Case Citation: (2026) taxcode.in 1738 HC

2026:AHC-LKO:70294

Reserved on 24.09.2026
Delivered on 01.10.2026

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 2133 of 2026

Devid Babu Gupta @ David Babu Gupta

.....Applicant(s)

Versus

U.O.I. Thru. Senior Intelligence Officer/Authorised Officer Lko.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Pranjal Krishna, Aman Prakash, Dheeraj Srivastava, Mrs.Suniti Sachan
Counsel for Opposite Party(s)	:	Digvijay Nath Dubey, Dheeraj Srivastava

---

Court No. - 28

HON'BLE RAJEEV BHARTI, J.

1. Heard learned counsel for the applicant, learned counsel appearing for Union of India and perused the record.

2. The present application has been filed seeking anticipatory bail in DGGI File No. DGGI/INV/GST/1346/2026-Gr-H, under Sections 19/26 of the Health Security se National Security Cess Act, 2025; Sections 9, 9A, 13 of the Central Excise & Section 70 and allied provisions of the Central Goods and Services Tax Act, 2017, District- Lucknow.

3. In brief, the prosecution case is that Manish Kumar, proprietor of M/s Kamadgiri Products, was allegedly operating a clandestine manufacturing network for Pan Masala, Zarda Scented Tobacco and Desi Dohra without payment of applicable GST, HSN Cess and Central Excise duty.

4. Acting on specific intelligence, DGGI, Lucknow Zonal Unit, conducted searches at seven premises on 18.08.2026 and allegedly recovered and seized 27 undeclared FFS pouch-packing machines from three unregistered manufacturing units, besides raw materials, packaging material, invoices and finished products.

www.taxcode.in

5. The revenue evasion has allegedly been quantified at more than Rs. 186.62 crores, apart from further GST liability alleged to be payable. It is further alleged that in his statement recorded under Section 70 of the CGST Act, Manish Kumar allegedly admitted to clandestine manufacture and clearance using the said machines. His involvement was allegedly corroborated by statements of machine operator Ram Lakhan, contractor Arvind Kumar and employee Rakesh Kumar, who attributed the operation, supply of raw materials and management of the units to Manish Kumar and his brother David.

6. Learned counsel for the applicant submits that the materials collected by the Department itself identify co-accused Manish Kumar, proprietor of M/s Kamadgiri Products, as the principal person allegedly responsible for the activities in question. It is submitted that no comparable or individualized role has been attributed to the present applicant and that there is no primary material demonstrating retention of any alleged proceeds or benefit by him.

7. Learned counsel submits that the applicant is ready and willing to cooperate with the investigation and undertakes that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case; shall not tamper with documentary or electronic evidence; shall intimate any change in his residential address or mobile number; shall not leave India without prior permission of the competent court, if so required; and shall faithfully abide by any other condition that may be imposed by the Court. It is further submitted that the departmental intimation dated 19.08.2026 records that the Grounds of Arrest and the Reasons to Believe were communicated to co-accused Manish Kumar both physically and through email and that the connected documents were subsequently made available to the applicant through the family of co-accused Manish Kumar.

8. Per contra, learned counsel for the Union of India submits that the present anticipatory bail application is premature, as the applicant has merely been issued summons under Section 70 of the CGST Act and that no order or authorization for his arrest under Section 69 of the CGST Act

has yet been passed by the competent authority. It is submitted that mere issuance of summons does not, by itself, give rise to a reasonable apprehension of arrest. In support of his arguments, he places reliance on the decision of the Apex Court in **Union of India vs. Sunil Biyani, 2026 LiveLaw (SC) 797.**

9. It is, however, submitted that the interrogation of the applicant, if considered necessary in accordance with law, cannot be ruled out at this stage, particularly for ascertaining his role in the ownership and control of machinery, procurement and supply of raw materials, operation of packing premises, manufacture and packing of finished goods, clandestine clearance thereof, identification of recipients and the financial, documentary and electronic trail.

10. It is further submitted that the applicant's undertaking to cooperate with the investigation does not, by itself, confer an automatic right to anticipatory bail. It is urged that effective investigation may require his confrontation with witnesses, documents, electronic evidence and other material collected during investigation.

11. Placing reliance upon **P. Chidambaram vs. Directorate of Enforcement, (2020) 13 SCC 791**, learned counsel submits that anticipatory bail ought not to be granted in a manner which may frustrate effective interrogation and investigation, particularly in a complex economic offence.

12. Having heard learned counsel for the parties and perused the material on record. The first question which arises for consideration is whether the present application can be said to be premature merely because the applicant has been summoned under Section 70 of the CGST Act. In this regard, Section 69 of the CGST Act deals with the power of arrest whereas Section 70 confers upon the proper officer the power to summon the person whose attendance is considered necessary, either to give evidence or to produce a document or any other thing in an inquiry.

13. Before proceeding further, it would be apposite to advert to the provisions of Sections 69 and 70 of the CGST Act, which have a direct bearing on the issue involved in this present case.

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

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

(3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of Section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

Section 70. Power to summon persons to give evidence and produce documents.-

(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

[(1-A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.]

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of Section 193 and Section 228 (45 of 1860) of the Indian Penal Code."

