Neutral Citation No. - 2025:AHC:136034

Reserved

AFR

Court No. - 29

Case: APPLICATION U/S 528 BNSS No. - 6400 of 2025

Applicant: Smt. Bacchi Devi

Opposite Party: State of U.P. and Another

Counsel for Applicant: Sanjeev Kumar Yadav

Counsel for Opposite Party: G.A.

Hon'ble Vinod Diwakar, J.

1. Heard Shri Satyaveer Singh, learned *Amicus Curiae,* along with learned counsel for the applicant, learned A.G.A. for the State-respondent, and perused the material available on record.

2. The applicant has challenged the summoning order dated 29.04.2022 passed in Case No. 10849 of 2022, which is pending trial before the learned Chief Judicial Magistrate, Gorakhpur. The applicant has also prayed to quash the impugned charge-sheet no. 1/2021, filed in connection with Case Crime No.0395 of 2021, registered under Section 420 IPC, read with Sections 63 and 65 of the Copyright Act, 1957.

3. In brief, the prosecution's case is that the applicant is the proprietor of a retail paint shop operating under the name Krishna Hardware Paints Centre, located at Shanti Nagar, Bichhiya, District Gorakhpur and on spot inspection by the officers of the authorised company, the applicant was found selling counterfeit Asian Paints products, and huge quantity of counterfeit paints have been recovered from the applicant's shop. Whereas the applicant's case is that she had procured paint products from a wholesale distributor, namely Force Trading, situated at Dharamshala Bazar, Gorakhpur, through valid tax

invoices/receipts issued at the time of purchase. The paints were sold from the applicant's retail outlet in the ordinary course of business.

4. Learned counsel for the applicant submitted that the applicant had no knowledge or reason to believe that the paint products or packaging received from the wholesaler were counterfeit or adulterated. The alleged presence of counterfeit paint boxes only came to light during a raid conducted by the authorised representative of the complainant's company at the applicant's shop.

4.1 Even assuming the allegations to be true on their face, the essential ingredients required to constitute an offence under Section 420 IPC read with Sections 63 and 65 of the Copyright Act, 1957, are not satisfied. There is no dishonest intention or *mens rea* attributable to the applicant, nor any act of infringement knowingly committed by her. Thus, the continuation of the criminal proceedings against the applicant is a gross abuse of the process of law, as the statutory prerequisites for invoking the said penal provisions are clearly absent in the present case.

5. *Per contra,* learned A.G.A. submitted that during a spot inspection conducted at the applicant's premises by the authorised representative of SGS IPR Consultancy- the complainant- a substantial quantity of counterfeit Asian Paints products was recovered, indicating that the applicant was deriving significant illegal profit. As regards the applicant's knowledge and intention to earn such profit, these matters are to be examined during trial and can only be determined after the prosecution witness has deposed. At this stage, the veracity and probative value of the prosecution's evidence cannot be assessed and placed reliance on the principle laid down in *State of Haryana v. Bhajan Lal*[1].

---

1 *1992 Suppl. (1) 335*

6. In the given facts and circumstances, the applicant was afforded an opportunity to address the merits of the case. However, learned counsel for the applicant has submitted that unless the trial court proceedings are stayed at the very outset during the pendency of the present petition, the applicant would be compelled to surrender before the trial court, be remanded to judicial custody, and only thereafter her bail application would be considered on merits. Although the applicant was not arrested during the investigation. Such a course of action, it is submitted, runs contrary to the established jurisprudence governing bail post-filing of a charge sheet within the criminal justice system, and the whole purpose of filing the present petition would be frustrated.

7. To address the issue raised herein, Shri Satyaveer Singh, learned Advocate present in court, voluntarily offered to assist. Accordingly, he has been appointed as *Amicus Curiae* to assist the court in facilitating a just and logical conclusion of the matter.

8. The present petition is one among several wherein the applicant(s) seek a limited relief- namely, to be permitted to appear before the trial court to face trial without being taken into judicial custody. Alternatively, the applicant(s) prays that the application(s) be disposed of with an observation or direction permitting the applicant(s) to file an application for discharge before the trial court, without the risk of being remanded to custody during the pendency or consideration of such application.

9. This court has observed a recurring and concerning trend in applications filed under Section 482 Cr.P.C. (corresponding section 528 of BNSS, 2023), wherein, barring a few instances where arguments are addressed on merits, most of such applications are filed prematurely. These applications are accompanied only by the FIR, bail orders, and the police report filed under Section 173 Cr.P.C. (corresponding section 193 of the BNSS, 2023), but are notably

deficient in essential documents such as the statements of witnesses recorded under Sections 161 and 164 of the Cr.P.C. (corresponding sections 180 & 183 of the BNSS), seizure memos, site plans, or other incriminating material evidence relied upon by the police. This appears to be a consequence of such petitions being instituted before the stage contemplated under Section 207 of Cr.P.C. (corresponding section 230 of the BNSS, 2023)- i.e. supply to the accused(s) of the copy of police report and other documents.

10. It has been consistently observed that applications under section 482 Cr.P.C. (corresponding section 528 of the BNSS, 2023), are routinely filed before this Court immediately after the trial court takes cognisance and issues summoning orders. In such applications, litigants primarily seek quashing of the charge-sheet and setting aside of the cognizance order passed upon its filing. The underlying objective behind such applications appears, more often than not, to be the avoidance of judicial custody during trial or the securing of interim relief aimed at staying Non-Bailable Warrants (NBWs) or proceedings initiated under Sections 80 to 83 of Cr.P.C. (corresponding sections 82(1) to 85 of the BNSS, 2023) - reliefs which, in substance, are in the nature of final reliefs.

11. It is further observed that, on any given working day, approximately 350 to 500 cases are listed before this Court, and nearly 50 to 75 learned advocates make oral mentions of their matters, expressing apprehensions that, if their petitions are not taken up on that very day, the concerned trial courts may issue Non-Bailable Warrants (NBWs) against their clients or commit them to judicial custody. This concern is frequently raised even in cases where the charge-sheet has been filed without arresting the accused, and where the accused has fully cooperated during the investigation. It is pertinent to note that, in such cases, the investigating agency often either chooses not to arrest the accused at all, or the accused secures

anticipatory bail till the filing of the charge-sheet. In some instances, the accused also obtains interim protection in the form of a *"no coercive action"* order by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, until the conclusion of the investigation – a routine practice.

12. Surprisingly, there is another disturbing trend, in most of such cases, learned counsel do not press for quashing of the charge-sheet on merits. Instead, the primary concern appears to be securing an order from this Court that the petition be disposed of with liberty to the accused to raise all permissible legal and factual contentions at the stage of arguments on the application for discharge before the trial court. Such liberty is, as a matter of practice, invariably sought and granted by the High Court, along with protection to the accused from being taken into judicial custody upon appearance before the trial court in compliance with a summons issued pursuant to cognizance, for a limited period of a couple of weeks or so. However, this relief, though commonly granted, neither fulfils the requirements of law nor provides any substantive benefit to the litigants.

13. It is also commonly observed that in cases where the police have not arrested the accused during investigation and have filed the charge-sheet without custodial interrogation, the prevailing practice in the trial courts is to require the accused, nonetheless, to undergo, even if briefly, judicial custody in order to obtain regular or anticipatory bail after cognizance is taken. As a result, to avoid incarceration, the accused is compelled to file a fresh anticipatory bail application- either before the Court of Sessions or the High Court. If such anticipatory bail is not granted, the accused is then left with no option but to surrender before the trial court, whereupon they are remanded to judicial custody until a regular bail order is passed or approach the High Court under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for limited purpose discussed herein above,

generally. This practice persists regardless of the fact that the accused was either on bail during the investigation or that the investigating agency did not find it necessary to arrest the accused at any stage before the filing of the charge-sheet.

14. This prevailing practice, which often results in the accused being compelled to spend anywhere from a month to several years in judicial custody, is neither sanctioned by law nor aligned with the principles consistently laid down by the Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab*[2], *Sushila Aggarwal v. State (NCT of Delhi)*[3], *Siddharth v. State of U.P.*[4] and *Satender Kumar Antil v. CBI*[5]. Despite the settled legal position discouraging unnecessary pre-trial incarceration, this deviation has continued unabated and remains widely prevalent across district courts in Uttar Pradesh, without effective checks or corrective intervention.

