

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 17697 of 2021****With****R/CRIMINAL MISC.APPLICATION NO. 17700 of 2021****With****R/CRIMINAL MISC.APPLICATION NO. 17702 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI : Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

NILESHBHAI NATUBHAI PATEL**Versus****THE STATE OF GUJARAT****Appearance:****MR BM MANGUKIYA(437) for the Applicant(s) No. 1****MR CHETAN K PANDYA(1973) for the Applicant(s) No. 1****MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1****MR MITESH AMIN, PP with MR CHINTAN DAVE APP (2) for the Respondent(s) No. 1****RULE SERVED(64) for the Respondent(s) No. 2****CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI****Date : 14/10/2021****COMMON ORAL JUDGMENT**

- As the issue involved in all these applications are similar with regard to the grant of

anticipatory bail, all these applications are heard together and are being disposed of by this common order.

2. All these applications are filed by the concerned applicant – accused under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for short), wherein the applicants have prayed that the applicants be granted pre-arrest bail at the time of and in the event of arrest in connection with File No. DCST/ENF-2/AC-6/CONFIDENTIAL/2021-22 registered with the office of the Deputy Commissioner of State Tax, Enforcement, Division-2, Ahmedabad.
3. Heard learned advocate, Mr. B.M. Mangukiya assisted by learned advocate, Mr. Chetan K. Pandya for the applicants and learned Public Prosecutor, Mr. Mitesh Amin assisted by learned advocate, Mr. Chintan Dave for the respondents.
4. Learned advocate for the applicants submitted that the applicant viz., Nileshbhai Natubhai Patel of Criminal Misc. Application No.17697/2021 is the Chairman and Whole-Time Director of M/s. Madhav Copper Limited (hereinafter referred to as “the Company” for short), whereas the applicant viz.,

Divya Arvindbhai Monpara of Criminal Misc. Application No.17700/2021 is the Director of the said Company and the applicant viz., Rohitbhai Bhikhabhai Chauhan of Criminal Misc. Application No.17702/2021 is the Chairman and Whole-Time Director of the Company. It is submitted that the Company is a Public Limited Company listed on the National Stock Exchange (NSE) and is governed by the strict Rules framed by the Securities and Exchange Board of India (SEBI) and audited accounts are required to be submitted to NSE periodically. It is submitted that the Company of the applicants is a producer Company which produces the finished goods of Copper and the raw material is acquired from the local markets and also from the abroad and the purchases and sales data matches, inspite of that, the allegations are leveled by the respondents that the purchase is not genuine one and the goods have not been moved from the sellers to purchasers. It is submitted that it is the case of the respondent no.2 that the applicants have claimed to purchase the material worth of Rs.762.00 crores, which in fact has not purchased but fake bills have been

obtained so as to wrongfully claim Input Tax Credit and the said purchases have been allegedly made from 36 different firms and companies. It is further alleged that the applicants thereby evaded payment of State Tax worth of Rs.137.00 crores by claiming wrongful Input Tax Credit as the suppliers have not paid tax to the Government though collected from the applicant's Company. It is further submitted that the purchaser has to receive the goods and after the goods have been received, the purchaser is required to make the payment of value of the goods along with the tax and, thereafter, the purchaser has to verify the supply in the electronic ledger maintained by the supplier, which is being reflected in the applicant's company's electronic ledger and thus, the supplier and purchaser have to file necessary returns as prescribed and, therefore, the supplier and the purchaser have to file returns in the form of GSTR-1, GSTR-2 and GSTR-3B. At this stage, learned advocate for the applicants has referred to the provision of the Gujarat Goods and Services Tax Act (hereinafter referred to as "GGST Act" for short). Learned advocate for the applicants,

thereafter, submitted that one of the allegations made against the applicants is that the Company has made all the payments to the supplier by banking transactions, however, the said amount is received by the applicants from back channel in cash. It is submitted that the said allegations are *prima facie* not correct as the Company is manufacturing and procuring goods from the concerned seller and, thereafter, sold the goods in the form of final products. It is also contended that entire records with regard to the purchases of 36 companies have been seized or directed to be produced by the respondents and, therefore, now entire record is available with the respondents.

5. Learned advocate for the applicants, thereafter, submitted that as per the procedure prescribed under the GGST Act, monthly return is required to be filed under Section 39 of the GGST Act and, thereafter, normal process of scrutiny of returns is carried out under Section 61 of the GGST Act and in case, any discrepancy is found, an explanation could be called for and after the explanation is found satisfactory, no further

action would be taken, however, where the explanation is not accepted, the concerned officer may proceed and take action under Sections 65, 66 and 67 of the GGST Act or to proceed to determine tax under Sections 73 and 74 of the GGST Act. It is contended that no explanation has been called for by the respondent – department from the Company except communication dated 18.07.2019 and in response thereto, the Company gave explanation on 12.08.2019. It is further submitted that in relation to the search conducted on 04.10.2019, a show cause notice was issued to the Company on 05.11.2020 in relation to the period from 01.07.2017 to 03.10.2019 raising total demand of Rs.10,43,33,762/-, to which, the Company gave its reply. At this stage, it is also contended that the Company has deposited a sum of Rs.7,71,22,360/- to avoid further financial burden under protest pending adjudication of the ITC. Learned advocate has also submitted that no proceedings for determination of tax and other dues have been initiated for the period subsequent to 04.10.2019 or pursuant to the search conducted in December, 2020 either under Section 73 or under

Section 74 of the GGST Act by issuing a show cause notice.

