

238 CRWP-6077-2025 (O&M)

BARKHA BANSAL VS. STATE OF U.T., CHANDIGARH & OTHERS

222 CRM-M-36725-2025

BHARAT LAL VS. DIRECTORATE GENERAL, GOODS & SERVICE  
TAX INTELLIGENCE, CHANDIGARH

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**Present:** Mr. Vinod Ghai, Senior Advocate  
with Mr. Arnav Ghai, Advocate  
and Mr. R.S. Bagga, Advocate  
for the petitioner(s) in both petitions.

Mr. Manish Bansal, Public Prosecutor  
with Mr. Viren Sibal, Addl. Public Prosecutor, U.T., Chandigarh.

Mr. Satya Pal Jain, Addl. Solicitor General of India (through V.C.)  
with Mr. Rajesh Sethi, Advocate, Mr. Sourabh Goel, Advocate  
Mr. Anshuman Sethi, Advocate, Ms. Geetika Sharma, Advocate  
Ms. Anju Bansal, Advocate and Mr. Deify Jindal, Advocate  
for respondents No.2 and 3 in CRWP-6077-2025.

Ms. Sidhi Bansal, Advocate,  
Ms. Ridhi Bansal, Advocate  
and Mr. Viney Kumar, Advocate  
for respondent – CBIC.

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1. The present petition is filed under Article 226 of the Constitution of India for issuance of a writ in the nature of *Habeas Corpus* for directing respondent No.1 to recover the husband of the petitioner, namely Bharat Lal Garg (hereinafter ‘detenue’), from the illegal custody of respondents No.2 and 3 and to hand him over to the petitioner and his family members or, in the alternative, appoint a Warrant Officer for this purpose.

2. On 05.06.2025, the following order was passed by this Court:

*“Learned Counsel appearing on behalf of the petitioner inter alia contends that the detenue had entered the office premises of the respondents No.2 and 3 on 04.06.2025 which is evident from the entry at Sr. No.17 of the Register maintained by*

*the office of respondents. He contends that since then, the detenue has not returned and that even though a period of more than 24 hours has already been elapsed, the detenue has also not been produced before the Competent Court. He thus contends that there is an apprehension of the well being of the detenue and that he is being illegally confined by the respondents No.2 and 3. He prays that a Warrant Officer be appointed to secure the rights, life and liberty of the detenue-Bharat Lal Garg.*

*Notice of motion.*

*Without commenting on the merits of the present case, let a Warrant Officer be appointed to inspect the premises of respondents No.2 and 3 and such other place which may thereafter become known to the Warrant Officer and to secure release of the detenue-Bharat Lal Garg. In case the detenue is found to be in illegal detention, then to take appropriate steps in accordance with law to secure his release.*

*The petitioner undertakes to deposit the necessary statutory charges as determined by law for appointment of Warrant Officer and also to arrange for the transportation of the Warrant Officer.*

*The report be filed on or before 09.06.2025*

*Let a copy of this order be handed over to the learned Counsel appearing on behalf of the petitioner under the signatures of Court Secretary.”*

2.1.           Thereafter, on 02.07.2025, the following order was passed by this  
Court:

*“Learned Senior counsel for the petitioner inter alia contends that the petitioner approached this Court on 05.06.2025 by way of the present petition seeking issuance of a writ in the nature of habeas corpus, directing respondent No.1 to recover her husband- the detenue, who had been in the illegal custody of respondents No. 2 and 3 since 04.06.2025.*

*Learned Senior counsel further contends that this Court vide order dated 05.06.2025 appointed a Warrant Officer to inspect the office of respondents No. 2 and 3. On the same day, the Warrant Officer, with the assistance of the local police, entered the Central Revenue Building, Sector 17, Chandigarh at 06:42 PM. He also made an entry in the concerned register (Annexure P-2) in this regard. Thereafter, the Warrant Officer recovered the detenue from the office of Anju Sheokand, IRS where he was being guarded by one Peon working for the Department. No explanation was provided for detaining the detenue in the said premises. The Warrant Officer then proceeded to record the statement of*

*detenue, who also showed his injuries to him, as evident from the screenshot of the video attached at Annexure P-4.*

*He further contends that the detenue was in illegal custody of respondents No.2 and 3 from 12:05 PM on 04.06.2025, i.e. for a period of over 30 hours. The detenue was not even produced before the competent Court within the stipulated 24 hours. Further still, the detenue was forcible taken away in a convoy of 03 cars from the custody of the Warrant Officer, who was performing his official duty, as directed by this Court. The same is buttressed by the screenshots of the video available at Annexure P-5. Subsequently, at 8:40 PM, a memo of arrest was issued by respondents No. 2 and 3, in an attempt to cover up the fact that they illegally detained the detenue. Moreover, Rahul Vats, Intelligence Officer also misbehaved with the Warrant Officer in presence of the police party. A CD containing the video recording of the events that transpired at the said premises as well as the mistreatment of the Warrant Officer is available as Annexure P-7.*

*Furthermore, at 9:25 PM, the Warrant Officer appeared before the Duty Magistrate and informed the Court that the officials of respondent No. 3 have obstructed him in discharging his official duty. The same also stands recorded in the order dated 05.06.2025 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Chandigarh. He further submits that, shockingly, respondent No. 2 issued summons to the petitioner on 16.06.2025 for appearance, one day prior to date fixed in the present writ petition, in order to pressurise her to withdraw the same.*

*Learned Senior counsel further refers to the report of Warrant Officer and submits that after finding detenue in the said premises, respondents No. 2 and 3 and Amandeep Singh, IRS arrived at the spot, however, they were unable produce any document regarding the arrest of the detenue. The Warrant Officer also specifically forbade these officials from engaging in any paper work at that stage. The report of the Warrant Officer also reveals that respondents No. 2 and 3 created obstruction when he, in discharge of his official duty, was recording statement of the detenue. In fact, they also snatched papers from his hand. It was only at 08:40 PM on 05.06.2025 that an arrest memo along with grounds of arrest was handed over to him.*

*Lastly, it is duly established from the report of the Warrant Officer that the detenue arrived at the said premises at 12:02 PM on 04.06.2025 and was only produced before the Duty Magistrate at 09:25 PM on 05.06.2025. As such, respondents No. 2 and 3 have not only illegally detained the detenue but also deliberately caused obstruction in the administration of justice. Thus, the act and conduct of the officials of the Department is contemptuous and should be dealt with a heavy hand.*

*Per contra, learned Additional Solicitor General of India assisted by learned counsel for respondents No. 2 and 3 submits that detenue was never detained illegally. As a matter of fact, he was summoned in connection with investigation in a matter pertaining to Section 132 of Central Goods and Services Tax Act, 2017 and was duly arrested at 8:40 PM on 05.06.2025, when his response was found to be evasive. Further, some time was sought to file a reply to controvert the submissions made by learned Senior counsel for the petitioner.*

*Having heard learned counsel for the parties and after perusing the record with their able assistance, this Court finds force in the arguments advanced by learned Senior counsel for the petitioner. The conduct of respondents No. 2 and 3 and other officials of the Department is ex facie contemptuous as they have intentionally and maliciously misbehaved with the Warrant Officer and hindered him from discharging the official duty entrusted to him by this Court vide order dated 05.06.2025.*

*Further, as per the report of the Warrant Officer, the detenue remained in custody of respondents No.2 and 3 since 12:02 PM on 04.06.2025. He was only served with an arrest warrant at 8:40 PM the next day i.e. 05.06.2025. It is evident that the detenue was produced before the jurisdictional Magistrate at 9:25 PM on 05.06.2025 i.e. beyond the stipulated period of 24 hours which is in direct contravention of his fundamental rights under Article 22 of the Constitution of India.*

