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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO. 6016 OF 2025 (GM-RES)

**BETWEEN:**

VIRAL NARENDRA GOSALIA  
S/O NARENDRA GOSALIA  
AGED ABOUT 39 YEARS  
R/AT FLAT NO.2104  
LOGIN CHS, OPP. ORCHID SUBURBIA  
NEW LINK ROAD  
NEAR DAHANUKAR WADI METRO STATION  
KADIVALI WEST  
MUMBAI-400 067.

...PETITIONER

(BY SRI. MRC MANOHAR, ADVOCATE)

**AND:**

THE SENIOR INTELLIGENCE OFFICER  
DIRECTORATE GENERAL OF GOODS AND SERVICES  
TAX INTELLIGENCE, BANGALORE ZONAL UNIT  
NO.112, S.P ENCLAVE  
ADJACENT TO KARNATAKA BANK  
K.H. ROAD  
BENGALURU-560 027.

...RESPONDENT

(BY SRI. MADHU N. RAO, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BNSS, 2023 PRAYING TO QUASH THE PROCEEDINGS IN CRIME NO.03/2025 (F.NO. DGGI/INT/INTL/1506/2024/-GRC-01 PR ADG-DGGI-ZU) ON THE FILE OF THE DATED 31.01.2025 SPECIAL COURT FOR ECONOMIC OFFENCES, NRUPATHUNGA ROAD PRESIDING OFFICER, BENGALURU INITIATED BY RESPONDENT FOR OFFENCES PUNISHABLE U/S. 69(1) R/W S. 132(1)(A), 132(1)(B),





132(1)(I) R/W 132(5) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017, AS PER ANNEXURE-A.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

**ORAL ORDER**

The petitioner is before this Court invoking its writ jurisdiction under Articles 226 and 227 of the Constitution of India and its inherent powers under Section 528 of BNSS, 2023 (i.e., Section 482 of the CrPC, 1973). The petitioner seeks a writ in the nature of Certiorari to quash the proceedings in Crime No.03/2025 (F.No. DGGI/INT/INTL/1506/2024-Gr C-01-O/o Pr ADG-DGGI-ZU) on the file of the Special Court for Economic Offences, Nrupathunga Road, Bengaluru, which were initiated by the respondent for offences punishable under Section 69(1) read with Sections 132(1)(a), 132(1)(b), and 132(1)(i) read with 132(5) of the Central Goods and Services Tax Act, 2017 **(Annexure A)**.

1.1. Furthermore, the petitioner seeks the consequential relief of quashing the order of remand dated 31.01.2025 **(Annexure B, pp. 67–69)** passed by the Special Court in Crime No.03/2025, as well as quashing the application for remand of the arrestee-petitioner dated 31.01.2025 (Annexure A).



1.2. The petitioner, as of the date of this order, has been in judicial custody for over 40 days pursuant to the impugned remand order of the Learned Special Court.

2. The petitioner challenges his arrest on the grounds that there was non-compliance with the statutory requirement for the issuance of a notice under Section 35(3) of BNSS, 2023 (i.e., the Section 41-A notice under CrPC, 1973).

3. The factual matrix of the case is as follows: The petitioner, a proprietor of two entities—M/s. JMG Enterprises/Heena Enterprises (bearing GSTIN No. 27AQMPG1606J1ZV) and M/s. Heena International—is alleged by the respondent to have raised fake invoices for purported supplies of goods and services in order to avail inadmissible input tax credit (ITC) without actually supplying the Fast Moving Consumer Goods (FMCG). This scheme purportedly resulted in wrongful ITC to the tune of Rs.5.10 crores through his proprietary firms and further facilitated fictitious transactions with various entities, including M/s. Samruddhi Trading Company, M/s. Navoday Enterprises Ltd., and M/s. Mini Boss Consultancy Pvt. Ltd., among others.

4. In brief, the petitioner is alleged to have colluded with various persons to generate fabricated invoices for the supply of FMCG goods without any actual movement of goods or rendering of services. Furthermore, he is accused of diverting



the supply of invoiced goods to other entities in the open market without issuing corresponding invoices in the names of the recipient companies, thereby enabling those companies to claim wrongful ITC. A review of the application for the petitioner's remand reveals a specific allegation that the petitioner-accused No. 3 attempted to influence individuals into providing false statements to authorities regarding those who orchestrated the fake invoicing scheme, and further, that he destroyed evidence by deleting WhatsApp messages, thus misleading or hampering the investigation.

