

**ABC 2025(I) 680 SC
ACQUITTAL & BAIL CASES
SUPREME COURT OF INDIA**

(M.M. Sundresh & Rajesh Bindal, JJ.)

Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP
(CrI) No. 5191/2021

Order date : 21 January 2025

SATENDER KUMAR ANTIL

- Appellant(s).

Versus

CENTRAL BUREAU OF INVESTIGATION & ANR. - Respondent(s).

Law Covered :- (A) *Code of Criminal Procedure, 1973 - Section 41-A (Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 35) - Service of Notice - WhatsApp and Other Electronic Modes Not Valid - Personal Service Mandatory - Notices issued under Section 41-A CrPC/Section 35 BNSS must be served personally - Electronic service via WhatsApp, email, or SMS is not recognized under Chapter VI of CrPC/BNSS - Standing Order issued by DGP Haryana permitting such modes is contrary to law - Held, notices must be served strictly in accordance with the procedure prescribed under the statutes - Directions issued to all States and UTs to issue corrective Standing Orders. (Order portion)*

(B) *Code of Criminal Procedure, 1973 - Sections 160 & 175 (Bharatiya Nagarik Suraksha Sanhita, 2023 - Sections 179 & 195) - Mode of Service - Mandatory Compliance With Statutory Procedure - Service of notices under Sections 160 and 175 CrPC (BNSS - Sections 179 and 195) must follow the prescribed statutory mode - Use of WhatsApp or other digital means not permitted - States/UTs directed to issue Standing Orders to enforce proper procedure for such service. (Order portion)*

(C) *Code of Criminal Procedure, 1973 - Section 440 (Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 484) - Undertrial Prisoners - Release on Aadhaar-Based Personal Bond - Proposal Under Deliberation - Proposal to release UTPs on personal bonds after Aadhaar verification where no bail application has been filed despite being informed - NALSA has acknowledged the suggestion - Further deliberation required with Amicus - Issue deferred to next hearing. (Order portion)*

(D) *High Courts - Monitoring Committees - Monthly Meetings and Compliance Reports Mandatory - Non-Compliance to Invite Coercive Action - High Courts directed to ensure their monitoring committees meet monthly to review compliance with*

Supreme Court directives - Reports must be submitted regularly - Lakshadweep granted final opportunity to file fresh affidavit - Non-compliance will require Chief Secretary's personal appearance. (Order portion)

Facts :- The Court reviewed compliance with earlier directions issued in *Satender Kumar Antil v. CBI & Anr.* across States, UTs, and High Courts. The Amicus Curiae submitted a report flagging three issues: (i) Aadhaar-based release of undertrial prisoners (UTPs) on personal bonds where no bail application is filed, (ii) improper service of notices under CrPC/BNSS through electronic means like WhatsApp, and (iii) failure by High Courts and governments to establish functional monitoring mechanisms for regular reporting. After hearing all parties, the Court issued directions on each point.

Law of Relief :- (i) States and UTs directed to ensure personal service of notices under Sections 41-A, 160, and 175 CrPC (BNSS - Sections 35, 179, 195) - Standing Orders permitting WhatsApp or digital notice declared impermissible.

(ii) All High Courts must conduct monthly monitoring committee meetings and file compliance reports - Lakshadweep granted last chance to file a fresh affidavit or face appearance of its Chief Secretary.

Counsel :- For Appellant(s): Mr. Sidharth Luthra, Sr. Adv. (AC), Mr. Akbar Siddique, AOR, Mr. Karl P Rustomkhan, Adv., Mr. Suhail Ahmed, Adv., Mr. Mohd Osama, Adv., Mr. Mohammad Farman Ashraf, Adv., Mr. Shahzar Qureshi, Adv.

