read with Central Goods and Service Tax Rules, 2017, Rule 8 — Code of Criminal Procedure, 1973, Section 438 / Bharatiya Nagarik Suraksha Sanhita, 2023, Section 482 — Power to Arrest — Requirement of prior communication of arrest order to the accused before arrest — Mandatory Nature - An order passed by the Commissioner under Section 69(1) of the CGST Act recording "reasons to believe" is a sine qua non for an accused to entertain an apprehension of arrest and maintain an application for anticipatory bail - Principles of natural justice, fairness in administrative action, and Article 21 require that communication of the arrest order under Section 69 to the person sought to be arrested is mandatory prior to arrest - The order may be communicated electronically (via email/mobile provided under Rule 8 of the CGST Rules), under BNSS provisions, or via other permissible modes - Without such communication, the question of arrest does not arise, so as to enable the accused to exercise their right to seek pre-arrest bail or judicial review of the reasons. [Paras 14-22].

For Petitioner(s): Mr. S. Dwarakanath, A.S.G. Mr. Gurmeet Singh Makker, AOR Mr. Rajat Vaishnav, Adv. Mr. Shrirang Verma, Adv. Mrs. Priyadarshni Priya, Adv. Ms. Medha Pushkarna, Adv.

For Respondent(s): Mr. Gaurav Agarwal, Sr. Adv. Mr. Arjun Garg, AOR Ms. Amruta Arjun Garg, Adv. Ms. Arushi Kulshrestha, Adv. Ms. Mrinmoyee Das, Adv

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. Sunil Biyani, the respondent before us, applied for pre-arrest bail¹ before the High Court of Judicature at Bombay². Whilst rejecting the respondent's application on 13th February, 2026, the High Court granted protection to him from arrest for a week from date of intimation of the order under Section 69 of Central Goods and Services Tax Act, 2017³. Union of India is in appeal before us against such protective order, reading as under:

"6. However considering the facts and circumstances, the present Applicant shall not be arrested for a period of one week, if the order under Section 69 of the Central Goods and Services Tax Act, 2017 is passed, from the date of intimation of such order to the Applicant."

3. At the outset, we record that the respondent has not laid a challenge to the order of the High Court rejecting his prayer for pre-arrest bail before this Court.

4. While there has been minimal dispute over the facts before us, those necessary for the adjudication of the issues that arise are noted hereunder:

a. The Directorate General of GST Intelligence (DGGI), Mumbai Zonal Unit⁴, was investigating M/s Alphaneon Techsolutions Pvt. Ltd. and its group entities allegedly for wrongfully availing and passing of Input Tax Credit (ITC) without actual supply of goods or services, circular invoicing, and non-payment of GST on import of services. During inspection of the registered premises, the respondent, Sunil Biyani, was found present and acknowledged the inspection.

b. During the investigation, the Department issued three summonses under Section 70 of CGST Act to the respondent. Instead of appearing, the respondent sought adjournments and thereafter filed an application for anticipatory bail before the Sessions Court, Mumbai. It was rejected on 14th October, 2025. Respondent subsequently approached the High Court seeking pre-arrest bail. Pursuant to the High Court's interim directions, the respondent appeared before the Department and his statement was recorded.

c. During the course of hearing before the High Court, the Department filed an affidavit averring that no order under Section 69 of the CGST Act had been passed as the investigation was still at a nascent stage and the material facts were under verification.

d. The High Court rejected the application for anticipatory bail noting that in the absence of an order under Section 69 of the CGST Act, there could be no apprehension of arrest and, hence, an application for anticipatory bail could not be entertained; nonetheless, the High Court granted relief of the nature noticed above.

5. It is an admitted position on either side, in view of the decision of this Court in *Radhika Agarwal v. Union of India*⁵, that mere issuance of summons under Section 70 of the CGST Act — as is the situation in the present case — does not make the person summoned an accused. For convenience, the relevant passage from this Court's decision in *Radhika Agarwal* (supra) is reproduced thus:

"71. However, we may clarify that a person summoned under Section 70 of the CGST Act is not per se an accused protected under Article 20(3) of the Constitution, as has been held in *Deepak Mahajan*⁶. This is because the prohibitive sweep of Article 20(3) of the Constitution does not go

¹ ABA No. 3001/2025

² High Court

³ CGST Act

⁴ Department

⁵ (2025) 6 SCC 545

⁶ (1994) 3 SCC 440

back to the stage of interrogation. Reference in this regard has been placed on *Poolpandi v. CCE*⁷ and *Dukhishyam Benupani v. Arun Kumar Bajoria*⁸. It is obvious that the investigation must be allowed to proceed in accordance with law and there should not be any attempt to dictate the investigator and at the same time, there should not be any misuse of power and authority.”

