



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 972/2025

P C Purohit Son Of Late Shri Shankarlal Purohit, Aged About 54 Years, Resident Of Miraj Complex, Nh-8, Upali Uden, Nathdwara, Rajsamand, Rajasthan.

-----Accused/Petitioner

Versus

Union Of India, Through The Senior Intelligence Officer, Dggi, Jzu, Jaipur, (UOI).

-----Respondent



For Petitioner(s)	:	Mr. Deepak Chauhan Mr. Akshay Singh Mr. Shubham Raj
For Respondent(s)	:	Mr. Ajatshatru Mina Mr. Rajat Choudhary

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Reserved on	:::	March 12, 2025
Pronounced on	:::	March 20, 2025

1. By filing the present criminal misc. petition u/S 528 BNSS, the accused petitioner has prayed to quash and set aside the order dated 31.01.2025, passed by the Court of learned Addl. Chief Judicial magistrate (Economic Offence), Jaipur Metro-II (for short, 'the trial Court') in Criminal Misc Case No. 06/2025 (Union of India Vs. M/s. Miraj Products Limited & Anr.; to quash the non-bailable warrants in question and further to direct the learned Court concerned to accept the bonds from the accused petitioner as per law.



2. Facts in brief of the case are that the Office of Directorate General of GST Intelligence received an information that Packaging Sales Private Limited is supplying of packing material in the name of fake firms with an intent to dodge the checking conducted by GST Department and finally offloading the material at M/s Miraj. The said department conducted simultaneous raids at the office of M/s Montage Packaging being situated in Jaipur and office of M/s Miraj Products Private Limited at Nathdwara. During the raid at M/s Miraj Products it was allegedly found that a truck was being unloaded at M/s Miraj with invoices in the name of M/s Shri Balaji Enterprises, Ahmedabad. During the raid it was found that M/s Montage used to provide packaging items to M/s Miraj without valid invoices and invoices were issued by M/s Montake in the name of other firms. The department seized the goods which were being unloaded during the raid. The Department proceeded with the investigation which finally culminated into a complaint being lodged against the present petitioner and by order dated 03.08.2024 the cognizance has been taken against the petitioner by the trial court for offences punishable under section 132(1)(a)(f) (h) (j) (k) and (l) of the Central Goods & Services Tax Act, 2017 (for short 'the Act of 2017') and issued the non-bailable warrants to secure his presence.

3. The petitioner and co-accused being aggrieved by the order dated 03.08.2024 whereby the learned trial court took cognizance and issued the non-bailable warrants for securing their presence, they preferred S.B. Criminal Misc.



Petition No. 6137/2024 to the extent of quashing the non-bailable warrants. The aforesaid criminal misc. petition was disposed of vide order dated 21.09.2024 with a liberty to the petitioners therein to avail the remedy before the court below for conversion of arrest warrant issued against them into bailable warrant.

4. In view of the liberty granted by this Court vide order dated 21.09.2024 passed in S.B. Criminal Misc. (Petition) No. 6137/2024, the petitioner preferred an application on 25.09.2024 under section 72(2) of the BNSS for conversion of the non-bailable warrants issued against the accused petitioner into the bailable warrants.

5. The application filed by the accused petitioner under section 72(2) of the BNSS was dismissed vide order dated 31.01.2025.

6. Learned counsel appearing for the accused petitioner submitted that the impugned order dated 31.01.2025, passed by the learned trial Court is perverse, contrary to law and against the principle of governing issuance of warrants. Counsel that in the present case, learned trial Court did not give any reasoning as to whether the issuance of arrest warrant directly is permissible under law considering the fact that since the complaint has been filed after the investigation, only the presence of the accused petitioner has to be secured for the purpose of trial and therefore, in terms of Section 87 and 88 of CrPC, the arrest warrant can only be issued when Court records the satisfaction that issuance of summons will not serve the



purpose. However, the learned trial Court did not took this into consideration the aforesaid facts.

7. Learned counsel also submitted that the CGST/SGST Act is not a complete self-contained code and it is dependent upon the provisions of the CrPC/BNS, as may be applicable at stages, therefore, considering the provision 204(5) CrPC and of Section 87 and 88 of CrPC, the direct issuance of arrest warrant against the accused petitioner is bad in law.

8. Learned counsel further submitted that issuance of non-bailable warrants against the accused petitioner at the first instance is manifestly illegal and contrary to the settled law.