For Respondent(s): Mr. Suryaprakash V Raju, A.S.G., Mrs. Aishwariya Banti, A.S.G., Mrs. Shradha Deshmukh, Sr. Adv., Mr. Mukesh Kumar Maroria, AOR, Ms. Sairica S Raju, Adv., Mr. Ritwiz Rishabh, Adv., Mr. Annam Venkatesh, Adv., Ms. Priyanka Das, Adv., Mr. Udai Khanna, Adv., Mr. Mohd Akhil, Adv., Mr. Padmesh Mishra, Adv., Mr. Tacho Eru, Adv., Mr. Vatsal Joshi, Adv., Mr. Arvind Kumar Sharma, AOR

Cases Referred :-

1. *Satender Kumar Antil v. CBI & Anr.*: (2022) 10 SCC 51 (Para 13, 15)
2. *Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.*: 2021 SCC Online Del 5629 (Para 13, 15)
3. *Amandeep Singh Johar v. State (NCT Delhi)*: 2018 SCC Online Del 13448 (Para 15)

ORDER

1. We have heard the learned Amicus Curiae, Sh. Siddharth Luthra, and the learned counsel appearing for the respective parties. a

2. The learned Amicus has filed the compliance report dated 20.01.2025 before this Court after a detailed analysis of the Affidavits/ Reports filed by the States, Union Territories (for short “UTs”) and the High Courts, filed in pursuance of the directions passed by this Court vide earlier orders dated 11.07.2022, 03.02.2023, 21.03.2023, 02.05.2023, 13.02.2024, 06.08.2024 and 15.10.2024. b

3. Certain additional directions were also issued by this Court vide order dated 15.10.2024 to all the States, UTs and the High Courts to make use of the Model Affidavit filed by the High Court of Meghalaya to ensure compliance of earlier directions in Para. F of the order dated 06.08.2024, so that an ‘Institutional Monitoring Mechanism’ can be set in place to ensure full and complete compliance of not only the earlier directions passed, but also of those directions that may be passed by this Court in the future as well. c
d

4. The learned Amicus submitted that in pursuance of this Court’s order dated 11.12.2024, all the concerned parties have reported either full or part compliance of the directions issued by this court, except for the State of Mizoram (which has filed its Compliance Affidavit way beyond the deadline given by this Court) and the UT of Lakshadweep (which has merely refiled its earlier Compliance Affidavit dated 21.05.2023). e
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5. The learned Amicus has flagged off three broad issues for our consideration. They are as follows:

(i) Release of Undertrial Prisoners (for short “UTPs”) on personal bond, based on verification of AADHAAR Card. g

(ii) Service of Notice under Section 41-A of the Code of Criminal Procedure, 1973 (for short “CrPC, 1973”) and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS, 2023”) is to be made in person, as contemplated under the statutes, and not through WhatsApp or other electronic modes. h

(iii) Whether sufficient steps have been taken by the High Courts to set in place an “Institutional Monitoring Mechanism” in pursuance of the order dated 06.08.2024 passed by this court?

SUBMISSIONS UNDER ISSUE (i):

6. Under **Issue (i)**, the learned Amicus submitted that in Para.

a 7 of its additional Compliance Affidavit dated 14.10.2024, the NALSA
has accepted and recorded the suggestion of the Amicus regarding
release of UTPs on personal bonds after verification of their
AADHAAR Card details and depositing the same in the concerned
Court, in cases where no application under Section 440 of CrPC, 1973
or Section 484 of BNSS, 2023 has been preferred by the UTP, despite
b being informed about their right to move such an application.

c 7. The learned Amicus also submitted that he seeks time to
consult and deliberate with the learned counsel for the NALSA about
the feasibility of coming up with an effective and efficient proposal
for the release of UTPs on the aforementioned terms. Hence, the said
issue may be taken up on the next date of hearing.

