

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

CRM (R) 13 of 2025

Santosh Kumar Sah

VERSUS

Union of India

For the petitioner:

Mr. Amales Ray, Ld. Sr. Adv.

Mr. Dhiraj Lakotia, Adv.

Ms. Radhika Agarwal, Adv.

For the respondents :

Ms. Meghna Joshi, Adv.

Ms. K. Kundu, Adv.

Mr. Nigam Mittal, Adv.

Ms. Prerna Mitra, Adv.

Mr. Ratan Banik, Adv.

Last Heard On: April 11, 2025

Mr. Bishwaraj Agarwal, Adv

Mr. Saptarshi Banik, Adv

Judgment on: April 17, 2025

Biswaroop Chowdhury,J:

This is an application under Section 439 of the Code of Criminal Procedure 1973/483 of the Bharatiya Nagarik Suraksha Sanhita 2023 filed by the petitioner who is in custody in connection with CR Case No. 530 of 2025 dated 31-03-2025 under Sections 132 (1) (c) read with 132 (5) of the Central

Goods and Service Tax Act 2017, pending before the Learned Additional Chief Judicial Magistrate Siliguri Darjeeling.

It is the contention of the petitioner that the petitioner is a tax-paying Businessman and the authorized signatory of M/S. Buddhu Sha and Co, a registered GST. Assessee engaged in the lawful trade of fast-moving consumer goods, primarily tobacco products manufactured by ITC LTD, under a distributorship arrangement confined to the Jaigaon region. The petitioner operates under an area-specific supply agreement with ITC LTd, under which all goods are delivered directly to the petitioner's designated warehouse or business premises by the supplier-ITC Ltd. It is further contended that the petitioner was arrested on 31-03-2025 at around 9.30 P.M by officers of the Central Goods and Services Tax (CGST). Department Siliguri pursuant to an Arrest Authorisation Order dated 30.03.2025 issued by the Commissioner, CGST and CX. Siliguri. The said order claimed that the petitioner in his capacity as the authorized signatory of M/S Budhu Sha and Co. had rendered himself liable to punishment under Section 132 (1) (c) read with Section 132 (1) (i) and Section 132(5) of the central Goods and Services Tax Act 2017, and was therefore liable to be arrested under Section 69(1) of the said Act. The arrest was effected without any judicial warrant and significantly before any formal complaint had been filed before the Learned Magistrate. The Memo of Arrest Served on the petitioner records that the arrest is based on the alleged wrongful availment of Input Tax Credit (ITC) amounting to Rs. 37.29 crores purportedly on the basis of invoices raised without actual supply of goods. It

was alleged that the vehicles mentioned in the relevant E. Way Bills had not crossed all toll plazas along the designated route. However no adjudication proceedings show cause notice or quantification of demand under Section 74 of the CGST Act preceded the arrest, nor was there any material indicating culpable intent. It is also contended that on 01.04.2025 a formal complaint was also filed by Shri Dilip Kumar Gupta, Superintendent (HEAU) Siliguri CGST and CX. Commissionerate, before the Learned Additional Chief Judicial Magistrate Siliguri on behalf of the Union of India, under Section 132 (1) (c) read with Section 132 (1) (i) and Section 132(5) of the Central Goods and Services Tax Act 2017. It is contended that a search was conducted at the petitioner's Principal place of business on 29.03.2025 which continued into 30-03-2025 and was specifically in relation to the very same allegations, that now form the basis of the present prosecution – namely, the purported fraudulent availment of Input Tax Credit (ITC) without actual receipt of goods. During the course of this search, officers of the CGST Department selected a specific E-Way-Bill No. 841513001162 dated 26-03-2025 for verification which they had flogged as fictitious upon inspection, the goods described in the said invoice were physically found in stock at the premises. The Batch numbers matched the invoice details. Officers also examined CCTV footage which clearly captured the arrival of Vehicle No. WB 73G5358, on 27-03-2025. At around 9.00 AM and the unloading of goods at the petitioner's warehouse. It is further contended that the Pancha prepared on 30.03.2025 records all these findings including photographic evidence confirmation of batch numbers and the presence of