6. Learned advocate for the applicants would thereafter submit that since no FIR has been filed against the applicants, arrest of the applicants under Section 69 of the GGST Act cannot be made. Learned advocate has referred to the provisions contained in Sections 154, 155 and 167 of the Criminal Procedure Code and, thereafter, submitted that GST Officers are not the Police Officers and they have not been conferred with the power of investigation and no power has been given under the GGST Act to the authorities to investigate the offences punishable under the provision of the GGST Act. Learned advocate would contend that search was conducted on 07.07.2021 and the applicants were issued summons under Section 70 of the GGST Act for recording of evidence and, hence, the applicants apprehended that they would be pressurized to confess the crime not committed by them and they would be arrested without following due process by violating Article 21 of the Constitution of India.
7. At this stage, learned advocate for the applicants

has pointed out from the record that the applicants have filed W.P. (Cri) No.301/2021 before the Hon'ble Supreme Court, wherein the applicant has challenged the validity of Section 69 of the GGST Act. Learned advocate has also referred to the interim orders passed by the Hon'ble Supreme Court in the said matter and after referring to the same, it is contended that the applicants were protected by the Hon'ble Supreme Court by an order dated 15.09.2021 and direction was given to the applicants to remain present before the concerned Officer for giving written explanation to the summons issued under Section 70 of the GGST Act. It is submitted that the applicants remained present before the respondent authority and cooperated with the concerned officer. At this stage, it is further pointed out that on 21.09.2021, the Hon'ble Supreme Court passed an order, whereby the applicants were directed to avail remedy under the Code, for which, the Hon'ble Supreme Court granted time of seven days to the applicants.

It is, therefore, submitted that as the petition challenging the validity of Section 69 of

the GGST Act is pending for consideration before the Hon'ble Supreme Court, if the applicants are arrested, the said petition would become infructuous and, therefore, this Court may release the applicants on anticipatory bail.

8. Learned advocate would at this stage contend that even bare reading of Section 69 of the GGST Act suggests that powers can be exercised only in relation to Section 132 of the GGST Act, where the Commissioner has "reasons to believe" that a person has committed any offence as specified in the said provision. It is also contended that Section 132 of the GGST Act requires prior adjudication and the said provision is required to be interpreted strictly. It is also pointed out at this stage that the Commissioner cannot delegate the powers to his subordinate, inspite of that, as per the affidavit filed by the concerned officer before the Hon'ble Supreme Court, power is delegated by the Commissioner to the Joint Commissioner, which is not permissible.
9. Learned advocate for the applicants further submits that the applicants have purchased the material from the concerned parties, which were

holding valid registration number at the time of execution of the transaction, however subsequent to the transaction, registration numbers of the concerned firms were cancelled and, therefore merely because the registration of the concerned firms have been cancelled with retrospective effect, the transaction entered into by the applicants with the said parties cannot be said to be fictitious or bogus in nature.

10. Learned advocate for the applicants, thereafter, submits that till date, the department has not determined the liability of the applicants after the process of adjudication. It is submitted that even after adjudicating the liability of the applicants, appeal can be filed before the appellate authority under Section 107 of the GGST Act where there is provision that if 10% amount of the liability fixed by the adjudicating authority is deposited, stay can be granted.

11. Learned advocate, therefore, urged that the allegations leveled against the Company and the applicants are *prima facie* not believable and in fact, the applicants would be available for the purpose of investigation and the applicants will

abide by any conditions, which this Court may impose while enlarging them on anticipatory bail. It is also pointed out that maximum punishment prescribed for the alleged offence is of five years and there is no antecedents of the present applicants and, therefore, even if the applicant is convicted after the trial, at the time of filing an Appeal, the applicants can be enlarged on regular bail and, therefore, this Court may consider the case of the applicants for the grant of anticipatory bail.

12. Learned advocate for the applicants has placed reliance upon following judgments/ orders,

- (1) the judgment in case of **Nitin Verma Vs. State of Uttar Pradesh**, reported in 2021 (49) **G.S.T.L. 357 (Allahabad)**;
- (2) the order dated 09.01.2019 of the Hon'ble Supreme Court in case of Meghraj Moolchand Burad (Jain) Vs. Directorate General of GST Intelligence Pune & Anr. passed in Special Leave to Appeal (Crl.) No.244/2019;
- (3) the judgment in case of **Nikit Mittal Vs. State of Jharkhand**, reported in 2019 (30) **G.S.T.L. 459 (Jharkhand)**;
- (4) the judgment in case of **Mahendra Kumar Singhi Vs. Commissioner of Commercial Taxes, Karnataka**, reported in 2019 (24) **G.S.T.L. 721 (Karnataka)**;

(5) the judgment in case of **Sushila Aggarwal & Ors. Vs. State (NCT of Delhi) & Anr.**, reported in (2020) 5 SCC 1;

(6) the judgment in case of **Lalitakumari Vs. State of Uttar Pradesh**, reported in (2014) 2 SCC 1.

13. On the other hand, learned Public Prosecutor, Mr. Amin, after referring to relevant documents, submitted that the prosecution has made out *prima facie* case against the applicants and, therefore interrogation of the applicants would be required and while considering the anticipatory bail application filed by the applicants, conduct/behavior of the applicants is also required to be kept in view. Learned Public Prosecutor submitted that there are other operators i.e. the concerned persons of the fictitious firms and out of them, four persons have been arrested, whereas one person is not available for the purpose of interrogation. Learned Public Prosecutor has supplied separate confidential papers, from which, it is pointed out that the applicants used to raise false invoices and during the period between 2019 to 2021, there were 700 transactions and in fact, 36 dummy firms were created and false invoices and sales were raised and in pursuance

thereto, Company has issued cheques to 36 dummy firms including four persons, who have been arrested and there were receipts of more than 737 Crores and amount has been withdrawn by bearer cheques or transferred to other Company or by RTGS to dummy firms. It is further submitted that certain material is collected from the laptop of one Mr. Afzal, who has been arrested. Learned Public Prosecutor referred to Page Nos.15, 89 and 90 of the separate compilation. Thereafter, learned Public Prosecutor has also referred to Page Nos.13, 16, 91 and 92 of the separate compilation and contended that after the withdrawal of the amount by dummy firms, amount is transferred to the applicants through Angadia in cash. Learned Public Prosecutor has also contended that though the Hon'ble Supreme Court has directed the applicants to remain present before the concerned officer for the purpose of interrogation and to cooperate, the applicants though remained present, did not cooperate with the Investigating Officer. Learned Public Prosecutor at this stage has referred to Page No.23 as also Page No.114, Page No.25 as also Page No.124 and Page No.194 of

the separate compilation. It is further submitted that in the facts of the present case, custodial interrogation of the applicant is required and there is liability of more than Rs.137.00 Crores of the Company through the applicants and, hence, all these applications may not be entertained.

