



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CRIMINAL APPLICATION NO. 10436 of 2019**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE R.M.CHHAYA** Sd/-

**and**

**HONOURABLE MR.JUSTICE PARESH UPADHYAY** Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

**DEEP SURESH GADHECHA** ...APPLICANT

Versus

**STATE OF GUJARAT & ORS.** ...OPPONENTS

Appearance :

MR SHALIN MEHTA, SENIOR ADVOCATE with  
MS NIYATI K SHAH, ADVOCATE for the Applicant

MR MITESH AMIN, PUBLIC PROSECUTOR with  
MR HARDIK SONI, ADDITIONAL PUBLIC PROSECUTOR for the  
Opponents



CORAM: **HONOURABLE MR.JUSTICE R.M.CHHAYA**  
and  
**HONOURABLE MR.JUSTICE PARESH UPADHYAY**

**Date : 16/12/2019**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE PARESH UPADHYAY)**

1. By this petition under Article 226 of the Constitution of India, the applicant / petitioner has prayed for writ of habeas corpus, qua his father viz. Sureshbhai Ugarchand Gadhecha, contending that the arrest of his father made by the State Tax Officer-3, Enforcement, DIV-2, Ahmedabad vide Arrest Memorandum Dated 06.12.2019, is without authority of law. The foundation of this petition is that the father of the applicant has been deprived of his personal liberty, without following the procedure established by law, which is violative of Article 21 of the Constitution of India.

2. The prayer clause of this petition reads as under.

"9 A. This Hon'ble Court may be pleased to issue the writ of habeas corpus or any other writ, order or direction in the nature of habeas corpus directing the Respondent No.4 to physically produce the petitioner's father, namely, Suresh Gadhecha from the custody of the Respondent Nos.2 and 3 as they have wrongfully confined the father of the petitioner, in violation of the provisions of the Central Goods and



Services Tax Act, 2017 and Gujarat Goods and Services Act, 2017 and be further pleased to handover the custody of the petitioner's father to the petitioner;

B. That during the pendency of the present petition, this Hon'ble Court may be pleased to direct the Respondent No.4 to secure the presence of the petitioner's father namely, Suresh Gadhecha, from the custody of Respondent Nos. 2 and 3 and physically produce him before this Hon'ble Court on today, in the interest of justice;

C. This Hon'ble Court may be pleased to pass any other and further or grant any relief as may be deemed fit and proper in the interest of justice."

3. This petition was filed, moved and taken up for hearing on 06.12.2019 itself. This Court (Coram : Hon'ble Mr. Justice S.R. Brahmbhatt and Hon'ble Dr. Justice A.P. Thaker) had, while issuing notice to the respondents on 06.12.2019, passed the following order.

"1. Learned counsel for the petitioner made a specific mention for seeking circulation of this Habeas Corpus matter today itself. The permission was granted and accordingly, it was permitted to be circulated and it is



listed.

2. Learned counsel for the petitioner has invited Court's attention to the provisions of section 69 of the Gujarat Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 and submitted that said section only authorizes the Commissioner to delegate the powers for authorizing the arrest but decision to arrest is to be taken by the Designated Statutory Authority and the same is not the delegation or cannot be delegated contrary to Section 69 of the Act.

3. The counsel for the petitioner also invited this Court's attention to the arrest memo and ground of arrest to indicate therefrom that the arrest is effected by the State Tax Officer-3 and in that memo at page-29, after narrating the word 'authorized' the narration indicates that 'reason to believe' and decision for arrest, as nowhere, as per the submission of counsel, the designated statutory authority was ever consulted looking to development of events from recording the statement till effect of



arrest, which happened at midnight or early morning at around 5-30 AM on 6.12.2019.

4. Let there be a notice returnable on 9.12.2019, as though ostensibly there appears to be an arrest in accordance with law but the counsel for the petitioner is not wholly incorrect in contending that the arrest memo and ground of arrest does not disclose any contemplation or mulling over and coming to a decision for arrest the father of petitioner on account of statutory designated authority and therefore, the factum of arrest becomes absolutely illegal and thus, this Court will have jurisdiction to make appropriate order and even issue writ of habeas corpus. Therefore, against this backdrop, we expect the respondents to come forward with the following on the next date of hearing namely :

(i) the order of authorization, which has been referred to by the arresting officer in the arrest memo, whereunder, he has been authorized to arrest the father of petitioner;



(ii) the documentary evidence and/or the circumstances indicating the due deliberation and application of mind on the part of designated statutory authority for ordering arrest of the father of petitioner - the corpus;

(iii) The gist of material which might have been forming part of consideration for arriving at a circumstances stated so as to satisfy the statutory provisions of Section 69 by the statutorily designated authority to arrest;

(iv) any other material that may support and justify the arrest especially when emphatic statement is made qua lack of consideration on the part of designated statutory authority rendering the entire arrest questionable.

Direct service permitted today."

4. Thereafter, under the orders of Hon'ble the Chief Justice, this petition is listed before this Bench. On 12.12.2019, this Court had passed the following order.

"1. Heard Mr. Shalin Mehta, learned Senior Counsel assisted by Ms.Niyati



K. Shah, learned counsel for the petitioner and Mr. Hardik Soni, learned Addl. Public Prosecutor for the respondents.

2. Mr. Hardik Soni, learned APP has tendered Affidavit-in-Reply filed by respondent No.3, copy of which has been served upon learned counsel for the petitioner. The same is taken on record. He further states that the Corpus - Sureshbhai Ghadecha is lodged in the Central Jail, Sabarmati, Ahmedabad.

