



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (HABEAS CORPUS) NO. 4428 of
2026**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN Sd/-

and

HONOURABLE MR.JUSTICE D. M. VYAS Sd/-

| Approved for Reporting | | |
|------------------------|----|--|
| Yes | No | |
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KEYUR JAYENDRABHAI PATEL THRO. JALPA JAYENDRABHAI PATEL
Versus
STATE OF GUJARAT & ORS.

Appearance:

MR MAULIK VAKHARIYA(6628) for the Applicant(s) No. 1

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MR UTKARSH SHARMA, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

TIRTH NAYAK(8563) for the Respondent(s) No. 2,3

CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
and
HONOURABLE MR.JUSTICE D. M. VYAS

Date : 07/05/2026

ORAL JUDGMENT

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

1. Captioned writ petition is filed challenging, *inter alia*, the entire exercise of the petitioner's arrest by respondent and remand proceedings by the Chief Judicial Magistrate to be untenable, illegal, arbitrary and unconstitutional in connection with File



no.DGGI/INV/GST/2112/2025-GR-B. Considering the nature of the prayers prayed for in the captioned writ petition and with the consent of the learned advocates appearing for the respective parties, the captioned writ petition is taken up for final disposal.

2. Issue Rule, returnable forthwith. Mr Utkarsh Sharma, learned Additional Public Prosecutor waives service of notice of Rule for respondent no.1 and Mr Tirth Nayak, learned advocate waives service of notice of Rule for respondent nos.2 and 3.

3. Mr Virat G. Popat, learned Advocate, at the outset, submitted that the challenge is restricted qua the action of the respondent in not strictly following the provisions of section 69 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “the Act of 2017”) inasmuch as, the Commissioner has not recorded the reasons to believe and if recorded, the same are not supplied to the petitioner. It is a condition precedent that the Commissioner must record his reasons to believe before authorizing the arrest and absence of the formation of the reasons to believe, strikes at the root of the jurisdiction, rendering the arrest illegal. It is further submitted that the reasons to believe, which is purported to be supplied, is not signed by the Commissioner but some another officer who might have been authorized.

3.1 Reliance is placed on the judgment in the case of *Radhika Agarwal v. Union of India* reported in (2025) 27 Centax 425 (SC): 2025(392) E.L.T.273(S.C). The issue before the Apex Court, was in connection with the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the PML Act”) as well as Customs Act, 1962 (hereinafter referred to as “the Act of 1962”), dealing with the powers of the officers to arrest. Section 19 of the PML Act as well as section 104 of the Act of 1962 deal with the powers to arrest. In both the provisions, the officers named therein



and the expression 'any other officer authorized by the Central Government' covers within its sweep other officers also, who may be authorized by the Central Government. It is submitted that as per sub-section (1) of section 104 of the Act of 1962, the customs officer empowered by general or special order of the Commissioner, may record the reasons to believe. As against this, section 69 of the Act of 2017 only empowers the Commissioner to record the reasons and no other officer. Hence, it is Commissioner and Commissioner only, who statutorily has to record the reasons and then pass order authorizing any officer to arrest such person.

3.2 It is further submitted that while dealing with the provisions of section 69 of the Act of 2017, the Apex Court has clearly noted that to pass an order of arrest, in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and the pre-conditions of sub-section (5) of section 132 are satisfied. Moreover, failure to do so would result in an illegal arrest. It is submitted that the Apex Court, has categorically held that the ratio recorded in the judgment in connection with the Act of 1962 would equally apply to the provisions of section 69 of the Act of 2017 insofar as maintenance of the records, obligation of the arresting officers and rights of the accused person arrested.

3.3 Reliance is also placed on the judgment in the case of *Arvind Kejriwal v. Directorate of Enforcement* reported in (2025) 2 SCC 248. The Apex Court, has held and observed that 'the reasons to believe' as recorded in writing are to be furnished. It has been held and observed that the requirements in sub-section (1) of section 19 of the PML Act are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and



examined by the Court. The Apex Court has held and observed that it would not be proper to hold that the accused can be denied and not furnished a copy of 'the reasons to believe', considering the fact that it would prevent the accused from challenging the arrest and questioning the reasons to believe. It is therefore submitted that supply of the reasons to believe, to the arrestee to enable him to exercise the right to challenging the arrest is a *sine qua non*.

3.4 It is submitted that the language of sub-section (1) of section 19 of the PML Act and the language contained in section 69 of the Act of 2017, are in pari materia with and hence, the principle laid down in the above-referred two judgments applies to the facts of the present case as this Court is examining the action of the Commissioner in light of section 69 of the Act of 2017 inasmuch as, in the case of Radhika Agarwal v. Union of India (supra), the Apex Court was dealing with the controversy regarding the power to arrest under the Act of 1962 and the Act of 2017. Exception is carved out in favour of the department to claim redaction and exclusion of specific particulars and details; however, it has to be justified by the officers or the authors of the 'reasons to believe'. The Court, has added a word of caution that such kind of redaction is justified in small number of cases for good cause; however, the reason is not a good ground to deny the accused access to a copy of the 'reasons to believe' in most cases.

