Case Citation: (2026) taxcode.in 1181 HC

2026:AHC:32796-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 139 of 2026

Jai Kumar Aggarwal

.....Petitioner(s)

Versus

Directorate General Of Gst Intelligence And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mohit Singh
Counsel for Respondent(s)	:	Dhananjay Awasthi, G.A.

Court No. - 46

HON'BLE SIDDHARTH, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Imran Ullah, learned Senior Counsel assisted by Sri Mohit Singh, Sri Nadeem Murtaza, Sri Vedant Gupta, Ms. Snigdha Singh and Sri Harsh Vardhan Kediya and Sri Vineet Vikram, learned counsel for the petitioner; Sri Dhnanjay Awasthi, Sri Gopi Krishan Soodh and Sri Harmanpreet Singh, Senior Standing Counsel DGGI, Delhi (online), learned counsel for respondent nos. 1 & 2 and Mrs. Manju Thakur, learned A.G.A.-Ist for State-respondent nos. 3 & 4 and perused the material on record.

2. The above noted habeas corpus writ petition has been filed by the petitioner praying for following reliefs:-

i. To issue a writ, order or direction, in the nature of Habeas Corpus directing the respondents herein to produce the corpus/petitioner while declaring the detention, arrest, and subsequent remand and custody of the petitioner as unconstitutional, illegal and arbitrary and consequently directing that the Petitioner be released forthwith;

ii. to issue a writ, order, or direction in the nature of certiorari setting aside the order dated 17.01.2026 passed by the Chief Judicial Magistrate, Meerut, in Case No. 1361/2025, under Section 132(1)(c) of the CGST Act, 2017, Department DGGI, Ghaziabad, and all consequential

www.taxcode.in

proceedings thereof;

iii. to issue any other and further writ, order, or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

iv. To allow the instant petition with costs.

3. The brief facts of the case is that on 29.12.2025 at about 8:00 a.m., officers of respondent no.1 detained the petitioner and started search proceedings at his residential premises as per Section 67 of CGST Act. After the search proceedings under Section under Section 67 of the CGST Act, petitioner was arrested on 16.1.2026 as per Section 69 of the Act aforesaid.

4. Learned Senior Counsel for the petitioners submits that at about 6:40 p.m. on 16.1.2026 respondent no.1 handed over an arrest memo without any annexure and search memo to the petitioner and directed the petitioner and his wife to accompany them. Apart from the aforesaid documents, no other documents were supplied to the petitioner at the time of his arrest. Neither "ground of arrest" nor "reasons to believe" as mandatorily required under Section 69 CGST Act read with the judgment of Apex Court in the case of ***Radhika Agrawal Vs. Union of India, (2025) 5 SCC 545*** were furnished to the petitioner. It has been submitted that the arrest of the petitioner under Section 69 of CGST Act is unwarranted since the offence alleged is punishable up to 5 years only and therefore in view of the recent judgment of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, dated 11.7.2022,*** the arrest of petitioner could not have been made.

5. Learned Senior Counsel for the petitioner has pointed out to the circular dated 17.8.2022 issued by the department of Central Board of Indirect Taxes and Customs (GST- Investigation Wing), the relevant portion of which reads as under:-

" *F.No. GST/INV/Instructions/2021-22 GST-Investigation Unit*

17th August 2022

Instruction No. 02/2022-23 [GST - Investigation]

Subject: Guidelines for arrest and bail in relation to offence punishable under the CGST Act, 2017-reg.

Hon'ble Supreme Court of India in its judgment dated 16th August, 2021 in Criminal Appeal No. 838 of 2021, arising out of SLP (Crl.) No. 5442/2021, has observed as follows:

"We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

Conditions precedent to arrest:

3.1 Sub-section (1) of Section 132 of CGST Act, 2017 deals with the punishment for offences specified therein. Sub-section (1) of Section 69 gives the power to the Commissioner to arrest a person where he has reason to believe that the alleged offender 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 clause (ii) of subsection (1), or sub-section (2) of the Section 132 of CGST Act, 2017. Therefore, before placing a person under arrest, the legal requirements must be fulfilled. The reasons to believe to arrive at a

decision to place an alleged offender under arrest must be unambiguous and amply clear. The reasons to believe must be based on credible material.