*However, before passing any orders, an opportunity is afforded to respondents No. 2 and 3 to show cause as to why contempt proceedings may not be initiated against them for snatching papers from the Warrant Officer and obstructing him from performing his official duty. This Court cannot turn a Nelson's eye to such recalcitrant misconduct depicting a blatant disregard for the rule of law. Allowing such lawless to continue unchecked would undermine the authority and dignity of the justice administration mechanism.*

*In view of the discussion above, respondent No. 3- Additional Director General GST is directed to file his affidavit indicating:*

*(i) Complete details regarding names of the officials of the Department along with their designations, who were present at Central Revenue Building, Sector 17, Chandigarh from 06:30 PM to 09.00 PM on 05.06.2025*

*(ii) Status of installation of CCTV cameras at the premises of Central Revenue Building, Sector 17, Chandigarh in accordance with the judgment rendered by the Hon'ble Supreme Court in Paramvir Singh Saini vs. Baljit Singh and others (2021) 1 SCC 184.*

*It is further directed that the original record, including the arrest memos and ground of arrest as well as the medical examination report of the detinue be also produced on the next date of hearing.*

*Adjourned to 18.07.2025.”*

3. In compliance of order dated 02.07.2025, an affidavit of Sanket Kale, Additional Director General, Directorate of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, an affidavit of Gurdhyan Singh, Senior Intelligence Officer, Directorate General of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, as well as a reply on behalf of respondents No.2 and 3 have been filed in the Court today, which are taken on record.

4. A perusal of the affidavit of Sanket Kale, Additional Director General, Directorate of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, indicates that he was not present at the Central Revenue Building (hereinafter ‘Zonal Office’) when the Warrant Officer arrived there, as such, the events that subsequently transpired occurred in his absence. Further, a perusal of the affidavit filed by Gurdhyan Singh, Senior Intelligence Officer, Directorate General of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, reveals that a specific stand has been taken in Para No.1 to 14, to justify the presence and arrest of the detinue in question. The relevant portion of the affidavit of Gurdhyan Singh, Senior Intelligence Officer, reads as under:

*“1. On June 5, 2025, the Ld. warrant officer Sh. Sandeep Mehta, appointed by this Hon'ble Court, accompanied by Sh. Gurbir Dhillon, Advocate and 5 police personnel, arrived at the ground floor of the GST wing in the C.R. Building, at 6:43 PM.*

*2. After making entry in the visitor register kept at the entry gate ground floor, the Ld. warrant officer went to the 6th floor and conveyed his identity as warrant officer appointed by the Hon'ble Punjab and Haryana High Court, Chandigarh. He also informed*

*about the filing of a Habeas Corpus writ petition. Sh. Gurbir Dhillon, entered the building and subsequently the DGGI office without any authority as he was neither mandated by the court not was in possession of any Vakalatnama.*

*3. The Ld. warrant officer's mandate was to release Sh. Bharat Lal if found in illegal detention as mentioned in the order dated 05.06.2025, passed by this Hon'ble Court.*

*4. The DGGI officers (including Deponent) informed Ld. warrant officer that Sh. Bharat Lal was not in illegal custody, as the arrest procedure under the CGST Act, 2017, had already commenced at 5:46 PM when the Investigating Officer (IO)-Rahul Vats had moved the proposal for arrest in the e-office through his superior officers (including Deponent) to the Additional Director General.*

*Under the CGST Act, 2017, arrest is made only after authorisation is given and the power to authorize an arrest rests with the Additional Director General/Commissioner. This is to ensure at the highest level of scrutiny before authorizing an arrest. The e-office application, developed by NIC, is used by the offices of CBIC to carry out the file work, which is a tamper proof application. It duly captures the time stamps of the file movement. The details of the file movement related to Bharat Lal's arrest are as below:*

| <i><b>Date and Time</b></i>    | <i><b>Action initiated</b></i>                                                                                                                                                                                                                                                            |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>05.06.2025<br/>05:46 PM</i> | <i>The Intelligence Officer prepared detailed note regarding the statement and evidences against Sh. Bharat Lal explaining the contravention of the provisions of GST Law and proposal to arrest Sh. Bharat Lal was forwarded to the Senior Intelligence Officer in the e-office file</i> |
| <i>05.06.2025<br/>06:06 PM</i> | <i>Senior Intelligence Officer perused the proposal made by the Intelligence Officer and after recording his opinion, submitted the e-office file to the Deputy Director.</i>                                                                                                             |
| <i>05.06.2025<br/>06:09 PM</i> | <i>The Deputy Director perused the proposal made by the Senior Intelligence Officer &amp; Intelligence Officer and after recording his noting, submitted the e office file to the Additional Director on E-Office Portal.</i>                                                             |
| <i>05.06.2025<br/>06:16 PM</i> | <i>The Additional Director perused the proposals made by the her staff and after recording her noting, submitted the e office file to the Additional Director General on E-Office Portal.</i>                                                                                             |
| <i>05.06.2025<br/>06:48 PM</i> | <i>The Additional Director General perused the proposals made by his staff and</i>                                                                                                                                                                                                        |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <i>recorded in his note that he has sufficient reasons to believe that Sh. Bharat Lal has committed an offence specified under Section 132(1) (b) and 132(1)(c) read with the Section 132(5) of Central Goods &amp; Services Tax Act, 2017, read with corresponding provisions of UTGST/SGST Act, 2017, Section 20 of IGST Act, 2017, which is punishable under Section 132(1) (i), and accordingly, authorized Sh. Rahul Vats, Intelligence Officer to arrest Sh. Bharat Lal under the provisions of Section 69 <i>ibid</i>, through <b>Authorization dated 05-06-2025</b> which was physically and digitally signed by him at 06:48 PM on 05-06-2025.</i> |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

5. *It is submitted that the arrest proposal for Sh. Bharat Lal underwent scrutiny by different officers, with each officer assessing correctness and as to whether the grounds of arrest exist or not. Utmost care was exercised by the officers to ensure that liberty of Bharat Lal was not curtailed without reasonable grounds.*

6. *It is pertinent to mention here that DGGI does not affect arrests hastily; every factor is carefully weighed and evaluated before a conclusion is reached. This Hon'ble Court will appreciate that unearthing a modus operandi to defraud the government exchequer is inherently a time-consuming and resource-intensive activity.*

7. *DGGI officers presented documents to the Ld. warrant officer, explaining that Sh. Bharat Lal was not illegally detained and that his arrest had been duly authorized by the competent authority.*

*The Digitally signed (with time stamp 6:48:41 pm) and manually endorsed arrest authorisation was duly shown to the warrant officer. Printout of the note-sheet from e office with timestamps was also taken and shown to the warrant officer. Copy of photograph/screenshot which clearly shows that the arrest authorization was shown to the warrant officer is Annexure-R-2/1.*

*However, the Ld. warrant officer appeared to have formed an opinion that since arrest memo had not been served, the person was in illegal detention.*

8. *After that, the officers had made a request to the Ld. warrant officer to give a written acknowledgment if he intended to take custody of the person i.e. Sh. Bharat Lal, which was refused by the Ld. warrant officer.*

9. *It is humbly submitted that the DGGI officers fully cooperated with the Ld. warrant officer and never restrained either the Ld.*

*warrant officer or the advocate accompanying him. If there had been any restraint by the DGGI officers, then the Police personnel assisting and accompanying the Ld. warrant officer would have definitely intervened and acted against such officers.*

*10. Since there was no restriction or obstruction caused by the officers of DGGI, the Ld. warrant officer directed the accompanying police personnel to take Shri Bharat Lal into custody and take him to the police station. The police officials, as per their own interpretation of the situation, refused to obey the Ld. warrant officer.*