complete supporting documents such as invoices e-way bills, and payment records. Crucially no unaccounted stock, cash or incriminating material was found or seized. In fact the panchanama also notes that the petitioner voluntarily extended complete co-operation including granting access to his accounting software and net banking interface to facilitate verification. This glaring omission points to a deliberate and calculated suppression of favourable material and renders the arrest and prosecution wholly arbitrary and devoid of fairness. It is also contended that the search proceedings concluded on 30-03-2025 with the preparation and issuance of a spot panchanama which accurately recorded the physical verification of stock tallying of batch numbers availability of corresponding transport document and absence of any unaccounted goods, cash or incriminating materials. On the very next day ie. 31/03/2025 three officers of the CGST. Department visited the petitioner's business premises and made an unexpected and wholly irregular request to retrieve and substitute the copy of the original panchanama that had been handed over to the petitioner the previous evening. The officers carried with them a different version of the Panchanama and sought to replace it with the original copy. The petitioner and his staff finding this request suspicious and unlawful refused to comply. It is contended that the allegations forming the basis of the present complaint and arrest pertain exclusively to financial years preding FY-2024-25, and in particular to FY-2020-21, 2021-22, 2022-23 and 2023-24. No proceedings whatsoever have been initiated against the petitioner for the current financial year 2024-25 and

yet, the arrest was abruptly made on 31-03-2025 just a day before the close of the financial year and in the complete absence of any complaint on record before a competent court. It is not the first time the department has looked into these very same issues, in fact the petitioner was earlier summoned under Section 70 of the CGST Act on 21-12-2022 and was called upon to furnish documents for the period 01.04.2021 to 31.03.2022 and the petitioner duly submitted complete documentation including purchase records, transport details and sale invoices. It is contended that on 10.10.2023 the petitioner was issued a detailed notice asking for documents relating to specific shipping bills raised between November 2021 and August 2022, and for FY-2022-23 the petitioner was required to provide details of inward and outward supplies in specific HSN-classified goods up to December 2022 as well as Electronic Generation Manifests (EGMS) which were reportedly missing on ICEGATE. All these documents were duly provided by the petitioner. At no stage during or after the exchange did the department accuse the petitioner of non-cooperation or resort to coercive action. The proceedings initiated under Section 73 of the CGST (which by design applies only to non fraudulent cases culminated in a formal drop order dated 22-02-2025 in relation to FY-2020-21 wherein no demand was raised and no adverse findings was returned. This sequence of events completely undercuts the allegation that the petitioner had availed bogus ITC on the basis of fake invoices. It is further contended that the instant arrest following on the heels of a detailed search operation on 29.03.2025 and 30.03.2025 conducted on the same allegations which yielded no incriminating

material amounts to a deliberate act of suppression and a gross abuse of the arrest power under Section 69.

The petitioner was arrested without warrant without confrontation with fresh material without any quantified demand or adjudication under Section 74 and despite demonstrated consistent co-operation across multiple rounds of inquiry. The arrest therefore is not only disproportionate but wholly unjustified in law and facts.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party Union of India. Perused the petition filed and materials on record.

Learned Advocate for the petitioner submits that in the complaint lodged by the respondent several facts of the allegations which are irrelevant have been stated but the basis or foundation for commission of the alleged offence under Section 132 (1) (c) of the CGST Act mentioned in para-7 of the complaint are as follows:

Vehicles mentioned in certain E-way Bills enclosed as Annexure-1) issued by one of the suppliers of M/S Budhu Sha and Company, involving ITC of Rs. 3.7.29 crores have either crossed no toll plaza or have not crossed all the toll-plaza falling on the normal/designated route, from the place of business of the said supplier to the place of business of M/S. Buddhu Sha and Co. He had even failed to produce any reliable evidence to establish that the goods have

been transported in actual and vehicles have actually moved/crossed all toll-plazas on the way.

Learned Advocate further submits that from the particulars attached to the complaint that E-way Bills issued by ITC Ltd (the supplier) in respect of the financial years 2021-22, 2022-23 and 2023-24 corresponding to 232 invoices are the subject matter of Investigation. Learned Advocate also submits that although it is contended that there is no evidence regarding receipt of the goods in terms of Section 16(2)(b) of the CGST. Act 2017 whereas it is apparent from panchanama dated 29-03-2025 that search was conducted on 29-03-2025 and that was continued till the next day ie. 30-03-2025 Learned Advocate relies upon the following extracts of panchanama dated 30.30.2025.