6. Since the respondent had merely been summoned when he unsuccessfully applied for pre-arrest bail, rejection of such application by the High Court, though not under challenge, stands affirmed.

7. What falls for our consideration is whether the High Court could have granted the relief of protection from arrest for a period of one week of communication of the order passed under Section 69, CGST Act while dismissing the application.

8. As far back as 1951, a 5-judge Bench of this Court in *State of Orissa v. Madan Gopal Rungta*⁹, albeit in the context of writ jurisdiction, laid down the law that a petition under Article 226 of the Constitution of India cannot be used for the sole purpose of issuing interim relief when the high court is of the considered opinion that the petition itself is not maintainable. It held so on the established principle that an interim relief can only be in the aid of and ancillary to the main relief. This principle, reiterated in several other decisions of this Court, was recently noticed and echoed by this Court in *Mangal Rajendra Kamthe v. Tahsildar, Purandhar*¹⁰.

9. In the context of criminal matters, while dealing with orders dismissing petitions seeking quashing of FIR or charge-sheet, this Court specifically examined whether a high court could grant further relief against arrest for a specific period or till the completion of trial. Relying on *Madan Gopal Rungta* (supra), this Court speaking through Hon’ble K.S.P. Radhakrishnan, J. in *Hema Mishra v. State of U.P.*¹¹ held in the negative. His Lordship held that no further interim relief could be granted while declining interference and dismissing a writ petition. A profitable reference may be made to the relevant portion of the decision hereunder:

“22. I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge-sheet, whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in *State of Orissa v. Madan Gopal Rungta*¹², while dealing with the scope of Article 226 of the Constitution, held as follows:

“6. ... Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and ... that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of the opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature

⁷ (1992) 3 SCC 259

⁸ (1998) 1 SCC 52

⁹ 1951 SCC 1024

¹⁰ 2026 SCC OnLine SC 297

¹¹ (2014) 4 SCC 453

¹² 1951 SCC 1024

of temporary injunctions, under Article 226 of the Constitution. ... the language of Article 226 does not permit such an action.”

The language of Article 226 does not permit such an action and once the Court finds no merits in the challenge, the writ petition will have to be dismissed and the question of granting further relief after dismissal of the writ, does not arise. Consequently, once a writ is dismissed, all the interim reliefs granted would also go.”

10. Concurring with the observations made by Hon’ble Radhakrishnan, J., Hon’ble Dr. A.K. Sikri, J., expounded further in these words:

“25. Another aspect which is highlighted in the judgment rendered by Radhakrishnan, J. is that many times in the writ petition filed under Article 226 of the Constitution of India seeking quashing of the FIR or the chargesheet, the petitioners pray for interim relief against arrest. While entertaining the writ petition the High Court invariably grants such an interim relief. It is rightly pointed out that once the writ petition claiming main relief for quashing of FIR or the charge-sheet itself is dismissed, the question of granting further relief after dismissal of the writ petition, does not arise. It is so explained in para 22 of the judgment of my learned Brother.

26. I would like to remark that in the absence of any provisions like Section 438 CrPC applicable in the State of Uttar Pradesh, there is a tendency on the part of the accused persons, against whom FIR is lodged and/or charge-sheet is filed in the Court, to file a writ petition for quashing of those proceedings so that they are able to get protection against the arrest in the interregnum which is the primary motive for filing such petitions. It is for this reason that invariably after the lodging of the FIR, a writ petition under Article 226 is filed with the main prayer to quash those proceedings and to claim interim relief against pre-arrest in the meantime or till the completion of the trial. However, the considerations which have to weigh with the High Court to decide as to whether such proceedings are to be quashed or not are entirely different than that of granting interim protection against the arrest. Since the grounds on which such an FIR or charge-sheet can be quashed are limited, once the writ petition challenging the validity of the FIR or charge-sheet is dismissed, the grant of relief, incidental in nature, against arrest would obviously not arise, even when a justifiable case for grant of anticipatory bail is made out.”

(emphasis ours)

11. Thus, it is a settled position of law that even in cases where a petition seeking quashing of FIR or charge-sheet is dismissed, no interim relief can be granted by the high courts. In a similar vein, we have no hesitation to supplant the principle in cases of application seeking pre-arrest bail. We hold that while dismissing a petition seeking pre-arrest bail on the ground that the same is not maintainable – whatever be the ground therefor – the high court or the sessions court, as the case may be, cannot extend or grant protection which is in the nature of interim relief that could be granted during the pendency of the application.

12. For the forgoing reason, we set aside the protection granted to the respondent vide paragraph 6 of the impugned order.

