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IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION
M.M. SUNDRESH; J., NONGMEIKAPAM KOTISWAR SINGH; J.
JANUARY 15, 2026
MA NO.2034 OF 2022 IN MA NO. 1849 OF 2021 IN SPECIAL LEAVE PETITION (CRL.) NO. 5191 OF 2021
SATENDER KUMAR ANTIL *versus* **CENTRAL BUREAU OF INVESTIGATION AND ANR.**

Criminal Law — Arrest — Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) — Section 35 — Mandatory issuance of notice for offences punishable with imprisonment up to 7 years — Interplay between Section 35(1)(b) and Section 35(3) to 35(6) — Discretionary nature of arrest - Core Principles and Rulings – i. Rule of Notice vs. Exception of Arrest - The Supreme Court held that for offences punishable with imprisonment up to 7 years, issuing a notice under Section 35(3) of the BNSS is the rule, whereas effecting an arrest under Section 35(6) read with Section 35(1)(b) is a clear exception; ii. Mandatory Checklist for Arrest - For an arrest to be legally justified in the specified category of offences, compliance with Section 35(1)(b)(i) (reason to believe) along with at least one condition mentioned in Section 35(1)(b)(ii) is a sine qua non; ii. No Automatic Arrest on Non-Compliance - Even if an individual fails to comply with the terms of a notice under Section 35(3) or is unwilling to identify themselves, arrest is not a matter of course - The Investigating Agency must still form an opinion that the arrest is an objective necessity for the investigation; iii. Fresh Materials Required for Subsequent Arrest - If a police officer decides to arrest an individual after having already issued a notice under Section 35(3), such an arrest must be based on materials and factors that were not available at the time the notice was issued; iv. Judicial Scrutiny - Magistrates must not authorize detention in a casual or mechanical manner - They are required to peruse the report and checklist furnished by the police officer to ensure the necessity of arrest is justified under the statutory parameters. *[Relied on Arnesh Kumar v. State of Bihar & Anr, (2014) 8 SCC 273; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51; State of Uttar Pradesh v. Bhagwant Kishore Joshi, (1964) 3 SCR 71; Paras 20-33]*

WITH MA No. 2035 of 2022 IN SPECIAL LEAVE PETITION (CRL.) NO. 5191 of 2021

O R D E R

1. A seminal issue which has arisen for our consideration is: Whether notices under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "**BNSS, 2023**") are to be mandatorily issued in all cases, *qua* an offence punishable with imprisonment up to 7 years?

2. The consequential issue is: Whether in the absence of circumstances under Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS, 2023 existing, is an arrest by a police officer, *qua* an offence punishable with imprisonment up to 7 years, legally justified?

SUBMISSIONS ON BEHALF OF THE AMICUS CURIAE

3. At the outset, learned Amicus Curiae Mr. Sidharth Luthra submitted that in the absence of specific circumstances under Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS, 2023 existing, an arrest by a Police Officer, *qua* an offence punishable with imprisonment up to 7 years, is not legally justified. Reliance is placed on the judgment of this Court in **Arnesh Kumar v. State of Bihar & Anr, (2014) 8 SCC 273**.

4. The learned Amicus invites the attention of this Court to the judgment dated 03.12.2025 passed by the High Court of Bombay, in the matter of **Chandrashekhar Bhimsen Naik v. State of Maharashtra & Ors., 2025 SCC OnLine Bom 5357**. The following paragraph, in the said judgment, is reproduced for convenience:

"21. The FIR invoked offences under Bharatiya Nyaya Sanhita and **the said offences involve a punishment less than 7 years and it was therefore imperative on the part of Investigating Officer to issue a notice under Section 35(3) of Sanhita directing the accused to appear before him and upon such a notice being issued, the Petitioner was duty bound to comply with the terms of the notice. As long as the Petitioner complied and continued to comply with the notice, in terms of sub section (5) of Section 35, it was not open for the Investigating Officer to arrest him unless by reasons recorded, he express the opinion that the accused ought to be arrested. It is only if the Petitioner would have failed to comply with the terms of notice or unwilling to identify himself, in such case subject to such orders, as may have been passed by a competent Court, the arrest could have been effected**.