3.2 Since arrest impinges on the personal liberty of an individual, the power to arrest must be exercised carefully. The arrest should not be made in routine and mechanical manner. Even if all the legal conditions precedent to arrest mentioned in Section 132 of the CGST Act, 2017 are fulfilled, that will not, ipso facto, mean that an arrest must be made. Once the legal ingredients of the offence are made out, the Commissioner or the competent authority must then determine if the answer to any or some of the following questions is in the affirmative:

3.2.1 Whether the person was concerned in the non-bailable offence or credible information has been received, or a reasonable suspicion exists, of his having been so concerned?

3.2.2 Whether arrest is necessary to ensure proper investigation of the offence?

3.2.3 Whether the person, if not restricted, is likely to tamper the course of further investigation or is likely to tamper with evidence or intimidate or influence witnesses?

3.2.4 Whether person is mastermind or key operator effecting proxy/ benami transaction in the name of dummy GSTIN or non-existent persons, etc. for passing fraudulent input tax credit etc.?

3.2.5 As unless such person is arrested, his presence before investigating officer cannot be ensured.

3.3 Approval to arrest should be granted only where the intent to evade tax or commit acts leading to availment or utilization of wrongful Input Tax Credit or fraudulent refund of tax or failure to pay amount collected as tax as specified in sub-section (1) of Section 132 of the CGST Act 2017, is evident and element of mens rea / guilty mind is palpable.

3.4 Thus, the relevant factors before deciding to arrest a person, apart from fulfillment of the legal requirements, must be that the need to ensure proper investigation and prevent the possibility of tampering with evidence or intimidating or influencing witnesses exists.

3.5 Arrest should, however, not be resorted to in cases of technical nature i.e. where the demand of tax is based on a difference of opinion regarding interpretation of Law. The prevalent practice of assessment could also be one of the deterrnining factors while ascribing intention to evade tax to the alleged offender. Other factors influencing the decision to arrest could be if the alleged offender is co-operating in the investigation, viz. compliance to summons, furnishing of documents called for, not giving evasive replies, voluntary payment of tax etc."

6. He has submitted, relying upon the aforesaid circular, that there was no special reason assigned at the time of the arrest of the petitioner justifying his arrest. The arrest of petitioner was made casually in disregard of the procedural safe guards provided in the circular aforesaid.

7. Further reliance has been made on paragraph no. 34 of the judgement of Apex Court in the case of **Radhika Agrawal (Supra),** which is quoted herein below:-

"34. 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*** ***Vs. Directorate of Enforcement, (2025) 2 SCC 248*** *. 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 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."

8. Further reliance has been made on paragraph Nos. 51, 52, 54, 64 & 66 of the aforesaid judgement:

"51. We shall now draw our attention to the provisions of the GST Acts. We have collectively referred to the Central as well as the State GST as "the GST Act".

55. To a large extent, our reasoning and the ratio on the applicability of the Code to the Customs Act would equally apply to the GST Acts in view of Sections 4 and 5 of the Code. Sub-section (10) to Section 67 of the GST Acts postulates that the provisions of the Code relating to search and seizure shall, as far as may be, apply to search and seizure under the GST Acts, subject to the modification that for the purpose of sub-section (5) to Section 165 of the Code, the word 'Magistrate' shall be substituted with the word 'Commissioner'. Section 69, which deals with the power of arrest, a provision which we will refer to subsequently, also deals with the provisions of the Code when the person arrested for any offence under the GST Acts is produced before a Magistrate. It also deals with the power of the authorised officers to release an arrested person on bail in case of non-cognizable and bailable offence, having the same power and subject to the same provisions as applicable to an officer in charge of a police station. We would, therefore, agree with the contention that the GST Acts are not a complete code when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.

54. Section 69 of the GST Acts states that where a Commissioner has reasons to believe that a person has committed any offence specified in clauses (a) to (d) of sub-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.

64. The circular also refers to the procedure of arrest and that the Principal Commissioner/Commissioner has to record on the file, after considering the nature of the offence, the role of the person involved, the evidence available and that he has reason to believe that the person has committed an offence as mentioned in Section 132 of the GST Act. The provisions of the Code, read with Section 69(3) of the GST Acts, relating to arrest and procedure thereof, must be adhered to. Compliance must also be made with the directions in ***D.K. Basu Vs. State of W.B., 1997 SCC (Cri) 92.***

64.1. The format of arrest, as prescribed by the Central Board of Indirect Taxes and Customs in Circular No. 128/47/2019-GST dated 23.12.2019, has also been referred to in this Instruction. Therefore, the arrest memo should indicate the relevant section(s) of the GST Act and other laws.

