IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR ANTICIPATORY BAIL) NO. 22343 of 2025

With

R/CRIMINAL MISC.APPLICATION NO. 25275 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER

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Approved for Reporting	Yes	No
	✔	

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MAHENDRAKUMAR AMRUTLAL SHAH

Versus

STATE OF GUJARAT & ANR.

==========

Appearance:

MR. J.S. UNWALLA SR. ADVOCATE WITH MR. SIDDHARTH R. KHESKANI WITH MR SUMIT B SIKARWAR(5991) WITH ADIT PANCHOLI WITH FARSHEED KAVINA WITH YUKTA SUMARA WITH JAY SUMARA WITH ADITI BHARDWAJ for the Applicant(s) No. 1

MR. NIRAK SHARMA, APP(6157) for the Respondent(s) No. 2

MR UTKARSH R SHARMA LEARNED SENIOR STANDING COUNSEL for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 01/10/2026

JUDGMENT

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1. Since the issues involved, the facts and the submissions canvassed by the Ld. Advocates for the respective parties are common, both the Applications were heard together with the consent of the Ld. advocates and are being decided by this common judgment. The Hon'ble Apex Court, by its Order dated 14.08.2026, has directed this Court to make an endeavour to dispose of the matters expeditiously and within four weeks from the date of receipt of copy of that Order. As reported, the Registry received the copy on 29.08.2026.

2. By way of these Applications under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**"), the Applicants seek anticipatory bail in the event of their arrest in connection with the FIR bearing No. DRI/AZU/GI-02/ENQ-28/2025 registered with the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit.

BRIEF FACTUAL MATRIX

3. Before dealing with the submissions of the Ld. advocates for both sides and the legal position under Section 35(3) of the BNSS, it would be appropriate to first refer to the facts of the case in brief. The case of the prosecution is as follows.

3.1. On specific intelligence that a huge quantity of smuggled gold bars and jewellery was concealed at Flat No. 104, Avishkar Apartments, Mahalakshmi Society, Paldi, Ahmedabad, a team of officers of the DRI, Ahmedabad and the ATS, Gujarat searched the premises on 17.03.2025 and 18.03.2025 under search authorisation dated 17.03.2025 bearing CBIC DIN 202503DDZ100001631CE. The search proceedings were recorded in a panchnama drawn on both the dates.

3.2. During the search, 882 gold bars, gold jewellery, two watch belts, ten watches, one mobile phone and Indian currency were recovered. The seized

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articles were valued at Rs.109,33,83,948/-. Flat No. 104 of Avishkar Apartments had been taken on rent by Applicant Meghkumar Mahendrakumar Shah about four to five months before the search and seizure.

3.3. During the investigation, certain material came on record which required the presence of the Applicants. Hence, Summons under Section 108 of the Customs Act, 1962 were issued to Applicant Mahendrakumar Amrutlal Shah on 20.03.2024, 24.03.2025, 27.03.2025, 02.04.2025 and 11.04.2025, and to Applicant Meghkumar Mahendrakumar Shah on 18.03.2025, 19.03.2025, 20.03.2025, 24.03.2025 and 02.04.2025, calling upon them to remain present on the dates mentioned therein.

3.4. The summonses were served on both the Applicants by email and also physically at their declared address. Neither of them appeared, nor did they produce the documents called for.

3.5. As the Applicants continued to remain absent, the DRI filed complaints against them under Sections 208 and 210 of the BNSS before the Ld. ACJM, Ahmedabad. The complaint against Applicant Mahendrakumar Amrutlal Shah was registered as Criminal Case No. 64827 of 2025 and the complaint against Applicant Meghkumar Mahendrakumar Shah was registered as Criminal Case No. 64852 of 2025.

3.6. According to the prosecution, from the day after the search of 17.03.2025 and 18.03.2025, both the Applicants absconded and left India for Dubai through Nepal. As both the Applicants were absconding, Look Out Circulars were also issued against them.

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3.7. Thereafter, pursuant to the interim order of the Apex Court granting protection, the Applicants appeared before the respondent and gave their statements.

3.8. Rule has already been issued by the Coordinate Bench of this Court vide order dated 04.12.2025 in Criminal Misc. Application No. 25275 of 2025. In Criminal Misc. Application No. 22343 of 2025, Rule returnable forthwith. Ld. APP Mr. Raval and Ld. Senior Standing Counsel Mr. Utkarsh Sharma waive service of notice of Rule on behalf of the respective respondents.

3.9. It is required to be noted that earlier, the Coordinate Bench of this Court heard the matters on the question of applicability of Section 35(3) of the BNSS and, by order dated 14.05.2026, held that Section 35(3) is not mandatory and that, considering the conduct of both the Applicants, the Investigating Authority had rightly declined to issue notice to them under Section 35(3). That order was challenged before the Hon'ble Apex Court in Special Leave Petition (Crl.) No. 11024 of 2026, wherein, by interim order dated 22.05.2026, the Hon'ble Apex Court protected the Applicants from arrest subject to their cooperating with the investigation.

3.10. The Special Leave Petition was finally disposed of on 14.08.2026 with a direction to this Court to decide these applications within four weeks from the date of receipt of a copy of the order. All the issues were kept open, including the one decided by Coordinate Bench in the order dated 14.05.2026, and the interim protection granted on 22.05.2026 was continued.

3.11. This is the broad context in which the present Application has come up for hearing before this Court.

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SUBMISSIONS OF THE APPLICANT

Section 35(3) of BNSS ACT, 2023

4. Mr. Jal Unwalla, Ld. Senior Advocate appearing for the Applicant has raised the following contentions for the consideration of this Court:

4.1. Main thrust of the argument of Ld. Senior Advocate Mr. Unwalla is that no notice under Section 35(3) of the BNSS has been issued, though the offence alleged under Section 135 of the Customs Act, 1962 is punishable with imprisonment for a term which may extend to seven years and with fine. It is contended that unless a notice under Section 35(3) of the BNSS is issued, the Applicant cannot be arrested.

4.2. Ld. Senior Advocate Mr. Unwalla has relied upon ***Arnesh Kumar v. State of Bihar and Another***, (2014) 8 SCC 273, and submitted that where the arrest of a person is not required under Section 41(1) of the Code of Criminal Procedure, 1973 (which corresponds to Section 35(1) of the BNSS), the Police Officer **has to** issue a notice directing the accused to appear before him at a specified place and time. If the accused complies with the notice, he is not to be arrested unless, for reasons to be recorded, the police officer is of the opinion that his arrest is necessary.