The directions issued in *Arnesh Kumar*, were made applicable to all cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years, with or without fine. Emphasizing upon unnecessary arrest of the accused and his detention by the Magistrate in a casual and mechanical manner, the direction was issued that all State Governments shall instruct its Police Officers not to arrest mechanically, and before effecting an arrest, to be satisfied about the necessity of arrest under the parameters laid down flowing from Section 41 of the Code of 1973. It was, therefore, directed that the Police Officers shall forward a checklist duly filled in furnishing the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention.

It is a specific direction in *Arnesh Kumar* (supra) that the Magistrate shall also not act mechanically and while authorizing the detention of the accused shall peruse the report furnished by the Police Officer and only after being satisfied, shall authorize the detention."

(emphasis supplied)

5. According to the learned Amicus, the aforesaid para requires examination by this Court, as it presents two seemingly conflicting positions regarding offences punishable with imprisonment up to 7 years.

6. On the one hand, the order makes it imperative for the police officer to issue a notice under Section 35(3) of the BNSS, 2023 to the accused, *qua* an offence punishable with imprisonment of up to 7 years. On the other hand, it appears to permit the police officer to effect an arrest, in the very same category of offences, provided that "Reasons of Arrest" are recorded and valid. It is submitted that this creates a grey area regarding procedural compliance of Section 35(3) of the BNSS, 2023, by the police officer.

7. It is submitted that the requirement to issue a notice under Section 35(3) of the BNSS, 2023 to the accused, *qua* an offence punishable with imprisonment up to 7 years, is absolute, and cannot be bypassed solely by recording reasons for arrest.

8. It is further submitted that the power of arrest is distinct from the justification to exercise it. The phrase "for proper investigation of the offence," found in Section 35(1)(b)(ii) of the BNSS, 2023, cannot be interpreted to grant unfettered discretion to the police officer for making an arrest.

9. It has been brought to our notice that the issue—"Whether notices under Section 41-A of the Code of Criminal Procedure, 1973 (now Section 35(3) of the BNSS, 2023) are required to be given before arrest in all cases and in particular in the cases where the offence is punishable up to 7 years, when the arrest of an accused is necessary?" is

currently pending adjudication before the High Court of Bombay in the matter of **Vicky Bharat Kalyani v. State of Maharashtra, Criminal WP (St.) No. 24338 of 2024**.

10. In light of the above, specifically the observations made in **Chandrashekhar Bhimsen Naik *(supra)*** and the pending issue in **Vicky Bharat Kalyani *(supra)***, it is submitted by the learned Amicus that this Court may consider clarifying whether notices under Section 35(3) of the BNSS, 2023 are to be mandatorily issued in all cases, *qua* an offence punishable with imprisonment up to 7 years, thereby settling the position of law regarding the interplay between the mandate of notice and the discretion to arrest.

SUBMISSIONS ON BEHALF OF THE LEARNED ASG

11. At the outset, Ms. Aishwarya Bhati, learned ASG submitted that the clarification sought for by the learned Amicus regarding the mandatory nature of notices under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "**CrPC, 1973**"), which is *pari materia* to Section 35 of the BNSS, 2023, has already been conclusively settled by this Court in **Arnesh Kumar *(supra)*** and **Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51**.

12. The following paragraphs in the aforesaid judgments are reproduced for convenience:

Arnesh Kumar vs. State of Bihar & Anr, (2014) 8 SCC 273

"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. **These are the conclusions, which one may reach based on facts.**

7.2. The **law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest**.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by subclauses (*a*) to (*e*) of clause (1) of Section 41CrPC.

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9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

"**41-A.** ***Notice of appearance before police officer***.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice."

