

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION No.15066/2025

BETWEEN :

SRI AKRAM PASHA
AGED 53 YEARS
S/O LATE ABDUL RASHID
No.17/A, BANNIMANTAP
A INDUSTRIAL LAYOUT, MANDI MOHALLA
VTC MYSORE – 570 015.

... PETITIONER

(BY SRI HASHMATH PASHA, SENIOR COUNSEL FOR
SRI KARIAPPA N A, ADVOCATE)

AND :

SENIOR INTELLIGENCE OFFICER
DGGI, BENGALURU ZONAL UNIT
K H ROAD, BENGALURU – 560 027.
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU – 560 001.

... RESPONDENT

(BY SRI MADHU N RAO, SENIOR STANDING COUNSEL)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE BNSS, 2023 PARYING TO RELEASE HIM ON ANTICIPATORY BAIL AND BE PLEASED TO DIRECT TO THE INVESTIGATING OFFICER TO RELEASE THE PETITIONER ON BAIL IN CASE OF HIS ARREST BY THE RESPONDENT GST OFFICER IN PURSUANCE OF HIS SUMMONS DATED 10.10.2025 AS PER SUMMONS UNDER SECTION 70 OF THE CGST ACT, BEARING CBIC-DIN-202510DSS00000555A56 (ANNEXURE-A) IN THE ABOVE CASE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.12.2025, THIS DAY, **SHIVASHANKAR AMARANNAVAR J**, DELIVERED THE FOLLOWING;

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CAV ORDER

This petition is filed by the petitioner/accused under Section 482 of BNSS praying to grant anticipatory bail in case of his arrest, pursuant to summons dated 10.10.2025 issued under Section 70 of the Central Goods and Services Act, 2017 (for short 'CGST Act') bearing CBIC-DIN-202510DSS00000555A56.

2. Heard the learned Senior Counsel for the petitioner and learned counsel for respondent.

3. Learned Senior counsel for the petitioner would contend that the offence alleged is under Section 132(1)(b)(c) of CGST Act and the maximum sentence that can be imposed for the offence alleged is imprisonment for five years and fine. Accused No.1 came to be arrested and charge sheet has been filed against him and as per the table in the charge sheet tax due is Rs.21,64,35,395/-. Petitioner is the Proprietor of A.R.Steel and he is stated to be due of Rs.24,89,630/-. Sri Nasir Ahmed who is alleged of tax due of Rs.18,57,88,319/- has been granted anticipatory bail. The petitioner alleged to have escaped at search on 10.09.2025 and he has been issued with summons under Section 69 dated 10.10.2025. Petitioner has been issued with summons under Section 70 of the CGST Act to appear before the Senior Intelligence Officer, DGGI, Bengaluru on 21.10.2025 and therefore, he apprehends his arrest. In the year 2024, the State Officers have adjudicated the matter and order of adjudication

dated 30.08.2024 indicate that tax due is Rs.27,10,123/- and it has been paid by the petitioner. The order of adjudication dated 25.02.2025 indicate that the son of petitioner is tax due of Rs.11,90,301/- . GST return filed by the petitioner has been adjudicated and it has been finalized. The petitioner has been granted anticipatory bail in Crime No.162/2025. The petitioner participated in State adjudication. If the amount adjudicated is not paid after demand, then it amounts to offence. The offence is compoundable under Section 138 of the GST Act. The object of GST is not to arrest, but to collect tax. There is no bar under the Act for grant of anticipatory bail. Every document is uploaded online and it is available there. The GST authorities initiated investigation and it was pending with the State authorities. Under Section 6(2)(b) of the GST there is a bar for authorities to investigate when investigation is pending. The State GST Authority has handed over the documents to Central authorities. The files

handed over by the State authorities to the Central authorities pertaining to A.R.Steel are four bundles which includes purchase sale files. Petitioner has paid the tax assessed by the State authorities. Accused No.1 has been granted anticipatory bail when the case was with the State authorities. Learned Senior Counsel relying on several decisions contended that the offence alleged against the petitioner is non-bailable offence and the punishment provided is imprisonment for five years and therefore, it is not a heinous offence and the petitioner is entitled for grant of anticipatory bail. On these grounds, he prayed to allow the petition.