#### Submissions

5. Learned Senior Counsel Shri MT Nananiah, appearing for the petitioner, primarily submitted that the petitioner's arrest is vitiated on the ground of non-compliance with Section 35(3) of BNSS, which mandates the issuance of a notice of appearance to any person accused of an offence punishable with imprisonment of up to seven years. Non-compliance with this statutory requirement, he contended, is contrary to settled law as affirmed by the Apex Court in *Arnesh Kumar v. State of Bihar (2014) 8 SCC 273* and *Satender Kumar Antil v. CBI (2022) 10 SCC 51*. He further noted that this Court has opined in *MakeMyTrip (India) Pvt. Ltd. v. State of Karnataka (2022)* that a notice of appearance under Section 41-A of the CrPC (i.e. Section 35(3) of BNSS) is mandatory in cases involving economic offences.



5.1. Accordingly, the learned Senior Counsel argued that since the petitioner was deprived of an opportunity to appear before the investigative authorities, his arrest under Section 69 of the CGST Act, 2017, cannot be permitted as a justifiable restriction on liberty under the law. This non-compliance amounts to a violation of the petitioner's fundamental right under Article 21 of the Constitution. Therefore, the petitioner has invoked the constitutional writ remedy and sought the relief of quashing the remand order under this Court's inherent powers.

5.2. In addition, the learned Senior Counsel contended that the petitioner's arrest by the respondent also violates Section 74(1) of the CGST Act, 2017, which mandates that a notice be issued by the proper officer at least six months before the expiry of five years from the date of wrongful availment of ITC, directing such assessee to show cause as to why the specified amount should not be paid.

In support, reliance is placed on:

1. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273;
2. Sandeep Goyal v. Union of India, DHC;
3. Satender Kumar v. CBI, (2022) 10 SCC 51;
4. Sanjay Chandra v. CBI, (2012) 1 SCC 40;
5. P. Chidambaram v. ED, (2020) 13 SCC 791; and
6. Sourabh Agarwal v. Union of India, High Court of Chhattisgarh, MCRC No. 2729, 2023.

6. Per contra, Sri Madhu N. Rao, learned counsel for the respondent – DG GST Intelligence, argued that the instant



petition is not maintainable under Section 528 of BNSS, 2023 (i.e., Section 482 of CrPC, 1973), and further contended that a review of the memorandum of the petition fails to reveal any grounds warranting a writ petition under Articles 226 and 227, so as to grant extraordinary constitutional remedy. He further submitted that the petition is not maintainable because the offence is registered under the CGST Act, 2017, and no order of remand was issued under the governing Sanhita or BNSS.

6.1. In other words, the learned counsel argued that the provisions of the CGST Act, 2017—particularly those in Chapter XIV dealing with the powers of inspection, search, seizure, and arrest—render the Act self-contained. Consequently, the provisions of BNSS, 2023 (or the CrPC) do not apply to criminal proceedings initiated under the CGST Act. Thus, if an offence punishable under Section 131 of the CGST Act, 2017 is registered and an order remanding the petitioner to judicial custody is issued by the Commissioner of Central Tax, the petitioner cannot invoke the inherent powers of this Court under Section 528 of BNSS (or Section 482 of the CrPC).

6.2. In rebuttal to the contention of non-compliance with the issuance of a notice of appearance under Section 35(3) of BNSS, 2023, the learned counsel produced the Memo of Documents dated 10.03.2025, which contains a summons



issued to the petitioner under Section 70 of the CGST Act, 2017 on 02.01.2025. He argued that the issuance of such summons thereunder for the purpose of tendering evidence satisfies the requirement of a notice of appearance under Section 35(3) of BNSS, as the summons indicates a threshold higher than mere reasonable suspicion, as stipulated under Section 35(3) of BNSS, 2023.