3. Ms. Niyati K. Shah, learned counsel for the petitioner has tendered a photocopy of the Notification issued by Commissioner of State Tax, Gujarat State, bearing No. EST/1/ Jurisdiction /B.2168 dated 05.07.2017, which is taken on record.

4. Heard learned counsel for the parties.

5. As this Court is dealing with the petition under Article 226 of the Constitution of India, whereby, a writ of habeas Corpus is prayed for and also taking into consideration the



earlier order dated 06.12.2019, we hereby direct the respondent authorities to produce the Corpus - Sureshbhai Ghadecha, who is in judicial custody pursuant to Arrest Memorandum No.DCST/ENF2/STO1/Arrest Memorandum/201920/B. dated 06.12.2019 before this Court on the next date of hearing i.e. on 16th December, 2019.

6. This order is passed in presence of the officer of respondent No.3 Authority. Writ of this order be sent to the Jail Superintendent, Sabarmati Central Jail, Ahmedabad. S.O. to 16<sup>th</sup> December, 2019."

5. It is under these circumstances, the corpus is present before this Court today.

6. At the outset, we make it clear that :-

(i) This Court is NOT examining the issue whether the accused / corpus, who is in judicial custody and is present before this Court, should be granted bail or not.

(ii) This Court is also NOT examining the issue, had the accused / corpus approached this Court in time, whether he would have been granted protection against his arrest or not.

(iii) This Court is also NOT examining the issue whether



the accused / corpus has in fact committed any offence under the provisions of “the Gujarat Goods and Services Tax Act, 2017 and / or the Central Goods and Services Tax Act, 2017”, (“the Act’ for short) as claimed and recorded by the State Tax Officer and / or the Joint Commissioner of State Tax that, they have reasons to believe that he (the accused / corpus) has committed such offences under the said Act warranting his arrest.

(iv) The ONLY point for consideration before this Court in this petition is, whether the exercise of powers by the State Tax Officer of arresting the accused / corpus (Sureshbhai Ugarchand Gadhecha) vide Arrest Memorandum dated 06.12.2019, even with the authorisation in that regard by the Joint Commissioner of State Tax vide order dated 05.12.2019 is legally sustainable, OR the said arrest is without authority of law, keeping in view Article 21 of the Constitution of India, as claimed by the petitioner on behalf of the accused / corpus.

7. Rule. Mr. Soni, learned Additional Public Prosecutor waives service of rule on behalf of the respondent Authorities.

8.1 Mr. Shalin Mehta, learned senior advocate assisted by Ms. Niyati Shah, learned advocate for the applicant has submitted that, the father of the petitioner – corpus was summoned by the State Tax Officer on 05.12.2019 at 2:30 pm to give statement under Section 70 of the Act. He had accordingly remained present. He was questioned till late night - 1:00 a.m. of 06.12.2019. When the father of the petitioner requested to the officer that he be permitted to go home and the questioning be continued on the next date, he was



informed that he is arrested. In the arrest memorandum, the time of arrest is shown as 1:15 am on 06.12.2019. It is submitted that the exercise of powers by the respondent authorities is not only arbitrary, but is without authority of law. Attention of this Court is invited to Section 69(1) of the Act and it is contended that, before arrest, the Commissioner must have arrived at the conclusion and he should have been satisfied that, he has reasons to believe that the concerned person had committed an offence under Section 132(1)(b)(c) of the Gujarat Goods and Services Tax Act – 2017 & Central Goods and Services Tax Act – 2017 which are punishable under Section 132(1)(i) of the Gujarat Goods and Services Tax Act – 2017 & Central Goods and Services Tax Act – 2017. It is submitted that in the present case, no such satisfaction is arrived at by the Commissioner and thus, the condition precedent of the arrest under Section 69(1) of the Act has not been complied with. It is submitted that the entire exercise of arresting the father of the petitioner and in turn presenting him before the Magistrate and the Magistrate taking him in the judicial custody, is illegal and the arrest of the father of the petitioner be declared as illegal confinement and he be set at liberty forthwith.

8.2 Serious grievance is made against the respondent Authorities contending that they have acted in absolute arbitrary manner. It is submitted that even if the case of the State Tax Officer as reflected in the arrest memorandum dated 06.12.2019 is accepted to the extent that he was authorised by the Joint Commissioner vide authorisation order dated 05.12.2019, the Joint Commissioner himself can not be said to be the competent authority to order arrest, without there being



any satisfaction arrived at by the Commissioner under Section 69(1) of the Act as noted above, which is the condition precedent for arrest. It is submitted that there is no delegation by the Commissioner, arriving at such a satisfaction. It is submitted that there is no such delegation in the order dated 23.06.2017, which is claimed by the State Authorities by filing the affidavit in reply. Reliance is placed on the decision of the Supreme Court of India in the case of Sidhartha Sarawgi versus Board of Trustees for the Port of Kolkata reported in (2014) 16 SCC 248.