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(*b*)(*ii*);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention…"

(emphasis supplied)

Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51

29. Despite the dictum of this Court in *Arnesh Kumar* [*Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , no concrete step has been taken to comply with the mandate of Section 41-A of the Code. **This Court has clearly interpreted Sections 41(1)(*b*)(*i*) and (*ii*) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(*b*)(*i*) of Section 41 has to be read along with sub-clause (*ii*) and therefore both the**

elements of "reason to believe" and "satisfaction qua an arrest" are mandated and accordingly are to be recorded by the police officer.

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32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. **We express our hope that the investigating agencies would keep in mind the law laid down in *Arnesh Kumar* [*Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449], the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance**. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code."

(emphasis supplied)

13. It is submitted that in **Arnesh Kumar *(supra),*** this Court held that in cases, *qua* an offence punishable with imprisonment up to 7 years, arrest is prohibited, unless the conditions enumerated in Section 41(1)(b) of the CrPC, 1973 (now Section 35(1)(b) of the BNSS, 2023) are satisfied, and explicitly directed that police officers must not arrest automatically, but they may arrest if they are satisfied that such arrest is necessary to prevent further offence, for proper investigation, or to prevent tampering with evidence.

14. It is further submitted that there is no contradiction in the decision of the High Court of Bombay in **Chandrashekhar Bhimsen Naik *(supra).*** Though Section 35(3) of the BNSS, 2023 mandates the issuance of a notice, the legislative intent of Section 35(1)(b) of the BNSS, 2023 empowers the police officer to deviate from the said mandate only when the "Reasons for Arrest" are valid and recorded.

15. Finally, it is submitted that as Section 35 of the BNSS, 2023 and the ratio of the judgments of this court in **Arnesh Kumar *(supra)*** and **Satender Kumar Antil *(supra)*** themselves clearly provide the specific exceptions where arrest is permissible, no further clarification is required from this Court.

DISCUSSION

16. An investigation by a police officer generally begins with the recording of information regarding an offence. It is a process which is primarily aimed at the ascertainment of facts and circumstances surrounding an alleged crime and involves the police officer proceeding to the spot of occurrence to collect evidence and ends with the formation of an opinion as to whether, on the basis of the material collected, there is a case to place the accused before a Magistrate for trial and, if so, taking the necessary steps for the same by filing a charge-sheet. This has been succinctly dealt with by this Court in the case of **State of Uttar Pradesh v. Bhagwant Kishore Joshi, (1964) 3 SCR 71** in the following manner:

"17. What is investigation is not defined in the Code of Criminal Procedure; but in *H.N. Rishbud and Inder Singh* v. *State of Delhi* [(1955) 1 SCR 1150, 1157-58] this Court has described, the procedure, for investigation as follows:

"Thus, under the Code **investigation consists generally of the following steps, (*1*) Proceeding to the spot, (*2*) Ascertainment of the facts and circumstances of the case, (*3*) Discovery and arrest of the suspected offender, (*4*) Collection of evidence relating to the commission of the offence which may consist of (*a*) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (*b*) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (*5*) formation of the opinion as to whether**

on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."

This Court, however, has not said that if a police officer takes merely one or two of the steps indicated by it, what he has done must necessarily be regarded as investigation. **Investigation, in substance, means collection of evidence relating to the commission of the offence. The Investigating Officer is, for this purpose, entitled to question persons who, in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt, for this purpose he has to proceed to the spot where the offence was committed and do various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary for establishing the accusation against the offender. Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it**…"

(emphasis supplied)

17. An arrest, being an act done by a police officer in furtherance of an investigation, is discretionary and optional to be applied on the facts of a particular case. Section 35 of the BNSS, 2023 provides for situations where a person may be arrested by a police officer, without a warrant.

Section 35 of the BNSS, 2023

"35. When police may arrest without warrant.—(1) **Any police officer may without an order from a Magistrate and without a warrant, arrest any person—**

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(i) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a noncognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) **The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.**

(4) **Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.**

(5) **Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.**

(6) **Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.**

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."