9. Learned counsel for the accused petitioner further submitted that ED Officers cannot arrest an accused when the Special Court has taken cognizance on the complaint in money laundering cases. Drawing parallels, the present case is also governed by a Special Statute and the dictum passed by the Apex Court gets squarely applied to the facts and circumstances of the present case.

10. In support of his submissions, learned counsel has placed reliance upon following judgments delivered by the Hon'ble Apex Court:-

- i) Vikas Vs. State of Rajasthan; (2014) 3 SCC 321;
- ii) Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.; (2022) 10 SCC 51;



iii) Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra; (2012) 9 SCC 791;

(iv) Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office (Criminal Appeal No. 2608/2024) arising out of Special Leave to Appeal (Crl.) No(s). 121/2024 decided on 16.05.2024; and

(v) Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors., reported in (2007) 12 SCC 1.

11. Mr. Ajatshatru Mina learned Special Public Prosecutor with Mr. Akshay Bhardwaj appearing for the Union of India opposed the submissions advanced by the counsel for the accused petitioner and submitted that the impugned order dated 31.01.2025 has been passed by the learned trial Court after going through the entire material which was made available. Learned Special Public Prosecutor appearing for the respondent-department submitted that the allegation against the accused petitioner and co-accused is of evasion of the GST amount around to Rs.2,000 Crores. He further submitted that the offence alleged against the petitioner is a heinous offence and the court below has not committed any error in issuing non-bailable warrants against the accused petitioner for securing his presence. He further submitted that the accused petitioner has not cooperated the department during the course of investigation.



12. In support of submissions, the learned Special Public Prosecutor has relied upon the judgment passed by the Coordinate Bench of this Court in the case of ***Shyam Sunder Singhvi Vs. Union of India (S.B. Criminal Revision Petition No. 273/2019)*** decided on **24.01.2020** along-with other connected petitions and so also the order dated **24.07.2024** passed by the Coordinate Bench of this Court in the case of ***Meena Devi & Anr. vs. Sharad Kumar (S.B. Criminal Revision Petition No. 451/2021)*** & other connected petitions.

13. Considered the submissions advanced by both the counsels appearing for the respective parties and minutely scanned and scrutinized the entire material made available to the Court.

14. The basic issue raised by the counsel appearing for the accused petitioner is that when the cognizance is taken by the Competent Court on a complaint filed after completion of investigation in the matter, his presence can be secured by issuing summons or bailable warrants. Issuing non-bailable warrants for securing the presence of an accused can be resorted only when an accused does not turn up even after service or execution of summons or bailable warrants.

15. In the present case after registration of the case by the respondent- department, summons were issued to the petitioner and in response to the summons the petitioner



appeared before the department and he was interrogated and his statements were recorded on 08.6.2022. The department did not choose to arrest the accused petitioner at the relevant time. Para 11.2 of the complaint speaks of the fact that the accused petitioner during investigation of the matter appeared before the authorities of the Department and his statements were also recorded.

16. Even in the complaint submitted by the respondent – Department, they themselves have not desired to seek arrest / the custody of the accused petitioner.

17. By filing the application under section 72(2) of the BNSS, the petitioner has made a limited prayer that the non-bailable warrants issued against him for securing his personal presence before the court below be converted into bailable warrants and his bail bonds be accepted in view of the fact that he is always ready to appear before the concerned court and he has also cooperated with the investigation in the matter by appearing before the Investigating Officer and got recorded his statements. It is a well settled law that when a cognizance is taken against an accused, at the very first instance for securing his personal appearance before the concerned court, summons or bailable warrants should be issued and the option of issuing non-bailable warrants should only be resorted to if such an accused person does not appear



before the concerned court even after service of summons or bailable warrants.

18. The Hon'ble Apex Court in the case of **Tarsem Lal (supra)** has observed in paras 31, 32 and 33 as under:-

"31. We are informed across the Bar by the learned counsel of the appellants that some of the Special Courts under PMLA are following the practice of taking the accused into custody after they appear pursuant to the summons issued on the complaint. Therefore, the accused are compelled to apply for bail or for anticipatory bail apprehending arrest upon issuance of summons. We cannot countenance a situation where, before the filing of the complaint, the accused is not arrested; after the filing of the complaint, after he appears in compliance with the summons, he is taken into custody and forced to apply for bail. Hence, such a practice, if followed by some Special Courts, is completely illegal. Such a practice may offend the right to liberty guaranteed by Article 21 of the Constitution of India. If ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.



