IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, FTC III, ALIPORE, SOUTH 24 PARGANAS.

Present	Souvik De (WB01069) Additional Sessions Judge, Fast Track 3rd Court, Alipore, South 24 Parganas.
Criminal Revision No.	58 of 2025
CNR	WBSP01-013509-2025
Revision/Motion Under Sections	397/399 of the Criminal Procedure Code, 1973 corresponding to section 438/440 of the BNSS
Order Under Challenge	Order dated 19.08.2025 passed in connection with Complaint Case No. 2489 of 2025, by the Ld. Chief Judicial Magistrate, at Alipore, South 24 Parganas
Revisionist	Union of India represented through the Assistant Comissioner (Anti-Evasion), CGST& CX, Kolkata, North Commissionerate
Represented By	Mr. Abhradip Maity, Ld. PP-in-Charge
Respondent	Sri Sanjay Daga
Represented By	Mr. Tirthankar Roy
Date Of Filing Of Motion Before Ld. Sessions Judge, South 24 Parganas, Alipore	17.09.2025
Date Of Receipt Of Record By This Court	21.02.2026
Date on which Argument Done	20.06.2026, 04.07.2026, 01.08.2026, 05.08.2026
Date of the Judgment	14.08.2026

List of references in chronology

By the Appellant

1. Radhika Agarwal vs. Union of India, (2025) 6 SCC 545

<u>By the Respondent</u>

1. Deepak Garg vs. Union of India & Ors., decided by Hon'ble Gauhati High Court on 08.09.2025
2. Varun Goyal vs. The State of Assam & Ors., (2025) SCC OnLine Gau 5216
3. Gopal Rathi vs. State, 2025 SCC OnLine Cal 6687
4. State of Gujarat and Others vs. Choodamani Parmeshwaran Iyer and Another, (2023) 20 SCC 315
5. Notification No. 8265-RG dated 23.08.2023 issued by the Hon'ble High Court at Calcutta
6. Ram Naresh Singh vs State of Madhya Pradesh, 1995 Cr.LJ 2523
7. Amar Nath & Ors. Vs State of Haryana & Ors, 1977 AIR SC 2185

<u>By the Court</u>

1. Union of India vs Sunil Biyani, 2026 LiveLaw SC 797
2. Government of India & Anr. vs Sri Devraj URS Medical College, 2026 LiveLaw SC 766
3. Shobha Namdev Sonavane vs. Samadhan Bajirao Sonvane and Others, 2026 LiveLaw SC 188
4. State of Karnataka vs. Sri Darshan Etc., 2025 SCC OnLine SC 1702
5. Mahipal vs. Rajesh Kumar alias Polia and Another, (2020) 2 SCC 118
6. Neeru Yadav v State of Uttar Pradesh, AIR 2015 SC 3703
7. Arnesh Kumar vs. State of Bihar & Anr., (2014) 8 SCC 273
8. Y. S. Jagan Mohan Reddy v. Central Bureau of Investigation, AIR 2013 SC 1933
9. Puran vs. Rambilas and Another, (2001) 6 SCC 338

Reference clause

1. Central Goods and Services Tax Act, 2017 referred to at times as CGST act and at times as the Act
2. The Code of Criminal Procedure referred to as the CrPC
3. The Bharatiya Nagarik Suraksha Sanhita, 2023 referred to at times as the BNSS

J U D G M E N T

PRELUDE

(1) The instant revisional judgment treks through different terrain of legal niceties to weigh up as to whether while passing the impugned order under challenge thereby, enlarging the respondent on bail merely on account of the procedural infirmities noticed by her, learned Chief Judicial Magistrate, Alipore, South 24 Parganas, adopted the correct legal approach or not.

(2) The issue assumes significance because the allegations against the respondent do not pertain to an ordinary penal offence committed against an individual. They relate to offences under the **Central Goods and Services Tax Act, 2017,** involving alleged fraudulent availment and passing of Input Tax Credit through fictitious firms and non-existent business entities, thereby causing substantial loss to the public revenue.

(3) The nature of such offences has repeatedly engaged the attention of the Hon'ble Supreme Court, which has consistently held that economic offences occupy a distinct category and require a different judicial approach while considering matters relating to arrest and bail.

(4) The law on the subject is no longer res integra.

(5) In **Y. S. Jagan Mohan Reddy v. Central Bureau of Investigation**, reported in **AIR 2013 SC 1933,** the Hon'ble Supreme Court authoritatively held that economic offences stand on an altogether different footing from ordinary crimes.

(6) The Hon'ble Supreme Court observed that economic offences constitute a class apart and need to be visited with a different approach in matters relating to bail.

(7) The Court noticed that such offences are generally committed with deliberate design involving deep-rooted conspiracies and huge loss of public funds. The repercussions of such offences extend beyond the immediate parties. They adversely affect-

- **public confidence;**
- **the financial stability of the country;**
- **the economy;**
- **and ultimately the nation itself.**

(8) The Hon'ble Supreme Court therefore held that while considering bail in such matters, Courts are required to keep in view not merely the individual liberty of the accused, but also the larger societal interest.

(9) The observations of the Hon'ble Supreme Court are of immense relevance in the facts of the present case. The allegations here relate to fraudulent GST transactions affecting the public revenue. The victim, in a broader sense, is not merely the Revenue Department. The victim is the society at large whose economic interests are sought to be protected through the fiscal legislation.

(10) The Constitution undoubtedly accords the highest value to personal liberty. Article 21 remains the sentinel guarding that liberty.

(11) At the same time, the Constitution equally contemplates a society governed by rule of law. Neither individual liberty nor societal interest enjoys absolute supremacy. The duty of a criminal Court lies in maintaining a delicate constitutional balance between the two.

(12) Where the allegations disclose commission of grave economic offences affecting the financial health of the nation, the Court cannot lose sight of the larger public interest, while examining procedural irregularities committed during investigation.

(13) This does not mean that statutory safeguards become illusory. Nor does it imply that investigating agencies may disregard the mandate of law. Rather, the Court is expected to determine whether the lapse complained of, goes to the root of the matter or whether it is merely procedural without causing substantial prejudice.

(14) This judgment is a quest for the apt deduction of the law apropos the impugned order, in the backdrop of the above postulation.

FRONT MATTER

(15) This criminal revision is directed against the order dated **19.08.2025** passed by the learned Chief Judicial Magistrate, Alipore in **C Case No.2489 of 2025**, whereby the learned Magistrate was pleased to enlarge the respondent/accused on bail primarily on the grounds that the arrest of the accused was not in conformity with the mandate contained in **Section 35(1)(b)(ii)** and **Section 35(3)** of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** and further that the arresting authority had failed to adhere to the principles laid down by the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar & Anr., (2014) 8 SCC 273.**

FACTS LEADING TO THE REVISION

(16) The records reveal that the respondent came under investigation for offences punishable under the provisions of the **Central Goods and Services Tax Act, 2017**, involving allegations of fraudulent availment and passing of Input Tax Credit through fictitious and non-existent entities, thereby causing substantial loss to the public exchequer.

(17) Upon completion of the preliminary investigation, the Proper Officer, exercising powers under **Section 69 of the CGST Act, 2017,** issued an authorization directing arrest of the respondent.

(18) The authorization memo records, inter alia, that-

- **the respondent was prima facie involved in commission of cognizable and non-bailable offences;**
- **custodial interrogation was considered necessary for proper investigation;**
- **there existed reasonable apprehension of tampering with evidence and influencing witnesses;**
- **the respondent was allegedly instrumental in creation and operation of dummy GST registrations and fraudulent transactions involving fake input tax credit.**

(19) Pursuant thereto, the respondent was arrested and produced before the learned Chief Judicial Magistrate, Alipore.

(20) Before the learned Magistrate, the respondent questioned the legality of the arrest principally on the grounds that-

(i) no checklist contemplated under Section 35(1)(b)(ii) of the BNSS had been prepared;

(ii) no notice under Section 35(3) of the BNSS had been served;

(iii) the arrest violated the directions issued in Arnesh Kumar vs. State of Bihar & Anr., (2014) 8 SCC 273;

(iv) the authorization memo issued under Section 69 of the CGST Act could not substitute the statutory checklist envisaged under the BNSS.