*11. There was a situation in the office when neither the Ld. warrant officer nor the police was ready to take custody of Sh. Bharat Lal. The situation persisted for some time. Since neither party took custody, the DGGI officers proceeded with further legal formalities.*

*12. To complete the final arrest formality, the arrest memo was served at 8.40 pm i.e. after the Ld. Warrant officer and Police had refused to take custody of Bharat Lal. Thus, the process of effecting the arrest, which started at 5.46 pm, ended at 8.40 pm.*

*13. Immediately after the arrest, Sh. Bharat Lal was taken for medical examination as per the legal procedure and was thereafter produced before the Ld. Duty Magistrate at approximately 9:30 PM. The Ld. warrant officer was also present during this appearance before the Ld. Duty Magistrate and he duly brought the matter to the attention of the Magistrate. The Ld. warrant officer, in his submission before the Magistrate as recorded in the order of Duty Magistrate stated that '...obstruction was however caused by police officials whose name he has mentioned in the report'. If there had been any obstruction by DGGI then Ld. warrant officer would have ALSO mentioned the same before the Duty Magistrate. But Ld. warrant officer did not raise issue of any obstruction by DGGI.*

*14. It is noteworthy that Ld. Duty Magistrate, has duly examined all the relevant documents presented by DGGI, and has categorically mentioned the same in the order which reads as - "After perusal of the file it is clear that....". After hearing the submissions, the magistrate did not find any procedural lapse in the arrest and subsequently remanded Sh. Bharat Lal to judicial custody for 14 days ”*

5. In the reply filed on behalf of respondents No.2 and 3, it has been categorically mentioned that the detainee was not detained. It is stated that summons dated 29.05.2025 were issued to the detainee to tender a statement on 28.05.2025. However, he failed to appear and fresh summons dated 29.05.2025

were issued to both the detainee and the petitioner for 04.06.2025. As such, it is their claim that the detainee appeared voluntarily at 12:15 PM on 04.06.2025 before the concerned officer, pursuant to the notice issued under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter 'CGST Act'). In fact, he also intimated respondent No.2 about his appearance on 04.06.2025 through email. Furthermore, on 04.06.2025 itself, the detainee also submitted his willingness (Annexure R-2/3) to join the process of imaging and extraction of data of his laptop, necessary for forensic examination. Accordingly, the forensic imaging process was initiated which commenced at 3:30 PM and concluded at 09:30 PM. Thereafter, the detainee also consented to recording a voluntary statement under Section 70 of the CGST Act, the process of which continued till the afternoon of 05.06.2025. It is claimed that during the said process, the basic needs of the detainee were taken care of.

6. It is the case of respondents No.2 and 3 that at no point in time, was the detainee put in illegal detention by the DGGI officials. It is submitted that he had full access to his mobile phone and he made as many as 18 calls during the material time. However, the detainee gave evasive answers and did not cooperate with the concerned agency. After meticulously examining his voluntary statements, it was revealed to the DGGI officials that the detainee is a repeat offender, well versed in techniques to commit financial fraud. Accordingly, the investigating officers duly analysed the available material and concluded that detainee has committed offences under Sections 132(1)(b) and 1(c) read with Section 132, 1(i) and (5) and Section 135 of the CGST Act. Subsequently, at 05:46 PM on 05.06.2025, the arrest proposal was prepared and submitted to supervisory authorities on the online portal namely E-office, much

prior to the arrival of the Warrant Officer. The arrest proposal underwent scrutiny by five layers of officers and the Intelligence Officer was finally authorised to arrest the detainee by respondent No.3 on 05.06.2025 at 06:48 PM. The Warrant Officer was apprised of the entire process and a print out from E-Office with time stamps reflecting the same was shown to the Warrant Officer. However, it is submitted that the Warrant Officer appeared to have already formed an opinion that the detainee was in illegal detention since the arrest memo had not been served.

7. Further, Para 1 of the submissions contained in reply filed on behalf of respondents No.2 and 3, categorically mentions that the detainee was neither detained nor arrested on 04.06.2025. He had appeared before the concerned officials (hereinafter ‘DGGI officials’ ) of his own volition, in compliance of the summons issued by lawful authority, to assist in investigation of the alleged financial fraud. It is further argued that the presence of the detainee did not entail any element of coercion or custodial restraint, which is essential for his presence to be construed as ‘detention.’ Reliance in this regard has been placed upon the judgment rendered by the Hon’ble Supreme Court in *CBI vs. Anupam J. Kulkarni, (1992) 3 SCC 141*, wherein it was held that mere physical presence of a person at the premises of an investigating agency does not necessarily constitute ‘custody’ as the same requires existence of some form of formal arrest or coercive restraint. Additionally, in *State of Punjab vs. Ajaib Singh, AIR 1953 SC 10*, the Hon’ ble Supreme Court has elucidated that calling upon a person to cooperate in an investigation does not amount to detention or arrest unless the element of compulsion is established. A reference has also been made to the judgments

rendered by the Hon' ble Supreme Court in *K.K. Kochunni vs. State of Madras, AIR 1959 SC 725* and *T.T. Antony vs. State of Kerala, (2001) 6 SCC 181* as well as the Delhi High Court in *Ojasvi India Private Limited vs. Union of India, 2021 SCC Online Del. 3306* and the Bombay High Court in *Union of India vs. Padam Narayan Agarwal, 2008 SCC Online Bom. 982*.

8. Mr. Rajesh Sethi, Advocate, representing respondents No.2 and 3, very fairly submits that the detenue, in pursuance of the a notice served upon him under Section 70 of the CGST Act, appeared before the concerned officer at 12:15 PM on 04.06.2025. Thereafter, he was subjected to interrogation and this process continued till 04:56 PM on 05.06.2025. Further still, the Warrant Officer entered the zonal office at 06:45 PM and he entered the office at around 07:00 PM while the arrest of the detenue, was affected at 08:46 PM, after completion of all the requisite formalities. He submits that the detenue was put under restraint only at 5:46 PM on 05.06.2025 and that the subsequent arrest was made as per procedure of law after receiving authorization under Section 69 of the CGST Act at 6:46 PM. Moreover, the grounds of arrest were also communicated to the detenue at 08:40 PM. Learned counsel vehemently reiterates that the presence of the detenue in the zonal office was voluntary as it was his choice, devoid of any external pressure, to remain present there. As such, there is no material to even remotely suggest that the detenue was detained without his consent. Referring to the detailed reply, he further submits that the genesis of the events culminating into the arrest of the detenue has been duly explained. Additionally, the Warrant Officer was also present when detenue, was produced before the learned Duty Magistrate at 09:25 PM on 05.06.2025. However, neither did he raise any objections with regard to the

conduct of DGGI officials nor did he mention any instances of obstruction at their behest. After hearing the parties and examining all the relevant documents presented by the concerned officials, the learned Duty Magistrate did not find any procedural lapses in the arrest of the detainee and remanded him to judicial custody. Mr. Rajesh Sethi, Advocate empathetically submits that no restriction or obstruction was caused to the Warrant Officer by the DGGI officials at the relevant time.