14. At this stage, learned Public Prosecutor has placed on record a copy of memo of Writ Petition filed by the applicants before the Hon'ble Supreme Court and referred to reliefs as prayed for in the said petition. It is submitted that as per the interim order dated 21.09.2021 passed by the Hon'ble Supreme Court, the said petition is restricted to Para No.26(iii) i.e. with regard to validity of Section 69 of the GGST Act. Learned Public Prosecutor, therefore, contended that when the applicants have not pressed relief with regard to seeking direction to the respondent authority to comply with the mandatory procedure under Chapter – XII of the GGST Act including Sections 154, 155 and 172 of the GGST Act, it is not open for the applicants to raise similar contentions before this Court.

15. At this stage, learned Public Prosecutor has

placed reliance upon the order dated 04.08.2020 passed in case of Sandeep Mahendrakumar Sanghavi Vs. Union of India by the Division Bench of this Court in Special Civil Application No.8669/2020.

Learned Public Prosecutor submitted that in the said order, the Division Bench has considered the provision contained in Section 104 read with Section 28 of the Customs Act. Learned Public Prosecutor has referred to Paragraph Nos.14, 17, 34, 38 and 92 of the said decision.

16. Learned Public Prosecutor would thereafter refer to and rely upon Section 5(3) of the GGST Act. It is contended that as per the said provision, power of the Commissioner can be delegated and there is no embargo as contended by learned advocate for the applicants.
17. Learned Public Prosecutor has placed reliance upon the judgment dated 04.02.2020 passed by the Division Bench of this Court in case of Nathalal Maganlal Chauhan Vs. State of Gujarat in Special Civil Application No.513/2020 with Special Civil Application No.2741/2020.
18. At this stage, learned Public Prosecutor submits that the contention raised by learned advocate for

the applicants that in order to invoke the provision of Section 69 read with Section 132 of the GST Act, two conditions need to be satisfied cumulatively i.e. first, the Commissioner has "reasons to believe" that a person has committed any offence as specified in the said GST Act and second, it is determined that the concerned person has committed offence, which has to be necessarily the post-determination of the demand by following due process of law. It is pointed out that similar contention was considered by the Division Bench of this Court in case of Vimal Yashwantgiri Goswami Vs. State of Gujarat while passing an order dated 20.10.2020 in Special Civil Application No.13679/2019 and allied matters. Learned Public Prosecutor has referred to relevant paragraphs of the said decision and submitted that such contention was not accepted by the Division Bench.

19. It is also contended that in the economic offence involving huge public money, this Court may not entertain the present applications for the grant of anticipatory bail. Learned Public Prosecutor thereafter contended that merely because the maximum punishment prescribed under the Act is of

five years, the applicants cannot be enlarged on anticipatory bail. It is submitted that in an order dated 17.04.2020 passed in Special Leave to Appeal (Cri) No.1803/2020, the concerned accused was in jail since more than 1 year and 8 months and in the said case, it was alleged that the said petitioner – accused has created fake firms and committed fraud to the tune of Rs.74.00 Crores and, therefore, the Hon'ble Supreme Court has not entertained the said SLP, however, direction was issued to complete the investigation within stipulated time.

20. It is also pointed out by learned Public Prosecutor that if the applicants are enlarged on anticipatory bail, they will tamper with the evidence and witnesses and even the applicants would not be available at the time of trial. Learned Public Prosecutor has, therefore, urged that all these applications be dismissed.

21. Having heard learned advocates appearing for the parties and having gone through the material placed on record, it would emerge that the applicants are apprehending their arrest in connection with File No. DCST/ENF-2/AC-6/

CONFIDENTIAL/2021-22 registered with the office of the Deputy Commissioner of State Tax, Enforcement, Division-2, Ahmedabad. The applicants have filed Writ Petition (Cr1) No.301/2021 before the Hon'ble Supreme Court, wherein the applicants have prayed for following reliefs,

- (i) Issue appropriate Writ, Order(s) or Direction(s) to the Respondent Nos. 1 to 4 to comply with the mandatory procedure under Chapter XII of the Code of Criminal Procedure, 1973 including Section 154, 157, 167, 172 etc. for valid commencement and continuation of the investigation into any offence qua the petitioners in respect of investigation arising out of File No.DCST/ENF-2/AC-6/CONFIDENTIAL/2021-22;
- (ii) Declare the process instituted, commenced and continued by the Respondents qua the petitioners vide File No.DCST/ENF-2/AC-6-CONFIDENTIAL/2021-22 as no nest, illegal, void ab initio for not following the mandatory procedure under Chapter XII of Code of Criminal Procedure, 1973 and therefore, violative of the 'procedure established by law':
- (iii) Issue an appropriate writ order or direction declaring that the provisions of section 69 of the Central Goods and Service Tax Act, 2017 to be ultra vires the constitution being arbitrary and in violation of Article 14, 19, 20 and 21 of the Constitution of India.
- (iv) And/or pass any other or further orders which Your Lordships may deem fit and proper in the interest of justice."

22. In the aforesaid Writ Petition, the Hon'ble Supreme Court has initially passed an interim

order dated 15.09.2021 and thereby directed the present applicants to remain present before the respondent authority on 17.09.2021 and interim protection was granted to the applicants till 21.09.2021 and, thereafter on 21.09.2021, the Hon'ble Supreme Court has passed further interim order and has observed as under,

"We will confine the consideration only in respect of challenge to the provision of Section 69 of the 2017, Act. For any other relief during the progress of the investigation, the petitioner(s) must approach the concerned Forum by way of appropriate proceedings, if so advised. That be done within one week from today."

23. Thus from the aforesaid interim orders passed by the Hon'ble Supreme Court, it is revealed that the issue with regard to the validity of Section 69 of the GST Act is under consideration before the Hon'ble Supreme Court and the Hon'ble Supreme Court has not considered other reliefs as prayed for in the said writ petition.

24. Section 69 of the GST Act empowers the Commissioner to arrest a person, who has committed any offence stipulated in the said section if the Commissioner has reason to believe that the said person has committed any offence as stated in the said provision. At this stage, this Court would

like to refer to the provision contained in Section 5(3) of the GGST Act, which reads as under,

"The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him."