6.2.1. The learned counsel further submitted that since the petitioner had already tendered evidence in the investigation into the wrongful availment of ITC by a syndicate of individuals and companies—and had admitted during an inquiry conducted under Section 50 of the CGST Act to diverting goods to other entities without issuing corresponding invoices—the petitioner was already afforded a reasonable opportunity to present his defense in the judicial proceeding under Section 50. Therefore, issuance of another notice under BNSS prior to his arrest was unnecessary.

6.2.2. Moreover, the learned counsel contended that the respondent conducted the arrest in compliance with the ratio enunciated in *Prabir Purkayastha v. State (NCT of Delhi) 2024 INSC 414*, wherein the Apex Court held that the grounds for arrest must be mandatorily communicated to the arrestee to enable him to contest the arrest effectively. Consequently, since the petitioner had ‘sufficient knowledge’ regarding the



investigation into the wrongful availment of ITC (as evidenced by the prior issuance of a summons under Section 70 of the CGST Act), the requirement for a separate notice of appearance under BNSS need not be strictly enforced. Furthermore, the learned counsel argued that the petitioner cannot contend that his arrest was vitiated on account of non-issuance of a notice of appearance under Section 35(5) of BNSS, given that the Sanhita does not apply to criminal proceedings arising from self-contained statutes such as the CGST Act, 2017.

6.3. Additionally, the learned counsel for the respondent produced the arrest memo dated 05.03.2025 and reiterated the gravity of the alleged offences committed by the petitioner, arguing that continued incarceration is necessary to conclude the investigation.

In support, reliance was placed on:

1. Guidelines for Arrest and Bail in Relation to Offences Punishable under the GST Act, 2027 – Instruction No. 2 of 2023;
2. Instruction No. 01/2025-GST;
3. Radhika Agarwal v. Union of India (2025) 27 Centax 425 (S.C.) [27.02.2025];
4. PV Ramana Reddy v. Union of India, 2019 (25) GSTL 185 (Telangana) [18.04.2019]; and
5. PV Ramana Reddy v. Union of India, 2019 (26) GSTL (S.C.) [27.05.2019].



Issues

7. Having heard the learned counsels and reviewed the material on record, the following issues arise for consideration:

7.1. Is the instant petition maintainable? In other words, may the petitioner—currently in judicial custody in connection with offences punishable under Sections 132(1)(a), 132(1)(b), and 132(1)(i) read with 132(5) of the CGST Act, 2017—invoke the inherent powers of this Court under Section 528 of BNSS, 2023 (i.e., Section 482 of the CrPC, 1973) to challenge the non-compliance with the mandatory issuance of a notice of appearance under Section 35(3) of BNSS (i.e., Section 41-A of the CrPC)?

7.1.2. Do the provisions of the CGST Act, 2017, render it a self-contained law, thereby excluding the applicability of BNSS, 2023 (and by extension, the CrPC, 1973) in criminal proceedings instituted under the CGST Act?

7.2. Can the issuance of a summons under Section 70 of the CGST Act, 2017, be equated with the notice of appearance that must be mandatorily issued under Section 35(3) of BNSS, 2023?



7.3. Whether the arrest of the petitioner for an offence punishable with imprisonment for a maximum term of less than seven (7) years, without issuance of notice of appearance, as stipulated under Section 35(3) of BNSS, 2023 (i.e. Section 41A of CrPC, 1973) is vitiated?

8. For convenience, all issues are addressed together. The scope of this adjudication is limited solely to determining whether the petitioner’s arrest—as accused No. 3 in the case registered by the respondent—is vitiated on account of non-compliance with the provisions of Section 35(3) of BNSS, 2023. Accordingly, this order is not an adjudication on the merits of the underlying charges.