9. However, the report of the Warrant Officer, reveals that on his arrival in the zonal office, the concerned officials could not produce any paper or document relating to the arrest of the alleged detainee. The relevant part of the said report is reproduced hereinbelow:

*“I along with counsel for petitioner reached Police Station Sector-17, Chandigarh at 06.15 pm on 05.06.2025. SHO Rohit Kumar met there. After disclosing my identity and purpose of visit, I asked him to provide police protection to search detainee-Bharat Lal Garg at the premises of respondents No. 2 and 3.*

*I along with counsel for petitioner, Satish Kumar, ASI and one constable reached office of respondent No. 2 and 3 at 06.45 pm on 05.06.2025. Som Nath, peon of respondent No. 2 and 3 was present there. I along with counsel for petitioner searched each and every corner of the office and detainee-Bharat Lal Garg was found present in a room. Peon called Gurdhyan Singh (respondent No. 2), Anupama Pant (respondent No. 3 and Amandeep Singh, IRS. After some time, all three reached at the spot. At that time they could not show me any papers relating to arrest of detainee. I directed them not to do any paper work in this case now at this stage. But they did not care. I directed the police officials to stop them and to take the detainee to the police station but police officials refused to do so. It is further submitted respondent No. 2 and 3 stopped under signed from recording the statement of detainee and snatched papers from my hand.*

*In the meantime, SHO also reached there. I directed SHO to take detainee to police station for recording his statement. SHO refused to do so and went from there along with the police officials leaving me alone. Then I called Udaipal Singh, DSP, Chandigarh Police on mobile No. 97795 80914 but he said that he can do nothing in*

*the matter. Thereafter, I call SP City, Chandigarh on mobile No. 97795 80906 but no body pick up my phone from other side.*

*Thereafter, respondent No. 2 and 3 handed over me arrest memo (Annexure R-1), jamatalashi (Annexure R-2) and intimation of grounds of arrest (Annexure R-3) of detenue recorded at 08.40 pm on 05.06.2025 whereas detenue had come to office at 12.02 pm on 04.06.2025 as per entry made in guest register of the office annexed at annexure P-1 along with the petition. I reached the office at 6.45 pm on 05.06.2025. It appears that they had arrested detenue at 08.40 pm after I reached the office.”*

10. Having heard learned counsel for the parties and after perusing the record of the case, the following questions arise before this Court for just adjudication of the present controversy:

*1. Whether keeping a person, who has been summoned under Section 70 of the CGST Act, overnight in the zonal office can be construed as voluntary and not violative of the constitutional safeguards?*

*2. Whether the arrest of a person summoned under Section 70 of the CGST Act, would be legally sustainable if there is a substantial non-compliance of Section 69 of the CGST Act by the DGGI officers while granting authorization for such arrest?*

*3. Whether the grounds of arrest need to be furnished to the person concerned when formal arrest is affected or when he is first put under restraint by DGGI officials?*

11. Vide order dated 02.07.2025, the following information was requisitioned by this Court:

*“...In view of the discussion above, respondent No. 3- Additional Director General GST is directed to file his affidavit indicating:*

*(i) Complete details regarding names of the officials of the Department along with their designations, who were present at Central Revenue Building, Sector 17, Chandigarh from 06:30 PM to 09.00 PM on 05.06.2025*

*(ii) Status of installation of CCTV cameras at the premises of Central Revenue Building, Sector 17, Chandigarh in accordance with the judgment rendered by the Hon'ble Supreme Court in Paramvir Singh Saini vs. Baljit Singh and others (2021) 1 SCC 184.*

*It is further directed that the original record, including the arrest memos and ground of arrest as well as the medical examination report of the detainee be also produced on the next date of hearing ”*

Before addressing the core issue, this Court would like to note that it is a matter of regret that the requisite record has not been produced in spite of specific directions to this effect. However, the affidavit of Sanket Kale, Additional Director General, Directorate of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, states that cameras have been installed on the premises of the Central Revenue Building, Sector 17, Chandigarh, however, due to some ongoing construction work therein, they are intermittently non-functional.

12. This Court finds the explanation regarding the CCTV cameras rather incongruous as all the electronic and digital resources of the zonal office, including the E-office portal, were fully functional. It is beyond comprehension how only the cameras were affected. A three Judge bench of the Hon'ble Supreme Court ***Paramvir Singh Saini vs. Baljit Singh and others (2021) 1 SCC 184***, speaking through Justice R.F. Nariman, made the following observations in this regard:

*“17. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet*

*systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.*

*18. Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each District of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigation agency in order to further process the complaint made to it.*

*19. The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install CCTV cameras and recording equipment in the offices of:*

*(i) Central Bureau of Investigation (CBI)*

*(ii) National Investigation Agency (NIA)*

*(iii) Enforcement Directorate (ED)*

*(iv) Narcotics Control Bureau (NCB)*

*(v) Department of Revenue Intelligence (DRI)*

*(vi) Serious Fraud Investigation Office (SFIO)*

*(vii) Any other agency which carries out interrogations and has the power of arrest.*

*As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.*

*The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.*

*20. The SLOC and the COB (where applicable) shall give directions to all Police Stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the concerned premises by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.*

*21. Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India, and since nothing substantial has been done in this regard for a period of over 2½ years since our first Order dated 03.04.2018, the Executive/Administrative/police authorities are to implement this Order both in letter and in spirit as soon as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/ Union Territory giving this Court a firm action plan with exact timelines for compliance with today's Order. This is to be done within a period of six weeks from today."*

In the absence of any details regarding the allegedly ongoing construction work or the nature of obstruction caused to the operation of cameras, the explanation provided in the affidavit is rejected which inevitably leads to the inference that the cameras were intentionally made non-functional.

- **KEEPING A PERSON SUMMONED UNDER SECTION 70 OF THE CGST ACT, OVERNIGHT IN THE ZONAL OFFICE**

13. Time and again, the constitutional Courts have come to the aid of those victimized by weaponisation of criminal law, even by State run agencies. In ***Sukhwant Singh vs. State of Punjab 2009(4) R.C.R(Criminal) 868***, the Hon'ble Supreme Court opined that reputation is a valuable personal asset and a facet of an individual's right to life as enshrined in Article 21 of the Constitution. It goes unsaid that an arrest is a rather overt act that significantly impacts how the society views the arrestee. It is for this reason that multiple procedural safeguards have been put in place by the Legislature as well as the Judiciary to ensure that arrests are not mechanically made.

14. A Division Bench of Bombay High Court in ***Ram Kotumal Issrani vs. Directorate of Enforcement and others 2024 SCC Online Bom. 1050***, expressed strong disapproval of the practice of detaining a person overnight for recording his statement under Section 50 of the Prevention of Money Laundering Act, 2002 (hereinafter 'PMLA'). It was held that the factum of consent would be immaterial in such a situation as such an approach is in violative of fundamental rights of the summoned person. It was further observed that there is no justification to recording the statement so late into the night when the same could conveniently be done the next day. In order to ensure that fundamental rights of the summoned persons are honoured, the Division Bench also directed the Enforcement Directorate to issue circular notifying appropriate timings for recording of statements, when one has been summoned under Section 50 of the PMLA. In compliance thereof, the Enforcement Directorate issued a circular dated 11.10.2024 which calls for recording of statements of the persons summoned during 'earthly hours'.