15. In order to appreciate the gravity of the issue, it is essential to examine the procedural framework followed by trial courts in cases where the charge-sheet has been filed without the arrest of the accused during investigation, regardless of the reasons for such non-arrest. At this juncture, the learned *Amicus Curiae's* submission offers a comprehensive overview of the procedure followed by the trial courts. Upon submission of the charge sheet, the trial court issues a summons to ensure the accused's presence. In accordance with district court practices, the accused has three procedural options, which are outlined as follows:

15.1 First Option– Appearance and Surrender: The accused may choose to appear before the court in response to the summons and surrender. Upon surrender, the accused is invariably taken into custody. A regular bail application is then filed. The court, in turn,

---

2 *(1980) 2 SCC 565*
3 *(2018) 7 SCC 731*
4 *(2021) 1 SCC 676*
5 *(2022) 10 SCC 51*

calls for objections from the prosecution, hears the matter on the merits, and thereafter passes an order. In cases triable by the court of session, it is commonly observed that bail is denied at the Magistrate level, and the accused is left to approach the sessions court. In non-session triable cases, bail is usually granted after 15 to 30 days, depending on the stage of the hearing and the court's discretion. In the interim, the accused remains in judicial custody, with the only recourse being to move a regular bail application before the sessions court.

15.2 Second Option– Anticipatory Bail: Alternatively, the accused may choose to apply for a fresh anticipatory bail either before the Court of Sessions or the High Court. This process, however, is often lengthy, cumbersome, and procedurally complex, especially in cases involving serious offences, and until the accused obtains anticipatory bail, they continue to avoid appearing before the trial court.

15.3 Third Option – The course adopted in the present case, namely, filing an application under Section 528 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), for the limited purpose discussed hereinabove.

16. In cases triable by the Sessions Court, the procedure becomes even more intricate and onerous:

16.1 The accused first surrenders before the Magistrate and is remanded to judicial custody. A regular bail application is then moved before the Magistrate. Upon rejection- which is common in cases triable by the Sessions Court- the accused is required to file a fresh application before the Sessions Court. If bail is granted, the accused is released; however, if it is denied, the accused must then approach the High Court by filing a regular bail application, and thereafter Supreme Court as has been done in *Musheer Alam case (supra).*

16.2 If the accused opts not to surrender, they must first apply for anticipatory bail before the Sessions Court. If the bail is granted, the accused must comply by furnishing the required bail bonds. If the application is rejected, the accused is required to approach the High Court for anticipatory bail to avoid judicial custody during the trial.

16.3 This procedural labyrinth, especially in cases where the investigating agency has not felt it necessary to arrest the accused during the investigation, results in avoidable incarceration and undue hardship, contrary to the spirit of the law and the constitutional guarantee of personal liberty.

17. Learned *Amicus Curiae* further invited the attention of the Court to the glaring consequences of the aforesaid mode of procedural options highlighted herein above.

17.1 The decision on an application for anticipatory bail, when successively filed before both the Sessions Court and the High Court, may take several years. In the meantime, proceedings before the trial court remain effectively paralysed, with the court continuously issuing summons, bailable warrants, non-bailable warrants, and even initiating proceedings for declaring the applicant as an absconder.

17.2 To circumvent the cumbersome and coercive procedural framework outlined above, the accused often resorts to filing a petition under Section 528 of the BNSS, 2023, seeking the limited reliefs discussed herein before- primarily to avoid judicial custody upon appearance before the trial court and to secure liberty to pursue remedies such as discharge or bail without the risk of incarceration.

17.3 This vicious cycle recurs in virtually every case where the police have filed the charge-sheet without arresting the accused, leading to an unwarranted procedural burden and an avoidable deprivation of personal liberty. Such a practice not only undermines

the constitutional mandate of fairness and due process but also poses a serious threat to the rule of law and judicial propriety.

17.4 In this process, the accused is often compelled to engage in multiple rounds of litigation- typically 4 to 5 separate proceedings- before both the Sessions Court and the High Court, seeking protection from arrest or relief against coercive measures. Simultaneously, trial courts become overburdened with the task of hearing regular and anticipatory bail applications in such cases, where the police have filed the charge-sheet without arresting the accused. As a result, each trial court may spend approximately 2 to 2.5 hours daily solely on bail-related hearings of such a nature of cases. The High Court's docket, in turn, becomes increasingly congested with repetitive, routine, and largely innocuous prayers, leading to inefficient use of judicial time and resources. In cases where there is more than one accused, they often approach the court one after another, at their own convenience, with the intention of delaying the trial and waiting until a favourable order is obtained. This practice further hampers the functioning of the courts, leaving the system virtually choked.

17.5 During this period, the trial court continues to proceed with coercive measures- beginning with the issuance of summons, followed by bailable warrants, then non-bailable warrants, and eventually initiating attachment proceedings under Sections 80 to 83 of Cr.P.C. (corresponding sections 82(1) to 85 of the BNSS, 2023). In practice, it often takes approximately five years or more for the matter to reach the stage contemplated under Sections section 228 of Cr.P.C. (corresponding section 251 of the BNSS, 2023), which pertain to the supply of police reports and accompanying documents to the accused, and the committal of the case to the Court of Session for trial, defeating the spirit of speedy trial enshrined under Article 21 of the Constitution of India.

17.6 As a result, this futile and repetitive process consumes significant judicial time at both the trial and High Court levels, while simultaneously draining the resources of litigants.

18. In effect, it's a no-win situation for all stakeholders- a judicial stalemate that continues unchecked, despite its apparent inconsistency with established principles of criminal law, procedural fairness, and constitutional liberty. Yet, the practice persists. This may be attributed to several possible factors: **(i)** a perception among judicial officers that their conduct escapes scrutiny; **(ii)** a diminished sense of constitutional duty in upholding the rule of law; **(iii)** a lack of initiative or interest in upgrading judicial skills; **(iv)** a belief that their orders will remain unchallenged by the High Court under the guise of long-standing practices; **(v)** apathy towards the hardships faced by the ordinary litigant; and/or **(vi)** an absence of accountability or fear of departmental action. These reasons are merely illustrative, and there may be many more contributing factors.

19. The entire process exposes a deeply troubling reality, thus it is both appropriate and necessary to revisit the celebrated Constitution Bench judgments of the Supreme Court that have authoritatively addressed the principles governing anticipatory bail-particularly in the context of whether anticipatory bail is required after the issuance of summons in cases where the police have filed the charge-sheet without arresting the accused. A re-examination of these precedents will provide clarity on the legal framework and help assess the validity of the prevailing practices.

20. The Indian criminal justice system has been constitutionally mandated to balance two competing interests: the right to personal liberty and the interest of fair and effective investigation. The remedy of anticipatory bail, codified in Section 438 of the Code of Criminal Procedure, 1973 (corresponding section 482 of the BNSS), and the filing of a charge-sheet without the arrest of the accused, serve as

critical safeguards for protecting personal liberty in cases involving non-bailable offences. *However, in the District Courts of Uttar Pradesh, a peculiar and widespread judicial anomaly has arisen; should an accused person, who was not arrested during investigation and against whom a charge-sheet has been filed, be required to seek a fresh anticipatory bail merely to avoid being remanded to judicial custody post-cognisance?*

21. The answer, emerging from the progressive jurisprudence laid down by the Supreme Court, increasingly suggests a clear departure from ritualistic and automatic arrests, emphasising that appearance and bail bond are sufficient to secure an accused's presence before the court. This jurisprudence traces its roots from *Gurbaksh Singh Sibbia (supra)*, travelled through *Sushila Aggarwal (supra)* - a constitutional Bench judgement, *Siddharth (supra)*, and was recently summarised in *Satender Kumar Antil (supra)* by the 3-Judge Bench of the Supreme Court.

22. In *Gurbaksh Singh Sibbia (supra)*, the Constitution Bench of the Supreme Court laid down the foundational principles of anticipatory bail. It held that **(i)** anticipatory bail is not an extraordinary remedy, to be granted only in rare cases, but a part of the broader right to liberty under Article 21, **(ii)** there is no fixed time limit or procedural stage beyond which anticipatory bail cannot be granted, and **(iii)** the Court must balance the interests of liberty and legitimate investigation without treating arrest as necessary in every case. The Constitutional Bench rejected the notion that the right to anticipatory bail should automatically end with the filing of a charge-sheet or commencement of trial.

