2026:BHC-AUG:5423-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 885 OF 2025

Kanhaiya Nilambar Jha
Age : 38 yrs, occ : service
R/o 5, Mohammad Chawal,
Golibar Road, Shanti Nagar,
Ghatkopar West, Mumbai Petitioner

Versus

1. Union of India
Through Secretary,
Department of Revenue,
Ministry of Finance, North
Block, New Delhi.

2. Principal Commissioner
Mr. Pradip Gurumurthy,
CGST & Central Excise,
Chhatrapati Sambhajinagar

3. Additional Commissioner
(Preventive) Mr. Rajkumar Kendre,
CGST & Central Excise,
Chhatrapati Sambhajinagar

4. The Superintendent (Preventive)
Mr. B.S. Nade, CGST & Central Excise,
Chhatrapati Sambhajinagar

5. State of Maharashtra,
Through Secretary, Government
of Law and Judiciary Dept.
Mantralaya, Mumabi Respondents

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Mr. R.F. Totala, i/b Mr. Vedant Kabra,
Advocate for the petitioner.
Mr. A.G. Talhar, DSGI a/w Mr. Pratik Bothari and Ms. Nandini Chittal, Advocates for respondent Nos.1 to 4.
Mr. S.R. Wakale, A.G.P. for respondent No.5-State.

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CORAM : SANDIPKUMAR C. MORE AND
Y.G. KHOBRAGADE, JJ.

Reserved On : 19.12.2025
Pronounced on : 05.02.2026

Judgment (Per Sandipkumar C. More, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the petitioner as well as learned A.P.P.

2. By way of this writ petition, the petitioner Kanhaiya Nilambar Jha, who is posing himself as an Office Boy in M/s Kabsan Services Private Limited, is seeking declaration about his arrest by present respondent No.4 in Case No.1/2025, as null and void. He has also prayed for quashing and setting aside the order dated 21.06.2025 passed by the learned Judicial Magistrate (First Class), Nanded granting his magisterial custody. Consequently, the petitioner has sought direction to respondent No.4 to give him compensation of Rs. 10,00,000/- (Rupees Ten Lakh) towards his illegal arrest.

3. Chronology of the events and background facts as claimed by the petitioner,can be summarised as under :

On 17.06.2025 around 1.00 p.m. GST Officers visited office of one Chartered Accountant Bhavik Bhanushali (Mehta) at Mumbai. Thereafter the petitioner was

telephonically called there and taken into custody by these GST Officers without any summons or arrest memo on the same day. Thereafter he was taken out of Mumbai to Chhatrapati Sambhajinagar without informing his family members. On 18.06.2025 the petitioner was brought and illegally detained at CGST and Central Excise Office, GST Bhavan, Chhatrapati Sambhajinagar. He was kept there in the custody without showing any arrest and without producing him before any Magistrate till 20.06.2025. On 20.06.2025 wife of the petitioner approached an Advocate who visited CGST Office and met the petitioner there. According to respondent No.4, petitioner was called since 17.06.2025 for recording his statement as witness. Therefore, advocate of the petitioner e-mailed multiple senior GST officers seeking information regarding basis of custody of petitioner and his expected release. But respondent No.4, in turn, issued threatening reply e-mail by refusing to provide any information. Advocate for the petitioner again sent e-mail reiterating illegality of his detention. However, on 21.06.2025, respondent No.4 shown formal arrest of the petitioner at Nanded under Section 69 of the Central Goods and Services Tax Act (for short, “CGST Act”) and filed Case No. 1/2025 before the learned Judicial Magistrate (First Class), Nanded for the offence punishable

under Sections 132 (1)(b), 132 (1)(c) and 132 (I)(i) of the CGST Act. On 21.06.2025 the concerned Magistrate remanded the petitioner in M.C.R. till 03.07.2025. The petitioner, on the same day, filed bail application before concerned Magistrate citing his illegal detention since 17.06.2025. However, after filing say opposing the said bail application, the same was rejected by the concerned Magistrate on 23.06.2025. Then on 26.06.2025, petitioner filed fresh bail application before the Sessions Judge, Nanded and subsequently filed application for interim bail on 03.07.2025. Though the learned Sessions Judge allowed application of interim bail on 04.07.2025, but the respondents Authorities immediately filed application for cancellation of said bail application on 05.07.2025, and therefore, the concerned learned Sessions Judge granted stay to the interim bail. However, this Court then directed to decide the bail application of the petitioner, and therefore, the learned Sessions Judge, Nanded, after hearing both the parties, was pleased to grant bail to the petitioner. As such, the petitioner is now claiming the aforesaid reliefs on the ground of his alleged illegal detention.

