CNR No: PHHC010447842026
Case Citation: (2026) taxcode.in 1523 HC
2026:PHHC:126777



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**(276)** **Date of Decision: 08.09.2026**

**1. CRM-M-15056-2026 (O&M)**

Prayank Gupta … Petitioner

Versus

Union of India and Another … Respondents

**AND**

**2. CRM-M-17743-2026 (O&M)**

Mahesh Gupta … Petitioner

Versus

Union of India and Another … Respondents

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present:- Ms. G.K.Maan, Sr. Advocate with
Ms. Shruti , Advocate
for the petitioner in CRM-M-15056-2026.

Mr. Randeep Singh Rai, Sr. Advocate with
Mr. Amit Dhawn, Advocate and
Ms. Radhika Mehta, Advocate
for the petitioner in CRM-M-17743-2026.

Mr.Saurabh Goel, Sr. Standing Counsel, CBIC with
Ms. Geetika Sharma, Advocate
for respondent No.1-UOI.

Ms. Navreet Kaur, AAG, Punjab

**VIRINDER AGGARWAL, J. (Oral)**

1. This order shall dispose of the above-captioned two petitions as the same arise out of the same investigation and involve identical questions of law and substantially similar facts. For the sake of convenience, the facts are being taken from CRM-M-15056-2026.

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2. The present petitions have been preferred under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 438 of the Code of Criminal Procedure, 1973), seeking grant of anticipatory bail to the petitioners in connection with the proceedings initiated by the respondent-Department under the Central Goods and Services Tax Act, 2017.

3. The petitions arise in the context of summons dated 25.11.2025 and 27.11.2025 issued under Section 70 of the Central Goods and Services Tax Act, 2017, requiring the petitioners to appear before the investigating authority in connection with the inquiry concerning M/s KK Alloys Unit-I and Unit-II. The petitioners apprehend that their appearance pursuant to the aforesaid summons may culminate in their arrest in exercise of powers under Section 69 of the CGST Act.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have been unnecessarily subjected to repeated summons and search proceedings. It is contended that the dispute essentially relates to availment of Input Tax Credit and that there is no order under Section 69 of the CGST Act authorising their arrest. Learned counsel submits that the petitioners have a bona fide apprehension of arrest and, therefore, seek protection of their personal liberty.

5. Learned counsel appearing for the respondent-Department opposes the prayer and submits that the investigation concerns large-scale and organised availment of ineligible Input Tax Credit. It is further submitted that searches were conducted under Section 67 of the CGST Act and that the petitioners have failed to cooperate with the investigation and have not appeared pursuant to the summons issued under Section 70 of the Act. It is further submitted that the

investigation is still in progress and involves examination of supplier networks, banking transactions, digital evidence and movement of goods.

6. Having considered the rival submissions and the material placed on record, this Court finds that the prayer for anticipatory bail is premature. The Hon'ble Supreme Court in ***Union of India Vs. Sunil Biyani, 2026 INSC 849***, has now authoritatively settled the legal position with regard to an application for anticipatory bail founded upon summons issued under Section 70 of the CGST Act. In ***Sunil Biyani (supra)***, the Hon'ble Supreme Court, after considering its earlier judgment in ***Radhika Agarwal Vs. Union of India, 2025 (6) SCC 545***, has held that mere issuance of summons under Section 70 of the CGST Act does not make the person summoned an accused.

7. More importantly, the Hon'ble Supreme Court has held that an order under Section 69 of the CGST Act constitutes the **sine qua non** for maintaining an application seeking anticipatory bail. The said order is also required to be communicated to the person sought to be arrested so as to enable him to avail the remedy of anticipatory bail. The Hon'ble Supreme Court has further held that where no order under Section 69 of the CGST Act has been passed, there can be no legally sustainable apprehension of arrest on the basis merely of summons issued under Section 70 of the Act. The requirement of an existing order under Section 69 is thus the foundational jurisdictional premise for seeking pre-arrest protection. The relevant observations made by the Hon'ble Supreme Court in ***Sunil Biyani (supra)*** are reproduced hereinbelow for ready reference:

> *"11. Thus, it is a settled position of law that even in cases where a petition seeking quashing of FIR or charge-sheet is dismissed, no interim relief can be granted by the high courts.* ***In a similar vein, we***

***have no hesitation to supplant the principle in cases of application seeking pre-arrest bail. We hold that while dismissing a petition seeking pre-arrest bail on the ground that the same is not maintainable - whatever be the ground therefor - the high court or the sessions court, as the case may be, cannot extend or grant protection which is in the nature of interim relief that could be granted during the pendency of the application.***

*12. For the forgoing reason, we set aside the protection granted to the respondent vide paragraph 6 of the impugned order.*

