



GAHC010235292025



Application No.	Application Received on	Date on which copy was made ready	Fees paid (Rs.)	Posting date to Delivery Desk
632708	24/10/2025	24/10/2025	100.00	24/10/2025

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

Case No. : Bail Appln./3440/2025

SHRI MUKESH AGARWAL
SON OF SHRI SAGAR MAL AGARWALLA, RESIDENT OF HOUSE NO 19 ,
1FLOOR, PRAKASH KUNJ, ARUNODOI PATH, R.K. CHOUDHARY ROAD
KUMARPARA, GUWAHTI, BHARALUMUKH, GUWAHTI 781 009, IN THE
DISTRICT OF KAMRUP (METRO), ASSAM

VERSUS

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SENIOR INTELLIGENCE OFFICER, DIRECTORATE
GENERAL OF GOODS AND SERVICE TAX INTELLIGENCE, GUWAHATI
ZONAL UNIT, HOUSE NO. 4, RAJGARH, BYE LANE NO. 2, CHANDMARI, P.O.
SILPUKHURI, GUWAHATI 781 003, IN THE DISTRICT OF KAMUP, (METRO),
ASSAM

2:ADDITIONAL DIRECTOR GENERAL
DIRECTORATE OF GENERAL OF GOODS SERVICE TAX
INTELLIGENCE
GUWAHATI ZONAL UNIT
HOUSE NO. 77
RUPKONWAR JYOTI PRASAD AGARWAL ROAD
GUWAHATI-781 037. OPP. SRIMANTA SANKARDEVA KALAKSHETRA
P.O. PANJABARI
GUWAHATI-781037.

3:THE INTELLIGENCE OFFICER

DIRECTORATE OF GENERAL OF GOODS SERVICE TAX
INTELLIGENCE
GUWAHATI ZONAL UNIT
HOUSE NO. 77
RUPKONWAR JYOTI PRASAD AGARWAL ROAD



OPP SRIMANTA SANKARDEVA KALAKSHETRA
P.O. PANJABARI
GUWAHATII-781037

Advocate for the Petitioner : DR. ASHOK SARAF, MR P K BORA, MR S J SAIKIA, MR. N N DUTTA, MR P BARUAH, MR S K AGARWAL

Advocate for the Respondent : SC, GST,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 24-10-2025

Heard Dr. A. Saraf, learned Sr. counsel assisted by Mr. S. Agarwal, learned counsel for the applicant. Also heard Mr. S.C. Keyal, learned standing counsel, GST appearing for the respondent.

2. The present application is instituted praying for grant of regular bail to the applicant in connection with Case No. DGGI/INT/INTL/650/2023 pending before the court of learned Chief Judicial Magistrate, Kamrup (M) at Guwahati.

3. The materials brought on record revealed that a search was conducted in the business premises of M/s Balaji Steel Rolling Mills and M/s Balaji Concast on 19-05-2023. In the said search certain incriminating materials had come on record. The accused petitioner is the partner in the said two firms. The statement of the accountant of the firms Rakesh Sarkar was recorded on 19-05-2023 wherein he is said to have admitted the clandestine supply of goods having gross value of Rs. 11.46 Crores by M/s. Balaji Concast during the period from April, 2022 to May, 2023 on which GST of Rs. 1.74 Crores was

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payable. With regard to the goods supplied by M/s Balaji Steel Rolling Mills, the said accountant had admitted the clandestine supply of goods having gross value of Rs. 23.66 Crores made during the period April, 2022 to May, 2023 for which GST to the tune of Rs. 3.62 Crores was payable. It is further projected that the statement of the applicant was recorded on 26-02-2024 with regard to the irregularities detected in connection with supplies made by the said two firms and the applicant is stated to have agreed with the statement made by the accountant of the said firms. The applicant is further stated to have admitted tax liability of 1.74 Crores in respect of M/s Balaji Concast and Rs. 3.64 Crores in respect of M/s Balaji Steel Rolling Mills for the period from April, 2022 to May, 2023.