9. It is well established in modern criminal jurisprudence and constitutional law that any challenge to the legality of an arrest involves a contest between the entrenched right to life and liberty and the larger public interest and state obligation to punish the guilty. Thus, any interpretative exercise by this Court—whether under its writ jurisdiction or inherent powers—must employ a “test of proportionality.” This test, as consistently endorsed by the Apex Court in recent cases (*including in the cases of Association of Democratic Reforms and Anr. v. Union of India and Ors., 2024 INSC 113; Arvind Kejriwal v. Directorate of Enforcement, 2024 INSC 512;*



and *Radhika Agarwal v. Union of India, 2025 INSC 272*), requires that the justifiability of any state action curtailing liberty be examined against the following parameters:

- (i) Whether the impugned state action serves a legitimate aim or purpose;
- (ii) Whether the restrictions imposed have a rational nexus with the stated aim and objective;
- (iii) Whether less restrictive, yet equally effective, alternatives were available to minimize the impairment of liberty; and
- (iv) Whether an appropriate balance is struck between the individual's liberty and the pursuit of the public purpose.

9.1. It is needless to state that any determination based on the above factors must be made after a careful consideration of the unique facts and circumstances of the case, with due regard to the need for a judicious exercise of discretion.

9.2. As regards the grant of bail, it is pertinent to advert to the following judicial pronouncements:

9.2.1. In the case of **P Chidambaram v. Directorate of Enforcement, 2020 13 SCC 791**, the Apex Court has observed as follows:



***“23. ... the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that **even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.**”***

*(emphasis supplied)*



9.2.2. In the case of **Sanjay Chandra v. CBI (2012) 1 SCC 40**, the Apex Court has observed as follows:

***40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.***

*(emphasis supplied)*

9.2.3. In the case of **Satender Kumar Antil v. CBI (2022 Live Law (SC) 577)**, the Apex Court observed in respect of grant of bail to persons accused of offences punishable with less than seven years of imprisonment that *“one would expect a better exercise of discretion on the part of the court in favour of the accused”*.

10. In addressing the maintainability of the instant petition under Section 528 of BNSS (or Section 482 of the CrPC, 1973), it is necessary to determine whether the



provisions of BNSS, 2023 (or the CrPC, 1973) apply to criminal proceedings arising under the CGST Act, 2017. A perusal of Sections 4 and 5 of the BNSS, 2017—which deals with the trial of offences under BNSS, 2023 and under other laws, along with the relevant saving provisions—is instructive.

The provisions read as follows:

**Section 4:**

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained herein.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, subject to any enactment in force that regulates the manner or place of investigating, inquiring into, trying, or otherwise dealing with such offences.

**Section 5:**

Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law currently in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law in force.

11. The Apex Court, in **Ashok Munilal Jain and Anr. v. Assistant Director, Directorate of Enforcement (2018) 16 SCC**, held that the procedure prescribed under the Criminal Procedure Code (CrPC), 1973 is equally applicable to criminal proceedings arising under the CGST Act, 2017.

12. This ratio was reaffirmed by a three-judge Bench of the Apex Court in **Radhika Agarwal v. Union of India (2025)**



**SCC OnLine SC 449.** In that decision, the Apex Court held that the provisions of BNSS, 2023 (i.e., the CrPC, 1973) are applicable to proceedings arising under the Customs Act, 1962 and the CGST Act, 2017, because the provisions in the former complement those in the latter, unless a specific provision to the contrary exists in the latter. The Court further referred to its earlier decision in *AR Antulay v. Ramdas Srinivas Nayak and Anr. (1984) 2 SCC 500*, noting that the Code of Criminal Procedure (now BNSS, 2023) is the 'parent statute' that governs the investigation, inquiry, and trial of cases by criminal courts of various designations.

13. Having established the applicability of BNSS, 2023 to criminal proceedings arising under the CGST Act, 2017, it is pertinent to recall the settled position of law regarding the exercise of the extraordinary jurisdiction conferred under Section 528 of BNSS (or Section 482 of the CrPC, 1973):

13.1. The exercise of authority by courts under Section 528 of BNSS is essentially discretionary and should not be invoked in matters covered by the specific provisions of the Sanhita. (See, *LV Jadhav v. Shankarrao AIR 1983 SC 1219*; *Arun Shankar Shukla v. State of UP AIR 1999 SC 2554*; and *Madhu Limaye v. State of Maharashtra AIR 1978 SC 47*.)

13.2. The inherent powers may be invoked in three circumstances:



- (a) to give effect to any order under this Code;
- (b) to prevent the abuse of the process of any court;  
and
- (c) to otherwise secure the ends of justice.