23. Despite *Gurbaksh Singh Sibbia (supra)*, a problematic practice became entrenched in many trial courts- in Uttar Pradesh-wherein the accused(s) not arrested during investigation are compelled to

surrender and seek regular bail post-cognisance, failing which they risk remand to judicial custody.

24. The Supreme Court, through a consistent line of authoritative decisions- including *Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.*[6], *Gurbaksh Singh Sibbia (supra),* and *Sushila Aggarwal (supra)*,- has firmly established the foundational principle that personal liberty is a cornerstone of the criminal justice system. That arrest should not be used as a punitive or mechanical measure.

25. In *Gudikanti Narasimhulu (supra)*, Justice V.R. Krishna Iyer memorably articulated the guiding philosophy by stating that *bail is the rule, jail the exception*. Justice Krishna Iyer emphasised that courts must act with judicial sensitivity and constitutional awareness when dealing with questions of pre-trial detention. That arrest and incarceration before conviction must be guided by necessity- not routine. This judgment remains a cornerstone in the evolution of bail jurisprudence, firmly grounding the grant of bail in the values of fairness, reasonableness, and the overarching protection of individual liberty.

26. In *Siddharam Satlingappa Mhetre v. State of Maharashtra*[7], the Supreme Court reaffirmed the principles laid down in *Gurbaksh Singh Sibbia (supra)* by holding that the order granting anticipatory bail for a limited duration and thereafter directing the accused to surrender and apply for a regular bail is contrary to the legislative intention and the judgment of the constitution Bench in *Gurbaksh Singh Sibbia case (supra)*[2], and further clarified that the restriction of the provision of anticipatory bail under section 438 Cr.P.C. (corresponding section 482 BNSS) limits the personal liberty of the accused granted under Article 21 of the constitution. The added provision is nowhere found in the enactment and bringing in restrictions, which are not found in the

---

6 *(1978) 1 SCC 240*
7 *(2011) 1 SCC 694*
2 *Para 95 & 99 of Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*

enactment is again an unreasonable restriction. It would not stand the test of fairness and reasonableness, which is implicit in Article 21 of the constitution after the decision of the case in *Menaka Gandhi v. Union of India*[8] and further clarified the scope and duration of anticipatory bail. The court held that a fixed time limit should not ordinarily restrict anticipatory bail and, unless exceptional circumstances warrant otherwise, such protection should continue until the conclusion of the trial.

27. However, in *Salauddin Abdulsamad Shaikh v. State of Maharashtra*[9], a 3-judge Bench of the Supreme Court took a view that stood in contrast to the principles laid down in *Gurbaksh Singh Sibbia (supra).* The court in *Salauddin (supra)* held that anticipatory bail should ordinarily be limited in duration. The rationale offered was that since anticipatory bail is granted at a stage when investigation is still underway, the relief must be temporary and subject to judicial reassessment upon completion of the investigation or filing of the charge-sheet. It was further observed that once the investigation progresses or a charge sheet is submitted, the accused should apply for regular bail.

28. Notably, the judgment in *Salauddin (supra)* failed to adequately engage with the binding precedent established by the Constitution Bench in *Gurbakhs Singh Sibbia (supra)*, and for this reason, it has often been viewed as rendered *per incuriam.*

29. Despite these apparent doctrinal deficiencies, the decision in *Salaluddin (supra)* was followed in a series of subsequent judgments, thereby creating a judicial anomaly that imposed unwarranted limited durations on anticipatory bail. These included cases such as *K.L. Verma v. State*[10], *Sunita Devi v. State of Bihar*[11], *Adri Dhran Das v.*

---

8 *(1978) 1 SCC 348*
9 *(1996) 1 SCC 667*
10 *(1998) 9 SCC 348*
11 *(2005) 1 SCC 608*

State of West Bengal[12], *Nirmal Jeet Kaur v. State of M.P.*[13], *HDFC Bank Ltd. v. J.J. Mannan*[14], *Satpal Singh v. State of Punjab*[15], and *Naresh Kumar Yadav v. Ravindra Kumar*[16]. This line of decisions effectively narrowed the scope of anticipatory bail.

30. However, this view was decisively overruled by the Constitutional Bench of the Supreme Court in *Sushila Aggarwal (supra)*. The court categorically held that the protection granted under Section 438 of the Cr.P.C. (corresponding section 482 of BNSS) is not inherently time-bound and cannot be curtailed arbitrarily. It clarified that an order granting anticipatory bail does not automatically lapse upon the issuance of a summons, filing of the charge-sheet, or framing of charges. Unless the court specifically limits the duration of such protection based on particular facts and compelling circumstances, the anticipatory bail shall ordinarily remain in force till the conclusion of the trial. The judgment thus reaffirmed the primacy of personal liberty and sought to harmonise the provision with the constitutional guarantee under Article 21.

30.1 The Supreme Court in *Sushila Aggarwal (supra)* further clarified that anticipatory bail under Section 438 Cr.P.C. (corresponding section 482 of BNSS) can be made subject to reasonable conditions- such as full cooperation with the investigation, mandatory appearance before the court when required, and abstaining from tampering with evidence or influencing witnesses. However, the imposition of arbitrary or mechanical time limits on the duration of anticipatory bail was expressly held to be impermissible, unless justified by specific and compelling reasons. The Constitution Bench emphasised that the protection granted under anticipatory bail must not be rendered illusory by unwarranted limitations.

---

12 *(2005) 4 SCC 303*
13 *(2004) 7 SCC 558*
14 *(2010) 1 SCC 679*
15 *(2018) 13 SCC 813*
16 *(2018) 1 SCC 632*

30.2 It is further held that an order granting anticipatory bail does not automatically cease to operate upon the filing of a charge sheet, upon the accused being summoned, or upon the framing of charges. In the absence of any supervening circumstances, such anticipatory bail may ordinarily continue until the conclusion of the trial. The trial court, however, retains the power under Section 439(2) of the Cr.P.C. (corresponding section 483(3) of BNSS) to cancel such bail and direct the arrest of the accused, if warranted by the facts and circumstances of the case. Mere filing of the charge sheet does not compel an accused, who has been granted anticipatory bail, to surrender and seek regular bail- unless specific allegations or material indicate that the accused is absconding, evading the process of law, intimidating witnesses, violating conditions of bail, or has otherwise abused the concession granted. Subject to continued compliance with the conditions imposed at the time of grant, anticipatory bail can subsist till the conclusion of the trial.

30.3 The observations in *Siddharam Satlingappa Mhetre (supra)* and other similar judgments that no restrictive conditions at all can be imposed, while granting anticipatory bail, has overruled. Likewise, the decision in *Salauddin Abdulsamad Shaikh (supra)*, and subsequent decisions including *K.L. Verma (supra)*, *Sunita Devi (supra)*, *Adri Dharan Das (supra)*, *Nirmal Jeet Kaur (supra)*, *HDFC Bank Ltd. (supra)*, *Satpal Singh (supra),* and *Naresh Kumar Yadav (supra),* which lay down such restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time have also been overruled in *Sushila Aggrawal (supra).*

30.4 This judicial insistence on custody is often based on an erroneous interpretation of Section 170 Cr.P.C. (corresponding section 190 of BNSS), which states that the police shall forward the accused ***"in custody"*** along with the charge-sheet. Trial courts and police have

frequently misread this as requiring physical custody, disregarding the liberty-centric mandate of Article 21 of the constitution.

31. In *Siddharth v. State of U.P. (supra)*, the police had completed the investigation and were ready to file a charge-sheet. However, they insisted that the accused be arrested and produced before the Magistrate for the charge-sheet to be formally taken on record. The accused approached the Supreme Court challenging this insistence, and the court held through a progressive and practical interpretation of the law that personal liberty is an important aspect of the constitutional mandate. The occasion to arrest an accused during investigation arises when a custodial investigation becomes necessary, or when the crime is heinous, or when there is a possibility of influencing the witnesses, or the accused may abscond. A distinction must be made between the existence of the power to arrest and the justification for the exercise of it[17]. There is no need to send an accused to judicial custody at the stage of 170 Cr.P.C., especially in cases where the police themselves saw no reason to arrest during the investigation. By cautioning against ritualistic arrest practices, the Supreme Court has once again highlighted the need for rational, liberty-conscious criminal procedure, in tune with constitutional mandates and the evolving ethos of human rights.