(emphasis supplied)

18. Section 35(1) of the BNSS, 2023, through the use of the word "may," makes the position of law rather clear that the power of arrest is discretionary and optional. The power of arrest under Section 35(1)(a) to Section 35(1)(j) of the BNSS, 2023 are distinct and different from each other, with the commonality being an offence which is cognizable in nature.

19. To attract the power of arrest under Section 35(1)(b) of the BNSS, 2023, the conditions mentioned thereunder ought to be complied with scrupulously. Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS, 2023 must be read together, meaning thereby that compliance with Section 35(1)(b)(i) of the BNSS, 2023 is a *sine qua non* in all cases of arrest.

20. Section 35(1)(b)(i) of the BNSS, 2023 speaks about the "reason to believe" on the part of the police officer. Such a reason to believe should be formed on the basis of a complaint, information, or suspicion that the person concerned has committed the offence. However, this alone would not suffice. Additionally, any one of the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 must also be satisfied. In other words, it is not required that all the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 should be available, but only the existence of one of them that is required.

21. After being satisfied that there is a necessity of arrest, a police officer is bound to record his reasons either for arrest, as provided for under Section 35(1)(b) of the BNSS, 2023, or for merely issuing a notice under Section 35(3) of the BNSS, 2023. Section 35(1)(b) of the BNSS, 2023, thus, carves out an exception, with its inbuilt safeguards.

22. Suffice it is to state that an investigation can go on even without an arrest. While undertaking the exercise of collecting the evidence for the purpose of forming his opinion over the commission of a cognizable offence, a police officer shall pose a question, to himself, on the necessity of an arrest. This safeguard is provided as, in any case, the power to arrest an accused person is always available with a police officer even after he records his reasons, in writing, for not doing so at an earlier stage.

Joginder Kumar v. State of UP And Ors. (1994) 4 SCC 260

"20...No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. **There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except**

in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do."

(emphasis supplied)

23. Section 35(3) of the BNSS, 2023, once again, reiterates the object of the enactment that an arrest by a police officer is not mandatory in all cases. This provision applies to all cognizable offences. However, insofar as the offences punishable with imprisonment up to a period of 7 years are concerned, this provision will have to be read along with Section 35(1)(b) of the BNSS, 2023, and its proviso which mandates the furnishing of reasons, in writing, for both, making an arrest and when there is no requirement to do so. As stated above, the requirement of not arresting an accused is *qua* the stage of issuing notice under Section 35(3) of the BNSS, 2023. Hence, it is amply clear that a harmonious construction of Section 35(1)(b) and Section 35(3) of the BNSS, 2023 needs to be made.

Satender Kumar Antil v. Central Bureau of Investigation, 2025 SCC ONLINE SC 1578

"22. Section 35(4) of the BNSS, 2023 imposes a duty on the recipient of the notice to the effect that once the notice is served, the person must comply with every term of the notice. Section 35(5) of the BNSS, 2023 provides that as long as the person to whom the notice is issued, appears as is required and continues to comply with the notice, they cannot be arrested in relation to the alleged offence. Arrest may be made only if the Investigating Agency records specific reasons as to why the arrest is necessary."

(emphasis supplied)

24. Section 35(5) of the BNSS, 2023 facilitates the liberty of a person by imposing an implied prohibition of arrest when a person complies with a notice issued under Section 35(3) of the BNSS, 2023. This provision reiterates the fact that any subsequent arrest, being an exception, is warranted only when a police officer forms an opinion for such an arrest, which he is duty bound to record, in writing, by furnishing adequate reasons.

25. With respect to the submission made by the leaned Amicus, *qua* the contradiction in the reasoning of the High Court of Bombay in Chandrashekhar Bhimsen Naik ***(supra),*** on a reading of the judgment, we did not find any contradiction, as stated. The judgment has clearly dealt with the mandatory compliance of the provisions of Section 35 of the BNSS, 2023, by the police officer.

