

Present: Sh. Pramod Bahuguna, Sr. Public Prosecutor for the complainant department assisted by Inspector Anurag Kumar, CGST, Gurugram.
Accused Yogesh Gupta in custody being represented by Shri Gaurav Gupta, Advocate.

Accused Yogesh Gupta produced before the Court in custody. An application for seeking judicial remand under Section 167 of Cr.P.C. read with Section 187 of BNSS Act, 2023 for 14 days has been moved on behalf of complainant department.

2. At this stage, an application has been filed on behalf of accused for rejecting the prayer of complainant seeking remand of accused and enlarge the accused on the terms and conditions as fixed by the Court. Copy supplied. Reply not filed.

3. Arguments heard. The learned counsel for the applicant/accused has submitted that the present offence is punishable under Section 132(1) of CGST Act, 2017, for which sentence is 5 years. It is further argued that grounds of arrest were not communicated properly to the accused and just formality has been made by the complainant in the name of informing the grounds of arrest and as such, the grounds of arrest as provided by the prosecution is not sufficient to understand the nature of case. It is further argued that compliance of Section 41A of Cr.P.C./Section 35 of BNSS Act, 2023 has not been made because issuance of notice prior to arrest of applicant/accused was necessary before arresting him as the offence involved in the present case is punishable not exceeding 7 years. Therefore, it has been requested that arrest of accused is illegal and he may be released from the custody.


(Anurag Kumar)
CGST/Gurugram

4. On the other hand, Shri Pramod Bahuguna, Sr. Public Prosecutor appearing on behalf of complainant department has submitted that accused has been arrested as per Section 69 of the CGST Act. It is further argued that accused has been arrested under a special Act and hence, provision of Section 41, 41(A) of Cr.P.C/35 of BNSS Act will not be applicable in the case in hand. It is further argued that grounds of arrest were duly informed in writing to the accused and there is no illegality in the arrest of accused. All the legal requirements have been complied with while arresting the accused in the present case. With these submissions, request has been made to dismiss the application filed on behalf of the applicant/accused and requested to send applicant/accused in judicial custody for 14 days.

5. I have given thoughtful consideration to the arguments raised by learned counsels for both the parties and have gone through the case file very carefully.

6. The first and foremost objection of applicant/accused is that the ground of arrest were not informed to him in proper manner and merely a formality was done by the prosecution by providing ground of arrest in writing. This Court has gone through the grounds of arrest, which were conveyed by the prosecution to the accused. It is pertinent to mention here that on arrest memo, it has been acknowledged by the accused himself in writing that he has been informed and explained about the grounds of arrest. Therefore, this Court is of the view of that ground of arrest have been properly informed and explained to the applicant/accused by the prosecution.

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7. It is correct that present offence under Section 132(1) of CGST Act, 2017 is punishable upto 5 years. *Hon'ble Apex Court in case law titled as Arnesh Kumar. Vs. State of Bihar decided on 02.07.2014 in Criminal Appeal No.1273 of 2014* made it mandatory to follow the provisions of Section 41 & 41A of Criminal Procedure Code for the offence which are punishable upto 7 years. Prosecution has taken a stand that present accused has been arrested under Section 69 of CGST Act and hence, provision of Section 41 and 41A of Criminal Procedure Code/35 of BNSS Act are not applicable in the present matter but this Court does not find force in the arguments of learned counsel for the complainant. In case law titled as *Akhil Krishan Maggu and another. Vs. Deputy Director and others decided on 15.11.2019 in CWP No.24195 of 2019 (O&M), Hon'ble Punjab & Haryana High Court* held as under :-

9. *The provisions of CGST Act are not subject to exclusion of Criminal Procedure Code rather Section 67(10) as well as Section 69(3) borrow provisions of Code of Criminal Procedure, 1973.*

As per Section 41(1)(b) as amended by Code of Criminal Procedure (Amendment) Act, 2008 applicable w.e.f 01.11.2010, a person may be arrested if he has committed a cognizable offence punishable with imprisonment which may be less than 7 years or may extend to 7 years if conditions specified therein are satisfied. As per Section 41A of Cr.P.C., a notice shall be issued to the person

against whom complaint has been made or credible information has been received or reasonable suspicion exists and he shall not be arrested if he complies with the notice.