8.3 Learned senior advocate for the petitioner has also referred to the contents of the affidavit in reply to contend that, even if the order dated 23.06.2017 is read with the corrigendum dated 17.12.2018, the notification dated 05.07.2017 tilts the balance in favour of the corpus. It is submitted that the harmonious reading of these orders / notification would make it clear that the powers delegated vide order dated 23.06.2017 cannot be said to be the delegation of power by the Commissioner under Section 69(1) of the Act for both the functions contained therein. It is submitted that the impugned action being illegal and is without authority of law be interfered with. Mr. Mehta, learned senior advocate for the petitioner has also taken this Court, extensively through the different sections of the Act and the decision of the Supreme Court in the case of Sidhartha Sarawgi (supra) with specific emphasis that the satisfaction to be arrived at by the Commissioner is not the function which otherwise could be delegated by him. However, he has made it clear that since even according to him, order dated 23.06.2017 does not delegate the power of arriving at the satisfaction warranting



arrest, the question is as to whether it could have been delegated or not, is not the point at issue and therefore, the same need not be gone into by this Court.

8.4 It is further submitted that though the Magistrate has, while taking the corpus in custody, made certain observations with regard to the validity of the arrest, this subsequent development need not be taken into consideration by this Court, since this Court had already issued notice on this petition and the fact that this Court is seized of the matter is reflected in the order of the Magistrate as well.

8.5 It is submitted that this petition be allowed and the corpus be set at liberty forthwith.

9.1 Per contra, Mr. Mitesh Amin, learned Public Prosecutor assisted by Mr. Hardik Soni, learned Additional Public Prosecutor has vehemently opposed this petition.

9.2 It is informed by learned Public Prosecutor that the corpus is present before the Court pursuant to the order dated 12.12.2019.

9.3 It is submitted that, since the corpus is in judicial custody, he can not be termed to be in illegal confinement and this petition is not maintainable. It is further submitted that this petition is not maintainable also for the reason that any interference by this Court, in substance would amount to interfering in the order passed by the Magistrate, taking him in judicial custody, which is not under challenge in this petition. It is submitted that this petition therefore be rejected as not



maintainable.

9.4 Without prejudice to the above contention, it is submitted that even if this petition is held to be maintainable by this Court, in the present case, this Court may not exercise discretion under Article 226 of the Constitution of India, since the father of the petitioner (corpus – Sureshbhai Ugarchand Gadhecha) has committed serious offence under Sections 132(1)(b)(c) of the Gujarat Goods and Services Tax Act, 2017 & the Central Goods and Services Tax Act, 2017. Attention of this Court is also invited to the decision of the Telangana High Court in the case of **P.V. Ramana Reddy versus Union of India** reported in (2019) 14 taxmann.com 407 (Telangana). It is also pointed out that the said decision was challenged before the Supreme Court of India and the SLP against the said decision is dismissed.

9.5 On merits, the learned Public Prosecutor has referred to the contents of the affidavit in reply dated 12.12.2019 to support the case of the respondent authorities. It is further submitted that the officers are present with the files and the same be made available to the Court if the Court so desires.

9.6 Heavy reliance is placed on Section 69(1) of the Act. It is vehemently contended that the language of Section 69(1) of the Act makes it clear that there is only one contemplation in it and there is no dis-juncture at any stage in the said sub-section and therefore the exercise of power to arrest the person is not independent of recording satisfaction. Attention of this Court is invited to the order dated 23.06.2017 and the Corrigendum dated 17.12.2018, the copies of which are



annexed with the affidavit in reply. For the purpose of explaining these two orders, learned Public Prosecutor has read, line-by-line different provisions of the Act, more particularly, Sections 2(91), 5(1), 5(3) and 67 and 69. While referring to the orders dated 23.06.2017 and 17.12.2018, it is contended that, the delegation of power by the Commissioner, in the present case, to the Joint Commissioner, can not be said to be incomplete in any manner keeping in view the provisions of Section 5(1) and Section 5(3) of the Act.

9.7 Mr. Amin, learned Public Prosecutor has taken this Court through the language of Section 69(1) of the Act, line-by-line to contend that, there is no dis-juncture in the language of that sub-section and the argument of learned advocate for the petitioner that the said sub-section contains two functions, can not be accepted. According to him, there is not only one function, which can not be looked at in isolation and the entire function is delegated by the Commissioner to the Joint Commissioner by order dated 23.06.2017, vide Entry No.49. Learned Public Prosecutor has also referred to Entry Nos.39 to 51 in support of his submissions.

9.8 It is submitted that the exercise of powers by the Joint Commissioner, and in turn by the State Tax Officer, is clearly with the Authority of the Commissioner and delegation made by him and therefore no interference be made by this Court on that count. It is submitted that once it is accepted that the action of the officer, be it the Joint Commissioner or the State Tax Officer, is with the authority, this Court may not examine the merits, as to whether, there was sufficient material with the concerned officer to order arrest or not, or whether the



corpus needs to continue in judicial custody or set at liberty. It is submitted that what is within the domain of the Magistrate, be not done by this Court in the writ jurisdiction that too writ of habeas corpus. It is submitted that even on merits, this petition be not entertained. Reliance is placed on the decision of the Telangana High Court in the case of P.V. Ramana Reddy versus Union of India reported in 2019 (104) taxmann.com 407 (Telangana).

9.9 It is noted that the learned Public Prosecutor has extensively taken this Court through the contents of the affidavit in reply dated 11.12.2019.

