

Radhika Agarwal v. Union of India and Others

Case number: Writ Petition (Criminal) No. 336 of 2018 and connected matters

Citation: 2025 INSC 272 **Decision date:** 2025-02-27

GST summons and arrest powers, evidence-based safeguards, coerced recovery and anticipatory bail; separate Customs analysis

Court: Supreme Court

Bench: Sanjiv Khanna, CJI; Bela M. Trivedi and M.M. Sundresh, JJ. Principal judgment by Khanna, CJI, joined by Sundresh, J.; separate concurring opinion by Trivedi, J.

Decision stage: Common judgment deciding constitutional and arrest-power questions; individual matters directed to be listed for final hearing and disposal

01 Facts

A large group of writ petitions, appeals and connected proceedings questioned arrest powers under the Customs and GST statutes and the safeguards governing their exercise. The GST petitioners challenged the legislative competence to enact sections 69 and 70, contending that the power under Article 246-A to levy and collect GST did not extend to criminal enforcement. Other issues included whether arrest must await completion of tax assessment, whether criminal-procedure protections apply, the availability of anticipatory bail before an FIR, and allegations that tax payments were extracted by threats of arrest. The Customs challenges were considered against amendments enacted after Om Prakash, which had addressed the earlier statutory classification of offences. This common judgment resolved those legal questions; it did not set out and finally adjudicate every petitioner's alleged evasion, liability or entitlement to bail. The official file contains two opinions: a principal judgment signed by Chief Justice Sanjiv Khanna and Justice M.M. Sundresh, and a separate concurrence by Justice Bela M. Trivedi. Their paragraph numbering is independent.

Pinpoint: Principal judgment paragraphs 2-4, 48-60, 63, 69-78; official PDF pages 12-14, 40-48, 52-53 and 57-63. Trivedi J., paragraph 1, official PDF page 64 (separate opinion page 1).

02 Court Discussion

The principal judgment upheld legislative competence. Article 246-A supplies both the source of power and the field of GST legislation. Its broad scope extends to measures ancillary to effective levy and collection, including prevention of evasion, summons, arrest and prosecution. The challenge to sections 69 and 70 therefore failed. GST legislation is nevertheless not an exhaustive criminal-procedure code. Through sections 4 and 5 of the CrPC, ordinary procedural safeguards apply unless expressly or impliedly excluded by the special statute. Section 67(10) itself imports search-and-seizure procedure with the specified modification.

For GST arrest, the judgment first records the text of section 69(1), which refers to section 132(1)(a)-(d), punishable under clauses (i) or (ii), or section 132(2). It then focuses on cognizable, non-bailable offences under section 132(5): the specified (a)-(d) offences with the relevant amount exceeding Rs. 5 crore. It records Revenue's submission that arrests were made only in that non-bailable category. In that setting, paragraphs 56-59 require the Commissioner to record evidence-based reasons establishing the offence and its monetary threshold, supported by relevant and sufficient material and a reasoned computation.

Suspicion or an unsupported assertion does not suffice; arrest cannot be used merely to investigate whether those statutory conditions exist. This account must be read with the wider text of section 69 reproduced in the judgment, rather than as an unqualified rewriting of all its clauses.

A completed assessment is not an invariable prerequisite. Where the offence and monetary threshold can be established with sufficient certainty from available material, the Commissioner may authorise arrest before a formal assessment order. Reasons must expressly connect the evidence to the statutory conditions, and the Commissioner and Magistrate must not ignore the benefit-of-doubt principle. Conversely, the existence of an arrest power does not make arrest routine or compulsory. The Court requires observance of the CBIC instructions, applicable CrPC protections and D.K. Basu safeguards. Those cover documented authorisation, arrest records, communication of grounds, notification of a nominated person, health and safety, and appropriate post-arrest procedure. The judgment records the January 2025 instruction requiring written grounds as an annexure to the arrest memo, with acknowledgement. It also applies the relevant Customs discussion to GST record-keeping, arresting-officer obligations and arrested-person rights.