*13.****
*14.****

*15. Sub-section (1) of Section 69 grants the Commissioner the power to authorise any officer to arrest a person. Such order must, as prescribed, be preceded by "reasons to believe". Such reasons in turn, must refer to the material and evidence underlying such opinion and evince application of mind. These are, among others, the stipulations laid down in* ***Radhika Aggarwal (supra)****.*

*16. According to Mr. Agarwal, learned senior counsel for the respondent, what necessarily follows is that until and unless an order under Section 69 of the CGST Act is passed by the Commissioner recording the "reasons to believe" that an offence under Section 132 of the CGST Act has been committed, no alarm is activated and there cannot be any apprehension of arrest by the person summoned. In other words, once the Commissioner concludes that there are "reasons to believe" that any offence of the nature stated in Section 69 has been committed warranting an arrest and an order to that effect is passed, the alarm is activated and the person (alleged to be the offender, whose arrest is authorised) becomes an accused who is open to be arrested*

*and, thus, acquiring the right to seek pre-arrest bail. Consequently, an order under Section 69 of the CGST Act would be a sine qua non to maintain an application seeking such bail.*

*17.* ***In such circumstances, the contention of Mr. Agarwal has been that unless the order passed under Section 69 is communicated to the accused, in this case the respondent, he cannot apply for an anticipatory bail.*** *It has further been contended that though not mandated by the statute, by extension of the principles of natural justice and fairness in administrative action, the requirement of communication of the order passed under Section 69 of the CGST Act to the accused before he is arrested, has to be read into the statute and communication of such an order to the person sought to be arrested must be held to be mandatory. If not, it would lead to a catch-22 situation where the accused can neither apply for anticipatory bail till the order under Section 69 is passed nor does he become aware of the order to subject the same to a challenge on available grounds before an appropriate forum.*

*18.* ***We are inclined to accept the contention of Mr. Agarwal. The order under Section 69 of the CGST Act, as held, being a sine qua non to seek anticipatory bail, it would be an anomaly to hold that the order need not be communicated at all, much less, be communicated after the arrest of such person.*** *In any case, communication of the order would not, in any manner, obstruct the investigation ensued by the department. On the contrary, it reinforces the right of the accused to seek anticipatory bail as stipulated in Shushila Aggarwal v, State(NCT of Delhi) (2020) 5 SCC 1.*

*19.****
*20.****
*21.****

> *22.* ***In view of the aforsaid, we require the Commissioner to communicate the order under Section 69 of the GST Act to the respondent in the manner indicated in the preceding paragraph, whereafter he may pursue such remedy as he may be advised. We reiterate, without such communication, question of arrest would not arise."***
>
> *....(emphasis applied)*

8. The said principle has recently been applied by this Court in ***CRM-M-45412-2016, Avneet Sharma Vs. Union of India and another***, decided on 18.08.2026. In that case also, the petitioner had approached this Court on the basis of summons issued under Section 70 of the CGST Act and apprehension of arrest under Section 69. Since admittedly no order under Section 69 had been passed, the petition was held to be premature and was dismissed without examining the merits of the departmental proceedings.

9. Coming to the present cases, despite the serious allegations noticed in the replies filed by the Department, the material placed on record does not disclose that any order under Section 69 of the CGST Act authorising arrest of either of the petitioners has, till date, been passed and communicated to them. The existence of an investigation, issuance of summons under Section 70, conduct of search proceedings under Section 67, or the apprehension that the investigation may ultimately result in arrest, by itself, cannot substitute the statutory requirement of an order under Section 69 of the CGST Act. This Court is, therefore, of the considered view that at the present stage the petitioners' apprehension of arrest rests upon a contingency which may or may not arise. The foundational order contemplated under Section 69 of the CGST Act is presently absent. Consequently, the prayer for anticipatory bail is premature.

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10. It is clarified that this Court has not expressed any opinion on the merits of the allegations levelled against the petitioners, the nature of the alleged availment of Input Tax Credit, the alleged non-cooperation of the petitioners, or the necessity or otherwise of custodial interrogation. All such questions are left open to be considered at the appropriate stage, if occasion so arises. It is further clarified that in the event an order under Section 69 of the CGST Act is subsequently passed and communicated to either of the petitioners, it shall be open to the concerned petitioner to avail such remedy as may be available to him in accordance with law.

11. Accordingly, both the petitions are **dismissed as premature**, without expressing any opinion on the merits of the allegations or the pending investigation.

12. All pending miscellaneous application(s), if any, shall stand disposed of accordingly.

13. A photocopy of this order be placed on the file of the connected case.

**(VIRINDER AGGARWAL)**
**JUDGE**

**08.09.2026**
***S. Pathania***

*Whether speaking/reasoned* *Yes/No*
*Whether Reportable* *Yes/No*

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