4. *Per contra*, learned counsel for the respondent would contend that the offence alleged against the petitioner is cognizable and non-bailable offence and punishment provided is imprisonment for five years and fine. The search has been conducted at 13 locations. The petitioner and his son have created fake invoice. Rs.50 to

60 Crores of GST is due by the petitioner. At the time of raid the persons of petitioner's side have manhandled the officers and FIR have been registered in Crime No.161/2025 and 162/2025. There is forgery of document by the petitioner. The petitioner has not paid the GST for transactions worth Rs.100 Crores. The statement of person under Section 70 is admissible in evidence. The statement of Nasir Ahmed has been recorded under Section 70. The summons has been issued to the petitioner for six times. Inspite of that the petitioner has not appeared before the authorities for interrogation. The petitioner is required for custodial interrogation. The offence alleged against the petitioner is economic offence. On these grounds, he prayed for rejection of the petition.

5. Having heard the learned counsels, the Court has perused the materials placed on record.

6. The case of the respondent is that based on the intelligence inputs, the investigation conducted has unearthed a syndicate of individuals, and entitled who have indulged themselves into creation of bogus entities; availing of inadmissible and fraudulent Input Tax Credit without actual underlying supply of goods and/or services; issuance of invoices without underlying supply of goods and/or services.

7. The instant issue is related to fraudulent availment and passing of fake input tax credit, without actual supply of goods/services. The petitioner, Sri Akram Pasha, Proprietor of M/s.A.R.Steel, (GSTIN-29AHBPA2384H1ZJ) having principal place of business at 105, Lashkar Mohalla Gandhinagar, Udayagiri MP Main Road, Mysore is engaged in availment of irregular and fraudulent input tax credit to the tune of Rs.31.33 Crores on the strength of fake invoices without receipt of any goods/services, either from the non-existing entities or from the entities which are involved in

the chain of fake invoicing. A coordinated search on 10.09.2025 at 13 locations were conducted under Section 67(2) of CGST Act, 2017. As per search authorization issued by the competent authority, a search proceeding was conducted at both of the residential premises of the petitioner located at Mysore.

8. As per investigation carried out based on records available, it is evident that Shri Akram Pasha, Proprietor of M/s.A.R.Steel Traders, located at 105, Lashkar Mohalla, Gandhinagar, Udayagiri Mp Main Road, Mysore – 570019 has not carried out business activity from the declared business premises for a long time as evident from the mahazar drawn at the business premises.

9. Further, on analysis of the inward supply details, it is evident that he is engaged in availing ineligible and fraudulent Input Tax Credit on the strength of bogus invoices without any underlying supply of goods/or services

from the entities which have been cancelled suo-moto by the department and the entities who are actively involved in the fake ITC supply chain. The petitioner has availed fraudulent Input Tax Credit of Rs.11,10,17,359/- from such 36 suppliers who have been cancelled/suspended by the department for various reason viz. wrongful availment of ITC, non-existent entity etc. Further, during investigation, it is also found that the majority of Input Tax Credit to the extent of Rs.20,52,39,822/- has been availed from M/s.N.M.G. Traders (GSTIN-29EMPIA3360K1ZW), having no active business whatsoever, which is found to be registered for namesake with sole intention of availing and passing on fake Input Tax Credit. Therefore, it is seen that the petitioner has availed total ineligible ITC of Rs.31,62,57,131/- from 36 suo-moto cancelled entities and M/s.N.M.G.Traders, a namesake entity.

10. Even though the petitioner has been issued with summons under Section 70 CGST Act dated 18.09.2025,

24.09.2025, 29.09.2025, 10.10.2025, 31.10.2025, 03.11.2025, he has failed to appear before the respondent.