31.1 The Supreme Court decisively addressed this misinterpretation in *Siddharth (supra)* by holding that: **(i)** custody in Section 170 Cr.P.C. does not mean arrest. It only means presentation of the accused before the court to take cognisance, **(ii)** if the police never found the need to arrest the accused during investigation and the accused has cooperated throughout, there is no justification for arrest merely to take cognizance or file the charge-sheet, and **(iii)** liberty cannot be sacrificed on the altar of procedural formality. This ruling marked a pivotal moment, as it acknowledged that a bail bond or

17 *Joginder Kumar v. State of U.P., (1994) 4 SCC 260*

undertaking is sufficient to secure the accused's presence, obviating the need for anticipatory or regular bail in such circumstances.

32. The Supreme Court, in *Musheer Alam v. State of U.P.*[18], deprecated the practice of sending an accused to judicial custody after the court has taken cognizance of the charge sheet, if the accused was not arrested during the investigation. In this case, the petitioner was not arrested during the investigation, and the charge sheet was filed without an arrest. The trial court subsequently took cognizance of the case. Following the trial court's practice, the petitioner filed for anticipatory bail before the Sessions Court, which was rejected. The petitioner then challenged the rejection order before the High Court, which upheld the decision. Aggrieved by this, the petitioner approached the Supreme Court seeking anticipatory bail. While allowing the petition, Justice J.B. Pardiwala, speaking for the Bench, termed the practice as ***"unusual."*** The relevant extract of the order is reproduced below for reference:

> *".....**5**. We take notice of the fact that the investigation is over and charge-sheet has been filed in the CBI Court at Gorakhpur.*
>
> ***6.** While the investigation was in progress, the Investigating Officer did not deem fit to arrest the petitioner herein.*
>
> ***7.** The CBI Court has taken cognisance and has issued summons to the petitioner herein to appear.*
>
> ***8.** The learned counsel appearing for the petitioner would submit that there is a practice in the State of Uttar Pradesh that arrest is effected after the charge-sheet is filed and the Court takes cognisance of the charge-sheet. We do not propose to say anything as regards in this unusual practice except that it makes no sense.*
>
> ***9.** We are of the view that once the investigation is over and charge-sheet is filed then the accused should be asked to appear before the Court concerned and should furnish bail to the satisfaction of the trial court.*
>
> ***10.** If at all, the Investigating Officer wanted to interrogate the petitioner, he could have arrested him during the course of the investigation itself. Now there is no point in making a formal arrest.*
>
> ***11.** In such circumstances, referred to above, we order that the petitioner herein shall appear before the CBI Court, Gorakhpur and furnish bail to the satisfaction of the Court……."*

---

18 *(2025) SCC OnLine SC 116*

(emphasis lead)

33. In *Satender Kumar Antil (supra)*, the Supreme Court laid down comprehensive guidelines aimed at streamlining the procedures relating to arrest and bail. It also issued specific directions in cases where the police have filed a charge sheet without arresting the accused, along with other related directives. The relevant excerpts from the orders passed in the Miscellaneous Applications are outlined in succeeding sub-paragraphs for ready reference. This Court confines itself to referring only to those directions that are pertinent to the issue at hand and are specifically applicable to the State of Uttar Pradesh.

33.1 The Court emphasised that if an accused has not been arrested during investigation and has cooperated with the investigation, there is ordinarily no justification for taking the accused into custody by the courts upon filing of a charge sheet, as held in the case of *Sidharth (supra)*. In such cases, the trial court is expected to accept the appearance of the accused upon service of summons and permit them to furnish a bail bond under Section 88 Cr.P.C. (corresponding section 91 of BNSS), rather than insisting on surrender or seeking anticipatory bail. The Court emphasised that in such cases, it is not mandatory for the accused to seek anticipatory bail, as the filing of the charge-sheet without arrest is a clear indication that the investigating agency did not find it necessary to curtail the liberty of the accused during investigation. Therefore, there is no occasion for the Court to send the accused to judicial custody until or unless there are pressing reasons for it.

33.2 It is pertinent to note that, in view of repeated non-compliance with this mandate, the Supreme Court expressed concern over the entrenched practice of insisting on judicial custody or anticipatory bail, notwithstanding that the accused had never been arrested during the investigation. The relevant para of the order dated 11.7.2022, passed in *Satender Kumar Antil (supra)* are extracted herein below:

*****

"43. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P.[2] This is a power which is to be exercised by the Court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the Court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the Court for the framing of charges and issuance of process for trial. If the Court is of the view that there is no need for any remand, then the Court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the Court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to State that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.

44. This Court in Siddharth v. State of U.P.[2], has held that: (SCC pp. 680-82, paras 4-11)

"4. … There are judicial precedents available on the interpretation of the aforesaid provision albeit of the Delhi High Court.

5. In High Court of Delhi v. CBI[27], the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170CrPC prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under: (SCC OnLine Del paras 15-16 & 19-20).

'15. Word "custody" appearing in this section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigating officer before the Court at the time of filing of the charge-sheet whereafter the role of the Court starts. Had it not been so the investigating officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

---

2 ***Siddharth v. State of U.P., (2022) 1 SCC 676***

27 ***High Court of Delhi v. CBI, 2004 SCC OnLine Del 53: (2004) 72 DRJ 629***

16. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognisable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course, the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the investigating officer concerned or officer in charge of the police station thinks that presence of the accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.'

6. In a subsequent judgment the Division Bench of the Delhi High Court in High Court of Delhi v. State[28] *relied on these observations in High Court of Delhi v. CBI (supra) and observed that it is not essential in every case involving a cognisable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.*

7. The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a charge-sheet simply because the accused has not been arrested and produced before the Court.

8. In Deendayal Kishanchand v. State of Gujarat[29]*, the High Court observed as under: (SCC OnLine Guj paras 2 & 8).*

'2. … It was the case of the prosecution that two accused i.e. present Petitioners 4 and 5, who are ladies, were not available to be produced before the Court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the Court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet

---

28 *2018 SCC OnLine Del 12306: (2018) 254 DLT 641*
29 *1982 SCC OnLine Guj 172*

could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted without Accused 4 and 5. This is very clear from the evidence on record.

8. I must say at this stage that the refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submit the charge-sheet, it is the duty of the Court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognisance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth.'

9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the Court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons, he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody, but it merely connotes the presentation of the accused by the investigating officer before the Court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it[30]. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout

30 *Joginder Kumar v. State of U.P., (1994) 4 SCC 260*

cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

11. We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar case[30] how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 Cr.P.C."

46. Section 204 of the Code speaks of issue of process while commencing the proceeding before the Magistrate. Sub-section (1)(b) gives a discretion to a Magistrate qua a warrant case, either to issue a warrant or a summons. As this provision gives a discretion, and being procedural in nature, it is to be exercised as a matter of course by following the prescription of Section 88 of the Code. Thus, issuing a warrant may be an exception in which case the Magistrate will have to give reasons.

47. Section 209 of the Code pertains to commitment of a case to a Court of Session by the Magistrate when the offence is triable exclusively by the said Court. Clauses (a) and (b) of Section 209 of the Code give ample power to the Magistrate to remand a person into custody during or until the conclusion of the trial. Since the power is to be exercised by the Magistrate on a case-to-case basis, it is his wisdom in either remanding an accused or granting bail. Even here, it is judicial discretion which the Magistrate has to exercise. As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard. Here again, we make it clear that there is no need for a separate application and Magistrate is required to afford an opportunity and to pass a speaking order on bail.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in Arnesh Kumar[16]. Any dereliction on their part has to be brought to the notice of the higher authorities by the Court followed by appropriate action.

100.5. There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code.

---

30 ***Joginder Kumar v. State of U.P., (1994) 4 SCC 260***

16 ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***

100.6. There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth[2]*.*

*****

33.3 In the course of hearing *Satender Kumar Antil (supra)*, the Supreme Court, on multiple occasions, issued orders and expressed concern over the persistent non-compliance with the directions in *Sidharth v. State of U.P. (supra)* by the District Courts in the State of Uttar Pradesh. The Supreme Court further issued guidelines by order dated 7.10.2021[19] based on categorisation of offences and followed *Sidharth v. State of U.P. (supra)* for cases where the accused was not arrested during the investigation and cooperated throughout the investigation, including appearing before the Investigating Officer whenever called. The order dated 11.7.2022 was widely circulated to all the High Courts and District Courts of Uttar Pradesh.