(21) Accepting the aforesaid contention, the learned Magistrate held that the arrest suffered from serious procedural infirmities and consequently enlarged the accused on bail.

(22) The learned Chief Judicial Magistrate, while granting bail, substantially held-

- **that Section 35(1)(b)(ii) of the BNSS mandates recording of reasons and preparation of a checklist before effecting arrest;**
- **that Section 35(3) of the BNSS also requires compliance with the statutory safeguards before arrest;**
- **that admittedly no separate checklist as contemplated under of the BNSS was produced before the Court;**
- **that the directions contained in Arnesh Kumar (supra) continue to be binding upon all investigating agencies;**
- **that Radhika Agarwal (supra) cannot be interpreted as overriding or diluting the principles laid down in Arnesh Kumar (supra);**
- **consequently, the arrest being procedurally defective, the accused deserved to be enlarged on bail.**

(23) The correctness of the aforesaid findings is under challenge in this revision. The revisional jurisdiction of this Court has thus been invoked alleging patent illegality, material irregularity and improper exercise of judicial discretion in granting bail solely on perceived procedural deficiencies in the process of arrest.

SUBMISSION ON BEHALF OF THE REVISIONIST / STATE

(24) Learned Public Prosecutor appearing for the revisionist assails the impugned order as being legally unsustainable, contrary to the law declared by the Hon'ble Supreme Court and founded upon an erroneous understanding of the scope of Section 35 of the BNSS vis-à-vis the provisions governing arrest under the CGST Act.

(25) It is argued that the learned Magistrate completely overlooked the ratio laid down by the Hon'ble Supreme Court in **Radhika Agarwal vs Union of India & Ors. reported in (2025) 6 SCC 545,** particularly paragraph 63 of the judgment authored by Hon'ble Mr. Justice Sanjiv Khanna.

(26) According to the revisionist, the Hon'ble Supreme Court has categorically held that even where statutory conditions authorising arrest are satisfied, arrest should not be effected mechanically or routinely. Before directing arrest, the competent authority must consider five relevant questions, namely-

 # Whether the accused is concerned in a cognizable and non-bailable offence or credible information or reasonable suspicion exists regarding his involvement;

 # Whether arrest is necessary for proper investigation;

 # Whether the accused, if not arrested, is likely to tamper with evidence or influence witnesses;

 # Whether the accused is the mastermind or principal operator of fraudulent transactions involving fake GST registrations, benami concerns or fraudulent input tax credit;

Whether, unless arrested, the presence of the accused before the investigating authority cannot otherwise be secured.

(27) It is submitted that these five parameters constitute the real safeguards intended to govern the exercise of the power of arrest.

(28) Learned Public Prosecutor argues that the authorization memo issued under Section 69 of the CGST Act unmistakably addresses the first four parameters in express terms.

(29) Although the fifth parameter has not been reproduced in identical language, the cumulative tenor of the authorization unmistakably demonstrates that custodial interrogation was considered indispensable for effective investigation.

(30) Therefore, according to the revisionist, the authorization memo substantially fulfils the object underlying the checklist contemplated under Section 35(1)(b)(ii) of the BNSS.

(31) It is next argued that the learned Magistrate committed a manifest error in insisting upon a separate checklist in every case without appreciating that **Radhika Agarwal (supra)** recognizes that the authorization itself may supplement the statutory requirement provided the relevant considerations are demonstrably reflected therein.

(32) According to the State, procedural safeguards are intended to ensure fairness in arrest and not to create artificial technicalities defeating investigation into grave economic crimes.

(33) The learned Public Prosecutor further submits that the omission to expressly reproduce the fifth consideration cannot, by itself, invalidate the arrest, when the authorization as a whole unmistakably indicates that arrest was considered necessary for effective investigation.

(34) It is further argued that the learned Magistrate read the judgment in **Radhika Agarwal (supra)** only partially and ignored the concurring opinion rendered by Hon'ble Ms. Justice Bela M. Trivedi, wherein Her Ladyship cautioned that minor procedural lapses committed during investigation of grave economic offences should not be viewed through a magnifying glass so as to frustrate the very object of special fiscal statutes enacted to protect the financial interests of the nation.

(35) It is further contended that the learned Magistrate completely failed to appreciate that economic offences constitute a distinct class requiring a different approach while considering liberty of the accused.

(36) According to him, economic offences involve deep-rooted conspiracies causing serious loss to the economy and therefore deserve a different approach while considering bail.

(37) According to the revisionist, by granting bail solely upon a perceived procedural irregularity without considering the gravity of the allegations, the learned Magistrate exercised jurisdiction with material irregularity warranting interference under the revisional jurisdiction of this Court. It is also the submission of the revisionist that the State is not preferring for cancellation of the bail order and rather challenging the legality, propriety and correctness of the reasons so given by the Ld. Jurisdictional Magistrate while passing the impugned order of bail. It is the specific submission of the revisionist that with the reasoning of the order standing illegal, improper and incorrect, the impugned order requires to be set aside and the consequential orders thereto are required to be passed. According to him, challenging the legality, propriety and correctness of the order, owing to the substantial right of the State anent doing proper investigation being affected, does not make the challenge improper on the ground of that the impugned order of granting bail is interlocutory order.

SUBMISSION ON BEHALF OF THE RESPONDENT/ ACCUSED

(38) Learned Senior Counsel appearing for the respondent supports the impugned order in its entirety.

(39) It is submitted that the safeguards incorporated in Section 35 of the BNSS are mandatory in nature and embody the constitutional guarantee against arbitrary deprivation of personal liberty under Article 21 of the Constitution.

(40) According to the respondent, the ratio in **Arnesh Kumar (supra)** continues to hold the field and binds every investigating agency irrespective of the statute under which investigation is undertaken.

(41) It is argued that the directions contained in **Arnesh Kumar (supra)** have been reaffirmed through administrative instructions issued by the **Hon'ble High Court at Calcutta vide Notification No. 8265-RG dated 23.08.2023,** thereby making compliance obligatory.

(42) The respondent submits that admittedly no checklist under Section 35(1)(b)(ii) of the BNSS was prepared and no notice under Section 35(3) of the BNSS was served.

(43) It is contended that such omission strikes at the very legality of the arrest.

(44) Learned Counsel further argues that **Radhika Agarwal (supra)** nowhere dispenses with compliance of statutory safeguards under the BNSS and therefore cannot be construed as overruling or modifying the principles laid down in **Arnesh Kumar (supra).**

(45) According to the respondent, the authorization memo under Section 69 of the CGST Act cannot replace a statutory checklist contemplated by the criminal procedure law. It is further submitted that if the Legislature intended such substitution, the statute itself would have expressly provided so. Empasis has been laid on **State of Gujarat and Others vs. Choodamani Parmeshwaran Iyer and Another reported in (2023) 20 SCC 315.**

(46) The respondent therefore contends that the learned Magistrate rightly exercised judicial discretion in protecting personal liberty by granting bail after noticing clear procedural violations committed by the arresting authority.

(47) The respondent has further contended that the statutory mandate contained in Section 35/ 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is absolute and admits of no departure even in prosecutions under the Central Goods and Services Tax Act, 2017 (CGST Act). In support of such contention, reliance has been placed upon the decisions of the **Hon'ble Gauhati High Court in Varun Goyal vs. The State of Assam & Ors., reported in (2025) SCC OnLine Gau 5216, Deepak Garg vs. Union of India & Ors., decided on 08.09.2025,** as well as the judgment of the **Hon'ble High Court at Calcutta in Gopal Rathi vs. State,** reported in **2025 SCC OnLine Cal 6687.** The revisionist also has referred to **Amar Nath & Ors. Vs State of Haryana & Ors reported in 1977 AIR SC 2185** and **Ram Naresh Singh vs State of Madhya Pradesh reported in 1995 Cr.LJ 2523** and has submitted that the a bail order being an interlocutory order, cannot be challenged before the Revisional Forum and to challenge a bail order praying for cancellation of bail, provision of Section 439(2) of the CrPC corresponding to Section 483(3) of the BNSS. According to him, with the same not being done herein this case, the instant Revisional Application stands technically defective.

(48) Lastly, it is argued that revisional jurisdiction ought not to be exercised merely because another view is possible, particularly where the order granting bail is founded upon protection of fundamental rights guaranteed under the Constitution.

