HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 19738 OF 2026 (T-RES)

BETWEEN:

1. MR. CHAND PASHA,
S/O MR. ABDUL RAHIM,
AGED ABOUT 69 YEARS,

2. MR. MOHIN PASHA,
S/O MR. CHAND PASHA,
AGED ABOUT 29 YEARS,

BOTH R/O NO. 87,
SUNDAR RAM SHETTY NAGAR,
BG ROAD, BTM 4TH STAGE,
NEW IIMB, BENGALURU-560076.

...PETITIONERS

(BY SRI. BHARATH KUMAR V., ADVOCATE)

AND:

1. UNION OF INDIA
REPRESENTED THROUGH
PRL. CHIEF COMMISSIONER
OF CENTRAL TAX, BANGALORE
CENTRAL TAX ZONE, HAVING
OFFICE AT NO. 1, QUEENS ROAD,
VASANTH NAGAR, BENGALURU-560001

2. STATE OF KARNATAKA,
THROUGH, COMMISSIONER OF
COMMERCIAL TAXES, VANIJYA
THERIGE KARYALAYA,
KALIDASA ROAD,
GANDHINAGAR,

BENGALURU - 560 009

3. COMMERCIAL TAX OFFICER,
(ENFORCEMENT)-59,
SOUTH ZONE, C/O ADDL.
COMMISSIONER OF COMMERCIAL
TAXES (ENFORCEMENT), SOUTH ZONE,
HAVING OFFICE AT ROOM NO. 205,
2ND FLOOR, VTK-2 BUILDING,
RAJENDRA NAGAR, KORAMANGALA,
BENGALURU - 560 047

...RESPONDENTS

(BY SRI. ARAVIND V CHAVAN, ADVOCATE FOR R1
SRI. ADITYA VIKRAM BHAT, AGA FOR R2 AND R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. ISSUE A WRIT, ORDER OR DIRECTION IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT DIRECTING THE RESPONDENTS OR ANY OF ITS OFFICERS SUBORDINATE TO THE RESPONDENTS HEREIN TO ISSUE A PRIOR NOTICE, INTIMATING THEIR INTENT, TO ARREST THE PRESENT PETITIONERS HEREIN IN RESPECT OF SECTION 132 OF THE CENTRAL GOODS AND SERVICE TAX ACT / KARNATAKA GOODS AND SERVICE TAX ACT, 2017.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING - B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE B M SHYAM PRASAD

ORAL ORDER

The petitioners are Registered Taxable Persons, and they have been served with the Show Cause Notices both under Sections 73 and 74A[8] of the Central Goods and Services Tax Act/Karnataka Goods and Services Tax Act, 2017 [for short, *the CGST/ KGST Act'*]. The petitioners have filed this petition for a direction to the respondents, which can be stated as under:

> *A direction to the respondents to issue a prior notice of their intent to arrest under Section 132 of the Central Goods and Service Tax Act / Karnataka Goods and Service Tax Act, 2017.*

This Court, on 01.07.2026, has called upon the learned Additional Government Advocate to secure instructions for the disposal of the petition with Sri Bharath Kumar V, the learned counsel for the petitioners, canvassing that there must be a direction to the respondents to issue a seven-days prior notice of arrest relying upon the orders of the High Court of

Delhi in Criminal Miscellaneous Case No. 2300/2021 and other connected matters.

2. Sri Aditya Vikram Bhat, a learned Additional Government Advocate for the second and third respondents who is supported by Sri Aravind V Chavan, a learned standing counsel for the first respondent, submits that the petitioners' cause for seeking the direction as above is the asserted apprehension of an arrest and the alleged lack of a remedy to protect themselves against such arrest but this cause must be considered in light of the decision of the Apex Court in '***Radhika Agarwal v. Union of India and Others'***[1]. Sri Aditya Vikram Bhat argues that the Apex Court, in the aforesaid decision, has held that registration of an FIR would not be necessary to sustain an application for anticipatory bail so long as the facts are clear and there is a reasonable apprehension or a reasonable basis for

[1] *[2025] 6 SCC 545*

apprehending arrest. The learned Additional Government Advocate argues that the Apex Court has clarified that this ratio would apply even when there are proceedings under CGST/KGST Act and the decisions to the contrary cannot be treated as binding precedents.