4.3. He submitted that the directions issued in ***Arnesh Kumar*** **(supra)** are not confined to cases under Section 498A of the IPC or Section 4 of the Dowry Prohibition Act, and apply to all cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, with or without fine.

4.4. According to him, offence under Section 135 of the Customs Act, 1962 is punishable with imprisonment for a term which may extend to seven years and

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with fine, and hence notice under Section 35(3) of the BNSS was necessary. It is submitted that the summons under Section 108 of the Customs Act served on the Applicant is only for attendance to give evidence and to produce documents. The respondent cannot, by merely issuing summons under Section 108, dispense with the mandatory requirement of notice under Section 35(3) of the BNSS.

4.5. Ld. Senior Advocate has also relied upon ***Satender Kumar Antil v. Central Bureau of Investigation and Others***, **2026 INSC 115** wherein the question was whether notice under Section 35(3) of the BNSS must be issued in all cases involving an offence punishable with imprisonment up to seven years. It is submitted that the Apex Court has held that, for such offences, notice under Section 35(3) is the rule as a matter of course, and arrest under Section 35(6) read with Section 35(1)(b) of the BNSS is the exception. As the offence in the present case is punishable with imprisonment up to seven years, it is submitted that notice under Section 35(3) was mandatory.

4.6. Further, it was argued that Section 104 of the Customs Act cannot override Section 35(3) of the BNSS. Section 104(3) of the Customs Act provides that an officer of customs who arrests any person under Section 104(1) shall have the same powers and be subject to the same provisions as an officer in charge of a police station under the Code of Criminal Procedure, 1898. It is urged that, since the customs officer exercises the powers of an officer in charge of a police station while releasing such person on bail, his action must also meet the requirements of Section 35 of the BNSS.

4.7. It is further submitted that, in view of Section 5 of the BNSS and in the absence of any specific provision to the contrary in the Customs Act, there is no bar to the applicability of the BNSS. Reliance for this proposition is placed on ***Parvinder Singh v. Directorate of Enforcement***, 2026 SCC OnLine SC 903.

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4.8. Ld. Senior Advocate has also relied upon the decision of the Gauhati High Court in ***Mukesh Agarwal v. Union of India***, wherein summons had been issued under Section 70 of the CGST Act, 2017, which is *pari materia* with Section 108 of the Customs Act. It was held there that, though summons had been issued under Section 70, no separate notice under Section 35(3) had been issued, and as this was in clear breach of the guidelines laid down in ***Arnesh Kumar (supra)***, the petitioner was entitled to be released on bail on that count alone.

4.9. Reliance is next placed on the decision reported in the case of ***Viral Narendra Goasalia Vs. Senior Intelligence Officer, Directorate General of Goods and Services Tax Intelligence, Bengaluru 2025 SCC OnLine Kar 20***, wherein the petitioner had challenged his arrest on the ground that the statutory requirement of notice under Section 35(3) of the BNSS was not complied with. It was argued there that Section 69(1) of the CGST Act, which empowers the Commissioner to order the arrest of a person, does not contain the safeguards under Sections 41 and 41A of the CrPC. Further, Section 70(1) of the CGST Act (*pari materia* with Section 108 of the Customs Act) takes care of that situation. The Court, however, held that summons under Section 70 of the CGST Act cannot be equated with a notice of appearance under Section 35(3) of the BNSS.

4.10. Ld. Senior Advocate has further relied upon ***Vishesh Jain v. Directorate of Revenue Intelligence***, 2021 SCC OnLine Del 2533, wherein anticipatory bail was granted having regard to the petitioner's willingness to join the investigation. It is submitted that in the present case, the Applicant has already cooperated with the investigation.

4.11. Reliance is also placed on ***Rajulapati Ankababu v. State of Andhra Pradesh***, 2017 Supreme (AP) 442, wherein it was held that unless a special Act contains a specific provision excluding Section 41A of the CrPC, that provision

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continues to apply to special enactments in matters of investigation, inquiry and trial.

4.12. Ld. Senior Advocate has drawn the attention of this Court to ***Radhika Agarwal v. Union of India***, (2025) 6 SCC 545, and submitted that the threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code. Section 41 permits the police to arrest a person without warrant where a reasonable complaint has been made, credible information has been received or a reasonable suspicion exists. Whereas Section 104(1) permits a customs officer to arrest a person only if he has "*reason to believe*" that the person has committed an offence. A person has reason to believe a thing if he has *sufficient cause* to believe that thing, but not otherwise. This standard, it is submitted, is higher than mere suspicion.

4.13. Relying on the above decisions, Ld. Senior Advocate submitted that notice under Section 35(3) is required to be issued wherever the offence is punishable with imprisonment up to seven years, and since no such notice was issued in the present case, the Applicant is entitled to anticipatory bail on that ground alone.

Re: Merits of the present Application

4.14. On merits, the Ld. Senior Advocate submitted that the Applicants are in India, have cooperated with the investigation and have appeared before the Investigating Officer in response to the summons under Section 108 of the Customs Act. On 16.08.2026, the Applicant himself wrote to the Respondent asking whether any further cooperation or information was required, but no reply has been received till date.

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4.15. It is further submitted that the Applicants have filed a Quashing Petition, in which Coordinate Bench of this Court has issued notice and directed the Investigating Officer to place on record the investigation report along with the records of the file bearing No. DRI/AZU/GI-02/ENQ-28/2025 registered with the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit under the Customs Act, 1962, arising out of the search and seizure of 17/18.03.2025. It is submitted that no such report has been placed on record till date, as is evident from the order dated 17.09.2026 passed in Criminal Misc. Application (for Quashing and Setting Aside FIR/Order) No. 23683 of 2025.

4.16. The show cause notice issued by the Respondent has also been challenged by the Applicant in Special Civil Application No. 5801 of 2026, wherein the Division Bench, by order dated 23.04.2026, directed the respondent not to proceed with the disposal of the gold bars in any manner during the pendency of the Petition and not to pass any final order without the permission of the Court.

