GAHC010277642025

2025:GAU-AS:17771

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./3951/2025

SAMEER MALIK
S/O SRI BABU MALIK
R/O GALI NO. 271/3 NEW ISLAM NAGAR
LISARI GATE
MEERUT
UTTAR PRADESH-250002.
PERMANENT RESIDENT AT NEAR JAMA MASJID
SIJUBARI
HATIGAON
P.S. HATIGAON
GUWAHATI
DIST. KAMRUP (M)
ASSAM -788025

VERSUS

THE UNION OF INDIA
REPRESENTED BY SC
C.G.S.T.

Advocate for : MS. S K NARGIS
Advocate for : SC
GST appearing for THE UNION OF INDIA

BEFORE

HON'BLE MR. JUSTICE PRANJAL DAS

O R D E R

19.12.2025

Heard Ms. S.K. Nargis, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel for the CGST.

2. This is a subsequent bail application, as an earlier bail petition was rejected on 05.12.2025 passed in Bail Appln. 3839/2025.

3. This application under Section 483 of BNSS, 2023 has been filed by the accused petitioner, namely, Sameer Malik praying for grant of bail in connection with Anti Evasion Unit, CGST, Guwahati Case No.93/GST/2025-26 under Section 132(5) read with Section 69 of CGST Act. The accused petitioner, Sameer Malik, was arrested on 14.11.2025.

3. The prosecution case is that one Satish Prajapat, Inspector Central, GST, Guwahati, lodged a complaint dated 14.11.2025 before the learned CJM, Kamrup (M), Guwahati, stating inter-alia that in a major detection of GST fraud involving Sameer Malik, Bahadur Islam and others, the present petitioner is indulging in obtaining GST registration of non-existing firms and acting as key persons for issuance of fake invoices to pass on fake Input Tax Credit (ITC) without any corresponding supply of goods and services and that the same was being done for monetary remuneration through non-existent GST registration.

4. It is alleged that as per the analysis done by the department, the fraudulent transactions of the aforesaid nature were said to be more than

Rs.8,00,000,00/-(Eight Crores) for the period from June, 2025 to October, 2025.

5. The prosecution case is that the alleged offences for which the petitioner and the other co-accused have been prosecuted, fall within the ambit of Section 132 sub-(1) and in terms of Section 132 (5), these offences are cognizable and non-bailable. It is also contended by the Investigating Agency that after taking due permission from the authority of the Commissioner of the Department as required under Section 69 of the Act, the accused petitioners have been arrested.

6. The learned counsel for the petitioner submits that in this subsequent petition he is not so much on the merits of the matter but that his main contention is non-compliance with the statutory notices under Section 35(3) BNSS, (corresponding to Section 41/41A Cr.P.C.). Drawing attention to the summons issued to the petitioner under Section 70 of the CGST Act, it is contended that the said summons is governed by the provisions of the Civil Procedure Code, 1908, but in the said summons, the provisions of Section 35 (3) BNSS has also been written - and that the same cannot be combined together.

7. It is also pointed out by the learned counsel for the petitioner that subsequently a purported notice under Section 35(3) BNSS was given, which is dated 14.11.2025 with date of appearance mentioned as 13.11.2025 - which is obviously contradictory. Drawing attention to the arrest memo dated 14.11.2025, the learned counsel for the petitioner submits that the time of arrest on 14.11.2025 is mentioned as 12.10 P.M. but in the notice dated 14.11.2025, the required time of appearance before the Revenue Authority is mentioned as 4.15 p.m. Therefore, it is submitted that the notice for appearance indicated a time, which is after the petitioner has already been

arrested and hence, such a faulty/mechanical compliance with the statutory notice cannot be considered as compliance at all.

8. The prosecution representing the CGST, represented by the Standing Counsel Mr. S.C. Keyal, produces the case diary before the Court and draws attention to the petition filed by the Investigating Officer, wherein, the Investigating Officer has fairly conceded that the date on the notice requiring appearance on 13th is a typographical error. However, no explanation is forthcoming regarding the time of arrest being prior to the time of appearance indicated in the notice under Section 35(3) of BNSS.

