

ITEM NO.2

COURT NO.9

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No. 2034/2022 in MA 1849/2021 in
SLP(Cr1) No. 5191/2021

SATENDER KUMAR ANTIL

Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION & ANR.

Respondent(s)

[TO BE TAKEN UP AT 2:00 P.M.]

Mr. V.N. Raghupathy, Advocate for High Court of Karnataka; Mr. Tapes Kumar Singh, Advocate for High Court of Jharkhand; Mr. P.I. Jose, Advocate for Gauhati High Court; Mr. Arjun Garg, Advocate for High Court of Madhya Pradesh; Mr. Amit Gupta, Advocate for High Court of Delhi; Mr. Sanjai Kumar Pathak, Advocate for High Court of Meghalaya; Mr. Sibho Sankar Mishra, Advocate for High Court of Orissa, Mr. Abhimanyu Tewari, Advocate for State of Arunachal Pradesh, Mr. Somanadri Gaud Katam, Advocate for High Court of Telengana; Mr. Aaditya A. Pande, Advocate for the State of Maharashtra; Mr. Ankur Prakash, Advocate for the State of Uttarakhand; M/s Arputham Aruna, Mr. Debojit Borkakati, Advocate for the State of Assam, Mr. S.N.Terdol, Advocate for the State of Ladakh, Mr. Avijit Mani Tripathi, Advocate for the State of Meghalaya, Mr. Manish Kumar, Advocate for the State of Bihar, Mr. Mahfooz A.Nazki, Advocate for the State of Andhra Pradesh, Mr. Maibam N.Singh, Advocate for the High Court of Manipur, Mr. Prashant S.Kenjale, Advocate for the High Court of Bombay, Mr. Ajay Pal, Advocate for the State of Punjab, Mr. Gagan Gupta, Advocate for High Court of Andhra Pradesh, Mr. Nishe Rajen Shonker, Advocate for the State of Kerala, Mr. Suwendu Suvasis Dash, Advocate for the State of Orissa, Mr. Pradeep Mishra, Advocate for the State of Uttar Pradesh, Mrs. Swati Ghildiyal, Advocate for the State of Gujarat, Mr. Pukhrambam Ramesh Kumar, Advocate for the Government of Manipur, Mr. Abhay Anil Anturkar, Advocate for the State of Goa, Mr. Anupam Raina, Advocate for the High Court of Jammu, Mr. Sunny Choudhary, Advocate for State of Madhya Pradesh, Mr. Varinder Kumar Sharma, Advocate for High Court of Himachal Pradesh, Ms. K.Enatoli Sem, Advocate for State of Nagaland, Mr. R.Ayyam Perumal, Advocate for State of Madras, Ms. Pallavi Langar, Advocate Govt. of Himachal Pradesh, Mr. Sameer Abhayankar, Advocate for State of Sikkim, Mr. Aravindh S. Advocate of U.T. Pudducherry, Ms. D.Bharthi Reddy, Advocate for High Court of Uttarakhand, Mr. Tapes Kumar Singh, Advocate for High Court of Jharkhand, Mr. Gaurav Agarwal, Advocate for High Court of Patna, Mr. Aproo Kurup, Advocate for High Court of Chhatisgarh, Mr. Nikhil Goel, Advocate for High Court of