33.4 The Supreme Court has once again clarified that if, during the course of the investigation, there was no occasion for them to arrest the accused, mere filing of a charge sheet does not *ipso facto* constitute a valid ground for sending the accused to judicial custody. This principle, which was laid down in *Sidharth v. State of U.P. (supra)*, has been reiterated and reinforced in *Statender Kumar Antil (supra)*.

33.5 By its subsequent order dated 3.2.2023, the Supreme Court directed all States and Union Territories to incorporate the decisions in *Satender Kumar Antil (supra)* and *Sidharth (supra)* as part of the curriculum of the State Judicial Academies as well as the National Judicial Academy[20].

33.6 In continuation, the relevant extract of the order dated 21.3.2023, passed in Misc. Application No.2034 of 2022[21] is reproduced herein below for ready reference:

---

2 *Siddharth v. State of U.P., (2022) 1 SCC 676*
19 *Satender Kumar Antil v. CBI, (2021) 10 SCC 773*
20 *(2023) SCC OnLine SC 1842*
21 *(2023) SCC OnLine SC 452*

*****

3. We have little option but to direct for the personal appearance of the Registrars of all the High Courts.

4.. Counsels have produced before us a bunch of orders passed in breach of the judgment in the case of Satender Kumar Antil v. CBI only as samples to show how at the ground level despite almost 10 months passing, there are a number of aberrations. It is not as if these judgments have not been brought to the notice of the trial Courts and in fact have even been noted, yet orders are being passed which have a dual ramification i.e., sending people to custody where they are not required to be so sent and creating further litigation by requiring the aggrieved parties to move further. This is something which cannot be countenanced, and, in our view, it is the duty of the High Courts to ensure that the subordinate judiciary under their supervision follows the law of the land. If such orders are being passed by some Magistrate, it may even require judicial work to be withdrawn and those Magistrates to be sent to the judicial academies for upgradation of their skills for some.

5. Amongst the illustrative orders, every large number of them happens to be from Uttar Pradesh and we are informed that orders passed specially in Hathras, Ghaziabad and Lucknow Courts seem to be in ignorance of this law. We call upon the counsel for the High Court of Allahabad to bring this to the notice of the Hon'ble the Acting Chief Justice so that necessary directions are issued to ensure that such episodes don't occur, including some of the suggestions made by the above.

6. Another aspect which is sought to be pointed out by learned counsel is that not only is there a duty of the Court but also of the public prosecutors to plead correct legal position before the Court as officers of the Court. Illustrations are being given once again where the submissions of the public prosecutors are to the contrary. In this behalf Mr. Maninder Singh, learned Senior Counsel submits that even in an earlier order passed by this Court in Aman Preet Siingh v. C.B.I. Through Director[22], this aspect was flagged as under:

> *"7. Learned counsel for the appellant has brought to our attention to the proceedings recorded on 26.8.2021 before the Magistrate to submit that the high handedness of the respondent is apparent from the fact that the public prosecutor, despite these orders from this Court, sought to plead that the appellant had not been allowed any bail, non bailable warrants had been issued against him, the direction of this Court for the appellant not to be arrested did not mean that he could not be sent to judicial custody and since this Court observed that he could attend virtually*

22 *(2021) SCC OnLine SC 941*

> *till physical hearing started, which had by then resumed, he should be sent to judicial custody. We may only note all these submissions are completely inappropriate and indefensible. Neither did the learned Additional Solicitor General seek to contend except stating that those are only submissions. We except a public prosecutor to be conscious of the legal position and fair while making submissions before the Court. We say no more as at least the Chief Judicial Magistrate understood the order clearly and thus did not agree with the submission of the public prosecutor."*

33.7 Likewise, in continuation of the proceedings in the same petition, the Supreme Court, by order dated 2.5.2023, passed in *Miscellaneous Application No. 2034 of 2022 in M.A. No. 1849 of 2021 in SLP (Crl.) No.519 of 2021*[23], observed as under, and the relevant extracts thereof are reproduced hereinbelow:

*****

> *"(ii) The Registrar of the Allahabad High Court appears not to have even filed the affidavit setting out what steps have been taken in pursuance to the directions passed by us on 21.3.2023 and it is now stated before us that it will be filed. We find this completely unacceptable. A date is fixed where considerable time is spent in this matter to ensure that the law is followed. The least we expect is that the affidavits will be filed well in time with advance copies to the Amicus so that he can assist the Court. This is more so of a State where it has been found that there are large number of examples of orders being passed by judicial officers, not in conformity with the judgment passed in the present matter.*
>
> *We call upon the Allahabad High Court to file appropriate affidavit within four weeks with advance copy to the learned Amicus setting out the steps taken in this regard and as to whether it has been identified if some judicial officers have been still frequently passing orders not in conformity with the judgment and whether any of the officers have been sent to the judicial academies for further upgradation of their skills.*
>
> *We may also note that as per some orders handed over to the learned Amicus, even after the last order, such orders as have been illustratively passed by the Lucknow and Ghaziabad Courts are not following the judgment of this Court. We would like to emphasise that if counsels want to bring to the notice of the Court that such orders are being passed, the least which is expected is that the Amicus would*

---

23 *(2023) SCC OnLine SC 758*

have been handed over advance copies of such orders to facilitate him in assisting the Court.

One of the orders pointed out is of Sessions Judge, Lucknow in Bail Application[24] i.e. even after the order passed by us on 21.03.2023. The order rejects an anticipatory bail application in a matter of a matrimonial dispute where it was alleged that there was an assault on the complainant and various family members were sought to be roped in which included the husband, brother-in-law, mother-in-law and father-in-law. It was stated before the Court that the accused applicants were not arrested during the investigation and now charge sheet has been filed. The statement of the Public Prosecutor is also recorded that the offences levelled are punishable with less than seven years of imprisonment. Thereafter the order notes the 2021 judgment of this Court. Despite this the anticipatory bail application is rejected qua all the applicants while recording "since ample safeguards in given situation is already available to the accused-applicant, therefore, no ground exists for grant of anticipatory bail."

We have thus, specifically brought this order to the notice of learned counsel for the Allahabad High Court as an illustration where despite all directions, much leaves to be desired.

Certainly, the learned Judge concerned meets the parameters for upgradation of his skills in a Judicial Academy and the needful be done by the High Court.

The fact that the directions in the case would apply to anticipatory bail cases was enunciated in the order dated 21.3.2023 and thus, there could not have been any confusion on this aspect.

Another illustrative order, we may note is in the case of a Second Anticipatory Bail Application No. 1287 of 2023 in the Court of the Special Judge, Anti-Corruption CBI Court No.1, Ghaziabad dated 18.4.2023 which also the High Court needs to look into."

*****

33.8 Further, in the course of the same proceedings, the Supreme Court, by order dated 13.02.2024[25], observed as under, the pertinent extracts whereof, are reproduced hereinbelow:

*****

*"**State of Uttar Pradesh — Directions to be complied with***

229. In terms of direction contained in para 100.2, it is directed to provide the particulars of first information reports of cognizable and non-bailable cases in which the mandate of Sections 41, 41-A CrPC

---

24 *[Under Section 438, Cr.P.C.] No. 3704 of 2023 dated 26.04.2023*

25 *Satender Kumar Antil v. CBI and another, (2024) 9 SCC 198*

and Arnesh Kumar[5] has not been followed and consequently to provide the details of necessary actions that have been taken against erring police officers. Also, in terms of direction contained in para 100.2, information has to be provided as to whether the Standing Order is being complied with by the investigating officers

230. In terms of the directions contained in 100.7, it is directed that the State shall provide details of Special Court constituted and the necessary steps taken for creation of additional Special Courts and its stage.

231. Compliance with the order dated 21-3-2023[2] passed by this Court:

(a) In terms of the above referred order, we direct the State to ensure that the Prosecutors are stating the correct position of law as per the judgment passed by this Court in Siddharth[4] and Satender Kumar Antil [1].

(b) To circulate the judgment passed by this Court in Siddharth[4] and Satender Kumar Antil [1].

(c) To train and update the Prosecutors on a periodical basis and provide details of the same.

High Court of Allahabad-Directions to be complied with

232. In terms of the compliance of the directions issued in para 100.2, the affidavit submitted highlights discrepancy, wherein information highlights compliance of Section 41 and 41-A Cr.P.C., however, bail is being granted due to non compliance of the same in certain districts such as Barabanki, Farrukhabad, Kashiram Nagar, Lakhimpur Kheeri and Moradabad. Since the two conditions cannot co-exist, the High Court is directed to ensure uniform compliance and furnish information on the same.