11. The petitioner apprehending his arrest has filed Crl.Misc.No.8081/2025 under Section 482 of BNSS seeking anticipatory bail and the same came to be rejected by order dated 23.10.2025 by LXVII Additional City Civil and Sessions Judge, Bengaluru City. Therefore, the petitioner has approached this Court seeking anticipatory bail.

12. Before advertiring to the arguments and case laws cited, it is essential to analyse the scheme of the CGST Act. The Act was introduced to harmonise the indirect tax regime in the country. In furtherance to this, several powers have been conferred on the authorities under the Act. One such power is the power of inspection, seizure and arrest under Chapter XIV of the Act. Under section 69 of the Act, when the person has reasons to believe that the person has committed any offence under section 132, the

Commissioner may by order authorize any officers of the Central tax to arrest such person.

13. Section 132 of the CGST Act is reproduced hereunder:

"132. Punishment for certain offences.—(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely :—

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input-tax credit or refund of tax;
- (c) avails input-tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input-tax credit without any invoice or bill;
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three

months from the date on which such payment becomes due;

(e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made there under or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information ; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable,—

(i) in cases where the amount of tax evaded or the amount of input-tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine ;

(ii) in cases where the amount of tax evaded or the amount of input-tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine ;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input-tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine ;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.—For the purposes of this section, the term 'tax' shall include the amount of tax evaded or the amount of input-tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services tax Act, the Integrated Goods and Services tax Act or the Union Territory Goods and Services tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act."

14. Chapter XIX deals with offences and penalties.

Section 132 provides for punishment for committing certain offences. As per sub-section (1), whoever commits any of

the twelve offences mentioned therein shall be punished in the manner provided in clauses (i) to (iv) of sub-section (1). In this case, we are concerned with offences under clauses (b) and (c) of sub- section (1). As per clause (c), the offence is availing input-tax credit using invoice or bill without the supply of goods or services or both in violation of the CGST Act ; and as per clause (b), a person who issues any invoice or bill without supply of goods or services or both in violation of the provisions of the CGST Act or the rules made thereunder leading to wrongful availment or utilization of input-tax credit or refund of tax. If a person commits the above two offences as per clauses (c) and (b), he shall be punishable under clause (i) if the amount of tax evaded or the amount of input-tax credit wrongly availed of or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees with imprisonment for a term which may extend to five years and with fine. All other penalties are below five years. Therefore, the maximum

penalty that can be imposed for committing offences under clauses (c) and (b) of sub-section (1) of section 132 is imprisonment for a term which may extend to five years and with fine. As per sub-section (5), the offences specified in clause (a) or (b) or (c) or (d) of sub-section (1) and punishable under clause (i) of that section are cognizable and non-bailable.

15. Section 132 of the Central Goods and Services tax Act, 2017 ("the CGST Act") lists a total of twelve offences that are punishable by imprisonment and/or a fine. The term of imprisonment and the amount of fine, is dependent on the amount involved in the offence, or in some cases, the act committed by the offender. The provision further categorises certain offences as cognizable and non-bailable, if the amount involved exceeds

16. Rupees five hundred lakhs. These offences relate to persons who supply goods or services without issuing

invoices, or issue invoices without supplying goods or services and thus wrongfully availing input-tax credit ; or to persons who collect tax but fail to pay it to the Government beyond a period of three months from date on which payment becomes due. All other offences listed under the Act have been categorised as non-cognizable and bailable.

17. Section 138 of the CGST Act further dilutes the heinousness of offences under the Act. The said section makes every offence under the Act compoundable except for certain circumstances which have been specified under different clauses to the proviso of section 138. The relevant section has been reproduced hereunder :

"138. Compounding of offences.—(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed :

Provided that nothing contained in this section shall apply to,—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section ;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services tax Act or the Union Territory Goods and Services tax Act or the Integrated Goods and Services tax Act in respect of supplies of value exceeding one crore rupees ;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force ;
- (d) a person who has been convicted for an offence under this Act by a court ;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132 ; and

(f) any other class of persons or offences as may be prescribed :

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law :

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated."