9.10 Mr. Amin, learned Public Prosecutor has further submitted that even if the Court finds that this petition is maintainable, ultimately the petition being Article 226 of the Constitution of India, the same being discretionary and equitable relief, this is not the case where the powers be exercised by this Court.

9.11 It is submitted that this petition be dismissed and the corpus be sent back to the judicial custody.

10. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under.

11. Though it is already noted in Para : 6 above, before recording any finding by this Court, it is noted again at this stage that :-



(i) This Court is NOT examining the issue whether the accused / corpus, who is in judicial custody and is present before this Court, should be granted bail or not.

(ii) This Court is also NOT examining the issue, had the accused / corpus approach this Court in time, whether he would have been granted protection against his arrest or not.

(iii) This Court is also NOT examining the issue whether the accused / corpus has in fact committed any offence under the provisions of the Gujarat Goods and Services Tax Act, 2017 and / or the Central Goods and Services Tax Act, 2017, as claimed and recorded by the State Tax Officer and the Joint Commissioner of State Tax that, they have reasons to believe that he (the accused / corpus) has committed such offences warranting his arrest.

(iv) The ONLY point for consideration before this Court in this petition is, whether the exercise of powers by the State Tax Officer of arresting the accused / corpus (Sureshbhai Ugarchand Gadhecha) vide Arrest Memorandum dated 06.12.2019, even with the authorisation in that regard by the Joint Commissioner of State Tax vide order dated 05.12.2019 is legally sustainable, OR the said arrest is without authority of law, keeping in view Article 21 of the Constitution of India, as claimed by the petitioner on behalf of the accused / corpus.

12.1 While examining the validity of any order passed by a statutory authority, which parameters should be kept in view by the Court, can be traced in the judgment of the Supreme Court of India in the case of Commissioner of Police, Bombay versus Gordhandas Bhanji reported in AIR 1952 SC 16, which was followed in the judgment of the Constitution Bench of the Supreme Court of India in the case of Mohinder Singh Gill



versus the Chief Election Commissioner reported in AIR 1978 SC 851.

12.2 The relevant paragraphs of the judgment of the Supreme Court of India in the case of Commissioner of Police, Bombay versus Gordhandas Bhanji reported in AIR 1952 SC 16 read as under.

"9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

10. Turning now to the language used, we are clear that by no stretch of imagination can this be construed to be



an order which in effect says :-

"I, so and so, by virtue of the authority vested in me, do hereby order and direct this and that."

If the Commissioner of Police had the power to cancel the license already granted and was the proper authority to make the order, it was incumbent on him to say so in express and direct terms. Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.

17. It is clear to us from a perusal of these rules that the only person vested with authority to grant or refuse a license for the erection of a building to be used for purposes of public amusement is the Commissioner of Police. It is also clear that under Rule 250 he has been vested with the absolute discretion at any time to cancel or suspend any license which has been



granted under the rules. But the power to do so is vested in him and not in the State Government and can only be exercised by him at his discretion. No other person or authority can do it."

12.3 Following the above principles, the Constitution Bench of the Supreme Court of India in the case of Mohinder Singh Gill versus the Chief Election Commissioner reported in AIR 1978 SC 851 observed (in Paragraph 8 of the said decision) as under.

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (AIR 1952 SC 16).

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the



officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

12.4 Keeping the above principles in view, the source of power and the grounds mentioned in the Arrest Memorandum in question, being Arrest Memorandum No.DCST /ENF-2/STO-3/ARREST MEMORANDUM/ 2019-20/B dated 06.12.2019 only can be looked into by this Court. Since there is reference to the authorisation in that regard by the Joint Commissioner of State Tax vide order dated 05.12.2019, we have taken into consideration the said authorisation dated 05.12.2019 as well. It may not be proper to consider any material beyond this to test the validity of the impugned arrest memorandum, however heavy reliance is placed by the respondent authorities on the Order by the Commissioner of State Tax, Gujarat State No.GSL/S5(1)/B.1 dated 23.06.2017, a copy of which is placed on record along with affidavit in reply. Attention of this Court is also invited to the Corrigendum in the said order dated 23.06.2017, vide subsequent order dated 17.12.2018. Taking a liberal view in favour of the State Authorities, this Court has also considered the said orders



dated 23.06.2017 and 17.12.2018 while considering the impugned arrest memorandum dated 06.12.2019 passed by the State Tax Officer, read with authorisation in that regard by the Joint Commissioner of State Tax dated 05.12.2019. On conjoint consideration of these four orders, this Court finds as under.

13.1 While weighing the above orders, Section 69 of the Act, more particularly Sub-section (1) thereof, needs to be kept in view. It reads as under.

"69. (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorise any officer of State tax to arrest such person.

(2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty four hours.

(3) Subject to the provisions of the



Code of Criminal Procedure, 1973,

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station."

13.2 Section 69(1) of the Act stipulates two functions. One is the obligation cast upon the Commissioner and second is the power vested in him. Firstly, the Commissioner should have reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section. Once he arrives at this satisfaction, then flows the power vested in him whereby he (the Commissioner) may, by order, authorise any officer of State tax to arrest such person (who is believed by the Commissioner to have committed any offence).