4. It is further projected that the applicant, herein, had made deposited an amount of Rs. 2.0 Crores in respect of liability arising in connection with supplies made by M/s Balaji Steel Rolling Mills and Rs. 15 Lakhs in respect of M/s Balaji Concast. The matter was thereafter not proceeded with. However, it is projected that the applicant on 22-05-2025 was served with a summon under Section 70 of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as the CGST Tax, 2017) requiring the applicant to appear before the Addl. Director General, Directorate General of Goods and Service Tax, Intelligence, Guwahati Zonal Unit, i.e. the respondent No. 2, herein, on 10-06-2025. The applicant in response to the said summons vide communication dated 09-06-2025, informed the respondent No. 2 that the documents in connection with the investigations were already available in the office of the respondent No. 2 and that he had already given his statement in the matter accepting the tax liability. He further stated that no further

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documents being required to be supplied and also that on account of severe financial crisis faced by him, he was not in a position to pay remaining tax liability as determined in the matter. The said communications were issued in respect of both the firms involved.

5. Thereafter, on 18-06-2025, a further summon was issued under Section 70 of the CGST Act, 2017 requiring the applicant or his authorised representative to appear before the respondent No. 2 on 27-06-2025. The applicant responded to the said summons and reiterated the contentions as made by him earlier vide the communication dated 09-06-2025. Thereafter, it is seen that a further summons was issued to the applicant on 21-08-2025 directing the applicant or his authorised representative to appear before the office of the respondent No. 2 on 29-08-2025. The applicant again vide his communication dated 29-08-2025, reiterated the contentions raised by him earlier in the communication dated 09-06-2025.

6. The applicant having not appeared in response to the summons issued to him, the respondent No. 2 on 09-09-2025 issued an Authorisation of Arrest (Reasons to Believe). In the said Authorisation of Arrest after reiterating the facts as noticed hereinabove, it was projected that during the course of further investigation, on scrutiny of seized records, it was found that apart from clandestine supplies alleged to have been made in the year 2022-23, such clandestine supplies was also made by the said two firms in the year 2019-20, 2020-21 & 2021-22. The tax evaded for which the clandestine supplies was so made was also determined. In the said Authorisation of Arrest, it was further projected that as only a part statement of the applicant was recorded on 26-02-2024, therefore, to record voluntary statement of the applicant, summons were issued to him on three

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occasions. However, he did not comply with the said summons. In the said Authorisation of Arrest, it was further projected that on analysis of the materials coming on record, it was revealed that the applicant had indulged in clandestine supplies of goods resulting in evasion of GST to the extent of Rs. 15.25 Crores. It was further projected that clandestine supply of goods without issuance of invoice is an offence under Section 132(1)(a) of the CGST Act, 2017 and punishable under Section 132(1)(i) of the CGST Act and it is cognizable and non-bailable offence under Section 132(5) of the CGST Act, 2017. In view of the above conclusions, the respondent No. 2, proceeded to authorise Mr. Ravi Kumar, Intelligence Officer, DGGI, Guwahati Unit to arrest the applicant, herein.

7. It is projected that the applicant was arrested on 16-10-2025. On such arrest, the grounds of arrest was issued to him under Section 47 of BNSS, 2023 on 16-10-2025. The contention raised in the said grounds of arrest is a reiteration of the contentions contained in the Authorisation of Arrest. The petitioner was also issued with arrest memo under Section 69 of the CGST Act. Thereafter, an information with regard to the arrest of the applicant along with the grounds thereof was issued vide communication dated 16-10-2025, to the wife of the applicant under Section 48 of the BNSS Act, 2023.

8. The applicant under the above circumstances has instituted the present application praying for regular bail, in pursuance to his arrest in connection with the above noted case on 16-10-2025.

9. Dr. A. Saraf, learned Sr. counsel appearing for the applicant by reiterating the facts noticed, hereinabove, has submitted that the applicant had in the year 2023 itself got his statement recorded in the matter and had also paid a part of the tax liability in respect of

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the two firms involved. Dr. Saraf submits that without disclosing any further materials, the respondent authority had issued summons to him on three occasions. Basing on disclosure made in the said summons, the applicant, herein, had submitted his response, thereto, by reiterating the steps taken by him in the matter.

10. Dr. Saraf submits that the offence involved in the matter which mandates punishment up to 05 (five) years, a summons under Section 35(3) of BNSS, 2023 corresponding to Section 41A Cr.P.C., was required to be issued to the applicant before his arrest in the matter. However, he submits that the said course of action was not adopted by the respondent authorities and thereby they have violated the law laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. CBI & Ors.** reported in **(2022) 10 SCC 51**. In support of above submission Dr. Saraf has further referred to a decision of the Hon'ble Supreme Court rendered in the case of **Arnesh Kumar Vs. State of Bihar**, reported in **(2014) 8 SCC 272**.

