

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 3089 of 2022**=====
SANJAY MUKESHBHAI PATEL

Versus

STATE OF GUJARAT
=====

Appearance:

MR BHADRISH RAJU,

for MR RUCHIT J VYAS(10687) for the Applicant(s) No. 1

for the Respondent(s) No. 2,3,4,5,6

MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR for the Respondent(s)

No. 1
=====**CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT**Date : 23/03/2022****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. This petition is preferred seeking the directions for issuance of Writ of Habeas Corpus for Respondent No.6, brother of the present petitioner who is alleged to be illegally confined by GST - Respondent No.2 herein since 18.3.2022. The petitioner averred that Respondent NO.6 is the real brother and is engaged as Tax Consultant and work related to Gumasta License. Petitioner himself is also a Tax Consultant and he and his brother both reside together.

2. It is averred that the raid conducted by GST officials at the residence of one Mr. Bharat Patel on 17.3.2022 resulted into calling the Respondent No.6 between 2:00 to 3:00 p.m. on 18.3.2022. It is the grievance made on the part of the

petitioner that he was permitted to give two pairs of clothes to one GST officer at the main gate of the GST Office building on 20.3.2022 but till date he is not permitted to meet his brother.

3. The prayers sought for are as follows:

“14(A) To issue a writ of habeas corpus or any other writ, order or direction directing the Respondent No.2 to produce the corpus of Respondent No.6 – Brother of present Petitioner before this Hon’ble Court from the illegal custody of Respondent No.2;

(B) During the pendency of admission, hearing and final disposal of this petition, be pleased to direct the Respondent No.2 to 5 to produce Respondent No.6, brother of the Petitioner, before this Hon’ble Court, who is kept under illegal and wrongful confinement of the Respondent No.2;

(C) To pass any other and further orders as may be deemed fit and proper.”

4. We have heard learned advocate Mr. Bhadrish Raju assisted by learned advocate Mr. Ruchit Vyas for the petitioner. Learned advocate urged that the Apex Court in the case of *D.K.Basu vs. State of W.B.* reported in **(1997) 1 SCC 416** has already laid down the requirement of principles laid down here to govern all enforcement agencies which would also apply to the GST Officials. He has further urged that

these guidelines also have been explicitly applied to the GST department by virtue of the decision of this Court entered in the case of *Vimal Yashwantgiri Goswami v. State of Gujarat* reported in *[2020] 121 taxmann.com 3 (Gujarat)*

“81. We have already indicated in our judgment that Page 168 of 176 Downloaded on the guidelines as laid by the Supreme Court in D.K. Basu (supra) shall apply even to the officers of the GST department. Before being codified in the Code, the specific requirement to draft an arrest memo at the time of arrest was first laid down as a guideline by the Supreme Court in D.K. Basu (supra). In D.K. Basu (supra), the Supreme Court laid down 11 guidelines to be followed in all cases of arrest and detention. As one of these guidelines, the requirement to draw up an arrest memo was first articulated as:

“36 (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.”

While producing the person arrested under

Section 69 of the CGST Act, the importance of valid, proper and exhaustive arrest memo should not be undermined. Every authorized officer under the Act, 2017 carrying out arrest must be clear that the preparation of an arrest memo is mandatory. At this stage, we may state the guidelines issued by the Supreme Court in D.K. Basu (supra):

“(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest

in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or and through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and

major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

The safeguards mandated through the above referred guidelines, particularly the requirement to prepare an arrest memo, are directed towards “transparency and accountability” in the powers to arrest and detain. These safeguards flow from the fundamental rights guaranteed in Articles 21 and 22 respectively of the Constitution of India. The life and liberty of a person is secured under Article 21 and supplemented by Article 22 that provides key protection against the arbitrary arrest or detention to every arrested person.”

5. Issue **Notice returnable on 24.3.2022.** Learned APP waives service of notice on behalf of Respondent No.1.
6. Respondent NO.2 shall present himself before this Court along with the Corpus at **11:00 a.m. tomorrow.** He shall also bring before this Court the detail compliance of *D.K.Basu (supra)* and the decision of *Vimal Yashwantgiri Goswami (supra)*.
7. Direct service today is permitted to Respondent Nos.2 to 5. They shall be served through Respondent No.5.

(SONIA GOKANI, J)

(MAUNA M. BHATT,J)

NAIR SMITA V.