18. Sections 69 and 70 of the CGST Act are reproduced hereunder :

"69. Power to Arrest.—(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of Central tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 174),—

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the magistrate ;

(b) in the case of a non-cognizable and bailable offence, the Deput Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in- charge of a police station.

70. 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."

19. Chapter XIV of the CGST Act deals with inspection, search, seizure and arrest. It consists of sections 67 to 72. Section 70 deals with power to summon persons to give evidence and produce documents. As per sub-section (1), the proper officer under the CGST Act has the 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 enquiry in the same manner as

provided in the case of a civil court under the provisions of the Civil Procedure Code, 1908. Thus, section 70 (1) confers the power on the proper officer to summon any person whose attendance he considers necessary to either tender evidence or to produce documents, etc., in any enquiry. Exercise of such a power is similar to the powers exercised by a civil court under the Civil Procedure Code, 1908. Sub-section (2) further clarifies that every inquiry in which summons are issued for tendering evidence or for production of documents is to be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code, 1860.

20. There is no embargo under the CGST Act restraining the petitioner from seeking pre-arrest bail. Economic offences such as tax evasion, money laundering, etc., affect the economy of the country and thus are considered grave in nature. To deter persons from indulging in such economic offences, criminal sanctions are required

to be imposed. One of the most prominent criminal sanctions imposed with regard to economic offences is that of arrest. It is widely acknowledged that arrests result in deprivation of liberty of a person. Thus, while it is imperative to maintain law and order in society, the power to arrest must also always be subject to necessary safeguards. Against this backdrop, analysing the arrest provisions under the goods and services tax law, with a view to study the adequacy of the safeguards and authorisation built into the text of the statute, the interplay between these provisions and the standards of arrest has to be established through judicial precedents, as well as other sources such as the Constitution of India and general statutes such as the Code of Criminal Procedure.

21. On the other side, the case of Shravan A Mehra v. Superintendent of Central Tax, Anti evasion, Commissionerate Manu/KA/0875/2019 is the one that squarely applies to the present case. In this matter, bail

was granted in relation to offences under the Act in view of the fact that the offences were not punishable with imprisonment for more than five years. In this case, the petitioner was alleged of having obtained invoices from the company of the respondent without delivery of the goods and thereby evading payment of tax and committing an offence under section 132(1)(b) of the Act. Therein, the petitioner once appeared before the authorities concerned but on a subsequent summon, they were apprehending arrest because another witness who was called to tender statement was arrested by the police. Thus, an application for anticipatory bail was filed before the court. The court after analysing the provisions of the Act held as under :

"On close reading of the above said sections, the maximum punishment provided under the Act is five years and fine and if that is taken into consideration, the magnitude of the alleged offence and it is not punishable with death or imprisonment for life. Even as per the said provision, the alleged offence is also compoundable with the authority, who has initiated the said proceedings. The

only consideration which the court has to consider while releasing the petitioners on anticipatory bail is, that whether the petitioners can be secured for the purpose of investigation or for the purpose of trial. Under such circumstances, I feel that by imposing stringent conditions if the petitioners are ordered to be released on anticipatory bail, it would meet the ends of justice."

22. In a similar matter, bail was granted by the Delhi Court in the case of Raghav Agrawal v. Commissioner of Central Tax and GST Delhi North Bail Application 4019/2020 vide order dated 21st December, 2020.

23. Again, in a similar vein, the Bombay High Court also granted ad-interim relief to the petitioner by directing the investigative authorities not to take any coercive steps against the petitioner in Sapna Jain v. Union of India [2020] SCC Online 13064. This was challenged before the Honourable Supreme Court. The Honourable Supreme Court did not interfere with the order and tagged it along with other matters that were listed before a three-judge bench

in the case of Union of India v. Sapna Jain (2021) 2 SCC 782. The matter is pending before the three-judge bench and has not been decided till date. Thus, the question regarding anticipatory bail while dealing with offences under CGST Act is yet unsettled. Hence, it falls before this Court to decide the present matter by exercising its discretion as per intention of the Act along with analyzing the factors necessary for the grant of anticipatory bail.

