# No GST Arrest Until the Order Reaches You

SUPREME COURT, 12 AUGUST 2026

**Union of India v. Sunil Biyani, 2026 INSC 849**

The Section 69 order authorising your arrest must now be communicated to you BEFORE the arrest. Without that communication, in the Court's own words, "question of arrest would not arise."

GST | SECTION 69 CGST ACT | DIRECTOR LIABILITY | FOUNDER RISK

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# Two Holdings. The Department Won the Appeal and Lost the Point That Matters.

**Bench:** Dipankar Datta J. (author) and Sheel Nagu J. Criminal Appeal arising out of SLP (Crl.) No. 12535 of 2026, decided at New Delhi on 12 August 2026.

### HOLDING ONE (paragraph 11)

A High Court or Sessions Court dismissing a pre-arrest bail application as not maintainable CANNOT attach protection from arrest to that dismissal. Interim relief is ancillary to the main relief; when the application falls, so does the protection.

### HOLDING TWO (paragraphs 18 and 22)

The order under Section 69 of the CGST Act, 2017 must be communicated to the person sought to be arrested, BEFORE arrest. The Court read this requirement into a statute that does not contain it on its own text.

**NET EFFECT:** You lose the protective cushion you could once collect at the summons stage. You gain a rule that you cannot be picked up without first being told.

# The "File Early, Collect a Protective Order" Strategy Is Now Closed

### What the Bombay High Court Did

On 13 February 2026, it rejected Sunil Biyani's anticipatory bail application as premature because no Section 69 order existed, and then granted him one week's protection from arrest from the date of intimation of any future order.

The Supreme Court set that direction aside at paragraph 12.

### The Legal Lineage

1. **State of Orissa v. Madan Gopal Rungta, 1951 SCC 1024**

   Five judge Bench held that interim relief can be granted "only in aid of and as ancillary to the main relief."

2. **Hema Mishra v. State of U.P., (2014) 4 SCC 453**

   Applied to criminal matters.

3. **Mangal Rajendra Kamthe v. Tahsildar, Purandhar, 2026 SCC OnLine SC 297**

   Restated the principle.

**PRACTICAL CONSEQUENCE:** Filing at the summons stage now buys you a dismissal and nothing else. Money and legal capital spent for zero protection.

# Why the Court Read a Communication Requirement Into Section 69

The standard from **Radhika Agarwal v. Union of India, (2025) 6 SCC 545** anchors the reasoning. The Court built its holding in four steps.

1

### STEP ONE

The order must be preceded by "reasons to believe", referring to underlying material and evidence and showing application of mind.

2

### STEP TWO

A person merely summoned under Section 70 is NOT an accused. That is why a bail application at the summons stage is premature. The Section 69 order is "a sine qua non to maintain an application seeking such bail."

3

### STEP THREE

The catch 22: without the order you cannot apply for anticipatory bail; without communication you never learn the order exists to challenge it.

4

### STEP FOUR

Paragraph 18: "it would be an anomaly to hold that the order need not be communicated at all, much less, be communicated after the arrest of such person. In any case, communication of the order would not, in any manner, obstruct the investigation."

Paragraph 20 adds a second, independent reason: without disclosure of the reasons, you cannot test them, and "withholding of reasons could have drastic consequences on the right to liberty of the accused."

# Your GST Registration Email Is Now a Liberty Critical Field

At paragraph 21 the Court supplied the mechanics. Rule 8 of the Central Goods and Services Tax Rules, 2017 requires every applicant for registration to declare a mobile number and an e-mail address in Part A of FORM GST REG-01, each verified by a separate one time password.

The Department therefore already holds a working electronic address for every registrant.

> The Section 69 order "may be communicated through electronic means in addition to the mode, as permitted under the BNSS, as well as all other permissible modes of communication."

### The Risk

If the e-mail on your GST registration routes to a former employee, a lapsed consultant, or an inbox nobody opens, a liberty affecting order can be validly served on you and you will not know.

### The Standard

Electronic service is expressly permitted, not merely tolerated. Do not expect a paper order hand delivered to your office.

**Action required this week:** Check the e-mail and mobile on every GSTIN you are an officer of.

# The Threshold Map: Section 69 Read With Section 132

Not every GST default can lead to arrest. The power is tied to specific offences at specific monetary levels.