POINTS FOR DETERMINATION

(49) Having heard the learned Advocates for both sides and upon careful consideration of the records, the following questions arise for determination:

1. Whether the learned Chief Judicial Magistrate correctly appreciated the scope and ambit of Sections 35(1)(b)(ii) and 35(3) of the BNSS while granting bail?

2. Whether the authorization memo issued under Section 69 of the CGST Act is capable of supplementing the checklist contemplated under Section 35(1)(b)(ii) of the BNSS in the light of the judgment in ***Radhika* Agarwal (supra)**?

3. Whether omission to expressly record the fifth parameter indicated in paragraph 63 of **Radhika Agarwal (supra)** renders the arrest illegal or constitutes only a minor procedural lapse in the facts of the present case?

4. Whether the learned Magistrate correctly reconciled the principles laid down in **Arnesh Kumar (supra)** with those laid down in **Radhika Agarwal (supra)**?

5. Whether ratios of **Varun Goyal (supra), Deepak Garg (supra), Gopal Rathi (supra) and Choodamani Parmeshwaran Iyer (supra)** speaks that section 69 of CGST Act does not supplement Section 35(1)(b)(ii) of the BNSS?

6. Whether the impugned order being interlocutory order cannot be challenged before the Revisional Forum and the only way out to the State was to approach under Section 439(2) of the CrPC corresponding to Section 483(3) of the BNSS, praying for cancellation of bail?

7. Whether the impugned order granting bail suffers from material irregularity, legal impropriety or jurisdictional error warranting interference by this Revisional Court?

8. What relief, if any, is the revisionist entitled to?

DISCUSSION AND REASONS

Points No. 1 to 4

Statutory Scheme Governing Arrest under the BNSS and the CGST Act

(50) Before embarking upon an examination of the legality of the impugned order, it would be apposite to advert to the statutory framework governing the power of arrest and the safeguards incorporated by the Legislature against arbitrary deprivation of personal liberty.

(51) The issue involved in the present revision does not merely concern the grant of bail to an accused. Rather, it concerns the interplay between the safeguards introduced under the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, the statutory power of arrest conferred under **Section 69 of the Central Goods and Services Tax Act, 2017**, and the principles governing exercise of such power as judicially interpreted by the Hon'ble Supreme Court.

(52) The constitutional guarantee under **Article 21** of the Constitution ordains that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Such procedure has consistently been interpreted by the Hon'ble Supreme Court to mean a procedure which is fair, just and reasonable and not arbitrary or oppressive.

(53) It is equally well settled that the power of arrest, though necessary for effective investigation of crime, is one of the most drastic powers conferred upon the investigating agency. Therefore, every statute, conferring such power simultaneously incorporates safeguards intended to prevent abuse.

(54) The BNSS is no exception.

Section 35 of the BNSS

(55) Section 35 of the BNSS substantially corresponds to Section 41/41A of the erstwhile CrPC.

(56) The legislative intent behind the provision is unmistakable.

(57) The object is not to prohibit arrest altogether.

(58) Neither is it intended to dilute the powers of investigation.

(59) It's purpose is to ensure that arrest is not resorted to mechanically or as a matter of course.

(60) The Legislature consciously, requires the police officer or arresting authority to record reasons, demonstrating that arrest has become necessary, having regard to the circumstances of the case.

(61) Thus, the emphasis of Section 35 of the BNSS is upon **application of mind** rather than **ritualistic compliance.**

(62) The provision seeks to balance two equally important constitutional objectives-

- ✔ **protection of individual liberty; and**
- ✔ **effective investigation of crime.**

(63) The Court is therefore required to ascertain whether the statutory safeguards have substantially been observed and whether the decision to arrest emanated from an objective consideration of the relevant factors.

Section 35(1)(b)(ii) of the BNSS

(64) Section 35(1)(b)(ii) of the BNSS contemplates that where arrest is proposed in offences punishable up to seven years, the arresting authority must satisfy itself that arrest has become necessary for one or more of the statutory purposes.

(65) These purposes broadly include-

 # proper investigation,
 # preventing disappearance of evidence,
 # preventing inducement or intimidation of witnesses,
 # preventing repetition of offence,
 # ensuring appearance of the accused before Court.

(66) Thus, the Legislature does not envisage arrest merely because the officer possesses power to arrest.

(67) Power and necessity are two distinct concepts. Possession of power does not automatically justify its exercise. The existence of jurisdiction is one thing. The manner of exercising that jurisdiction is quite another. Section 35 of the BNSS recognizes this distinction.

Section 35(3) of the BNSS

(68) Section 35(3) of the BNSS further provides that in appropriate cases the investigating agency should issue notice requiring appearance instead of immediately arresting the accused.

(69) The provision embodies the legislative preference that arrest should ordinarily be the last option and not the first response.

(70) However, this safeguard itself is subject to one important qualification.

(71) Where circumstances demonstrate that issuance of notice would frustrate investigation or where custodial interrogation becomes indispensable, the statute does not make issuance of notice mandatory.

(72) The requirement has therefore to be appreciated in the backdrop of the nature of allegations, the stage of investigation and the necessity of arrest.

(73) The provision cannot be interpreted divorced from the facts of each individual case.

Section 69 of the CGST Act

(74) Section 69 of the CGST Act authorizes the Commissioner to order arrest where he has **reasons to believe** that a person has committed offences specified under Section 132.

(75) The expression "reasons to believe" has acquired a definite connotation in administrative law.

(76) It does not signify mere suspicion. Neither does it permit arbitrary satisfaction. It requires objective consideration of relevant material. The satisfaction must be genuine. It must be based upon tangible material. The power cannot be exercised mechanically.

(77) Equally, the Court does not sit in appeal over the subjective satisfaction of the Commissioner so long as the satisfaction is founded upon relevant material.

(78) Thus, Section 69 of the Act itself, incorporates safeguards against arbitrary arrest.

Whether BNSS applies to Arrest under the CGST Act

(79) There is no dispute that while exercising powers under Section 69 of the CGST Act, the authorized officer remains subject to constitutional safeguards governing arrest.

(80) Neither the CGST Act nor any special statute can override Article 21.

(81) Likewise, the procedural safeguards recognized by judicial precedents continue to operate unless expressly excluded.

(82) Accordingly, there cannot be any quarrel with the proposition that the principles laid down in **Arnesh Kumar (supra)** continue to inform the exercise of power under Section 69 of the Act.

(83) However, the controversy is not whether **Arnesh Kumar (supra)** applies. The real controversy is whether the subsequent decision in **Radhika Agarwal (supra)** explains the manner in which those safeguards are to be implemented in prosecutions under the CGST Act.

(84) This distinction, in the opinion of this Court, assumes considerable significance.

The Decision in Arnesh Kumar

(85) The celebrated judgment of the Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar & Another, (2014) 8 SCC 273,** was rendered with the avowed object of curbing unnecessary arrests.

(86) The Hon'ble Supreme Court noticed an alarming tendency amongst investigating agencies to arrest accused persons mechanically immediately after registration of an FIR without objectively considering whether arrest had actually become necessary.

(87) The Court observed that arrest brings with it serious consequences.

- **Loss of reputation.**
- **Humiliation.**
- **Psychological trauma.**
- **Disruption of family life.**
- **Loss of employment.**
- **Irreparable damage to dignity.**

(88) These consequences may continue to haunt an individual even if ultimately acquitted.

(89) It was therefore observed that arrest should not become a routine administrative exercise. The investigating officer must first satisfy himself that arrest has become necessary.

(90) The Hon'ble Supreme Court accordingly directed preparation of a checklist corresponding to Section 41 of the CrPC (now Section 35(1)(b)(ii) of the BNSS), recording of reasons and production of such material before the Magistrate.

(91) The object was to ensure accountability in exercise of the power of arrest.

Nature of the Guidelines

(92) The directions issued in **Arnesh Kumar (supra)** undoubtedly have binding force under Article 141 of the Constitution.

(93) Every investigating agency is obliged to faithfully follow them.

(94) Likewise, every Magistrate is duty-bound to satisfy himself regarding compliance before authorising further detention.

(95) The learned Chief Judicial Magistrate was therefore perfectly justified in examining whether the safeguards contained in Section 35 of the BNSS had been observed.

