

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 31.08.2021****Pronounced on 01-10-2021****WPCR No. 469 of 2021**

1. Paritosh Kumar Singh Alias Diwakar Choudhary S/o Smt. Kamla Devi Aged About 39 Years R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhathagaon, Raipur, Chhattisgarh. In Jail Acting In The Premises Through Manish Singh, S/o Akhilesh Kumar Singh, A/a- 30 Years (Brother Of Petitioner No. 1), R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur.
2. Ravi Kumar Tiwari Alias Bablu Mishra S/o Shri Umashankar Tiwari Aged About 36 Years R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhathagaon, Raipur, Chhattisgarh. In Jail Acting In The Premises Through Manish Singh, S/o Akhilesh Kumar Singh, A/a- 30 Years (Brother Of Petitioner No. 1), R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur.
3. Munna Tiwari Alias Bablu Mishra S/o Shri Umashankar Tiwari Aged About 38 Years R/o Village Belwasa, Mathiya, P.S And Post Aadar, District- Siwan, Bihar. In Jail Acting In The Premises Through Manish Singh, S/o Akhilesh Kumar Singh, A/a- 30 Years (Brother Of Petitioner No. 1), R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur.
4. Kaushal Tiwari Alias Bablu Mishra S/o Shri Umashankar Tiwari Aged About 40 Years R/o Village Belwasa, Mathiya, P.S And Post Aadar, District- Siwan, Bihar. In Jail Acting In The Premises Through Manish Singh, S/o Akhilesh Kumar Singh, A/a- 30 Years (Brother Of Petitioner No. 1), R/o House No. 3399, Ward No. 61, Rawatpura Colony, Bhatagaon, Raipur.

---- Petitioners**Versus**

1. State Of Chhattisgarh Through The District Magistrate, Raipur, Chhattisgarh.
2. Senior Intelligence Officer Director General Of Gst, 4th Floor Complex, Lalapur, Opposite Fruit Market, Raipur, District- Raipur, Chhattisgarh.

---- Respondents

For Petitioners : Shri B.P. Sharma, Advocate
 For State : Shri D.P. Singh, Deputy Advocate General
 For Respondent No. 2: Shri Manish Sharma, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioners have filed this writ petition (criminal) under Article 226 of the Constitution of India challenging the legality and propriety of the order dated 26.06.2021 passed in Criminal Revision No. 62/2021 passed by 5th Additional Sessions Judge, Raipur by which he rejected the revision and affirmed the order dated 12.05.2021 passed by the learned Chief Judicial Magistrate, First Class in Criminal Case No. 3600/2021 by which he rejected the application filed by the petitioner under Section 167 Cr.P.C. for grant of default bail.
2. Learned counsel for the petitioners would submit that the petitioners have been arrested for alleged violation of Central Goods and Service Tax Act, 2017 (for short 'the Act of 2017') for offence committed under Sections 132(1)(b) and (c) of the Act of 2017 and produced before the Judicial Magistrate, from where they were sent to judicial custody. The details of date of arrest as well as date of judicial custody are given below:-

Name of the Petitioner	Date of arrest	Date of Judicial Custody	Day of filing of complaint on 25.03.2021
Paritosh Kumar Singh	25.01.2021	25.01.2021	59 th
Ravi Kumar Tiwari	25.01.2021	25.01.2021	59 th
Munna Tiwari	25.01.2021	28.01.2021	59 th
Kaushal Tiwari	25.01.2021	28.01.2021	59 th

3. Learned counsel for the petitioners would submit that the petitioners have been arrested and produced before the Magistrate concerned on 25.01.2021 from where they have been remanded in judicial custody and as per Section 132 (1)(b) and (c) of the Act of 2017 maximum punishment is 5 years with fine. As per Section 167(2) Cr.P.C. respondent authorities are bound to file charge-sheet within 60 days and in this case charge-sheet has not been filed but a complaint has been filed on 25.03.2021. Complaint has been filed by the Senior Intelligence Officer without there being any name of natural person, therefore, the complaint is not maintainable. Petitioners No. 3 and 4 have been arrested on 25.01.2021 from

Siwan (Bihar) and presented under transit remand for 72 hours i.e. from 26.01.2021 to 29.01.2021 before the Magistrate. At the time of arrest, certain documents have been filed seeking judicial remand which was granted by Chief Judicial Magistrate, Raipur till 08.02.2021.