4. Learned counsel for the petitioner, during the course of argument, did not press the prayers mentioned in prayer clauses (b) and (c) in the petition so far as it relate to

declaring arrest of the petitioner as null and void and order of granting him magisterial custody. As such, the only prayer remains in this petition is in respect of grant of compensation of Rs. 10,00,000/- on account of alleged illegal arrest of the petitioner. Learned counsel for the petitioner vehemently argued that respondent No.4 Mr. Nade was not having jurisdiction to issue summons to the petitioner at Mumbai and the summons to the petitioner issued on 17.06.2025 was therefore without jurisdiction and prepared as false and fabricated document. According to him, CA Bhavik was called at 9.00 p.m. on 17.06.2025 at the office of Ankit Dharod without any summons and concocted story was prepared for facilitating illegal detention of the petitioner. Learned counsel for the petitioner submits that fabricated record of summons was prepared after the petitioner was taken into custody and that too after getting mail from his advocate. Learned counsel for the petitioner further submitted that in fact 7 days notice was required for issuing summons as per order XVI of the Code of Civil Procedure since there is no specific provision about the duration mentioned in Section 70 of the CGST Act. According to him, there was violation of guidelines issued by higher authorities of the respondents and Article 21 (2) and Article 22 of the Constitution of India as well. Thus, the

learned counsel for the petitioner claimed that there was illegal detention of the petitioner at the hands of respondents for which heavy compensation needs to be awarded. In support of his submissions, he also relied on the following judgments.

(i) Joginder Kumar vs State of U.P. and others (1994) 4 SCC 260

(ii) D.K. Basu vs State of W.B.; (1997) 1 SCC 416

(iii) Dikshant vs State of Maharashtra; 2025 SCC OnLine Bom 3484

(iv) FSM Education Pvt. Ltd vs Union of India and others (2022) 2 Mah LJ 128

5. On the contrary, learned counsel Mr. Talhar for respondent Nos.1 to 3, by filing affidavit-in-reply, strongly opposed the submissions made on behalf of the petitioner. He, by referring chronology of the events, contended that the petitioner was in fact managing the affaris of M/s Kabsan Services Pvt. Ltd and by showing fake and fabricated accounts, he secured input tax credit of huge amount in crores. According to him, petitioner was in fact called as a witness to record his statements under proper summons under Section 70 of the CGST Act, which does not say anything about 7 days notice in advance. According to him, from 17.06.2025 to 20.06.2025, the petitioner was with the respondents voluntarily and under proper summons for recording statement and only on 21.06.2025, after ascertaining the

charges against the petitioner, he was arrested at Nanded and produced before the Magistrate on the same day. As such, according to learned counsel for respondent Nos.1 to 3, there was no restriction on the petitioner till 20.06.2025 and only after disclosing the grounds of arrest, he was taken in custody on 21.06.2025. He pointed out that proper procedure was followed while giving summons to the petitioner as well as CA Bhavik Mehta. According to him, there was no need of 7 days notice as claimed by the petitioner. Thus, he prayed for dismissal of the petition. He also relied on the following judgments.

(i) Ram Kotumal Issrani vs Directorate of Enforcement and others; 2024 ALLMR (Cri) 1881

(ii) Radhika Agarwal vs Union of India (UOI) and others MANU/SC/0274/2025

6. Learned counsel for the petitioner, vide affidavit in rejoinder, reiterated his contention in the petition.

7. With the able assistance of the learned counsel for the petitioner as well as learned Counsel Mr. Talhar, we have gone through the documents placed on record and also the material placed on record in the light of observations of the citations relied by the rival parties and the concerned legal provisions.

8. As observed earlier, it is to be noted that now only one prayer in this petition is remained for consideration, since the learned counsel for the petitioner waived prayer clauses (B) and © for declaring the arrest of the petitioner as well as order of granting him magisterial custody, as null and void. The petitioner is now claiming compensation of Rs. 10,00,000/- for his illegal detention at the hands of the respondents by alleging that he was taken in custody from 17.06.2025 to 20.06.2025, but his arrest was shown on 21.06.2025. On the contrary, respondent Nos.1 to 4 are claiming that the petitioner was not in fact arrested, but to ascertain the fraudulent utilization of Input Tax Credit by the Kapson Company registered at Nanded of which the petitioner was found to be In-charge of, they had summoned the petitioner as well as other persons namely Chartered Accountant Ankit Dharod and his consultant Bhavik Mehta for recording their statements. In short, they claimed that the petitioner suppressed the fact that he was accompanied by the aforesaid persons during the period from 17.06.2025 to 20.06.2025 and came with a false case of his illegal detention. Under such circumstances, the only question which is under consideration in the petition is, as to whether the petitioner was under illegal detention for the aforesaid period when he was summoned for

recording statement under Section 70 of the CGST Act. Learned counsel for the petitioner also raised question that there was violation of Section 70 as respondent Nos.1 to 4 did not give 7 days notice for the petitioner to appear before them under the aforesaid summons.

