04.11.2026

S.L. 5
Ct. No. 8

Mujahid/
Rakib,
A.R.(Ct.)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Case No.

MAT 1916 of 2026
With
CAN 1 of 2026

In the matter of :

Deepak Kumar Daiya

... Appellant

VS.

The State of West Bengal & Ors.

... Respondents

For the Appellant :
Mr. Sanjib Mitra
Mr. Chandrachur Biswas
Ms. Sulogna Chowdhury

... Advocate

For the State :
Mr. Dibyendra Narayan Ray, Ld. G.P.
Ms. Sarbani Chakraborty
Mr. Guddu Singh

... Advocate

1. The present challenge has been preferred against an order whereby the learned Single Judge has refused to grant stay and/or quash a First Information Report (FIR) registered against the petitioner at the behest of the State for alleged violation of Sections 132/133 of the West Bengal Goods and Service Act, 2017.

2. Learned counsel for the petitioner contends that in view of the provisions of Section 132(6) of the said Act, prior sanction of the Commissioner is to be obtained prior to registration of an FIR for offences committed under the said Act. Moreover, by dint of the concerned Notification dated September 1, 2022 issued by the appropriate authorities, which

has statutory force, unless the monetary limit of the fraudulently obtained refund is more than Rs.500 lakhs, no question of prosecution normally arises.

3. Learned counsel sites ***Radhika Agarwal –Vs. – Union of India and Ors.*** reported at ***(2025) 6 SCC 545,*** where the Hon'ble Supreme Court clarified that non-cognizable offences have been made bailable and that only when the offence falls under the limited categories specified in Clauses (a) to (b) of Sub-section (1) of Section 132 of the WBSGST Act and when the amount of tax evaded, amount of input tax credit wrongly availed or utilized, or the amount of refund wrongly taken exceeds to Rs.500 lakhs, that the offence is non-bailable and cognizable.

4. Learned counsel for the appellant further cites a coordinate Bench judgment of the Madhya Pradesh High Court in the matter of ***Deepak Singhal –Vs. – Union of India and Ors.*** reported at ***2024 Supreme (MP) 423*** where it was observed that the GST Act, 2017 is a special legislation which holistically deals with procedure, penalties and offences relating to GST and the GST Authorities cannot be permitted to bypass procedure for launching prosecution under the GST Act, 2017 and invoke provisions of the Indian Penal Code only, without pressing into service penal provisions under the GST Act and that too without obtaining

sanction from the Commissioner under Section 132(6) of GST Act.

5. Learned Government Pleader, appearing for the respondent authorities, contends that the learned Single Judge proceeded on the premise that the FIR contained alleged offences not only under the SGST Act, 2017 but also under several provisions of the Bharatiya Nyaya Sanhita (BNS), 2023.

6. Upon perusal of the impugned order and the materials before us, we find that the alleged offences committed by the petitioner/appellant, as per the complaint and the consequential FIR lodged against the appellant, are not confined to violations of provisions of the SGST Act, 2017 but also traverse into the domain of offences under Sections 316(2)/316(5)/318(4)/336(2)/336(3)/337/340(2)/ 61(2) of the BNS, 2023. Thus, the paradigm and rigours available within the contemplation of the SGST Act are not applicable to the FIR in its entirety, vitiating the same.

7. In any event, if the FIR results in any trial, during such trial, or at any subsequent stage under the appropriate provisions of BNSS, the appellant would be at liberty to assail the clubbing of the appropriate Sections under the SGST Act without prior permission being taken from the Commissioner and/or compliance with the notification and statues in question. Despite the

same, since provisions of the BNS have been also incorporated the FIR, it cannot be said at this premature stage that the FIR is entirely vitiated for alleged non-compliance of the 2017 Act. In such view of the matter, we do not find any infirmity in the impugned order whereby the learned Single Judge refused to grant any ad interim protection to the petitioner/appellant.

8. Hence, MAT 1916 of 2016 is dismissed on contest, thereby affirming the impugned order dated October 22, 2026 passed in WPA 20184 of 2026.

9. Consequentially, CAN 1 of 2026 is also disposed of.

10. We make it clear that the merits of the contentions of the parties have not been conclusively decided by this Court and it will be open to the parties to agitate all the points taken in the appeal on their own merits before the Writ Court and other forums.

11. There will be no order as to costs.

12. All parties shall act in terms of server copy of this order, downloaded from the official website of this Court.

(Sabyasachi Bhattacharyya, J.)

(Arjun Ray Mukherjee, J.)