32. *Coming back to the facts of the cases before us, warrants were issued to the appellants as they did not appear before the Special Court after the service of summons. As held earlier, the appellants could have applied for cancellation of warrants issued against them as the warrants were issued only to secure their presence before the Special Court. Instead of applying for cancellation of warrants, the appellants applied for anticipatory bail. All of them were not arrested till the filing of the complaint and have cooperated in the investigation. Therefore, we propose to direct that the warrants issued against the appellants shall stand cancelled subject to the condition of the appellants giving undertakings to the respective Special Courts to regularly and punctually attend the Special Court on all dates fixed unless specifically exempted by the exercise of powers under Section 205CrPC. The second condition will be furnishing bonds to the Special Court in terms of Section 88 CrPC.*

33. *Now, we summarise our conclusions as under:*

33.1. *Once a complaint under Section 44(1)(b) PMLA is filed, it will be governed by Sections 200 to 205CrPC as none of the said provisions are inconsistent with any of the provisions of PMLA;*

33.2. *If the accused was not arrested by ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;*

33.3. *After a summons is issued under Section 204CrPC on taking cognizance of the offence punishable under Section 4 PMLA on a complaint, if the accused appears before the Special Court pursuant to*



the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88CrPC;

33.4. In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205CrPC;

33.5. If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70CrPC. Initially, the Special Court should issue aailable warrant. If it is not possible to effect service of theailable warrant, then the recourse can be taken to issue a non-ailable warrant;

33.6. A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

33.7. In a case where the accused has furnished bonds under Section 88CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Section 70CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; if such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said court on all the dates fixed by it. While cancelling the warrant, the court can always take an undertaking from the accused to appear before the court on every date unless appearance is specifically exempted. When ED has not taken the custody of the



accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

33.8. *When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88CrPC, and the accused will have to apply for cancellation of the warrant;*

33.9. *After cognizance is taken of the offence punishable under Section 4 PMLA based on a complaint under Section 44(1)(b), ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and*

33.10. *If ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when ED wants to conduct a further investigation concerning the same offence, it*



may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."

19. The facts of the case of **Tarsem Lal (supra)** are quite similar to the facts of the present case. In the case of **Tarsem Lal (supra)**, the Hon'ble Apex Court has dealt with the case of accused persons therein who were not arrested after registration of the enforcement case information report till the Special Court took the cognizance against them. The cognizance was taken on the complaint filed under section 44(1)(b) of the PMLA and the Special Court issued warrants for procuring their presence. The present case is on better footings than the case of **Tarsem Lal (supra)** because in that case the accused appellants therein did not appear before the Special Court after summons were served upon them, whereas in the present case the petitioner never avoided his appearance before the Special Court and he has appeared before the Investigating Officer.

20. The Hon'ble Apex Court in the case of **Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors., reported in (2007) 12 SCC 1** has observed as under:-

"53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:



- *it is reasonable to believe that the person will not voluntarily appear in court; or*
- *the police authorities are unable to find the person to serve him with a summon; or*
- *it is considered that the person could harm someone if not placed into custody immediately.*

54. *As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.*

55. *In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."*

21. The Hon'ble Apex Court in the case of **Vikas (supra)** has observed as under:-

"17. *In the legislative history for the purposes of bail, the terms "bailable" and "non-bailable" are mostly used to formally distinguish one of the two classes of cases*



viz. "bailable" offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodised by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 CrPC. The power under Section 319 CrPC being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are reiterated in Inder Mohan Goswami [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] and in State of U.P. v. Poosu [(1976) 3 SCC 1 : 1976 SCC (Cri) 368] , wherein it is mentioned that : (Inder Mohan Goswami case [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] , SCC p. 17, para 53)

"53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result."

This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it



is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case.

18. *The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued.*

19. *In view of the above, we modify the orders passed by the trial court and confirmed by the High Court, and direct that summons be issued against the appellant for his appearance instead of non-bailable warrants which were ordered to be issued against him."*

22. In the case of ***Shyam Sunder Singhvi (supra)***, referred by learned special Public Prosecutor, the Coordinate Bench of this Court in paras 59 and 62 has observed as under:-

"59. *This court finds that time and again the Apex Court has laid down the law that economic offences are required to be dealt with strict approach as these offences affect the economy of the whole Nation and economic offences are committed with a pre-meditated design. This court finds that the economic offences stand on a different footing and they constituent a class apart and need to be visited with a different approach. The economic offences have deep rooted conspiracies and involving huge loss of public funds and thus, need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial*



health of the country. The Apex Court in the case of *Y.S. Jagan Mohan Reddy Vs. CBI* reported in (2013) 7 SSC 439 has considered the nature of economic offences and the relevant portion of the judgment is quoted hereunder:-

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

62. This court finds that the court below has taken into account the nature of allegations levelled against the accused petitioners, role of accused petitioners, impact of the alleged offences on the society and the scope of interference in economic matters by giving undue leverage to the accused petitioners affecting the interest of the society and has accordingly rejected the prayer of the petitioners in rightful manner. The offences under PMLA, 2002 are cognizable and non-bailable, as per Section 45 of the Act."