4. It has been further contended by the learned counsel for the petitioners that they have collected remand order sheets which show that investigation has not been completed, therefore, they seek further time to file charge-sheet, therefore, the petitioners have been taken into judicial custody. Thereafter, one Bharat Bhushan Sahu who claims himself to be Senior Intelligence Officer in the Office of GST, Raipur filed application on 25.01.2021 and sought judicial custody for 14 days which was accepted and extended by the Court.
5. Learned counsel for the petitioners would submit that as per the provisions of Cr.P.C. it is responsibility of the respondent authority to submit charge sheet within 60 days, however, in the present case, no charge-sheet has been filed, therefore, the petitioners are entitled to be released on bail but the same has been denied by the Chief Judicial Magistrate, Raipur vide order dated 12.05.2021 against which revision was preferred which was also dismissed vide impugned order dated 26.06.2021. Thereafter, the present writ petition (criminal) has been filed.
6. Learned counsel for the petitioners would submit that as per Section 132(1)(b) and (c) of the Act of 2017 investigation should be done in respect of cognizable offence, cognizable offence under Section 2(c) of Cr.P.C. is defined as under:

“2(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.”

7. Learned counsel for the petitioners would submit that from bare perusal of the definition, it is crystal clear that cognizable offence means a case in which accused can be arrested without warrant. He would further refer to the definition of 'complaint' as defined under Section 2(d) 'inquiry' as defined under Section 2(g) and 'investigation' as defined under Section 2(h) of the Cr.P.C. which reads as under:-

“2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

2(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.”

8. learned counsel for the petitioners would submit that as per the provisions of Section 167(2) of the Cr.P.C. if charge-sheet is not filed within 60 days, the accused is entitled to be released on bail. In case of Section 132 (1)(b) and (c) of the Act of 2017 alleged to have been committed by the petitioners, maximum punishment is 5 years, then if charge-sheet is not filed within 60 days, the petitioners are entitled to get benefit of Section 167 (2) Cr.P.C.. He would further submit that since right of the petitioners' liberty which has been granted by the Constitution under Article 19 and 21 has been infringed they have filed the present petition under Article 226/227 of Constitution of India. He would further submit that there are other lapses on part of the respondent authorities as under Chapter XII authority is duty bound to file charge-sheet under Section 173 of Cr.P.C. after investigation without any delay. He would draw attention of this Court towards Section 190 of the Cr.P.C. which is extracted below:-

“190. Cognizance of offences by Magistrates:-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2)The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under

sub- section (1) of such offences as are within his competence to inquire into or try.”

9. The learned counsel for the petitioners would submit that respondent authorities cannot discharge their responsibility by filing complaint in place of charge-sheet, therefore, the procedure followed by the respondent authority, *void ab initio*, deserves to be quashed and deserves to be interfered by this Court. The order of the Magistrate, not extending benefit of default bail under Section 167(2) of the Cr.P.C. is nothing but abuse of process of law and suffers from illegality. Thereafter, learned Revisional Court has also committed illegality and irregularity in not interfering the order passed by the Chief Judicial Magistrate. Both the orders are liable to be quashed.
10. Learned counsel for respondent No. 2 would submit that the issue required to be inquired is availment and transmission of Input Tax Credit (ITC) on the basis of mere paper transactions / fictitious supply transactions involving GST to the tune of Rs. 258 Crores indicating total fictitious business in terms of taxable value to the tune of Rs. 1400 Crores. The petitioners, by way of, creation of several fictitious and physically nonexistent trading company firms in Chhattisgarh, Jharkhand, Madhya Pradesh, West Bengal, Maharashtra and registered them in GSTN portal online, using identity credential of several persons using forged PAN and had issued fake bills to transmit fake ITC to several other traders. The petitioners, for the purpose of such fictitious trading had fraudulently shown in their GST returns to have procured several kinds of goods from within and across the State. The Directorate General of Goods and Service Tax Intelligence, Raipur Zonal Unit, Raipur had cracked this racket on the basis of intelligence against a taxpayer named M/s Manoj Enterprises who during the month of July-2020 and August-2020 claimed Rs. 44.72 crores from ITC by way of trading activities even when their statutory returns did not indicate the purchase of any such goods for trade. On the basis of the information gathered, petitioners No. 1 and 2 were arrested on 25.01.2021 from Raipur and produced before the learned Chief Judicial Magistrate, Raipur on the same day and petitioners No. 3 and 4 were also arrested on 25.01.2021 from

Siwan, Bihar and produced before the Chief Judicial Magistrate, Siwan. Learned Chief Judicial Magistrate, Siwan granted transit remand upto Raipur and accordingly produced before the learned Chief Judicial Magistrate, Raipur on 28.01.2021.