233. In terms of the directions issued in para 100.5, the High Court is directed to ensure compliance to the effect that bail applications should not be insisted upon in applications under Sections 88, 170, 204 and 209 CrPC as they are being insisted upon in certain districts such as Agra, Chitrakoot and Sambhal, and to furnish information on the same.

234. In terms of the directions issued in para 100.6, the High Court is directed to ensure compliance of the same and furnish information.

235. In terms of the directions issued in para 100.7, the High Court is directed to ensure compliance with respect to consultation with the State Government for constitution of Special Courts and filling vacancies in the existing District Courts, and to furnish information on the steps taken to comply with the same.

---

5 ***[Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273]***
2 ***[Satender Kumar Antil v. CBI, 2023 SCC OnLine SC 452]***
4 ***[Siddharth v. State of U.P., (2022) 1 SCC 676]***
1 ***[Satender Kumar Antil v. CBI, (2022) 10 SCC 51]***

236. In terms of the directions issued in paras 100.8 and 100.9, it is noted that despite the identification of undertrial prisoners, sufficient steps have not been taken to ensure compliance by filing applications on their behalf under Section 440 CrPC, in most districts. The High Court is directed to ensure compliance and furnish information on the same.

237. In terms of the directions issued in para 100.11, the High Court is directed to furnish complete information regarding the compliance of the directions in all districts and to take steps for compliance.

238. The High Court is directed to identify judicial officers passing orders in non-conformity with the directions issued by this Court in Satender Kumar Antil[1], in terms of the order dated 2-5-2023[6] of this Court, and to provide details as to the actions taken against erring officers.

239. To furnish information on whether the directions of Satender Kumar Antil[1] is being applied to petitions under Section 438 CrPC or not."

*****

33.9 Further, in the course of the same proceedings, the Supreme Court, by order dated 6.8.2024[21], issued the following directions, the relevant extracts whereof are reproduced hereinbelow:

*****

"State of Uttar Pradesh — Directions to be complied with

79. The State must provide a clarification and details with respect to the instances of non-compliances of para 100.2 of Satender Kumar Antil case[1] by police officers in District Farukkhabad (which is based on the data provided by the High Court of Allahabad) and provide details of action taken against the said erring officers as mandated by para 100.2.

80. The State must ensure compliance of para 100.7 of Satender Kumar Antil v. CBI[1].

81. The State must ensure compliance of paras 259 and 260 of the order dated 13-2-2024[5] passed by this Court and implement the SOP (Constitution of an "Empowered Committee" and an "Oversight Committee") to help poor prisoners.

High Court of Allahabad — Directions to be complied with

82. The High Court must provide data, in conformity of orders dated 3-2-2023[2] & 13-2-2024[5] identifying any judicial officers who are

---

1 *[Satender Kumar Antil v. CBI, (2022) 10 SCC 51*
6 *[Satender Kumar Antil v. CBI, 2023 SCC OnLine SC 758]*
21 *Satender Kumar Antil v. CBI, (2024) 9 SCC 177*
5 *[Satender Kumar Antil v. CBI, (2024) 9 SCC 198]*
2 *[Satender Kumar Antil v. CBI, 2023 SCC OnLine SC 1842]*

passing orders in non-conformity with the directions issued by this Court in Satender Kumar Antil v. CBI[1] and to provide details as to the actions taken against such erring officers, if any.

83. The High Court must provide data in order to show compliance with paras 100.5, 100.6, 100.8, 100.9, 100.11 of Satender Kumar Antil case[1].

84. The High Court must provide clarification and an explanation with respect to non-compliance of para 100.5 of Satender Kumar Antil[1] case by the Special Judge, Anti-Corruption, CBI-5, Lucknow in orders dated 24-7-2024 arising out of [Anticipatory Bail Application No. 5384 of 2024 & Anticipatory Bail Application No. 5393 of 2024 in Sessions Case No. 1117 of 2024 [RC No. 03(A)/2022.

85. The High Court must provide data indicating whether the District & Sessions Judges are complying with the direction to apply principles of Satender Kumar Antil v. CBI[1] to applications seeking anticipatory bail under Section 438 CrPC."

*****

33.10 Further, in the course of the same proceedings, the Supreme Court, by order dated 21.1.2025[22], issued the following directions, the relevant extracts whereof are reproduced hereinbelow:

*****

"11 (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."

*****

34. In one such instance, the Supreme Court directed the learned District Judge, Lucknow, to undergo judicial training, observing that the subordinate judiciary was not following the directions laid down in *Satender Kumar Antil (supra)*. This direction underscores the Supreme Court's concern regarding the routine and mechanical insistence on custody or anticipatory bail, despite the absence of arrest during investigation- a practice inconsistent with the constitutional mandate of safeguarding personal liberty. The Court reiterated that

---

1 *[Satender Kumar Antil v. CBI, (2022) 10 SCC 51]*

22 *[Satender Kumar Antil v. CBI, 2025 SCC OnLine SC 1322]*

unnecessary incarceration and procedural rigidity violate the fundamental rights enshrined under Article 21 of the constitution, and that bail, not jail, remains the governing norm unless custodial interrogation is warranted.

35. The trajectory of anticipatory bail jurisprudence, from *Gurbaksh Singh Sibbia (supra)* to *Satender Kumar Antil (supra)*, represents a mature constitutional evolution toward affirming personal liberty and rationalising procedural rigour. In an age where arrests are increasingly recognised as tools of oppression when misused, the courts have correctly shifted the focus to appearance and cooperation, rather than mechanical incarceration.

36. The rule of law rests on the supremacy of law and equality before it, with the Supreme Court as its final interpreter whose judgments bind all subordinate courts under Article 141 of the Constitution. Disregard of its directives- particularly those safeguarding personal liberty in *Sidharth (supra)* and *Satender Kumar Antil (supra)*- undermines constitutional governance and fosters judicial impropriety. Despite the Supreme Court's order dated 3.2.2023 directing the incorporation of these rulings into the curricula of all State Judicial Academies and the National Judicial Academy, repeated violations persisted, prompting further orders on 21.3.2023 and 2.5.2023, including a direction to the District Judge, Lucknow, for skill- upgradation training at the Judicial Training and Research Institute.

37. These are not isolated incidents. This Court routinely encounters cases where trial courts disregard the principles laid down in *Sidharth (supra) and Satender Kumar Antil (supra).* From the date of the *Sidharth (supra)* judgment i.e. dated 16.8.2021 until the skill-enhancement directives to learned District Judge, Lucknow by order dated 2.5.2023- spanning nearly two years- there has been little change in the approach of the subordinate judiciary, underscoring the

urgent need for stronger enforcement and accountability. This, therefore, warrants the intervention of this Court. High Courts, vested with inherent powers under Section 528 of the BNSS, 2023 read with Articles 226 and 227 of the Constitution, are empowered to issue structured and binding guidelines to ensure uniform adherence to Supreme Court judgements to meet the ends of justice. As affirmed in *Jasbir Singh v. State of Punjab*[26], persistent defiance warrants supervisory intervention. The Supreme Court affirmed that continued defiance of binding pronouncements warrants supervisory action. Issuing structured, uniform guidelines to ensure implementation at the trial court level is therefore both legitimate and necessary. When exercised judiciously and transparently, these powers preserve judicial integrity, ensure accountability, and uphold the rule of law.

DIRECTIONS

38. Based on the foregoing deliberations, and to give effect to the constitutional guarantees under Article 21 of the Constitution of India, this Court, in exercise of the powers vested in it under Article 227 of the Constitution and Section 528 of the BNSS, and to secure the ends of justice as well as to implement the directions issued in *Satender Kumar Antil (supra)*, hereby directs as follows:

(i) All District Judges shall ensure that, in cases where the charge-sheet has been filed without arrest- whether because custodial interrogation was not effected during investigation by Investigating Officer, or the accused had secured anticipatory bail/protective orders under Article 226 of the Constitution or Section 528 of the BNSS and duly cooperated during investigation- the trial court shall not remand the accused to judicial custody upon appearance pursuant to summons, nor insist upon filing of regular or anticipatory bail applications. The accused shall be permitted to appear and furnish a personal bond at the first instance, in terms of *Musheer Alam (supra)*

26 *(2006) 8 SCC 294*

and *Satender Kumar Antil (supra)*[5]. The requirement of surety under Section 91 BNSS may be considered subsequently at the court's discretion to ensure appearance of the accused.