3.5 It is further submitted that the word used in paragraph 41 of the judgment in the case of Arvind Kejriwal v. Directorate of Enforcement (supra) furnishing of a copy of the 'reasons to believe' and hence, it has to be a verbatim copy of the 'reason to believe' recorded by the Commissioner and not something which is recorded by another subordinate officer as it is likely to create a variation in the 'reasons to believe' recorded by the Commissioner on one hand



and 'reasons to believe' provided by the officer. It is submitted that it is likely to affect the decision that may be taken by the Chief Judicial Magistrate, while considering the request of remand of the arrestee.

4. On the other hand, Mr Tirth Nayak, learned advocate appearing for the respondent nos.2 and 3, at the outset, has raised the preliminary objection as regards maintainability of the writ petition. It is submitted that the petition would not be maintainable for, at the time of hearing of the remand application, similar such contentions were raised that are raised before this Court and those contentions have been considered. When the contentions have been dealt with while passing the order of remand, the petitioner may not be permitted to circumvent the remedy that is available to him of challenging the order of remand passed by the Chief Judicial Magistrate before the higher forum. It is submitted that no doubt it is true that writ petition seeking Habeas Corpus is maintainable but, in the exceptional circumstances and the ordinary course would be to challenge the order before the appropriate forum.

4.1 Reliance is placed on the judgment in the case of *Baldev Singh v. State of Punjab* reported in (1971) 2 ILR Punjab & Haryana 235 wherein, it is held that if the detenu has been remanded to custody by the Magistrate on a police report in a criminal case, the detention is not illegal and a writ or a direction in the nature of Habeas Corpus cannot be issued. Reliance is also placed on the judgment of the Division Bench in the case of *Vinodbhai Tilakdhari Tiwari v. State of Gujarat* passed in Special Criminal Application (Habeas Corpus) no.15962 of 2025. Reference is made to the judgment of the Apex Court in the case of *V. Senthil Balaji v. State* reported in (2024) 3 SCC 51, wherein it is observed that a writ of Habeas Corpus shall only be issued when the detention is illegal. As



a matter of rule, an order by a judicial officer culminating into a judicial function, cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. It is submitted that it is true that when there is a non-compliance of the mandatory provisions, exception is carved out for entertaining a writ of Habeas Corpus and that too, by way of a challenge. Reliance is also placed on the judgment in the case of *Saurabh Kumar v. Jailor, Koneila Jail* reported in (2014) 13 SCC 436. The Apex Court, has observed that the writ of Habeas Corpus, is no substitute for enlargement of the arrestee from custody.

4.2 While advertng to the submission made as regards scope of section 69 of the Act of 2017, it is submitted that the requirements contained therein, are three fold; namely, (i) that the Commissioner himself is to record 'reasons to believe' (ii) that authorization by the Commissioner to any officer to arrest such person and (iii) that the authorized officer shall inform the arrestee about the grounds of arrest. The contention of the petitioner that the requirements are not followed inasmuch as, the reasons to believe are not supplied as signed by the Commissioner, is misplaced, for, there is neither any provision in the Act of 2017 providing that the reasons to believe as signed by the Commissioner is to be supplied nor is the principle laid down by the Apex Court in the judgment in the case of *Radhika Agarwal v. Union of India* (supra).

4.3 It is next submitted that on merits as well such contention is fallacious inasmuch as, as per Note # 111, on 19.03.2026 the Additional Director General has recorded the 'reasons to believe' which is in terms of section 69 of the Act of 2017. Besides, the Additional Director General has authorized the Intelligence Officer to arrest the petitioner in connection with the commission of offences of the Act of 2017, as indicated therein. Consequently and on the



same day i.e. 19.03.2026, the Authorization Letter digitally signed by the Additional Director General, Director General of GST Intelligence, Surat Zonal Unit is issued coupled with supply of the 'reasons to believe' to the arrestee and hence, the requirement of section 69 of the Act of 2017 stands sufficiently complied with and nowhere in the judgment of the Apex Court in the case of Radhika Agarwal (supra), it is laid down that the 'reasons to believe' as recorded and signed by the Commissioner is to be provided. It is submitted that recently, in the case of *Jai Kumar Aggarwal v. Directorate General of GST Intelligence and others* reported in 2026 SCC OnLine All 376, the Allahabad High Court, has held and observed that it is for the Commissioner to ascertain and record the 'reasons to believe' explicitly and with reference to the material and evidence underlying his opinion. It is observed that in the judgment of the Apex Court in the case of Radhika Agarwal (supra), it is nowhere provided that the 'reasons to believe' should be supplied to the accused.

4.4 It is further submitted that the office of the Director General of the GST Intelligence has received intelligence regarding a non-existent 'Naksh Enterprises' and it availing a huge amount of input tax credit. Accordingly, search was carried out followed by recording of the statement of the authorized person and it connected the petitioner. Therefore, on 19.03.2026, on the basis of the material available on the record, the Additional Director General has recorded the 'reasons to believe' and the concerned officer, was authorized. The 'reasons to believe' were provided on 19.03.2026 that is duly received by the petitioner and in lieu thereof the petitioner has put his signature, further indicating that the contents have been explained to him in Hindi language. Therefore, to say that the 'reasons to believe' as signed by the Additional Director General is not supplied, would be incorrect.