24. It is true to contend that the economic offences are grave in nature however the same does not mean that the bail needs to be denied in every case. The same has been reiterated by the honourable Supreme Court in the case of P. Chidambaram v. Directorate of Enforcement (2020) 13 SCC 791 as follows :

"Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the

exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would be fall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of 'grave offence' and in such circumstance while considering the application for bail in such matters, the court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the Legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the

precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

25. In the present case, there cannot be any conflict with the fact that petitioner has been charged with economic offence. However, it is to be reiterated that the offence does not contemplate punishment for more than five years or commission of any serious offence along with the economic offence as it is usually the case in offences under other special statutes dealing with economic offences like Prevention of Money Laundering Act, 2003. Thus, as per the scheme of the CGST Act, though the offence is of economic nature yet the punishment prescribed cannot be ignored to determine the heinousness of the offence. To conclude, in my view the offences under the Act are not grave to an extent where the custody of the accused can be held to be sine qua non.

26. Before analysing the application for anticipatory bail, it is essential to take note of the approach that is expected from the High Courts in such applications as observed by the honourable Supreme Court in the case of Arnab Manoranjan Goswami v. State of Maharashtra (2021) 2 SCC 427:

"More than four decades ago, in a celebrated judgment in State of Rajasthan v. Balchand (State of Rajasthan v. Balchand (1977) 4 SCC 308 ; [1977] SCC (Cri) 594), Krishna Iyer, J. pithily reminded us that the basic rule of our criminal justice system is 'bail, not jail' (These words of Krishna Iyer, J. are not isolated silos in our jurisprudence, but have been consistently followed in judgments of this court for decades. Some of these judgments are : State of U. P. v. Amarmani Tripathi (2005) 8 SCC 21 ; [2005] SCC (Cri) 1960 (2) and Sanjay Chandra v. CBI (2012) 1 SCC 40 ; (2012) 1 SCC (Cri) 26 ; (2012) 2 SCC (L&S) 397.

The High Courts and courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this court to intervene at all times. We must in particular also emphasise the role of the district

judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the 'subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. The High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this court languish as undertrials. Courts must be alive to the situation as it prevails on the ground in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the 'solemn expression of the humaneness of the justice system'. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen

has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."

27. The Constitution Bench judgment in the case of Gurubaksh Singh Sibia v. State of Punjab (1980) 2 SCC 565 has been serving as an encyclopedia for the cases in relation to anticipatory bail. Therein, the court also called for a similar approach when it observed :

"26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of section 438, especially when no such restrictions have been imposed by the Legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be

made to depend on compliance with unreasonable restrictions. The beneficent provision contained in section 438 must be saved, not jettisoned. . . ."

28. The Honourable Supreme Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* (2011) 1 SCC 694 concerning grant of anticipatory bail after exhaustively analyzing the rights under article 21 held as under :

"A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."

29. A three-judge bench of the Honourable Supreme Court in the case of *Nathu Singh v. State of U. P.* (2021) 6 SCC 64 has called for a liberal interpretation in the cases relating to grant of anticipatory bail, when it observed :

"19. At first blush, while this submission appears to be attractive, we are of the opinion that such an analysis of

the provision is incomplete. It is no longer res integra that any interpretation of the provisions of section 438 CrPC has to take into consideration the fact that the grant or rejection of an application under section 438 CrPC has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in article 21 of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the courts must not read in limitations or restrictions that the Legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief. . . ."

30. Equally important is to take into considerations the factors that the court ought to take into account while granting or refusing anticipatory bail. In a judgment, the Constitutional Bench of the Honourable Supreme Court had the occasion to consider some important aspects of anticipatory bail in the case of *Sushila Aggarwal v. State (NCT of Delhi)* (2020) 5 SCC 1. The principal question before the honourable court was whether the grant of anticipatory bail operates for a limited time period or not.