11. Learned counsel for respondent No. 2 would submit that from the facts mentioned, it is crystal clear that petitioners have committed offence under Section 132(1)(b) and 132(1)(c) of the Act of 2017 and liable to be punished under Section 132(1)(i) read with Sub-section (5) of Section 132 of the Act of 2017.
12. Learned counsel for respondent No. 2 would further submit that as per Section 4(2) of Cr.P.C. read with Section 5 of the Cr.P.C. all the offences under any law other than IPC will also be investigated, inquired into, tried according to the provisions of Cr.P.C. subject to any enactment for the time being in force regulating them. Sections 4 and 5 of the Cr.P.C. are reproduced below:-

“4. Trial of offences under the Indian Penal Code and other laws:-

- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. **Saving.** Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

13. Learned counsel for respondent No. 2 would submit that Section 173 of the Cr.P.C. specifically provided in respect of report of police officer on completion of investigation. Since, complainant is not a police officer, therefore, a complaint has been filed on 25.03.2021 within 60 days of the arrest of the petitioners under Section 200 of the Cr.P.C. as Section 173 of Cr.P.C. is not applicable in the instant case. The learned Magistrate is duly empowered to take cognizance under

Clause (a) of Section 190 of Cr.P.C.

14. Learned counsel for respondent No. 2 to substantiate his submission would rely upon the judgment passed by Hon'ble Supreme Court in case of **Directorate of Enforcement vs Deepak Mahajan and Another**¹ **Badaku Joti Svant vs State of Mysore**² **Mohd. Yousuf vs Afaq Jahan (Smt.) and Others**³ and **Mahendra Prasad Sharma and Others vs. The State of Bihar**⁴. He would further relied upon the judgment passed by the High Court of Talangana in **P.V. Ramana Reddy vs Union of India**⁵, order dated 27.05.2019 passed by Hon'ble Supreme Court in case of **P.V. Ramana Reddy vs Union of India and Others in Special Leave to Appeal (Cr.) 4430/2019** and order dated 29.05.2019 passed by the Hon'ble Supreme Court in case of **Union of India vs. Sapna Jain and Others in Special Leave to Appeal (Cri.) 4322-4324/2019**.
15. He would further submit that the complaint has been filed on 25.03.2021 and since petitioners have been arrested on 25.01.2021, therefore on 59th day complaint has been filed. Since, the complaint has been filed within 60 days, therefore, petitioners are not entitled to get benefit of Section 167(2) Cr.P.C. Therefore, learned Revisional Court as well as learned Judicial Magistrate have not committed any irregularity or illegality which warrant interference by this Court, and the present writ petition is liable to be dismissed.
16. I have heard learned Counsel for the petitioners as well as learned Counsel for the State and perused the case diary and records of the case with utmost satisfaction.
17. Before advertng to the submissions made by the parties, it is necessary for this Court to examine the provisions of Section 167(2) of Cr.P.C. which are extracted below for convenience:-

“Section 167(2) in The Code Of Criminal Procedure, 1973 -

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no

¹ AIR 1994 SC 1775

² AIR 1966 SC 1746

³ (2006) 1 SCC 627

⁴ 1977 CrLJ 1025

⁵ 2019 SCC Online TS 2516

jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

18. As per the provisions of Section 167(2) of Cr.P.C., default bail is right of an accused. The object of the provisions of Section 167(2) of Cr.P.C. is that State authority should not take any malafide belated action against accused persons. Right of the accused is an integral part of personal liberty, as per the provisions and is an indefeasible link to safeguard under Article 21 of the Constitution of India. Hon'ble Supreme court is very recent judgment in case of **M. Ravindran vs Intelligence Officer, Directorate of Revenue Intelligence**⁶ has held in para 20, 24, 24.2 and 25.2 as under :-

“24. In the present case, admittedly the Appellant-accused had exercised his option to obtain bail by filing the application at 10:30 a.m. on the 181st day of his arrest, i.e., immediately after the court opened, on 01.02.2019. It is not in dispute that the Public Prosecutor had not filed any application seeking extension of time to investigate into the crime prior to 31.01.2019 or prior to 10:30 a.m.

⁶ (2021) 2 SCC 485

on 01.02.2019. The Public Prosecutor participated in the arguments on the bail application till 4:25 p.m. on the day it was filed. It was only thereafter that the additional complaint came to be lodged against the Appellant. Therefore, applying the aforementioned principles, the Appellant-accused was deemed to have availed of his indefeasible right to bail, the moment he filed an application for being released on bail and offered to abide by the terms and conditions of the bail order, i.e. at 10:30 a.m. on 01.02.2019. He was entitled to be released on bail notwithstanding the subsequent filing of an additional complaint.