The power under Section 528 of BNSS is meant to achieve real and substantial justice—particularly where the court is of the opinion that non-interference would result in a failure of justice, where grave injustice has occurred and must be remedied, or where the required statutory provision has not been complied with. (*See, Sanapareddy Maheedhar Seshagiri v. State of Andhra Pradesh AIR 2008 SC 787; Mast Ram v. Smt Shanti Devi 2002 CrLJ 1616 (1617) HP.*)

13.3. The inherent powers of a High Court are not negated by any overlap with the judicial review powers conferred under Articles 226 and 227. Writs are extraordinary constitutional remedies and operate independently of the statutory right under Section 528 to address grievances not specifically provided for in the Sanhita.

13.4. The High Court may, at its discretion, entertain a petition under Article 227 of the Constitution or under Section 528 of BNSS to address a substantial question of law that goes to the root of the matter or the genesis of the



prosecution. (See, *Ratansi Mulji v. Vindo Ratilal Gandhi*, 1991 CrLJ 2766 (2770) (Bom)).

14. Furthermore, a coordinate Bench of this Court in the case of **Sudarshan Ramesh v. Union of India (2023 SCC OnLine Kar 71)** observed at paragraph 24 as follows:

*“The petitioner has challenged the order rejecting the request for withdrawal of LOC on the ground that he cannot be subjected to investigation indefinitely on the basis of mere suspicion, since he is not prosecuted for any cognizable offence nor has a non-bailable warrant been issued to secure his presence. The proceedings initiated under the provisions of the PMLA against the petitioner’s brother form the basis for issuing the LOC, and any action taken or order passed under the PMLA may be challenged by invoking the inherent jurisdiction under Section 482 Cr.P.C. or under Article 226 read with Section 482 Cr.P.C. to prevent abuse of the process of law or to secure the ends of justice.”*

15. Furthermore, a perusal of Section 69(3)(a) of CGST Act, 2017 reveals that the said Act envisages that the arrestee charged with a cognizable and non-bailable offence as under Section 132(4) of the said Act shall be forwarded to the custody of the Magistrate, in default of bail. The statute does not provide for custody of the arrestee to either police or the proper officer. Therefore, the authority of the Magistrate to, either admit the said arrestee on bail or remand him to judicial custody, is to be necessarily exercised in accordance with the provisions of the BNSS, 2023 (i.e. CrPC, 1973).



15.1. Accordingly, the instant petition is maintainable under Section 528 of BNSS, 2017, particularly where the grounds of challenge to the arrest include non-compliance with the statutory provision of Section 35(3) of BNSS, 2017.

15.2. Similarly, where the issue involves a challenge to the lawfulness of an arrest and continued remand of more than 40 days since the date of arrest, a writ petition under Articles 226 and 227 of the Constitution is not only maintainable but also entertainable.

16. Shri MT Nananiah submitted that Section 35(3) of BNSS, 2023 mandates that in all cases where an arrest is not required under Section 35(1) of BNSS (Section 41 of CrPC), the notice of appearance must be issued to any person against whom a complaint has been made or against whom there is a reasonable suspicion of having committed a cognizable offence. The learned Senior Counsel further argued that non-compliance with this requirement, as in the case at hand, vitiates the arrest of the petitioner. Section 35 of BNSS, 2023 which deals with the arrest of persons without a warrant, is reproduced below:

*35. (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest any person:*

*(a) who commits, in the presence of a police officer, a cognizable offence;*



*(b) against whom a reasonable complaint has been made, or credible information has been received, or there exists reasonable suspicion that he has committed a cognizable offence punishable with imprisonment for a term that may be less than seven years or up to seven years (with or without fine), if the following conditions are satisfied:*

*(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that the person has committed the said offence; and*

*(ii) the police officer is satisfied that such arrest is necessary:*

*(a) to prevent the person from committing any further offence; or*

*(b) for the proper investigation of the offence; or*

*(c) to prevent the person from causing the evidence of the offence to disappear or tampering with such evidence; or*

*(d) to prevent the person from giving any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or*

*(e) if, unless the person is arrested, his presence in Court whenever required cannot be ensured.*

*The police officer shall record his reasons in writing when making such an arrest.*

