

No Arrest in the Dark: The Supreme Court's Mandate on Communication of Section 69 Orders under the CGST Act

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For close to a decade since the Goods and Services Tax regime came into force, taxpayers summoned for interrogation under [Section 70](#) of the CGST Act have often found themselves standing at the edge of a cliff they cannot see. They know an investigation is underway. They know that Section 69 empowers the Commissioner to order their arrest. What they have never known, with any certainty, is whether such an order actually exists, when it was passed, or on what "**reasons to believe**" it rests. This information asymmetry, the Department holding a card it was never obliged to show, has fuelled a decade of anticipatory bail litigation before every High Court in the country, each straining to fashion protective interim orders in the absence of any statutory duty on the Revenue to disclose its hand. In ***Union of India v. Sunil Biyani*** ([2026-VIL-78-SC](#)), the Supreme Court has closed that gap. In the same breath as it set aside a curiously worded protective order passed by the High Court, the Court read into [Section 69](#) of the CGST Act a duty that practitioners had long argued for but few courts had been willing to enforce: the duty to communicate the order of arrest, and the reasons underlying it, to the person before he is arrested, not after.

1. Introduction

The starting point of this decision, and indeed of any discussion on the power to arrest under a fiscal statute, is the constitutional guarantee under **Article 21** of

the Constitution: no person shall be deprived of his life or personal liberty except according to procedure established by law. Where that procedure involves an arrest, **Article 22(1)** supplies the accompanying safeguard, the arrested person must be informed, "as soon as may be", of the grounds for his arrest, and must not be denied the right to consult and be defended by a legal practitioner of his choice. These are not decorative constitutional flourishes. They are the operative check on a State that possesses, in Section 69 of the CGST Act, a power of arrest that operates almost entirely outside the ordinary architecture of criminal procedure, now the Bharatiya Nagarik Suraksha Sanhita (BNSS). There is no FIR in the conventional sense, no prior judicial sanction, and no independent investigating agency reporting to a magistrate at each stage. The only internal check built into Section 69 is the requirement that the Commissioner must have "**reasons to believe**" that a person has committed an offence specified under [Section 132](#) of the CGST Act before authorising his arrest. Everything, therefore, turns on how seriously that requirement is treated, whether it is a genuine, recorded, and reviewable safeguard, or a mere procedural formality invoked after the fact to justify an arrest already made. **Sunil Biyani** answers that question, and in doing so, gives real teeth to the promise of Articles 21 and 22 in the specific context of GST enforcement.

2. Factual Background

The respondent applied for pre-arrest bail before the High Court of Bombay [[2026-VIL-872-BOM](#)]. While rejecting the application, the High Court nonetheless granted him protection from arrest for a period of one week from the date of intimation of any order passed against him under Section 69 of the CGST Act. The backdrop to this application was an ongoing investigation by the DGGI, Mumbai Zonal Unit, into the wrongful availment and passing on of Input Tax Credit (ITC). In the course of that investigation, when the Department issued multiple summons, the respondent moved an application for anticipatory bail before the Sessions Court, Mumbai. That application was rejected, following which the respondent approached the High Court seeking pre-arrest bail.

During the hearing before the High Court, the Department stated that no order under Section 69 of the CGST Act had, in fact, been passed, the investigation was still at a nascent stage and material facts were under verification. On this basis, the High Court rejected the anticipatory bail application itself, holding that in the absence of an order under Section 69, there could be no apprehension of arrest, and an application for anticipatory bail could not be entertained. And yet, having said so, the High Court went on to grant the respondent protection from arrest for one week from the date any such order under Section 69 came to be communicated to him.

3. Issues before the Supreme Court

Two distinct questions arose before the Supreme Court.

First, could the High Court, having held that the anticipatory bail application itself was not maintainable for want of any order under Section 69, still grant protection from arrest in the nature of interim relief for a defined period following any future order?

Second, and of considerably wider import: is an order passed by the Commissioner under Section 69 of the CGST Act required to be communicated to the person against whom it is passed, before he can be arrested pursuant to it?

4. Discussion and Findings of the Supreme Court

4.1 Summons Under Section 70 Does Not, By Itself, Make One an Accused

The Court began by reaffirming settled ground. Relying on its earlier decision in **Radhika Agarwal v. Union of India** ([2025-VIL-11-SC](#)), the Court reiterated that the mere issuance of summons under Section 70 of the CGST Act does not, without more, make the person summoned an accused. Since the respondent, at the stage he approached the High Court, had only been summoned and no order

under Section 69 had been passed, the rejection of his anticipatory bail application, though not itself under challenge before the Supreme Court, stood affirmed on this footing alone.

4.2 No Power to Grant Interim Relief Where the Main Proceeding Is Not Maintainable

The more consequential part of the judgment addresses a question that recurs across writ and bail jurisprudence alike: can a court grant interim protection once it has concluded that the very proceeding before it does not survive scrutiny?

The Supreme Court traced this principle to a five-judge Bench decision as far back as 1951, in ***State of Orissa v. Madan Gopal Rungta*** (1951 SCC 1024). Although rendered in the context of writ jurisdiction under Article 226, that Bench laid down the foundational rule that a writ petition cannot be used for the sole purpose of obtaining interim relief where the High Court itself takes the view that the petition is not maintainable. The rationale is straightforward that **interim relief is, by its very nature, ancillary and subservient to the main relief** and it cannot be granted in a vacuum. This principle has been reiterated by the Supreme Court on several occasions since, most recently in ***Mangal Rajendra Kamthe v. Tahsildar, Purandhar*** (2026 SCC OnLine SC 297).