64.2, In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo.

64.3. Instruction 02/2022-23 GST (Investigation) dated 17.08.2022

further lays down that a person nominated or authorised by the arrested person should be informed immediately, and this fact must be recorded in the arrest memo. The date and time of the arrest should also be mentioned in the arrest memo. Lastly, a copy of the arrest memo should be given to the person arrested under proper acknowledgement.

64.4. The circular also makes other directions concerning medical examination, the duty to take reasonable care of the health and safety of the arrested person, and the procedure of arresting a woman, etc. It also lays down the post-arrest formalities which have to be complied with. It further states that efforts should be made to file a prosecution complaint under Section 132 of the GST Acts at the earliest and preferably within 60 days of arrest, where no bail is granted. Even otherwise, the complaint should be filed within a definite time frame. A report of arrests made must be maintained and submitted as provided in paragraph 6.1 of the Instruction.

9. It has been submitted by learned Senior Counsel for the petitioner that it is clear from remand order dated 17.1.2026 that the "medical report" and "memo of arrest" were served on the petitioner on 17.1.2026 after remand order dated 17.1.2026 was passed by the learned Magistrate, when his arrest was effected on 16.1.2026. Therefore, it is clear that the prior to his arrest, he was no supplied the "grounds of arrest" or "reasons to believe". In fact the "reasons to believe" have not been supplied to the petitioner as yet. It has been submitted that once it is found by this Court that the after remand order was passed, "grounds of arrest" were supplied to the petitioner, the order of remand become illegal and therefore the court has jurisdiction to entertain the habeas corpus writ petition preferred by the petitioner before this Court in view of the judgment of Apex Court in the case of ***Mihir Rajesh Shah Vs. State of Maharastra and another, MANU/SC/1492/2025. Relevant paragraph no. 56 thereof is quoted herein below:-***

" 56. In conclusion, it is held that:

> *i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all*

statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally.

The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free."

10. It has finally been submitted that from the material on record and judgements cited above at bar it is clear that petitioner has been arrested illegally and detained in jail since 16.1.2026. Hence this writ petitioner deserves to be allowed by granting reliefs sought in the writ petition.

11. Sri Dhnanjay Awasthi, learned counsel for respondent nos. 1 & 2, has vehemently opposed the submissions made by learned Senior Counsel for the petitioner. The first argument of learned counsel for respondent nos. 1 & 2 is that "reasons to believe" are not required to be supplied to the petitioner. There are only internal documents to be perused by the department and the court as Section 69 (1) of the CGST Act, only provides that where 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.

12. He has submitted that "reasons to believe" are not required to be supplied to such person and only Commissioner should have "reasons to believe" that such person has committed the alleged offence. He has

submitted that word "may" used in Section has effect of word "shall" and is mandatory in nature and not merely directory.

13. Second argument of learned counsel for respondent nos. 1 & 2 is that in paragraph no. 58 of the judgment in the case of ***Radhika Agrawal (supra)*** the Apex Court has held that Commissioner must record "reasons to believe" in his order while directing arrest of the person so implicated. There is no requirement of serving copy of the "reasons to believe" of the accused.

14. He has thirdly submitted that vires of Section 69 of CGST Act has already been upheld in the case of ***Radhika Agrawal (supra)*** and therefore argument made by learned counsel for the petitioner is legally misconceived and deserves to be turned down.

15. He has forthly submitted that since vires of Section 69 and 70 of CGST Act has been upheld by the Apex Court in the case of ***Radhika Agrawal (supra)***, therefore, unless the aforesaid provisions of CGST Act are again challenged with reference to the service of "reasons to believe", it is not open for the petitioner to raise such an argument as has been raised before this Court.

16. Learned Counsel for respondent nos. 1 and 2 has finally submitted that judgment of Apex Court in the Case of ***Satendra Kumar Antil Vs. C.B.I. & Another (supra)*** does not applies to the case of CGST Act which is complete code in itself and judgment of the Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another (supra)*** is contrary in part to the judgment of the Apex Court in the case of ***Radhika Agrawal (Supra)***. He submits that the ratio of case ***Satendra Kumar Antil Vs. C.B.I. & Another (supra),*** that where offence is/are punishable upto 7 years or below arrest cannot be effected, is not applicable to the present case under CGST Act.

17. Learned counsel for respondent nos. 1 & 2 has submitted that the service of grounds of arrest on the petitioner on 17.1.20256 at 5:00 p.m. will not affect the merits of the remand order since grounds of arrest was admittedly supplied to the petitioner.