*Provided that, in cases where arrest is not required under this sub-section, the police officer shall record in writing the reasons for not making the arrest.*

*(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term that may extend to more than seven years (with or without fine or with a death sentence), and the police officer has reason*



*to believe on the basis of that information that such person has committed the said offence;*

*(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or*

*(e) in whose possession anything is found that may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence in connection with such property; or*

*(f) who obstructs a police officer in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or*

*(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or*

*(h) who is reasonably suspected of having been involved in, or against whom a reasonable complaint has been made, or credible information has been received, or there exists reasonable suspicion of his involvement in any act committed outside India which, if committed in India, would have been punishable as an offence, and for which he is liable to be apprehended or detained in India under any law relating to extradition or otherwise; or*

*(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or*

*(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made, and it appears from the requisition that the person might lawfully be arrested without a warrant by the officer who issued the requisition.*

*(2) Subject to the provisions of Section 39, no person involved in a non-cognizable offence, or against whom a complaint has been made, or credible information has been received, or where there exists reasonable*



*suspicion of such involvement, shall be arrested except under a warrant or an order of a Magistrate.*

***(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1), issue a notice directing the person—against whom a reasonable complaint has been made, or credible information has been received, or where there exists reasonable suspicion that he has committed a cognizable offence—to appear before him or at such other place as may be specified in the notice.***

***(4) When such a notice is issued, the person is duty-bound to comply with its terms.***

***(5) If the person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to therein unless, for reasons recorded in writing, the police officer deems arrest necessary.***

***(6) If, at any time, the person fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to any orders of a competent Court, arrest him for the offence mentioned in the notice.***

***(7) No arrest shall be made without prior permission from an officer not below the rank of Deputy Superintendent of Police in cases where the offence is punishable for less than three years and where the person is infirm or is above sixty years of age.***

17. The Apex Court in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** held that an arrest without a warrant by a police officer for a cognizable offence punishable with imprisonment of up to seven years must satisfy not only the requirement of having 'reason to believe' that the arrestee has



committed the alleged offence but also that the arrest is necessary for one or more of the purposes enumerated in sub-clauses (a) to (e) of clause (1) of Section 41 CrPC (with Section 35(1) of BNSS corresponding to Section 41 CrPC). As to the issue of notice of appearance under Section 35(3) of BNSS (i.e., Section 41-A of CrPC), the Court observed that such notice must be served on the accused within two weeks from the date of institution of the case, with an extension by the Superintendent of Police possible for reasons recorded in writing. This ratio was recently affirmed in **Satender Kumar Antil v. CBI, (2022 Live Law (SC) 577)**.

18. A coordinate Bench of this Court in **Make My Trip (India) Pvt. Ltd. v. State of Karnataka (2022)** has ruled in favor of the mandatory issuance of a notice of appearance under Section 35(3) of BNSS, in economic offences (*See also, Sandeep Goyal v. Union of India (2021)*)

19. In **Union of India v. Sapna Jain (2021) 2 SCC 782**, while referring the matter to a three-judge Bench of the Apex Court on the issue of grant of pre-arrest bail and the nature of guarantee accorded under Section 41-A(3) of CrPC against arrest in relation to cognizable and non-bailable offences under the CGST Act, the Apex Court observed at paragraphs no. (3) and (5) as follows:



*“2. As different High Courts of the country have taken divergent views on this matter, we are of the view that the position in law should be clarified by this Court. Hence, the notice...*

***3. As the respondent-accused have been granted the privilege of pre-arrest bail by the High Court in the impugned orders [Sapna Jain v. Union of India, 2019 SCC OnLine Bom 13064; Chandraprakash Labhchand Sanklecha v. Union of India, 2018 SCC OnLine Bom 21184], at this stage, we are not inclined to interfere with the same. However, we make it clear that High Courts, when entertaining such requests in the future, will bear in mind that this Court, by its order dated 27-5-2019 in P.V. Ramana Reddy v. Union of India [P.V. Ramana Reddy v. Union of India, (2021) 2 SCC 784], had dismissed the special leave petition filed against the judgment and order [P.V. Ramana Reddy v. Union of India, 2019 SCC OnLine TS 3332] of the Telangana High Court in a similar matter, wherein the Telangana High Court took a view contrary to that expressed in the present case. Having heard the learned counsel for the petitioner and perused the relevant material, we are not inclined to interfere. The special leave petition is accordingly dismissed.”***

