Reserved on : 08.01.2026
Pronounced on : 12.01.2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.23 OF 2026 (GM - RES)

BETWEEN:

1 . E.ISHITHA
D/O SRI PRATHAP E.,
AGED ABOUT 18 YEARS,
NO.39, 3RD CROSS,
SHIVAKUMARASWAMY LAYOUT,
NEAR BYRAVESHWARA CIRCLE,
THOTADAGUDDAHALLI,
NAGASANDRA,
BENGALURU – 560 073.

2 . REVATHI E.,
W/O SRI PRATAP E.,
AGED ABOUT 37 YEARS,
NO.39, 3RD CROSS,
SHIVAKUMARASWAMY LAYOUT,
NEAR BYRAVESHWARA CIRCLE,
THOTADAGUDDAHALLI, NAGASANDRA,
BENGALURU – 560 073.
[PRESENTLY LODGED AT CENTRAL PRISON]

... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI SHREEHARI, ADVOCATE)

AND:

1 . ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT)-01, SOUTH ZONE,
BENGALURU,
VTK-2, B-BLOCK, III FLOOR,
KORAMANGALA,
BENGALURU – 560 047.

2 . ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT), SOUTH ZONE,
BENGALURU,
VTK-2, KORAMANGALA,
BENGALURU – 560 047.

3 . COMMISSIONER OF COMMERCIAL TAXES,
VANIJYA THERIGE KARYALAYA,
1ST MAIN ROAD, GANDHINAGAR,
BENGALURU – 560 009.

.... RESPONDENTS

(BY SRI B.A.BELLIAPPA, SPP A/W
SRI JAGADEESHA B.N., ADDL.SPP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BNSS, 2023 PRAYING TO QUASH THE ARREST MEMO DATED 03.01.2026 ENCLOSED AS ANNEXURE-B ISSUED BY THE R1 AND BEARING NO. ADCOM/ENF/SZ/ACCT(ENF)–02/ARST-01/2-25-26 AS ILLEGAL AND VOID AB INITIO; QUASH THE GROUNDS OF ARREST DATED 03.01.2026 ENCLOSED AS ANNEXURE-C ISSUED BY THE R1 AND BEARING NO. ADCOM/ENF/SZ/ACCT(ENF)-01/ARR-01/2025-26 AS ILLEGAL AND ARBITRARY; DECLARE THAT THE ARREST OF THE PETITIONER ON 03.06.2025 BY THE R2 AND R1 AS ILLEGAL.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.01.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/daughter and wife of one Sri E.Prathap are at the doors of this Court calling in question the grounds of arrest dated 03-01-2026 and seeking a declaration that the arrest of accused No.1 and 2/2nd petitioner and father of the 1st petitioner on 03-01-2026 by the 2nd respondent is illegal. They also seek interim prayer of interim bail.

2. Facts, in brief, germane are as follows: -

On 03-01-2026 the officials of the respondents enter the premises of the petitioners on the strength of an authorization granted under Section 67(2) of the Karnataka Good and Services Tax Act, 2017 ('the Act' for short). On 03-01-2026 at about 1.30 p.m. summons was issued to the petitioners requiring them to attend a hearing at the office of the 2nd respondent at 2.30 p.m. The averment is that, at that point of time both the husband and the wife were arrested and information of arrest was given on the evening of the same day. It is the averment that about 12.30 A.M.

the grounds of arrest and other documents were served upon the daughter, the 1st petitioner. Presently, both the husband and wife are in custody. The daughter and the mother are now at the doors of this Court in the subject petition seeking quashment of arrest memo and a declaration holding that the arrest was illegal.

3. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioners and Sri B. A. Belliappa, learned Special Public Prosecutor appearing for the respondents.

4. The learned senior counsel Sri Sandesh J. Chouta appearing for the petitioners would submit that the daughter/1st petitioner is seeking interim bail for the mother on humanitarian grounds, that she has to look after a child of 11 years old and that of the 1st petitioner who is 18 years old. He would further contend that the arrest memo, grounds of arrest and reasons to believe or arrest authorization are all contrary to law.

5. Per-contra, the learned Special Public Prosecutor would vehemently refute the submissions in contending that the allegations against the husband and the wife is a multi-crore fraud.

Notices are being issued to them and they are not appearing before the authorities since September, 2025 be it under the Act or under the BNSS, it is therefore, they had to be taken into custody and the concerned Court has permitted interrogation/questioning of both accused Nos. 1 and 2 in judicial custody itself, that is not under challenge. The grounds in the grounds of arrest or reasons in the reasons to believe are not justiciable under Article 226 of the Constitution of India. He would, therefore, contend that grant of interim bail will open pandora's box. It is always open to the parties to approach the regular bail Court for grant of an interim bail and this Court in exercise of its jurisdiction under Section 482 of the Cr.P.C., would grant interim bail only in exceptional circumstances. He would submit that, if the 2nd petitioner/wife of accused No.1 is let out, tampering of records and vanishing of records can easily happen, notwithstanding the fact that all the records are in digital form.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. Before embarking upon consideration of whether, accused No.2/mother should be released on grant of interim bail or otherwise, I deem it appropriate to notice the law governing the issue.

