

## What do the courts say on Fraudulent avilment of ITC

**Summary of Significant Judicial Pronouncements where various Courts held contradicting views in the situation of pre and post arrest in the matters related to Fraudulent Availment of ITC:**

1. **M/s. Jayachandran Alloys (P) Ltd (Madras High Court) [2019 105 taxmann.com 245 (Madras)]**  
The Hon'ble Madras High Court provided relief to the petitioner by giving interim protection to prevent the department from invoking the powers under Section 69 of the Act (arrest provision) read with Section 132 (offences provision). Further, the Court held that committal of offence is to be fixed first before punishment is imposed. The court also directed the department to complete the adjudication by proper procedure as per the law. [[1\\_JayachandranAlloysPLtd](#)]

2. **Meghraj Moolchand Burad (Bombay High Court) [2019 21 GSTL 125 (Bombay)]**  
The petitioner filed an anticipatory bail application. Ld. Single Judge bench of the Bombay High Court rejected it taking into consideration the conduct of the applicant, gravity of offence and the serious allegations made. [[2A\\_MeghrajMoolchandBurad HC](#)]

***SLP filed by petitioner in Supreme Court (Appeal CrI. Nos.244/2019, dated 09.01.2019 - citation).***

The Hon'ble Supreme Court has granted interim protection that petitioner shall not be arrested provided he appears before the Directorate General of GST Intelligence. In the event of petitioner's arrest, he shall be released on bail on furnishing security to the satisfaction of the competent authority. [[2B\\_MeghrajMoolchandBuradSC interim order dated 9-1-19](#)]

3. **M/s Mili Enterprise (Gujarat High Court) [2021 (7) TMI 303]**  
The Petitioner has not been served with any notice or the reasons for blocking the credit. The court held that if the powers are exercised under Rule 86(A) of the Goods & Services Tax Rules, 2017, then also, the concerned authority is required to give reasons for blocking the credits in the credit ledger of the Petitioner. [[3A\\_MILI ENTERPRISE](#)]

Similar ruling has been made by the Hon'ble Allahabad High Court in the case of **M/s North End Food Marketing Pvt. Ltd. [2021-TIOL-1769-HC-ALL-GST]** [[3B NORTH END FOOD MARKETING PVT LTD](#)]

4. **M/s Aryan Tradelink (Karnataka High Court) [2021 (6) TMI 182]**  
The High Court held that in light of Rule 86-A(3), restriction in blocking of the electronic credit ledger cannot be extended beyond the period of one year from the date of imposing such restriction and accordingly, in light of blocking having been made on 21.01.2020, its continuance in the present instant is impermissible in law. Accordingly, it is declared that the action of the respondents in continuing the blocking of electronic credit ledger is set aside. [[4A\\_Aryan Tradelink](#)]

Similar ruling has been made in the following judgements:

- **M/s AS Steel Traders VSP Pvt. Ltd. (Andhra Pradesh High Court) [2021-TIOL-1802-HC-AP-GST]** [[4B\\_AS STEEL TRADERS VSP PVT LTD](#)]
- **M/s Vimal Petrothin Private Limited (Uttarakhand High Court) [2021 (7) TMI 127]** [[4C\\_Vimal Petrothin Private Limited](#)]

5. **Pawan Goel And Anr (Delhi High Court) [2021-TIOL-1318-HC-DEL-GST]**  
The petitioners were alleged to be involved in availing ITC by using of fake invoices and the anticipatory bail was cancelled by the Patiala House Court. However, the Hon'ble Delhi High

Court granted bail as the petitioners were cooperating in the investigation and were not regular offenders. [[5 PAWAN GOEL](#)]

6. **Sapna Jain vs. Union of India (Bombay High Court) [2019-TIOL-1146-HC-MUM-GST]**  
Anticipatory Bail allowed. {No coercive action shall be taken against the petitioner till the next date} [[6A SAPNA JAIN HC](#)]

***SLP Filed by the Government in Supreme Court [(2019) 106 taxmann.com 212 (SC)]***

The Hon'ble Supreme Court held that it would run no interference with the Order of the High Court as to privilege of Pre- arrest bail.

However, remarks were made: High Court while entertaining pre-arrest bail to accused should keep in mind that Supreme Court had dismissed SLP filed against order of Telangana High Court in a similar matter wherein High Court did not grant protection against arrest [[6B Sapna Jain SC](#)]

7. **Rakesh Arora (Punjab & Haryana High Court) [2021-TIOL-251-HC-P&H-GST]**  
The Hon'ble High court held that the petitioner has availed fraudulent ITC and the revenue has not received any tax. The application of the bail is rejected by the court as the grounds raised by the petitioner in the writ are not enough and the nature of accusations on the petitioner cannot be overlooked. [[7 RAKESH ARORA](#)]

8. **Amit Dua (Patiala House Courts) [2021 (9) TMI 111]**  
In the instant case the petitioner is alleged of availment of credit of non-existing firms on the basis of invoices and was arrested for the same on 23 July 2021. The petitioner has applied for grant of bail to which the court has held that the grant of bail depends upon complex facts and factors. The other co-accused persons are still absconding. The role of the accused is at the same footing with the other accused persons. The allegations against the accused are serious and investigation is still underway. If accused is released at this juncture, he would definitely interdict with the fair investigation given the fact that the absconding accused persons may be protected by him. Thus, Application was dismissed. [[8 Amit Dua](#)]

*Disclaimer: The above content is for general use and not a legal/professional advice. While Team Voice of CA has made reasonable research to ensure the relevancy of the content however, it shall be under no liability in any manner whatsoever for incorrect information/amedments in due course, if any.*