*(emphasis supplied)*



13.3 The occasion for the Commissioner to authorise any officer of the State Tax to arrest any person would arise only after the Commissioner arrives at the conclusion / is satisfied that he (the Commissioner) has reasons to believe that a person has committed any offence under the Act. Thus the satisfaction to be arrived at with regard to the concerned person (assessee / accused) having committed any offence under the Act is condition precedent for ordering arrest. There is no doubt in our mind that even the Commissioner himself also can not order arrest of any person under the Act, if he has not arrived at the conclusion or is satisfied that he (the Commissioner) has reasons to believe that a person has committed any offence under the Act.

*(emphasis supplied)*

13.4 Viewing the matter from this angle, it needs to be seen whether in the present case, any such satisfaction is recorded by the authority prescribed under the statute. The reading of the section stipulates that, the said satisfaction has to be arrived at by the Commissioner. It is not even the case of the respondent Authorities that the Commissioner has arrived at any such satisfaction. Thus the requirement of Section 69(1) of the Act does not stand satisfied in this case. The Arrest Memorandum dated 06.12.2019 or even the authorisation given to the State Tax Officer by the Joint Commissioner does not refer to any such satisfaction having been arrived at, at the level of the Commissioner or even any application of mind in that regard by the Commissioner. The Arrest Memorandum dated 06.12.2019 which is signed by the State Tax Officer inter alia reads to the effect that :- Shri M.K. Bhandari, Joint



Commissioner,.....has authorised him (the State Tax Officer), to arrest Sureshbhai Gadhecha (the father of the petitioner). The said arrest order further reads that, "...I have reasons to believe that you had committed offence.....". This would mean that, the satisfaction leading to arrest is arrived at by the State Tax Officer, but the arrest is ordered by the Joint Commissioner. Going by the order under scrutiny, the Court may only inquire whether the State Tax Officer, in the present case, was authorised to arrive at any such satisfaction which is condition precedent of ordering arrest of any person. That answer is certainly NO. The respondent Authorities also agree with this. The case of the respondent Authorities however is that, the said satisfaction was arrived at, at the level of the Joint Commissioner of State Tax. As already noted above, since there is reference in the Arrest Memorandum dated 06.12.2019 to the authorisation in that regard by the Joint Commissioner of State Tax vide order dated 05.12.2019, we have taken into consideration the said authorisation dated 05.12.2019 as well. Over and above the satisfaction claimed to have been arrived at by the State Tax Officer as reflected in the order dated 06.12.2019, the authorisation order of the Joint Commissioner dated 05.12.2019 also refers to such satisfaction having been arrived at by him. The relevant part thereof reads that, "I ...hereby authorise State Tax Officer to arrest Sureshbhai Gadhecha...as I have reasons to believe that he has committed offences...". We accept the case of the respondent Authorities that in the present case, the satisfaction was not merely of the State Tax Officer, but was of the Joint Commissioner as well. The question still remains, whether the



Joint Commissioner was vested with that power, which as a matter of fact is the obligation cast upon the Commissioner by the statute. To answer this, heavy reliance is placed by the respondent Authorities on the order dated 23.06.2017. Though it may be unfair to the petitioner and corpus to take into consideration the order dated 23.06.2017, taking lenient view in favour of the State Authorities, this Court has taken into consideration even the order dated 23.06.2017 and Corrigendum therein vide order dated 17.12.2018 which are placed on record by the State Authorities along with affidavit in reply to contest this petition. Even after considering those two orders, the non-compliance of the first part of Section 69(1) of the Act, which is condition precedent of ordering arrest of any person, stands as it is. We hold so for the following reasons.

13.5 The relevant part of the order dated 23.06.2017 reads as under.

“ORDER

By the Commissioner of State Tax,

Gujarat State, Ahmedabad

Dated the 23<sup>rd</sup> June, 2017

No.GSL/S.5(1)/B.1

WEB COPY

Specification of Proper officers under the Gujarat Goods and Services Tax Act, 2017.

In exercise of power conferred upon me by sub-section (1) of section 5 read with clause (91) of section 2 of the Gujarat Goods and Services Tax Act, 2017 and the rules framed thereunder, I do hereby



assign the functions to be performed under this Act by a proper officer as defined in clause (91) of Section 2 under the different sections of the said Act mentioned in the entries in column (2) of the Schedule below and described in the corresponding entries at column (3) of the said Schedule to the proper Officer specified in the corresponding entries in column (4) thereof, subject to the condition that the functions hereby assigned shall be performed only within their jurisdiction unless specific jurisdiction is mentioned there against.

**SCHEDULE -A**

Sl.No .	Section	Functions Assigned	Designation of Proper Officer
(1)	(2)	(3)	(4)
1	10(5)	To determine tax and penalty referred to in this section	Deputy Commissioner Assistant Commissioner State Tax Officer
49	69(1)	To authorize any officer of State Tax to arrest a person committed any offence	Joint Commissioner

(P D Vaghela)  
Commissioner

13.6 The relevant part of the Corrigendum dated 17.12.2018 reads as under.

"For the words, figures and brackets "sub-section (1) of Section 5 read sub-section (1) and (3) of Section 5."



13.7 With the aid of the Corrigendum dated 17.12.2018, the State Authorities want us to accept that the order dated 23.06.2017 which was issued in exercise of powers under Section 5(1) of the Act, be read as having been issued in exercise of both – the powers under Section 5(1) and 5(3) of the Act. We accept this. Even then, the non-compliance of condition precedent to order arrest of any person as contemplated under Section 69(1) of the Act stands as it is. For this purpose, Section 5 of the Act needs to be kept in view. It reads as under.