13. Before parting, we may address a subsidiary question. It is, whether the order passed by the Commissioner under Section 69 of the CGST Act is required to be communicated to the person sought to be arrested?

14. To answer this question, we need to read the conditions prescribed under Section 69 of the CGST Act. It reads as follows:

“69. Power to arrest.—

(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132

which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twentyfour hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973, — (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

(emphasis ours)

15. Sub-section (1) of Section 69 grants the Commissioner the power to authorise any officer to arrest a person. Such order must, as prescribed, be preceded by “reasons to believe”. Such reasons in turn, must refer to the material and evidence underlying such opinion and evince application of mind. These are, among others, the stipulations laid down in Radhika Agarwal (supra).

16. According to Mr. Agarwal, learned senior counsel for the respondent, what necessarily follows is that until and unless an order under Section 69 of the CGST Act is passed by the Commissioner recording the “reasons to believe” that an offence under Section 132 of the CGST Act has been committed, no alarm is activated and there cannot be any apprehension of arrest by the person summoned. In other words, once the Commissioner concludes that there are “reasons to believe” that any offence of the nature stated in Section 69 has been committed warranting an arrest and an order to that effect is passed, the alarm is activated and the person (alleged to be the offender, whose arrest is authorised) becomes an accused who is open to be arrested and, thus, acquiring the right to seek pre-arrest bail. Consequently, an order under Section 69 of the CGST Act would be a sine qua non to maintain an application seeking such bail.

17. In such circumstances, the contention of Mr. Agarwal has been that unless the order passed under Section 69 is communicated to the accused, in this case the respondent, he cannot apply for an anticipatory bail. It has further been contended that though not mandated by the statute, by extension of the principles of natural justice and fairness in administrative action, the requirement of communication of the order passed under Section 69 of the CGST Act to the accused before he is arrested, has to be read into the statute and communication of such an order to the person sought to be arrested must be held to be mandatory. If not, it would lead to a catch-22 situation where the accused can neither apply for anticipatory bail till the order under Section 69 is passed nor does he become aware of the order to subject the same to a challenge on available grounds before an appropriate forum.

18. We are inclined to accept the contention of Mr. Agarwal. The order under Section 69 of the CGST Act, as held, being a sine qua non to seek anticipatory bail, it would be an anomaly to hold that the order need not be communicated at all, much less, be communicated after the arrest of such person. In any case, communication of the order would not, in any manner, obstruct the investigation ensued by the department. On the

contrary, it reinforces the right of the accused to seek anticipatory bail as stipulated in *Sushila Aggarwal v. State (NCT of Delhi)*¹³.

19. A 5-Judge Bench of this Court in *Gurbaksh Singh Sibbia v. State of Punjab*¹⁴, which has also been relied upon by the Bench in *Radhika Agarwal (supra)*, intertwined personal liberty as an important facet of Section 438 of the Code of Criminal Procedure, 1973¹⁵ (equivalent to Section 482, *Bharatiya Nagarik Suraksha Sanhita, 2023*¹⁶) and cautioned against an interpretation which imposes unreasonable restrictions. The instructive passage from *Gurbaksh Singh Sibbia (supra)* reads thus:

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi*¹⁷, that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

(emphasis ours)

20. This also further fortifies the accused's right to challenge the order and the “reasons to believe” recorded by the Commissioner, which prompted the issuance thereof. Such order, being amenable to judicial review by the constitutional courts, may be tested on settled principles of law. If Section 69 were read as it is, without there being any requirement of disclosure of the “reasons to believe”, withholding of reasons could have drastic consequences on the right to liberty of the accused.

21. We note that Rule 8 of the Central Goods and Service Tax Rules, 2017¹⁸ mandates that a person seeking registration under the CGST Act must provide an email address and mobile number. Thus, the order may be communicated through electronic means in addition to the mode, as permitted under the BNSS, as well as all other permissible modes of communication. This would enable an accused to seek remedy that the law provides to him, if so advised.

22. In view of the aforesaid, we require the Commissioner to communicate the order under Section 69 of the GST Act to the respondent in the manner indicated in the preceding paragraph, whereafter he may pursue such remedy as he may be advised. We reiterate, without such communication, question of arrest would not arise.

23. The criminal appeal stands disposed of on the aforesaid terms.

¹³ (2020) 5 SCC 1

¹⁴ (1980) 2 SCC 565

¹⁵ CrPC

¹⁶ BNSS

¹⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

¹⁸ CGST Rules

24. We record that the observations made herein are confined to the extent necessary to address the point of law canvassed and do not constitute a finding on facts or the merits of the matter. The pending investigation shall proceed uninfluenced by the observations made hereinabove.

25. Connected applications, if any, stand closed.

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