4.17. It is also submitted that the gold bars and the other articles have already been confiscated by the Respondent. Out of the 882 gold bars recovered, 522 are of international make, manufactured by foreign refiners in the following quantities: 189 bars by Argor-Heraeus, 119 bars by Valcambi, 101 bars by MMTC-PAMP, 57 bars by SAM, 43 bars by UBS, 10 bars by Rand Refinery and 3 bars by The Perth Mint. The Applicant has fully cooperated with the investigation and has furnished all details about these gold bars, and it is not alleged that the identification marks on the bars are tampered with or are false or fabricated.

4.18. Lastly, it is submitted that though the Applicant has continuously cooperated with the investigation, the respondent has not been able to show why

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custodial interrogation of the Applicant is necessary in the present case and though it has been argued that the applicants be granted bail.

SUBMISSIONS OF THE PROSECUTION ON SECTION 35(3) OF BNSS ACT, 2023

5. Ld. Advocate for the respondent has mainly submitted as follows.

5.1. It was submitted that on the basis of the Complaint and the information received, a reasonable suspicion exists that the Applicant has committed a cognizable offence, and there is reason to believe that basis that he has committed the offence. His arrest is necessary for proper investigation, to prevent him from committing any further offence, and to prevent him from causing the evidence to disappear or tampering with it. As the Applicants absconded to Dubai through Nepal and did not comply with the summons issued under Section 108 of the Customs Act, the requirements of Section 35(1)(b)(ii)(a), (b) and (c) of the BNSS stand satisfied, and there was no need to issue notice under Section 35(3). Having failed to comply with the summons under Section 108, the Applicants cannot now contend that notice under Section 35(3) had to be issued, as it is the respondent's case that the requirements of Section 35(1)(b)(ii)(a), (b) and (c) of the BNSS are satisfied.

5.2. It is further submitted that, in view of Section 104(1) of the Customs Act, the requirement of Section 35 of the BNSS does not arise, and where the requirements of Section 35(1) are satisfied, there is no question of invoking Section 35(3). The Applicant chose not to cooperate with the investigation at the relevant time, which is clear from the fact that he did not appear even after summons under Section 108 were issued. Therefore, he cannot now come forward and say that notice under Section 35(3) ought to have been issued before his arrest.

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5.3. It is submitted that there was no requirement to issue notice when the Applicant had failed to cooperate, appear or produce documents in response to the summons under Section 108, and the Investigating Officer intended to arrest him. As the present case falls squarely within Section 35(1) of the BNSS, the question of notice under Section 35(3) does not arise.

5.4. It is also submitted that the Customs Act contains a separate provision, namely Section 104, which lays down the procedure for arrest. Even in ***Radhika Agarwal v. Union of India***, (2025) 6 SCC 545, the Apex Court did not lay down any requirement of prior notice to an accused before arrest. The contention of the Applicant that notice under Section 35(3) was mandatory is contrary to law, since the requirement of Section 35(1)(b)(i) of the BNSS along with one of the conditions in Section 35(1)(b)(ii) exists in the present case. It is further submitted that even in ***Satender Kumar Antil v. Central Bureau of Investigation and Others***, it has been held that Section 35(3) is not mandatory.

5.5. It is submitted that on the facts of the present case, the conditions under Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS are fulfilled and no notice was required. The respondent has also served summons under Section 108 of the Customs Act, which is a special Act and contains no provision for prior notice. Hence, the question of issuing notice under Section 35 of the BNSS does not arise.

5.6. It is submitted that the Directorate of Revenue Intelligence seeks arrest only where the circumstances so warrant, and in the present case there was sufficient material on record giving reasons to believe that the Applicant had committed the offence. Therefore, the respondent was not bound to issue notice under Section 35(3) of the BNSS to the Applicant. It is further submitted that, as the requirements of Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS were

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fulfilled, the respondent was empowered to arrest the Applicant without prior notice under Section 35(3).

5.7. Ld. Advocate for the respondent has sought to distinguish ***Vishesh Jain v. Directorate of Revenue Intelligence*** (supra), relied upon by the Applicant, on the ground that the petitioner in that case had already joined the investigation. It is also submitted that under Section 104(1) of the Customs Act, 1962, an officer of customs empowered by a general or special order of the Principal Commissioner or Commissioner of Customs may arrest a person if he has reason to believe that such person has committed an offence punishable under Section 135 of Customs Act.

5.8. It is further submitted that Section 104(4) of the Customs Act applies notwithstanding anything contained in the Code of Criminal Procedure, 1973, and would prevail over anything to the contrary therein. The Customs Act being a Special Act, Section 35(3) of the BNSS will not apply to the facts of the present case. The Respondent had reason to believe that the Applicant committed the offence, and since the case falls within Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS, there was no question of issuing notice under Section 35(3). It is also submitted that, as the Applicant absconded, did not cooperate with the investigation and withheld material details even during interrogation, his custodial arrest is necessary and no discretionary relief ought to be granted to him.

SUBMISSIONS OF THE PROSECUTION ON MERITS OF THE BAIL APPLICATION.

6. On behalf of the State, the Ld. Special APP has submitted as follows:

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6.1. The foreign origin gold, gold jewellery and high end watches are "smuggled goods" as defined in Section 2(39) and "prohibited goods" as defined in Section 2(33) of the Customs Act, 1962. The offence committed by the Applicant is cognizable and non bailable under Section 104 and punishable under Section 135 of the Customs Act.

6.2. It was further argued that non-cooperation of Meghkumar Shah, son of Applicant Mahendrakumar Shah, is evident from the fact that he and his father have been absconding to Dubai through Nepal since the day of the search on 17.03.2025 and 18.03.2025. Summons were also served on his email addresses, through which he was corresponding with the department from Dubai. Both Meghkumar Mahendrakumar Shah (son) and Mahendrakumar Amrutlal Shah (father) were summoned to produce legitimate purchase or import documents for the seized goods, but earlier neither of them produced a single document, which shows the organised nature of the smuggling syndicate and their non-cooperation in the inquiry. The seized goods, valued at Rs.109,33,83,948/-, consisting of foreign origin gold bars, gold jewellery, high end watches, watch belts, a mobile phone and cash, were not supported by any legitimate document when the Coordinate Bench passed the order dated 14.05.2026.