26. Hence, we give our imprimatur to the views expressed by the High Court of Bombay and, as already observed by us in this order that, as a matter of course, a notice under Section 35(3) of the BNSS, 2023 is to be issued to an accused or any individual concerned, *qua* an offence punishable with imprisonment up to 7 years and, that, as long as a person to whom a notice under Section 35(3) of the BNSS, 2023 is issued has complied and continues to comply with the terms of the notice then, as per Section 35(5) of the BNSS, 2023, it is not open for the police officer to arrest him unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

Satender Kumar Antil v. Central Bureau of Investigation, 2025 SCC ONLINE SC 1578

"23. Section 35(6) of the BNSS, 2023 lays down the procedure to be followed in case of non-compliance with the notice issued by the Investigating Agency under Section 35(3) of the BNSS, 2023. Noncompliance with a notice does not *ipso facto* mandate arrest, as there lies a discretion with the Investigating Agency, which must be of the opinion that the arrest of the concerned person is necessary for the purpose of investigation. In other words, failure to comply with the notice does not lead to automatic arrest. Rather, it is the last resort available to the Investigating Agency, after due exercise of discretion regarding the necessity of arrest.

24. Therefore, the **abovementioned provision contains an element of substantivity, which becomes evident from the discretion provided to the Investigating Agency. The substantive element is in the nature of a safeguard, especially when the liberty of an individual is involved.**

25. The **protection of one's liberty is a crucial aspect of the right to life guaranteed to each and every individual, under Article 21 of the Constitution of India, 1950** (hereinafter referred to as the '**Constitution**'). **The procedure encapsulated in Section 35(6) of the BNSS, 2023, seeks to secure this fundamental right, from encroachment by the relevant Authority, and therefore, any attempt to interpret the provision as a mere procedural one, would amount to rewriting the provision itself."**

(emphasis supplied)

27. We have already clarified the position *qua* Section 35(6) of the BNSS, 2023 in our earlier order dated 16.07.2025 wherein, it has been stated that even assuming that the person to whom a notice under Section 35(3) of the BNSS, 2023 has been issued, fails to comply with the terms of the notice or is unwilling to identify himself, an arrest is not a matter of course.

28. We have also clarified, on the earlier occasion, that the procedure contained in Section 35(6) of the BNSS, 2023 has been introduced on the touchstone of Article 21 of the Constitution of India, 1950. These inbuilt safeguards are required to be complied with by the police officer, in letter and spirit.

29. From a conspectus of the above, it is amply clear that even if the conditions mentioned under Section 35(1)(b) of the BNSS, 2023 are in existence, there can be no mandatory arrest, as a police officer still may or may not decide to do so.

30. While making an arrest under Section 35(6) of the BNSS, 2023, after the stage of issuing a notice seeking presence under Section 35(3) of the BNSS, 2023, the circumstances and factors that were in existence at the time of issuing the said notice shall not be taken into consideration by a police officer while making an arrest subsequently. In other words, for effecting an arrest under Section 35(6) of the BNSS, 2023, it must be based upon materials and factors which were not available with the police officer at the time of issuing a notice under Section 35(3) of the BNSS, 2023. Therefore, the power of arrest under Section 35(6) of the BNSS, 2023 is to be exercised rather sparingly, only under circumstances as aforementioned.

31. Hence, we have no hesitation to hold that a notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, *qua* an offence punishable with imprisonment up to 7 years, is the rule, while an arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, is a clear exception.

CONCLUSION

32. The power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023 must be interpreted as a strict objective necessity, and not a subjective convenience for the police officer. It does not mean the police officer can arrest to simply ask questions. However, it means that the police officer must satisfy himself that the investigation, *qua* an offence punishable with imprisonment up to 7 years, cannot proceed effectively without taking the concerned individual into custody. Any interpretation to the contrary would clearly frustrate the purpose and legislative intent of Sections 35(1)(b) and Sections 35(3) to 35(6) of the BNSS, 2023.

33. On the basis of the interpretation given by us, we conclude as follows:

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.

b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, *qua* an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, *qua* offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.

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