14. The mere issuance of summons under Section 70 of the CGST Act, by itself, does not necessarily establish that the person summoned is under arrest or that an order of arrest has already been passed against him. At the same time, the absence of an existing order of arrest cannot be treated as an absolute bar to the exercise of the jurisdiction for anticipatory bail where the applicant is able to demonstrate a real, genuine and reasonable apprehension of arrest founded upon the facts and circumstances of the particular case.

15. The law relating to the anticipatory bail is now well settled. The jurisdiction is attracted when there is an apprehension of arrest and the Court is required to examine whether such apprehension is reasonable and founded upon tangible circumstances, rather than a mere fanciful or speculative fear.

16. The Hon'ble Supreme Court in **Radhika Agarwal v. Union of India, reported in (2025) 6 SCC 545** has also clarified that a person summoned under Section 70 of CGST Act does not, merely by reason of such summons, acquire the status of an accused entitled to the protection contemplated under Article 20(3) of the Constitution. At the same time, the investigation has to proceed in accordance with law and the power vested in the investigating authority cannot be permitted to be misused.

17. The present case, however, stands on a somewhat different footing. The material placed before the Court indicates that the investigation concerns an alleged clandestine manufacturing and clearance operation involving substantial revenue implications. Searches have already been conducted at several premises, machinery and other material have already been seized, the alleged revenue evasion has been quantified more than Rs. 186.62 crores and significantly, the co-accused connected with the alleged activity has already been arrested.

18. In these circumstances, the apprehension expressed by the applicant cannot, at this stage, be characterized as wholly fanciful or imaginary. The application, therefore, cannot be rejected merely on the ground that no formal order of arrest has yet been placed on record.

19. The fact that the application is maintainable, however, does not conclude the matter. The existence of an apprehension of arrest is a condition for invoking the jurisdiction, it is not, by itself, a sufficient ground for granting anticipatory bail.

20. The Court is required to consider the nature and gravity of the allegations, the material collected during investigation, the role attributed to the applicant, the stage and requirement of investigation, the possibility of the applicant influencing witnesses or tampering with evidence and, where relevant, the necessity of custodial interrogation.

21. In the present case, the allegations relate to an alleged organized clandestine manufacturing and clearance operation. The investigation is stated to involve several interconnected aspects including the ownership and control of machinery, procurement and supply of raw material, operation of manufacturing at packaging premised and clearance of finished goods, identification of residents and examination of the corresponding financial documentary and electronic trail.

22. The material placed before the Court further indicates that the applicant was summoned on several occasions including 18.8.2026, 24.8.2026, 31.8.2026 and 7.9.2026. According to learned counsel for Union of India, despite repeated summons, the applicant has not cooperated with the investigation.

23. The applicant undertaking to cooperate with the investigation is undoubtedly a relevant circumstance. However, such an undertaking cannot, by itself, foreclose the investigating agency's statutory authority to undertake interrogation in accordance with law, wherever such interrogation is found necessary for fair and effective investigation.

24. The distinction between ordinary questions and custodial interrogation is relevant in the context. In **C.B.I. vs. Anil Sharma, (1997) 7 SCC 187**, the Hon'ble Supreme Court has observed as under:-

> *"Custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disintering much useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a*

responsible manner and that those entrusted with the task of disintering offences would not conduct themselves as offenders."

25. At the same time, the Court remains that the necessity of custodial interrogation is not to be treated as an end in itself. Its necessity has to arise from the facts of the particular investigation and must be exercised strictly in accordance with law. In the present matter, having regard to the nature of the allegations, the magnitude of the alleged revenue evasion, the material already collected, the arrest of the co-accused and the specific areas of the investigation indicated by the Department, the requirement of further interrogation of the applicant cannot, at this stage, be completely ruled out.

26. There can be no disputes that personal liberty is a valuable constitutional right and the anticipatory bail is an important remedy for protecting an individual against unjustified arrest. At the same time, the exercise of such jurisdiction has to be balanced against the legitimate requirement of investigation in the larger interest of criminal justice.

27. The Court is not required at the stage of consideration of anticipatory bail, to conduct a meticulous examination of the evidence or to record findings on the ultimate guilt or innocence of the applicant. The inquiries necessarily limited to determining whether having regard to the circumstances of the case, the extraordinary protection against arrest deserves to be extended.

28. The Court also cannot lose sight of the allegation that the applicant has not cooperated with the investigation despite repeated summons. Such conduct, while not by itself determinative, is certainly a relevant circumstance when considered along with the nature of the allegation and the stated requirement of further interrogation.

29. The Court is, therefore, of the considered view that the applicant has not made out a case for extending the extraordinary protection of anticipatory bail, at this stage.

30. For the reasons recorded herein-above, this Court finds that although the present anticipatory bail application cannot be rejected merely on the ground that it has been filed before any formal orders of arrest, the

applicant has failed to establish circumstances warranting the grant of anticipatory bail. If the nature and gravity of the allegations, the magnitude of the alleged revenue implication, the stage of investigation, the material collected during the course of investigation, the arrest of the co-accused, the alleged non-cooperation of the applicant despite repeated summons and the stated requirement of further interrogation, taken cumulatively persuade this Court not to extend the extraordinary protection sought by the applicant.

31. Accordingly, the present anticipatory bail application is **rejected.**

32. It is made clear that the observations contained in this order are confined strictly to the present anticipatory bail application and shall not be construed as an expression of opinion on the merits of the prosecution case or the ultimate guilt or innocence of the applicant.

(Rajeev Bharti,J.)

October 1, 2026
Shravan