6.3. It is submitted that in the present case the burden of proof has not been discharged. The goods are deemed to be smuggled and prohibited under Sections 2(39) and 2(33) of the Customs Act, 1962 and are liable to confiscation under Section 111 of the Act. The acts of omission and commission of Meghkumar Mahendrakumar Shah, namely hiding the goods in residential premises taken on rent by him for four to five months without any valid rent agreement, carrying out financial transactions linked to the syndicate, withholding information and fleeing to Dubai by flight from Nepal, may render him liable to penalty under Section

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112 and prosecution under Section 135 of the Customs Act. The offence falls under Section 135(1)(b), is punishable under Section 135(1)(i)(A) and (B), and is cognizable and non bailable under Sections 104(4)(b) and 104(6)(a) and (c).

6.4. As regards the contention of the Applicant that there is no material to show that he has any history of smuggling and that, in the absence of such material, the case rests on presumptions, it is submitted that the recovery of a huge quantity of gold, gold jewellery and watches during the search on 17.03.2025 and 18.03.2025, concealed in premises taken on rent only four to five months earlier, and the fact that the Applicant fled the country to evade investigation, are sufficient and cogent grounds for custodial interrogation of the Applicants. The case does not rest merely on presumption. Even if it were a case of so-called presumption, there is no explanation as to why the Applicant did not join the investigation for such a long time.

6.5. It is further submitted that the object of the ongoing investigation is to ascertain the true and complete sequence of events which led to the accumulation and possession of a substantial quantity of foreign origin gold bars, high value luxury watches and other goods recovered from the premises linked to the Applicant and his family members. The investigation is being carried out strictly as per law, and all steps taken so far are in conformity with the provisions of the Customs Act, 1962 and the procedure established by law, following due process.

6.6. It is submitted that the present petitions are nothing but an attempt to obstruct the ongoing investigation. The conduct of the Applicants shows an effort to divert the attention of the investigating agency and to shield the Applicant and his family from scrutiny in view of their non-cooperation. It also suggests that the Applicants want to gain time so that the material evidence can be destroyed, which would affect the investigation.

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6.7. It is submitted that even after the Applicant came to give his statement, he disclosed facts selectively and concealed material particulars, which shows that the present petition is an abuse of the process of this Court. Having failed to make a full and frank disclosure, the petitioners are not entitled to any equitable or discretionary relief, and the petition deserves to be dismissed *in limine* with exemplary costs on this ground alone. The contention of the Applicants that the entire seizure would ultimately be subjected to tax after adjudication is misconceived. Gold is a restricted item, and in the absence of the required legal documents, it is liable to confiscation and is not subject to tax as claimed by the Applicant. Possession of or a claim over foreign origin goods is by itself a sufficient reason to interrogate the Applicant under the Customs Act, 1962. The Applicant avoided interrogation by fleeing to Dubai and did not produce any document until the Apex Court granted interim protection. In view of the above, the Applicant is not entitled to the benefit of anticipatory bail.

6.8. Ld. advocate for the respondent further submitted that the Applicant was absconding, did not cooperate with the investigation and fled to Dubai through Nepal, and the investigation has also revealed that he destroyed evidence. Considering such conduct, he is not entitled to any relief, much less discretionary relief under Section 482 of the BNSS.

REJOINDER BY THE APPLICANT

7. In rejoinder, Ld. Senior Advocate Mr. Unwalla submitted that the respondent has not given any justification for custodial interrogation of the Applicant. It is submitted that the Applicant has consistently cooperated with the investigation, as is clear from his letter dated 16.08.2026 asking whether the respondent required any further information or clarification. Ld. Senior Advocate also pointed out that the Apex Court, while disposing of Special Leave Petition

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(Crl.) No. 11024 of 2026, specifically observed that the petitioner had joined the investigation. Hence, the respondent cannot now contend that the Applicant is not cooperating with the investigation.

7.1. Ld. Senior Advocate further submitted that in ***Satender Kumar Antil v. Central Bureau of Investigation and Others***, it was observed that notice under Section 35(3) of the BNSS must be issued to an accused for offences punishable with imprisonment up to seven years. According to him, it cannot be left to the discretion of customs officers to arrest without issuing notice under Section 35(3). It is also submitted that the respondent cannot rely on the summons under Section 108 of the Customs Act to claim compliance, since Section 108 of the Customs Act and Section 35 of the BNSS are not *pari materia*. As no notice under Section 35(3) has been issued, the Applicant is entitled to protection and pre arrest bail ought to be granted.

REASONS AND ANALYSIS

Section 4 and 5 of BNSS

8. Before considering the issue of whether Section 35(3) of the BNSS would govern an arrest under the Customs Act, it is necessary to refer to Sections 4 and 5 of the BNSS. The question whether the provisions of the BNSS apply to an offence under a special Act, and to what extent, has to be answered with reference to these two provisions. They read as under:

> ***4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.***
>
> *(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*

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> *2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*
>
> ***5. Saving.*** *Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*

9. Sections 4 and 5 of the BNSS are practically in the same terms as Sections 4 and 5 of the Code of Criminal Procedure, 1973. Under Section 4(2), offences under laws other than the Bharatiya Nyaya Sanhita are also to be investigated, inquired into, tried and ***otherwise dealt with*** as per the BNSS. However, this is subject to any enactment which regulates the manner or place of investigating, inquiring into, trying or ***otherwise dealing with*** such offences.

10. Section 5 then saves any special or local law, any special jurisdiction or power conferred, and any special form of procedure prescribed by any other law, unless there is a specific provision to the contrary. Thus, the BNSS is the general law of criminal procedure, but where a special Act makes its own provision or confers a special power, the special provision would hold the field to that extent.

11. Hon'ble Apex Court in ***Radhika Agarwal*** (supra) held as follows:

> "**13.** *Section 4(1) stipulates that offences under the Indian Penal Code, 1860, shall be investigated, inquired into, tried, and otherwise dealt with in accordance with the Code. For offences under any other local law, Section 4(2) stipulates that they shall be investigated, inquired, tried, or otherwise dealt with in accordance with the Code, subject to any other*

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> *enactment governing the manner or place of investigation, inquiry, trying or otherwise dealing. Section 5, the savings clause, clarifies that the Code shall not affect any special or local law, or any special jurisdiction or power conferred, or any special procedure prescribed, unless there is a specific provision to the contrary.* ***Thus, the provisions of the Code would be applicable to the extent that there is no contrary provision in the special act or any special provision excluding the jurisdiction and applicability of the Code.*** *...*"

12. As regards the Customs Act, Hon'ble Apex Court in ***Radhika*** (supra) found that the Act lays down its own procedure for arrest. It was held as under:

> "**45.** *Moreover,* ***the framework of the Customs Act clearly reflects the legislative intent to establish a distinct and unique procedure for the exercise of arrest powers by a customs officer.*** *For example, Section 104(4), specifies only 4 categories of offences as cognizable, outlined under sub-sections (a) to (d). Section 104(5) clarifies that all other offences under the Customs Act are non-cognizable in nature, meaning that arrests for these offences cannot be made without a warrant. ...*"

13. However, the Hon'ble Supreme Court does not hold that Customs Act as a whole is excluded from that aspect and in fact, specifically holds some sections of the BNSS applicable to the Customs Act.