(ii). At the stage of proceedings under Sections 88, 170, 204, and 209 Cr.P.C. (corresponding sections 91, 190, 227 and 232 of BNSS), the trial court- whether presided over by a District Judge, Additional District and Sessions Judge, or Magistrate- shall inform the accused of his right to furnish a personal bond at the first instance, and may require surety subsequently, if necessary[27].

(iii). Immediately after appearance of accused in response to summons, the court shall comply with Sections 230 and 231 of BNSS, 2023, committing the case to the court of session when exclusively triable by it, and proceed to the next trial stage without unnecessary delay.

(iv). For the sake of clarity, when the trial court encounters such anticipatory bail or protective orders under Article 226 or Section 528 BNSS specifying protection till the filing of the charge-sheet, or direct that "*no coercive action"/"stay on arrest shall operate until filing of charge sheet"*, these protections shall be deemed to continue until the conclusion of trial, in line with *Gurbaksh Singh Sibbia (supra)*, *Sushila Aggarwal (supra)*, *Sidharth (supra)*, *Satender Kumar Antil (supra)*, and *Musheer Alam (supra)* unless supported by with cogent reasons, making out an exceptional case. This direction aligns with the consistent position adopted by the Supreme Court, beginning with *Gurbaksh Singh Sibbia (supra)*, affirmed in *Sushila Aggarwal (supra)*, clarified in *Sidharth (supra)*, and reiterated in *Satender Kumar Antil (supra)* and *Musheer Alam (supra)*. A reference may be invited to paragraphs 43, 44, 46 and 47 of the order dated 11.7.2022; paragraph no.3 of order dated 7.10.2021; paragraph no.6 of order dated 16.12.2021; paragraph no.4, 5 and 6 of order dated 21.3.2023;

5 *(2022) 10 SCC 51, by order dated 11.7.2022*
27 *Satinder Kumar Antil (supra)*

paragraph nos.7(ii) of order dated 2.5.2023; paragraph nos.229 to 239 of the order dated 13.2.2024; paragraph nos.79 to 85 of the order dated 6.8.2024 passed in *Satender Kumar Antil v. CBI, [all the orders mentioned hereinabove have been passed by Supreme Court in SLP (Crl.) No.5191 of 2021].*

(v). The Joint Director (Prosecution) in each district shall maintain detailed records of all such cases where trial courts remanded accused persons to custody, despite charge-sheets being filed without prior arrest, contrary to the Supreme Court directives in *Arnesh Kumar (supra), Sidharth (supra)*, *Satender Kumar Antil (supra)*, and observation made in *Musheer Alam (supra).*

(vi). All Jail Superintendents shall maintain corresponding records of such cases. The record shall be maintained in a register documenting cases along with a *remand order* where an accused has been sent to jail by the trial court despite not being arrested during the investigation and the judicial remand is contrary to the judgments mentioned in preceding paragraph.

(vii). The Additional Director General of Police (Prosecution), Directorate of Prosecution, Lucknow, shall compile an annual, centralised record of all such instances, based on data from Joint Directors (Prosecution), and Jail Superintendents. This record shall be reviewed periodically, submitted to higher authorities, including the Registrar General of the High Court. It shall be used to assess the conduct of Judicial and Prosecuting Officers. The Directorate of Prosecution shall promote compliance with binding directions, protect the constitutional right to liberty, and preserve the integrity of the criminal justice system. The objective is to establish an additional layer of oversight at the zonal and regional levels, complementing the centralised data maintained by the Directorate of Prosecution.

(viii). The Director, JTRI, Lucknow, shall ensure sustained training programmes for judicial officers to secure compliance with this order.

(ix). The Secretary, District Legal Services Authority, in coordination with District Court Bar Associations, shall conduct regular legal awareness camps to educate and sensitise advocates on these directions.

(x). District Judges shall submit monthly reports to the High Court containing: **(a)** the number of cases in which judicial remand was ordered despite no prior arrest; **(b)** feedback on judicial training and compliance with these directions; and **(c)** details of legal awareness camps conducted. A reference is invited to paragraph 11(d) of the order dated 21.1.2025 passed in *Satender Kumar Antil v. CBI*[22].

(xi). It is noted that *Sidharth (supra)* was delivered on 16.08.2021 and reinforced in *Satender Kumar Antil (supra)* by order dated 11.7.2022. Despite this, violations persisted by the learned trial courts, leading the Supreme Court to direct skill enhancement training for a District Judge nearly a year after *Satender Kumar Antil* and two years after *Sidharth*. The Supreme Court also expressed concern that judges in other districts of Uttar Pradesh remained unaware or indifferent to these directions, therefore, it can safely be observed that the long-standing practice of District Judges merely endorsing *'seen'* on the cover page of circulation letters for judgments has lost its efficacy. Therefore, the learned District Judges shall endorse: *"Read, understood, and discussed with fellow judges of the district"*, and, after deliberating on this judgment with their fellow judges, submit a report to this effect to the Registrar General of this Court immediately upon receipt of a copy of this order.

39. The learned *Amicus Curiae* has also drawn attention to a related issue, namely, the difficulty encountered by litigants in furnishing two

---

22 *(2025) SCC OnLine SC 1322*

sureties for each case. This requirement, invariably followed in all districts pursuant to various circulars issued by this Court, often involves substantial surety amounts and, as such, may obstruct the course of justice and create impediments in the seamless compliance with the aforesaid directions.

39.1 Due to the unavailability of sureties- especially for litigants residing outside the district or even outside the State- many remain languishing in jail for extended periods, sometimes from several months to years. The Supreme Court has consistently held that an accused should not be denied release on bail solely due to the non-availability of sureties, as such a situation, particularly when the accused has spent even a single day in custody after the grant of bail, amounts to a travesty of justice and frustrates the very purpose of bail.

40. To understand the rationale behind the district court's consistent requirement for two sureties and with bail bond commensurate the gravity of offence, it is essential to trace its origins to certain circulars issued by the High Court. A brief review of these circulars would provide clarity and facilitate a better understanding of the practice.

40.1 In continuation of the earlier directions, Circular Letter No. 3/VIIb-47 dated 17 January 1972 was issued regarding the acceptance of surety bonds. It directed Presiding Officers to exercise judicial discretion, whereby a surety was required to file a detailed affidavit of movable and immovable assets, and, if found reliable, the bond could be accepted without reference to the Tehsil. Where such reference was considered necessary, safeguards against corruption were to be observed, and reports were to be assessed on their merits without undue influence. Strict action was also mandated in cases involving false affidavits or incorrect Tehsil reports.

40.2 Thereafter, a Circular Letter No. 24/VIIb-47 dated 25 February, 1976 was reiterated and expanded these instructions, requiring

affidavits from sureties detailing property, value, and previous suretyship; dispensing with further verification where an advocate vouched for the surety thereby discontinuing the practice of sending bonds to the Tehsil for verification.

40.3 Subsequently, a Circular No. 58/98 dated 5th November 1998, in partial modification of the earlier Circular dated 20th October 1998, was issued mandated strict compliance in serious offences such as murder, dacoity, rape, and NDPS cases, with high surety amounts proportionate to the gravity of the offence- ordinarily secured by two sureties of the like amount- along with directions for address verification, submission of photographs, and production of sale deeds.

40.4 Similarly, a Circular No. 44/98 was again issued directing that in such serious offences, the surety bond should generally be fixed at Rs.1 lakh, covered by four sureties of Rs.25,000 each, together with procedural safeguards. Further, a Circular Letter No. 3/Admin.(G) dated 16 February, 2009 was again issued instructing subordinate judicial officers to normally require two sureties, with bond amounts proportionate to the offence's seriousness, particularly in murder, dacoity, rape, and NDPS cases. The present Circular was based upon the decision passed in ***Shiv Shyam Pandey v. State of U.P.*** **and Others**[28], which examined the relevance of previous circulars mandating requirement of four sureties of Rs.25000/- each in light of the Supreme Court judgment passed in ***Motiram v. State of Madhya Pradesh***[29].

40.5 While examining the requirement of four sureties, the Supreme Court considered the opinion of a Committee comprising judges, lawyers, Members of Parliament, and legal experts, and concluded that release on bail includes release on the accused's own bond. The Court observed that judicial discretion must be exercised judiciously

---

28 *2008 SCC OnLine All 1264*
29 *(1978) 4 SCC 47*

in cases where the accused is too poor to procure sureties, as insisting on bail with sureties in such circumstances would serve no purpose other than to keep the accused in custody, thereby causing consequent handicaps in the preparation of his defence.