7.1. A three Judge Bench of the Apex Court in the case of **RADHIKA AGARWAL v. UNION OF INDIA**[1], considers this issue elaborately. The Apex Court holds that Cr.P.C., is applicable to proceedings of arrest under the provisions of the Act and the requirement of issuance of notice under Section 41A of the Cr.P.C., is imperative. The Apex Court has held as follows:

> "…. …. ….
>
> **32.***Arvind Kejriwal* v. *Enforcement Directorate* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248: (2025) 1 SCC (Cri) 695] , a recent judgment authored by one of us (Sanjiv Khanna, J.), is a dictum relating to the Prevention of Money Laundering Act, 2002 (for short "the PML Act"). **This Court held that the power of arrest granted to the Directorate of Enforcement (for short "DoE") under Section 19 of the PML Act is fenced with certain preconditions. These preconditions act as stringent safeguards to protect the life and liberty of individuals.** The relevant portion reads: (SCC pp. 262-63, para 9)
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> > "*9.* A bare reading of the section reflects, that while the legislature has given power to the Director, Deputy Director, Assistant Director, or an authorised

[1] **(2025) 6 SCC 545**

> officer to arrest a person, it is fenced with preconditions and requirements, which must be satisfied prior to the arrest of a person. The conditions are:
>
> **(*i*) The officer must have material in his possession.**
>
> **(*ii*) On the basis of such material, the authorised officer should form and record in writing, "reasons to believe" that the person to be arrested, is guilty of an offence punishable under the PML Act.**
>
> **(*iii*) The person arrested, as soon as may be, must be informed of the grounds of arrest.**
>
> **These preconditions act as stringent safeguards to protect life and liberty of individuals. We shall subsequently interpret the words "material", "reason to believe", and "guilty of the offence"**. Before that, we will refer to some judgments of this Court on the importance of Section 19(1) and the effect on the legality of the arrest upon failure to comply with the statutory requirements."

33. In *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] , a combined reading of *Pankaj Bansal* v. *Union of India* [*Pankaj Bansal* v. *Union of India*, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] , *PrabirPurkayastha* v. *State (NCT of Delhi)* [*PrabirPurkayastha* v. *State (NCT of Delhi)*, (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , and *Vijay Madanlal Choudhary* v. *Union of India* [*Vijay Madanlal Choudhary* v. *Union of India*, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1] was adopted by this Court. It was held that the power to arrest a person without a warrant and without instituting a criminal case is a drastic and extreme power. Therefore, the legislature had prescribed safeguards in the language of Section 19 itself which act as exacting conditions as to how and when the power is exercisable. **These safeguards include the requirement to have "material" in the possession of DoE, and on the basis of such "material", the authorised officer must form an opinion and record in writing their "reasons to believe" that the person arrested was "guilty" of an offence punishable**

under the PML Act. The "grounds of arrest" are also required to be informed forthwith to the person arrested.

34. The contention of the DoE that while "grounds of arrest" were mandatorily required to be supplied to the arrestee, "reasons to believe", being an internal and confidential document, need not be disclosed, was decisively rejected in *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] . It was held that "reasons to believe" are to be furnished to the arrestee such that they can challenge the legality of their arrest. Exceptions are available in one-off cases where appropriate redactions of "reasons to believe" are permissible. The relevant portion reads: (SCC pp. 278-79, paras 41-43)

> "*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.
>
> *42*. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details of documents, when the investigation is in progress. This will not be the position in most cases. DoE may claim redaction and exclusion of

> specific particulars and details. However, the onus to justify redaction would be on the DoE. The officers of the DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the non-disclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file, including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole judge.
>
> *43*. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an event, the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply."

35. *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] also holds that the courts can judicially review the legality of arrest. This power of judicial review is inherent in Section 19 as the legislature has prescribed safeguards to prevent misuse. After all, arrests cannot be made arbitrarily on the whims and fancies of the authorities. This judicial review is permissible both before and after criminal proceedings or prosecution complaints are filed.

36. On the nature of "material" examined by the DoE, *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] states that such "material" must be admissible before a court of law. This is because the designated officer is required to arrive at a conclusion of guilt based on the

"material" examined and such guilt can only be based on admissible evidence. The relevant portion reads: (SCC pp. 280-81, para 47)

> "*47*. DoE has drawn our attention to the use of the expression "material in possession" in Section 19(1) of the PML Act instead of "evidence in possession". **Though etymologically correct, this argument overlooks the requirement that the designated officer should and must, based on the material, reach and form an opinion that the arrestee is guilty of the offence under the PML Act. Guilt can only be established on admissible evidence to be led before the court, and cannot be based on inadmissible evidence. While there is an element of hypothesis, as oral evidence has not been led and the documents are to be proven, the decision to arrest should be rational, fair and as per law. Power to arrest under Section 19(1) is not for the purpose of investigation. Arrest can and should wait, and the power in terms of Section 19(1) of the PML Act can be exercised only when the material with the designated officer enables them to form an opinion, by recording reasons in writing that the arrestee is guilty."**

37. The investigating officer is also required to look at the whole material and cannot ignore material that exonerates the arrestee. A wrong application of law or arbitrary exercise of duty by the designated officer can lead to illegality in the process. The court can exercise judicial review to strike down such a decision. Referring to errors in the decision-making process, *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] records how such errors can vitiate the judgment or decision of the statutory authority. The relevant portion reads: (SCC pp. 292-93, paras 67-68)

> "*67*. Error in decision-making process can vitiate a judgment/decision of a statutory authority. In terms of Section 19(1) of the PML Act, a decision-making error can lead to the arrest and deprivation of liberty of the arrestee. Though not akin to preventive detention cases, but given the nature of the order entailing arrest — it requires careful scrutiny and consideration. Yet, at the

> same time, the courts should not go into the correctness of the opinion formed or sufficiency of the material on which it is based, albeit if a vital ground or fact is not considered or the ground or reason is found to be non-existent, the order of detention may fail. [*Ram Manohar Lohia* v. *State of Bihar*, 1965 SCC OnLine SC 9; *Moti Lal Jain* v. *State of Bihar*, 1968 SCC OnLine SC 130]
>
> *68*. In *Centre for PIL* v. *Union of India* [*Centre for PIL* v. *Union of India*, (2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] , this Court observed that in judicial review, it is permissible to examine the question of illegality in the decision-making process. A decision which is vitiated by extraneous considerations can be set aside. Similarly, in *UttamraoShivdasJankar* v. *RanjitsinhVijaysinh Mohite Patil* [*UttamraoShivdasJankar* v. *RanjitsinhVijaysinh Mohite Patil*, (2009) 13 SCC 131] , elaborating on the expression "decision-making process", this Court held that judicial interference is warranted when there is no proper application of mind on the requirements of law. An error in the decision-making process crops up where the authority fails to consider a relevant factor and considers irrelevant factors to decide the issue."