14. Therefore, the effect of Sections 4(2) and 5 of the BNSS, as laid down by the Hon'ble Apex Court, is that the provisions of the BNSS would apply to offences under the Customs Act, except to the extent the Customs Act makes its own provision. This, naturally is rooted in the maxim *generalia specialibus non derogant.*

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15. Now insofar as the power of arrest is concerned, the Customs Act makes a specific provision in Section 104. That provision lays down who may arrest, for which offences, on what satisfaction and what is to follow after the arrest. As noted above Hon'ble Apex Court terms it as a *distinct and unique procedure*, and therefore, according to this Court, it is saved by Sections 4(2) and 5 of the BNSS for the reasons elaborated hereinafter. The provisions of the BNSS relating to the rights of an arrested person and the duties of the arresting officer after the arrest would continue to apply, since they supplement Section 104 without altering it.

16. Therefore now, decks are cleared for consideration of the question as to whether Section 35(3) of the BNSS falls in the category which supplements Section 104, or would amount to adding a condition to the power of arrest under Section 104 which is absent.

Section 35 of BNSS and Section 104 of the Customs Act

17. Section 35 of the BNSS is one complete scheme. Clause (b) of sub-section (1) applies to a cognizable offence punishable with imprisonment which may be less than seven years or may extend to seven years. A bare perusal of the provision would be better for convenience:

> *"***35. When police may arrest without warrant.**
>
> (1) *Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*
>
> *(a) who commits, in the presence of a police officer, a cognizable offence; or*
>
> *(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less*

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than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary —

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and

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the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1), issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

18. Therefore, a police officer may arrest a person without warrant when a reasonable complaint has been made, credible information has been received, or a

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reasonable suspicion exists against him. However, two conditions must also be satisfied.

19. **Firstly**, the police officer must have reason to believe, on the basis of such complaint, information or suspicion, that the person has committed the offence. **Secondly**, the police officer must be satisfied that the arrest is necessary for one of the purposes mentioned in clauses (a) to (e) of Section 35(1)(b)(ii), and he must record his reasons in writing while making such arrest. Under the *proviso*, he must record reasons even for not making the arrest. Sub-section (3) then provides that where the arrest of a person "***is not required under sub-section (1)***", the police officer shall issue a notice of appearance. Sub-sections (4) to (6) lay down the consequences of that notice.

20. **Thus, the notice under Section 35(3) is not an independent requirement. It comes into play only after the police officer has examined the case under Section 35(1) and found that arrest is not required**. The notice is the other side of the decision taken under Section 35(1). This is also how the Hon'ble Apex Court has read the provision in ***Satender Kumar Antil (supra)***.

21. However, Section 104 of the Customs Act is constructed differently. The said is reproduced hereinunder:

> *"***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 [*] 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.]*
>
> *(2) Every person arrested under sub-section (1) shall, without*

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unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to —

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh [rupees; or],

(c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or

(d) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees;] shall be cognizable."

22. Therefore, the following features of Section 104 are required to be noted:

(i) The power is not given to every officer of customs. It is given only to an officer "*empowered in this behalf by general or special order*" of the Principal Commissioner of Customs or Commissioner of Customs.

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(ii) The power is not available for every offence under the Act. It is available only for offences punishable under Sections 132, 133, 135, 135A and 136.

(iii) The Section does not classify offences by the term of imprisonment. It classifies them by the nature of the goods and the amount involved: sub-sections (4) and (5) of Section 104 decide which offences are cognizable, and sub-sections (6) and (7) decide which are non-bailable.

23. The only condition stated in Section 104(1) is that the empowered officer must have reason to believe that the person has committed such an offence.

24. Hon'ble Apex Court has explained the nature of this power in ***Radhika Agarwal (supra)***. After placing Section 19(1) of the Prevention of Money Laundering Act, 2002 and Section 104(1) of the Customs Act side by side, the Hon'ble Court held as under:

> "*Secondly, the fact that Section 104(1) does not explicitly require a customs officer to have "material in their possession" does not imply that a customs officer can conclude that an offence has been committed out of thin air or mere 46 See Gurudevdatta VKSSS Maryadit v. State of Maharashtra, AIR 2001 SC 1980; S. Mehta v. State of Maharashtra, 2001 (8) SCC 257; Patangrao Kaddam v. Prithviraj Sajirao Yadav Deshmugh, AIR 2001 SC 1121; and Ku. Sonia Bhatia v. State of Uttar Pradesh & Ors., (1981) 2 SCC 585. suspicion.* ***The threshold for arrest under Section 104(1) of the Customs Act is higher than that under Section 41 of the Code. Section 41 allows the police to arrest a person without a warrant, if a "reasonable complaint has been made", or "credible information has been received", or "a reasonable suspicion exists" that the person has committed a cognizable offence. In contrast, Section***

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> ***104(1) sets a higher threshold, stipulating that a customs officers may only arrest a person if they have "reasons to believe" that a person has committed an offence. A person is said to have a "reason to believe" a thing, if they have sufficient cause to believe that thing but not otherwise. 47 This represents a more stringent standard than the "mere suspicion" threshold provided under Section 41.***

25. Therefore, under Section 35, the belief is to be formed on the basis of a (i) reasonable complaint, (ii) credible information or a (iii) reasonable suspicion. Whereas, under Section 104 of the Customs Act, the belief is to be formed only by a specially empowered officer on the material in his possession. It must be recorded in writing and must show how the offence falls within the classification and the monetary limits prescribed by the Customs Act. It is in this sense that the threshold under Section 104(1) is higher.

26. The two provisions also differ in the means of securing a person's attendance without arresting him. Section 35 provides a notice of appearance under sub-section (3). The Customs Act provides Summons under Section 108 to any person whose attendance the officer considers necessary, and non-compliance can be prosecuted.