‘Goods were found positioned as it were seen last day at the time of looking the go-down. On verification all the physical stocks were found in line with the entries in stock summary ie. no unaccounted/excess/short stocks were found.’ Assuring the officers of his full co-operation, Shri Santosh Kumar Sah voluntarily offered to provide his net banking credentials, allowing the officers to view transactions at any time.

‘Acting upon an idea emerged through the discussion among the officers and the tax payer, officers requested the tax payer to provide details including invoice no. and Batich Number of available stock of cigerattes purchased from ITC Limited. The ITC software by feeding the invoice no. through which the available stock of cigarettes were procured.’

The officers then identified an E-way Bill No. 841513001162 dated 26.03.2025 for which the toll crossing record was not available on the E-way bill portal. The batch no of the goods procured through the corresponding invoices to the above-mentioned E-way bill were identified and verified whether the goods with the same batch no. are available in the stock or not. The officers found the goods physically available in the stock. Batch no wise photo of the goods (cigarettes-cartons) were also taken by the officers. Moreover the officer also checked the CCTV footage and found that the vehicle no. WB-73G-5358 corresponding to the above said E-way bill entering the PPOB at around 9.00 AM on 27-03-2025 and being unloaded onwards also.'

Learned Advocate relies upon the decisions of the Hon'ble Supreme Court in the case of Radhika Agarwal VS Union of India reported in [2025] 171 tanmann.com 83.2 (S.C) and the decision Arvind Kejriwal VS Directorate of Enforcement reported in (2025) 2SC. P-248 and submits that from the said judgments it can be logically deducted as follows:

- i) That Commissioner must satisfactorily show vide the reasons to believe recorded by him that the person to be arrested has committed a non-bailable offence.
- ii) While recording the reasons to believe should state the Commissioner's satisfaction and refer to the 'material' forming the basis of his findings regarding the commission of a non-bailable offence.

- iii) Failure to do so would result in an illegal arrest.
- iv) The difference between the 'reasons to believe' and 'suspicion' is explained.
- v) Suspicion requires lower degree of satisfaction, and does not amount to belief. Belief is beyond speculation or doubt, and the threshold of belief conveys conviction founded on evidence regarding existence of a fact or doing of an act.
- vi) The reasons for the formation of the belief which must have a rational connection with or an element bearing on the formation of belief. The reasons should not be extraneous or irrelevant for the purpose of the provision.

Learned Advocate submits that the foundation of the allegations that the petitioner's firm availed Input Tax Credit fraudulently on the basis of fake invoices is that the entries of subjected E-way Bills corresponding to 232 invoices as given were not found in the 'toll crossing record' in toll plazas which is not statutorily prescribed and moreover non-entry of the E-way bills in the toll crossing record is not a conclusive proof or 'material' to hold that the petitioner availed Input Tax Credit fraudulently in as much as the investigating team while conducting search on 29-03-2025 and 30-03-2025 themselves doubted the authenticity of the toll crossing.

Learned Advocate further submits that during conducting search the investigating team did not find any discrepancy or anomaly in respect of

availment of Input-tax credit for the financial year 2024-25 and moreover adjudication proceedings under Section 73 of the Act for the Financial year 2020-21 was dropped on 22-02-2025. Learned Advocate also submits that non-entry of E-way bills in the toll crossing record of the toll plaza, which is not statutorily prescribed cannot be treated as material' conversely such as non-entry in the toll crossing record can be treated as extraneous and irrelevant documents.

Learned Advocate relies upon the following Judicial decisions:

Radhika Agarwal VS Union of India reported in 2025 171 Taxman com.832 S.C.

Arvind Kejriwal VS Directorate of Enforcement

Reported in (2025) 2 SCC P-248.

Instruction No-02/2022-23

(GST-Investigation dated 17.08-2022)

Vishal Kumar Arya VS Union of India

Reported in 2025 SCC online Cal-1892

Prem Sundar Chaudhury VS Union of India.

Reported in [2025] 172 taxman.com 849 (Patna).