15. Further, in an identical matter under the CGST Act, a Division Bench of the Bombay High Court in ***Mahesh Devchand Gala vs. Union Of India of India and others*** in ***Criminal Writ Petition No.938 of 2024*** decided on 24.09.2024, not only ordered release of the petitioner therein but also directed the Central Government to take appropriate steps to ensure that persons are not detained overnight for the purpose of interrogation. The relevant observations are reproduced below:

*“2. We, in para 5, after taking into consideration the timeline set out by the respondent No.2, in our order dated 10th May, 2024, have observed as under;*

*“5. Having heard learned counsel for the respective parties, prima facie, we are in agreement with the submissions advanced by Mr. Ponda i.e. that the petitioner appears to have been detained for more than 24 hours. Prima facie, the justification given by the respondent No. 2 explaining the detention of the petitioner, does not appear to reason, considering the conflicting stand taken by the respondent No. 2 in their affidavit filed in this Court and their reply filed before the trial Court. It is also pertinent to note that the GST investigation of the Company was done, sometime in 2021 and that the petitioner had appeared before the authorities on behalf of the said Company. It also appears that a full-fledged inquiry was done in 2021 and the authorities had audited the accounts of the years 2017 to 2020. The time span mentioned by the respondent Nos. 1 to 3 for generating the GST returns and getting the Dowment Identification Number (DIN), prima facie appears to be an eye wash and appears to have been done to show, that the petitioner was produced within 24 hours. As admitted in the affidavit, the process of generating the relevant GST returns took around 3 to 4 hours, process of verification took 3 to 4 hours and the generation of arrest memo along with DIN took another 4 hours. Prima facie, we do not find, in the facts, that there was any reason for the respondent No. 2 to keep the petitioner overnight, when he came on 13th March 2023, more particularly, if the respondent No. 2 did not have documents to question the petitioner. **It is not as if, the petitioner had not cooperated with the authorities and as such, it was well within the powers of the respondent No. 2 to call him on some other day or even on the next day. We deprecate the practice of keeping a person overnight under the guise of recording of his statement, irrespective of whether the person volunteered or not.**”*

(emphasis added)

Subsequently, on 01.04.2025, in ***Mahesh Devchand Gala(supra)***, the Court was informed in Review Meeting dated 25.09.2024 held by Principal Chief Commissioner of GST and Central Excise, Mumbai Zone, certain directions were issued in this regard to all field formations. The order dated 01.04.2025 is reproduced below:

*“1. Although, the aforesaid Petition was disposed off vide order dated 24th September 2024, the matter was kept today for recording compliance of paragraph 6 of the said order, which directs the Central Government to take appropriate steps to ensure that persons are not detained overnight for the purpose of interrogation.*

*2. Mr. Mishra, learned Senior Standing Counsel appearing for the Respondents Nos.1 to 3, has tendered a letter dated 27th March 2025 addressed by the Joint Commissioner (In-situ), CGST, Mumbai West. Photo-copy of the said letter is taken on record. It appears that the Principal Chief Commissioner of GST and Central Excise, Mumbai Zone in its Review Meeting dated 25th September 2024 has issued certain directions to all field formations. The said directions are as under;*

***“a) Directions given by the Hon’ble Supreme Court as per order dated 21.02.2023 passed in the matter of Paramvir Singh Saini Vs. Baljit Singh &Ors in SLP (Criminal) No. 3543 2020 regarding installation of CCTVs and recording of statements during investigation of cases, are to be followed;***

***b) All Commissioners to follow CBIC Instructions issued vide No.01/2023-24-GST (Inv) dated 30/03/2024 regarding investigation and keep check on Search Warrants and Summons being issued;***

***c) Commissionerates to ensure that persons are not detained in office, beyond office hours except strictly as per laws, rules and regulations. Commissioners shall monitor and ensure that all matters are handled as per law.”***

*3. Direction (c) which is issued pursuant to the order passed by this Court.*

*4. The office of the GST to take prompt steps to put up the aforesaid directions on their official website as well as ‘X’ handle at the earliest and in any event within one week from today, to make citizens aware of the same.*

*5. Since the order dated 24th September 2024 has been complied with, no further orders.*

16. Further in an identical matter, a Division Bench of the Telangana High Court in ***Agarwal Foundries Private Limited Rama Towers and others vs. Union of India and others, 2020 SCC OnLine TS 1446***, concluded that keeping a prospective accused in the office premises at ungodly hours would take the colour of informal custody as it involves deprivation of the liberty. Accordingly, the said person would be entitled to the constitutional protections provided under Articles of 21 and 22 of the Constitution of India. In that vein, the DGGI Officials were instructed to carry on the interrogation between 10:30 AM to 05:00 PM on the weekdays, in the visible range of the counsel of the petitioner therein. Speaking through Justice Sri M.S. Ramachandra Rao, the following was opined:

*85. What was so important to be recorded at such a time, which cannot wait till the morning of 12.12.2019, is not disclosed by the respondents.*

*86. We shall here refer to the plea in para 35 of the counter filed by the respondents 1 to 4 and 10 in this regard. They state as follows:*

*" ....it was imperative to record statement of Shri Pramod Agarwal ( in pursuance of summons issued under Section 70 of the CGST Act, 2017) on the spot as preliminary investigation clearly suggested his role in the tax evasion by petitioner no.1. The petitioner no.2 was available at the spot i.e. the Corporate Office of petitioner no.1. He was served the summons in his office. There is no bar to making enquiries under Section 70 of the GST Act, 2017 in the night itself...."*

*87. We are unable to accept this explanation offered by the respondents to justify the issuance of summons to the 2nd petitioner after the midnight of 11.12.2019 i.e., after 00:00 hrs on 12.12.2019 and asking him to appear before the 4th respondent at 00:30 hrs on 12.12.2019.*

*88. The Supreme Court in D.K. Basu (1997)1 SCC 416 also held that even a prolonged interrogation by an investigative*

*agency may take the colour of deprivation of personal liberty in the following manner:*

*"18. However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder."(emphasis supplied)*

**89. The respondents cannot say that detention of the 2nd respondent in the office of the 1st respondent till much after midnight on the intervening night of 11.12.2019 and 12.12.2019 is a routine thing. Prima-facie it amounts to deprivation of the liberty of the 2nd petitioner since he was forced to be present with the respondents 5 to 9 at that late hour on that night.**

**90. In our opinion, the respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forceably keeping them in their custody for indefinite period. If it is done, it has to be construed as informal custody and the law relating to an accused in custody has to be expressly or impliedly applied. If accused can get all the benefits under Article 22 of the Constitution, a person in such informal custody can say that he is also entitled to get relief under Article 21 of the Constitution of India. This view has been taken by the Gujarat High Court in Jignesh Kishorbhai Bhajiawala v. State of Gujarat 2017 Crl.L.J.1760 para 19 at pg.1777 while dealing with similar actions of authorities under the Prevention of Money Laundering Act, 2002.**

*91. In view of the admitted fact that the search operations were continued well past midnight and summons were issued to 2nd petitioner to appear at 00:30 hrs on 12.12.2019, we do not accept the plea of the respondents that they did not act contrary to established procedure, that the search proceedings were carried out under proper and applicable law and procedure, and no harm or damage were made to any human/person or property and no sentiments were hurt.*

92. No doubt in *P.V.Ramana Reddy*[2019] 66 GSTR 33(Telangana) a Division Bench of this court held that enquiry by officers of the GST Commissionerate is not a criminal proceeding, but it is a judicial proceeding; and under Sub- Section (1) of Section 70 of the CGST Act, 2017, the proper officer under the CGST Act has the power to summon a person either to give evidence or to produce a document; that if such person who is issued a summons gives false evidence or fabricates false evidence or intentionally offers any insult or causes any interruption to any public servant, under Sections 193 and 228 of the IPC, he would be liable for punishment; that though the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, such power should be exercised by the High Court sparingly; that under Section 69 of the CGST Act there is power to order arrest in cases where the Commissioner has reasons to believe that a person has committed any offence specified in Clauses (a) to (d) of Sub-Section (1) of Section 132 of the said Act; that such power is confined to cognizable and non-bailable offences; under Sub-Section (3) of Section 69 bail can also be obtained by persons arrested in connection with non-cognizable and bailable offences; and Section 41 and section 41A of CrPC, 1973 would apply in the event the Commissioner intends to arrest any person; and that normally relief of protection against arrest ought not to be granted. It is also contended that the Commissioner exercising power under Section 69(1) is not a police officer.