27. A similar view has been taken by the High Court of Bombay at Goa in ***Directorate of Revenue Intelligence v. Sanjay Vedrakash Soni***, Criminal Court (Main) No. 1168 of 2025, decided on 28.11.2025 (2025:BHC-GOA:2339). That was a Court for cancellation of bail granted by the learned Chief Judicial Magistrate to a person arrested by the DRI under Court 104 of the Customs Court. One of the grounds on which the learned Magistrate had granted bail was that no notice under Court 35(3) of the BNSS had been served on the accused. The High Court did not accept this reasoning, and observed as under:

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> *"... In any case, as rightly submitted by the learned Special Public Prosecutor, Section 104 of Customs* ***Act lays down a special procedure in respect of power to arrest*** *... In that provision also, the necessity of such notice is not mentioned. In Radhika's case, it is not mentioned that the notice under Section 35(3) (Section 41A of Cr.P.C.) was necessary. Therefore, there is a basic error in the reasoning of the Magistrate in consideration of the bail application."*

28. In view of the above discussion, and on a plain reading of the two provisions, this Court is of the opinion that Section 35(3) of the BNSS does not merely complement Section 104 of the Customs Act. If applied, it would add a condition to the power of arrest conferred by Section 104(1). Since the Customs Act makes a specific provision regarding the power of arrest, and that provision is saved by Sections 4(2) and 5 of the BNSS, the requirement of notice under Section 35(3) of the BNSS would not apply to an arrest by an empowered officer of customs under Section 104 of the Customs Act. Needless to say, such an arrest would, however, is always subject to the safeguards laid down by the Hon'ble Apex Court in ***Radhika Agarwal*** (supra).

Even if Section 35 of BNSS were to Apply

29. There is one more aspect which this Court must address. Though this Court has held that Section 35(3) of the BNSS would not apply to an arrest under Section 104 of the Customs Act, a considerable part of the arguments on both sides was centred on ***Satender Kumar Antil*** **(supra)** and the application of Section 35 to the present case. Hon'ble Apex Court has already explained how Section 35 of the BNSS is to be read and applied in practice. It would, therefore,

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be appropriate to examine whether the Applicants would be in any better position even if it is assumed that Section 35 of the BNSS applies.

30. On such examination, it becomes clear that the controversy is only academic, since the result would remain the same. In ***Satender Kumar Antil (supra)***, the Hon'ble Apex Court has held that for an offence punishable with imprisonment up to seven years, the notice under Section 35(3) is the rule and arrest is an exception. At the same time, the Hon'ble Apex Court has made it clear that arrest is permissible where the conditions of Section 35(1)(b) exist. In paragraph 33(c), it has been held as under:

> "*For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence*".

31. Thus, even under Section 35, the notice is not an absolute condition which must precede every arrest irrespective of the facts. It is undoubtedly the rule, but where the arrest of the person is not required under Section 35(1).

32. In ***Radhika Agarwal v. Union of India*** (supra), the Hon'ble Court held as under:

> "*91. However, when the legality of such an arrest made under the special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely, to ascertain whether the officer was an authorised officer under the Act, whether the reason to believe that the person was*

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guilty of the offence under the Act, was based on the "material" in possession of the authorised officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. ***Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review****.*

92. ***It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case****. The criteria or parameters of judicial review over the subjective satisfaction applicable in service related cases, cannot be made applicable to the cases of arrest made under the special Acts. The scrutiny on the subjective opinion or satisfaction of the authorised officer to arrest the person could not be a matter of judicial review, inasmuch as when the arrest is made by the authorised officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act.* ***Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorised officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation****.*

…

95. Though, the power of judicial review keeps a check and balance on the functioning of the public authorities and is exercised for better and more efficient and informed exercise of their powers, ***such power has to be exercised very***

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> ***cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities****. To sum up, the powers of judicial review may not be exercised unless there is manifest arbitrariness or gross violation or non-compliance of the statutory safeguards provided under the special Acts, required to be followed by the authorised officers when an arrest is made of a person prima facie guilty of or having committed offence under the special Act."*

33. Thus, in the concurring opinion, Her Ladyship has observed that where the legality of an arrest made under a special Act such as the Customs Act is challenged, the Court's power of review is limited. The Court has to see only whether the statutory and constitutional safeguards have been complied with. Whether that material was sufficient, or whether the facts on which the belief rests are correct, is not for the Court to examine at the stage of inquiry or investigation, which is a nascent stage.

34. According to Hon'ble Apex Court, what the Court can look into at the stage of inquiry or investigation is only whether the safeguards under the statute and the Constitution have been followed, namely, whether the officer was authorised under the Act and whether he had material with him on which he formed the reason to believe. Whether that material was sufficient, or whether the facts on which the belief rests are correct, is not for the Court to examine at that stage. The Apex Court has also recognised that arrest may at times be a necessary part of the investigation, as the accused may give information leading to discovery of material facts, and his custody may be needed so that the investigation is not hampered and the witnesses are protected. In the present case, the material prima facie shows that the requirements of Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS are fulfilled.

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35. In view of the above, the requirement of notice under Section 35(3) of the BNSS, though the rule as laid down by the Hon'ble Supreme Court for offences punishable with imprisonment up to seven years, **cannot be read as an absolute and non-derogable condition, much less in the present case in view of Section 104 of the Customs Act**.

36. Thus, an Application for anticipatory bail cannot be considered on the lone ground of absence of a Notice under Section 35(3). Court has to consider the allegations, the material collected during investigation, the role attributed to the Applicants and the circumstances in which their arrest is sought. If the case falls within Section 35(1)(b)(i) or Section 35(1)(b)(ii) of the BNSS and/or the requirements of Section 104 of the Customs Act are satisfied, the mere non issuance of notice under Section 35(3) would not be a ground to grant anticipatory bail.

Decisions relied upon by the Applicant

37. Ld. Senior Advocate for the Applicants has placed heavy reliance on ***Arnesh Kumar (supra)***. There cannot be any dispute about the principles laid down therein. However, the directions in ***Arnesh Kumar (supra)*** were issued to police officers and Magistrates, in the context of Sections 41 and 41A of the Code, so that arrests are not made in a routine and mechanical manner. The decision reads Section 41A, now Section 35(3), as applicable in cases where the arrest of a person is not required under Section 41(1), now Section 35(1). It does not lay down that a notice must precede an arrest even where the conditions of Section 41(1)(b) are satisfied.