(96) This Court finds no error in the learned Magistrate undertaking such examination.

(97) However, the correctness of the impugned order does not end there.

(98) The crucial question is whether the learned Magistrate examined the issue in the light of the subsequent exposition of law rendered in **Radhika Agarwal (supra)**, particularly, in relation to arrests under fiscal statutes.

(99) It is here that the revisional challenge assumes significance.

Notification of the Hon'ble High Court at Calcutta

(100) Learned Counsel for the respondent has rightly drawn attention to Notification No. **8265-RG dated 23.08.2023** issued by the Hon'ble High Court at Calcutta reiterating faithful compliance with the directions contained in **Arnesh Kumar (supra)**.

(101) There can be no two opinions that all subordinate courts and investigating agencies functioning within the State are obliged to observe the said directions.

(102) The notification reinforces judicial discipline. It reminds Magistrates of their duty while authorizing detention. It reminds investigating agencies that arrest cannot be mechanical. The notification is therefore entirely consistent with the constitutional philosophy underlying Article 21.

(103) Nevertheless, neither the notification nor **Arnesh Kumar (supra)** can be interpreted as requiring blind insistence upon form over substance.

(104) The object of the directions is to ensure genuine application of mind. The object is not to elevate procedural formality into an inflexible ritual. The distinction between the two, though subtle, is extremely important.

Whether Every Procedural Deviation Necessarily Invalidates Arrest

(105) One of the principal reasons assigned by the learned Magistrate is that no separate checklist under Section 35(1)(b)(ii) of the BNSS was produced.

(106) The learned Magistrate appears to have proceeded upon the premise that absence of a separate checklist automatically vitiated the arrest.

(107) This Court is unable to persuade itself to subscribe to such an absolute proposition.

(108) Law seldom deals in absolutes.

(109) The doctrine of substantial compliance has repeatedly been recognised by Constitutional Courts where the object of the statutory safeguard stands demonstrably fulfilled.

(110) The Court must always ascertain-

- ✔ **whether the decision-making process was fair;**
- ✔ **whether relevant considerations were objectively examined;**
- ✔ **whether reasons exist on record;**
- ✔ **whether the arrest was mechanical;**
- ✔ **whether the constitutional safeguards stood substantially observed.**

(111) The answer cannot invariably depend upon the nomenclature of the document.

(112) If the relevant considerations stand fully incorporated in another contemporaneous document forming part of the authorization process, the Court cannot ignore such material, merely because, it bears a different title.

(113) The substance of the exercise must prevail over its form. Whether such substantial compliance exists in the present case, necessarily, depends upon the ratio laid down in **Radhika Agarwal (supra).** It is that decision which assumes determinative importance in the present revision.

Transition to the Next Point

(114) Having examined the statutory framework and the principles emerging from **Arnesh Kumar (supra),** this Court shall now proceed to analyse the decision of the Hon'ble Supreme Court in **Radhika Agarwal (supra),** particularly paragraph 63 of the opinion authored by Hon'ble Mr. Justice Sanjiv Khanna and the concurring opinion of Hon'ble Ms. Justice Bela M. Trivedi, in order to ascertain whether the authorization memo issued under Section 69 of the CGST Act can legitimately supplement the checklist contemplated under Section 35 of the BNSS and whether the omission to expressly record the fifth parameter is fatal to the legality of the arrest.

Whether *Radhika Agarwal* (supra) dilutes the Ratio of *Arnesh Kumar* (supra)?

(115) The pivotal question falling for determination in the present revision is whether the learned Chief Judicial Magistrate correctly appreciated the ratio laid down by the Hon'ble Supreme Court in **Radhika Agarwal (supra)** while examining the legality of the arrest.

(116) The learned Magistrate has observed that **Radhika Agarwal (supra)** does not have an overriding effect upon the law declared in **Arnesh Kumar (supra).** To that extent, the learned Magistrate cannot be faulted.

(117) Indeed, under Article 141 of the Constitution, the law declared by the Hon'ble Supreme Court binds all Courts. One Bench of coordinate strength ordinarily does not overrule another. The judgment in **Radhika Agarwal (supra)** nowhere records that the principles laid down in **Arnesh Kumar (supra)** stand overruled or diluted. Consequently, the proposition that the safeguards formulated in **Arnesh Kumar (supra)** continue to operate is legally unexceptionable.

(118) However, the issue does not end there. The real question is whether the learned Magistrate correctly appreciated the **manner in which the Hon'ble Supreme Court harmonized those safeguards with arrests under special fiscal statutes such as the CGST Act.**

(119) In the respectful opinion of this Court, the answer has to be in the negative.

Paragraph 63 of Radhika Agarwal

(120) The judgment rendered by Hon'ble Mr. Justice Sanjiv Khanna deserves careful perusal.

(121) Paragraph 63 is not merely a reiteration of **Arnesh Kumar (supra).** It is an elucidation of the safeguards required while exercising powers of arrest under the CGST Act.

(122) The Hon'ble Supreme Court unequivocally observed that **even where, all statutory preconditions for arrest under Section 69 read with Section 132 of the CGST Act are fulfilled, arrest does not automatically follow.**

(123) The competent authority is still required to undertake an independent exercise of judgment.

(124) The Court formulated five relevant questions which the competent authority must consider before directing arrest.

(125) The emphasis, therefore, is not upon the existence of power. The emphasis is upon the **exercise of discretion.** The distinction is fundamental. The Hon'ble Supreme Court thus reaffirmed the constitutional philosophy underlying Article 21 by holding that arrest must never become a routine administrative consequence of the existence of jurisdiction.

The Five Questions

(126) The Hon'ble Supreme Court formulated the following considerations:

> (i) Whether the accused is concerned in a non-bailable offence or credible information exists regarding such involvement;
>
> (ii) Whether arrest is necessary to ensure proper investigation;
>
> (iii) Whether the accused, if left at liberty, is likely to tamper with evidence or influence witnesses;
>
> (iv) Whether the accused is the mastermind or principal operator behind fraudulent GST transactions or fictitious entities;
>
> (v) Whether, unless arrested, his presence before the Investigating Officer cannot otherwise be ensured.

(127) A careful reading of paragraph 63 demonstrates that the Hon'ble Supreme Court was not prescribing a ritualistic format. The Court was prescribing **parameters for objective satisfaction.** The substance of the inquiry is far more significant than the format in which such satisfaction is recorded.

Whether the Five Questions Constitute a Checklist?

(128) The learned Magistrate appears to have proceeded upon the footing that unless a separate checklist independently containing all five questions accompanies the arrest, the arrest becomes legally vulnerable.

(129) With due respect, this Court is unable to subscribe to such an interpretation.

(130) The Hon'ble Supreme Court itself has nowhere directed that a particular form or proforma alone would satisfy the mandate of law.

(131) What is insisted upon is that the competent authority should demonstrably apply its mind to the relevant considerations.

(132) Such application of mind may appear-

- in the statutory checklist,
- in the authorization memo,
- in contemporaneous official records,
- or in any document forming part of the decision-making process.

(133) The Court must examine the substance. The nomenclature of the document cannot be decisive.

Whether the Authorization Memo Supplements the Checklist

(134) This Court has carefully examined the authorization issued under Section 69 of the CGST Act.

(135) The authorization unmistakably records-

- **the existence of reasonable grounds to believe commission of cognizable and non-bailable offences;**
- **necessity of custodial interrogation;**
- **apprehension regarding tampering with evidence;**

- **involvement of the respondent in fraudulent GST activities through fictitious entities.**

(136) Thus, the first four parameters identified by the Hon'ble Supreme Court stand expressly reflected in the authorization itself.

(137) One aspect deserves particular emphasis.

(138) The learned Magistrate proceeded on the assumption that the authorization memo and the statutory checklist operate in watertight compartments.

(139) Such an interpretation, in the considered opinion of this Court, does not accord with the practical realities of investigation under special fiscal statutes.

(140) The authorization under Section 69 is not an empty administrative approval.

(141) It is itself founded upon objective satisfaction recorded by the Commissioner.

(142) If the authorization demonstrably contains the very considerations, which the statutory checklist is intended to capture, it would be artificial to ignore the document merely because it bears a different nomenclature.