11. Dr. Saraf in the above premises has submitted that the arrest of the applicant being in violation of the law laid down in this connection by the Hon'ble Supreme Court in its decision in the case of **Satender Kr. Antil (Supra)**, the applicant is entitled to be released on bail on that count alone. Dr. Saraf has also disputed the contentions made in the Authorisation of Arrest by the respondent No. 2, and also the determination of tax purportedly evaded by the applicant, herein, for the years involved. Dr. Saraf has submitted that materials brought on record would go to reveal that the pre-conditions for forming "Reason to Believe" Authorisation of Arrest of the applicant, herein, was clearly absent. Dr. Saraf has in this connection has relied upon the decision of the Hon'ble

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Supreme Court in the case of **Radhika Agarwal Vs. UoI & Ors.** reported in **2025 OnLine SC 449.**

12. In the above premises, Dr. Saraf submits that the allegations levelled against the applicant, herein, being based on documentary evidence, the custodial interrogation of the applicant is not called for. He further highlights that after his arrest on 16-10-2025, he was remanded for a day in the custody of the department and on his production thereafter on 17-10-2025, the applicant was remanded to judicial custody wherein he continues to remain. In the above premises, Dr. Saraf submits that the applicant is entitled to be enlarged on regular bail.

13. Per contra, Mr. S.C. Keyal, learned standing counsel, GST by producing the case record has submitted that the summons having been issued to the applicant under Section 70, there is no requirement of the authorities to issue notices under Section 35 BNSS upon the applicant, herein. He further submits that the ground of arrest was given to the applicant on his arrest in compliance with the provisions of Section 47 of the BNSS Act and thereafter, intimation of his arrest along with grounds were furnished to the wife of the applicant under Section 48 of the BNSS, 2023. Mr. Keyal further submits that the applicant, herein, in spite of receipt of summons had failed to appear before the respondent No. 2 and thereby, the respondent No. 2 had proceed to issue Authorisation of Arrest on 16-10-2025. Mr. Keyal submits that the Authorisation of Arrest dated 09-09-2025 narrates the particulars involved in the matter in details and no lacuna can be find therein. Accordingly, Mr. Keyal submits that the determination of tax evaded by the applicant, herein, in connection with the two firms involved having been so determined



basing on materials brought on record the investigation carried out in the matter, the prayer of the applicant for being enlarged on bail would call to be rejected and the applicant be continued in detention so as to conclude the investigation involved and also to negate the possibility of the applicant, herein, influencing the witnesses and or tampering the evidences. He further submits that the given the nature of allegation levelled against the applicant, herein, his physical presence is very much called upon for the purpose of smooth completion of the investigation involved.

14. I have heard the submissions made by the learned counsel for the parties and also perused the materials available on record.

15. The materials brought on record reveals that in pursuance to the search conducted in the business premises of M/s Balaji Steel Rolling Mills and M/s Balaji Concast on 19-05-2023 incriminating materials were seized and thereafter, basing on the statement of the accountant of the said two firms, tax evasion committed by the applicant with regard to the supplies made by the said two firms for the period April, 2022 to May, 2023 be come to the forefront. It is seen that the applicant, herein, had also admitted the statement with regard to the tax evasion so made by the said two firms. The applicant is also found to have admitted a tax liability to the extent of Rs. 1.74 Crores in respect of M/s Balaji Concast and Rs. 3.64 Crores in respect of M/s Balaji Steel Rolling Mills for the supplies made by it during the period from April, 2022 to May, 2023.

16. It is also seen that the respondent had issued three summons under Section 70 of CGST Act, 2017, requiring the applicant, herein, to appear in person or through authorised agent before the respondent No. 2, to record his verbal statement. Although



the applicant had responded to the said summons by issuing communications, he had not appeared before the respondent No. 2 as directed vide the said summons issued under Section 70 of CGST Act, 2017. Thereafter, the respondent No. 2 proceeded to issue Authorisation of Arrest (Reason to Believe) and therein it was highlighted that in addition to the evasion of tax as detected for the supplies made by the firms in question during the period from April, 2022 to May, 2023, further evasion of tax for the financial years 2019-20, 2020-21, 2021-22 & 2022-23 came to be detected. The respondent No. 2 noticing that the applicant had not appeared before him in response to the summons issued in the matter, authorised Mr. Ravi Kumar, Intelligence Officer, DGGI, Guwahati Unit to arrest the applicant, herein. The material brought on record does not reveal that separate notices under Section 35(3) of the BNSS, 2023 was issued to the applicant, herein.