"5. (1) Subject to such conditions and limitations as the Commissioner may impose, an officer of State tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.



(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of State tax."

14.1 On conjoint consideration of the orders dated 23.06.2017 and 17.12.2018 read with Sections 5(1) and 5(3) of the Act, what needs to be seen by this Court is that, which function, in fact, is delegated by the Commissioner to which officer. As quoted above, by Entry No.49 in order dated 23.06.2017, the Commissioner has authorised Joint Commissioner "to authorise any officer of State Tax to arrest a person (who is believed to have) committed any offence." Thus the second of the two functions envisaged under Section 69(1) of the Act is delegated by the Commissioner to the Joint Commissioner. This Court accepts the case of the respondent Authorities to this extent.

14.2.1 As already noted in Paras : 13.2 and 13.3 above :-

(vide 13.2) Section 69(1) of the Act stipulates two functions. One is the obligation cast upon the Commissioner and second is the power vested in him. Firstly, the Commissioner should have reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section. Once he arrives at this



satisfaction, only then flows the power vested in him whereby he (the Commissioner) may, by order, authorise any officer of State tax to arrest such person (who is believed by the Commissioner to have committed any offence).

(vide 13.3) The occasion for the Commissioner or even any officer of the State Tax to arrest any person would arise only after the Commissioner arrives at the conclusion / is satisfied that he (the Commissioner) has reasons to believe that a person has committed any offence under the Act. Thus the satisfaction to be arrived at with regard to the concerned person (assessee / accused) having committed any offence under the Act is condition precedent for ordering arrest. There is no doubt that even the Commissioner himself can also not order arrest of any person under the Act, if he has not arrived at the conclusion or is satisfied that he (the Commissioner) has reasons to believe that a person has committed any offence under the Act.

14.2.2 By the order dated 23.06.2017 read with Corrigendum dated 17.12.2018, one of the two functions envisaged under Section 69(1) of the Act, being the second one i.e. he (the Commissioner) may, by order, authorise any officer of State tax to arrest such person (who is believed by the Commissioner to have committed any offence) stands delegated to the Joint Commissioner vide Entry No.49. The case of the respondent Authorities is accepted by this Court to this extent. But at the same time, it is also held by this Court that, not only any officer authorised by the Commissioner, but even the Commissioner himself also could not have ordered arrest of any person under the Act, if he (the Commissioner)



has not arrived at the conclusion or is satisfied that he (the Commissioner) has reasons to believe that a person has committed any offence under the Act. The satisfaction to be arrived at by the competent authority in this regard is the condition precedent for ordering arrest of that person. The obligation to be satisfied with regard to the reasons to believe that a person has committed any offence under the Act is cast upon the Commissioner. Whether the said duty could have been delegated by the Commissioner to any officer or not is not gone into by this Court leaving it open to be gone into in an appropriate case, since this Court finds that as a matter of fact, no delegation is made by the Commissioner in that regard vide order dated 23.06.2017 – Entry No.49. **This Court can not read in Entry No.49 beyond what is written therein.** Thus even after taking into consideration the order dated 23.06.2017, with Corrigendum dated 17.12.2018, there is no ambiguity that the power / obligation, to be satisfied with regard to having reasons to believe that a person has committed any offence under the Act, which is cast upon the Commissioner, is not delegated by him (the Commissioner) to the Joint Commissioner, as claimed through the affidavit in reply. **Delegation has to be specific and Court can not read something more than what is actually delegated.**

14.2.3 The satisfaction recorded by the Joint Commissioner, with regard to he having reasons to believe that a person has committed any offence under the Act, is therefore without any authority of law and is of no consequence and can not be taken cognizance of. Consequently, we hold that, the first requirement of Section 69(1) of the Act, which is condition precedent to order arrest of



any person, is not satisfied in the present case. The arrest of Sureshbhai Ugarchand Gadhecha - the corpus is thus without any authority of law and his continuance in judicial custody is no less than illegal confinement. The corpus therefore needs to be set at liberty, forthwith. There is one more reason to hold so. It is as under.

15.1 It is the case of the respondent Authorities as vehemently contended by the learned Public Prosecutor that, delegation of power by the Commissioner to the Joint Commissioner vide order dated 23.06.2017 – Entry No.49 is the complete delegation under Section 69(1) of the Act. According to him, the said Sub-section [being Section 69(1)] should not be read by putting dis-juncture in it, which is not provided by the statute. We reject this argument. As already held above, Section 69(1) of the Act stipulates two functions, which is already discussed in detail above. Further, even qua one section or even one sub-section, the Commissioner has, by the very order dated 23.06.2017, delegated different functions to different authorities / officers. Reference in this regard needs to be made to Entry Nos.39 to 46 of Schedule – A of the said order dated 23.06.2017. They are as under.