38. On the extent of judicial review available with the court viz. "reasons to believe", it was held that judicial review cannot amount to a merits review. The exercise is confined to ascertain if, based upon "material" in possession of the DoE, the DoE had "reasons to believe" that the arrestee is guilty of an offence under the PML Act. The relevant portion reads: (*Arvind Kejriwal case* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] , SCC p. 279, para 44)

> "*44*. We now turn to the scope and ambit of judicial review to be exercised by the court. **Judicial review does not amount to a mini-trial or a merit review. The exercise is confined to ascertain whether the "reasons to believe" are based upon material which "establish" that the arrestee is guilty of an offence under the PML Act. The exercise is to ensure that the DoE has acted in accordance with the law. The courts scrutinise the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken**

> **by the DoE to ensure that the "reasons to believe" justify the arrest in terms of Section 19(1) of the PML Act, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid, and therefore a deeper and in-depth scrutiny is required. Arrest, after all, cannot be made arbitrarily and on the whims and fancies of the authorities. It is to be made on the basis of the valid "reasons to believe", meeting the parameters prescribed by the law.** In fact, not to undertake judicial scrutiny when justified and necessary, would be an abdication and failure of constitutional and statutory duty placed on the court to ensure that the fundamental right to life and liberty is not violated."

39. On the different facets of judicial review available with the Court while examining the legality of arrests, *Arvind Kejriwal* [*Arvind Kejriwal* v. *Enforcement Directorate*, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] states: (SCC pp. 292-93, paras 65-66)

> "*65*. … We have already referred to the contours of judicial review expounded in *PadamNarain Aggarwal* [*Union of India* v. *PadamNarain Aggarwal*, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1] , and *Partap Singh* [*Partap Singh* v. *Enforcement Directorate*, (1985) 3 SCC 72 : 1985 SCC (Cri) 312 : (1985) 58 Comp Cas 477 : (1985) 155 ITR 166] . We have also referred to the principles of *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. [Wednesbury unreasonableness [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] strikes at irrationality when a decision is so outrageous in its defiance of logic or of accepted standards that no sensible person who had applied his mind to the question to be decided would have arrived at it. See *Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 (HL).]
>
> *66*. **In *Amarendra Kumar Pandey* v. *Union of India* [*Amarendra Kumar Pandey* v. *Union of India*, (2024) 15 SCC 401 : 2022 SCC OnLine SC 881] , this Court elaborated on the different facets of**

judicial review regarding subjective opinion or satisfaction. It was held that the courts should not inquire into correctness or otherwise of the facts found except where the facts found existing are not supported by any evidence at all or the finding is so perverse that no reasonable man would say that the facts and circumstances exist. Secondly, it is permissible to inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In simple words, the conclusion has to logically flow from the facts. If it does not, then the courts can interfere, treating the lack of reasonable nexus as an error of law. Thirdly, jurisdictional review permits review of errors of law when constitutional or statutory terms, essential for the exercise of power, are misapplied or misconstrued. Fourthly, judicial review is permissible to check improper exercise of power. For instance, it is an improper exercise of power when the power is not exercised genuinely, but rather to avoid embarrassment or for wreaking personal vengeance. Lastly, judicial review can be exercised when the authorities have not considered grounds which are relevant or has accounted for grounds which are not relevant."

… … …

52. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of Sections 4 and 5 of the Code. Sub-section (10) to Section 67 of the CGST Act postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word "Magistrate" shall be substituted with the word "Commissioner". **Section 69, which deals with the power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as**

applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by the provisions of the GST Acts.

53. There is no specific stipulation or provision in the GST Acts in respect of facets of investigation, inquiry or trial. This Court in *Ashok Munilal Jain* v. *Enforcement Directorate* [*Ashok Munilal Jain* v. *Enforcement Directorate*, (2018) 16 SCC 158 : (2019) 4 SCC (Cri) 747] has held that in view of Section 4(2) of the Code, the procedure prescribed under the Code also applies to the special statutes unless the applicability is expressly barred or prohibited. The provisions of the GST Acts in this regard can be contrasted with the Railway Property (Unlawful Possession) Act, 1966. However, in our opinion, this does not help and assist the petitioners' contention.

… … …

58. It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the preconditions of sub-section (5) to Section 132 of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state his satisfaction and refer to the "material" forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses (*a*) to (*d*) of sub-section (1) to Section 132. The computation of the tax involved in terms of the monetary limits under clause (*i*) of sub-section (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.

59. The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of Section 132 are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing—to the satisfaction of the Commissioner—that the requirements of sub-section (5) to Section 132 of the CGST Act are met.

60. Our attention was drawn to the judgment of the High Court of Delhi in *MakeMyTrip (India) (P) Ltd.* v. *Union of India* [*MakeMyTrip (India) (P) Ltd.* v. *Union of India*, (2016) 96 VST 37 : 2016 SCC OnLine Del 4951] , which is a decision interpreting the power of arrest under the Finance Act, 1994. These provisions are related to service tax. Excise duty, service tax, and other taxes are subsumed under the GST regime. Accordingly, we are in agreement with the findings recorded in this decision to the extent that the power of arrest should be used with great circumspection and not casually. Further, as in the case of service tax, the power of arrest is not to be used on mere suspicion or doubt, or for even investigation, when the conditions of sub-section (5) to Section 132 of the CGST Act are not satisfied.