23. In the case of **Meena Devi (supra)**, as referred by the learned Special Public Prosecutor, the Coordinate Bench of this Court has observed as under:-



"ये निगरानी याचिकाएँ योग्य अधिवक्ता याचीगण द्वारा प्रत्याहृत किए जाने के आधार पर निरस्त की जाकर आदेश दिया जाता है कि याचीगण आज से एक माह के भीतर अधीनस्थ न्यायालय के समक्ष स्वयं को समर्पित करें। इस एक माह की अवधि तक याचीगण के विरुद्ध जारी गिरफ्तारी वारण्ट के निष्पादन की कार्यवाही स्थगित रहेगी। याचीगण द्वारा एक माह की अवधि में स्वयं को विचारण न्यायालय के समक्ष समर्पित नहीं किया जाता है तो यह माना जावेगा कि याचीगण न्यायालय के आदेश की उपेक्षा करते हुए उपस्थिति से बच रहे हैं और विचारण न्यायालय याचीगण/अभियुक्तगण को पुनः गिरफ्तारी वारण्ट से तलब करने के लिए स्वतंत्र होगा।

विचारण न्यायालय को निर्देशित किया जाता है कि याचीगण/अभियुक्तगण द्वारा उनके समक्ष समर्पण किए जाने पर एवं आवेदन पत्र प्रस्तुत करने पर वे दोनों पक्षों को सुनकर आवेदन पत्र का यथाशीघ्र बिना किसी अनुचित विलम्ब के नियमानुसार निस्तारण करें।"

24. Learned Special Public Prosecutor in support of his submissions has also referred the judgment delivered by the Hon'ble Apex Court in the case of **Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Anr., reported in 2024 SCC OnLine SC 726** and submitted that the non-bailable warrants can be issued in the matters where the accused is charged with the heinous crime. He has also submitted that the present case is covered under the category of heinous offence as it relates to evasion of huge amount of GST.

25. In the case of **Tarsem Lal (Supra)**, the Hon'ble Apex Court has deprecated the practice that after filing of the complaint, the accused appears in compliance with the



summons, he is taken into custody and forced to apply for bail that too in a peculiar fact that before filing of the complaint the accused is not arrested. In the present case also the accused petitioner was not arrested before filing the complaint, though he appeared before the Investigating Officer and got recorded his statements.

26. In the case of **Sharif Ahmed (supra)** referred by the learned Special Public Prosecutor also, the Hon'ble Apex Court has observed that "it is a well settled law that the non-bailable warrants cannot be issued in a routine manner and that the liberty of an accused cannot be curtailed unless necessitated by the larger interest of public and the State". It was also observed in para 46 in the aforesaid judgment that the non-bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper / destroy the evidence.

27. The present case may be of serious nature but along-with the seriousness of the matter it is also to be seen that whether the accused is likely to evade the process of law or tamper/ destroy the evidence. In the present case, the accused petitioner is ready to join the process of law and before filing of the complainant he has also appeared before the Investigating Officer and got recorded his statements which clearly shows that there is no likelihood to evade the process of law by the accused petitioner.



The Hon'ble Apex has also observed in the aforesaid judgment that along-with the seriousness of the crime, for issuing the non-bailable warrants, the Special Court is also under an obligation to consider the fact that whether the accused is tampering / destroying the evidence.

28. Though in the complaint filed by the respondent-department they have stated that the employees of the accused petitioner have destroyed the evidence, however, no cognizance has been taken by the Special Court against the accused petitioner for such allegations of tampering or destroying the evidence.

29. In view of the aforesaid discussion, this Court can held that the issuance of non-bailable warrants at the very first instance after taking cognizance for securing the personal presence of the accused is not sustainable.

