# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# NAGPUR BENCH AT NAGPUR

## CRIMINAL APPLICATION (ABA) NO. 280 OF 2025

( Rahul S/o Vijaykumar Ahuja

**Vs.**

Directorate General of GST Intelligence, Nagpur Zonal Unit, 2nd Floor, South Wingh, New Secretariat Building, Civil Lines, Nagpur-440001 )

| Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
|---|---|

Mr. A.A. Naik, Senior Advocate a/b Mr. C.B. Barve, Advocate for the Applicant.
Mr. Kunal Nalamwar, Advocate for the Non-applicant.

**CORAM: URMILA JOSHI-PHALKE, J.**

**DATED : 7th JULY, 2025**

**1.** Heard.

**2.** By this application, the Applicant is seeking anticipatory bail in connection with Crime No.DGGI/INT/INTL/1425/2024 dated 03.01.2025 for the offences punishable under Sections 132(1)(a), 132(1)(b), 132(1)(i) and Section 132(5) of the Central Goods and Service Tax Act, 2017.

**3.** Learned Senior Counsel for the Applicant submitted that the Applicant is the proprietor of M/s. Rahul Mobile. The said firm came to be incorporated in the year 2017 as a proprietary concern for business of sale of mobiles and accessories. The said proprietary firm also holds a GST registration certificate bearing No.27BVYPA2889K1ZP. The

Applicant is also the regular income tax payer from past several years and also in the habit of diligently filing his GST returns. On 29.11.2024, the Officers of Director General of Goods and Service Tax Intelligence team of Nagpur Zonal unit raided the premises of the Applicant and seized various documents and articles including files, diary, documents, laptop from the shop of the applicant. The GST Officer issued summons to the Applicant to remain present and answer the queries raised in the summons on 07.01.2025. The Applicant sought exemption from personal appearance on 07.01.2025 because of the advanced stage of pregnancy of his wife. On 09.01.2025 the Officer of GST again issued summons for the appearance to the Applicant with a direction to remain present before the Director General of GST Intelligence on 16.01.2025. The Applicant again sought the exemption from personal appearance because of the advanced stage of pregnancy of his wife. He submitted that without issuing a notice under Section 41 of Cr.P.C. [35(2) of the BNS], the summons is issued. He submitted that thereafter the present Applicant approached to this Court by filing Criminal Writ Petition No.100/2025, this Court has protected the Applicant by granting ad-interim protection.

**4.** Subsequent to that in view of the decision of the Hon'ble Apex Court in the case of ***Radhika Agarwal v. Union of India and others [2025 SCC OnLine SC 49],*** the liberty was granted to the present applicant to approach to the Sessions Court. Accordingly, he approached to the Sessions Court and the Sessions Court has rejected the application. Hence, he preferred this application.

**5.** He further submitted that as far as the custodial interrogation is concerned the Applicant has already cooperated with the investigating agency as the Applicant has already attended the concerned office and handed over the documents. He submitted that this Court as well as while disposing the writ petition the co-ordinate Bench also protected the present Applicant. Now, anticipatory bail application is maintainable, and therefore, the co-ordinate bench has given a liberty to the present Applicant to apply for the anticipatory bail and further liberty is granted to apply for the ad-interim anticipatory bail.

**6.** He also invited my attention towards the observations of the Hon'ble Apex Court as far as the application of the provisions and the guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** and he submitted that in view of that the investigating agency of the officials of the Non-applicant shall follow the procedure by issuing the notice under Section 41 of Cr.P.C. and (35) of the Bhartiya Nyay Sanhita, 2023 to the present applicant.

**7.** He submitted that as far as the cooperation to the investigating agency is concerned, the Applicant has already on various occasions attended the office and handed over the documents, his custodial interrogation is not required. In view of that, he be protected by granting anticipatory bail by confirming the ad interim protection granted to him.

**8.** Learned Special Prosecutor for the Non-applicant submitted that Section 69 of the CGST Act, 2017 empowers the Commissioner to arrest a person when he has reasons to believe that a person has committed any offence specified in clauses (a) or (b) or (c) or (d) of sub-section (1) of Section 132, which is punishable under clauses (i) and (ii) of sub-section (1) or sub-section (2) of the said Section. He may by order authorizes any officer of the Central Tax or to arrest such person. In view of sub-section (2) of Section 69, where a person is arrested under sub-section (1) of an offence specified under sub-section (5) of Section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours. He also submitted that, though the Applicant has attended the office of GST he had not provided the relevant documents and not cooperating with the same, and therefore, his custodial interrogation is required, and therefore, grant of anticipatory bail deserves to be rejected.