61. However, relying upon the judgment in *MakeMyTrip* [*MakeMyTrip (India) (P) Ltd.* v. *Union of India*, (2016) 96 VST 37 : 2016 SCC OnLine Del 4951] , it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the CGST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (*a*) to (*d*) to sub-section (1) of Section 132

of the CGST Act and that clause (*i*) to sub-section (1) is attracted. **But there could be cases where even without a formal order of assessment, the Department/Revenue is certain that it is a case of offence under clauses (*a*) to (*d*) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (*i*) of sub-section (1) to Section 132 of the CGST Act with sufficient degree of certainty. In such cases, the Commissioner may authorise arrest when he is able to ascertain and record reasons to believe. As indicated above, the reasons to believe must be explicit and refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.**

… … …

63. The Central Board of Indirect Taxes and Customs (GST-Investigation Wing), has accepted the said position vide Circular dated 17-8-2022, the relevant portion of which reads as under:

> "F. No. GST/INV/Instructions/2021-22
> GST-Investigation Unit
>
> 17-8-2022
>
> Instruction No. 02/2022-23 [GST — Investigation]
>
> Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017 — reg.
>
> Hon'ble Supreme Court of India in its judgment dated 16-8-2021 in *Siddharth* v. *State of U.P.* [*Siddharth* v. *State of U.P.*, (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423] , has observed as follows: (SCC p. 682, para 10)
>
> '*10*. 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 [*Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . 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.'

***

3. *Conditions precedent to arrest*:

3.1. **Sub-section (1) of Section 132 of the 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 the 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 credible 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 GSTIN 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.

3.3. Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilisation of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act, 2017, is evident and element of mens rea/guilty mind is palpable.

3.4. Thus, the relevant factors before deciding to arrest a person, apart from fulfilment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5. Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of law. The prevalent practice of assessment could also be one of the determining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the

alleged offender is cooperating in the investigation viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax, etc.

*****"**

64. The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the CGST Act. The provisions of the Code, read with Section 69(3) of the CGST Act, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in D.K. Basu [D.K. Basu v. State of W.B., (1997) 1 SCC 416 : 1997 SCC (Cri) 92] .

64.1. The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23-12-2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws.

64.2. In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST-Investigation Wing) vide Instruction No. 01/2025-GST dated 13-1-2025 (GST/INV/Instructions/21-22). The Circular dated 13-1-2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgment of the same should be taken from the arrested person at the time of service of the arrest memo.

64.3. Instruction No. 02/2022-23 GST (Investigation) dated 17-8-2022 further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact

must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgment.

64.4. The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. **It further states that efforts should be made to file a prosecution complaint under Section 132 of the CGST Act at the earliest and preferably within 60 days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time-frame. A report of arrests made must be maintained and submitted as provided in Para 6.1 of the Instruction.**

64.5. The aforesaid directions in the circular/instruction should be read along with the specific directions outlined in the earlier judgments of this Court and the present judgment.

… … …

91. However, when the legality of such an arrest made under the special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely, to ascertain whether the officer was an authorised officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorised officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. *Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review*.

92. It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case. ***The criteria or parameters of judicial review over the subjective satisfaction applicable in service related cases, cannot be made applicable to the cases of arrest made under the special Acts. The scrutiny on the subjective opinion or satisfaction of the authorised officer to arrest the person could not be a matter of judicial review, inasmuch as when the arrest is made by the authorised officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act. Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorised officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation***.

93. As held in *Adri Dharan Das* v. *State of W.B.* [*Adri Dharan Das* v. *State of W.B.*, (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , ordinarily arrest is a part of the process of investigation intended to secure several purposes. *The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the society, etc. For these or such other reasons, arrest may become an inevitable part of the process of investigation*.

94. It is pertinent to note that the special Acts are enacted to achieve specific purposes and objectives. ***The power of judicial review in cases of arrest under such special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the special Acts may frustrate the very purpose and objective of the Acts*****.** It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. ***Frequent or casual interference of the courts in the functioning of the authorised officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorised officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts*****. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes.**

95.*Though, the* power of judicial review keeps a check and balance on the functioning of the public authorities and is exercised for better and more efficient and informed exercise of their powers, *such power has to be exercised very cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities*. To sum up, the powers of judicial

> **review may not be exercised unless *there is* manifest arbitrariness or gross violation or *non-compliance* of the statutory safeguards provided under the special Acts, required to be followed by the authorised officers when an arrest is made of a person prima facie guilty of or having committed offence under the special Act."**

(Emphasis supplied)

The Apex Court in the afore-quoted judgment considers various issues, right from applicability of the Cr.P.C., for proceedings of arrest. The Apex Court was following the earlier judgment in the case of **ASHOK MUNILAL JAIN v. ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT [(2018) 16 SCC 158]** and holds that in view of Section 4(2) of the Cr.P.C., the procedure prescribed under the Cr.P.C., would apply to the special statutes unless, expressly barred or prohibited. The Apex Court further holds that legality of arrest under the special enactment including the Act if challenged, the Court should be extremely loathe in exercising its power of judicial review. Frequent or causal interference in the functioning of the authorised officers who have been specially conferred with the powers to combat serious crimes may embolden the unscrupulous elements to commit such crimes.

Therefore, minor procedural lapses on the part of the authorised officers may not be seen with magnifying glass.

7.2. Prior to the judgment of the Apex Court in the case of **RADHIKA AGARWAL** *supra*, a Division Bench of the High Court of Telangana in the case of **P.V. RAMANA REDDY v. UNION OF INDIA**[2], considers the interplay between Section 69 of the Act, and Section 41-A of the Cr.P.C., and holds as follows:

"…. …. ….