5. Mr Utkarsh Sharma, learned Additional Public Prosecutor, submitted that it is nobody's case that the 'reasons to believe' are not supplied. The issue, is as to whether the author of the 'reasons to believe' himself has supplied it or it is supplied by somebody else. Reliance is placed on the judgment in the case of Arvind Kejriwal v. Directorate of Enforcement (supra). It is submitted that the significance of the 'reasons to believe' had come into picture by way of the judicial pronouncement dealing with two aspects, namely, the intent and whether it is supplied or not. In the case before the Apex Court, it is noted that for recording reasons of belief, whether the records and the details are in sync with and if it is not, it is likely to cause grave prejudice to the accused as much as, he could have challenged those 'reasons to believe'. In other words, the 'reasons to believe' has to be in sync with the record and the details available. The Apex Court in the case of Radhika Agarwal (supra) has clearly noted that judicial intervention is warranted only in exceptional circumstances when the arrest is *prima facie* found to be mala fide or is prompted by extraneous consideration or is made in contravention of or in breach of the provisions of the concerned statute; or when the authority acting under the concerned statute does not have the requisite authority.

5.1 It is further submitted that non-supply of the 'reasons to believe' to the arrestee would not be fatal and it would be permissible to make available for the perusal and the Court can examine it and determine whether the non-supply is fatal to the arrest or not. It is submitted that in the case of Arvind Kejriwal v. Directorate of Enforcement (supra), the Apex Court has carved out an exception by pointing out that in a one-off case it may not be feasible to reveal the material when the investigation is in progress, giving liberty to the officer concerned to claim redaction. It is submitted that in the case on hand, the 'reasons to believe' is



furnished except that the author has not put his signature. It is submitted that the object behind supplying 'reasons to believe' is to facilitate the arrestee to challenge the same indicating that the 'reasons to believe' recorded are not proper. Undisputedly, the 'reasons to believe' has been supplied to the petitioner, but in the manner not acceptable to the arrestee; however, the same would not alter the contents or crux, causing any prejudice to the arrestee. It is submitted that the course available to the arrestee was to challenge the 'reasons to believe' on merits instead, the arrestee has approached this Hon'ble Court seeking Writ of Habeas Corpus, raising technical grounds and in the humble request of the respondents it may not be entertained.

6. Mr Virat Popat, learned advocate in a brief rejoinder, submitted that the Act of 2017, covers various facets, namely, arrest, detention and offences etc., depending upon the stake involved and for which purpose, officers are designated to exercise the powers and it would not be permissible to the officers to delegate those powers to the other officers instead exercising himself. It is submitted that variation in recording the 'reasons to believe' would be impermissible as the slight variation is likely to enure different result. Therefore, it is inevitable that the reasons of belief recorded by the designated officer is provided verbatim to the arrestee with no addition or subtraction, facilitating independent examination by the learned Judicial Magistrate First Class, while passing the order of remand or otherwise. It is next submitted that furnishing the 'reasons to believe' to the arrestee, serves twofold purposes, namely, offering opportunity to the arrestee to challenge the same before higher forum and facilitating authorized detention by the learned Judicial Magistrate First Class. It is further submitted that the requirement, is to supply the 'copy' whereas, in the case on hand, what is supplied cannot be said that the copy of the 'reasons



of belief' is supplied. It is submitted that sub-section (1) of section 104 of the Act of 1962 uses the word officer while that is not the case when powers are to be exercised under sub-section (1) of section 69 of the Act of 2017 as it clearly empowers Commissioner only to record the 'reasons to believe'. Therefore, it would be impermissible for any officers other than the Commissioner to record the 'reasons to believe' and provide the copies. If such exercise is adopted, it is likely to render section 69 of the Act of 2017 nugatory.

6.1 It is further submitted that the verbatim non-supply of the 'reasons to believe' to the arrestee has rendered the detention illegal. It is submitted that the copy of the 'reasons to believe' made available for the perusal of this Court was never forming part of the documents before the learned Chief Judicial Magistrate and had no opportunity to consider the 'reasons to believe' recorded by the Additional Director General and what was placed before the learned Chief Judicial Magistrate was 'reasons to believe' noted by the Intelligence Officer, Director General of Goods & Services Tax Intelligence, Vadodara regional unit. When the 'reasons of belief' recorded by the Commissioner was not placed before the learned Judicial Magistrate First Class for its scrutiny and the Judicial Magistrate First Class had no occasion to examine it and it has rendered the decision illegal and the consequent arrest of the arrestee as well. Hence, the prayers of the petitioner may kindly be accepted and the arrest of the petitioner be declared as invalid.

7. Heard the learned advocates appearing for the respective parties. Perused the documents made available on the record including the e-office notings.

8. The petitioner, by way of the captioned writ petition has prayed for the following reliefs:



“A. Hold and declare the entire exercise leading to the Petitioner's arrest by Respondent and remand proceedings by the Chief Judicial Magistrate to be wholly untenable, illegal, arbitrary and unconstitutional; in connection with File No DGGI/INV/GST/2112/2025-Gr-B

B. As a sequel and consequence to the Prayer A (ibid), set-aside and quash the impugned action of arrest of the petitioner and his subsequent incarceration by way of impugned Remand for judicial custody dated 20-03-2026 (ANNEXURE-G) passed by Chief Judicial Magistrate which are patently routine, mechanical and not in conformity with the obligations/duties cast on the Remand Court; in connection with File No DGGI/INV/GST/2112/2025-Gr-B

C. As a sequel and consequence of the prayers (ibid.), direct the forthwith release of the petitioner from custody as his fundamental rights under Articles 21 as well as 22 (1) & (2) of the Constitution, along with the sacrosanct provisions of Cr.PC, 1973 and BNSS, 2023, stand blatantly infringed and violated;