Niranjan Paul VS ACST Siliguri and ors in WPA-707 of 2025 dated 08.04.2025.

Apart from the judicial decisions Learned Advocate has produced, copies of Form GSTR-I form GSTR-2A. and Form GSTR-9. and documents procured from ITC LTd. (suppliers) confirmation of sales transaction ledger of invoice wise goods and packing slips for 232 invoices.

Learned Advocate for the opposite party Union of India submits that the instant application is not maintainable as an application for bail is pending before Learned Sessions Court and without withdrawing the said application this bail application is filed. Learned Advocate submits that the facility of availing passing and utilization of Input Tax Credit (in short 'ITC') has been introduced in the taxation system of Goods and service Tax with a purpose to prevent cascading effect of taxation and to avoid the honest tax-payers and the public from the burden of double taxation. A supplier of taxable goods/services may avail the credit of taxes paid on their inward supplies and utilize such credit to discharge the tax liabilities on his outward supplies. The said supplier has to follow certain conditions in order to avail such credit of taxes paid on inward supplies. Such conditions are prescribed under Section 16 of Central Goods and Services Act 2017. Provisions have also been made under CGST Act 2017 and rules made thereunder for refund of unutilized input tax credit at the end of any tax period where the outward supply made by a supplier is zero

rated supply (which includes export of goods/services in terms of Section 16 of the Integrated Goods and Service Tax Act 2017) made without payment of tax.

Learned Advocate further submits that one of the conditions to take/avail ITC is that a registered person have to receive the goods/services or both, which are used or intended to be used in the course or furtherance of his business as per Section 16 (2) (b) of the CGST Act 2017. In order to get unjust enrichment some persons avail, ITC (Input Tax Credit) without actual receipt of goods and get refund thereof in a planned way. There is payment of value of supply from the account of suppliers however, there is no actual transfer/movement of goods from the place of the supplier, to the place of the recipient. Such transaction shown on paper is nothing but eye wash.

Learned Advocate also submits that in order to verify the fulfillment of the condition prescribed at Section 16(2) (b) of the CGST Act 2017 for availment of ITC by M/S. Budhu Sha and Company GSTIN-19AAFFB0139C122 Principal place of Business – D arising para Dalsing para Main Road Dalsingpara Jalpaiguri West Bengal 735208 wherein this petitioner Sh. Santosh Kumar Sah is the Authorized signatory and managing partner of the firm in respect of the goods supplied to them by their suppliers an exercise has been done to check the movement of the vehicles carrying the goods from the premises of their suppliers to the premises of M/S Budhu Sha and Company. The transportation of goods from the place of Business (PPOB) of ITC Limited, located at Matigara District – Darjeeling West Bengal PIN-734010 (GSTIN:

19AAACIS950LIZ7), to the place of Business (PPOB) of Budhu Sha and Company situated at Dalsing para Tea Garden District-Alipurduar, West Bengal PIN_735208(GSTIN:19AAFFB0139CIZZ) have to pass through specific toll plazas. These toll plazas are determined by the geography and topography of the region and are not avoidable under normal road infrastructure. Accordingly there are two principal routes that connect the points of origin and destination. Learned Advocate further submits that the first route which is commonly used for goods movement from Siliguri to Dalsingpara involves the north direction traversal of i) Panikause Toll Plaza, (ii) Husludanga Toll Plaza and, (iii) Rangalibazna Fee Plaza. The second route used as an alternative involves south direction passage through sulkhapara Fee Plaza followed by a north direction passage through Rangalibar na Fee Plaza. Passage through these toll plazas is imperative and any deviation is neither feasible nor justifiable under standard logistic.