9. Admittedly, the chronology of the events as observed by us in the upper part, is not in dispute and only in the light of legal provision, it can be decided as to whether the period from 17.06.2025 to 20.06.2025 spent by the petitioner with respondent Nos.1 to 4 amounts to illegal detention.

10. Admittedly, from the record it is disclosed that when Anti-evasion Wing of CGST, Aurangabad generated a system generated intelligence indicating fraudulent utilization of ITC (Input Tax Credit) by Kabsan and passing on of GST without any supply of goods or services or both, an inquiry was commenced. In that connection respondent No.4 visited the office of Bhavik Mehta at Mukbai where the petitioner was called. After having found involvement of the petitioner, seizure of 42 mobile phones, 12 SIM cards, one all-in-one computer, two laptops and two CPU were seized from him. Thereafter it appears that on 17.06.2025 when all this procedure took time, the petitioner was asked under summons

as per Section 70 of the CGST Actto appear before respondent No.2 for further questioning at Aurangabad. The record shows that other persons Bhavik Mehta and Ankit Dharod were also issued with similar summonses for their appearance on 18.06.2025 at about 11.30 a.m. at GST Bhavan, Aurangabad. On going through the copies of the said summonses, it is clearly evident that they are received by the petitioner as well as these two persons without raising any objection by acknowledging them under their respective signatures. Further, after attending GST Bhavan at Aurangabad, the petitioner and Bhavik Mehta were again issued with similar summonses for attending GST Bhavan on 19.06.2025 for further inquiry. Thereafter on 19.06.2025 also the petitioner was called for inquiry on 20.06.2025. It is to be noted that the petitioner did not raise any objection for such attendance during period from 17.06.2025 to 20.06.2025. Thereafter on ascertaining the involvement of the petitioner he was arrested on 21.06.2025 and without any delay, produced concerned Magistrate, who granted him custody.

11. Learned counsel for the petitioner vehemently argued that there should have been 7 days notice prior to fixing the date for inquiry in view of Section 70 of CGST Act, but there was clear-cut violation at the hands of respondent

No.4 while issuing said summons by not giving time gap of 7 days. For that purpose he drew our attention to the concerned Section 70 of CGST Act, which reads thus :

> *"(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*
>
> *(1-A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]*
>
> *(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860)".*

Admittedly, on going through Section 70, it has been provided that the summons must be issued as provided in the case of Civil Court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908). However, nowhere in this Section there is reference of 7 days prior notice. Learned

counsel for the petitioner, for that purpose, relied on Order XVI of the C.P.C. which relates to summoning and attendance of witnesses, which is reproduced herein below for quick reference.

> *"(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such person for their attendance in Court.*
>
> *(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.*
>
> *(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such part shows sufficient cause for the omission to mention the name of such witness in the said list.*
>
> *(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the 2[Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).]".*

However, on going through the aforesaid Order, it indicates that it is in respect of summons to the witnesses after settlement of issues, that means, at the stage of trial. But in the instant matter, after considering the language of Section 70 of the CGST Act, summons has been issued to the petitioner in respect of inquiry, and therefore, when the Section is silent in respect of 7 days notice, we are unable to understand that there should be 7 days notice required for such inquiry.

12. Though in the case of ***FSM Education Pvt. Ltd vs Union of India*** (supra) this Court had held that if any summons is required to be issued by the respondent, then it shall indicate the purpose of issuance of summoned with clear 7 days notice, however, this observation had come in the peculiar circumstances of that case only and this cannot be made directly applicable in the instant matter, considering the mandate of Section 70 of CGST Act. It is to be noted that in the case of ***Radhika Agarwal vs Union of India*** (supra), the Hon'ble Apex Court has held thus:

> *"69. However, we may clarify that a person summoned under Section 70 of the GST Acts is not per se an accused protected under Article 20(3) of the Constitution, as has been held in the case of Deepak Mahajan (supra). This is because the*

prohibitive sweep of Article 20(3) of the Constitution does not go back to the stage of interrogation. Reference in this regard has been placed on Poolpandi and Others v. Superintendent, Central Excise and Others53 and Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria.54 It is obvious that the investigation must be allowed to proceed in accordance with law and there should not be any attempt to dictate the investigator and at the same time, there should not be any misuse of power and authority.