(143) The law has always preferred substance over form. The object of judicial scrutiny is to ascertain whether there has been meaningful application of mind. The object is not to insist upon duplication of reasons, in separate documents, where the relevant considerations already stand recorded contemporaneously.

(144) Accordingly, this Court holds that, in appropriate cases, an authorization memo issued under Section 69 of the CGST Act may legitimately, supplement the statutory checklist contemplated under Section 35(1)(b)(ii) of the BNSS, provided, it substantially, records the relevant considerations governing arrest.

(145) Such supplementation, however, cannot be construed as dispensing with statutory safeguards altogether. The investigating agency remains under an obligation to ensure that every relevant factor indicated by the Hon'ble Supreme Court receives due consideration.

The Fifth Requirement

(146) This now brings the Court to the principal controversy.

(147) It is true that the authorization memo does not expressly record in so many words that-

> **"unless the respondent is arrested, his presence before the Investigating Officer cannot otherwise be ensured."**

(148) The omission is undeniable.

(149) The question is whether such omission necessarily renders the arrest illegal.

(150) The answer, in the opinion of this Court, has to be found from the language employed by the Hon'ble Supreme Court itself.

(151) The Hon'ble Supreme Court observed that the competent authority must determine **whether the answer to any or some of the five questions is in the affirmative.**

(152) The emphasis is significant. The Court did not state that every question must invariably receive an affirmative answer. Nor did it prescribe any mandatory phraseology. The purpose was to ensure meaningful application of mind. However, at the same time, this Court is equally of the view that **none of the five questions can be altogether ignored**.

(153) Every relevant consideration ought to receive conscious attention.

(154) The answer may ultimately be- affirmative, negative, or unnecessary in the peculiar facts. But the consideration itself ought to be reflected.

(155) The fifth parameter, therefore, ought ideally to have found place in the authorization.

(156) To that extent, the arresting authority cannot be said to have exhibited ideal procedural compliance.

Whether the Omission is Fatal

(157) The question, however, is not whether there has been perfect compliance.

(158) The real question is whether the omission is so fundamental that it nullifies the entire arrest.

(159) This Court is unable to answer the question in the affirmative. Several reasons persuade this Court.

- ✔ **Firstly, the first four parameters have been expressly recorded.**
- ✔ **Secondly, the authorization itself records necessity of custodial interrogation.**
- ✔ **Thirdly, the allegations concern organized economic offences involving fraudulent availment and passing of Input Tax Credit through fictitious concerns.**
- ✔ **Fourthly, the authorization reflects apprehension regarding tampering with evidence.**

(160) These circumstances themselves substantially indicate why immediate custodial interrogation was considered necessary.

(161) In such circumstances, although the fifth parameter ought to have been expressly adverted to, it's omission does not eclipse the evident application of mind reflected in the remaining portions of the authorization.

(162) The omission, therefore, assumes the character of a procedural lapse rather than a jurisdictional defect.

The Concurring Opinion of Hon'ble **Justice Bela M. Trivedi**

(163) The learned Magistrate appears to have concentrated principally upon paragraph 63 of the opinion authored by Hon'ble Mr. Justice Sanjiv Khanna.

(164) While doing so, the learned Magistrate unfortunately omitted to consider the equally important concurring opinion delivered by Hon'ble Ms. Justice Bela M. Trivedi.

(165) This omission, in the opinion of this Court, materially affects the correctness of the impugned order.

(166) Hon'ble Justice Bela M. Trivedi emphatically observed that offences under fiscal statutes stand upon a different footing. Her Ladyship observed that such offences are directed not merely against an individual complainant but against the financial and economic fabric of the nation. The victim is society itself. The national economy bears the impact. Consequently, Courts should be circumspect before interfering with the exercise of statutory powers conferred upon specialised investigating agencies entrusted with combating sophisticated financial crimes. Her Ladyship further observed that **minor procedural lapses should not be viewed with a magnifying glass** so as to confer unintended benefit upon persons accused of grave economic offences.

(167) This observation assumes considerable significance in the present case.

(168) The learned Magistrate noticed the omission of the fifth factor, but did not examine whether such omission was substantial enough to invalidate the arrest, despite the existence of detailed reasons, satisfying the remaining parameters.

(169) The impugned order proceeds, as though, every procedural deviation, however insignificant, automatically renders the arrest illegal.

(170) Such an approach, in the respectful opinion of this Court, is inconsistent with the tenor of the concurring opinion rendered by Hon'ble Justice Bela M. Trivedi.

Harmonious Reading of *Arnesh Kumar* and *Radhika Agarwal*

(171) Judicial precedents must always be read harmoniously. No judgment is to be read as a statute. Sentences cannot be picked out in isolation. The observations made in one paragraph cannot be divorced from the context of the judgment as a whole.

(172) If **Arnesh Kumar (supra)** insists upon safeguards against arbitrary arrest, **Radhika Agarwal (supra)** explains how those safeguards are to operate in the context of specialised fiscal investigations.

(173) The two judgments supplement one another. They do not conflict. The former protects liberty. The latter balances liberty with effective investigation of grave economic offences.

(174) Read together, they require-

- ✔ **objective application of mind;**
- ✔ **recording of reasons;**
- ✔ **avoidance of routine arrest;**
- ✔ **but equally, avoidance of hyper technical interference where substantial compliance exists and the allegations**

concern offences affecting the nation's financial health.

(175) The learned Chief Judicial Magistrate, unfortunately, construed **Arnesh Kumar (supra)** in isolation without harmoniously reading the subsequent exposition contained in **Radhika Agarwal (supra)**. To that extent, the impugned order cannot be sustained.

Findings on Points Nos. 1 to 4

(176) Accordingly, this Court records the following findings:

I. The learned Magistrate rightly held that compliance with the safeguards under Section 35 of the BNSS remains mandatory.

II. However, the learned Magistrate erred in holding that the authorization memo issued under Section 69 of the CGST Act could never supplement the statutory checklist.

III. The authorization memo in the present case substantially addresses the first four parameters identified in paragraph 63 of **Radhika Agarwal (supra)**.

IV. Although the fifth parameter ought to have been expressly adverted to by the competent authority, such omission constitutes a procedural lapse and not a jurisdictional defect so grave as to justify grant of bail solely on that ground.

V. Where circumstances demonstrate that issuance of notice would frustrate investigation or where custodial interrogation becomes indispensable, the statute does not make issuance of notice under Section 35(3) of the BNSS mandatory. The requirement has therefore to be appreciated in the backdrop of the nature of allegations, the stage of investigation and the necessity of arrest. The provision cannot be interpreted divorced from the facts of each individual case.

VI. The learned Magistrate failed to appreciate the concurring opinion of Hon'ble Justice Bela M. Trivedi in paragraph 94 of **Radhika Agarwal (supra)** and consequently, adopted an unduly technical approach inconsistent with the spirit of **Radhika Agarwal (supra)**.

Points No. 5 to 8

Ratios of Varun Goyal (supra), Deepak Garg (supra), Gopal Rathi (supra) and Choodamani Parmeshwaran Iyer (supra) vis-a-vis section 69 of the CGST Act and Section 35(1)(b)(ii) of the BNSS

(177) Having bestowed anxious consideration to the submissions and the authorities cited, this Court is unable to persuade itself to accept the contention advanced on behalf of the respondent.

(178) At the very outset, it is required to be borne in mind that a judicial precedent is an authority only for what it actually decides and not for what may logically follow therefrom. A judgment is not to be read as a statute, nor can a proposition be culled out from a decision divorced from the issue which actually fell for determination before the Court. It is a settled principle that the ratio decidendi of a judgment extends only to the point that was directly and substantially in issue and consciously adjudicated upon.

(179) A careful reading of the judgments relied upon by the respondent unmistakably reveals that in none of those cases did the respective High Courts undertake an examination of the interplay between Section 69 of the CGST Act and Section 35(1) (b) (ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). Equally, the question whether the special procedure engrafted under Section 69 of the CGST Act supplements or satisfies the requirements envisaged under Section 35(1) (b) (ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC) was neither raised for consideration nor adjudicated upon in those decisions.