30. The another issue before the Court is that after converting the non-bailable warrants into bailable warrants if the accused petitioner appears before the concerned Court, whether he / she should be released on bail or he has to move an application for regular bail. In support of his submissions, counsel appearing for the accused petitioner has relied upon the order passed by the Coordinate Bench of this Court in the case of **Directorate of Enforcement Vs. Piyush Jain & Anr., (S.B. Criminal Bail Cancellation Application No.40/2024), decided on 21.08.2024 and**



other connected matters. In the case of **Piyush Jain (supra)**, the Coordinate Bench of this Court in paras 15 and 16 has observed as under:-

"15. तरसेम लाल के मार्गदर्शक निर्णय तथा बिजय केतन व नलिनी पृष्टि के मामले में पश्चात्वर्ती पारित आदेशों से यह स्पष्ट है कि जहां अभियुक्तगण को अनुसंधान अधिकारी द्वारा धारा 19 "अधिनियम 2002" के प्रावधानों का प्रयोग करते हुए गिरफ्तार नहीं करने के विकल्प का प्रयोग किया गया है, तो ऐसी स्थिति में परिवाद प्रस्तुत होने के बाद धारा 200-205 दण्ड प्रक्रिया संहिता के प्रावधान लागू होते हैं। चूंकि अभियुक्त अभिरक्षा में नहीं है अतः जमानत पर रिहाई का प्रश्न उत्पन्न नहीं होता है और धारा 45 "अधिनियम 2002" के प्रावधान किसी भी रूप में आकृष्ट नहीं होते हैं। उपरोक्त विधिक व्यवस्था की कसौटी पर देखा जाए तो विचारण न्यायालय द्वारा अभियुक्तगण को विचारण के दौरान उनकी नियमित उपस्थिति हेतु बंधपत्र निष्पादित करने का जो आदेश दिया है वह जमानत आदेश की श्रेणी में नहीं आता है, अतः ऐसी स्थिति में धारा 437, 439 व 439(2) दण्ड प्रक्रिया संहिता के प्रावधान आकृष्ट नहीं होते हैं।

16. विद्वान एएसजी का यह निवेदन रहा है कि अभियुक्तगण द्वारा कारित अपराध भारत की अर्थव्यवस्था के प्रतिकूल होकर गंभीर प्रकृति का अपराध है, अभियुक्तगण के विरुद्ध प्रारंभ से लेकर अंत तक इस अपराध के संबंध में सुदृढ़ दस्तावेजी व मौखिक साक्ष्य रही है, अतः ऐसी स्थिति में वे धारा 88 दण्ड प्रक्रिया संहिता के प्रावधानों की आड़ में अभियुक्तगण रिहा होने योग्य नहीं है। यहां यह उल्लेखनीय है कि जब अपराध प्रवर्तन निदेशालय के अनुसार इतना गंभीर था और उनके पास शुरू से सुदृढ़ साक्ष्य व सामग्री अभियुक्तगण के विरुद्ध रही तो उन्हें अनुसंधान के दौरान गिरफ्तार नहीं करने का निर्णय क्यों लिया गया इसका कोई



स्पष्टीकरण या उचित आधार विद्वान एसजी बताने में पूर्णतः
असफल रहे हैं।"

31. The learned Special Public Prosecutor relying upon the order passed by the Coordinate Bench of this Court in the case of **Meena Devi (supra)** submitted that the non-bailable warrants issued against the accused petitioner for securing his presence may be converted into bailable warrants but the accused has to submit the regular bail application to be decided by the Special Court.

32. In the case of **Tarsem Lal (supra)**, the Hon'ble Apex Court has observed in para 33.3 as under:-

"33.3. After a summons is issued under Section 204CrPC on taking cognizance of the offence punishable under Section 4 PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88CrPC."

33. This Court while dealing with the similar situation in the case of **Sunil Kumar Singh Vs. State of Rajasthan (S.B. Criminal Misc. (Petition) No.649/2025) decided on 06.03.2025**, relying upon the order dated 02.07.2024 passed in S.B. Criminal Misc Petition No. 3860/2024 (Iti Mathur Vs. State of Rajasthan & Anr.), the order dated 23.04.2019 passed in S.B. Criminal Misc. Petition No.



2381/2019 (Kanhaiyalal & Anr. Vs. State of Rajasthan & Anr.) and the judgment passed by the Hon'ble Apex Court in the case of **Vikas Vs. State of Rajasthan, reported on (2014) 3 SCC 321** converted the non-bailable warrants into bailable warrants.

34. The court below while dismissing the application filed by the accused petitioner under section 72(2) of the BNSS on 31.01.2025 has only observed that after taking cognizance and issuance of non-bailable warrants against the petitioner vide order dated 03.08.2024, finds no substantial change of circumstances and also hold that the allegations against the accused petitioner are of serious nature.