The Customs analysis separately rejects the claim that customs officers are police officers and recognises the post-amendment offence classifications. It requires reasoned, material-based satisfaction, justification of monetary thresholds and written grounds before production before the Magistrate. The principal opinion applies the safeguards and judicial-review reasoning discussed in Arvind Kejriwal to Customs arrest and, in the specified respects, GST arrest. This includes scrutiny of statutory preconditions and the decision-making process, with reasons-to-believe disclosure subject to justified, court-supervised redaction in exceptional cases. Judicial review is not a mini-trial or an appellate assessment of the sufficiency of evidence. It can address absence of supporting material, perversity, lack of a rational connection, legal misdirection, irrelevant considerations or failure to consider relevant matters. The distinct Customs offence thresholds must not be imported into a domestic GST case.

Tax payment during inquiry must remain voluntary. Section 74(5) does not permit extraction of payment by threatening arrest. A taxpayer subjected to unlawful coercion may approach a court for refund, and departmental action against responsible officers is contemplated; the judgment does not itself award a refund to every petitioner. A section 70 summons does not, by itself, make the recipient an accused protected by Article 20(3). Anticipatory bail may be sought before an FIR if concrete facts provide a reasonable apprehension of arrest. The principal judgment expressly says contrary GST decisions identified in footnote 56 should not be treated as binding; this is its treatment of those decisions as at the judgment date.

Trivedi J. expressly agrees with the Chief Justice on when and how arrest powers should be exercised. Both opinions insist on authorised officers, material-based recorded belief and compliance with constitutional and statutory safeguards, and both reject merits reappraisal as judicial review. Her separate opinion places greater emphasis on judicial restraint: it excludes scrutiny of adequacy of material or correctness of factual belief at a nascent investigation stage, cautions against magnifying minor procedural lapses, and limits intervention to manifest arbitrariness or gross breach or non-compliance with safeguards. This is a difference in the stated scope and intensity of review, not a dissent from the validity of the arrest powers or from the need for safeguards. The two-judge principal opinion remains the majority account of the review principles; the narrower observations in the concurrence should not be presented as replacing it.

Pinpoint: Principal judgment paragraphs 13-29 (procedure and Customs), 30-47 (arrest review and written grounds), 50-62 (GST safeguards), 63-71 (coercion, summons, anticipatory bail and assessment), and 72-75 (competence); PDF pages 18-40, 40-52, 52-59 and 59-62. Separate opinion paragraphs 1, 4, 6-13; PDF pages 64, 66-67 and 68-76.

03 Decision

The Court rejected the constitutional challenges and the challenge to the right of authorised officers under the Customs and GST Acts to arrest, subject to its explanation of the prerequisites and manner of exercising the power. The GST challenge to sections 69 and 70 on legislative competence was expressly rejected. The Court declined to examine section 135, concerning culpable mental state, because prosecution had not begun in the relevant cases; an aggrieved person could pursue an advised challenge before the High Court. Crucially, paragraph 78 directed the matters to be listed before an appropriate Bench in the week commencing 17 March 2025 for final hearing and disposal. The common judgment therefore did not finally dispose of every individual petition, uphold every impugned arrest, adjudicate tax demands or grant universal bail or refunds. Trivedi J.'s separate opinion added her judicial-review observations and did not substitute a different operative disposal.

Pinpoint: Principal judgment paragraphs 48, 75-78, PDF pages 40 and 62-63; Trivedi J., paragraphs 1 and 13, PDF pages 64 and 75-76.

04 In Favour Of

Union/Revenue on validity and no universal pre-assessment bar; taxpayer safeguards clarified; individual merits reserved

In favour of the Union/Revenue on the constitutional validity of the challenged enforcement powers and against a universal rule that assessment must precede arrest. Taxpayers obtained authoritative clarification of enforceable arrest safeguards, protection against coerced recovery and the availability of anticipatory bail on a properly grounded apprehension even before an FIR. This is a mixed result on the common questions, with case-specific final hearing and disposal expressly left for a later Bench. The listing direction establishes the procedural position on 27 February 2025 only; it does not certify that any named petition remains pending today.