24.2. We also find that the High Court has wrongly entered into merits of the matter while coming to the conclusion. The reasons assigned and the conclusions arrived at by the High Court are unacceptable.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.”

19. Thus, from the above stated provisions of law, it is abundantly clear that default bail is indefensible right of the petitioner. The same cannot be violated by prosecution. On above legal provisions of law and facts projected by the petitioners, the case has to be examined by this Court whether the petitioners are entitled to get default bail as provided in Section 167(2) of the Cr.P.C. on count of non filing of final report within 60 days or not.

20. For examining this aspect of the matter the relevant provisions the Act of 2017 have to be seen. Section 69 of the Act deals with the power of authority to arrest a person if he is involved in the violation of GST Act and Section 132 of the Act deals with conditions on which a person can be arrested for violation of the Act. Section 70 of the Act of 2017 deals with the power to summon persons to give evidence and produce documents. Section 69, 70 and 132 of Act of 2017 are extracted below:-

“Section 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 subsection (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 twenty-four 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.

Section 70 – Power to summon persons to give evidence and produce documents

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

132. Punishment for certain offences - (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” namely:

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made

thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using such invoice or bill referred to in clause (b);

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.”

21. From bare perusal of the provisions of Sections 69 and 70 of the Act, it is crystal clear that prosecution can be launched by way of private complaint with the previous sanction of Commissioner, no criminal proceeding can be taken to commence, the persons who are summoned under Section 70(1) and persons whose arrest is authorized under Section 69(1) of the Act are not be treated as persons accused of any offence until a prosecution is launched and that an officer of the Central Tax authorized under Section 69(1) of the Act to arrest a person is not a police officer. The officers under the GST Act is not a police officer, as such, he cannot and he does not seek custody of the arrested persons for completing the investigation / inquiry. Section 69(2) oblige the officer authorized to arrest the person to produce before a Magistrate within 24 hours. Immediately upon production the Magistrate may remand him to judicial custody or admit the arrested person to bail in accordance with procedure prescribed under Cr.P.C. Thus, from above discussion, it is quite clear that the GST officers are not the police officers, therefore, they are not required to submit final report as envisaged in Section 173 of Cr.P.C.

22. The Hon'ble Supreme Court in case of **Deepak Mahajan (supra)** has held in para 115 to 119 as under

“115. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under Section 173 of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under Section 61(ii) in the case of FERA and under Section 137 of the Customs Act. To say differently, the police officer after consummation of the investigation files a report under Section 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under Section 190(1)(b) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under Section 190(1)(a) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special

Acts. Therefore, the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

116. It may be recalled, in this connection, that Section 202(1) of the Code falling under Chapter XV under the caption "Complaints to Magistrates" envisages that any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192 of the Code can direct an investigation to be made by a police officer or 'by such other person as he thinks fit'. As regards the conferment of power on such person, sub-section (3) of Section 202 reads:

"If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

The expression "all the powers conferred by this Code on an officer-incharge of a police station" will include the powers conferred on the police officer under the relevant provisions of Chapter XII also.

117. M.P. Thakkar, C.J. of the Gujarat High Court (as he then was) speaking for a Division Bench in *N.H. Dave, Inspector of Customs v. Mohmed Akhtar*³⁴ while examining the import of Section 104 of the Customs Act has ruled thus:

"The expression 'investigation' has been defined in Section 2(h). It is an inclusive definition. No doubt it will not strictly fall under the definition of 'investigation' insofar as the inclusive part is concerned. But then it being an inclusive definition the ordinary connotation of the expression 'investigation' cannot be overlooked. An 'investigation' means search for material and facts in order to find out whether or not an offence has been committed. It does not matter whether it is made by the police officer or a customs officer who intends to lodge a complaint."

We are in total agreement with the above view of M.P. Thakkar, C.J.

118. The word 'investigation' though is not shown in any one of the sections of the Customs Act, certain powers enjoyed by the police officer during the investigation are

vested on the specified officer of customs as indicated in the table given above. However, in the FERA the word 'investigation' is used in various provisions, namely Sections 34, 36, 37, 38 and 40 reading, "... any investigation or proceeding under this Act..... though limited in its scope.

119. From the above discussion it cannot be said that either the Officer of Enforcement or the Customs Officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer."