The Court then extended the same logic to the criminal sphere. In ***Hema Mishra v. State of U.P.*** ((2014) 4 SCC 453), while examining whether a High Court, upon dismissing a petition seeking quashing of an FIR or charge-sheet, could nonetheless grant further protection against arrest, the Supreme Court, relying squarely on ***Madan Gopal Rungta***, answered in the negative. No further interim relief, it held, could survive the dismissal of the very petition in which it was sought.

Applying this chain of authority to the facts before it, the Supreme Court in Sunil Biyani held that the same principle governs applications for pre-arrest bail.

Where the High Court dismisses a petition seeking anticipatory bail it cannot simultaneously extend or grant protection in the nature of interim relief. The Bombay High Court's order, having rejected the anticipatory bail application as not maintainable and yet carved out a week's protection from arrest, could not survive this settled principle, and was accordingly set aside.

4.3 The Sine Qua Non Problem: Must the Section 69 Order Be Communicated?

Having disposed of the primary issue, the Court turned to what it described as a subsidiary but far more significant question: is the order passed by the Commissioner under Section 69 of the CGST Act required to be communicated to the person sought to be arrested?

The Court noted that it was the respondent's argument that until the Commissioner records "reasons to believe" that an offence under Section 132 has been committed and passes an order under Section 69 authorising arrest, no alarm is truly activated, there can be no genuine apprehension of arrest merely on the strength of a summons. It is only once that order is passed that the person acquires the status necessary to seek anticipatory bail. An order under Section 69 is, in this sense, a ***sine qua non*** for maintaining such an application. But if that order can be passed, and even acted upon, without ever being disclosed to the person concerned, he is left in an impossible position that he cannot apply for anticipatory bail until the order exists, and he has no means of knowing that it exists until the moment of arrest itself. Though Section 69 does not, in terms, mandate communication, the respondent urged that such a requirement must be read into the provision as an extension of natural justice and fairness in administrative action.

The Court accepted this reasoning in full. It held that since an order under Section 69 is a ***sine qua non*** for an accused to seek anticipatory bail, it would be anomalous, indeed self-defeating, to hold that the order need not be communicated at all, let alone that it may be communicated only after the arrest

has already taken place. Communication of the order, the Court observed, does not in any manner impede or obstruct the Department's investigation. If anything, it reinforces the very right to seek anticipatory bail that the Court's own jurisprudence has repeatedly recognised.

4.4 Communication as a Gateway to Judicial Review, Not a Concession to the Accused

The Court noted that communication of the order will also fortify the accused's right to challenge the order itself, and the "reasons to believe" that prompted its issuance, before the constitutional courts. Such an order, the Court held, is amenable to judicial review, and may be tested on settled principles of administrative and constitutional law. The Court thus borrowed the discipline that already governs preventive detention and other extraordinary powers, where reasons must not only exist but must be disclosed and be justiciable, into the GST enforcement framework. An **arrest** under Section 69, after this decision, **cannot rest on a satisfaction that exists only in the Commissioner's file** and nowhere else.

4.5 The Mode of Communication: Reading Rule 8 of the CGST Rules with the BNSS

Having held that communication is mandatory, the Court noted that [Rule 8](#) of the CGST Rules, 2017 requires every person seeking registration under the CGST Act to furnish an email address and a mobile number at the time of registration. The Court thus held that the order may be communicated through electronic means, in addition to the modes of service recognised under the BNSS and any other permissible mode of communication. This will enable the person concerned to pursue such remedy as he may be advised, without delay or dependence on physical service.

The Court's concluding observation leaves little room for ambiguity that without such communication, the question of arrest would not arise.

5. Conclusion

Sunil Biyani will likely be remembered less for the narrow point on which the Bombay High Court's order was reversed, and more for the structural correction it makes to the architecture of arrest under the CGST Act. For years, the "reasons to believe" requirement under Section 69 existed as an internal, largely unverifiable, condition, something the Department could point to after an arrest, but which the person arrested had no real means of testing beforehand. By holding that the order itself, and by necessary implication the reasons that inform it, must be communicated before arrest, the Supreme Court has converted a formal safeguard into a functional one.

The long-term consequences of this shift are considerable. It restores meaning to the guarantee under Article 21 read with Article 22. It introduces genuine transparency into a process that had, operated largely on the Department's own terms, with the person under investigation left to infer, from the tenor of a summons or the urgency of an interrogation, whether arrest was imminent. And critically, it opens the Commissioner's satisfaction to judicial review in a manner that was previously much litigated, an accused who now receives a reasoned, communicated order can test it on the same anvil as any other administrative decision affecting personal liberty, before a High Court exercising its writ jurisdiction or a Sessions Court considering an anticipatory bail application.

For practitioners, it will open the door to seek anticipatory bail once the order is issued by the Commissioner and communicated to the defaulting person. What ***Sunil Biyani*** ultimately protects is not any one assessee, but the constitutional promise that no person in this country should have to guess, from the shadows, whether the State has already decided to take away their liberty.

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(The views expressed in this article are strictly personal.)