25. Thus from the aforesaid provision, it is revealed that the Commissioner can delegate his powers to his subordinate officer. It is contended by learned advocate for the applicants that even assuming that the Commissioner is empowered to delegate his powers to his subordinate, as per Section 69 of the GGST Act, reasonable belief should be that of the Commissioner. At this stage, this Court would like to refer to the decision rendered by the Division Bench of this Court in case of **Nathalal Maganlal Chauhan (supra)**, wherein the Division Bench of this Court has observed in Paragraph Nos.11, 12, 57 and 59 as under,

"11. The principal argument of Mr.Chetan Pandya, the learned counsel appearing for the writ-applicant, is that the Commissioner of State Tax could not have delegated all his powers under the Act 2017 in favour of the Special Commissioner of State Tax and the Additional Commissioners of State Tax by virtue of the power conferred under sub-section (3) of Section 5 of the Act 2017. Mr.Pandya would submit that the plain

language of Section 69 of the Act would indicate that the reasonable belief should be of the Commissioner and not of the delegated authority. The argument is that the Parliament has chosen and thought fit to repose confidence in the Commissioner and that is the reason why in Section 69 the phrase 'Commissioner has reasons to believe' has been stated.

12. Mr.Pandya would submit that the words 'reason to believe' contemplates an objective determination based on intelligent care and deliberation as distinguished from a purely subjective consideration. If such is the mandate of the Legislature, then such a power can never be delegated. Mr.Pandya would submit that the impugned Notification is contrary to the mandate of Section 6 of the Gujarat Goods and Services Tax Act, 2017. According to Mr.Pandya, while passing an order under Section 69 of the GGST Act, 2017, a simultaneous order under the CGST Act, 2017 shall also have to be passed. Under the CGST Act, 2017, the Commissioner or the Additional Director General of Central Tax would exercise the power under Section 69 of the Act, 2017. The Additional Commissioner of State Tax is subordinate in rank compared to the Commissioner of Central Tax. He pointed out that for the GGST Act, 2017, it is the Additional Commissioner of State Tax who would be exercising the power under Section 69 of the Act on the strength of the impugned Notification whereas, under the CGST Act, 2017, it is the Commissioner or the Additional Director General who would be exercising the powers.

57. Thus, the dictum as laid in the aforesaid decision is that, be it quasi-judicial or administrative power, the same can be delegated provided the law expressly or by clear implication permits it to be delegated. The Bench took the view that having regard to Section 69(4) of the Act

referred to above, the Commissioner has been empowered to delegate any of his powers. The Bench also clarified that in the absence of the provisions of Section 69(4) of the Act, the Commissioner could not have delegated the quasi-judicial powers conferred upon him by the Act.

59. The last contention of Mr.Pandya is that although the Commissioner of Tax has been empowered by the statute to delegate his powers, yet, at the same time, Section 69 of the Act mandates that the reasonable belief should be that of the Commissioner. The argument proceeds on the footing that whenever a power is to be exercised based on the reasonable belief of the authority upon whom such power has been conferred, the same cannot be delegated though the statute empowers the statutory authority to do so. In short, Mr.Pandya is trying to draw a distinction between a particular power to be exercised and power to be exercised based on the reasonable belief of the authority. In our opinion, it does not make any difference. The very same reasonable belief will be that of the authority upon whom the power is delegated. The power under Section 69 of the Act can be exercised by the authority upon whom the power is delegated provided the delegatee has reasons to believe that the assessee has committed offence under Section 132 of the Act. Therefore, the condition precedent, i.e. 'reasonable belief', for the purpose of exercise of power under Section 69 of the Act remains the same."

26. From the observations made by the Division Bench of this Court, it is clear that the Commissioner can delegate his powers to his subordinate. A very same reasonable belief will be that of the authority upon whom the power is delegated. Thus,

the power under Section 69 of the GGST Act can be exercised by the authority upon whom the power is delegated provided the delegatee has reasons to believe that the assessee has committed offence under Section 132 of the GGST Act. Thus, the condition precedent, i.e. 'reasonable belief', for the purpose of exercise of power under Section 69 of the Act remains the same. Thus, this Court is of the view that the submissions canvassed by learned advocate for the applicants on this aspect is misconceived because of the aforesaid decision rendered by the Division Bench is clear on this point.

27. In the judgment of the Division Bench of this Court in case of **Vimal Yashwantgiri Goswami (supra)**, it has been observed in Paragraph Nos.11, 48 and 77 as under,

11. The learned Senior Advocate Mr. Hemani thereafter submitted on merits of the matter that in order to invoke the provisions of section 69 read with section 132 of the CGST Act, the "twin conditions" need to be satisfied "cumulatively" i.e. (1) the Commissioner has "reasons to believe" that a person has committed the specified offence and (2) It is determined that the concerned person has "committed" an offence which has to be necessarily the post-determination of the demand by following the due process of law.

48. The other ancillary questions which arise for our consideration are as under :

(i) Whether the provisions of section 69 of the CGST Act envisages that the Commissioner is obliged to record his reasons to believe and furnish the same to the person who is sought to be arrested?

(ii) Whether the provisions of sections 154, 155(1), 155(2), 155(3), 157, 172 of the Code of Criminal Procedure, 1973 are applicable or should be made applicable for the purpose of invoking the power to arrest under section 69 of the CGST Act? In other words, whether the authorised officer can arrest a person alleged to have committed non cognizable and bailable offences without a warrant of arrest issued by the Magistrate under the provisions of the Code of Criminal Procedure, 1973?

(iii) For the purpose of section 69(3) of the CGST Act, whether the officers of the GST department could be said to be a "police officer in charge of a police station" as defined under section 2(o) of the Code of Criminal Procedure, 1973?

(iv) Whether the constitutional safeguards laid out by the Supreme Court in **D.K. Basu's** case [1997 (1) SCC 416] in the context of the powers of the police officers under the Code of Criminal Procedure, 1973 and of officers of the Central Excise, Customs and Enforcement Directorate are applicable to the exercise of powers under the provisions of section 69 of the GST Act in equal measure?

77. In view of foregoing reasons and conspectus of law and the analysis of provisions of the section 69 read with section 132 of the CGST Act and provisions of the Code, we may sum up our Final conclusion to answer the questions arising in these petitions as under:

(1) **Q.** whether the power to arrest as provided under section 69 read with section 132 of the CGST Act can be invoked by the Commissioner only upon completion of the adjudication process of finalising the assessment and determination of the liability as per the provisions of the CGST Act?