93. The above decision in *P.V. Ramana Reddy* (supra) is binding on us. Following the principle laid down therein that the High Court can entertain an application for pre-arrest protection under Article 226 of the Constitution of India, but such power should be exercised by the High Court sparingly, we hold that having regard to the facts and circumstances set out above, this case falls under the exceptional category and this Writ Petition is undoubtedly maintainable.” (emphasis added)

17. In view of the discussion above, this Court does not find any justifiable reasons to condone keeping the detinue in the zonal office for over 30 hours. Curiously, a *prima facie* cognizable offence was yet to be made out against the detinue and in spite of that he was kept in the zonal office overnight and subjected to prolonged interrogation. It does not stand to reason that the detinue, a family man, would voluntarily subject himself to such treatment. Further, at this stage only data had been extracted from the laptop of the detinue for forensic analysis. In absence of a cognizable offence, it was rather

premature of the DGGI officials to entertain the idea of arrest, let alone justify it. Such an observation on part of the DGGI officials itself suggests that the detainee was not free agent while he was remained in the zonal office overnight. Learned counsel for respondents No.2 and 3 have vociferously argued that the presence of the detainee was not tainted by any element of coercion. However, this argument pales into insignificance in the background of the fact that the present writ petition had to be filed by the wife of the detainee to seek his release.

18. At time, erosion of fundamental rights is cloaked by procedural formalities and subtly, such circumstances are orchestrated where choice is essentially rendered illusory. When one is summoned to the office of a State run agency and kept under constant watch, an atmosphere suggesting stepping out is not an option is created. The very fact that the DGGI officials do possess the power to arrest is sufficient to induce a sense of fear and inhibition in the mind of the detainee, making the matter at hand a prime example of psychological coercion. The unspoken threat that leaving without permission would be met with immediate restraint and give rise to adverse consequences ensures that the detainee does not believe that exercising his fundamental rights is a real option. As such, even though the DGGI officials claim that the detainee remained present of his own accord, the illusion of voluntariness renders any consent invalid. The constitutional promise of liberty is not a hollow one; therefore, it is the duty of this Court to ensure that the rights of a citizen are rendered merely theoretical. At this juncture, it would be profitable to refer to the judgment rendered by a three Judge bench of the Hon'ble Supreme Court *in*

***Smt. Nandini Satpathy vs. P. L. Dani, (1978) SCC (Cri.) 236***, wherein speaking through Justice V.R. Krishna Iyer, the following was observed:

*“49. The policy of the law is that each individual, accused included, by virtue of his guaranteed dignity, has a right to a private enclave where he may lead a free life without overbearing investigatory invasion or even crypto-coercion. The protean forms gendarme duress assumes the environmental pressures of police presence, compounded by incommunicado confinement and psychic exhaustion, torture some interrogation and physical menaces and other ingenious, sophisticated procedures - the condition, mental, physical, cultural and social, of the accused, the length of the interrogation and the manner of its conduct and a variety of like circumstances, will go into the pathology of coerced para-confessional answers. The benefit of doubt, where reasonable doubt exists, must go in favour of the accused.”*

19. The terms ‘detention’ and ‘arrest’ are often used interchangeably. However, an arrest amounts to a formal withdrawal of liberty ordered by a competent lawful authority. It proves to be a useful tool to ensure that the person in question submits himself to the process of law. On the other hand, a prolonged restraint and detention for an indefinite time, restricting free movement and personal liberty, ought to be construed as an arrest in the absence of authorization under Section 69 of the CGST Act.

20. The DGGI officials have also taken a specific stand that the proceedings under Section 70 of the CGST Act are judicial proceedings and the DGGI officials must not be equated with police officials, thereby arguing that summoning prospective accused persons and keeping them beyond the office hours, with their consent, is perfectly valid. It is further argued that such voluntary statements are admissible and the provisions of the Code of Criminal Procedure, 1973 (Cr.P.C.) would not be applicable. Be that as it may, the DGGI officials have failed to indicate any reasons necessitating the continuation of interrogation into the night. Therefore, reason dictates that since the detainee

was held in informal custody for an indefinite period, he is entitled to the protections available under Articles 21 and 22 of the Constitution of India, as held in *Agarwal Foundaries (supra)*. Further, the detinue is also entitled to be released in view of the directions issued in *Mahesh Devchand Gala (supra)* that led to issuance of Circular dated 27.03.2025.

- **THE COMPLIANCE OF SECTION 69 OF THE CGST ACT**

21. The judicial landscape concerning the power of arrest under the CGST Act as well as evaluation of reasons for the same is well settled. Recently, in *Radhika Agarwal vs. Union of India and another, 2025 SCC Online SC 449* and *Arvind Kejriwal vs. Directorate of Enforcement, (2025) 2 SCC 248*, the Hon'ble Supreme Court dealt with multiple issues concerning the power to arrest under the CGST Act, the PMLA and the Customs Act, 1962. By means of these judgments, the Hon'ble Supreme Court has underscored the importance of robust safeguards for exercising the power to arrest. Referring to the principles available under the constitutional anchorage, the Hon'ble Supreme Court also highlighted the need for officers to show substantive reasons to believe that an offence has been committed by the prospective accused.

22. The Courts are required to strike a balance between the reasonable needs of law enforcement agencies and protection of citizens from abuse of power. Further, in this regard, judicial review is available to the extent of examining whether the satisfaction regarding 'reasons to believe' is based upon material which establishes the guilt of the arrestee and, if adequate and due care is taken to ensure that the arrest is not made arbitrarily, on the whims

and fancies of the authorities. These parameters were laid down to protect right to life and liberty of the citizens and pave way for judicial scrutiny in this regard. Additionally, it is mandatory for the grounds of arrest along with 'reasons to believe' to be provided to the arrestee. A three Judge Bench of the Hon'ble Supreme Court in ***Radhika Agarwal (supra)***, speaking through Chief Justice Sanjiv Khanna made the following observations:

*"55. Sub-section (4) to Section 132, an important provision for our consideration, states that notwithstanding anything in the Code, all offences under the GST Act, except the offences referred to in sub-section (5), are non-cognizable and bailable. Thus, non-cognizable offences have been made bailable. Sub-section (4) to Section 132 has to be read in light of the dictum of Om Prakash (supra) which decision the legislature was fully aware and conscious of when they enacted the GST Acts. This is also clear from sub-section (5) to Section 132 which states that the offences specified under clauses (a) to (d) of sub-section (1) to Section 132 and punishable under clause (i) of that sub section are cognizable and non-bailable. Thus, only when the offence falls under the limited categories specified in clauses (a) to (d) of sub-section (1) to Section 132, and, when the amount of tax evaded, amount of input tax credit wrongly availed or utilised, or the amount of refund wrongly taken exceeds Rs. 500 lakhs, that the offence is non-bailable and cognizable. At this stage, we must note the submission made on behalf of the Revenue that in cases of bailable and noncognizable offences, the central/state officers do not make arrests. Arrests are made only when the offence is non-bailable and cognizable, satisfying the conditions of sub-section (5) to Section 132, as specified in clauses (a) to (d) of sub-section (1) to Section 132 of the GST Acts.*

*56. 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 pre-conditions 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.*

57. *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 GST Act are met.*

58. *Our attention was drawn to the judgment of the High Court of Delhi in Makemytrip (India) Private Limited and Another v. Union of India and Others, 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 subsection (5) to Section 132 of the GST Acts are not satisfied.*

59. *However, relying upon the judgment in the case of Makemytrip (supra), 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 GST 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 GST Acts 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 GST Acts 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.*