SUBMISSIONS UNDER ISSUE (ii):

d 8. Under **Issue (ii)**, the learned Amicus submitted and flagged
off instances where notice(s) under Section 41-A of CrPC, 1973 were
sent to the accused through WhatsApp, but the accused did not
appear before the Investigating Officer(s). No action was taken
against such erring officer(s). He has brought to the attention of this
Court a Standing Order dated 26.01.2024 issued by the office of the
DGP, Haryana which permits Police Officers to serve notices under
e Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 in person or
through WhatsApp, e-mail, SMS or any other electronic mode.

f 9. He further submitted that this Court in **Satender Kumar
Antil v. CBI & Anr.: (2022) 10 SCC 51**, approved and upheld the
judgment passed by the Delhi High Court in **Rakesh Kumar v.
Vijayanta Arya (DCP) & Ors.: 2021 SCC Online Del 5629**, wherein it
was held that notice served through WhatsApp or other electronic
modes is not contemplated as a mode of service under Section 41-A of
CrPC, 1973 (which is now Section 35 of BNSS, 2023) since the same is
g not in accordance with Chapter VI of CrPC, 1973 (which is now
Chapter VI of BNSS, 2023) and hence cannot be treated as a valid
mode of serving notice under Section 41-A of CrPC, 1973/Section 35
of BNSS, 2023. Hence, the police machinery must not circumvent the
mandate of Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 by
h serving notices through WhatsApp or other electronic modes, instead
of following the normal mode of service. Reference is also made to
Section 532 of BNSS, 2023 which states that all trials, inquiries and
proceedings under BNSS, 2023 may be held in electronic mode, by use
of electronic communication or use of audio-video electronic means.
Even the aforesaid section does not permit notice under Section 35 of

BNSS, 2023 to be served through WhatsApp or other electronic modes.

SUBMISSIONS UNDER ISSUE (iii):

10. Under **Issue (iii)**, the learned Amicus submitted that in order to ensure full and complete compliance of not only the past, but also the future directions that will be issued by this court, the Committee for “Ensuring the Implementations of the Decisions of the Apex Court” of the respective High Courts will have to regularly hold meetings to ensure compliance at all levels, and also ensure that monthly compliance reports are being submitted by the concerned authorities.

DIRECTIONS:

11. Having heard the parties and having deliberated upon the aforesaid submissions, this Court in furtherance of Paras. 100.2, 100.8 and 100.9 of **Satender Kumar Antil v. CBI & Anr.: (2022) 10 SCC 51**, and its previous directions contained in earlier orders, deems it necessary to issue the following directions:

a) All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

b) All the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in **Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.: 2021 SCC Online Del 5629** and **Amandeep Singh Johar v. State (NCT Delhi): 2018 SCC Online Del 13448**, both of which were upheld by this Court in **Satender Kumar Antil v. CBI & Anr.: (2022) 10 SCC 51**.

c) All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

a d) All the High Courts must hold meetings of their respective Committees for “Ensuring the Implementations of the Decisions of the Apex Court” on a monthly basis, in order to ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities.

b e) We have taken note of the fact that the State of Mizoram has filed its Compliance Affidavit way beyond the deadline given by this Court and the UT of Lakshadweep has merely refiled its earlier Compliance Affidavit dated 21.05.2023. Hence, the UT of
c Lakshadweep must ensure compliance of the earlier directions issued by this court and file a fresh Compliance Affidavit within a period of **2 weeks** from today.

d 12. We make it amply clear that this is the last and final opportunity being given to the UT of Lakshadweep to comply with the earlier directions, barring which the Chief Secretary of the UT of Lakshadweep will have to remain physically present before this Court on the next date of hearing, if the aforesaid compliance (i.e. **Direction e**) is not made.

e 13. The Registrar Generals of the respective High Courts and Chief Secretaries of all the States/UTs are directed to ensure that due compliance of the aforementioned directions (except **Direction e**) is made within a period of **3 weeks** from today, and that the Compliance Affidavits be mailed within a period of **4 weeks** from today to the dedicated email address for this purpose
f at complianceinantil@gmail.com.

g 14. Needless to state, though the outer limit of 4 weeks for filing the Compliance Affidavits has been granted, however the learned counsel appearing for the respective High Courts, States/UTs and the Union of India shall ensure that the Compliance Affidavits reach the learned Amicus Curiae well within the time granted by us. In case of non-compliance, appropriate consequences would follow and the requisite orders shall be passed on the next date of hearing.

h **Issue (i)**, as aforementioned, will be taken up on the next date of hearing.

List the matter on **18.03.2025 at 2 p.m.**

Result:- Directions issued. Matter listed for further hearing.