**9.** On hearing both the sides and on perusal of the notice which is issued to the present Applicant from which it reveals that the grounds of appearance are not mentioned in the said notice. In view of Section 35(2) of B.N.S., the arrest of the applicant, if required the investigating agency or the officers to the in-charge shall issue the notice specified or recording his reasons for arrest. The offences punishable are less than seven years as punishment provide for the offence under Section 132(1) and (2) provide imprisonment of 5 years. Thus, punishment provided is less than seven years. There appears to be non-compliance of the Section 35(2) of B.N.S., and therefore, while considering the criminal writ petition the applicant was protected by this Court by granting ad-interim anticipatory bail. Subsequent to the grant of ad-interim anticipatory bail the said grounds are intimated to the applicant.

**10.** This Court has also in the case of ***Rahul v. Director General of Goods and Service Tax Intelligence, Nagpur Zonal Unit, thr. Sr. Intelligence Officer [2024 SCC OnLine bom 262]*** has considered the scheme contemplated under Section 132 of the CGST Act, 2017 and held that it provide a punishment for certain offences and it is urged that it is only when a person supplies any goods or services or both without issue of any invoice, in violation of the provisions of the Act and with an intention to evade taxes or issues any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, leading wrongful availment of the utilization of ITC or refund of the tax or avails ITC using such invoice or bill or collects any amount as tax but fails to pay the same to the Government beyond a period of three months, he can be said to have committed offences under clauses (a) or (b) or (d) of the Act, which is cognizable and non-bailable and the imprisonment imposed by way of punishment, on being convicted for the said offences, may extend to five years or fine, if the amount of ITC is wrongly availed or the amount of refund wrongly taken exceeds Rs.500/- Lakhs. In all other cases, punishment prescribed is imprisonment which may extend to three years and with fine.

**11.** In the light of the above provisions describing the punishment, the guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil*** (supra) and considering the penalty to be imposed on conviction for the offences alleged to have been committed, the arrest of the Applicant was unwarranted.

**12.** This Court at Principal Seat in the case of ***Daulat Samirmal Mehta Vs Union of India, thr. the Secretary and ors. [AIR OnLine 2021 BOM 516],*** also dealt with the same issue and held that power to arrest is provided in Section 69. As per sub-section (1), where the Commissioner has reasons to believe that the 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 authorize any officer of central tax to arrest such person. Chapter XIX deals with the offences and penalties. Section 132 is a part of Chapter XIX. It provides for punishment for committing certain offences and considering all these aspects as well as considering the Hon'ble Apex Court judgment it is held by this Court that upon considering the scheme in Section 132 of Chapter XIX of the CGST and after taking into account the punishment provided. Here in the present case the compliance in view of the observation of the Hon'ble Apex Court in ***Satender Kumar Antil*** (supra) appears to be there after the interim protection is granted to the present applicant by this Court. Even on perusal of the subsequent notices it does not comply with the requirement which are given in the case of ***Satender Kumar Antil*** (supra). It shows the reasons of arrest for tendering some statement or a document admittedly the custodial interrogation of the present Applicant is not required. The decision in the case of ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** as well as ***Satender Kumar Antil*** (supra) are applicable in these cases also.

**13.** Thus, considering the reasons mentioned in the notices for which custodial interrogation of the present Applicant is not required and the Applicant has already cooperated with the Investigating Agency. In view of that, the interim protection granted to the present Applicant deserves to be confirmed by imposing certain conditions. Accordingly, I proceed to pass following order:

**O R D E R**

**i.** The Application is **allowed**.

**ii.** The *ad interim* protection granted to the present Applicant by order dated 24.04.2025, is hereby confirmed on the condition that, he shall attend the Office of the Non-applicant – Directorate General of GST Intelligence Nagpur Zonal Unit, Nagpur once in a week on Monday between 10:00 a.m. and 01:00 p.m. and shall co-operate with the investigating agency and shall also cooperate to hand over the relevant documents to the investigating agency.

**iii.** The Applicant shall not induce or tamper any prosecution evidence in any manner.

**iv.** The Applicant shall not leave the jurisdiction of Nagpur City without prior permission of the Special Court.

**14.** Pending application/s, if any, shall stand disposed of accordingly.

**(URMILA JOSHI-PHALKE, J.)**

*SD. Bhimte*

Signed by: Mr.S.D.Bhimte
Designation: PA To Honourable Judge
Date: 09/07/2025 14:39:42