Learned Advocate also submits that on verification it was revealed that the vehicles mentioned in the Annexed 232 nos of E-way Bills (Toll details Annexure-2) pertaining to the period from April 2021 to March 2024 have not crossed all the toll plazas falling on the normal route from the supplier ITC Ltd, Matigara, Siliguri to M/S. Budhu Sah and Company Dalsingpara. The E-way Bill portal shown 'No Toll Record' in 150 consignments (Toll details Annexure-3) where forty (40) specific vehicles have been used. Out of these Forty (40) vehicles Sixteen (16) vehicles, used in 56 consignments. Thus the complete absence of toll data during the claimed movement period is a significant

anomaly and is not consistent with the lawful movement of goods as movement between the places of Businesses necessarily involves crossing the tolls falling on either of the routes. It is further submitted that on further verification of the E-way Bills No. 851179898279 and 841381086388. Specific anomalies have been detected with regard to the two consignments. It is submitted that the enquiry reveals that the vehicles mentioned in 232 Nos. of E-way Bills carrying inward goods pertaining to the period from April 2021 to March-2024 issued by one of the suppliers of M/S. Budhu Sha and Company ie ITC Ltd, involving ITC of Rs. 37.29 Crores have either crossed no Toll Plaza or have not crossed all the toll Plaza falling on the normal/designated route from the place of business of the said supplier to the place of business of M/S Budhu Sha and Company. He had even failed to produce any reliable documents to establish to establish that the goods have been transported in actual and vehicles have actually moved/crossed all toll Plaza on the way. Thus the petitioner has committed an offence which is punishable under the CGST Act 2017. Learned Advocate have also enclosed toll plaza statements and route maps.

Upon hearing the Learned Advocates and considering the facts of the case on the basis of materials on record it appears that complaint was made before Learned Additional Chief Judicial Magistrate Jalpaiguri on the allegation that the petitioner had committed an offence under Section 132 (1) (c) of the CGST Act 2017 punishable under Section 132 (1) (i) as the petitioner in his capacity as the authorized signatory and partner of M/S. Budhu Sha and Co. has fraudulently availed Input Tax Credit (ITC) amounting to Rs. 37.29 crores

during the financial years 2020-21 to 2023-24 without actual receipt of the goods.

The basis of the allegation is a toll data analysis retrieved from the E-way Bill portal. It is alleged that the vehicle listed in 232 E-way Bills (attached as Annexure-I to the complaint) did not cross any toll plaza, or failed to cross all toll plazas along the designated or normal route, from the supplier's premises to the petitioners registered place of business at Dalsingpara.

Upon further perusal of record it appears that the acts alleged relate to financial years 2020-21 to 2023-24 and during this period the petitioner was issued summons to appear on 21-12-2022 in connection with search dated 21/12/2022 under Section 67(2) under Central Goods and Services Tax Act 2017. Again on 10-10-2023 petitioner was asked to submit certified copy of EGM with regard to shipping bills and Order passed on 22/02/2025 where proceedings under Section 73 of CGST Act was dropped on payment of Tax which was due. It further appears from panchanama dated 30.03.2025 that officers of the CGST Authority caused physical stock verification of the goods which could not be verified the previous day due to limitation of time. It was found by the Authority on verification all the physical stocks were in line with the entries in stock summary ie. no unaccounted/excess/short. Stocks were found on completion of the verification JOINT STOCK VERIFICATION STATEMENT was prepared and signed by the officers of CGST and the petitioner. It further appears that pursuant to discussion between the tax

payer and the Authority the Tax payer/petitioner was requested to provide details including invoice no and Batch number of available stock of Cigarettes purchased from ITC limited. The Batch no were obtained from the ITC software by feeding the invoice no. through which the available stock of cigarettes were procured. The officers then identified an e-way bill no. 841513001162 dated 26-03-2025 for which the toll crossing record was not available on e-way bill portal. The Batch no of goods provided through the corresponding invoices to the above-mentioned e-way bill were identified and verified whether the goods with some batch no. are available in the stock or not. The officers found the goods physically available in the stock Batch no. wise photo of the goods (cigarettes-cartons) were also taken by the officers. Moreover the officer also cheked the CCTV footage and found that the vehicle no. WB73G5358 corresponding to the above said E-way bill entering the PPOB at around 9.00 AM on 27.03.2026 and being unloaded onwards also.

Thus from the panchanama dated 30-03-2025 it appears that although an e-waybill 841513001162 dated 26-03-2025 for which the toll crossing record was not available on e-way bill portal but upon verification with Batch no of goods procured through the corresponding invoices to the above mentioned e-waybill were identified and verified with the available stock and the same were found to be existing. The findings in the panchanama makes an arguable case of the petitioner to defend himself that the goods received may not always be available on e-waybill portal. Although the respondents have furnished documents on the basis of which they decided to proceed against the

petitioner but the panchanama dated 30-03-2025 does not corroborate the case against the petitioner.