D. As an interim/ad-interim measure, this Hon'ble Court may be pleased to direct the release of the Petitioner from custody on such terms and conditions that this Hon'ble Court may deem fit and appropriate;

E. Pass any such other order(s) or further direction(s) as this Hon'ble Court may deem fit in the interest of justice.”

9. Pertinently, the challenge raised by the petitioner is to declare the entire exercise leading to the petitioner's arrest by the respondent and remand proceedings by the Chief Judicial Magistrate to be wholly untenable, illegal, arbitrary and unconstitutional. The petitioner has also challenged his arrest and subsequent incarceration by way of the impugned remand of judicial custody dated 20.03.2026 passed by the Chief Judicial Magistrate. At the outset, it is required to be noted that Mr Virat Popat, learned advocate has stated at the bar that the action of the respondent is challenged solely on the ground of non-supply of the verbatim 'reasons to believe' as recorded by the Commissioner. The learned advocates have therefore, made their respective submissions and this Court, has heard accordingly and considered the said ground for deciding the captioned writ petition.

10. Tersely stated are the facts: Discernibly, intelligence was



gathered by the officers of the Director General of Goods & Services Tax Intelligence, Vadodara (hereinafter referred to as “DGGI”) that M/s Naksh Enterprises, Vadodara is engaged in availment and passing on of fraudulent Input Tax Credit (hereinafter referred to as “ITC”) without underlying goods or services or both. Necessary search was conducted and it was informed that no sales or purchase related to the goods of M/s Naksh Enterprise, Vadodara are made. Statement of the proprietor was recorded and during the course of the further investigation it was found that M/s Naksh Enterprise, Vadodara is a non-operational entity and was involved in availment and passing of fake/ineligible ITC without actual supply/receipt of goods. Similarly, inspection was carried out at the registered premises of M/s Shakti International and M/s AAI Metalics, Jamnagar. During the course of further investigation, it revealed that M/s AAI Metalics has received fraudulent ITC amounting to Rs.9.98 crores. It was found that ITC received by M/s AAI Metalics, Jamnagar in their GSTR-2A returns from the fake/non-existent/non-operational firm, was availed by them in GSTR-3B returns filed by it. Investigation therefore, further revealed that M/s AAI Metalics, Jamnagar has passed on fraudulent/ineligible ITC amounting to Rs.10.39 crores in their GSTR-1M returns without actual supply of goods. So was the case in the matter of M/s Shakti International as during the course of further investigation it revealed that it had received fraudulent/ineligible ITC amounting to Rs.4.03 crores without actual receipt of goods, on the basis of invoices issued by the firms which were non-existence/non-operational at their declared principal place of business.

11. Perceptibly, search came to be conducted by the officers of DGGI at the residence of the petitioner, one industrial unit and two other premises, followed by recording of the statements of in-charge, proprietor, authorized signatory etc. of the respective units



and premises. Statement of the petitioner was also recorded on 18.03.2026 under section 70 of Act of 2017. As a result of the investigation conducted, according to the DGGI, the petitioner was instrumental and beneficiary of the fake invoicing racket through M/s AAI Metalics, Jamnagar and M/s Shakti International, Jamnagar being used as a proxy for the purpose of availing and passing on of a fake ITC without actual receipt/supply of goods. The total fraudulent ITC passed on was amounting to Rs.10.39 crores without supply of goods by M/s AAI Metalics, Jamnagar for the period from April 2024 and November 2025 and Rs.4.03 crores fraudulent ITC claimed by M/s Shakti International, Jamnagar. The DGGI on the basis of the records and preliminary investigation, noticed that the petitioner was personally involved in availment of the fake ITC on the basis of invoices issued by non-operational firms and received monetary considerations leading to the evasion of the Goods and Services Tax by way of availing ITC of Rs.14.01 crores and passing on of ITC of Rs.10.39 crores without underlying receipts/supply of goods. The DGGI was of the opinion that the petitioner has committed an offence under section 132(1)(b) and section 132(1)(c), punishable under section 132(1)(i) read with sub-section (5) of section 132 of the Act of 2017.

12. On 18.03.2026, summons under sub-section (1) of section 70 of the Act of 2017 came to be issued by the Superintendent/Appraiser/Senior Intelligence Officer to the petitioner requiring the petitioner to appear before him on 19.03.2026 at 10:15 a.m. at the office located at Baroda which was duly received by the petitioner endorsing that he would on his own attend the Baroda office. Detailed statement of the petitioner was recorded on 19.03.2026. The Additional Director General in exercise of the powers conferred under sub-section (1) of section 69 of the Act of 2017, authorized the Intelligence Officer, DGGI, Vadodara to



arrest the petitioner in connection with the offences committed in nature described under sections 132(1)(b) and 132(1)(c) of the Act of 2017. The aforesaid authorization was followed by the arrest of the petitioner on 19.03.2026 around 06:40 p.m. and was produced before the Chief Judicial Magistrate on 20.03.2026 around 11:00 a.m. The record further reveals that the petitioner was duly supplied with the grounds of arrest for, it is signed by the petitioner putting an endorsement in hindi language to the effect that the petitioner was explained the reason of arrest in hindi and copy was given to him. Simultaneously, reasons to believe was served upon the petitioner wherein also, the petitioner has put an endorsement in hindi language stating that he has been explained the reason of arrest in hindi language and copy thereof was provided to him.