3. Sri Bharath Kumar V relies upon the following circumstances to assert why there must be a direction to the respondents to issue a prior notice emphasizing these as the peculiarities.

[A] The petitioners have been issued with seven Show Cause Notices either under Section 73 or 74A[8] of the Act followed by a search and summons to produce documents.

[B] The petitioners have responded to such summons and produced documents, but without an acknowledgment[2].

[C] The petitioners have been advised to reverse certain *Input Tax Credit* [ITC] claimed, and the petitioners have also *bona fide* accepted this advice.

[D] Notwithstanding these, the petitioners are once again issued with summons to produce the same set of documents as are covered under the summons dated 15.11.2025, and the petitioners have furnished these documents yet again.

[E] Despite receiving these documents, the Officer has refused to acknowledge it constraining the petitioners to forward the documents yet again by *e-mail.*

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[2] *The learned counsel alludes to the Notice dated 15.11.2025 as per Annexure-C1*

The learned counsel submits that the petitioners' apprehension of arrest is based not only in these circumstances but also with the Officer declaring that the petitioners would be issued with similar summons and that they would also be arrested if they fail to reverse every ITC which the Officer is insisting upon.

4. This Court must observe that the petitioners' cause for directions to the respondents to issue a prior notice intimating their intent to arrest is in a set of circumstances, and the question that this Court must address is about reading into the Statute [the CGST/ KGST Act] the requirement of a prior notice as now argued for. This Court must refer to the Apex Court's exposition in the case of ***Radhika Agarwal*** **[*supra*]** as follows.

> *"72. We also wish to clarify that the power to grant anticipatory bail arises when there is apprehension of arrest. This power, vested in the courts under the Code, affirms the right to*

life and liberty under Article 21 of the Constitution to protect persons from being arrested. Thus, in Gurbaksh Singh Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565: 1980 SCC (Cri) 465] , this Court had held that when a person complains of apprehension of arrest and approaches for an order of protection, such application when based upon facts which are not vague or general allegations, should be considered by the court to evaluate the threat of apprehension and its gravity or seriousness. In appropriate cases, applications for anticipatory bail can be allowed, which may also be conditional. It is not essential that the application for anticipatory bail should be moved only after an FIR is filed, as long as facts are clear and there is a reasonable basis for apprehending arrest. This principle was confirmed recently by a Constitution Bench of five Judges of this Court in Sushila Aggarwal v. State (NCT of Delhi) [Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1: (2020) 2 SCC (Cri) 721]. Some decisions [State of Gujarat v. Choodamani Parmeshwaran Iyer, (2023) 20 SCC 315: (2023) 115 GSTR 297; Bharat Bhushan v. GST Intelligence, (2024) 129 GSTR 297: 2024 SCC OnLine SC 2586] of this Court

> *in the context of the GST Acts which are contrary to the aforesaid ratio should not be treated as binding."*

5. This exposition is categorical in removing all doubts that even when there is an apprehension of arrest under the CGST/ KGST Act, Section 482 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* [*the BNSS*] can be invoked, and any decision to the contrary would not be a binding precedent. In view of this exposition, this Court, notwithstanding the circumstances relied upon by the petitioners, is not inclined to read into the Act a requirement of a prior Notice because the petitioners' cause for apprehending arrest could be examined by the competent Court if they avail the remedy under Section 482 of the BNSS.

6. The next question is *should this Court foreclose any cause that may be available to the petitioners based on the circumstances that they rely upon, or must this Court dispose of the petition to*

ensure that the proceedings are conducted efficaciously under the CGST/ KGST Act. This Court opines that the petitioners must invoke this Court's jurisdiction with the pleadings and prayer for a complete adjudication, and that the merits of the petitioners' grievance cannot be examined in the present petition where the pleadings are restricted. The petition therefore stands disposed of with liberty to the petitioners as aforesaid. It is needless to observe that if the petitioners invoke this Court's jurisdiction once again in terms of the liberty now granted, the defenses available to the respondents will be open.

Sd/-
(B M SHYAM PRASAD)
JUDGE

AN/-