> **41.** Though for the purpose of summoning of witnesses and for summoning the production of documents, the proper officer holding the enquiry under the CGST Act, 2017 is treated like a civil court, there are four other placesin the Act, where a reference is made, directly or indirectly, to the Cr. P. C. They are: (1) the reference to Cr. P. C. in relation to search and seizure under section 67(10) of the CGST Act, 2017, (2) the reference to Cr. P. C. under sub- section (3) of section 69 in relation to the grant of bail for a person arrested in connection to a non-cognizable and bailable offence, (3) the reference to Cr. P. C. in section 132 (4) while making all offences under the CGST Act. 2017 except those specified in clauses (a) to (d) of section 132(1) of the CGST Act, 2017 as non-cognizable and bailable and (4) the reference to sections 193 and 228 of IPC in section 70(2) of the CGST Act, 2017. Therefore, the contention of learned Additional Solicitor General that in view of section 69(3) of the CGST Act, 2017, the petitioners cannot fall back upon the limited protection against arrest, found in sections 41 and 41A of the Cr. P. C. may not be correct. **As pointed out earlier, section 41Awas inserted in Cr. P. C. by section 6 of the Code of Criminal Procedure (Amendment) Act,**

[2]2019 SCC OnLine TS 3332

2008. Under sub-section (3) of section 41A, Cr. P. C., a person who complies with a notice for appearance and who continues to comply with the notice for appearance before the summoning officer, shall not be arrested. In fact, the duty imposed upon a police officer under section 41A(1), Cr. P. C., to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in section 70(1) of the CGST Act. Though section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporatedin section 41 and 41A of the Cr. P. C., we think section 70(1) of the CGST Act takes care of the contingency.

42.In any case, the moment the Commissioner has reasons to believe that a person has committed a cognizable and non-bailable offence warranting his arrest, then we think that the safeguards before arresting a person, as provided in sections 41 and 41A of the Cr. P. C., may have to be kept in mind.

43.But, it may be remembered that section 41A(3) of the Cr. P. C., does not provide an absolute irrevocable guarantee against arrest. Despite the compliance with the notices of appearance, a police officer himself is entitled under section 41A(3), Cr. P. C., for reasons to be recorded, arrest a person. At this stage, we may notice the difference in language between section 41A(3) of the Cr. P. C. and 69(1) of the CGST Act, 2017. Under section 41A(3) of the Cr. P. C., "reasons are to be recorded", once the police officer is of the opinion that the persons concerned ought to be arrested. In contrast, section 69(1) uses the phrase "reasons to believe". There is a vast differencebetween "reasons to be recorded" and "reasons to believe."

44. It was contended by Mr. Niranjan Reddy, learned senior counsel for the petitioners that under section 26, IPC, a person is said to have "reason to believe", if he has sufficient cause to believe. Therefore, he contended that an authorization for arrest issued under section 69(1) of the CGST Act, 2017 should contain reasons in writing. But in one of the cases on

hand, the authorization for arrest does not contain reasons. Therefore, it was contendedthat the authorization was bad.

45. But, as we have pointed, the requirement under section 41A(3) of the Cr.P.C. is the "recording of a reason", while the requirement under section 69(1) of the CGST Act, 2017 is the "reason to believe". In fact, on the question as to whether or not, reasons to believe should be recorded in the authorization for arrest, the learned Additional Solicitor General submitted that reasons are recorded in files. The learned Additional Solicitor Generalalso produced the files.

46.If reasons to believe are recorded in the files, we do not think it is necessary to record those reasons in the authorization for arrest under section 69(1) of the CGST Act. Since section 69(1) of the CGST Act, 2017 specifically uses the words "reasons to believe", in contrast to the words "reasons to be recorded" appearing in section 41A(3) of the Cr. P. C., we think that it is enough if the reasons are found in the file, though not disclosed in the order authorizing the arrest."

(Emphasis supplied)

The High Court of Telangana holds that arrest under Section 69 can be authorized if reasons are found in the file in lieu of the usage of the term 'reasons to believe' in the said provision. The High Court of Telangana further holds that, *albeit* the order of arrest does not contain the safeguards that are incorporated in Section 41 and 41A of the Cr.P.C., summons issued under Section 70(1) of the Act may take care of the contingency. In the light of the judgments of the Apex Court and the High Court of Telangana, the contention of the

petitioners that this Court should exercise its jurisdiction akin to judicial review on the legality of arrest cannot be acceded to.

8. The learned senior counsel for the petitioners projected that the subject petition is a mercy petition and, therefore, bail should be granted, on the circumstances of the 1st petitioner being 18 years old daughter and the 2nd child being 11 years old who are now left without any care. Learned senior counsel places reliance upon several judgments of the Apex Court, with a pointed reference to the judgment in the case of **ARNAB MANORANJAN GOSWAMI v. STATE OF MAHARASHTRA**[3]. The Apex Court in the said judgment has held as follows:

"…. …. ….

> **64. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors which emerge from the precedents of this Court. These factors can be summarised as follows:**
>
> **64.1. The nature of the alleged offence, the nature of the accusation and the severity of the punishment in the case of a conviction.**
>
> **64.2. Whether there exists a reasonable apprehension of the accused tampering with the**

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[3] **(2021) 2 SCC 427**

witnesses or being a threat to the complainant or the witnesses.

64.3. The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice.

64.4. The antecedents of and circumstances which are peculiar to the accused.

64.5. Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR.