13. In view of the above, the grievance is raised by the petitioner that in the absence of supply of the copy of the 'reasons to believe' as recorded by the Commissioner, the arrest would be rendered illegal and unconstitutional and the consequential order of remand for judicial custody would be patently illegal and not in conformity with the obligation and duties cast on the remand Court. The respondents have opposed the said contention by stating that the 'reasons to believe' recorded by the Commissioner have been duly served upon the petitioner and hence, there is no requirement under the law of providing verbatim 'reasons to believe' to the petitioner. The 'reasons to believe' has been furnished and hence, there is a sufficient compliance of the principle laid down by the Apex Court in the case of Arvind Kejriwal v. Directorate of Enforcement (supra) and Radhika Agarwal (supra). Contention is also raised by the respondents regarding maintainability and/or entertainability of the captioned writ petition.

14. Before adverting to the contention raised by the petitioner



that by not following the statutory mandate as contained in section 69 of the Act of 2017 the arrest/detention is illegal, this Court, may deal with the issue regarding the maintainability and entertainability of the writ petition, seeking writ of Habeas Corpus. It need not detain the Court any longer, as the matter is well-settled by the following judgments of the Apex Court and this Court.

15. In the case of V. Senthil Balaji v. State represented by the Deputy Director (supra), the Apex Court, has laid down the proposition pointing out the difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. A writ of Habeas Corpus may be entertained in the formal case and in the latter the only remedy available is to seek a relief statutorily given. Paragraphs 28, 29 and 30 are reproduced hereinbelow for ready reference:

“28. A writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too by way of a challenge.

29. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as mandated under sub-section (3), since it becomes a judicial custody



thereafter and the concerned Court would be in a better position to consider due compliance.

30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. *State of Maharashtra v. Tasneem Rizwan Siddiquee*, (2018) 9 SCC 745:

“10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702 and *Manubhai Ratilal Patel v. State of Gujarat*, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475 . It is no more *res integra*. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on 21-3-2018 *Tasneem Rizwan Siddiquee v. State of Maharashtra*, 2018 SCC OnLine Bom 2712 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued.”

16. The coordinate Bench of this Court in the case of *Vinodbhai Tilakdhari Tiwari v. State of Gujarat* passed in Special Criminal Application (Habeas Corpus) no.15962 of 2025, dealt with the issue of maintainability of the writ petitions seeking issuance of a writ of Habeas Corpus. Reference is made to the judgment of the Apex Court in the case of *V. Senthil Balaji v. State* (supra) and the coordinate Bench, held that writ petition seeking to invoke writ of Habeas Corpus to question the detention made pursuant to a judicial order will be made available. Paragraphs 36 to 39 are reproduced for ease of reference:



“36. In fact, this proposition of law has been explicitly stated by the Apex Court in a recent decision, after noticing and considering a long line of decisions in respect of illegal detention even under judicial orders, in the following terms:

80. Thus, we would hold as follows: If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.

37. In fact the same proposition is also reiterated and it is also clarified as to when a writ for issuance of a habeas corpus would not lie in the case of V. Senthil Balaji v. State represented by Deputy Director & Ors. reported in (2024) 3 SCC 51 where it is held as follows:

28. A writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too by way of a challenge.

29. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while noncompliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as mandated under subsection (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance.

38. The Learned PP however sought to rely upon the judgment rendered in the case of Saurabh Kumar through his Father v. Jailor,



Koneila Jail and Anr. reported in (2014) 13 SCC 436 and in the case of State of Maharashtra & Ors. v. Tasneem Rizwan Siddiquee, reported in (2018) 9 SCC 745 to contend that once an order of remand had been passed and the custody of the person was relatable to the order of remand, a writ seeking for habeas corpus would not lie. It is to be stated here that the Apex Court has basically stated that an order of remand cannot be questioned by filing a writ of habeas corpus and it has not laid down the proposition that a writ petition seeking for habeas corpus would not be maintainable. As already observed if it is to be urged that the detention is in violation of a constitutional safeguard or of a specific statutory mandate, a writ of habeas corpus would be maintainable since it would basically be a complaint about the infringement of a constitutional safeguard or a statutory mandate.

39. In the light of the above discussion, it is manifestly clear that a writ petition seeking to invoke the habeas corpus jurisdiction to question the detention made pursuant to a judicial order will be maintainable and the arguments of the Learned PP cannot be sustained. The 1st question is accordingly answered.”

17. As the writ petition is held to be maintainable, this Court, would proceed to examine the contention of the petitioner regarding non-supply of the copy of the ‘reasons to believe’ as recorded by the Commissioner. In view thereof, at this stage, the provisions of section 69 of the Act of 2017 would be necessary and for ease of reference, it is reproduced hereinbelow:

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

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

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,--

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

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or



otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.”

18. Sub-section (1) of section 69 of the Act of 2017 provides for recording of ‘reasons to believe’ by the Commissioner, that the person has committed an offence and is punishable under the provisions of the Act of 2017 as specified therein, coupled with passing of the order authorizing any officer to arrest such person. Recording of reasons to believe is a *sine qua non* for satisfying the elements prescribed therein.