WEB COPY

SCHEDULE -A

Sl. No.	Section	Functions Assigned	Designation of Proper Officer
(1)	(2)	(3)	(4)
1	10(5)	To determine tax and penalty referred to in this section	Deputy Commissioner Assistant Commissioner State Tax Officer



39	67(1)	Authorization for inspection at any place of business of taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place	Joint Commissioner
40	67(2)	Authorization for search, seizure and confiscation.	Joint Commissioner
41	67(2) First proviso	To serve order not to remove the goods	Assistant Commissioner State Tax Officer
42	67(5)	To debar a person from whose custody any documents are seized to make copies thereof or to take extracts there from which may prejudicially affect the investigation.	Assistant Commissioner State Tax Officer
43	67(7) and proviso	Return of seized goods when no notice is served. To extend the date of issuing notice in relation to seized goods after six months of seizure.	Deputy Commissioner Assistant Commissioner (subject to approval from higher authority by administrative order).
44	67(8)	Disposal of perishable or hazardous goods to be notified by the Government.	Deputy Commissioner Assistant Commissioner State Tax Officer (subject to approval from higher authority by administrative order).



45	67(9)	To prepare inventory of seized perishable or hazardous goods	Deputy Commissioner Assistant Commissioner State Tax Officer
46	67(10)	To search and seizure under the provision of the CRPC 1973	Deputy Commissioner Assistant Commissioner State Tax Officer
47	67(11)	To seize accounts, registers or documents produced before a proper officer.	Deputy Commissioner Assistant Commissioner State Tax Officer
48	68(3)	To intercept any conveyance to inspect documents, devices and goods.	Deputy Commissioner Assistant Commissioner State Tax Officer
49	69(1)	To authorize any officer of State Tax to arrest a person committed any offence	Joint Commissioner
50	70(1)	Power to summon persons	Joint Commissioner Deputy Commissioner Assistant Commissioner State Tax Officer
51	71(1)	To authorise any officer to have access to any place of business of a registered person to inspect books of accounts etc.	Joint Commissioner

15.2 The above would make it further clear that, even while referring to different functions under the same Sub-section, the Commissioner has delegated powers to different



officers, as per his discretion and wisdom. The delegation has to be specific and the said order dated 23.06.2017 also, according to us, is very specific as to, the Commissioner has delegated what to whom. The Court can not, and we do not intend to read in Entry No.47 of the order dated 23.06.2017, what is consciously excluded by the Commissioner, from being delegated to any other officer. This would negate the argument of learned Public Prosecutor.

16. It is noted that as against the affidavit in reply of the respondent authorities annexing therewith the above referred delegation order dated 23.07.2017 read with corrigendum dated 17.12.2018, it was pointed out by the learned senior advocate for the petitioner that the wholesale delegation was made by the Commissioner to the Special Commissioner and Additional Commissioner of the State Tax vide notification dated 05.07.2017. A copy thereof was also placed on record. It was contended on behalf of the petitioner that, had the Special Commissioner or the Additional Commissioner would have recorded satisfaction as contemplated under Section 69(1) of the Act, with regard to the accused having committed any offence under the Act, and in turn, had the Joint Commissioner authorised the State Tax officer to effect arrest, the same could not have been termed as without authorisation, without challenging such a delegation, which is not the case on hand. While making this submission, learned senior advocate for the petitioner is categorical to the effect that, whether such a delegation could have been legally made or not, and if made and challenged, would be sustainable or not, is also an issue keeping in view the law laid down by the Supreme Court of India in the case of Sidhartha Sarawgi versus Board of Trustees



for the Port of Kolkata reported in (2014) 16 SCC 248. However this aspect can not be and need not be and therefore is not gone into by this Court, since it is claimed by the respondent authorities that the arrest in question was made by the State Tax Officer, under the orders of the Joint Commissioner keeping in view the delegation by the Commissioner vide order dated 23.06.2017. For this reason, no further deliberation may be required with regard to the notification dated 05.07.2017. We make it clear that, whether the delegation by the Commissioner to the Special Commissioner and the Additional Commissioner under the Act is legal or not, is not the point at issue before this Court in this petition and we may not be understood to have expressed any opinion in that regard either way.

17.1 Learned Public Prosecutor has submitted that, since the corpus is in judicial custody, it can not be said to be illegal confinement and therefore petition for issuance of writ of habeas corpus would not be maintainable. To support this argument, he has relied on the decision of the Supreme Court of India in the case of State of Maharashtra versus Tasneem Rizwan Siddiquee reported in (2018) 9 SCC 745 and the decision of the Telangana High Court in the case of P.V. Ramana Reddy versus Union of India reported in (2019) 14 taxmann.com 407 (Telangana), as confirmed by the Supreme Court of India in SLP (CRL.) No.4430 of 2019 dated 27.05.2019.

17.2 So far the decision in the case of State of Maharashtra versus Tasneem Rizwan Siddiquee (supra) is concerned, there can not be any dispute with regard to the proposition of law annunciated in the said decision, however it



needs to be noted that, what is cautioned by the Supreme Court of India is filing of petition under Article 226 of the Constitution of India before High Court as an alternate to filing bail application before the competent Court. We have already noted that, the point at issue before this Court in this petition is not whether the corpus is entitled to bail or not. The said decision would therefore not come to the help of the State Authorities.

17.3.1 So far the decision of the Telangana High Court in the case of P.V. Ramana Reddy (supra) is concerned, it needs to be noted that, the controversy before the Telangana High Court was not, which is in the present case. Paragraph 1 of the said decision reads as under.

"1. Challenging the summons issued by the Superintendent (Anti Evasion) of the Hyderabad GST Commissionerate, under Section 70 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and the invocation of the penal provisions under Section 69 of the Act, the Directors (Past and/or present) of a few Private Limited Companies, a Chief Financial Officer of a company and the Partner of a Partnership Firm have come up with the above writ petitions."