64.6. The significant interests of the public or the State and other similar considerations.

65. These principles have evolved over a period of time and emanate from the following (among other) decisions : *Prahlad Singh Bhati* v. *State (NCT of Delhi)* [*Prahlad Singh Bhati* v. *State (NCT of Delhi)*, (2001) 4 SCC 280 : 2001 SCC (Cri) 674] ; *Ram Govind Upadhyay* v. *Sudarshan Singh* [*Ram Govind Upadhyay* v. *Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688] ; *State of U.P.* v. *Amarmani Tripathi* [*State of U.P.* v. *Amarmani Tripathi*, (2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] ; *Prasanta Kumar Sarkar* v. *Ashis Chatterjee* [*Prasanta Kumar Sarkar* v. *Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; *Sanjay Chandra* v. *CBI* [*Sanjay Chandra* v. *CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] and *P. Chidambaram* v. *CBI* [*P. Chidambaram* v. *CBI*, (2020) 13 SCC 337 : (2020) 4 SCC (Cri) 528] .

… … …

68. Mr Kapil Sibal, Mr Amit Desai and Mr Chander Uday Singh are undoubtedly right in submitting that the procedural hierarchy of courts in matters concerning the grant of bail needs to be respected. **However, there was a failure of the High Court to discharge its adjudicatory function at two levels—first in declining to evaluate prima facie at the interim stage in a petition for quashing the FIR as to whether an arguable case has been made out, and secondly, in declining interim bail, as a consequence of its**

> **failure to render a prima facie opinion on the first.** The High Court did have the power to protect the citizen by an interim order in a petition invoking Article 226. Where the High Court has failed to do so, this Court would be abdicating its role and functions as a constitutional court if it refuses to interfere, despite the parameters for such interference being met. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponised for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions."
>
> (Emphasis supplied)

The Apex Court was considering the power to grant bail under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., in cases where the challenge was to the entire proceedings or registration of crime and there were no allegations that could be made out against the accused. While so doing the Apex Court lays down the postulates i.e., the nature of offence; severity of the punishment; reasonable apprehension of the accused tampering with the witnesses; possibility of securing the presence of the accused being difficult; antecedents; whether prima facie the ingredients of the offence are made out in the FIR; and significant interests of the public or the State. The High Court therein had refused to grant interim bail. The Apex Court grants interim bail

after looking into the fact that there was nothing that would touch upon the ingredients of Section 306 of the IPC against **ARNAB MANORANJAN GOSWAMI**. Therefore, the case would not come in aid of the petitioners.

9. The Apex Court again in the case of **SANJAY DUBEY v. STATE OF MADHYA PRADESH**[4] has held as follows:

> ***"Analysis, reasoning and conclusion***
>
> **11.** Having given the matter our anxious and thoughtful consideration, though the appellant may have a point that, strictosensu, in a petition under Section 439 of the Code, the court concerned ought not to travel beyond considering the specific issue viz. whether to grant bail or reject bail to an accused in custody, it cannot be lost sight of that the Court concerned herein was not a "Court of Session" but the High Court for the State of Madhya Pradesh, established under Article 214 of the Constitution of India (hereinafter referred to as "the Constitution").
>
> **12.** This singular fact, for reasons elaborated hereinafter, leads us to decline interfering with the impugned judgment [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] , but for different reasons. We have no hesitation in stating that had the impugned judgment been rendered by a Court of Session, the factors that would have weighed with us would be starkly different.
>
> **13.** A little digression is necessitated. **The High Court is a constitutional court, possessing a wide repertoire of powers. The High Court has original, appellate and suomotu powers under Articles 226 and 227 of the Constitution. The powers under Articles 226 and 227 of**

[4] **(2023) 17 SCC 187**

the Constitution are meant for taking care of situations where the High Court feels that some direction(s)/order(s) are required in the interest of justice. Recently, in *B.S. Hari Commandant* v. *Union of India* [*B.S. Hari Commandant* v. *Union of India*, (2023) 13 SCC 779] , the present coram had the occasion to hold as under : (SCC para 51)

> *"51. Article 226 of the Constitution is a succour to remedy injustice, and any limit on exercise of such power, is only self-imposed. Gainful reference can be made to, amongstA.V. Venkateswaran* v. *RamchandSobhraj Wadhwani* [*A.V. Venkateswaran* v. *RamchandSobhraj Wadhwani*, 1961 SCC OnLine SC 16 : (1962) 1 SCR 753 : AIR 1961 SC 1506] and *U.P. State Sugar Corpn. Ltd.* v. *Kamal Swaroop Tondon* [*U.P. State Sugar Corpn. Ltd.* v. *Kamal Swaroop Tondon*, (2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352] . *The High Courts, under the Constitutional scheme, are endowed with the ability to issue prerogative writs to safeguard rights of citizens. For exactly this reason, this Court has never laid down any straitjacket principles that can be said to have "cribbed, cabined and confined" [to borrow the term employed by the Hon. Bhagwati, J. as he then was) inE.P. Royappa* v. *State of T.N.* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165]], *the extraordinary powers vested under Articles 226 or 227 of the Constitution*. Adjudged on the anvil of *Nawab Shaqafath Ali Khan* [*Nawab Shaqafath Ali Khan* v. *Nawab Imdad Jah Bahadur*, (2009) 5 SCC 162 : (2009) 2 SCC (Civ) 421] , this was a fit case for the High Court [*B.S. Hari* v. *Union of India*, 2010 SCC OnLine P&H 2558] to have examined the matter threadbare, more so, when it did not involve navigating a factual minefield."
>
> (emphasis supplied)

14. Returning to the present case, though usually the proper course of action of the High Court ought to have been to confine itself to the acceptance/rejection of the prayer for bail made by the accused under Section 439 of the Code; however the High Court, being satisfied that there were, in its opinion, grave lapses on the part of the police/investigative machinery, which may have fatal

consequences on the justice delivery system, could not have simply shut its eyes.