*(emphasis supplied)*

20. The learned counsel for the respondent has placed reliance on the decision of the Division Bench of the High Court of Telangana in the case of **PV Ramana Reddy v. Union of India, 2019 (25) GSTL 185 (Telangana): DD 18.04.2019**, wherein the High Court had refused grant of anticipatory bail to the summoned-petitioners therein who



were accused to have engaged in circular trading by claiming ITC on material never purchased and passing on such ITC to companies to whom they never sold any goods, and the benefit of the wrongful ITC was claimed to the tune of INR 225 crores. The Division Bench had made further observation on prior issue of notice of appearance under Section 41-A of CrPC, 1973, inasmuch as Section 41-A(3) (*which states that no arrest shall be effected as long as the noticee complies and continues to comply with the notice issued under Section 41-A(1)*) did not afford an absolute irrevocable guarantee against arrest of persons without warrant.

20.1. Rebutting the contention of the impugned arrest herein being vitiated, the learned counsel for the respondent submitted that the issuance of notice of appearance under Section 35(3) of BNSS (or Section 41-A of CrPC, 1973) may be dispensed with when the arrestee under Section 69 of CGST Act, 2017 Act was earlier issued summons under Section 70 of the said Act to tender evidence or depose statements.

20.1.1. The learned counsel placed reliance on the above decision, more particularly, paragraph no. 41 thereof, wherein the High Court opined, "*in fact, the duty imposed upon a Police Officer under Section 41A(1) of Cr.P.C. to summon a person for enquiry in relation to a cognizable*



*offence, is what is substantially ingrained in section 70(1) of the CGST Act. Though section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporated under Section 41 and 41A of Cr.P.C., we think section 70(1) of the CGST, Act takes care of the contingency”.*

20.2. The learned counsel therefore, submitted that as long as there existed ‘recorded reasons’ in the departmental files, coupled with adequate ‘reasons to believe’, the arrest was not bad in law, for the arrestee was summoned earlier on 02.01.2025 to tender evidence in the judicial proceeding of inquiry opened by the respondent in respect of the same allegations of wrongful availment of ITC.

20.3. The said submission, however, cannot be countenanced in light of the fact that summons under Section 70 of the CGST Act can be issued to any person whose attendance is necessary in the conduct of the inquiry, and all persons so appearing are statutorily bound to “*state the truth during examination or ... as may be required*”. Furthermore, sub-section (2) of the Section 70 of the said Act deems every such inquiry conducted under sub-section(1) of Section 70 of the Act to be a judicial proceeding, within the meaning of Section 193 of IPC,1860 (*which deals with punishment for false evidence*) and Section 228 of IPC, 1860 (*which deals*



*with intentional insult or interruption to public servant sitting in Judicial Proceeding).*

20.4. Furthermore, the the three-Judge Bench of the Apex Court in the case of *Vijay Madanlal Choudhary v Union of India and Ors, 2022 INSC 757*, has elucidated the distinction between the stages of inquiry deemed to be judicial proceeding, and an investigation under the PML Act, 2002, wherein those summoned before inquiry would not be entitled to avail the fundamental right contained in Article 20(3) of the Constitution i.e., the right against self-incrimination, for the reason that at the stage of inquiry, *“the recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or*



*Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him”.*

20.5. Therefore, in view of the above, and the legal protection of right against self-incrimination accorded to individuals at the stage of investigation vis-a-vis lack thereof at the stage of inquiry - the primary purpose of which is ascertainment of facts, I am of the opinion that issuance of summons under Section 70 of the CGST Act cannot be equated with the issuance of notice of appearance under Section 35(3) BNSS, 2023 (Section 41-A of CrPC, 1973), as the latter is issued at the stage of investigation when a formal accusation, in form of a reasonable complaint or credible information has been received or a reasonable suspicion exists as to the commission of the cognizable offence, thereby warranting an arrest.