19. In the case on hand, the issue revolves around the language contained in sub-section (1) of section 69 of the Act of 2017 which is more or less in *pari materia* with the provisions of sub-section (1) of section 19 of the PML Act so also sub-section (1) of section 104 of the Act of 1962 (except the officers named therein). The requirements as contained in the above-referred provisions are jurisdictional conditions to be satisfied for the arrest, the validity of which can be challenged by the accused and examined by the Court. It is settled law that any arrest not in accordance with law would straightaway violate a personal liberty of a person and hence, with a view to facilitating the person to challenge its validity the ‘reasons to believe’ are required to be furnished (save and except in few cases depending upon the feasibility and the nature of investigation). The violation of personal liberty and the exercise of power to arrest in accordance with law, are two important phenomena and its scrutiny is amenable to judicial review. Therefore, the issue is whether it is necessary to provide the ‘reasons to believe’ to the arrestee. The issue is no longer *res integra*.

20. Pertinently, the challenge to the arrest is limited and solely on the ground of non-supply of verbatim ‘reasons to believe’ recorded



by the Commissioner. In the recent judgment in the case of Radhika Agarwal (supra), the Apex Court, was dealing with the issue regarding the power to arrest under the Act of 1962 and the Act of 2017. The provisions of the Act of 1962 and specially sub-section (1) of section 104 vis-a-vis sub-section (1) of section 19 of the PML Act, were compared and the Apex Court, held and observed that to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the 'reasons to believe' recorded by him, that the person to be arrested has committed a non-bailable offence and that the preconditions of sub-section (5) of section 132 of the Act are satisfied and failure to do so, would result in an illegal arrest. It has been further held and observed that the Commissioner while recording the 'reasons to believe' should state his satisfaction and refer to the material forming the base of his finding regarding commission of a non-bailable offence specified in clauses (a) to (d) of sub-section (1) of section 132. The Apex Court has also held and observed that the exercise should be undertaken in right earnest and objectively and not on mere *ipse dixit* without foundational reasoning and material. Therefore, statutory obligation is cast upon the Commissioner that while recording the 'reasons to believe' there has to be foundational reasoning and the material satisfying the conditions enumerated in section 132 and it would be incumbent upon the Commissioner to satisfactorily show vide the 'reasons to believe' recorded by him that the person, to be arrested, has committed a non-bailable offence. Paragraphs 31 to 33, 39, 40, 44, 52, 56, 57 and 60 are reproduced hereinbelow for ease of reference:

"31. In Arvind Kejriwal (supra), a combined reading of Pankaj Bansal v. Union of India and Others, 2023 SCC OnLine SC 1244/[2023] 155 taxmann.com 39 (SC), Prabir Purkayastha v. State (NCT of Delhi) (2024) 7 SCC 576/[2024] 162 taxmann.com 539 (SC) and Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929/[2022] 140 taxmann.com 610 (SC) was adopted by this Court. It was held that the power to arrest a person without a warrant and



without instituting a criminal case is a drastic and extreme power. Therefore, the legislature had prescribed safeguards in the language of Section 19 itself which act as exacting conditions as to how and when the power is exercisable. These safeguards include the requirement to have "material" in the possession of DoE, and on the basis of such "material", the authorised officer must form an opinion and record in writing their "reasons to believe" that the person arrested was "guilty" of an offence punishable under the PML Act. The "grounds of arrest" are also required to be informed forthwith to the person arrested.

32. The contention of the DoE that while "grounds of arrest" were mandatorily required to be supplied to the arrestee, "reasons to believe", being an internal and confidential document, need not be disclosed, was decisively rejected in Arvind Kejriwal (supra). It was held that "reasons to believe" are to be furnished to the arrestee such that they can challenge the legality of their arrest. Exceptions are available in one-off cases where appropriate redactions of "reasons to believe" are permissible. The relevant portion reads:

"41. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the "reasons to believe", based upon the material available with the authorized officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.

42. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details of documents, when the investigation is in progress. This will not be the position in most cases. DOE may claim redaction and exclusion of specific particulars and details. However, the onus to justify redaction would be on the DoE. The officers of the DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the nondisclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file,



including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole judge.

43. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply."

33. Arvind Kejriwal (supra) also holds that the courts can judicially review the legality of arrest. This power of judicial review is inherent in Section 19 as the legislature has prescribed safeguards to prevent misuse. After all, arrests cannot be made arbitrarily on the whims and fancies of the authorities. This judicial review is permissible both before and after criminal proceedings or prosecution complaints are filed.

39. In the present context, the power of arrest is provided in Section 104(1) of the Customs Act. For ease of reference, we have provided a tabular comparison between Section 19(1) of the PML Act, envisaging the DoE's power of arrest, and Section 104(1) of the Customs Act, envisaging the customs officer's power of arrest:

| Section 19(1) of the PML Act | Section 104(1) of the Customs Act |
|--|--|
| <p>19. Power to arrest. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> | <p>104. Power to arrest.— (1) If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> |

40. Section 104(1) stipulates that arrests may be made if a customs officer, empowered by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has "reasons to believe" that an offence has been "committed" in terms of Section 132 or Section 133 or Section 135 or Section 135-A or



Section 136 of the Customs Act. Thus, Section 104(1), effectively incorporates safeguards similar to those outlined in Section 19(1) of the PML Act. The semantical distinction, however, between Section 19(1) and Section 104(1), is twofold: first, Section 104(1) does not explicitly stipulate the requirement of a customs officer having "material in their possession"; and second, Section 104(1) does not explicitly state that the customs officer must reasonably believe that the arrestee is "guilty of an offence". Instead, Section 104(1) states that the customs officer must have "reasons to believe" that the arrestee has "committed an offence".