23. The Hon'ble Supreme Court in **Badaku Joti Savant (supra)** has held that Central Excise Officer can only file complaint as per Section 190 of the Cr.P.C. and cannot submit final report. The Hon'ble Supreme Court in para 9 has held as under :

"9. Strong reliance has however been placed on behalf of the appellant on S. 21 of the Act, the material part of which runs thus:

"21. (1) When any person is forwarded under section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case; Provided that....."

It is urged that under sub-section (2) of s. 21 a Central Excise Officer under the Act has all the powers of an officer-in-charge of a police station under chapter XIV of the Code of Criminal Procedure and therefore he must be deemed to be a police officer within the meaning of those words in s. 25 of the Evidence Act. It is true that sub-section (2) confers on the Central Excise Officer under the Act the same powers as an officer-in-charge of a police station has when investigating a cognizable case; but this power is conferred for the purpose of sub-s. (1) which gives power to a Central Excise Officer to whom any arrested person is forwarded to inquire into the charge against him. Thus under s. 21 it is the duty of the Central Excise Officer to whom an arrested person is forwarded to inquire into the charge made against such person. Further under proviso (a) to sub-s. (2) of s. 21 if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to

bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such. Magistrate. It does not however appear that a Central Excise Officer under the Act has power to submit a charge-sheet under s. 173 of the Code of Criminal Procedure. Under s. 190 of the Code of Criminal Procedure, a Magistrate can take cognizance of any offence either (a) upon receiving a complaint of facts which constitute such offence, of (b) upon a report in writing of such facts made by any police officer, or (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. A police officer for purposes of cl. (b) above can in our opinion only be a police officer properly so-called as the scheme of the Code of Criminal Procedure shows and it seems therefore that a Central Excise Officer will have to make a complaint under cl. (a) above if he wants the Magistrate to take cognizance of an offence, for "ample, under s. 9 of the Act. Thus though under sub-section (2) of s. 21 of the Central Excise Officer under the Act has the powers of an officer-in-charge of a police station when investigating a cognizable case, that is for the purpose of his inquiry under sub-s. (1) of s. 21. Section 21 is in terms different from s. 78(3) of the Bihar and Orissa Excise Act, 1915 which came to be considered in Raja Ram Jaiswal's case⁽¹⁾ and which provided in terms that "for the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an excise officer empowered under section 77, sub-section (2), is appointed shall be deemed to be a police station, and such officer shall be deemed to be the officer-in-charge of such station". It cannot therefore be said that the provision in s. 21 is on par with the provision in s. 78(3) of the Bihar and Orissa Excise Act. All that s. 21 provides is that for the purpose of his enquiry, a Central Excise Officer shall have the powers of an officer-in-charge of a police station when investigating a cognizable case. But even so it appears that these powers do not include the power to submit a charge-sheet under s. 173 of the Code of Criminal Procedure, for unlike the Bihar and Orissa Excise Act, the Central Excise Officer is not deemed to be an officer-in-charge of a police station."

24. Hon'ble High Court of Telangana in case of **P.V. Ramana Reddy (supra)** has held that officers who are authorised to arrest under Section 69 of the Act are not police officers. That order has been assailed before the Hon'ble Supreme Court in SLP (Cri.) 4430/2019, which was dismissed by the Hon'ble Supreme Court vide its order dated 27.05.2019.

25. Thus from above law laid down by the Hon'ble Supreme Court it is

quite clear that the authorized officer can only make complaint under Section 190(1) of the Cr.P.C. not submit final report as he is not a police officer.

26. Learned counsel for the petitioners would submit that since the final report has not been submitted and a complaint has been submitted by the Director General of GST Intelligence, they are entitled to get benefit of default bail under Section 167(2) of the Cr.P.C. This submission cannot be accepted in view of above stated legal position, therefore, contention of the petitioner for grant of default bail under Section 167(2) for non-furnishing of final report is rejected. This Court has also examined the factual foundation with regard to submission of complaint on 25.03.2021 which is within 60 days as reflected in the chart made in the foregoing paragraphs of the order. Thus, it is quite clear that complaint has been filed within 60 days of their arrest which is within the time prescribed for filing of complaint to entitle or disentitle the accused persons for default bail. As the complaint has been filed within 60 days, therefore, on this count also, the petitioners are not entitled to get default bail and present writ petition challenging the order dated 26.06.2021 passed by 5th Additional Sessions Judge in Criminal Revision No. 62/2021 and order dated 12.05.2021 passed by the Chief Judicial Magistrate First Class in 3600/2021 is liable to be dismissed.

27. Accordingly, the writ petition (criminal) is dismissed.

28. No order as to costs.

Sd/-
(Narendra Kumar Vyas)
Judge