

# Protections granted under criminal law apply to Customs, GST Acts: SC

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New Delhi, 27 February

The Supreme Court on Thursday ruled that protections granted to accused persons under the criminal law apply to those charged under the Customs, and goods and services tax (GST) Acts. The judgment was delivered by Chief Justice of India (CJI) Sanjiv Khanna, and Justices M M Sundresh and Bela M Trivedi in response to 279 petitions challenging the penal provisions of these two laws.

Pronouncing the verdict, the CJI said the provisions of Code of Criminal Procedure (CrPC) and the subsequent law, Bharatiya Nagarik Suraksha Sanhita (BNSS), on issues like anticipatory bail would be applicable to persons under the Customs and the GST Acts.

The court upheld the constitutional validity of arrest and prose-

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**Key safeguard:** Arrests cannot be used as a tool for tax recovery

**Anticipatory bail:** Allowed in GST cases, overruling the MakeMyTrip judgment

**Legal recourse:** Taxpayers can challenge coercive actions under Article 226

**Guidelines expected:** CBIC directed to frame rules to prevent misuse of arrest powers

cution provisions under GST and Customs Acts, clarifying that arrests cannot be used for recovery and that remedies under Article 226 are available in such cases.

Article 226 of the Constitution of India gives High Courts the power to issue writs to enforce rights, including fundamental rights.

Introducing necessary safeguards against coercive actions under the Central Goods and

Services Tax (CGST) Act and the Customs Act, the court ruled that authorities must establish "reasons to believe" before initiating proceedings, ensuring that arrests are not made arbitrarily. This is in line with principles laid down in Arvind Kejriwal's case.

"While upholding the constitutional validity (of arrest and prosecution under the two Acts), which, to be honest, was not completely



unexpected, the Supreme Court has provided for critical checks and balances, which should hopefully go a long way in curbing instances of tax-terrorism and providing some level of protection for taxpayers," said Sudipta Bhattacharjee, partner at law firm Khaitan & Co.

The court also held that people facing arrest under GST or Customs laws will be entitled to safeguards available under CrPC and that anticipatory bail can be allowed in cases of imminent arrest under GST law, overruling a contrary judgment.

"The court overruled the earlier judgment in the case of MakeMyTrip and clarified that arrest under GST Act can happen even before a formal quantification of tax demand. It has been very clearly laid down that arrest cannot be misused as a tool for tax recovery and any such coercive action for recovery can be challenged before a

High Court under Article 226," Bhattacharjee added.

"The SC frowns upon tax officers using the threat of arrest as a tool of intimidation and coercing people to pay taxes. The SC has directed CBIC (Central Board of Indirect Taxes and Customs) to frame appropriate guidelines. It also clarified that in cases of apprehension of arrest, the concerned individuals can seek protection through anticipatory bail, even in the absence of an FIR, provided there is a clear basis for such concern," said SR Patnaik, partner (head - taxation) of law firm Cyril Amarchand Mangaldas.

"This decision reinforces the fundamental importance of individual liberty, ensuring that the enforcement measures aimed at protecting government revenue do not override constitutional rights," said Ankit Jain, partner at law firm Ved Jain & Associates.