A. we are of the opinion that the power to arrest as provided under section 69 of the CGST Act can be invoked if the Commissioner has reason to believe that the person has committed offences as provided under the clauses (a), (b), (c) or (d) of sub-section(1) of section 132 of the CGST Act, which are punishable under the clause (i) or clause (ii) of sub-section (1) or sub-section (2) of the section 132 of the CGST Act without there being any adjudication for the assessment as provided under the provisions of the Chapter VIII of the CGST Act. The reference to section 132 in section 69 of the CGST Act is only for the purpose of indicating the nature of the offences on the basis of the same the reasonable belief is formed and recorded by the Commissioner for the purpose of passing an order of arrest.

(2) **Q.** whether the

provisions of section 69 of the CGST Act envisages that the Commissioner is obliged to record his reasons of belief and furnish the same to the person who is sought to be arrested?

A. (i) The Commissioner is required to record reasons of belief to arrest a person as per sub-section (1) of Section 69 of the CGST Act. However sub-section (2) and sub-section (3) of section 69 with reference to the provisions of sub-section(4) and sub-section (5) of section 132 of the CGST Act, differentiates between the cognizable and non cognizable offences. The sub-section (2) of section 69 provides for informing such a person about grounds of arrest if he is alleged to have committed a cognizable and non bailable offence and sub-section (3) authorises the Deputy Commissioner or Assistant Commissioner subject to the provisions of the Code for releasing the arrested person on bail if he is alleged to have committed non cognizable and bailable offences by exercising the power as an officer in charge of the police station.

Therefore, it is not necessary for the Commissioner to provide a copy of the reasons recorded by him for his belief if he has reason to believe that any person has committed offences which are cognizable and non-bailable. Sub-section (2) of section 69 of the CGST Act provides statutory duty upon the officer authorised to arrest to inform such person about grounds of his arrest and in case if the person is ordered to be arrested for offences which are non-cognizable and bailable, he would be released on bail as per provision of sub-section (3) of section 69 of the CGST Act.

(ii) The Commissioner while recording his reasons to believe that a person has committed any offence has only to form a prima facie opinion based on cogent materials and credible information. The words "reason to believe" contemplate an objective determination based on intelligence, care and deliberation involving judicial review as distinguished from a purely subjective consideration and hence he is not required to conclude that the person

sought to be arrested is guilty of any offence. The expression 'any person' in Section 69 of the CGST Act includes a person who is suspected or believed to be concerned in the evasion of tax or availing illegal input tax credit. However, a person arrested by an authorised Officer because he is found to be evading tax or availing input tax credit as specified in the clauses (a) to (d) of the sub-section (1) of the section 132 of the CGST Act is not, when called upon by the authorised Officer to make a statement or to produce a document or thing, accused of an offence within the meaning of Article 20(3) of the Constitution of India. Where an authorised Officer arrests a person and informs that person of the grounds of his arrest, for the purposes of holding an inquiry into the infringement of the provisions of the CGST Act which he has reason to believe has taken place, there is no formal accusation of an offence. The accusation could be said to have been made when a complaint is lodged by an officer competent in that behalf before the

Magistrate. The arrest and detention are only for the purpose of holding effective inquiry under the provisions of the CGST Act with a view to adjudging the evasion of GST and availing illegal input tax credit and imposing penalty.

(iii) The order authorising any officer to arrest may be justified if the Commissioner or any other authority empowered in law has reasons to believe that the person concerned has committed the offence under section 132 of the Act. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far-fetching, which would warrant the formation of the belief.

(iv) The power conferred upon the authority under Section 69 of the Act for arrest could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.

(v) The power under Section 69 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

(vi) The above are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because

it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Commissioner must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for the authority in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. A person is not liable to be arrested merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the authority effecting the arrest that such arrest is necessary and justified.

(3) Q. (i) Whether the provisions of sections 154, 155(1), 155(2), 155(3), 157, 172 of the Code of Criminal Procedure, 1973 are applicable or should be made applicable for the purpose of invoking the power to arrest under section 69 of the CGST Act? In other words, whether the authorised officer can arrest a person alleged to have committed non cognizable and bailable offences without a warrant of arrest issued by the Magistrate under the provisions of the Code of Criminal Procedure, 1973?

(ii) For the purpose of section 69(3) of the CGST Act, whether the officers of the GST department could be said to be a "police officer in charge of a police station" as defined under section 2(o) of the Code of Criminal Procedure, 1973?

A. (i) Any person can be arrested for any offence under the section 69 of the CGST Act, 1962, by the authorised officer to whom authority to arrest is given by the Commissioner if the Commissioner has reasons to believe that such person has committed an offence punishable under the clauses (a) to (d) of the subsection (1) which is punishable under the clause(i) or Clause (ii) of the subsection (1) or sub-section(2) of the Section 132 of CGST Act and in such circumstances, the authorised Officer is not obliged to follow the dictum of the Supreme Court as laid in the case of Lalitha Kumari (supra).

(ii) When any person is arrested by the authorised officer, in exercise of his powers under Section 69 of the CGST Act, the authorised officer effecting the arrest is not obliged in law to comply with the provisions of Sections 154 to 157 of the Code of Criminal Procedure, 1973. The authorised officer, after arresting such person, has to inform that person of the grounds for such arrest, and the person arrested will have to be taken to a Magistrate without unnecessary delay, if the offences are cognizable and non bailable. However, the provisions of Sections 154 to 157 of the Code will have no application at that point of time. Otherwise, sub-section (3) of section 69 provides for granting bail as the provision does not confer upon the GST officers, the

powers of the officer in charge of a police station in respect of the investigation and report. Instead of defining the power to grant bail in detail, saying as to what they should do or what they should not do, the short and expedient way of referring to the powers of another officer when placed in somewhat similar circumstances, has been adopted. By its language, the sub-section (3) does not equate the officers of the GST with an officer in charge of a police station, nor does it make him one by implication. It only, therefore, means that he has got the powers as defined in the Code of Criminal Procedure for the purpose of releasing such person on bail or otherwise. This does not necessarily mean that a person alleged to have committed a non cognizable and bailable offence cannot be arrested without a warrant issued by the Magistrate.