41. A brief analysis of the numerous circulars (supra) issued by this Court reveals that, as early as 1972, provision existed for the acceptance of surety bonds at the discretion of the Presiding Officer. Such discretion was to be exercised based on a detailed affidavit furnished by the sureties, disclosing their movable and immovable assets, and subject, where necessary, to verification from the Tehsil. Subsequently, by Circular dated 25.02.1976 (supra), the requirement of Tehsil verification for surety bonds was formally dispensed with. In the years that followed, as reflected in the various circulars referenced above, the conditions for the release of an accused on surety became progressively more stringent year after year. However, the Supreme Court, in the light of Article 21 of the Constitution of India, continued to dilute the rigour of such conditions[29].

42. In 1976, the High Court, in its considered wisdom, dispensed with the requirement of furnishing surety for the purpose of giving effect to bail orders. In the present day, i.e., in the year 2025, with significant advancements in surveillance mechanisms and other modes enabling law enforcement agencies to efficiently track and monitor the movements of an accused, the necessity of imposing stringent conditions for release from custody warrants reconsideration. It is, therefore, imperative to examine whether the continuance of such conditions is in consonance with the letter and spirit of Article 21 of the Constitution, which guarantees the right to personal liberty.

43. A 3-Judge Bench of the Supreme Court in *Ramchandra Thangappan Aachari v. State of Maharashtra*[30] held that it would

29 *(1978) 4 SCC 47*
30 *[2024 SCC OnLine SC 2629]*

amount to a travesty of justice if a petitioner were unable to avail the benefit of a bail order merely due to the inability to furnish a local surety. Such a requirement would infringe the fundamental rights guaranteed under Article 21 of the Constitution, especially where a person continues to remain in custody despite having a bail order in his favour. The court emphasised that an applicant's fundamental right to personal liberty cannot be curtailed on account of poverty or the inability to arrange surety/multiple sureties. In this context, the court directed the release of a POCSO convict who had remained in custody solely due to an inability to furnish a local surety. The Court underscored the need for the justice system to be sensitive to the plight of indigent convicts who are financially incapable of meeting onerous bail conditions.

44. Similarly, in *Girish Gandhi v. State of U.P. and Others*[31], the Supreme Court, while relying on *Motiram and Others v. State of Madhya Pradesh (supra)*, *In Re: Policy Strategy for Grant of Bail*[32], and *Hani Nishad @ Mohd. Imran @ Vicky v. State of U.P.*[33], reaffirmed and strengthened the principles laid down in *Satender Kumar Antil v. CBI (supra)*, emphasising that imposing bail conditions which are impossible to comply with ultimately defeats the very purpose of the bail order.

44.1 In a recent matter, the Division Bench of this Court, while adjudicating Criminal Misc. Modification Application No. 13 of 2023, noted that the convict had been granted bail on 30.11.2017 subject to the production of two sureties to the satisfaction of the trial court. However, as the accused was unable to furnish the sureties as directed, he continued to remain in custody. Pursuant to the directions of the Hon'ble Supreme Court in *In Re: Policy Strategy for Grant of Bail (supra)*, dated 19.05.2023, the Superintendent of Jail, through the

---

31 *[Writ Petition (Crl.) No.149 of 2024]*
32 *[(2023) SCC OnLine SC 483]*
33 *[SLP (Crl.) Nos. 8914-8915 of 2018]*

Legal Aid Counsel, moved an application before this court seeking modification of the bail conditions. Resultantly, by the intervention of this court, the accused was released on 15.09.2023 upon furnishing a personal bond- after an unwarranted delay of more than five and a half years. This instance constitutes a glaring violation of Article 21 of the constitution and runs contrary to the very essence and object of granting bail.

44.2 In another case, a Division Bench of this Court, while adjudicating Application No.7 of 2022 in Criminal Appeal No.17971 of 2003 seeking the release of the appellant on the ground that, although the convict had been granted bail by order dated 4.12.2003, he could not be released due to non-furnishing of sureties- a pre-requisite condition imposed by the Court. A report was called from the Jail Superintendent, Central Jail, Naini, Prayagraj. The report indicated that the convict's continued incarceration was solely due to the non-furnishing of sureties. Following the intervention of this Court, the convict was released in July 2022 on furnishing his personal bond- nearly 18 years after the bail order had been passed.

45. As rightly observed in *Shiv Shyam Pandey (supra)*, and in subsequent sting of judgments of the Supreme Court referred to hereinabove, the present matter in question reflects misuse of authority by both the police and the Magistrate. In district courts across the State, the routine and indiscriminate imposition of a requirement to furnish two sureties- often with bond amounts proportionate to the gravity of the alleged offence- has become an onerous burden, not only upon the accused but also upon the justice delivery system as a whole. Alarmingly, a parallel network has emerged in district courts involving fake sureties and forged surety bonds, often in connivance with local police personnel.

FURTHER DIRECTIONS

46. Accordingly, it is hereby directed that the mandatory requirement of two sureties are dispensed with, and henceforth, **(i)** the accused(s)/convict(s), as the case may be, shall be released on a "***single surety***", subject to the satisfaction of the Magistrate or the court concerned– the satisfaction shall drive from the socio- economic condition of the accused- and that the surety bond amount be fixed in accordance with the financial strength of the accused. In case, the accused(s) is unable to produce sound surety within seven days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute from para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release, besides other directions contained in order dated 31.1.2023 passed in ***In Re: Policy Strategy for Grant of Bail (supra),*** and **(ii)** if the accused has been booked in multiple cases (FIRs) even across many states, the court shall forthwith release the accused -if secures bail in all cases- in the light of ***Girish Gandhi v. State of U.P. and Others (supra).***

47. In view of the aforesaid deliberations, the Registrar General of this Court is directed to place a copy of this order before Hon'ble the Chief Justice, with a request to consider issuing fresh guidelines, in supersession of Circular No. 44/98 dated 20.8.1998 and Circular No. 4258/Admin.'G-II' dated 17.4.2020, as His Lordship may deem fit and appropriate, for directing the subordinate courts on the verification of sureties and bail bonds. *The aforesaid circulars have lost their relevance in light of the directions issued by the Supreme Court in In Re: Policy Strategy for Grant of Bail (supra) and other judgments discussed hereinabove.*

48. The court places on record its sincere appreciation for the valuable assistance rendered by Shri Satyaveer Singh, learned *Amicus Curiae*.

49. Reverting to the merits of the present case, it stands admitted that the charge sheet has been filed without the arrest of the applicant. Learned counsel for the applicant has confined his submission to a limited prayer- that the trial court be directed not to remand the applicant to judicial custody in the absence of anticipatory bail. Upon consideration, this Court observes as follows:

49.1 As regards the merits of the present case, I find force in the arguments of learned A.G.A. that during the spot inspection conducted at the applicant's premises by the authorised representative of SGS IPR Consultancy- the complainant- a substantial quantity of counterfeit Asian Paints products was recovered, indicating that the applicant was deriving significant illegal profit. As regards the applicant's knowledge and intention to earn such profit, these matters are to be examined during trial and can only be determined after the prosecution witness has deposed. The applicant shall be at liberty to raise all relevant contentions at the stage of framing of charge, and the trial court shall consider the same in accordance with law.

50. Needless to state, the applicant shall appear before the trial court on the next date of hearing and may directly furnish a bail bond, subject to the satisfaction of the trial court. There is no requirement for the applicant to file a separate bail application; the production of the bail bond alone shall suffice. Non-bailable warrant, if issued before or during the pendency of this application, shall stand ***set aside.***

51. The observation made hereinabove in para 49.1 shall not affect the merits of the case and has been made for the disposal of the present case.

52. The Registrar (Compliance) is directed to forthwith transmit a copy of this order to all the District Judges, who shall, in turn, circulate the same to all Judicial Officers of the District Courts; to the Director General of Police, who shall circulate it to all Commissioners of Police, Senior Superintendents of Police, and Superintendents of Police; to the Additional Director General (Prosecution), who shall circulate it to all Joint Directors in the districts; and to the Director, Judicial Training & Research Institute, Lucknow, for record and ensuring effective compliance.

53. Accordingly, with the above observations and directions, the present application is **disposed of.**

Order Date :- 12.8.2025
Anil K. Sharma

Justice Vinod Diwakar