In the case of Arvind Kejriwal the Hon'ble Supreme Court observed as follows:

'27. In the present case, we are examining Section 19(1) of the PML Act and the rights of the accused. We are not concerned with the ECIR. The relevant question arising is – whether the arrestee is entitled to be supplied with a copy of the “reasons to believe”? Paragraph 89 in Vijay Madanlal Choudhary (supra) refers to the importance of recording the “reasons to believe” in writing, and states this is mandatory. Further, both Pankaj Bansal (supra) and Prabir Purkayastha (supra) hold that the failure to record “reasons to believe” in writing will result in the arrest being rendered illegal and invalid. Paragraph 131 of Vijay Madanlal Choudhary (supra), which has been quoted subsequently, states that Section 19(1) requires in-depth scrutiny by the designated officer. A higher threshold is required for making an arrest, necessitating a review of the material available to demonstrate the person's guilt. Production of the “reasons to believe” before the Special Court/magistrate, cannot be construed and is not the same as furnishing or providing the “reasons to believe” to the arrestee who has a right to challenge his arrest in violation of Section 19(1) of the PML Act.²³

The Hon'ble Court further observed.

'41. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the "reasons to believe", based upon the material available with the authorised officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the Court.

Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.'

In the INSTRUCTION. No-02/2022-23. [GST-Investigation]dated 17th August 2022 it was provided as follows:

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Cr1.) No. 5442/2021, has observed as follows:

“we may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest on accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

2. Board has examined the above-mentioned judgment and has felt the need to issue guidelines with respect to arrest under CGST Act, 2017. Even, under legacy laws i.e. Central Excise Act, 1944 (1 of 1944) and Chapter V of the Finance Act, 1994 (32 of 1994), the instructions regarding exercise of power to arrest had been issued.

3. Conditions precedent to arrest:

3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender 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 clause (ii) of sub-section (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on creditable material.

3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/benami transaction in the name of dummy GSTIM or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

In the case of Prem Sundor Choudhary (supra) the Hon'ble Court observed as follows:

'5. After reading of Section 69 of CGST Act, 2017 there must be reason to believe that a person has committed an offence and from perusal of Section 132 of the Act, it is clear that there must be reason to believe of tax evasion or condition as specified in section 132 for arresting of such person under the Act. Learned senior counsel for the petitioner further submits that the monetary limit which is specified in section 132 regarding period of conviction as per the amount of tax evasion but in arrest memo of the petitioner the amount of tax evasion is not specified. It means that the arresting of the petitioner is merely on the basis of suspicion or there is nothing in this case. The Ministry of

Finance GST Investigation also issues a guideline for arrest and bail in relation to offences punishable under CGST Act, 2017 in which the condition precedent to arrest, procedure for arrest, post-arrest formalities and reports to be sent is described in detail. The guidelines determine some questions must be affirmative and accused should not be arrested on the basis of bail non-affirmative. In this case, guidelines were not followed. The learned senior counsel for the petitioner has also brought to the notice of this Court, Instruction No. 2/2022-2023 GST Investigation guideline for arrest and bail in relation to offences punishable under CGST Act, 2017. Hon'ble the Supreme Court of India in its judgment dated 16th August, 2021 in Cr. APP. No. 838 of 2021 arising out of SLP (Crl.) No. 5442 of 2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

6. As against this, learned counsel for the Union of India has submitted that the petitioner has caused loss of revenue to the tune of Rupees thirty three crore and odd.

7. On perusal of Section 132 of CGST Act, it is clear that the punishment for the alleged offence is up to five years. Section 132(1) (l) (i) of CGST Act reads as under:

"(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;"

Having heard learned senior counsel for the petitioner and learned counsel for the respondent and considering the facts and circumstances of the case, this Court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Case No. 35(O) of 2024 on executing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge Economic Offences at Patna.

