

Union of India v. Sunil Biyani

Case number: Criminal Appeal No. 3795 of 2026

Citation: 2026 INSC 849; [2026] 9 SCR 27

Decision date: 2026-08-12

GST arrest procedure: protection after dismissal of anticipatory-bail application and prior communication of section 69 authorisation

Court: Supreme Court

Bench: Dipankar Datta and Sheel Nagu, JJ.; judgment by Dipankar Datta, J.

Decision stage: Final disposal of criminal appeal with mixed procedural directions

01 Facts

DGGI's Mumbai Zonal Unit was investigating Alphaneon Techsolutions Pvt. Ltd. and group entities for alleged wrongful ITC without actual supplies, circular invoicing and non-payment of GST on imported services. Sunil Biyani was present at an inspection and acknowledged it. After three section 70 summonses, requests for adjournment and rejection of his anticipatory-bail application by the Sessions Court on 14 October 2025, he approached the Bombay High Court. He appeared and gave a statement pursuant to interim directions. The Department's High Court affidavit stated that no section 69 arrest-authorisation order had been passed because the investigation and verification were at an early stage. On 13 February 2026, in ABA No. 3001 of 2025, the High Court rejected anticipatory bail but directed that, if an authorisation were passed, he should not be arrested for one week from its intimation. The Union appealed that protection. Biyani did not challenge rejection of anticipatory bail. The issues were whether protection could survive dismissal of a non-maintainable bail application and whether the Commissioner's section 69 order had to be communicated before arrest.

Pinpoint: Paragraphs 1-7, official SCR PDF pages 3-6 (reported pages 29-32); case origin on page 3.

02 Court Discussion

The Court recorded the accepted position, drawn from Radhika Agarwal, that a person summoned under section 70 is not merely for that reason an accused attracting Article 20(3). On this record, where Biyani had only been summoned and no section 69 order existed at the relevant stage, the unchallenged rejection of anticipatory bail stood affirmed. Applying the principle that interim relief must aid a maintainable principal proceeding, and relying on Madan Gopal Rungta and Hema Mishra, the Court held that a High Court or Sessions Court dismissing a pre-arrest-bail application as non-maintainable cannot simultaneously grant or extend protection of the interim kind available during its pendency. The Court then addressed section 69 separately. The Commissioner's authorisation must be founded on reasons to believe supported by underlying material and evidence and showing application of mind. Accepting the respondent's argument that communication was necessary to make an available remedy effective, the Court required the order to be communicated before arrest. Its reasoning links disclosure and judicial scrutiny of the recorded reasons to personal liberty, anticipatory bail and constitutional judicial review. Rule 8's requirement to furnish email and mobile details permits electronic communication in addition to modes permitted under the BNSS and other lawful modes. The judgment removes the High Court's fixed one-week shield, but retains the requirement of communication; it creates no replacement seven-day waiting period. It makes no finding that the underlying alleged tax offences occurred.

Pinpoint: Paragraphs 5-12, PDF pages 5-9; paragraphs 13-22, pages 9-12. Reasons to believe: paragraph 15, page 10. Prior communication and remedies: paragraphs 18-22, pages 10-12. Merits reservation: paragraph 24, pages 12-13.

03 Decision

The Court set aside paragraph 6 of the High Court's order granting one week's protection from arrest after intimation of a section 69 authorisation. It required the Commissioner to communicate the section 69 order to the respondent through the indicated permissible modes, after which he could pursue an advised legal remedy. It expressly reiterated that arrest could not arise without that communication. The criminal appeal was disposed of on those terms, and connected applications were closed. The Court directed that the pending investigation proceed uninfluenced by its observations, which were confined to the legal questions and were not findings on facts or the merits.

Pinpoint: Paragraphs 12 and 21-25, PDF pages 9 and 12-13 (reported pages 35 and 38-39).

04 In Favour Of

Mixed: Union on removal of one-week protection; Sunil Biyani on mandatory pre-arrest communication of section 69 authorisation

Mixed procedural outcome. The Union succeeded in removing the High Court's one-week post-dismissal protection, and rejection of the then-premature anticipatory-bail application remained affirmed. Biyani obtained the safeguard that the section 69 authorisation be communicated before any arrest, preserving access to lawful remedies. This was neither a grant of anticipatory bail nor an acquittal, and it was not a Revenue victory on tax liability or culpability.