60. *The findings and the ratio recorded in paragraphs 30 to 47 above with reference to the Customs Act would equally apply insofar as maintenance of records as well as obligations of the arresting officer and rights of the accused/person arrested are concerned. Compliance in this regard must be made.*

61. *The Central Board of Indirect Taxes and Customs (GST-Investigation Wing), has accepted the said position vide circular dated 17.08.2022, the relevant portion of which reads as under:*

*"F.No. GST/INV/Instructions/2021-22*

*GST-Investigation Unit*

*17th August 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 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:*

*"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 the existence of the power to arrest and the justification for exercise of it. 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."*

xxxxxx

### **3. Conditions precedent to arrest:**

*3.1 Sub-section (1) of Section 132 of 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 subsection (1), or subsection (2) of the Section 132 of 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 utilization 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 fulfillment 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 co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc.*

xxxxxx"

62. *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 GST Act. The provisions of the Code, read with Section 69(3) of the GST Acts, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in D.K. Basu (supra). 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. 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 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 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 acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo. Instruction 02/2022-23 GST (Investigation) dated 17.08.2022 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 acknowledgement. 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 GST Acts 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 paragraph 6.1 of the Instruction. 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. ”*

23. Para 60 of **Radhika Agarwal(supra)** has made compliance of the observation regarding the obligations of the arresting officer and the rights of the arrestee, as recorded in Para 30 to 47, mandatory in nature. The relevant observations made in Para 30 to 36 are as under:

*“30. **Arvind Kejriwal v. Directorate of Enforcement, (2025) 2 SCC 248** a recent judgment authored by one of us (SanjivKhanna, J.), is a dictum relating to the Prevention of Money Laundering Act, 2002.<sup>40</sup> This Court held that the power of arrest granted to the Directorate of Enforcement ("DoE") under Section 19 of the PML Act is fenced with certain pre-conditions. These pre-conditions act as stringent safeguards to protect the life and liberty of individuals. The relevant portion reads:*

*"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 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 –*

*The officer must have material in his possession.*

*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.*

*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."*

31. *In Arvind Kejriwal (supra), a combined reading of Pankaj Bansal v. Union of India and Others, 2023 SCC Online SC 1244 Prabir Purkayastha v. State of NCT of Delhi, (2024) 7 SCC 576 and Vijay Madanlal Choudhary and Others v. Union of India and Others, 2022 SCC Online SC 929 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.*

32. *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 (supra). 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:*

*"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 authorized 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 nondisclosure 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."

33. Arvind Kejriwal (*supra*) 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.

34. On the nature of "material" examined by the DoE, Arvind Kejriwal (*supra*) 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:

"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."*

35. *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 (supra) records how such errors can vitiate the judgment or decision of the statutory authority. The relevant portion reads:*

*"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.*

*68. In Centre for PIL v. Union of India, 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 Uttamrao Shivdas Jankhar v. Ranjitsinh Vijaysinh Mohite Patil, 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."*

36. *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:*

*"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 scrutinize 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."*

24. In view of the above, it is clear that the Hon'ble Supreme Court has explicitly laid down that the Commissioner must:

1. Record his opinion on the file;
2. Consider the nature of offence;
3. The role of the person involved;
4. The evidence available on record;
5. Satisfaction that person involved is guilty of the offence;

In terms of Para 34 & 35 of ***Radhika Agarwal (supra)***, it is apparent that the designated officer is required to arrive at a conclusion of guilt based upon the 'material' examined. Applying the above dicta of the Hon'ble Supreme Court to the present factual matrix, it transpires that, admittedly, the designated officer (Additional Director General, Directorate of Goods and

Service Tax Intelligence, Chandigarh Zonal Unit) has passed a formal order on the basis of the arrest proposal made by the Intelligence Officer through E-office portal. However, neither has the designated officer made any recording on the file nor satisfaction after examining the relevant material has been expressed. As such, it appears that the opinion has been rendered without following the drill laid down by the Hon’ble Supreme Court in this regard which further renders the authorization to arrest granted by the designated officer under Section 69 of the CGST Act devoid of objective standards of reasons and justice. Furthermore, authorization has been granted through digitally, without even seeing if the relevant material calls for an arrest. This alone would be sufficient to hold that there is total non-compliance of the procedure prescribed under Section 69 of the CGST Act. Pertinently, the affidavit of the Intelligence Officer, reveals that the designated officer has considered the proposal and granted authorization at 06:48 PM in the following manner:

| <i><b>Date and Time</b></i>    | <i><b>Action initiated</b></i>                                                                                                                                                                                                                                                            |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>05.06.2025<br/>05:46 PM</i> | <i>The Intelligence Officer prepared detailed note regarding the statement and evidences against Sh. Bharat Lal explaining the contravention of the provisions of GST Law and proposal to arrest Sh. Bharat Lal was forwarded to the Senior Intelligence Officer in the e-office file</i> |
| <i>05.06.2025<br/>06:06 PM</i> | <i>Senior Intelligence Officer perused the proposal made by the Intelligence Officer and after recording his opinion, submitted the e-office file to the Deputy Director.</i>                                                                                                             |
| <i>05.06.2025<br/>06:09 PM</i> | <i>The Deputy Director perused the proposal made by the Senior Intelligence Officer &amp; Intelligence Officer and after recording his noting, submitted the e office file to the Additional Director on E-Office Portal.</i>                                                             |
| <i>05.06.2025<br/>06:16 PM</i> | <i>The Additional Director perused the proposals made by the her staff and after recording her noting, submitted the e office</i>                                                                                                                                                         |

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <i>file to the Additional Director General on E-Office Portal.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <i>05.06.2025<br/>06:48 PM</i> | <i>The Additional Director General perused the proposals made by his staff and recorded in his note that he has sufficient reasons to believe that Sh. Bharat Lal has committed an offence specified under Section 132(1) (b) and 132(1)(c) read with the Section 132(5) of Central Goods &amp; Services Tax Act, 2017, read with corresponding provisions of UTGST/SGST Act, 2017, Section 20 of IGST Act, 2017, which is punishable under Section 132(1) (i), and accordingly, authorized Sh. Rahul Vats, Intelligence Officer to arrest Sh. Bharat Lal under the provisions of Section 69 ibid, through <b>Authorization dated 05-06-2025</b> which was physically and digitally signed by him at 06:48 PM on 05-06-2025.</i> |

25. This Court has no hesitation to observe that the designated officer merely gave authorization on the ipse dixit of the Intelligence Officer who forwarded the proposal to arrest through E-office portal. The approach adopted is mechanical in nature and does not reflect application of mind. Moreover, as noted above, the record was not produced in Court and, the affidavits of the Intelligence Officer and Additional Director General, do not contain any information regarding the issuance of the communication and authorization under Section 69 of the CGST Act along with the DIN (Document Identification Number). The Central Board Of Indirect Taxes & Customs issued a Circular No.128/47/2019-GST dated 05.11.2019, mandating all GST related communications including orders, notices, summons, authorizations, communications, etc. to carry DIN (Document Identification Number). Further, it has also been clarified by the Board that the unavailability of electronically generated DIN on any of the specified communications, not covered by the exceptions mentioned in Para 3 of Circular No. 122/41/2019-GST dated

05.11.2019, shall be treated as invalid and be deemed to have never been issued. The failure to follow the drill mandated by law while granting authorization to arrest certainly vitiates the arrest as it suffers from an incurable illegality.