18. After hearing the rival submissions, this Court finds that the first issue to be decided is regarding the maintainability of the writ petition. It has been vehemently argued by the learned counsel for respondent nos. 1 & 2 that the petition is not maintainable since petitioner has been arrested by following procedure of law as per Section 67/69 of CGST Act. We find that such a contention raised before this Court is not apparent from record. It is settled law that if the court finds that the order of remand passed by the Magistrate is not in accordance with law. The arrest of the accused in such a case becomes illegal and the this Court has jurisdiction to entertain the habeas corpus writ petition preferred under Article 226 of the Constitution of India. This view finds support from the paragraph no. 28 of the judgement of Apex Court in the case of ***V. Senthil Balaji Vs. State represented by Deputy Director and others, (2024) 2 Supreme Court Cases 51.***

19. The argument of learned Senior Counsel for the petitioner that the "reasons to believe" were required to be furnished to the petitioner alongwith the "grounds of arrest" also needs consideration. From the paragraph no.34 of the judgment of Apex Court in the case of ***Radhika Agrawal (supra)*** it is clear that "grounds of arrest" and "reasons to believe" are mandatorily required to be supplied to the arrestee. We find that the aforesaid observation of Hon'ble Supreme Court was with regard to the provisions of P.M.L.A. Act and not GST Act.

20 Our view finds support from the paragraph nos. 58, 59, 60, 61, 64.2 of the judgment of Apex Court in the case of ***Radhika Agrawal (supra),*** quoted herein below:-

"58. 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.

59. 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. Our attention was drawn to the judgment of the High Court of Delhi in Makemytrip (India) Private Limited and Another v. Union of India and Others, 2016 SCC OnLine Del 4951. which is a decision interpreting the power of arrest under the Finance Act, 1994. These provisions are related to service tax. Excise duty, service tax, and other taxes are subsumed under the GST regime. Accordingly, we are in agreement with the findings recorded in this decision to the extent that the power of arrest should be used with great circumspection and not casually. Further, as in the case of service tax, the power of arrest is not to be used on mere suspicion or doubt, or for even investigation, when the conditions of sub-section (5) to Section 132 of the GST Acts are not satisfied.

61. However, relying upon the judgment in the case of Makemytrip (supra), it has been submitted on behalf of the petitioners, that the power under sub-section (5) to Section 132 cannot be exercised unless the procedure under Section 73 of the GST Act is completed and an assessment order is passed quantifying the tax evaded or erroneously

refunded or input tax credit wrongly availed. According to us, this contention should not be accepted as a general or broad proposition. We would accept that normally the assessment proceedings would quantify the amount of tax evaded, etc. and go on to show whether there is any violation in terms of clauses (a) to (d) to sub-section (1) of Section 132 of the GST Acts and that clause (i) to sub-section (1) is attracted. But there could be cases where even without a formal order of assessment, the department/Revenue is certain that it is a case of offence under clauses (a) to (d) to sub-section (1) of Section 132 and the amount of tax evaded, etc. falls within clause (i) of sub-section (1) to Section 132 of the GST Acts with sufficient degree of certainty. In such cases, the Commissioner may authorise arrest when he is able to ascertain and record reasons to believe. As indicated above, the reasons to believe must be explicit and refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.

64.2. In addition, the grounds of arrest must be explained to the arrested person and noted in the arrest memo. This instruction regarding the grounds of arrest came to be amended by the Central Board of Indirect Taxes and Customs (GST- Investigation Wing) vide Instruction No. 01/2025-GST dated 13.01.2025 (GST/INV/Instructions/21-22). The circular dated 13.01.2025 now mandates that the grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. The acknowledgement of the same should be taken from the arrested person at the time of service of the arrest memo."

21. It is amply clear from the above paragraphs of the judgment of Apex Court in the case of ***Radhika Agrawal (supra)*** 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 not provided anywhere that the "reasons to believe" should be supplied to the accused. Therefore, the arguments advanced by learned Senior

Counsel for the petitioner is turned down.

23. The argument of learned Senior Counsel for the petitioner that the petitioner ought not to have been arrested since he has been implicated for committing an offence, which is punishable below 7 years appears to be correct since Apex Court in the case of ***Satendra Kumar Antil (supra)*** has not excluded the application of ratio of the judgment to the offences covered under the Special Act. Therefore we agree that the ratio of the judgment in the case of ***Satendra Kumar Antil (supra)*** will apply to this case also.