15. We are of the view that the learned Single Bench could have directed institution of separate proceedings taking recourse to Article 226 of the Constitution, after formulating reasons and points for consideration. Thereafter, the matter should have been referred to the learned Chief Justice of the High Court for placing it before an appropriate Bench, which would proceed in accordance with law, of course, after affording adequate opportunity to the person(s) proceeded against.

16. With regard to the High Court's justified concern to prevent miscarriage of justice, separate/fresh proceedings could have been instituted as indicated above. We hasten to add that our observations are not to be construed to imply that the High Courts should delve into the efficacy of investigation at the stage of bail, and the present judgment is not to be misread to haul up the investigative agencies/officers in all cases.

17. This Court could have interfered with the "direction" for departmental proceedings against the appellant, as the learned counsel for the appellant advanced, had been so done in *SangitabenShaileshbhaiDatanta* [*SangitabenShaileshbhaiDatanta* v. *State of Gujarat*, (2019) 14 SCC 522: (2020) 1 SCC (Cri) 395] and *M. Murugesan* [*State* v. *M. Murugesan*, (2020) 15 SCC 251 : (2020) 4 SCC (Cri) 885] . However, it would be proper to take note that in the aforesaid two cases, the factual positions were quite different. In *Sangitaben Shaileshbhai Datanta* [*Sangitaben Shaileshbhai Datanta* v. *State of Gujarat*, (2019) 14 SCC 522 : (2020) 1 SCC (Cri) 395] , the Court took note of the fact that in the case involving rape of a minor, the High Court ordering the accused and the appellant therein, who was the grandmother of the victim along with parents of the victim to undergo scientific tests viz. lie detection, brain-mapping and narco-analysis was not only in contravention of the first principles of criminal law jurisprudence but also a violation of statutory requirements and thus, the bail granted to the accused was cancelled. The facts of the instant case are quite different, and ergo, *Sangitaben Shaileshbhai Datanta* [*Sangitaben Shaileshbhai Datanta* v. *State of Gujarat*, (2019) 14 SCC 522 : (2020) 1 SCC (Cri) 395] does not aid the appellant.

18. In *M. Murugesan* [*State* v. *M. Murugesan*, (2020) 15 SCC 251 : (2020) 4 SCC (Cri) 885] , it was noted that the jurisdiction of the High Court is limited to grant or refuse to grant bail pending trial and such jurisdiction ends when the bail application is finally decided. In this background, the High Court, after taking a decision on the bail application, having retained the file and directing the State to constitute a committee and seek its recommendation on reformation, rehabilitation and re-integration of convicts/accused persons and best practices for improving the quality of investigation and also to obtain districtwise data from the State and upon submission of final data, after reviewing the same, making such data a part of the order after decision on bail application, was held to be beyond jurisdiction. In the present case, on the date of passing of the impugned judgment [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] , the bail application was still at large, and had not yet been decided one way or the other.

19. There is no quibble with the propositions lucidly enunciated in *Sangitaben Shaileshbhai Datanta* [*Sangitaben Shaileshbhai Datanta* v. *State of Gujarat*, (2019) 14 SCC 522 : (2020) 1 SCC (Cri) 395] and *M. Murugesan* [*State* v. *M. Murugesan*, (2020) 15 SCC 251 : (2020) 4 SCC (Cri) 885] . Yet, as our discussions in the preceding paragraphs display, the same are inapplicable to the extant factual matrix. It is too well settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases are authorities only for what they actually decide. We do not want to be verbose in reproducing the relevant paragraphs but deem it proper to indicate some authorities on this point — *Sreenivasa General Traders* v. *State of A.P.* [*Sreenivasa General Traders* v. *State of A.P.*, (1983) 4 SCC 353] and *Amar Nath Om Prakash* v. *State of Punjab* [*Amar Nath Om Prakash* v. *State of Punjab*, (1985) 1 SCC 345 : 1985 SCC (Tax) 92] — which have been reiterated, inter alia, in *BGS SGS SOMA JV* v. *NHPC* [*BGS SGS SOMA JV* v. *NHPC*, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] and *Chintels (India) Ltd.* v. *Bhayana Builders (P) Ltd.* [*Chintels (India) Ltd.* v. *Bhayana Builders (P) Ltd.*, (2021) 4 SCC 602]

20. In the present case, the judgment impugned [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] was passed before the final disposal of the bail application by the High Court. On a closer scrutiny of the judgment impugned [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851], it is clear that the Superintendent of Police, Katni, while appearing in person on 21-9-2022 had submitted that he had already line-attached the appellant vide an order dated 20-9-2022 and was initiating enquiry for imposition of major penalty. The High Court was informed that the Superintendent of Police, Katniwould "*get conducted preliminary enquiry in the hands of the Additional S.P. and forward the report to the disciplinary authority of the T.I. to initiate inquiry for major penalty*".

21. The aforenoted was only reiterated by the High Court in the latter portion of the judgment impugned [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] , in the following terms : (*Shiv Kumar Kushwah case* [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] , SCC OnLine MP para 10)

> "*10*. Let DNA report be now produced within a period of three weeks by the concerned Officer for which Superintendent of Police, Katni shall personally monitor that sample is sent in time to the concerned DNA Testing Laboratory and report is obtained *besides taking appropriate action against the concerned T.I. Shri Sanjay Dubey for dereliction of duty, insubordination and causing undue disruption in the proceedings of the High Court*." (sic)
>
> (emphasis supplied)

22. A combined reading of the afore-extracted snippets makes it crystal clear that the Superintendent of Police, Katni, who was the officer superior to the appellant, himself had stated that he would take action against the appellant and was initiating enquiry for imposition of major penalty, which statement was a suomotu act and not upon or flowing from any direction of the Court. Therefore, there was no occasion for the High Court to further observe for action against the appellant to be taken, as already, the Superintendent of Police, Katni had taken a decision to initiate enquiry against the appellant for imposition of major penalty.