The court analysed the concept of anticipatory bail at great length and held as under :

"92.3 Nothing in section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified and ought to impose conditions spelt out in section 437(3) CrPC (by virtue of section 438(2)).

The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in

the facts of any case or cases ; however, such limiting conditions may not be invariably imposed.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

31. The Hon'ble Delhi High Court in the case of **Tarun Jain vs. Directorate General of GST Intelligence DGGI (2021 SCC Online Del 5733)** considering the similar case has observed as under:

52. In the present case, the petitioner has been accused of wrongfully utilizing the input-tax credit amounting to Rs. 72 crores, an offence under section 132(1)(b) and (c). Since the alleged amount exceeds five hundred lakhs, the accused can be punished with a maximum of five year of imprisonment and with fine. It is equally important to highlight that the offences under

the Act are bailable and non-cognizable except for the offence under section 132(5) of the Act. Additionally, under section 135 of the Act, in any prosecution under the Act requiring culpable mental state, the court is bound to presume culpable mental state of the accused. The section further states that the accused will have a defense to prove that he had no such mental state. Also, section 138 of the Act states that the offences under the Act shall be compoundable either before or after the prosecution.

53. The task before this court is two-fold, first being to ensure that no unwarranted abuse of process is allowed to impinge upon life and liberty of the petitioner, and second to ensure that the investigation is not hampered, procedure of administration of justice is not adversely impacted and ultimately the guilty is prosecuted.

54. These are competing interests included in an anticipatory bail application, i.e., the liberty of the accused and the interest of the investigative authorities for discovering the particular of offence. It is the case of the petitioner that he failed to appear due to his ill health, which evidently no more exists. The other ground pertains to apprehension of arrest, which can be removed by allowing the present application. It is very

well possible that the respondent-Department might get the information as required if the petitioner co-operates with the authorities concerned and arrest might not be necessary.

59. In view of these facts and circumstances and in light of the provisions of law, this court is inclined to allow the anticipatory bail application with some stringent conditions in view of the prior conduct of the petitioner.

32. In the present case, the petitioner has been accused of wrongly utilizing input tax credit amounting to Rs.31,62,57,181/- under Section 132(1)(b) and (c). Since the alleged amount exceeds Rs.500 lakhs, the accused can be punished maximum for five years of imprisonment and with fine. Also Section 138 of the Act states that the offences under the Act shall be compoundable either before or after the prosecution. It is very well possible that the respondent - Department might get the information as required if the petitioner co-operates with the authorities concerned and arrest might not be necessary.

33. The custodial interrogation in the instant matter is neither warranted nor provided for by the statute. Detaining the petitioner in judicial custody would serve no purpose rather would adversely impact the business of the petitioner.

34. In view of these facts and circumstances and in light of the provisions of law, this Court is inclined to allow the anticipatory bail application with some conditions. In the result, the following:

ORDER

The petition is allowed. In the event of arrest, the petitioner be released on bail on his furnishing personal bond in the sum of Rs.5,00,000/- (Rupees five lakhs only) with two solvent sureties of like amount to the satisfaction of the investigating officer/apprehending authority, with the following conditions:

- (i) He shall co-operate in the investigation and appear before the investigating officer/apprehending authority as and when summoned;
- (ii) He shall not indirectly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case;
- (iii) He shall provide his mobile number and keep it operational at all times ;
- (iv) He shall drop a PIN on google map to ensure that his location is available to the investigating officer/apprehending authority to file an appropriate application for cancellation of the anticipatory bail granted;
- (v) He shall commit no offence during the period he is on bail;
- (vi) He shall surrender his passport before the investigating officer/apprehending authority and under no circumstances leave India without prior permission of the investigating officer/apprehending authority, and, if he does not possess any passport, he shall file an affidavit to that effect before the investigating officer/apprehending authority.

If the breach of any of the above conditions is committed, it would be open to the investigating officer/apprehending authority to file an appropriate application for cancellation of the anticipatory bail granted.

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**

DKB