17. There is no dispute in the Bar that punishment prescribed for the offence alleged in this case against the applicant is imprisonment for 05 (five) years as well as with fine.

18. The imprisonment being for a period for 05 years only, in terms of the guidelines laid down by the Hon'ble Apex Court in the case of **Arnesh Kumar (Supra)** there is necessity for issuance of notice under Section 35(3) of BNSS, 2023. In the event, the said notices were to be dispensed with, it was the bounded duty of the arresting authority to set out the reasons for arriving at the satisfaction in this connection under the provisions of Section 35(1)(b)(ii) of the BNSS, 2023. However, the said aspect of the matter has been found to have not been complied with by the respondent.

19. In the case of **Arnesh Kumar (Supra)**, the Apex Court has while laying down



guidelines which are required to be followed before a person may be arrested in case involving offence which entails punishment of imprisonment of less than 7(seven) years or up to 7(seven) years has observed that the directions issued would not only be applicable to the cases under Section 498A of IPC or Section 4 of the Dowry Prohibition Act, 1961 but would also cover such cases where offence is punishable with imprisonment for a term which may be less than 7 (seven) years or which may extend to 7(seven) years, whether with or without fine. Thus, the guidelines issued by the Apex Court in the case of **Arnesh Kumar (Supra)**, are also applicable to this case.

20. Section 69 of the CGST Act, 2017 provides for the power to arrest however, before exercising such power, the competent authority must have "Reason to Believe" that a person has committed an offence specified clause (a) to clause (d) of sub-section (1) of Section 132 of CGST Act, 2017.

21. However, as stated in the Guidelines for Arrest and Bail in Relation to Offences Punishable under GST Act 2017 issued by the GST Investigation Wing on 17th August, 2022, the existence of the power to arrest and justification for exercise of it are quite distinct.

22. Section 69 of CGST Act, 2017 provides for the power to arrest. However, before exercising such power in a case involving offence punishable with imprisonment of less than 7(seven) years or which may extend up to 7(seven) years, justification for arrest has to be provided in terms of Section 35(1)(b)(ii) of the BNSS, 2023. No such justification has been made by the arresting authority, in writing, while arresting the present petitioner in this case. The contentions made by the respondents that the applicant may tamper the



evidence and influence the witnesses, without there being any material brought on record basing on which the arresting authority had arrived at the satisfaction regarding existence of such a condition and without stating such reasons in writing, there has occasioned a violation of the statutory provisions contained in Section 35(1)(b)(ii) of BNSS, 2023.

23. It is seen that there is no dispute in regards to the Arrest Memo issued by the respondent authorities by complying all necessary formalities under Section 69 of the CGST Act. But it is the issue raised by the petitioner that there was no proper compliance of Section 35(3) of BNSS which are mandatorily required to be followed. From the view expressed by the Hon'ble Supreme Court in case of **Radhika Agarwal (Supra)**, it is evident that though the CGST is a special enactment, but the same cannot be considered as a complete Code in itself as regards to the provision of search, seizure and arrest and as stated above, the provision of Code of Criminal Procedure would be applicable unless it is expressly or impliedly barred by the provision of the said Act. But, here in the instant case, it is seen that there is no compliance of Section 35(3) BNSS, which is mandatorily required to be followed as per the guideline of Hon'ble Supreme Court in the cases of **Arnesh Kumar (Supra)** and reiterated in **Satender Kumar Antil (Supra)**.

24. This Court is, therefore, is of the considered opinion that in the instant case, there has been violation of the guidelines issued by the Apex Court in the case of **Arnesh Kumar (Supra)** and on that count alone, the petitioner is entitled to be released on bail.

25. Having noticed the said position, this Court also notices that the disclosure made in the Authorisation of Arrest (Reasons to Believe) the authorities basing on the materials collected during the search of the premises of the two firms involved had determined the

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evidence and influence the witnesses, without there being any material brought on record basing on which the arresting authority had arrived at the satisfaction regarding existence of such a condition and without stating such reasons in writing, there has occasioned a violation of the statutory provisions contained in Section 35(1)(b)(ii) of BNSS, 2023.