44. Thirdly, given the framework of the Customs Act, which explicitly classifies offences into bailable and non-bailable, as well as cognizable and non-cognizable, the "reasons to believe" must reflect these classifications when justifying an arrest. The reasoning must weigh in why an arrest is being made in a specific case, particularly given the specific severity assigned to the offence by the legislature. The reasoning must also state how the monetary thresholds outlined in the Act are met. Subclauses (b) to (d) of Section 104(4) provide monetary thresholds for cognizable offences, while subclauses (a) and (c) to (e) of Section 104(6) provide those for non-bailable offences. The "reasons to believe" must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can be drawn. This level of detail is crucial, as it facilitates judicial review of the exercise of the power to arrest. The department's authority to arrest under Section 104 hinges on satisfying these statutory thresholds.

52. Section 69 of the GST Acts states that where a Commissioner has reasons believe that a person has committed any offence specified in clauses (a) to (d) of section (1) to Section 132, which is punishable under clauses (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may authorise any officer of central or state tax to arrest such person. Sub-section (2) requires that when a person is arrested for an offence specified in sub-section (5) to Section 132, the officer authorised to arrest, must inform the person of the grounds of arrest and produce him before the Magistrate within 24 hours.

56. It is clear from the aforesaid provisions that, to pass an order of arrest in case of cognizable and non-cognizable offences, the Commissioner must satisfactorily show, vide the reasons to believe recorded by him, that the person to be arrested has committed a non-bailable offence and that the pre-conditions of sub-section (5) to Section 132 of the Act are satisfied. Failure to do so would result in an illegal arrest. With regard to the submission made on behalf of the Revenue that arrests are not made in case of bailable offences, in our considered view, the Commissioner, while recording the reasons to believe should state his satisfaction and refer to the 'material' forming the basis of his finding regarding the commission of a non-bailable offence specified in clauses (a) to (d) of sub-section (1) to Section 132. The computation of the tax involved in terms of the monetary limits under clause (i) of sub-section (1), which make the offence cognizable and non-bailable, should be supported by referring to relevant and sufficient material.



57. The aforesaid exercise should be undertaken in right earnest and objectively, and not on mere ipse dixit without foundational reasoning and material. The arrest must proceed on the belief supported by reasons relying on material that the conditions specified in sub-section (5) of Section 132 are satisfied, and not on suspicion alone. An arrest cannot be made to merely investigate whether the conditions are being met. The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe must be based on the evidence establishing to the satisfaction of the Commissioner that the requirements of sub-section (5) to Section 132 of the GST Act are met.

60. The findings and the ratio recorded in paragraphs 30 to 47 above with reference to the Customs Act would equally apply insofar as maintenance of records as well as obligations of the arresting officer and rights of the accused/person arrested are concerned. Compliance in this regard must be made.”

21. It is noteworthy that in paragraph 60, the Apex Court, has clearly stated that the findings and the ratio recorded in paragraphs 30 to 47 of the judgment with reference to the Act of 1962 would equally apply insofar as maintenance of records as well as obligations of the arresting officer and rights of the accused/persons arrested.

22. In this behalf, apt would be the judgment of the Apex Court in the case of Arvind Kejriwal v. Directorate of Enforcement (supra). The Apex Court, was dealing with the provisions of section 19 of the PML Act which gives the officers power to arrest. Sub-section (1) provides that if the officers stated therein on the basis of material possessed has a reason to believe and recorded in writing that the person has been guilty of offence punishable under the Act, may arrest such person. The Apex Court did not accept the contention raised by the officer that the ‘reasons to believe’ as recorded in writing are not to be furnished. In the event, the investigation is in progress and it is not feasible for the officer concerned to reveal all material including the name of the witnesses, exception is carved out for not furnishing the ‘reasons to believe’ to the arrestee. It is observed that it would be permissible for the Directorate of



Enforcement to claim redaction and exclusion of specific particulars and details. Paragraphs 41 to 44 are reproduced hereinbelow for ready reference:

“41. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the "reasons to believe", based upon the material available with the authorised officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons believe should be furnished to the arrestee to enable him to exercise his fight to challenge the validity of arrest.

42. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details of documents, when the investigation is in progress. This will not be the position in most cases. DoE may claim redaction and exclusion of specific particulars and details. However, the onus to justify redaction would be on DoE. The officers of DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the non-disclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file, including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole judge.

43. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an event, the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply.

44. We now turn to the scope and ambit of judicial review to be exercised by the court. Judicial review does not amount to a mini-trial or a merit review. The exercise is confined to ascertain whether the "reasons to believe" are based upon material which "establish" that the arrestee is guilty of an offence under the PML Act. The exercise is to ensure that DoE has acted in accordance with the law. The courts



scrutinise the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken by DoE to ensure that the "reasons to believe" justify the arrest in terms of Section 19(1) of the PML Act, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid, and therefore a deeper and in-depth scrutiny is required. Arrest, after all, cannot be made arbitrarily and on the whims and fancies of the authorities. It is to be made on the basis of the valid "reasons to believe", meeting the parameters prescribed by the law. In fact, not to undertake judicial scrutiny when justified and necessary, would be an abdication and failure of constitutional and statutory duty placed on the court to ensure that the fundamental right to life and liberty is not violated."