38. The power of arrest in the present case flows from Section 104 of the Customs Act, which has been considered hereinabove. The principles of ***Arnesh Kumar (supra)***, as reiterated with reference to Section 35 of the BNSS

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in ***Satender Kumar Antil (supra)***, have already been considered, and on the facts of the present case they do not assist the Applicants.

39. Further, the submission that, by virtue of Section 104(3) of the Customs Act, the officer of customs is subject to Section 35 of the BNSS, also cannot be accepted. Section 104(3) gives the officer of customs the powers of an officer in charge of a police station only "*for the purpose of releasing such person on bail or otherwise*", that is, after the person has been arrested under Section 104(1). It does not bring in the provisions which govern the decision to arrest automatically.

40. The principle for which ***Parvinder Singh (supra)*** is relied upon, namely that the provisions of the BNSS apply in the absence of a specific provision to the contrary in the special Act, is not in dispute. It is the same principle as explained in ***Radhika Agarwal* (supra)**, which has been applied hereinabove. However, as stated above, Sections 4(2) and 5 of the BNSS saves "any special jurisdiction or power conferred" by any other law, and the power of arrest under Section 104 of the Customs Act is such a special power.

Application of principles to present case

41. As stated above, the issue cannot be decided only on the ground that no notice under Section 35(3) was issued to the Applicants. The Court has to examine whether the material before the Investigating Officer *prima facie* satisfies the requirements of Section 35(1)(b)(i) or Section 35(1)(b)(ii) of the BNSS. Moreover, the allegations also relate to an offence under Section 135 of the Customs Act, and hence, it is necessary to consider whether the requirements of Section 104 of the Customs Act are satisfied.

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42. In the present case, on specific intelligence regarding concealment of a large quantity of smuggled gold bars and jewellery at Flat No. 104, Avishkar Apartments, Mahalakshmi Society, Paldi, Ahmedabad, the premises were searched, and the following articles were detained and thereafter seized under seizure memo dated 28.03.2025:

Details of Seized Items

Sr. No.	Details of Items	Pcs.	Purity	Net Weight in Grams	Market Value (Rs.)	Tariff Value (Rs.)
1	Gold Bars	882	999.0 24 Kt	88020.00	79,83,41,400/-	72,72,19,480/-
2	Gold Jewellery	-	-	19794.08	12,88,32,991/-	-
3	Watch Belts	2	-	100.100	4,23,449/-	-
4	Watches	10	-	-	15,19,76,108/-	-
5	Mobile	1	-	-	12,000/-	-
6	Currency (INR)	-	-	-	1,37,98,000/-	1,37,98,000/-

Total Seizure Value: Rs.109,33,83,948/-

43. The panchnama revealed that the premises had been taken on rent by Meghkumar Mahendrabhai Shah, son of the present Applicant. His presence was required for the investigation, and summons dated 20.03.2024, 24.03.2025, 27.03.2025, 02.04.2025 and 11.04.2025 were issued calling upon him to appear on the dates mentioned therein. The Applicant did not appear in response to the summons and did not produce the documents called for. The Investigating Authority had ample material giving rise to a reasonable belief that the Applicant had committed the alleged offence. The Applicants had taken the premises on rent only four to five months before the search, and the reason to

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believe that the Applicant was guilty of the offence was based on the material in the possession of the authority.

44. Whether that material was sufficient or adequate for forming such belief is not a matter for scrutiny by the Court at the stage of inquiry or investigation, as held in paragraph 92 of ***Radhika Agarwal* (supra)**, which reads as under:

> *"92. ... The scrutiny on the subjective opinion or satisfaction of the authorised officer to arrest the person could not be a matter of judicial review, inasmuch as when the arrest is made by the authorised officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act.* ***Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorised officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation."***

45. Considering the entire facts of the case, the authorised officer had reason to believe that the Applicants had committed the offence, and that their arrest was required for proper investigation and to prevent the Applicant from tampering with the evidence, particularly since, during the investigation, the Applicant admitted that he destroyed the SIM cards and the mobile phone when he reached Dubai, about ten days after the search at Flat No. 104, Avishkar Apartments, Mahalakshmi Society.

46. The decision in ***Mukesh Agarwal v. Union of India and Others***, relied upon by the Ld. Senior Advocate for the Applicant, is distinguishable on facts.

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In that case, the Gauhati High Court granted regular bail taking into account that the Applicant therein had duly responded to the summons. In paragraph 22 of that judgment, the Court also noted that the arresting authority had given no written justification at the time of arrest and had recorded no reasons to show that the Applicant was likely to tamper with evidence or influence witnesses. Therefore, the ratio laid down in the said judgment is not applicable to the facts of the present case.

47. Ld. Senior Advocate for the Applicant has relied upon ***Vishesh Jain v. Directorate of Revenue Intelligence*** (supra), wherein the Court took into account that the Applicant in that case had joined the investigation, and observed in paragraph 8 that when specifically asked why the customs authorities required custody, no satisfactory answer was forthcoming.

48. Whereas in the present case, after summons under Section 108 of the Customs Act were issued, the Applicant did not cooperate with the investigation and absconded to Dubai through Nepal, and joined the investigation only after Hon'ble Apex Court granted him protection. Therefore, this Court is of the view that, on the facts of this case, it was not mandatory to issue notice under Section 35(3) of the BNSS to the Applicant. The respondent had sufficient material and reason to believe that the Applicant had committed the offence, and as the conditions under Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS were fulfilled, the question of issuing notice under Section 35(3) of the BNSS does not arise.