(180) In **Varun Goyal (supra) and Deepak Garg (supra),** the Hon'ble Gauhati High Court appears to have emphasized the mandatory nature of compliance with Section 35(3) of the BNSS while dealing with arrests under the GST enactment. Likewise, in **Gopal Rathi (supra),** the Hon'ble Calcutta High Court granted bail after noticing non-compliance with Section 35(3) of the BNSS. However, a careful examination of the said judgments demonstrates that the precise legal issue canvassed in the present proceedings, namely, whether the safeguards and procedural requirements incorporated in Section 69 of the CGST Act constitute a special statutory mechanism supplementing the requirements under Section 35(1) (b) (ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC), did not fall for consideration before the respective High Courts.

(181) The decision in **Choodamani Parmeshwaran Iyer (supra)** does not, in my considered view, directly answer the precise question which arises for determination in the present case, namely, whether the special procedure contemplated under the CGST Act, particularly Section 69 thereof, can be construed as supplementing the statutory safeguards contained in Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). The principal controversy before the Hon'ble Supreme Court in **Choodamani Parmeshwaran Iyer (supra)** was of a different complexion. The emphasis therein was substantially upon the maintainability of a prayer for anticipatory bail in the context of proceedings under the CGST Act, particularly after issuance of summons under Section

69 of the CGST Act, and upon the distinction between an application seeking the extraordinary protection of anticipatory bail and a writ petition seeking a mandamus against the authorities. The judgment, therefore, cannot, with due respect, be read as a direct pronouncement on the inter-play between Section 69 of the CGST Act and Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). Significantly, the subsequent pronouncement of the Hon'ble Supreme Court in **Radhika Agarwal (supra)** has expressly examined the relationship between the GST enactments and the general criminal procedural law. The said decision further emphasises that the power of arrest under the GST enactments is to be exercised subject to procedural safeguards.

(182) In that view of the matter, since **Radhika Agarwal (supra)** more directly engages with the question of the applicability of the issue concerned, this Court considers the ratio and observations therein to be of greater relevance to the controversy presently under consideration and, accordingly, gives primacy to the said pronouncement while examining the effect of Section 69 of the CGST Act vis-à-vis Section 35(1)(b) (ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC).

(183) It is trite law that a judgment rendered without considering a particular statutory question cannot be regarded as a binding precedent on that very question. A precedent cannot be stretched to cover issues which neither arose nor were consciously decided. The Court cannot, by implication or inference, read into a judgment a declaration of law on a point which was never debated before the Court.

(184) The respondent's argument proceeds on the assumption that the aforesaid decisions have conclusively held that Section 69 of the CGST Act has no bearing whatsoever upon the operation of Section

35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). Such an assumption, however, is wholly misplaced. None of the judgments relied upon contains any discussion on the scope of Section 69 of the Act vis-à-vis Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). None of them records a finding that Section 69 of the Act neither supplements nor operates in conjunction with the provisions of the BNSS. In absence of any such adjudication, it would be impermissible for this Court to attribute to those decisions a proposition which they never intended to lay down.

(185) The CGST Act is undoubtedly a special fiscal legislation enacted to regulate investigation and prosecution of offences relating to tax evasion. Section 69 of the Act thereof specifically empowers the Commissioner to authorize arrest upon formation of the statutory satisfaction contemplated therein and further prescribes the manner in which the arrested person is to be dealt with depending upon the nature of the offence. The existence of such special statutory safeguards cannot be ignored while examining the legality of an arrest effected under the said enactment.

(186) Whether Section 69 of the Act merely co-exists with Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC) or whether it supplements the procedural safeguards contained therein is a distinct question of statutory interpretation requiring an independent judicial examination. Such an issue cannot be answered merely by referring to judgments where the question itself neither arose nor was adjudicated.

(187) This Court is, therefore, unable to accept the submission of the respondent that the judgments in **Varun Goyal (supra), Deepak Garg (supra), Gopal**

Rathi (supra) and Choodamani Parmeshwaran Iyer (supra) conclusively settle the proposition that Section 69 of the CGST Act cannot supplement or operate harmoniously with Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). Those authorities undoubtedly reiterate the importance of compliance with statutory safeguards governing arrest, but they do not decide the specific issue presently under consideration.

(188) It is equally well settled that where two statutes operate in the same field, particularly when one is a special enactment and the other is a general procedural law, the endeavour of the Court must always be to adopt a harmonious construction so as to give effect to both enactments, unless there exists an irreconcilable inconsistency or an express legislative exclusion. A Court ought not to presume repugnancy between two statutory provisions when both can reasonably be construed to operate together. Whether such harmonious construction ultimately results in Section 69 of the Act supplementing the procedural safeguards contained in Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC) is a matter which has to be determined independently on the language, object and scheme of both enactments, and not on the basis of precedents which have not examined that issue at all.

(189) Accordingly, this Court holds that the decisions relied upon by the respondent cannot be treated as authorities for the proposition that Section 69 of the CGST Act is incapable of supplementing or operating in conjunction with Section 35(1)(b)(ii) of the BNSS (old Section 41(1) (b) (ii) of the CrPC). Since the precise legal issue raised by the State was never the subject matter of consideration in those judgments, the reliance placed thereon is clearly misplaced.

(190) The contention of the respondent that the aforesaid precedents conclusively negate the State's submission regarding the supplementary operation of Section 69 of the CGST Act is, therefore, rejected. The issue raised by the State remains open for independent determination on its own statutory merits and cannot be answered merely on the basis of authorities which did not specifically examine or pronounce upon the said question.

Whether bail order being interlocutory order cannot be challenged before the Revisional Forum and the only can be challenged under section 439(2) of the CrPC corresponding to 483(3) of the BNSS

&

Whether the impugned order granting bail suffers from material irregularity, legal impropriety or jurisdictional error warranting interference by this Revisional Court?

(191) The distinction between **setting aside an order granting bail** and **cancellation of bail** is well settled by the Supreme Court, particularly in **Puran vs. Rambilas and Another reported in (2001) 6 SCC 338, Mahipal vs. Rajesh Kumar alias Polia and Another reported in (2020) 2 SCC 118, Shobha Namdev Sonavane vs. Samadhan Bajirao Sonvane and Others reported in 2026 LiveLaw SC 188 and State of Karnataka vs. Sri Darshan Etc. reported in 2025 SCC OnLine SC 1702.**

Conceptual Difference

(192) The conceptual difference between setting aside an order granting bail and cancellation of bail is tabled hereunder-

Setting Aside an Order Granting Bail	Cancellation of Bail
The challenge is directed against the legality or correctness of the order granting bail itself.	The challenge is directed against the continuance of bail because of events occurring after the grant of bail.
The appellate or superior court examines whether the court granting bail exercised its discretion properly.	The court examines whether the accused has forfeited the privilege of bail by subsequent conduct.
Concerned with the validity of the original judicial order.	Concerned with the accused's conduct after release on bail.
Based on defects existing on the date the bail order was passed.	Based on supervening circumstances arising after the bail order.

Grounds for Setting Aside an Order Granting Bail

(193) A superior court may set aside a bail order where:

- **the court ignored material evidence;**
- **relevant circumstances were not considered;**
- **irrelevant considerations influenced the decision;**
- **the order is arbitrary or perverse;**
- **there is complete non-application of judicial mind;**

- **mandatory legal principles governing bail were ignored;**
- **the order is cryptic or non-speaking;**
- **the gravity of the offence and the prima facie case were not considered.**

(194) The legality of the order itself is under scrutiny.

Grounds for Cancellation of Bail

(195) Cancellation proceeds on a different footing.

(196) Here, the original grant of bail may have been perfectly legal, but subsequent events justify withdrawal of that liberty.

(197) Typical grounds include:

- **threatening or influencing witnesses;**
- **tampering with evidence;**
- **committing another offence;**
- **absconding;**
- **violating bail conditions;**
- **interfering with investigation or trial;**
- **misuse of the liberty granted by the court.**

(198) Thus, cancellation is based on **subsequent misconduct.**

Hon'ble Supreme Court's Distinction

(199) In Puran vs. Rambilas and Another reported in (2001) 6 SCC 338, Hon'ble Supreme Court held that:

➢ **cancellation of bail due to misconduct and**

➢ **setting aside a perverse bail order**

are **distinct concepts.**

(200) The Court observed that where the order granting bail itself is unjustified, illegal or perverse, a superior court may interfere even though there has been no misuse of liberty by the accused.