**WHICH OFFENCES:** only clauses (a) to (d) of Section 132(1). Supply without invoice to evade tax; invoice without supply leading to wrongful input tax credit or refund; availing that credit or fraudulently availing credit without any invoice; collecting tax and not paying it over for more than three months.

| Threshold | Provision | Maximum Imprisonment | Offence Classification |
|---|---|---|---|
| **Above Rs 5 Crore** | Section 132(1)(i) | Up to five years | COGNIZABLE AND NON BAILABLE under Section 132(5) |
| **Rs 2 Crore to Rs 5 Crore** | Section 132(1)(ii) | Up to three years | NON COGNIZABLE AND BAILABLE under Section 132(4) |

### Grounds of Arrest: Section 69(2)

For a Section 132(5) offence the officer must inform you of the grounds and produce you before a Magistrate within twenty four hours.

### Prosecution Sanction: Section 132(6)

No prosecution without the previous sanction of the Commissioner.

⚠ The Rs 2 crore to Rs 5 crore band is routinely blurred in practice. Pin it down early in any investigation file.

# The Sequence Any Founder Under Investigation Will Recognise

DGGI Mumbai Zonal Unit investigates M/s Alphaneon Techsolutions Pvt. Ltd. and group entities. Allegations recorded: wrongful availment and passing on of input tax credit without actual supply, circular invoicing, non payment of GST on import of services.

**STEP 1** (1)

Three summonses issued under Section 70. Instead of appearing, adjournments were sought.

**STEP 2** (2)

Anticipatory bail before the Sessions Court, Mumbai. Rejected on 14 October 2025.

**STEP 3** (3)

Bombay High Court, ABA No. 3001 of 2025. Under interim directions he did appear and his statement was recorded.

**STEP 4** (4)

The Department files an affidavit: NO Section 69 order has been passed, investigation at a nascent stage.

**STEP 5** (5)

High Court rejects the application on 13 February 2026, then grants one week's protection anyway.

**STEP 6** (6)

Union of India appeals only the protective direction. Supreme Court decides on 12 August 2026.

The non appearance is what converted a document request into a two year litigation.

# Three Things in the Judgment the Coverage Left Out

### ONE: Section 438 CrPC Is Now Section 482 BNSS

At paragraph 19 the Court expressly maps the anticipatory bail provision to Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. If your counsel is still drafting under Section 438 CrPC, the citation is stale.

### TWO: The Liberty Reasoning Is Constitutional, Not Procedural

The Court relied on the five judge Bench in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 and on Maneka Gandhi, cautioning against "an over-generous infusion of constraints and conditions" and anchoring the analysis in Article 21.

### THREE: The Communication Rule Reinforces Sushila Aggarwal

Paragraph 18 ties the holding to Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, so this is not a narrow GST point. It is the anticipatory bail framework applied to a tax statute.

**AND ONE LIMIT:** Paragraph 24 states the observations "are confined to the extent necessary to address the point of law canvassed and do not constitute a finding on facts or the merits." The investigation proceeds uninfluenced.

# Seven Actions for Any Director, Promoter or CFO

Act on these before an investigation reaches your door.

1. **VERIFY GST Registration Data**

   Verify the e-mail address and mobile number on the GST registration of every entity you are an officer of. Rule 8 data is now the channel for a liberty affecting order. Fix any dormant address this week.

2. **ATTEND the Section 70 Summons**

   A summons is not an accusation. Non attendance converts a document request into an adverse inference, and it is exactly what put this taxpayer in front of the Supreme Court.

3. **DO NOT Rush to Court at the Summons Stage**

   The application will be dismissed as premature and the court can no longer soften it.

4. **ASK IN WRITING About Section 69**

   Ask in writing whether an order under Section 69 has been passed. The Department's own affidavit on that question is what defined the stage of these proceedings.

5. **WHEN THE ORDER ARRIVES, Two Clocks Start**

   Your right to seek pre-arrest bail, and your right to challenge the sufficiency of the reasons to believe by judicial review. Brief counsel before that day.

6. **PRESERVE THE EXIT TRAIL If You Have Resigned**

   DIR-11, DIR-12, board resolution and e-mail acknowledgement in one folder.

7. **SEPARATE Entity Exposure From Officer Exposure**

   A demand on the company and a Section 69 order against an individual are different instruments with different consequences. Map who is exposed before an investigation starts.

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