(iii) The authorised officer exercising power to arrest under section 69 of the CGST Act, is not a Police Officer and, therefore, is not obliged in law to register FIR against the person arrested in respect of an offence under Sections 132 of the CGST Act.

(iv) The decision of the Supreme Court in the case of Om Prakash (supra) has no bearing in the case on hand.

(v) An authorised Officer is a 'proper officer' for the purposes of the CGST Act. As the authorised Officers are not Police Officers, the statements made before them in the course of inquiry are not inadmissible under Section 25 of the Evidence Act.

(vi) The power to arrest a person by an authorised Officer is statutory in character and should not be interfered

with. Section 69 of the CGST Act does not contemplate any Magisterial intervention.

(vii) The main thrust of the decision in the case of Om Prakash (supra) to ascertain whether the offence was bailable or non-bailable, was on the point that the offence being non-cognizable, it had to be bailable. In other words, Om Prakash (supra) deals with the question, "whether the offences under the Customs Act, 1962, and the Central Excise Act, 1944, are bailable or not?" However, provisions of the sub-sections (2) and (3) of the Section 69 of the CGST Act, provides in built mechanism and procedure in case of arrest for non-bailable offences and bailable offences.

(4) Q. Whether the constitutional safeguards laid out by the Supreme Court in **D.K. Basu's** case [1997 (1) SCC 416] in the context of the powers of the police officers under the Code of Criminal Procedure, 1973 and of officers of the Central Excise, Customs and Enforcement Directorate are applicable to the exercise of powers under the provisions of section 69 of the GST Act in equal measure?

A. We may now address ourselves on the last question as regards the applicability of the safeguards pertaining to arrest as explained by the Supreme Court in case of **D.K. Basu** (supra), referred to above. It is significant to note that in **D.K. Basu** (supra), the Supreme Court did not confine itself to the actions of police officers taken in terms of powers vested in them under the Code but also of the officers of the Enforcement Directorate including the Directorate of Revenue Intelligence ('DRI'). This also included officers

exercising powers under the Customs Act, 1962 the Central Excise Act, 1944 and the Foreign Exchange Regulation Act, 1973 (FERA') now replaced by the Foreign Exchange Management Act, 1999 ('FEMA') as well. It observed:

"30. Apart from the police, there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (CRPF), Border Security Force (BSF), the Central Industrial Security Force (CISF), the State Armed Police, Intelligence Agencies like the Intelligence Bureau, R.A.W, Central Bureau of Investigation (CBI) , CID, Tariff Police, Mounted Police and ITBP which have the power to detain a person and to interrogated him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act. Foreign Exchange Regulation Act etc. There are instances of torture and death in custody of these authorities as well, In re Death of Sawinder Singh Grover [1995 Supp (4) SCC 450], (to which Kuldip Singh, J. was a party) this Court took suo moto notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the additional District Judge, which disclosed a prima facie case for investigation and prosecution, this Court directed the CBI to lodge a FIR and initiate criminal proceeding against all persons named in the report of the

Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay sum of Rs. 2 lacs to the widow of the deceased by was of the relevant provisions of law to protect the interest of arrested persons in such cases too is a genuine need.

*33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detainees, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The latin maxim *salus populi est suprema lex* (the safety of the people is the supreme law) and *salus republicae est suprema lex* (safety of the state is the supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated - indeed subjected to sustained and scientific interrogation determined in accordance with the*

provisions of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or drive knowledge about his accomplices, weapons etc. His Constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the methods of interrogation of such a person as compared to an ordinary criminal...."

These constitutional safeguards emphasised in the context of the powers of police officers under the Code of Criminal Procedure and of officers of central excise, customs and enforcement directorates, are applicable to the exercise of powers under the GST Act in equal measure. An officer whether of the Central Excise department or another agency like the DGCEI, authorised to exercise powers under the Central Excise Act and/or the FA will have to be conscious of the constitutional limitations on the exercise of such power.

However, in context of **D.K.Basu**(supra), we would like to clarify that the law laid down by the Supreme Court in case of **Poolpandi and others v. Superintendent, Central Excise and others** reported in (1992) 3 SCC 259 has either been set aside or has been deviated from. It appears in paragraph no. 38 of the said judgment itself, it has been stated that the requirements referred to above (i.e. in paragraph no. 33) are for Articles 21 and 22 respectively of the Constitution of India and not to be strictly followed. We may give a simple illustration. Take a case in

which writ application is filed seeking direction for giving an opportunity to the person who is sought to be interrogated by the police officer for any offence punishable under the Indian Penal Code to consult his lawyer. Such a direction may perhaps be issued in case of an accused because of his right under Article 22 of the Constitution of India but the same cannot be made applicable to a person who is interrogated under section 70 of the GST Act or section 108 of the Customs Act where no right under Article 22 of the Constitution is affected as held by the Supreme Court in case of **Poolpandi**(supra). This Court, however, is quite conscious of the fact that pronouncement of Supreme Court in case of **Poolpandi**(supra) as also in another case, pointing out that the right of investigating authority should not be interfered with, as given to them under the provisions of the Act, does not give them an uncharted liberty to proceed in whatsoever manner they like in the matter of such inquiry or to extract statements from the person concerned by perpetuating torture or by applying third degree methods. That, no doubt, will be in clear violation of the right guaranteed under Article 21 of the Constitution of India which is available to all the citizens including a person who will be interrogated under section 70 of the GST Act or section 108 of the Customs Act as held by the Supreme Court in case of **D.K. Basu** (supra).

28. Another contention is taken by learned advocate for the applicants that without registration of the FIR/ complaint by the respondent no.2, no arrest can be made. It is also the contention of

learned advocate for the applicants that the provision of Sections 154, 155, 157 and 172 of the Code are applicable or should be made applicable for the purpose of invoking power to arrest under Section 69 of the GGST Act and, therefore, authorized officer cannot arrest the person alleged to have committed non-cognizable and bailable offence without a warrant of arrest issued by the Magistrate under the provisions of the Code of Criminal Procedure, 1973.