23. Observations made in paragraph 41, lays down the principle that the requirements in sub-section (1) of section 19 of the PML Act are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the Court and therefore, the accused cannot be denied and not furnished a copy of the 'reasons to believe' as much as, non-supply of the copy of the 'reasons to believe' would prevent the accused from questioning the 'reasons to believe' and challenging the arrest. Clearly, the arrestee cannot be denied a copy of the 'reasons to believe' so as to prevent him from challenging the arrest questioning the 'reasons to believe'. It is held and observed that scrutiny of the action of arrest, whether in accordance with law, is amenable to judicial review and that the 'reasons to believe' should be furnished to the arrestee to enable him to exercise his right to challenge the validity of the arrest. Exception is carved out in paragraph 42 of the judgment in the eventuality of non-feasibility to reveal the material, by claiming redaction and exclusion of a specific particulars and details, with a rider that such a position would not be in most cases. Therefore, it is well-settled that when it comes to violation of personal liberty, the 'reasons to believe', recorded, should be furnished to the arrestee so as to enable him to exercise his right to challenge the validity of the arrest.

24. Essentially, the contention raised by the petitioner, is that the



verbatim copy of the 'reasons to believe' as signed by the Commissioner is not provided and the so-called 'reasons to believe' provided to the petitioner is signed by the respondent no.3, who is not competent as per the provisions of the Act of 2017. In support of such contention, ground is raised that formation of 'reasons to believe' by the Commissioner is absent in the present case and the document purportedly containing 'reasons to believe' is not signed, recorded or approved by the Commissioner, but instead is signed by the arresting officer himself. According to the petitioner, the statute mandates clear jurisdictional condition precedent that the Commissioner must independently form and record his 'reasons to believe' before authorizing arrest and that the power is neither mechanical nor can be delegated in the absence of proper authorization. The above-referred grounds raised by the petitioner, in the facts of the case, are misplaced.

25. As the ground of challenge is limited only to non-supply of the copy of the 'reasons to believe' as recorded by the Commissioner, it would be relevant to discuss the e-office notings made available for the perusal of this Court by Mr Tirth Nayak, learned advocate for the respondent nos.2 and 3 containing recording of remarks, opinions and decisions. It clearly reflects that a detailed note Note#107 recorded by the Intelligence Officer was submitted for the perusal and approval before the Senior Intelligence Officer who, vide Note#108 considered and submitted it for further perusal and approval before the Assistant Director and the Assistant Director, vide Note#109 recorded the remarks which was further placed before the Additional Director who has recorded the Note#110. Finally, the matter was placed before the Additional Director General who, vide Note#111, having considered the facts of the case and the evidence placed, in exercise of the powers conferred under sub-section (1) of section 69 of the Act of 2017 recorded his



'reasons to believe'. Adherence to the instruction no.02/2022-2023(GST-Investigation) dated 17.08.2022 by the Additional Director General is noted, coupled with the direction, authorizing the Intelligence Officer to arrest the petitioner as per the provisions of sub-section (1) of section 69 of the Act of 2017 for committing offence under section 132(1)(b) and 132(1)(c) of the Act of 2017, punishable under section 132(1)(i) read with sub-section (5) of section 132 of the Act of 2017. The e-office notings, thereafter travelled back to the Additional Director who, issued instructions to take necessary action as approved. The file movement took place once again and the Intelligence Officer, vide Note#114, placed a draft of authorization of arrest for approval and vide Note#118, the Additional Director General approved it. Which in turn, was sent back vide e-office notings with a request to take action accordingly. It is not in dispute that 'reasons to believe' (page no.354 of the compilation) has been provided to the petitioner which substantially covers the 'reasons to believe', including the opinions, the decision as recorded in e-office notings. Therefore, this Court, is of the opinion that the 'reasons to believe' recorded by the Commissioner has been furnished to the petitioner, facilitating him to challenge his arrest on the grounds as permissible and available to him in law.

26. Having held that the 'reasons to believe' has to be provided and has been provided to the petitioner, the issue which now arises for the consideration, is whether verbatim copy as signed by the Commissioner should have been provided to the petitioner.

27. The idea behind furnishing 'reasons to believe' as recorded is to facilitate the arrestee to challenge his/her arrest before the Court of competent jurisdiction as the reason to believe, is amenable to the judicial review. Therefore, upon scrutiny of the e-office notings containing the 'reasons to believe' recorded by the Commissioner



vis-a-vis the 'reasons to believe' placed on the record as supplied to the petitioner (page no.354 of the compilation), in substance, is the same and are not at variance and hence, the contention of the petitioner regarding non-furnishing of the verbatim copy of the 'reasons to believe' as signed by the Commissioner, is stated to be rejected. Moreover, it would be impermissible to the petitioner to find fault with the manner in which the 'reasons to believe' has been supplied as neither the provisions of section 69 of the Act of 2017 nor the judgments, prescribe the mode and manner in which the 'reasons to believe' is to be furnished to the arrestee. Crucial mandatory requirement is furnishing of the 'reasons to believe' and if the arrestee is in receipt of the 'reasons to believe' then in that eventuality, the form and manner would be immaterial.

28. In view of the above discussion, the present petition is devoid of any merits and is dismissed accordingly. No order as to costs. Rule is discharged.

Sd/-

(SANGEETA K. VISHEN,J)

Sd/-

(D. M. VYAS, J)

RAVI P. PATEL