17.3.2 Opposing those petitions as not maintainable, it was the case on behalf of the State Authorities that the petitioners (therein) can not be permitted to convert the writ Court into a



Court of anticipatory bail (vide Para : 9(9) of the said judgment).

17.3.3 While dealing with those petitions and dealing with the objection of the State, the answers given by the Telangana High Court in that regard can be traced in Para : 61 of the said decision, which reads as under.

"61. In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Section 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances which we have indicated above."

17.3.4 The above would make it clear that, the decision of the Telangana High Court would not only not support the State Authorities, but would support the case of the petitioner so far maintainability of the petition is concerned. On merits, it would not have any application since the point at issue was different before that High Court.

17.4 If any citizen is deprived of his personal liberty, without



following the procedure established by law, it would be violative of Article 21 of the Constitution of India, the High Court does have power under Article 226 of the Constitution of India to examine the issue and pass appropriate order. Even if a person is in judicial custody and even if the bail is asked for by him and is rejected, either by the Magistrate or even by the Sessions Court, that itself may not be the deciding factor to form an opinion, whether the judicial custody is otherwise legal or not. Reference in this regard needs to be made to the decision of the Division Bench of this Court in the case of Hansaben W/o. Ishwarbhai Dahyabhai Patani versus State of Gujarat recorded on Special Criminal Application No.3232 of 2011, dated 13.12.2011.

17.5 For the above reasons (Para : 17.1 to 17.4), we hold that, this petition can not be said to be not maintainable.

18. So far the decision of the Telangana High Court in the case of P.V. Ramana Reddy (supra) is concerned, since the point at issue before Telangana High Court was not, which is before this Court, we have not accepted that judgment as a guiding factor in the present case, however since heavy reliance is placed on it by the learned Public Prosecutor, and even copy thereof is annexed with the affidavit in reply filed on behalf of the respondent authorities, it would be relevant to note that, in that very decision, the High Court has observed in Para : 30 that :- "...Under sub-Section (1) of Section 69, the power to order arrest is available only in cases where the Commissioner has reasons to believe that a person has committed any offence specified in clauses (a) to (d) of sub-Section (1) of Section 132



CGST Act, 2017. ...". We do not think it proper, or even necessary, to make any further observation, qua the effect of the said decision of the Telangana High Court.

19. It is attempted on behalf of the respondent Authorities to demonstrate before this Court how the corpus can be said to have committed offence under the Act. Learned Public Prosecutor has referred to the details in this regard as contained in the affidavit in reply filed on behalf of the State Authorities. Since we are not examining whether the corpus has committed any offence under the Act or not, dealing with those submissions, would be beyond the scope of the petition. We do not intend to expand the scope of this petition. The details with regard to the illegalities committed by the corpus, as perceived by the State Authorities, is therefore not recorded in this order.

20. In totality and for the reasons recorded above, we arrive at the conclusion that, the satisfaction recorded by the Joint Commissioner, with regard to he (the Joint Commissioner) having reasons to believe that the corpus - Sureshbhai Ugarchand Gadhecha has committed offence under the Act, is without any authority of law and is of no consequence and can not be taken cognizance of. Consequently, we hold that, the first requirement of Section 69(1) of the Act, which is condition precedent to order arrest of any person under the Act, is not satisfied in the present case. The arrest of Sureshbhai Ugarchand Gadhecha - the corpus is thus without any authority of law. We hold that the corpus has been deprived of his personal liberty, without following the procedure established by law and is therefore violative of Article 21 of the



Constitution of India and his continuance in judicial custody is no less than illegal confinement. The corpus therefore needs to be set at liberty, forthwith, if he is not required in any other offence. While passing this order, we also make it clear that, since this Court has not gone into the merits of the matter, it would be open to the Appropriate Authority, to take action in accordance with law. The same is without prejudice to the rights and contentions of the corpus – Sureshbhai Ugarchand Gadhecha.

21. For the reasons recorded above, the following order is passed.

21.1 This petition is allowed.

21.2 The arrest of the corpus – Sureshbhai, son of Ugarchand Gadhecha, by the State Tax Officer-3, Enforcement, DIV-2, Ahmedabad, vide Arrest Memorandum No.DCST/ENF-2/STO-3/ARREST MEMORANDUM/2019-20/B, Dated : 06.12.2019, is held to be without authority of law and thus, illegal. The corpus needs to be set at liberty, if he is not otherwise required in any other offence.

21.3 The corpus – Sureshbhai, son of Ugarchand Gadhecha, who was arrested by the State Tax Officer-3, Enforcement, DIV-2, Ahmedabad, vide Arrest Memorandum No.DCST/ENF-2/STO-3/ARREST MEMORANDUM/2019-20/B, Dated : 06.12.2019, and who is in judicial custody at Sabarmati Central Jail at Ahmedabad since 06.12.2019, and who is produced before this Court today pursuant to the order of this Court dated 12.12.2019, is set at liberty, forthwith.



21.4 This order is passed reserving liberty to the State Authorities as noted above.

21.5 Rule is made absolute. No order as to costs.

**(R.M. CHHAYA, J)**

**(PARESH UPADHYAY, J)**

MHDave/124