23. Be that as it may, the facts of the case prima facie disclose that in such an important and sensitive case, there had been, at least prima facie, callousness on the part of the police officer(s) concerned, including the appellant, in conducting a proper investigation to bring on record all relevant materials in support of the truth. Amidst such backdrop, the chances of undue benefit accruing to the accused, leading to miscarriage of justice, cannot be ruled out, and may, in fact, have increased. The significance of the investigative component cannot be emphasised enough, and the views of this Court on such aspect have been brought to the fore in *Manu Sharma* v. *State (NCT of Delhi)* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and *Manoj* v. *State of M.P.* [*Manoj* v. *State of M.P.*, (2023) 2 SCC 353 : (2023) 2 SCC (Cri) 1]

24. In this connection, on a slightly different but connected context, it would be apposite to refer to the judgment in *State of Gujarat* v. *Kishanbhai* [*State of Gujarat* v. *Kishanbhai*, (2014) 5 SCC 108 : (2014) 2 SCC (Cri) 457] , wherein the Court opined and directed as under : (SCC pp. 137-38, para 22)

> "***22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent***. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments, should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The

> Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, *if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses*."
>
> (emphasis supplied)

25. While respectfully reiterating the above, drawing an analogy therefrom, as the lapses are grave, and additionally, but importantly, the factum that the authority viz. the Superintendent of Police, Katni, itself realised lapses had crept into the investigation, and decided to initiate proceedings against the appellant (and others), the operative portion of the judgment [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] impugned by the High Court, becomes, merely reiterative, perhaps in more direct terms, of what had been stated before it. As such, purely, in the extant facts and circumstances, the impugned judgment [*Shiv Kumar Kushwah* v. *State of M.P.*, 2022 SCC OnLine MP 5851] does not warrant any interference by this Court. We propose no order as to costs."

(Emphasis supplied)

The Apex Court in **SANJAY DUBEY** *supra* holds that in exceptional circumstances where the High Court is satisfied that there were grave lapses on the part of the Police or Investigative machinery which may have fatal consequences on the justice delivery system, may interfere in matters regarding bail, which would otherwise be entertainable under Section 439 of the Cr.P.C.

10. The High Court of Delhi in the case of **RAM KISHOR ARORA v. DIRECTOR, DIRECTORATE OF ENFORCEMENT**[5] holds as follows:

"…. …… …..

> **86. I consider that in view of the orders passed by learned Special Judge on 28.06.2023 whereby he found sufficient material on the record and recorded a finding that the investigating agency has complied with the provisions of law while arresting the applicant accused this judgment rather favours the ED.**
>
> **87.** As far as the contention of the learned senior counsel for the petitioner to release the petitioner on interim bail or to release him or to pass an order enabling him to attend the meetings in custody, I consider that such order cannot be passed in the present proceedings, particularly, in view of the fact that the bail application has already been rejected by the learned Special Judge vide a detailed order.
>
> **88.** It is pertinent to mention here that the petitioner is required to visit Bombay to attend the meetings. I consider that

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> it would be impractical to send the petitioner to Bombay in custody for attending the meetings with the financial creditors. **It is pertinent to mention here that even for releasing the petitioner on interim bail the rigours of Section 45 have to be satisfied.** However, in the peculiar facts and circumstances, if the petitioner so desires the Superintendent Jail may arrange meeting to be held through VC from the jail itself in accordance with the law."

(Emphasis supplied)

The Delhi High Court holds that arrestee may not be released on interim bail, when material is available on record against the arrestee and when procedure prescribed for arrest is followed. This judgment was tossed before the Apex Court and the Apex Court has affirmed the same, in its judgment in the case of **RAM KISHOR ARORA v. DIRECTORATE OF ENFORCEMENT [2023 SCC OnLine SC 1682]**.

11. On a coalesce of the judgments of the Apex Court with regard of applicability of Cr.P.C/BNSS to the GST proceedings and the caution that the High Court should not entertain and grant interim bail as a matter of course and also the fact that if all procedure is followed, the exercise of jurisdiction under Section 482 to grant interim bail is extremely limited.

12. Diving back to the facts obtaining in the case at hand, though the prayer is challenging grounds of arrest or the arrest memo, it is on the face of it unacceptable, as the arrest memo runs into 21 pages. The grounds of arrest again is in great detail. Reasons for arrest is continuation of grounds of arrest. Therefore, it is settled principle of law that the grounds in the grounds of arrest, reasons in the reasons of arrest or reason to arrest is not justiciable, unless it depicts blatant non-application of mind, which is not the issue in the case at hand.

13. As observed hereinabove, the submission of the learned senior counsel is that this Court should show mercy or sympathy and release the accused No.2/petitioner No.2 on bail. This submission if accepted, would be exercising jurisdiction on misplaced sympathy and would undoubtedly open pandora's box, as if this Court would entertain the subject petition notwithstanding the finding of no illegality in the arrest proceedings and only on mercy. The mercy can vary from case to case; sympathy can also vary from case to case. Therefore, the facts in the case at hand cannot be termed as so exceptional, that this Court in exercise of

its jurisdiction under Article 226 r/w Section 482 of the Cr.P.C., should entertain the petition and grant interim bail.

14. The petition found wanting in entertainability, for grant of interim bail, stands ***rejected.***

The petitioners are, however, at liberty to approach the concerned Court seeking grant of bail. In the event petitioners file an application seeking grant of bail, the concerned Court without brooking any delay, shall consider the same and pass necessary order, in accordance with law. Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