9. Before proceeding further, the provisions of **Section 70 of CGST Act** may be reproduced herein below:-

Power to summon persons to give evidence and produce documents.-

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

10. Further, in the leading case of ***Radhika Agarwal Vs. Union of India and Ors.*** reported in ***(2025) 6SCC 545***, the Hon'ble Supreme Court has settled the legal position that for arrests under the GST law also, the provisions of Cr.P.C would be applicable and therefore, compliance with the procedural requirements at the time of arrest is necessary for arrest by such Revenue Authorities also.

11. In the leading case of ***Arnesh Kumar v. State of Bihar***, reported in ***(2014) 8 SCC 273***, the Hon'ble Supreme Court has emphasised that wherever the provisions of Section 41/41A corresponding to Section 35 of BNSS are applicable - the Investigating Officer arresting the person has to adduce the grounds for which notice is not issued for appearance. In other words the grounds of arrest,

further, wherever notice for appearance is given and the I/O after such appearance decides to arrest the person, in that case also, the proper reasons thereof have to be given.

12. The further requirement is that these aspects have to be perused by the Court and the remand Magistrates at the time of production of the accused and before granting further remands. It has been held that violation of these conditions could make the arrest infirm, making the petitioner liable to get bail.

13. I have given my anxious consideration to the new grounds adduced by the petitioner side and perused the relevant materials pointed out by both the sides. I have considered the rival submissions and perused the relevant case laws.

14. Upon perusing the case diary and the relevant materials of the record, I find that the notice under 35(3) B.N.S.S. given to the accused Sameer Malik, indicated his required appearance at 4.15 P.M on 13.11.2025, which is obviously a typing or writing error and the same has also been admitted by the Investigating Officer in his petition filed before the court. So, even, if the date of appearance is taken as 14.11.2025, the time indicated is 4.15 P.M. However, the arrest memo pertaining to Sameer Malik indicates his arrest on 14.11.2025 at 12.10 P.M.

15. Thus, as rightly contended by the learned Senior Counsel, by the time the petitioner was directed to appear in compliance with under 35(3) B.N.S.S., he had already been arrested on the same day at 11.45 A.M. In such a situation, there is no option but to hold that there has been no effective compliance with the notice under 35(3) B.N.S.S., thereby, making the arrest infirm/defective in terms of the settled law, already indicated above.

16. Consequently, on these technical grounds, the subsequent bail petition

has to be accepted and the petitioner Sameer Malik has to be granted bail.

17. Accordingly, he is allowed to go on bail of **Rs.1,00,000/-** with one surety of the like amount to the satisfaction of the concerned learned Court and subject to the following conditions:-

(i) The accused/petitioner shall not abscond.

(ii)The accused petitioner shall render full cooperation to the remaining investigation and appear before the I/O, whenever required for examination.

(iii) he shall not hamper or tamper with evidence.

(iv) He shall not try to influence witnesses.

18. In case of violation of bail conditions, the bail would be liable to be cancelled.

19. Before parting, I am inclined to make the following observations as held in **Radhika Agarwal (**Supra), even with regard to arrest by revenue authorities under GST, the procedural compliance under Sections 35/47/48 B.N.S.S. are essential, failing which, the arrest may become bad in law. Although, the Revenue Officials conducting such investigation under revenue laws are not trained police officers, nevertheless, during such investigation, they are having to comply with such procedural requirements stipulated by criminal procedure and the governing case laws.

20. Therefore, in the larger interest of society, the Revenue Officials should also be continually trained in these procedural matters under criminal law, so that, whenever arrests are genuinely required for the purpose of investigation, they are not defeated on technical grounds.

21. The instant bail petition stands **allowed** and **disposed of** on the aforesaid terms.

22. Send back the case diary.

JUDGE

Comparing Assistant