In the case of **Sharif Ahmed (supra)** the Hon'ble Apex Court while dealing with such situation has observed that "the Court is supposed to take into consideration along-with the seriousness of the crime the fact that the accused is likely to evade the process of law or tamper/ destroy the evidence". On consideration of the facts of the case and the averments made in the plaint and there being no allegation of tampering/ destroying with the evidence and further the fact that the accused petitioner is giving assurance to join the process of law and more particularly the fact that the accused petitioner before filing of the complaint appeared before the Investigating Officer and got recorded his statements. The Court feels that the court below while dismissing the



application for conversion of non-bailable warrants into the bailable warrants has not appreciated the complete material and also the settled law.

35. The learned court below while dismissing the application for conversion of non-bailable warrants into the bailable warrants vide impugned order dated 31.01.2025 has observed that after the order of taking cognizance dated 03.08.2024 and issuance of non-bailable warrants for securing the presence of the accused petitioner, there is no substantial change in the matter which could persuade the Court to allow the application filed by the accused petitioner under section 72(2) of the BNSS. Section 72(2) of the BNSS clearly empowers the Court below to cancel every such warrant of arrest issued by the Court under the Sanhita. The petitioner has approached the Court below with the assurance that he will not evade the process of law and would like to join the trial. To support, certain judgements were also cited before the trial court. The learned court below has not even cared to discuss whether what purpose would be served by summoning the accused petitioner by non-bailable warrants when he is ready to join the process of law by appearing before the Court. The court below has only considered the issue that the matter pertains to evasion of huge GST amount. Only an amount cannot be a ground for dismissal of the application. The court below was under an obligation to



see whether there is likelihood on the part of the accused petitioner of evading the process of law or he may tamper / destroy the evidence, as has been observed by the Hon'ble Apex Court in the case of **Sharif Ahmed (supra)**. This Court in view of the assurance given by the petitioner so as to join the trial and there is no evidence or cognizance against the accused petitioner as regards tampering/ destroying the evidence, feels that it is a fit case where the accused petitioner should be allowed the process of law by appearing before the court below without there being non-bailable warrants.

36. The allegation against the accused petitioner and the co-accused is that they have evaded the GST of amount around Rs.2,000 Crores. On a query put forth by the Court, the learned Special Public Prosecutor replied that the accused petitioner and co-accused have paid the GST amounting to Rs.1077 Crores. The petitioner along-with other persons are doing their business and contributing to the Nation's economy and are also generating the employment. The employment is the backbone of a developing country.

37. Whether the allegation of evasion of GST amount made against the accused petitioner and the co-accused are correct or false, is to be decided by the Competent Court on the basis of the evidence of the parties. The petitioner during the course of investigation has appeared before the



Investigating Officer on receipt of summons and has been interrogated and his statements have also been recorded as required under the CGST Act.

38. There is an assurance from the petitioner that he will join the process of law and will never evade the process of law or tamper / destroy the evidence.

The presumption of innocence is available to a person under the fundamental principles of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by the Competent Court. The Hon'ble Apex Court in the case of **Ramesh v. State of Karnataka, reported in 2024(9) SCC 169** has made observations as regards the presumption of innocence.

39. Taking into consideration the overall facts and circumstances of the case and the discussion made above, the Court is of the opinion that it is a fit case to exercise the inherent jurisdiction.

40. Accordingly, the criminal misc. petition filed by the accused petitioner is allowed. The order dated 31.01.2025 passed by the Court of learned Addl. Chief Judicial Magistrate (Economic Offence), Jaipur Metro-II in Criminal Misc Case No. 06/2025 (Union of India Vs. M/s. Miraj Products Limited & Anr.) is quashed and set aside. The application dated 25.09.2024 filed by the accused petitioner under section 72(2) of the BNSS is allowed. The non-bailable warrants



issued against the accused petitioner vide order dated 03.08.2024 are converted into the bailable warrants. The accused petitioner shall appear before the Court of Addl. Chief Judicial Magistrate (Economic Offence), Jaipur Metropolitan-II within a period of one month from today.

41. If the accused petitioner appears before the Court concerned within the given time, he shall not be treated as he is in custody and therefore, it is not necessary for him to apply for bail. However, the Court concerned can direct the accused petitioner to furnish the bail bonds to its satisfaction so as to secure his presence before the trial court as and when desired.

42. In view of the order passed in the main petition, the stay application and pending application/s, if any also stand disposed of.

(GANESH RAN MEENA),J

Sharma NK/Deputy Registrar