23. It is seen that there is no dispute in regards to the Arrest Memo issued by the respondent authorities by complying all necessary formalities under Section 69 of the CGST Act. But it is the issue raised by the petitioner that there was no proper compliance of Section 35(3) of BNSS which are mandatorily required to be followed. From the view expressed by the Hon'ble Supreme Court in case of **Radhika Agarwal (Supra)**, it is evident that though the CGST is a special enactment, but the same cannot be considered as a complete Code in itself as regards to the provision of search, seizure and arrest and as stated above, the provision of Code of Criminal Procedure would be applicable unless it is expressly or impliedly barred by the provision of the said Act. But, here in the instant case, it is seen that there is no compliance of Section 35(3) BNSS, which is mandatorily required to be followed as per the guideline of Hon'ble Supreme Court in the cases of **Arnesh Kumar (Supra)** and reiterated in **Satender Kumar Antil (Supra)**.

24. This Court is, therefore, is of the considered opinion that in the instant case, there has been violation of the guidelines issued by the Apex Court in the case of **Arnesh Kumar (Supra)** and on that count alone, the petitioner is entitled to be released on bail.

25. Having noticed the said position, this Court also notices that the disclosure made in the Authorisation of Arrest (Reasons to Believe) the authorities basing on the materials collected during the search of the premises of the two firms involved had determined the

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taxable value of the supplies made in the matter and also the amount of tax evaded for the financial years prior to the period earlier considered, i.e. from April, 2022 to May, 2023. The above situation would bring to the forefront that the materials requisite for proceeding against the applicant, herein, is already available with the respondent. The allegation against the applicant, herein, being now required to be established basing on documentary of evidence, this Court is of the considered view that the custodial interrogation of the applicant, herein, may not be called for. However, it is seen that the respondent No. 2 in the Authorisation of Arrest dated 09-09-2025 had recorded that only a part of the statement of applicant was recorded on 26-02-2024, therefore, there was a necessity to record voluntary statement of the applicant, herein. The applicant having not appeared before the respondent No. 2, in response to the summons issued to him under Section 70 of CGST Act, the decision so arrived at to authorise the arrest of the applicant, herein, was arrived at. The said aspect of the matter, has received consideration of this Court and this Court is of the prima facie view that the said aspect of the matter can be taken care of by imposing strict conditions in the matter while enlarging the petitioner, herein, on bail.

26. In view of the conclusions reached, hereinabove, this Court deems it proper not to examine the contentions raised by Dr. Saraf, learned Sr. counsel for the applicant on the merits of the allegations levelled against the petitioner.

27. For the reasons assigned hereinabove, this Court is of the considered view that the applicant, namely, **Shri Mukesh Agarwal** is required to be enlarged on bail on furnishing bond of Rs. 1,00,000/- (Rupees One Lakh) with 02 (two) sureties of like



amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati subject to the following conditions:

(a) The applicant, herein, on being released from detention shall appear before the respondent No. 2, on or before 03-11-2025 and have his statement recorded.

(b) That the petitioner shall appear before the Investigating Officer as and when so required by the Investigating Officer;

(c) That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court;

(d) That the petitioner shall provide his contact details including photocopies of his Aadhaar Card or Driving License or PAN card, mobile number, and other contact details before the Investigating Officer;

(e) That the petitioner shall not leave the jurisdiction of the Investigating Officer without prior permission of the Investigating Officer and when such leave is granted by the Investigating Officer, the petitioner shall submit his leave address and contact details during such leave before the Investigating Officer; and

(f) That the petitioner shall not commit any offence while on bail.

28. With the above observations and conclusions, the present bail application stands disposed of.

The Case Diary, produced by Mr. S.C. Kayal, learned standing counsel, GST be returned forthwith.

Sd- N. Umri Krishnan Nair

JUDGE

[Red and blue ink marks]



Salita
24/10/25

Comparing Assistant

CERTIFIED TO BE TRUE COPY

Harna Ala Bgr

Date *24.10.25*

Administrative Officer (Judicial)
Gauhati High Court, Authorised
U/S 75, BSA, 2023 (Act 47, 2023)