72. The last issue for our determination concerns the constitutional validity of Sections 69 and 70 of the GST Acts which provide for the power to arrest and the power to summon. The petitioners assail the vires of these provisions on the grounds of legislative competence. It is submitted that Article 246-A of the Constitution while conferring legislative powers on Parliament and State Legislatures to levy and collect GST, does not explicitly authorize the violations thereof to be made criminal offences. Our attention was drawn to Lists I and II of the Seventh Schedule to the Constitution which demarcate the legislative fields for the Union and the States to enact laws and make violations of the enactments as offences. Referring to Entry 93 of List I to the Seventh Schedule, it is submitted that the Parliament can enact criminal provisions only for the matters in

List I. It is further submitted that the power to summon, arrest and prosecute are not ancillary and incidental to the power of levying GST and therefore, are beyond the legislative competence of the Parliament under Article 246-A of the Constitution.

73. This argument, in our opinion, must be rejected. Article 246-A of the Constitution is a special provision defining the source of power and the field of legislation for the Parliament and the State Legislature with respect to GST:

> *"246-A. Special provisions with respect to goods and services tax.—(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.*
>
> *(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.*
>
> *Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article 279-A, take effect from the date*

recommended by the Goods and Services Tax Council."

75. The Parliament, under Article 246-A of the Constitution, has the power to make laws regarding GST and, as a necessary corollary, enact provisions against tax evasion. Article 246-A of the Constitution is a comprehensive provision and the doctrine of pith and substance applies. The impugned provisions lay down the power to summon and arrest, powers necessary for the effective levy and collection of GST. Time and again this Court has held that while deciding the issue of legislative competence, entries should not be read in a narrow or pedantic sense but given their broadest meaning and the widest amplitude because they are intrinsic to a machinery of government.58 The ambit of an entry or article laying down the legislative field extends to all ancillary and subsidiary matters which fairly and reasonably can be said to be comprehended in it.59 This settled dictum regarding the interpretation of legislative entries equally applies to the special provision of Article 246-A of the Constitution. In the context of the legislative power to levy and collect tax, a Constitution Bench of Seven Judges in R.S. Joshi, Sales Tax Officer, Gujarat and Others v. Ajit Mills Limited and Another,60 held:

"47. The principle in construing words conferring legislative power is that the most

liberal construction should be put on the words so that they may have effect in their widest amplitude. None of the items in the List is to be read in a narrow restricted sense. Each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. All powers necessary for the levy and collection of the tax concerned and for seeing that the tax is not evaded are comprised within the legislative ambit of the Entry as ancillary or incidental. It is also permissible to levy penalties for attempted evasion of taxes or default in the payment of taxes properly levied."

Thus, a penalty or prosecution mechanism for the levy and collection of GST, and for checking its evasion, is a permissible exercise of legislative power. The GST Acts, in pith and substance, pertain to Article 246-A of the Constitution and the powers to summon, arrest and prosecute are ancillary and incidental to the power to levy and collect goods and services tax. In view of the aforesaid, the vires challenge to Sections 69 and 70 of the GST Acts must fail and is accordingly rejected.

82. Whenever the jurisdiction of the High Court or the Supreme Court is invoked under Article 226

or Article 32 as the case may be, challenging the punitive or preventive detention, the Court is expected to take into consideration the nature of right infringed, the scope and object of the legislation under which such arrest or detention is made, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked etc. In exercise of their discretionary jurisdiction, the High Courts and the Supreme Court do not, as courts of appeal or revision, correct errors of law or of facts. The judicial intervention is warranted only in exceptional circumstances when the arrest is prima facie found to be malafide; or is prompted by extraneous circumstances, or is made in contravention of or in breach of provisions of the concerned statute; or when the authority acting under the concerned statute does not have the requisite authority etc.

87. However, when the legality of such an arrest made under the Special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely to ascertain whether the officer was an authorized officer under the Act, whether

> *the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorized officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review".*

13. Therefore, on going through the aforesaid observations as well as language of Section 70 of CGST Act, it cannot be held that there was need of 7 days notice for issuing summons under Section 70 of the CGST Act. On the contrary, it has to be held that a person can be summoned for making inquiry and recording his statement under the said provision which does not amount to detention.

14. In the instant case, it appears that the petitioner had readily accepted the summons issued to him from 17.06.2025 to 19.06.2025. He readily acknowledged the summons by putting his signatures thereon and also attending on the dates. Further, during that period he did not make any complaint about his alleged illegal detention. Further, the record shows that he was kept in GST Bhavan at Aurangabad

as per his own wish and he was also allowed to use his four mobile handsets from which he could have easily made contact with his family members. Under such circumstances, by no stretch of imagination, it can be held that the petitioner was under illegal detention at the hands of respondent Nos.1 to 4 during the said period. Therefore, no question arises of awarding compensation to the petitioner, as claimed by him. With these observation, we find no substance in the present petition and accordingly it stands dismissed.

15. Rule is discharged.

(Y.G. KHOBRAGADE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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