Pinpoint: Principal judgment paragraphs 56-62, 65, 67-70 and 75-78, PDF pages 46-52, 54-55, 57-58 and 62-63.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: In a GST arrest or summons matter, identify the precise offence, the statutory version applicable to the alleged conduct and procedure, the person's alleged role, the amount and computation, and the materials connecting that person to the offence. Preserve summons responses, contemporaneous books and invoices, evidence of cooperation, the authorisation and arrest memo, written grounds, acknowledgements and details of communication to relatives or another nominated person. Analyse the Commissioner's recorded reasons against each statutory condition. The absence of a completed assessment, by itself, is insufficient to defeat arrest; equally, a large investigation estimate, a summons or a suspicion does not dispense with the required evidentiary foundation. Record any demand to pay under threat contemporaneously and distinguish a genuinely voluntary payment from one allegedly extracted by coercion. Refund relief requires the facts and legal basis to be established in the appropriate proceedings. Seek anticipatory-bail advice when a fact-based apprehension arises rather than assuming an FIR must already exist. Frame an arrest challenge around statutory authority, procedural compliance and legally reviewable defects; neither opinion licenses a premature trial of the tax case. Cite the two opinions separately when addressing the intensity of review, and keep Customs-specific classifications distinct from GST. This note concerns the law and common questions addressed on 27 February 2025. Verify applicable amendments, current criminal-procedure provisions and savings, later binding decisions, and the separate disposal of the relevant connected case before using it in live proceedings.

Pinpoint: AKHB analysis based on principal judgment paragraphs 44-47, 50-62, 63-71 and 75-78, and separate opinion paragraphs 6-13. These practical steps are commentary, not additional directions issued by the Court.

Sources and limitations

Relevant provisions

Constitution of India: Articles 20(3), 21, 22(1), 32, 226 and 246-A

Central and State GST Acts: sections 67(10), 69, 70, 73(5), 74(5), 79, 132 and 135, in the statutory framework considered on 27 February 2025

Code of Criminal Procedure, 1973: sections 4, 5, 41-B, 41-D, 50, 50-A, 55-A, 167, 172 and 438, as discussed in the judgment

Customs Act, 1962: section 104, including its 2012, 2013 and 2019 amendments, and sections 132, 133, 135, 135-A and 136

CBIC GST-Investigation Instruction No. 01/2022-23 dated 25 May 2022; Instruction No. 02/2022-23 dated 17 August 2022; Instruction No. 01/2025-GST dated 13 January 2025

Statutory note

Historical judgment scope: the statutory provisions and CBIC instructions are described as considered by the Court on 27 February 2025. The judgment discusses the CrPC, 1973; this note does not substitute its section numbers or custody timelines for those applicable under the BNSS and any relevant savings in a current proceeding. Its section 132(5) discussion concerns the specified cognizable, non-bailable GST category and must be read with the complete section 69 text and the Revenue position recorded in paragraphs 52-56. No subsequent amendment or current consolidation audit has been completed. The voluntary-payment discussion is not an exemption from statutory interest or penalty.

Treatment note

Primary judgment and both opinions verified on 12 October 2026. No comprehensive subsequent-treatment search, review-petition check, later connected-case disposal audit, or current statutory update has been completed. The later-listing direction is reported historically, not as present-day docket status. This is an AI-assisted source-based AKHB research note, not evidence of human legal review and not a substitute for advice on the reader's facts.

Scope of source review

Complete 76-page official file read: principal judgment, PDF pages 1-63, paragraphs 2-78 following the opening grant of leave; separate opinion, PDF pages 64-76, paragraphs 1-13. Cover citation, lead case number and both signed dates/benches checked. Connected appeal numbers left blank on the cover have not been invented. All paragraph references identify which opinion is cited.

Primary source

Source description: Supreme Court of India official signed common judgment dated 27 February 2025, including both opinions

Official source: [Open source document](#)

AKHB source PDF: [Open source document](#)

Judges: Sanjiv Khanna; Bela M. Trivedi; M.M. Sundresh

Outcome kind: mixed

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