Merits of the Case for Grant Of Anticipatory Bail

49. The Applicants seek anticipatory bail in respect of an offence under Section 135(1)(b) of the Customs Act, 1962. The summons issued to them and

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their response are as under:

Summons issued to Mr. Mahendrakumar Shah

Sr. No.	Date	Particulars
1.	20.03.2025	Summons u/s 108 issued via email to appear on 21.03.2025.
2.	24.03.2025	Summons u/s 108 issued to appear on 25.03.2025.
3.	27.03.2025	Summons u/s 108 issued to appear on 28.03.2025.
4.	02.04.2025	Summons u/s 108 issued to appear on 03.04.2025.
5.	11.04.2025	Summons u/s 108 issued via email to appear on 15.04.2025.
6.	01.09.2025	Representation submitted by Mahendra offering bank guarantee of full market value for provisional release of goods.
7.	12.06.2026	Representation by Mahendra intimating scheduled arrival in India on 13.06.2026.
8.	16.06.2026	Representation No. 3 requesting to join investigation.
9.	20.06.2026	Representation No. 4 requesting to join investigation and record statement.
10.	23.06.2026	Representation No. 5 requesting to join investigation and record statement.
11.	25.06.2026	Representation No. 6 requesting to join investigation and record statement.
12.	29.06.2026	Representation No. 7 requesting to join investigation and record statement.
13.	03.07.2026	Summons issued u/s 108 directing appearance on 06.07.2026.
14.	06.07.2026	Petitioner joined investigation before DRI; remained present for interrogation.
15.	09.07.2026	Summons issued u/s 108 directing appearance on 10.07.2026.

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16.	10.07.2026	Petitioner joined investigation before DRI; remained present for interrogation.
17.	16.08.2026	Representation addressed to DRI seeking fresh date/time for further statement recording to preclude any allegation of non-cooperation.

Summons issued to Mr. Meghkumar Shah

Sr. No.	Date	Particulars
1.	18.03.2025	Summons issued u/sec. 108 to appear on 19.03.2025.
2.	20.03.2025	Summons issued u/sec. 108 through email to appear on 21.03.2025
3.	24.03.2025	Summons issued u/sec. 108 through email to appear on 27.03.2025
4.	02.04.2025	Summons issued u/sec. 108 through email to appear on 03.04.2025
5.	11.04.2025	Summons issued u/sec. 108 through email to appear on 15.04.2025
6.	05.06.2026	Megh returned from Dubai to Ahmedabad to join investigation.
7.	06.06.2026	Summons issued u/sec. 108 to remain present on 09.06.2026.
8.	09.06.2026	Megh joined investigation before DRI and remained present for interrogation.
9.	10.06.2026	Summons issued u/sec. 108 to remain present on 11.06.2026.
10.	11.06.2026	Megh again joined investigation before DRI. He was informed that he would be called again if required.
11.	29.06.2026	Megh addressed a representation to DRI seeking a date and time for further investigation and recording of further statement.

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12.	16.08.2026	Megh addressed a representation to DRI seeking a date and time for further investigation and recording of further statement stating that it should not happen that any assertion of non-cooperation is made and hence the petitioner was requesting for an appropriate date and time to join investigation.

50. From the above, it can be seen that after the Apex Court granted protection, the Applicant appeared before the authority on 06.07.2026. On further summons dated 09.07.2026, he again appeared on 10.07.2026. By letter dated 16.08.2026, the Applicant asked the respondent whether any further information was required from him, but the respondent has not replied till date.

51. When this Court specifically asked the Ld. Advocate for the respondent why custody of the Applicant was required, no satisfactory or specific answer was forthcoming. The Applicant has already given his statement before the customs authorities, has expressed his readiness to cooperate further and has reiterated his willingness to join the investigation by his letter dated 16.08.2026.

52. In the present case, the Applicants have cooperated with the investigation after there was interim protection granted by the Apex Court. They have appeared before the customs authorities in response to the summons issued under Section 108 of the Customs Act and have complied with them. There is nothing on record to show that, after joining the investigation pursuant to the interim order passed by the Apex Court in the Special Leave Petition, the Applicants have avoided the investigation or have failed to furnish any information or document sought by the customs authorities.

53. Ld. advocate for the Customs Department has not been able to point out any specific reason why custodial interrogation of the Applicants is presently

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required. No purpose which cannot be achieved without taking the Applicants into custody has been brought to the notice of the Court. On the contrary, the Applicants have stated that they are ready to continue to cooperate with the investigation and will remain present before the customs authorities as and when required.

54. It is true that Section 104 of the Customs Act empowers an authorised customs officer to arrest a person when the conditions prescribed therein are satisfied. However, the existence of the power does not mean it must be exercised in every case. The need for arrest has to be considered in the facts and circumstances of each case.

55. In the present matter, the Applicants have already joined the investigation and have complied with the summons issued under Section 108 of the Customs Act. The customs authorities have not placed any specific material before the Court to show why custodial interrogation is necessary at this stage. The Applicants have also expressed their willingness to continue to cooperate with the investigation.

56. Considering the cooperation already extended by the Applicants, their compliance with the summons issued under Section 108 of the Customs Act, their willingness to remain available for further investigation and the absence of any specific reason shown by the customs authorities for their custody, this Court is of the view that the purpose of investigation can be achieved without taking the Applicants into custody. In these circumstances, the Applicants deserve protection from arrest by way of pre arrest bail, subject to suitable conditions to ensure their continued cooperation with the investigation.

57. In the result, these Applications are allowed by directing that in the event of arrest or appearance of the Applicants in connection with the above-referred

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FIR, the Applicants shall be released on bail on furnishing a personal bond of Rs.10,000/- (Rupees Ten Thousand only) each, with one surety of the like amount each, on the following conditions that the Applicants:

(a) Shall cooperate with the investigation and make themselves available for interrogation whenever required;

(b) Shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;

(c) Shall not obstruct or hamper the investigation, and shall not tamper with the evidence collected or yet to be collected by the Authority;

(d) Shall remain present before the concerned Authority on **07.10.2026**, between 11:00 a.m. and 2:00 p.m.;

(e) Shall, at the time of execution of the bond, furnish their address to the Investigating Officer and the Court concerned, and shall not change their residence till the final disposal of the case or till further orders;

(f) Shall not leave India without the permission of the Court, and, if having a passport, shall deposit the same before the trial Court within a week;

(g) It is open for the investigating agency to move the learned trial Court for a direction under Section 483(2) of the BNSS to arrest the Applicants in the event of violation of any of the above conditions, such as absconding, non-cooperation during

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investigation, evasion, or intimidation or inducement of witnesses with a view to influence the outcome of the investigation or trial.

58. At the trial, the trial Court shall not be influenced by the prima facie observations made by this Court while considering these bail applications.

59. It is made clear that this order of anticipatory bail does not in any manner limit or restrict the rights or duties of the investigating agency to investigate into the charges against the Applicants who are granted pre-arrest bail.

60. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(SANJEEV J.THAKER,J)

ADITYA SINGH

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