However, the aforesaid contentions raised by learned advocate for the applicants are misconceived in view of the observation made by the Division Bench of this Court in case of **Vimal Yashwantgiri Goswami (supra)**. It is specifically held by the Division Bench of this Court in the aforesaid decision in Paragraph No.77 that any person can be arrested for any offence under Section 69 of the GGTS Act by the authorized officer to whom the authority to arrest is given by the Commissioner if the Commissioner has reasons to believe that such person has committed an offence punishable under Section 132 of the GGST Act. It is also held that when any person is

arrested by the authorized officer in exercise of power under Section 69 of the GGST Act, the authorized officer effecting arrest is not obliged in law to comply with the provision of Sections 154 to 157 of the Code, however, the authorized officer, after arresting such person, has to inform such person about grounds of his arrest and the person arrested will have to be taken to Magistrate without unnecessary delay if the offences are cognizable and non-bailable.

29. Similar view is taken by the Division Bench of this Court in case of **Sandeep Mahendrakumar Sanghavi (supra)**, where the Division Bench was considering similar type of provision i.e. the provision of the Customs Act and the Division Bench has observed in Paragraph No.92 as under,

"92. We sum-up our final conclusions as under :

- (1) Any person can be arrested for any offence under the Customs Act, 1962, by the Customs Officer, if such officer has reasons to believe that such person has committed an offence punishable under Section 132 or Section 133 or Section 135 or Section 135A or Section 136 of the Customs Act, 1962, and in such circumstances, the Customs Officer is not obliged to follow the dictum of the Supreme Court as laid in the case of Lalitha Kumari (supra).
- (2) When any person is arrested by an officer of the Customs, in exercise of his powers

under Section 104 of the Customs Act, 1962, the officer effecting the arrest is not obliged in law to comply with the provisions of Sections 154 to 157 of the Code of Criminal Procedure, 1973. The officer of the Customs, after arresting such person, has to inform that person of the grounds for such arrest, and the person arrested will have to be taken to a Magistrate without unnecessary delay. However, the provisions of Sections 154 to 157 of the Code will have no application at that point of time.

- (3) The Customs/DRI Officers are not the Police Officers and, therefore, are not obliged in law to register FIR against the person arrested in respect of an offence under Sections 133 to 135 of the Customs Act, 1962.
- (4) The decision of the Supreme Court in the case of Om Prakash (supra) has no bearing in the case on hand.
- (5) A DRI Officer is a 'proper officer' for the purposes of the Customs Act, 1962. As the Customs/DRI Officers are not the Police Officers, the statements made to them are not inadmissible under Section 25 of the Evidence Act.
- (6) A Police Officer, making an investigation of an offence, representing the State, files a report under Section 173 of the Code, becomes the complainant, whereas, the prosecuting agency under the special Acts files a complaint as a complainant, i.e. under Section 137 of the Customs Act.
- (7) The power to arrest a person by a Customs Officer is statutory in character and should not be interfered with. Section 108 of the Act does not contemplate any Magisterial intervention. The statements recorded under Section 108 of the Customs Act are distinct and different from the statements recorded by the Police Officers

during the course of investigation under the Code.

- (8) The expression 'any person' in Section 104 of the Customs Act includes a person who is suspected or believed to be concerned in the smuggling of goods. However, a person arrested by a Customs Officer because he is found to be in possession of smuggled goods or on suspicion that he is concerned in smuggling goods is not, when called upon by the Customs Officer to make a statement or to produce a document or thing, a person is accused of an offence within the meaning of Article 20(3) of the Constitution of India. Where a Customs Officer arrests a person and informs that person of the grounds of his arrest, for the purposes of holding an inquiry into the infringement of the provisions of the Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. The accusation could be said to have been made when a complaint is lodged by an officer competent in that behalf before the Magistrate. The arrest and detention are only for the purpose of holding effective inquiry under Sections 107 and 108 of the Customs Act with a view to adjudging confiscation of dutiable or prohibited goods and imposing penalty.
- (9) The main thrust of the decision in the case of Om Prakash (supra) to ascertain whether the offence was bailable or non-bailable, was on the point that the offence being non-cognizable, it had to be bailable. In other words, Om Prakash (supra) deals with the question, "whether the offences under the Customs Act, 1962, and the Central Excise Act, 1944, are bailable or not ?" At the time when the decision in Om Prakash (supra) was rendered, an offence under the Customs Act was not cognizable. So also, the categorization of cases which are non-bailable and cases which are bailable was not there before the amendment of Section 104 by Act No.23 of 2012 and Act No.17 of

2013 respectively.

(10) The Notification dated 7th July 1997 issued by the Central Board of Central Excise makes it clear that all the officers of the Directorate of Revenue Intelligence are appointed as the officers of the Customs. Under the Notification dated 7th March 2002, the officers of the DRI have been given the jurisdiction over the whole of India. In such circumstances, the submissions of the learned counsel appearing for the writ-applicant as regards the territorial jurisdiction of the DRI office at Vapi to summon the writ-applicant under Section 108 of the Customs Act, 1962, pales into insignificance.

(11) Although the allegations of harassment at the end of the DRI officials at Vapi are not substantiated by any credible material on record, yet there should not be any unnecessary harassment to a person summoned for the purpose of interrogation under Section 108 of the Customs Act, 1962."

30. Thus keeping in view the aforesaid decisions rendered by the Division Bench of this Court, this Court would like to examine the facts of the present case. It is alleged by the prosecution that the present applicants in connivance with other persons, entered into transaction with 36 dummy firms and false invoices and sales were raised and in pursuance thereto, the Company has issued cheques to 36 dummy firms including four person, who are now arrested by the respondent – department. There were receipts of more than

Rs.737.00 Crores and amount has been withdrawn by bearer cheque or transferred to other Company or by RTGS to dummy firms and during the course of investigation from one Mr. Afzal, certain material is collected. It is contended by learned Public Prosecutor that after the withdrawal of the amount by dummy firms, the said amount is transferred to the applicants through Angadia in cash. The respondent – department has collected certain material during the course of investigation with other accused, who have been arrested. It is the specific case of the department that the transaction worth of Rs.737.00 Crores were entered into with 36 dummy firms and there would be liability of more than Rs.137.00 Crores. Thus this Court is of the view that in the facts of the present case, the custodial interrogation of the applicants would be required.

