

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6103 OF 2025

Hemang Bipin Varaiya Petitioner

V/s.

The State of Maharashtra and Ors. Respondents

Mr. Nirmal Pagaria for the Petitioner.

Ms. Sangeeta Shinde, APP for the Respondent – State.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**

DATED : 10th DECEMBER, 2025

P.C. :-

1) The Petitioner, proprietor of M/s. Mahavir Metal Industries with GST registration, is engaged in manufacturing of copper and brass utensils and trade in non-ferrous metals.

Subsequent to a search and seizure operation being conducted by Respondent No.4 – The Assistant Commissioner of State Tax, Kalyan on 01/09/2025, and the warrant issued by the Deputy Commissioner of State Tax, investigation was conducted at the residence as well as the place of the business of the Petitioner on 03/09/2025. It is a case of the Petitioner that he rendered all his co-operation in the investigation but on finding that the books of accounts were not maintained in the factory premises which was shut but maintained at his residential premises, the same was also searched.

The search resulted in issuance of summons to the Petitioner

under Section 70 of the Maharashtra Goods and Services Tax Act, 2017, specifically directing his attendance in regards to the inquiry to be made in connection with suspected non-genuine business entity M/s. Mahavir Metal Industries under the Central Goods and Services Tax Act, 2017 / Maharashtra Goods and Services Tax Act, 2017.

2) The Petitioner was issued with the summons to mark his appearance before the Assistant Commissioner of State Tax on or before 03/09/2025. Further, on 08/09/2025, in pursuance of Sub-Section (3) of Section 35 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 informing that during the course of investigation initiated against him from 03/09/2025, there appear to be reasonable grounds to question him to ascertain the facts and circumstances in relation to the investigation in question, as he was accused of availing ineligible ITC of Rs.17,88,58,156/- from the declared Non-Genuine Tax Payers / suspected NGTPs and GSTINs cancelled taxable persons from 2019-20 to 2024-25, he was directed to appear before the Assistant Commissioner of State Tax, Kalyan on 11/09/2025 at 11:00 a.m.

The notice also directed that he shall also ensure compliance of the condition that he shall not commit any offence and shall not tamper with the evidence, nor shall he make any threat, inducement 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 Investigating Officer and that, he shall appear before the Court as and when required and co-operate with the investigation.

3) In response to the said notice, it is a case of the Petitioner that he contacted the authority on telephone and on 11/09/2025 at 07:25 p.m., and received an e-mail communication from the Assistant Commissioner of State Tax, directing him to attend the office on 12/09/2025 at 11:30 a.m.

4) This e-mail was replied to by the Petitioner on 11/09/2025 at 10:04 p.m., by forwarding the following message :-

“ With due respect, I beg to submit that I am unable to attend the proceedings scheduled on 12/09/2025 at 11:30 AM due to my health condition (high blood pressure and hypertension) along with certain urgent family difficulties.

In light of the above circumstances, I kindly request your goodself to grant me a short extension of 15-20 days to appear before your office and submit all necessary documents/information as required.

I assure you of my full cooperation in the investigation proceedings and undertake to attend personally on the next date granted.

Kindly consider my request sympathetically. ”

5) It is the grievance of the Petitioner that after this communication, he did not receive any communication at the end of the Assistant Commissioner of State Tax, fixing a particular date for his appearance but he came to be arrested on 17/09/2025.

It is this arrest which is called in question by the Petitioner by

submitting that once a notice has been issued to him under Section 35(3) of BNSS, 2023 and particularly when the offence which was projected to be attracted in the wake of the accusations levelled against him, invited for a punishment less than seven years imprisonment, it was necessary for the officer to follow the procedure prescribed therein. Reliance is placed upon the decision of the Apex Court in case of *Arnesh Kumar v/s. State of Bihar and Anr.*¹ as well as the decision in case of *Satender Kumar Antil v/s. Central Bureau of Investigation*² wherein the Apex Court had reiterated the necessary requirements when a notice is issued directing the person against whom either a reasonable complaint has been made or credible information is received, or a reasonable suspicion is raised that he has committed a cognizable offence, seeking his appearance before the police at such place and time as specified.

It is urged before us that when the power to arrest has been exercised by the Assistant Commissioner of State Tax, under Section 69 of the GST Act, upon issuance of the notice under Section 35(3) of the BNSS, 2023, no reasons are recorded while effecting the arrest, (the erstwhile Section 41 and 41-A of the Code of Criminal Procedure, 1973). It is submitted that the power of a police officer to arrest without warrant shall be exercised only if he can justify such arrest and has reason to believe, on the basis of such complaint, information or suspicion that such person has committed the said

1 (2014) 8 SCC 273

2 (2022) 10 SCC 51

offence and the arrest is necessary.