8. Further in case law titled as *The State of Gujarat etc. Vs. Choodamani Parme Shwaran Iyer and another 2023 LiveLaw (SC) 552 (S.C.)*, *Hon'ble Apex Court* has observed that contention of prosecution that in view of Section 69(3) of CGST Act, 2017, petitioners cannot fall back upon the limited protection against arrest, found in Sections 41 and 41A of Cr.P.C., may not be correct. The relevant paras No.41 to 43 are reproduced as under for ready reference :-

41. *Though for the purpose of summoning of witnesses and for summoning the production of documents, the Proper Officer holding the enquiry under the CGST Act, 2017 is treated like a Civil Court, there are four other places in the Act, where a reference is made, directly or indirectly, to the Cr.P.C. They are (1) the reference to Cr.P.C. in relation to search and seizure under Section 67(10) of CGST Act, 2017, (2) the reference to Cr.P.C. under sub-Section (3) of Section 69 in relation to the grant of bail for a person arrested in connection to a non-cognizable and bailable offence, (3) the reference to Cr.P.C. in Section 132 (4) while making all offences under the CGST Act.*

2017 except those specified in clauses (a) to (d) of Section 132 (1) of CGST Act, 2017 as non-cognizable and bailable and (4) the reference to Sections 193 and 228 of IPC in Section 70(2) of the CGST Act, 2017. Therefore, the contention of learned Additional Solicitor General that in view of Section 69(3) of the CGST Act, 2017, the petitioners cannot fall back upon the limited protection against arrest, found in Sections 41 and 41A of Cr.P.C., may not be correct. As pointed out earlier, Section 41-A was inserted in Cr.P.C. by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008. Under sub-Section (3) of Section 41A Cr.P.C., a person who complies with a notice for appearance and who continues to comply with the notice for appearance before the Summoning Officer, shall not be arrested. In fact, the duty imposed upon a Police Officer under Section 41A(1) Cr.P.C., to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in Section 70(1) of the CGST Act. Though Section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporated in Section 41 and 41A of Cr.P.C.,

we think Section 70(1) of the CGST Act takes care of the contingency.

42. In any case, the moment the Commissioner has reasons to believe that a person has committed a cognizable and non-bailable offence warranting his arrest, then we think that the safeguards before arresting a person, as provided in Sections 41 and 41A of Cr.P.C., may have to be kept in mind.

43. But, it may be remembered that Section 41A(3) of Cr.P.C., does not provide an absolute irrevocable guarantee against arrest. Despite the compliance with the notices of appearance, a Police Officer himself is entitled under Section 41A(3) Cr.P.C., for reasons to be recorded, arrest a person. At this stage, we may notice the difference in language between Section 41A(3) of Cr.P.C. and 69(1) of CGST Act, 2017. Under Section 41A(3) of Cr.P.C., "reasons are to be recorded", once the Police Officer is of the opinion that the persons concerned ought to be arrested. In contrast, Section 69(1) uses the phrase "reasons to believe". There is a vast difference between "reasons to be recorded" and "reasons to believe."

9. In view of the above observations, this Court is of the view that prosecution was under obligation to comply with the provisions of

Section 41, 41A of Cr.P.C/35 of BNSS Ac, 2023 before arresting the accused but same has not been complied and as such, arrest of accused cannot be termed as legal. In view of the matter, the application filed on behalf of applicant/accused Yogesh Gupta is hereby allowed. Accordingly, applicant/accused Yogesh Gupta is released from custody forthwith. However, prosecution/complainant department is given liberty to re-arrest the applicant/accused after following the due procedure as described in Section 41, 41A of Cr.P.C/35 of BNSS Act, 2023/70(1) of CGST Act. File be consigned to the record room after due compliance.

Pronounced in open court.
January 17th, 2025

Anant Kr. Mehta

Note: All the 7 (Seven) pages of this order have been checked and signed by me.

(Amit Gautam)
Additional Chief Judicial
Magistrate, Gurugram
UID No. HR-0289

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