31. Now it is the case of learned advocate for the applicants that the applicants have complied with the requirements of GGST Act and the Company has entered into transaction with the firms, which have valid registration numbers at the time of transaction, however subsequently, the said

registration has been cancelled with retrospective effect. It is also the contention of learned advocate for the applicants that the sales and purchase transactions were matched and no action was taken by the respondent – department for a particular period and, therefore, the transaction entered into by the Company with the so-called dummy firms can be said to be valid. However, the said submissions are misconceived. There are provisions in the GGST Act that the registration of the firm can be cancelled with retrospective effect. In the present case, during the course of investigation, it has been revealed that at the time of registration of the firm, the concerned persons have provided necessary documents for the purpose of registration, however as per the case of the prosecution, subsequently it was found that without there being any actual movement of the goods, false invoices were raised and after the arrest of four persons and during the course of investigation, it is revealed that those 36 firms were dummy firms. Thus in the facts of the present case, the custodial interrogation of the applicants is necessary.

32. At this stage, it is pertinent to note that as per the direction issued by the Hon'ble Supreme Court, the applicants remained present before the concerned officer of the department. However, it is specific case of learned Public Prosecutor that the applicants have not cooperated with the investigation and they have given evasive reply to certain important questions. I have perused the separate confidential papers supplied by learned Public Prosecutor during the course of hearing of these applications, from which, it is revealed that the applicants gave evasive reply to certain important questions. Thus, this Court is of the view that though directed, the applicants have not cooperated with the Investigating Agency.

33. It is contended by learned advocate for the applicants that the maximum punishment prescribed for the alleged offences is five years and, therefore, even after the conviction, if the applicants are entitled to be released on bail then, at this stage also, they are entitled to be released on anticipatory bail. However, the said submission is misconceived. As observed hereinabove, the custodial interrogation of the

applicants would be required in the facts of the present case. There are more than 700 transactions between the applicants and other persons of dummy firms and transactions worth of Rs.737.00 Crores were entered into between the parties. At this stage, this Court would like to refer to the order dated 17.04.2020 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl) No.1803/2020, wherein the Hon'ble Supreme Court has passed following order,

"The allegation against the petitioner is that he has created about 555 fake firms and has committed fraud to the tune of Rs.74,00,00,000/- (Rupees seventy four crore only).

Mr. K.M. Natraj, learned additional solicitor general, submits that the investigation is still pending and more number of fake firms created by the petitioner are being detected.

It is not in dispute that the maximum punishment to be imposed on the petitioner, if convicted, is five years. It is also not in dispute that the petitioner has already undergone one year and eight months imprisonment. It is brought to our notice that some of the accused are released on bail.

Be that as it may, having regard to the totality of facts and circumstances, we deem it appropriate to pass the following order:

The State shall make endeavour to complete the investigation within three months from today.

In case the investigation is not completed within three months from this day, the petitioner shall be released on

bail by the Trial Court by imposing appropriate terms and conditions.

If the investigation is completed, the report shall be filed before the concerned court. In case, the investigation is completed and the report is filed within three months from today, it is open for the petitioner to move the trial court for bail, if he so chooses. If such an application is filed, the same shall be considered on its own merits by the trial Court.

The special leave petition is disposed of accordingly."

34. Thus from the aforesaid order, it is clear that though the concerned accused was in jail since 1 year and 8 months, the Hon'ble Supreme Court had not exercised the discretion in favour of the said accused. In the present case, these are the applications filed by the applicants under Section 438 of the Code and, therefore in the facts of the present case, this Court is not inclined to exercise the discretion in favour of the applicants.

35. Learned advocate for the applicants has placed reliance upon the decision rendered by the different High Courts and, thereafter, it is contended that various High Courts have enlarged the concerned accused on anticipatory bail in connection with the offences, which are punishable under Section 132 of the GGST Act. However in the

facts of the present case, this Court is not inclined to exercise the discretion in favour of the applicants and the aforesaid decisions were rendered by the concerned High Court on the facts of a particular case.

36. Learned advocate, Mr. Mangukiya has placed reliance upon the recent order dated 07.10.2021 passed by the Hon'ble Supreme Court in case of Satender Kumar Antil Vs. Central Bureau of Inveestigation & Anr. in Special Leave to Appeal (Crl.) No.5191/2020. However, this Court is of the view that the Hon'ble Supreme Court has laid down certain guidelines for the grant of bail in categories/types of offence. It is pertinent to note that the present offence can be categorized as "economic offence" where huge public money in the form of alleged tax liability of Rs.137.00 Crores is involved. This Court has considered the seriousness of the charges and the fact that the applicants have not cooperated with the investigating agency though directed by the Hon'ble Supreme Court and, therefore in the fact of the present case, the aforesaid order passed by the Hon'ble Supreme Court would not be applicable.

37. Learned advocate has also placed reliance upon the decision in case of **Lalitakumari (supra)** in support of his submission that before taking preliminary inquiry, registration of FIR under Section 154 of the Code is mandatory. This Court is not disputing the proposition laid down by the Hon'ble Supreme Court in the said decision, however, the Division Bench of this Court in case of **Vimal Yashwantgiri Goswami (supra)** has considered the aspect as to whether the provision of Sections 154 to 157 and 172 of the Code are applicable for the purpose of invoking power to arrest under Section 69 of the GST Act and after considering various provision of the Act has categorically held in Paragraph No.77 that when any person is arrested by the authorized officer in exercise of power under Section 69 of the GST Act, the authorized officer effecting arrest is not obliged in law to comply with the aforesaid provisions.

38. In case of **Sushila Aggarwal (supra)**, the Hon'ble Supreme Court has observed and laid down the guidelines for considering the application under Section 438 of the Code. This Court has kept in

view the said decision while considering the present applications and in the facts of the present case, this Court is of the view that the applicants are not entitled to be released on anticipatory bail.

39. Learned Public Prosecutor has shown apprehension that looking to the gravity of the offence, if the applicants are enlarged on anticipatory bail then, there are all chances that the applicants will tamper with the evidence and witnesses and at the time of trial, the applicants would not be available.

40. Therefore in view of the aforesaid discussions, I am not inclined to exercise the discretion in favour of the applicants herein. Therefore, the present applications are dismissed. Rule is discharged.

Sd/-
(VIPUL M. PANCHOLI, J.)

Gautam