Pinpoint: Paragraphs 3, 6, 11-12 and 18-25, PDF pages 4-5 and 8-13.

05 AKHB REVIEW POINT

AKHB REVIEW POINT: Identify the exact procedural stage: a summons, a recorded arrest authorisation, its communication and an actual arrest are distinct events. Preserve the summonses, replies, authorisation, recorded reasons and evidence of the time and method of communication. Test the Commissioner's reasons against the statutory offence conditions and material rather than treating issuance of a summons as proof of guilt. A dismissed non-maintainable bail application cannot supply a continuing interim shield under this decision. If authorisation is communicated, consider the available bail or judicial-review remedy urgently; the judgment does not guarantee a one-week interval or the eventual grant of bail. Communication alone should not be treated as curing every substantive or procedural defect in an arrest. Keep the tax assessment, admissibility of credit, criminal allegations and personal-liberty remedies analytically separate. For current advice, check enactment and commencement before relying on the GST Council's 8 October 2026 recommendation to omit arrest powers; a recommendation is not proof that section 69 has ceased to operate.

Pinpoint: AKHB analysis based on paragraphs 5-6, 11-22 and 24, PDF pages 5 and 8-13; later proposal separately identified in the statutory note.

Sources and limitations

Relevant provisions

Central Goods and Services Tax Act, 2017: sections 69, 70 and 132, as reproduced and considered in the judgment

Central Goods and Services Tax Rules, 2017: rule 8 (registration contact details and electronic communication)

Code of Criminal Procedure, 1973: section 438; corresponding section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, as identified by the Court

Constitution of India: Articles 20(3), 21 and 226

Statutory note

The judgment construed section 69 as it stood for the issue before it and discussed section 438 CrPC alongside the corresponding section 482 BNSS. It does not decide the admissibility of the disputed ITC or quantify tax, penalty or criminal liability. On 8 October 2026, the GST Council recommended omission of section 69 and changes to prosecution provisions. The official PIB release, item 11.1, and Council FAQs, page 29, questions 13-15, frame these as recommendations/proposed amendments. They do not themselves establish enactment, notification or commencement. Those implementation steps have not been verified in this note, so it neither asserts that arrest powers have already been removed nor certifies the complete current statutory position.

Treatment note

Complete primary reported judgment checked on 12 October 2026. A comprehensive subsequent-treatment, review/clarification and individual-case docket check has not been completed. The section 69 communication direction is reported as the Court's decision, without a claim that the respondent subsequently received an order or was arrested. The separately verified October 2026 Council proposal is a legislative-development caution, not evidence that this judgment has been overruled or that its underlying statute has already changed. This AI-assisted AKHB research note is based on identified primary material. It does not represent verified human legal review and is not a substitute for professional advice on a particular case.

Scope of source review

All 13 pages of the official SCR rendition were read. Pages 1-2 and the first part of page 3 contain editorial report material; the Court's judgment is paragraphs 1-25 on PDF pages 3-13 (reported pages 29-39). The reported cover and case-origin section verify title, appeal number, date, citations and bench; the judgment identifies the author. This is an official reported rendition, not a signed-original facsimile. The eSCR-generated URL may expire, so the preserved source bytes and hash identify the reviewed copy. The Court's reasons and operative paragraphs, rather than the headnote alone, support this note. No later arrest, authorisation, bail order or investigation outcome has been verified.

Primary source

Source description: Official Supreme Court Reports rendition of the judgment dated 12 August 2026

Official source: [Open source document](#)

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

Judges: Dipankar Datta; Sheel Nagu

Outcome type: final

Later development sources

Entry 1

Source: PIB official release of the 57th GST Council recommendations, 8 October 2026

Source document: [Open source document](#)

Pinpoint: Items 11.1-11.2; proposed omission of section 69 and prosecution changes.

Entry 2

Source: GST Council official FAQs on the 57th meeting recommendations

Source document: [Open source document](#)

Pinpoint: PDF page 29, questions 13-15; express proposed-amendment language.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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