(201) **In Mahipal vs. Rajesh Kumar alias Polia and Another reported in (2020) 2 SCC 118,** Hon'ble Supreme Court held that:

> **"The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail."**

(202) The Court further observed that:

- **setting aside** examines whether the discretion to grant bail was exercised judicially;
- **cancellation** generally requires supervening circumstances demonstrating that the accused should no longer enjoy the liberty granted.

Legal Position

(203) The law, as settled in **Puran (supra), Mahipal (supra), Shobha Namdev Sonavane (supra) and Sri Darshan Etc. (supra)** may be summarized thus:

➔ **Setting aside an order granting bail** is an appellate or revisional exercise to correct an order that is illegal, arbitrary, perverse, or passed without proper application of judicial mind. It focuses on the **validity of the original order.**

➔ **Cancellation of bail** is a subsequent exercise based on supervening circumstances, such as misuse of liberty, violation of bail conditions, intimidation of witnesses, tampering with evidence, abscondence, or other conduct rendering continued bail inconsistent with the interests of justice.

➔ **Their legal foundations are distinct:** the former corrects an erroneous judicial exercise of discretion, while the latter withdraws a concession that has been abused after it was lawfully granted.

(204) As per the ratio of **Mahipal (supra)** the considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.

(205) In **Mahipal (supra)** Honourable Supreme Court has relied upon **Neeru Yadav v State of Uttar Pradesh, (Reported in AIR 2015 SUPREME COURT 3703)** wherein it was held:

> **"It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken**

note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."

(206) **Honourable Supreme Court** in **Mahipal (supra)** further held that where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record.

(207) In **Shobha Namdev Sonavane (supra) it has been held by the Honourable Supreme Court:**

> **"We make it clear that there is a clear distinction between cancellation of bail on the considerations provided under Section 439(2) CrPC (corresponding Section 483(3) BNSS) and reversal of an order of bail by the superior Court. While cancellation should only be resorted to in cases where the accused misuses the liberty of bail granted to him or tempers with the evidence. On the other hand, the order granting bail can be interfered with by the superior Court considering the nature and gravity of the offences; if the order granting bail ignores the relevant material available on record or that**

the same is based on extraneous considerations."

(208) It has further been held in **Shobha Namdev Sonavane (supra) that an unreasoned or perverse order of bail is always open to interference by the superior Court.**

(209) In **Sri Darshan Etc. (supra) it has been held by the Honourable Supreme Court** that annulment of bail orders refer to the appellate or revisional power to set aside a bail order that is perverse, unjustified, or passed in violation of settled legal principles. According to the **Honourable Supreme Court,** it is concerned with defects existing at the time the bail was granted, without reference to subsequent conduct. It has also been held that where the order granting bail is founded on irrelevant considerations, or non-consideration of material facts, the same is rendered perverse and is liable to be set aside.

<u>Whether the Learned Magistrate Applied the Correct Test</u>

(210) Having carefully perused the impugned order, this Court finds that the learned Magistrate concentrated almost exclusively, upon the procedural requirements of Section 35 of the BNSS.

The gravity of the allegations.

The nature of the offence.

The purpose behind custodial interrogation.

The observations of the Hon'ble Supreme Court regarding economic offences.

The concurring opinion rendered by Hon'ble Justice Bela M. Trivedi in **Radhika Agarwal (supra).**

None of these aspects received meaningful consideration.

(211) The learned Magistrate appears to have proceeded on the premise that once the procedural lapse was noticed, the grant of bail became an inevitable consequence.

(212) With due respect, such an approach cannot be approved. Judicial discretion is never exercised in isolation. It requires balancing of competing considerations.

(213) Where liberty and societal interest intersect, the Court must evaluate the entire factual and legal matrix. The impugned order, unfortunately, does not reflect such balancing exercise.

Whether the Procedural Lapse Goes to the Root of the Arrest

(214) As already discussed, this Court finds that the authorization memo substantially satisfies four out of the five considerations formulated in paragraph 63 of **Radhika Agarwal (supra)**.

(215) The omission relates only to the fifth consideration.

(216) The authorization, however, simultaneously records that custodial interrogation was considered necessary. It records the role attributed to the respondent. It records apprehension regarding tampering with evidence. It records the respondent's involvement in fraudulent GST transactions.

(217) Viewed cumulatively, these reasons substantially indicate why the competent authority considered arrest necessary.

(218) Although, the authorization ought ideally to have specifically addressed whether the presence of the respondent could otherwise be secured without arrest, failure to expressly record the same, in the peculiar facts of this case, cannot by itself invalidate the entire decision-making process.

(219) This Court is therefore, unable to hold that the omission strikes at the jurisdiction of the arresting authority. The omission constitutes an irregularity requiring future corrective measures rather than a fatal illegality warranting immediate release on bail.

Revisional Interference

(220) The revisional jurisdiction of this Court is undoubtedly limited. Ordinarily, an order granting bail is not lightly interfered with.

(221) However, where the discretion exercised by the subordinate Court is shown to have been influenced by an erroneous understanding of binding precedent or by misapplication of settled legal principles, interference becomes not only permissible but necessary to prevent miscarriage of justice.

(222) In the present case, the learned Chief Judicial Magistrate correctly appreciated the continuing applicability of **Arnesh Kumar (supra)** but, failed to harmoniously read the subsequent exposition of law in **Radhika Agarwal (supra)**. The learned Magistrate further omitted to consider the concurring opinion of Hon'ble Justice Bela M. Trivedi so made in paragraph 94 of **Radhika Agarwal (supra)** and the settled principles governing economic offences as enunciated in **Y.S. Jagan Mohan Reddy (supra)**.

(223) The result was an order, which, elevated a curable procedural lapse into a determinative ground for grant of bail, without examining, whether substantial compliance with the constitutional safeguards had otherwise been achieved.

(224) Such an approach, in the respectful opinion of this Court, amounts to material irregularity in the exercise of judicial discretion and warrants interference in revisional jurisdiction.

(225) The Hon'ble Supreme Court in **Y. S. Jagan Mohan Reddy (supra)**, has authoritatively held that economic offences constitute a class apart, involve deep-rooted conspiracies and affect the financial health of the country, thereby requiring a different approach while considering matters relating to bail. The learned Magistrate unfortunately failed to examine the matter from that perspective.

(226) Accordingly, this Court is of the considered opinion that although the arresting authority ought to have expressly dealt with the fifth parameter formulated in paragraph 63 of **Radhika Agarwal (supra)**, the authorization of arrest substantially reflects compliance with the constitutional safeguards. The omission noticed is one requiring future rectification and institutional discipline, rather than one rendering the arrest itself illegal.

(227) Consequently, the impugned order granting bail solely upon such procedural omission cannot be sustained in law.

(228) Since the order impugned stands improper, illegal and unjustified and by passing that order the substantial right of the State to do proper investigation has been seriously interdicted giving primacy to **Mahipal (supra), Shobha Namdev Sonavane (supra) and Sri Darshan Etc. (supra) over Amarnath (supra) and Ram Naresh Singh (supra),** I am of the considered opinion that this revision is quite maintainable as the issue under consideration is distinctly separate from cancellation of bail.

<u>Necessity of Institutional Compliance</u>

(229) This Court cannot also overlook that the omission noticed in the present case could have been easily avoided. Had the authorization expressly dealt with the fifth parameter formulated by the Hon'ble Supreme Court, the present controversy may never have arisen.

(230) Investigating agencies exercising powers under special statutes are expected to keep themselves abreast of the latest judicial pronouncements.

(231) The safeguards evolved by constitutional Courts are intended not to impede investigation but to strengthen its fairness and credibility.

(232) Strict institutional compliance with those safeguards enhances public confidence in the administration of criminal justice.

(233) Accordingly, while this Court is not inclined to treat the omission as fatal in the facts of the present case, it is equally of the opinion that the concerned GST authorities should ensure that such lapses do not recur in future.

(234) The authorization format should, henceforth, consciously address each of the considerations indicated by the Hon'ble Supreme Court in **Radhika Agarwal (supra)**, so that the decision-making process remains transparent, reasoned and constitutionally compliant.