24. Learned counsel for respondent nos. 1 & 2 has pointed to the counter affidavit and has demonstrated that the arrest memo, *Jama Talasi*, grounds of arrest and intimation regarding arrest of the petitioner sent to his wife were handed over to the petitioner and his wife and their signatures were taken on 16.1.2026 itself when the remand order was passed on 17.1.2026. Therefore, it is clear that the service of grounds of arrest and other documents were made on the petitioner before producing him before Remand Magistrate on 17.1.2026. Therefore, there is full compliance of the mandate of law regarding providing of the "memo of arrest" and "grounds of arrest" to the petitioner and also providing the copy of intimation to his wife about his arrest.

25. Learned Senior Counsel for the petitioner submits that the argument of counsel for respondent nos.1&2 is absolutely incorrect. He has submitted that the signatures of the petitioner were taken on all the documents while in custody and the copy of the same was never supplied to the petitioner or his wife. He has submitted that before the Remand Magistrate it was specifically argued on behalf of the petitioner that the "grounds of arrest" of petitioner was never provided to him in violation of the judgment of Apex Court in the case of ***Radhika Agrawal (supra), Rihan Kumar, etc.*** and the mandate of Apex Court has been violated. There is also no document evidencing that "reasons to believe" were present on the record and hence remand application of the prosecution should have been rejected. He has pointed out further that the Remand Magistrate has not recorded any finding that the "grounds of arrest" has been supplied to the petitioner. The findings recorded by the Remand

Magistrate only is that on 16.1.2026 the accused was arrested and the"grounds of arrest"were communicated to him in Hindi and English, orally and his signatures were taken thereon 16.1.2026 and after his arrest, memo of "grounds of arrest" was provided to him which has been brought on record. The copy of "reasons to believe" has been provided to the Court in sealed cover by the prosecution, which has been perused by the Court.

26. We find from paragraph No. 64.2 of the judgment of Apex Court in the case of ***Rakhika Agrawal (Supra)*** that as per the circular dated 13.1.2025, grounds of arrest must be explained to the arrested person and also be furnished to him in writing as an Annexure to the arrest memo. In this case we find that in the arrest memo, there is no mention of any annexure. Therefore it appears that opposite party nos. 1 & 2 have not been complied their own circular dated 13.1.2025 by furnishing to the petitioner the "grounds of arrest" alongwith the arrest memo as its annexure. On this account also we find that the remand order of petitioner is illegal.

27. Learned Senior Counsel for the petitioner has pointed out that the copy of medical report and grounds of arrest were received by learned counsel for the petitioner in Court at 5:00 p.m. on 17.1.2026 as per the endorsement made in the remand order dated 17.1.2026. Therefore he contends that after the remand order was passed, the medical report and grounds of arrest were provided to the counsel for the petitioner. Earlier his signatures were taken only on grounds of arrest. Further the court did the "reasons to believe" recorded by Commissioner by opening the sealed cover, wherein it was produced before the court. As per the paragraph of the judgement of Apex Court in the case of ***Radhika Agrawal (Supra)*** the court was required to ascertain whether the "reasons to believe" show that the arrest of petitioner has been made relying upon any credible evidence or it has been made only to investigate the suspicion against petitioner. Whether the power of arrest was used with circumspection and case was required to be ascertained by court before allowing remand application of respondents, which is not apparent from the remand order.

28. After the considering the fact that there is serious factual dispute

about actual service of "grounds of arrest" on the petitioner before affecting his arrest since in the remand order, there is no recital that the copy of "grounds of arrest" was provided to the petitioner at the time of his arrest and before producing him before the Remand Magistrate and finding of the remand order to be not in accordance with law and also keeping in view of the judgement of Apex Court in the case of ***Satendra Kumar Antil (supra),*** we hold that the remand order suffers from legal infirmity and cannot be sustained. It is hereby set aside.

29. This writ petition is **allowed.**

30. The petitioner shall be released from custody on production of copy of this order before the court/authority concerned duly downloaded in official website of this Court without waiting for production of certified copy of this order, which shall be filed after the court reopens after weekly holidays.

31. It shall be open for the respondent to proceed afresh against the petitioner in accordance with law, if so warranted.

(Jai Krishna Upadhyay,J.) (Siddharth,J.)

February 13, 2026
Ruchi Agrahari