Section 35 of the BNSS, 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 a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
(ii) the police officer is satisfied that such arrest is necessary—
(a) to prevent such person from committing any further offence; or
(b) for proper investigation of the offence; or
(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
(d) to prevent such person from making 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) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:
Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or ”

The Section contemplate that while effecting such an arrest, the Police Officer shall record reason in writing and the proviso appended to the said section also prescribe that even in such cases where the arrest of a person is not required under the sub-section, the police officer shall record the reasons in writing for not making the arrest.

Sub-section (3) of Section 35 of BNSS, 2023 deal with the situation where the arrest of the person is not required under Sub-section (1)

and in such a case, a notice shall be issued, directing the person against whom a reasonable complaint has been made or credible information has been received or reasonable suspicion exist that he has committed a cognizable offence, to appear before him at such place as may be specified and upon receipt of such notice, it shall be a duty of that person to comply with the terms of the notice.

Sub-section (5) of the BNSS, 2023 clearly provide that when such person comply and continue to comply with the notice, he shall not be arrested unless for the reasons to be recorded, the police officer is of the opinion that he ought to be arrested. However, when such person fail to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders, as may have been passed by the Competent Court, arrest him for the order mentioned in the notice.

6) Since the procedure to be followed by the Assistant Commissioner of State Tax is the one that is contemplated under Section 35 of BNSS, and as the Assistant Commissioner of State Tax exercising the power of arrest under Section 69 of the GST Act, is bound by the procedure prescribed under the BNSS, 2023.

7) Time and again, the Apex Court has reiterated the importance of this procedure to be followed as, it is well-settled that just because an Officer possesses the power to arrest, he must have justification to exercise the power,

whenever a cognizable offence is alleged to have been committed. There must be a specific, valid reason for arresting an individual so as to prevent him from committing for the crime or for proper investigation or to prevent him from tampering the evidence or intimidating the witnesses or for ensuring his presence in the Court.

8) Neither of these circumstances, stipulated in Section 35(1)(ii)(a) to (e) is satisfied in the present case, as we repeatedly inquired with the learned APP Mrs. Shinde whether the arresting officer has recorded any reasons and according to her, because he did not attend the proceedings in pursuance of the notice on 12/09/2025 and did not appear even thereafter, he came to be arrested on 17/09/2025.

In our view, this is not a justification, as we find that, the Petitioner had addressed an e-mail to the Assistant Commissioner of State Tax, in the night of 11/09/2025, informing him that he is unable to attend the proceedings scheduled on 12/09/2025 at 11:30 a.m. due to his health condition (high blood pressure and hypertension alongwith certain urgent family difficulties).

9) We do not find that the officer to whom the notice was addressed refused to entertain him or directed his presence on a particular date but instead, chose to arrest him on 17/09/2025 without recording reasons, particularly when he had already issued a notice to him under Section 35(3)

of the BNSS, 2023 asking him to secure his presence on a particular date.

10) Since we find that the Respondent No.4 has failed to adhere to the law laid down by the Apex Court in case of ***Arnesh Kumar*** (supra) as well as ***Satender Kumar Antil*** (supra) and despite being reiterated from time to time that arrest is a draconian step and particularly when the offence is punishable with imprisonment which is upto seven years or less than seven years, then the Officer shall exercise extreme caution and in ***Satender Kumar Antil*** (supra), the Apex Court had reiterated that if the directions issued in ***Arnesh Kumar*** (supra) are not followed, then the Officer is even liable for disciplinary proceedings. Despite this, on more than one occasion, we find that the procedure is not adhered to.

11) Recently, we had an opportunity to deal with an identical situation in case of ***Chandrashekhar Bhimsen Naik v/s. State of Maharashtra and Ors.*** in Criminal Writ Petition No.5764 of 2025 decided on 03/12/2025 when with reference to the directives of the Apex Court, we have noted that the statutory non-compliance of the procedure prescribed in BNSS, 2023 prove fatal and such an arrest which is effected without adhering to the said procedure, must be set-aside.

As far as the present case is concerned, we are informed that the Petitioner is already released on bail. In these circumstances, we can only restrict ourselves to a declaration as sought in the Petition that the arrest of

the Petitioner on 17/09/2025 and the subsequent remand Orders remanding him to the custody to be declared as illegal.

12) Needless to state that upon such declaration, if the Petitioner intend to seek any further remedy, it is open for him to do so.

Writ Petition is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)

PREETI
HEERO
JAYANI

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