Findings on Point Nos. 5 to 8

(235) Accordingly, this Court records the following findings:

I. **Varun Goyal (supra), Deepak Garg (supra), Gopal Rathi (supra)** and **Choodamani Parmeshwaran Iyer (supra)** do not conclusively settle the proposition that Section 69 of the CGST Act cannot supplement or operate harmoniously with Section 35(1)(b)(ii) of the BNSS. Those authorities undoubtedly reiterate the importance of compliance with statutory safeguards governing arrest, but they do not decide the specific issue presently under consideration.

II. The decisions relied upon by the respondent cannot be treated as authorities for the proposition that Section 69 of the CGST Act is incapable of supplementing or operating in conjunction with Section Section 35(1)(b)(ii) of the BNSS.

III. Since the precise legal issue raised by the State was never the subject matter of consideration in those judgments, the reliance placed thereon is clearly misplaced.

IV. The contention of the respondent that the aforesaid precedents conclusively negate the State's submission regarding the supplementary operation of Section 69 of the CGST Act stands rejected.

V. The issue raised by the State remains open for independent determination on its own statutory merits and cannot be answered merely on the basis of authorities which did not examine or pronounce upon the said question.

VI. Cancellation of bail and setting aside of bail stand completely on different platforms, which are glaringly distinct from each other. When propriety of an order is under challenge praying for setting aside the same, despite the order dealing with granting of bail, a criminal revision against the said order is quite maintainable.

VII. The learned Chief Judicial Magistrate misdirected herself in law by holding that the absence of a separate checklist under Section 35(1)(b)(ii) of the BNSS, notwithstanding the detailed authorization memo under Section 69 of the CGST Act, was by itself sufficient to enlarge the respondent on bail.

VIII. The authorization memo substantially satisfies the safeguards contemplated in paragraph 63 of **Radhika Agarwal (supra)**, save and except the express articulation of the fifth parameter.

IX. The omission to expressly address the fifth parameter is a procedural lapse calling for corrective institutional measures but, in the peculiar facts of this case, does not constitute a jurisdictional defect so grave as to justify the grant of bail solely on that ground.

X. The impugned order, therefore, suffers from material irregularity and legal impropriety and is liable to be set aside.

XI. With the order impugned standing improper, illegal & unjustified, founded on irrelevant consideration and the substantial right of the State to do proper investigation being seriously interdicted primacy is given to **Mahipal (supra), Shobha Namdev Sonavane (supra) and Sri Darshan Etc. (supra) over Amarnath (supra) and Ram Naresh Singh (supra).**

XII. The State is entitled to the reliefs as proclaimed in the ordering portion of the judgment.

DIRECTION TO THE GST AUTHORITIES

(236) Before parting with the record, this Court considers it necessary to issue certain directions in exercise of its revisional jurisdiction so that similar controversies do not arise in future.

(237) The Commissioner and all officers authorized to exercise powers under Section 69 of the CGST Act shall ensure that while authorizing arrest, the authorization order or the accompanying contemporaneous record specifically, reflects conscious consideration of each of the parameters indicated by the Hon'ble Supreme Court in paragraph 63 of **Radhika Agarwal (supra)**. The competent authority shall expressly indicate the same.

(238) The competent authority shall also ensure scrupulous adherence to the mandate of Section 35 of the BNSS and the principles laid down in **Arnesh Kumar (supra)**, so far as they are applicable, thereby avoiding avoidable procedural objections at subsequent stages of the proceedings.

(239) Though not an issue in this Revisional Application, yet regard having had to the latest observation of the Hon'ble Supreme Court of India so decided in **Union of India vs Sunil Biyani, reported in 2026 LiveLaw SC 799** and **decided by the Supreme Court of India on 12th August, 2026**, the Authority should communicate the **'reasons to believe to arrest'** to the accused.

(240) These directions are intended to strengthen institutional compliance with constitutional safeguards and shall not be construed as diluting the powers conferred upon the investigating agency under the CGST Act.

<u>**DIRECTION TO THE LEARNED MAGISTRATE**</u>

(241) The learned Chief Judicial Magistrate, while examining the legality of arrests effected under special fiscal statutes, shall bear in mind the principles laid down not only in **Arnesh Kumar (supra)**, but also, the subsequent exposition contained in **Radhika Agarwal (supra)**, including the concurring opinion of Hon'ble Ms. Justice Bela M. Trivedi. The learned Magistrate shall assess whether the relevant statutory safeguards have been substantially complied with and whether the contemporaneous authorization or other record demonstrates objective application of mind, rather than confining the enquiry to the mere existence or absence of a separately captioned checklist.

(242) The learned Chief Judicial Magistrate while rehearing the matter shall assess the ratio of **Sunil Biyani (supra) against the observation of the Hon'ble Supreme Court of India so made in Government of India & Anr. vs Sri Devraj URS Medical College, reported in 2026 LiveLaw SC 766, decided by the Hon'ble Supreme Court of India on 4th August, 2026, whereby, the Hon'ble Supreme Court of India has observed that unless judgment expressly states that a decision would apply prospectively, it shall apply retrospectively.**

<u>**EDICT**</u>

Accordingly, it is,

O R D E R E D

(i) That for the reasons discussed hereinabove, this Criminal Revision **succeeds and accordingly, allowed on contest without any order as to costs.**

(ii) The order dated **19.08.2025** passed by the learned Chief Judicial Magistrate, Alipore in **C Case No. 2489 of 2025**, enlarging the respondent/accused on bail, is hereby **set aside as the reasoning of the learned CJM is legally unsustainable and suffers from material irregularity**.

(iii) Since the impugned order is one **granting bail**, simply **"setting aside"** the bail order may have practical implications because the respondent has already been released. The Honourable Supreme Court has consistently held that **cancellation of bail**

requires consideration of factors such as - misuse of liberty, flouting of conditions, interference with investigation, bail was granted in ignorance of statutory provisions restricting powers of court to grant bail or the bail was obtained by misrepresentation or fraud. It may therefore be jurisprudentially proper to direct the learned Chief Judicial Magistrate to **reconsider the question of bail afresh**, in accordance with law and having regard to the latest observations of the Hon'ble Supreme Court so referred to in the body of this judgment, after hearing both parties.

(iv) The learned Chief Judicial Magistrate shall deal with the matter independently, strictly in accordance with law & latest precedents and on the basis of the materials then available on record, without being influenced by any observation contained in the impugned order or in this revisional judgment, save and except the legal principles declared herein. It is made abundantly clear that this Court has not expressed any opinion on the merits of the allegations against the respondent, which shall be adjudicated independently at the appropriate stage.

(v) While doing so, learned Chief Judicial Magistrate shall direct the concerned sureties to produce the respondent/accused person before her Court on the date fixed for hearing, failing which, the learned Chief Judicial Magistrate would proceed under section 491 of the BNSS, 2023 and would take stringent actions against the sureties concerned, so also, shall proceed against the respondent/accused person under section 269 of the BNS, 2023.

(vi) However, having regard to the procedural lapse noticed in the authorization of arrest, particularly the omission to expressly address the fifth parameter indicated in paragraph 63 of **Radhika Agarwal (supra)**, this Court deems it appropriate to observe that the investigating agency shall remain under a continuing obligation to ensure strict compliance with the constitutional and statutory safeguards governing arrest in all future proceedings.

(vii) The investigating agency would be under strict obligation to follow the ratio of **Sunil Biyani (supra)**.

(viii) Let a copy of this judgment be transmitted forthwith to the learned Chief Judicial Magistrate, Alipore for information and necessary action.

(ix) Let another copy of this judgment be forwarded to the jurisdictional Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax for circulation amongst the officers exercising powers under Section 69 of the CGST Act, so that the procedural deficiencies noticed in the present case are not repeated in future.

(x) Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(xi) The Criminal Revision stands **disposed of**

(xii) Make necessary noting in the Germane Register.

(xiii) Let a soft copy of this judgment be uploaded in the CIS as per the modalities of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985.

(xiv) The judgment is pronounced and delivered in open Court on the 14th day of August, 2026.

Dictated & corrected

Souvik De	**Souvik De(WB01069)**
Additional Sessions Judge	***Additional Sessions Judge***
Fast Track 3rd Court, Alipore	***Fast Track 3rd Court, Alipore***
South 24 Parganas	***South 24 Parganas***