In the case of Niranjana Paul (supra) a Learned Judge of this Hon'ble Court observed as follows:

The documents prescribed in the statute and the rules framed thereunder for movement of the goods namely tax invoices, E-waybills etc. have

been disclosed in the writ petition. The documents with regard to payment of transportation cost by the supplier and also that the supplier has paid the relevant tax and duties and filed the returns as prescribed under the statute have been annexed to this writ petition.

Upon going through the orders passed by the adjudicating authority as well as the appellate authority this Court finds that such documents were also produced by the petitioner before such authorities. Though the authorities both original as well as the appellate proceeded on the basis that there was no actual physical movement of the goods but the petitioner has produced documents before this Court in support of his contention that there was actual physical movement of the goods. Such documents which are available on records does not appear to have been considered by either of the authorities. Such authorities also did not return any finding as to whether the supplier complied with the provisions of the WBGST Act, 2017 with regard to payment of the tax and duty and filing of the returns for the relevant period.'

Upon perusal of the judicial decisions relied upon it is clear that the service Tax Authorities before proceeding against the tax payer either for recovery of tax due or penalty or before deciding to lodge a criminal complaint must consider all the relevant documents in relation to receipt of goods and services and in case of contravention of Section 132 (1) (c) of Central Goods and services Tax Act if the Authorities are of the view that an offence under the said section is committed should either cause inspection at the business

premises of the tax payer to satisfy themselves or ask the tax-payer for clarification before deciding to proceed against the tax-payer under Section 132 of CGST Act. It is to be remembered that the reputation of a business man tarnishes when a complaint is lodged against him and he is arrested in connection with his business activity. As CGST Authority is not an individual but Government Authority and 'State' within the meaning of Article 12 of the Constitution it is not only their duty to ensure revenue of the state in accordance with law but also to see that business men, tax payers are not unnecessarily harassed and their reputation is not tarnished and personal liberty is not unnecessarily infringed. Thus the Authority should proceed in a reasonable manner and apply their mind before deciding to set the criminal law in motion against a tax-payer.

In the instant matter the CGST Authority upon receiving the report of panchanama dated 30/03/2025 ought to have applied their mind and could have conducted further enquiry or give an opportunity to the petitioner of being heard before lodging the complaint on 31/03/2025 and arresting the petitioner. However as the CGST Authority has on enquiry collected some information and documents before lodging the complaint it would not be proper to make any further observation with regard to the merits of the case but it is necessary to decide as to whether petitioner should be granted bail.

In order to decide as to whether the accused should be granted bail it is necessary to consider the nature of offence severity of punishment, if convicted, chance of abscondence and tampering with evidence.

In the instant case the petitioner is charged with committing an offence the maximum punishment of which, is five years. Now considering the materials on record, it appears that the relevant documents and information is with the respondent authority thus there is no scope for tampering evidence. As the petitioner has his business there is no chance to abscond. Moreover it appears from record that the petitioner has-co-operated with the respondent authority.

Thus considering the nature of allegation, materials on record, period of detention and stage of investigation this Court is of the view that further detention of the petitioner is not necessary for the purpose of investigation. Hence the petitioner should be granted bail.

As a question of law is raised that once the petitioner has filed bail application before the Learned Sessions Court the bail application before this Court is not maintainable and the Learned Advocate for the petitioner submits that the bail application before Sessions Court is filed due to miscommunication and petition before session court will be withdrawn as not pressed, it is necessary to address on this issue.

In this regard it is to be noted that although Section 439 CrPC read with Section 483 of Bharatiya Nagarik Suraksha Sanhita 2023 confers special power

upon High Court and Court of Session to grant bail but once an application is filed before Court of Session another should not be filed in High Court, without withdrawal from sessions Court. However as bail applications are not affirmed by the accused and the accused simply executes vokalatnama being in custody without having knowledge what specific steps are taken he cannot be made to suffer for no laches on his part. However Learned Advocates should be more cautious in this regard. As this application for bail is moved before this Court, the application for bail filed before Learned Sessions Court stands dismissed.

In the facts and circumstances the petitioner be released on bail with 2 sureties of Rs. 10,000/- each subject to satisfaction of Learned ACJM Siliguri. The petitioner upon being released shall meet the CGST Authority as and when called and shall not do anything prejudicial to Inquiry or Trial.

Urgent certified copy shall be issued.

(Biswaroop Chowdhury,J:)