IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

13.08.2025.
Sl. No. 9
Ct.No. 4.
sdas
(Allowed)

C.R.M.(R) 47 of 2025

In Re:- An application for bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023/ under Section 439 of the Code of Criminal Procedure, 1973 in connection with C.R. Case No. 1078 of 2025 dated 03.07.2025 under Section 132(1)(a), punishable under Section 132(1)(i), read with Section 132(5) of the Central Goods and Services Tax Act, 2017.

In Re : Gopal Rathi

.... petitioner

Mr. Shri Singh
Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghana Joshi
Ms. Khushi Kundu
Ms. Madhulika Sharma
Ms. Anish Prasad

...for the petitioner

Mr. Ratan Banik
Mr. Bishwa Raj Agarwal
Mr. Saptarshi Banik ....for the respondent

This application has been preferred under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, BNSS) in connection with C.R. Case No. 1078 of 2025 dated 03.07.2025 under Section 132(1)(a), punishable under Section 132(1)(i), read with Section 132(5) of the Central Goods and Services Tax Act, 2017.

Mr. Singh, learned Advocate appearing on behalf of the petitioner, submits that the petitioner has been in custody for almost 40 days. He further submits that the petitioner was initially implicated in another case based on baseless and vague allegations.

At that time, the petitioner was lodged in judicial custody. However, he was subsequently released, and thereafter, the present case has been initiated against him.

He further submits that on 21st April, 2025, a search was conducted by certain officials of the respondent authorities. Pursuant thereto, the first summon was issued on 6th May, 2025, to which the petitioner duly responded. Subsequently, a second summon was issued on 8th May, 2025, and the petitioner again complied and appeared before the respondent authorities. He further submits that a third summon was issued on 26th June, 2025, and upon receipt of the same, the petitioner once again appeared before the respondents.

He further submits that a fourth summon was issued, and in response thereto, when the petitioner appeared before the office of the respondent authorities, he was arrested and subsequently remanded to judicial custody. It is submitted that prior to effecting the arrest, no notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) was served upon the petitioner.

In support of his submission, learned counsel places reliance on the decisions reported in *2022 SCC OnLine Bom 6528* (*Narendra Amrutlal Patel & Anr. vs. Assistant Commissioner of State Tax & Anr.*) and *(2025) 173 taxmann.com 479 (Gauhati)* (*Prabin Jha vs. Union of India*), to contend that the GST Act, 2017 is not a complete code in itself insofar as it relates to the procedure of search, seizure, and arrest. Therefore, the provisions governing search, seizure, and arrest as laid down in the BNSS would be applicable in respect of offences allegedly committed under the GST Act, 2017.

On this premise, he submits that the petitioner's arrest stands vitiated due to non-compliance with the mandatory requirement of Section 35(3) of the BNSS. He further submits that in light of the above circumstances, continued detention of the petitioner would serve no useful purpose. Accordingly, it is prayed that the petitioner be released on bail, subject to such terms and conditions as this Hon'ble Court may deem fit and proper.

Mr. Banik, learned Advocate appearing on behalf of the respondent, Union of India, vehemently opposes the prayer for bail as well as the contentions advanced by Mr. Singh, learned counsel for the petitioner. He submits that although there was no actual delivery of goods, the petitioner fraudulently availed input tax credit (ITC) to the tune of approximately Rs. 67 crores by issuing forged tax invoices.

Mr. Banik further submits that the alleged act constitutes an economic offence, which involves a serious misuse of the taxation system. Relying upon the decision of the Hon'ble Supreme Court in *Y. S. Jagan Mohan Reddy vs. Central Bureau of Investigation*, reported in *AIR 2013 SC 1933*, he contends that economic offences, being a part of deep-rooted conspiracies, should be viewed with gravity and seriousness while considering a prayer for bail.

Mr. Banik submits that the Commissioner, having sufficient materials and reasons to believe that the petitioner has committed the alleged offence, proceeded with the arrest, and therefore, no separate notice styled as a notice under Section 35(3) of the BNSS was issued prior to such arrest.

Heard the learned Advocates representing the respective parties and perused the materials on record as submitted on behalf of the petitioner.

The petitioner has duly responded to all the summons issued to him and has appeared before the concerned respondent authorities on each occasion. It is an admitted position that no notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has been served upon the petitioner, despite the fact that the maximum prescribed punishment for the alleged offence is five years.

The question as to whether the petitioner utilized forged tax invoices, without any actual transaction of goods, to fraudulently avail input tax credit, is a matter of evidence and can be determined on the basis of the documents already seized from the petitioner, as well as those that may be recovered in the course of further investigation.

The petitioner has already undergone detention for nearly 40 days. In light of this, I am of the considered opinion that continued detention of the petitioner would serve no useful purpose. Further detention or prolonged custodial interrogation aimed at determining whether the petitioner has wrongfully availed input tax credit is, in my view, unnecessary.

In view of the above, the petitioner shall be released on bail upon furnishing a bond of Rs. 50,000/-, with two sureties of Rs. 25,000/- each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Alipurduar, subject to the conditions that he shall appear before the trial court on every date of hearing until further orders, shall not intimidate witnesses or tamper with evidence in any manner whatsoever, and shall meet the enquiry officer once every week until further order of this Court. The petitioner shall not leave the territorial jurisdiction of the learned Additional Chief Judicial Magistrate, Alipurduar, except for the purposes of reporting to the Enquiry Officer and attending the court where another case against him is presently being tried. Further, he shall deposit his passport with the learned Additional Chief Judicial Magistrate, if it has not already been deposited in connection with other matters.

In the event the petitioner violates any of the conditions enumerated in the preceding paragraph, the learned Additional Chief Judicial Magistrate or the learned Trial Court shall have the authority to cancel his bail in accordance with law, without any further reference to this Court.

This application for bail is, thus, disposed of.

(Partha Sarathi Chatterjee, J.)