20.6. In the case at hand, the petitioner however, is an arrestee, who has been in custody since 30.01.2025 who had tendered evidence and cooperated with the conduct of inquiry, and thus, had complied with the summons issued on 02.01.2025 - under Section 70 of the CGST Act, 2017. The subject of challenge herein is not the issuance of summons, but the arrest effected in pursuance of the said summons, when the same was so made without issuance of the notice of



appearance under Section 35(3) of BNSS, 2023 (or section 41-A(1) of CrPC, 1973).

21. However, this Court on numerous occasions has opined that arrest of persons for offence of economic nature, and punishable with imprisonment of not more than seven years, must be preceded with an notice of appearance under Section 35(3) BNSS, 2023 (Section 41-A of CrPC, 1973), and that an arrest must be made only upon failure of the person to comply with the terms of the notice, as stipulated under sub-section (6) of section 35 of BNSS, 2023 (Section 41-A(4) of CrPC, 1973).

22. A further perusal of the decision of the High Court of Telangana in *PV Ramana Reddy (supra)*, reveals affirmation of the principle of mandatory issue of notice against accusations of commission of offences under CGST Act. Paragraph no. (61) of the judgment and order reads thus -

*“In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Section 69 and 132 of CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances which we have indicated above”.*



22.1. It is pertinent to note that the accused-petitioners in the above case law were denied the pre-arrest bail on account of possible failure of the accused to compound the offence by meeting the huge liability of INR 225 crores raised by the concerned Department, and furthermore, on the grounds that *“acts complained of against the petitioners constitute a threat to the very implementation of a law within a short duration of its inception”*.

23. The case at hand involves a complaint of wrongful availment of ITC by the petitioner to the tune of INR 5.10 crores only, and the petitioner has been in remand since the date of his arrest on 30.01.2025.

23.1. The CGST, Act 2017 provides for assessment under Section 59, provisional assessment under section 60, scrutiny of returns under Section 61, assessment of persons who do not file returns under Section 62, assessment of unregistered persons under Section 63, summary assessment in special cases under Section 64, and audit under Sections 65 and 66. It is undisputed that while a prosecution can be launched prior to conduct of summary assessment or special audit determining liability, no offence can be said to be made out in respect of purported discrepancies in the furnished returns, until completion of the said audits.



24. In light of the fact that the petitioner-arrestee was arrested against the offence punishable with no more than five years of imprisonment *plus* fine, but without the issuance of notice of appearance directing him to appear before the officer authorised under Section 69(1) of the CGST Act, and the fact that the petitioner has been incarcerated since 30.1.2025, coupled with the settled bail jurisprudence to exercise discretion in favour of accused of such nature, I deem it fit that the petitioner be enlarged on bail.

24.1. At the risk of repetition, it may be observed that this Court expresses no opinion on the registration of the impugned case against the petitioner, or the purported guilt of the petitioner in the alleged offences.

Accordingly, I order the following:

**ORDER**

- (i) The instant Petition is ***partly allowed*** by granting *Bail* to the Petitioner-accused No. 3 in Crime No. 03/2025 (F. No. DGGI/INT/INTL/1506/2024-Gr C-01-O/o Pr ADG-DGGI-ZU), pending on the file of the Special Court for Economic Offences, Nrupathunga Road, Bengaluru.



(ii) The Chief Superintendent of Police, Parappana Agrahara, Central Prison, Bengaluru, is hereby directed to release forthwith the petitioner in the aforesaid crime number, subject to following conditions:

- a) The Petitioner - Accused No. 3 shall execute a personal bond for a sum of Rs.1,00,000/- with one local surety for the likesum to the satisfaction of the Trial Court within a period of two weeks from the date of his release;
- b) The Petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- c) The Petitioner shall appear before the investigating authorities as and when required;
- d) The Petitioner shall not involve in similar offences in the future;
- e) The concerned Jail Authorities are hereby directed to release the petitioner forthwith without any delay and immediately upon receipt of this order, if he is not required for any other cases, if any.
- f) The Registry is directed to communicate this Order to the Jail Authorities concerned forthwith without any delay through e-mail and telephonically.

**Sd/-  
(HEMANT CHANDANGOUDAR)  
JUDGE**