- **THE RELEVANT TIME WHEN THE GROUNDS OF ARREST IS TO COMMUNICATED TO THE ARRESTEE**

26. Admittedly, the detinue in question was put under restraint at 05:46 PM, when the process for his arrest was initiated. There is no dispute with regard to arrival of the detinue in the zonal office at 12:15 PM on 04.06.2025. As concluded earlier, the detinue was kept overnight in the office when, at that point in time, he was not even accused of a cognizable offence. However, his interrogation continued till 02:30 PM on 05.06.2025 as recorded in the DDR No.75 dated 05.06.2025 with Police Station Central Sector 17 (Annexure R-1).

27. Firstly, the arrest of the detinue would be assumed to have commenced during his overnight detention at the zonal office, in terms of the judgment of a Division Bench of Telangana High Court in ***Agarwal Foundries (supra)***, as he was deprived of his right to freedom of movement beyond the boundaries of the zonal office. Secondly, the DGGI officials ought to have communicated the grounds of his arrest to the detinue when they put him under restraint at 05:46 PM on 05.06.2025, after over 29 hours from his arrival in the zonal office. As such, the detinue was illegally detained for over 24 hours, in violation of his fundamental rights. This Court finds support from the persuasive observation of the Bombay High Court in ***Ashak Hussain Allah Detha alias Siddique and another vs. Assistant Collector of Customs (P.)***,

***Bombay and another, 1990 SCC Online Bom. 3***, wherein the following was held:

**“IV. "ARREST" - MEANING AND COMMENCEMENT OF:**

7. Admittedly, the Applicants were detained without any authority from the midnight of 20th July, 1989 to 5.20 p.m. of 21st July, 1989 - for 17 hours. Their arrest has been so recorded that their production before the Magistrate falls within 24 hours stipulated by Article 22(2) of the Constitution of India and Section 57 of the Code of Criminal Procedure. The Prosecution urges that after the "arrest" they were not detained beyond 24 hours. This submission is a distortion of the true meaning of the constitutional guarantee against detention without the sanction of judicial Tribunal. The word "arrest" has not been defined in the Code of Criminal Procedure or in any other law. The true meaning needs to be understood. The word "arrest" is a term of art. It starts with the arrester taking a person into his custody by action on or words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate's judicial act<sup>1</sup>. In substance "arrest" is the restraint on a man's personal liberty by the power or colour of lawful authority [The Law Lexicon - P. Ramanatha Aiyar Reprint Edition 1987, page 85]. In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty [The Law Lexicon - T.P. Mukherjee, (1989) page 177-178.].

**1. Christie v. Leachinsky, (1947)1 All England Reporter 567; Holgate Mohammed v. Duke, (1984)1 All England Reporter 1054.** Both quoted in WORDS AND PHRASES LEGALLY DEFINED Vol. 1, Third Edition - page 113.

It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences [The Law Lexicon - P. Ramanatha Aiyar Reprint Edition 1987, page 85]. Whether a son is arrested or not does not depend on the legality of the Act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is arrested depends on whether he has been deprived of his personal liberty to go where he pleases [The Law Lexicon - T.P. Mukherjee (1989), Page 177-178]. It stands to reason, therefore, that what label the investigating officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.

The argument that the applicants were not arrested at the mid-night of 19th July, 1989 but were detained for interrogation is

*untenable. Since the offences under the Narcotic Drugs And Psychotropic Substances Act are cognisable [Section 37(1) of the Narcotic Drugs and Psychotropic Substances Act.], the Investigating Officers possess the authority to arrest without warrant. They arrest a suspect or do not arrest at all. The "detention in custody for interrogation known to law. Interrogation is known. A person may be lawfully interrogated. But during such interrogation he is a free man. If he is detained, not allowed to leave the office of the Respondent No. 1 and compelled the eat and sleep there, he is under detention. This restraint is in reality an arrest.*

*In this case, the applicants were not allowed to leave the Office of the Respondent No. 1 after the mid-night of 19th July, 1989. In the circumstances of this case, the applicants were arrested at the mid-night of 19th July, 1989.*

8. *The Investigating Officers may lawfully detain a suspect for an offence. But detention in custody for interrogation is not authorised by law. The Investigating Officers may detain for an offence only. In an English Case where the Customs Officers detained a person "for helping with their inquiries", it was held that there was no authority in the Customs Officers to detain a person except for an offence. The principle that emerges is this : Any restraint on a person's liberty except for an offence is illegal. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.*

**2. R. v. Lemsatef - (1977)2 A11 ER 835**

*"If the idea is getting around amongst either customs and excise officers or police officers that they can arrest or detain people, as the case may be, for this particular purpose, the sooner they disabuse themselves of that idea the better".*

*On this principle it follows that the detention of the Applicants on the mid-night of 19th July, 1989 was illegal if it was not far having committed an offence under the Narcotic Drugs and Psychotropic Substances Act. If it was for having committed an offence, the detention was "arrest" and it commenced at the mid-night of 19th July, 1989."*

28. The Hon'ble Supreme Court in **Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 245**, reiterated the law laid down in **Pankaj Bansal vs. Union of India (2024) 7 SCC 576** and held that the grounds of arrest must include all the facts to enable the arrestee to oppose custodial remand. Furnishing the grounds of arrest to the arrestee is sacrosanct to the process of law and must be conveyed in writing, expeditiously as he possesses

the right to be informed of the reasons for curtailment of his liberty. Failure to do the same would vitiate the processes of arrest and remand.

29. In view of the discussion above, it is apparent that while DGGI officials put the detainee under restraint at 05:46 PM on 05.06.2025, they did not show any urgency in supplying the grounds of arrest to him. As such, the subsequent process of arrest and remand stand vitiated. Moreover, the DGGI officials also failed to supply the detainee with the ‘reasons to believe’ that he has committed an offence under the CGST Act, necessitating his arrest. Such conduct is in clear violation of the ratio laid down by the Hon’ble Supreme Court in ***Radhika Agarwal (supra)*** and ***Arvind Kejriwal (supra)***, and would therefore render the arrest of the detainee illegal and *non est* in the eyes of law.

30. Lastly, there is nothing available on the record that would prompt this Court to disbelieve the report of the Warrant Officer.

31. In conclusion, the statement of any person summoned by the DGGI must be recorded during office hours in view of the judgment rendered by a Division Bench of the Bombay High Court in ***Mahesh Devchand Gala(supra)***. Further, the person so summoned is well within his rights to record his statement in the presence of his counsel. The counsel may be present in the field of vision of the summoned person but not his hearing range, in terms of the judgment of a Division Bench of the Telangana High Court in ***Agarwal Foundries(supra)***. Additionally, any person summoned to the DGGI may request his statement to be recorded under CCTV surveillance, in view of the judgment of the Hon’ble Supreme Court in ***Paramvir Singh Saini(supra)***.

32. Nothing observed hereinabove shall be construed as expression of opinion on the merits of the case lest it may prejudice the subsequent

proceedings. This Court has undertaken the limited task of assessing the legality of the arrest of the detainee, in terms of the CGST Act as well as the law laid down by the Hon'ble Supreme Court. Moreover, it is for the trial Court to determine whether the statement made by the detainee was voluntary or not.

33. List on 30.07.2025 for further consideration of the issue revolving obstruction caused to the Warrant Officer appointed by this Court as well as for release of the detainee in question.

34. The Additional Director General of Goods and Service Tax Intelligence, Chandigarh Zonal Unit, is directed to file an affidavit showing complete compliance of the directions issued by the Hon'ble Supreme Court in ***Paramvir Singh Saini (supra)***, on or before the next date of hearing and also to deliberate therein why the directions issued by this Court on 02.07.2025, regarding production of record have not complied with.

35. A photocopy of this order be placed on the file of the connected matter.

**18.07.2025**  
*yakub*

**(HARPREET SINGH BRAR)**  
**JUDGE**