Gujarat, Mr. Amit Sharma, Advocate for High Court of Tripura,, Mr. Sandeep Kumar Jha, Advocate for State of Rajasthan,, Mr. Shailesh Mandiyal, Advocate for U.T. J and K, Ms. Surbhi Kapoor, Advocate for state of Goa, Dr. Monika Gusain, Advocate for State of Haryana,Mr. Shuvodeep Roy, Advocate for State of Tripura, Ms. Manish Ambwani, Advocate for High Court of Rajasthan, Mr. Kunal Chatterjee, Advocate for High Court of Calcutta, Mr. Rahul Gupta, Advocate for High Court of Punjab and Haryana, Mr. Aproov Shukla, Advocate for High Court of Allahabad, Mr. Nirnimesh Dubey, Advocate for state of Mizoram, Mr. Joseph Aristotle S. Advocate for State of Tamil Nadu, Mr. Vishal Prasad, Advocate for State of Chhattisgarh,Ms. Astha Sharma, Advocate for State of West Bengal, Mr. Raghuvendra Srivastava, Advocate for High Court of Karnataka,Mr. Rajiv Kumar Choudhary, Advocate for State of Telengana,Mr. S.N.Terdol,Advocate forState of Daman & Diu.Mr. T.G.N.Nair, Advocate for High Court of Kerala,Mr. Nishe Rajen Shonker, Advocate for State of Kerala, Mr. Arvind S.Advocate for state of Pudducherry, Mr. Mudit Gupta, Advocate state of Himachal Pradesh, Ms. Saroj Tripathi,Advocate,Ms. Enakshi Mukhopadhyay Siddhanta, Advocate for High Court of Sikkim, Mr. Shibashish Misra, Advocate for High Court of Orissa, Mr. Kumar Mihir, Advocate for the High Court of Manipur.

WITH

MA 2035/2022 in SLP(Cr1) No. 5191/2021 (II)

Date : 21-01-2025 These applications were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE RAJESH BINDAL

By Courts Motion

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**UPON hearing the counsel the Court made the following
O R D E R**

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

The learned Amicus has filed the compliance report dtd. 20.01.2025 before this Court after a detailed analysis of the Affidavits/Reports filed by the States, Union Territories (for short "UTs") and the High Courts, filed in pursuance of the directions

passed by this Court vide earlier orders dtd. 11.07.2022, 03.02.2023, 21.03.2023, 02.05.2023, 13.02.2024, 06.08.2024 and 15.10.2024.

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

The learned Amicus submitted that in pursuance of this Court's order dtd. 11.12.2024, all the concerned parties have reported either full or part compliance of the directions issued by this court, except for the State of Mizoram (which has filed its Compliance Affidavit way beyond the deadline given by this Court) and the UT of Lakshadweep (which has merely refiled its earlier Compliance Affidavit dtd. 21.05.2023).

The learned Amicus has flagged off three broad issues for our consideration. They are as follows :

- (i) Release of Undertrial Prisoners (for short "UTPs") on personal bond, based on verification of AADHAAR Card.
- (ii) Service of Notice under Section 41-A of the Code of Criminal Procedure, 1973 (for short "CrPC, 1973") and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS, 2023") is to be made in person, as

contemplated under the statutes, and not through WhatsApp or other electronic modes.

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

SUBMISSIONS UNDER ISSUE (i)

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

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

SUBMISSIONS UNDER ISSUE (ii)

Under **Issue (ii)**, the learned Amicus submitted and flagged off instances where notice(s) under Section 41-A of CrPC, 1973 were sent to the accused through WhatsApp, but the accused did not appear before the Investigating Officer(s). No action was taken against such erring officer(s). He has brought to the attention of this

Court a Standing Order dtd. 26.01.2024 issued by the office of the DGP, Haryana which permits Police Officers to serve notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 in person or through WhatsApp, e-mail, SMS or any other electronic mode.

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

SUBMISSIONS UNDER ISSUE (iii)

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

DIRECTIONS

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

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

must be issued strictly in accordance with the guidelines issued by the Delhi High Court in *Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.*, 2021 SCC Online Del 5629 and *Amandeep Singh Johar v. State (NCT Delhi)*, 2018 SCC Online Del 13448, both of which were upheld by this Court in *Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51.

- c) All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.
- 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.
- e) We have taken note of the fact that the State of Mizoram has filed its Compliance Affidavit way beyond the deadline given by this Court and the UT of Lakshadweep has merely refiled its earlier Compliance Affidavit dtd. 21.05.2023. Hence, the UT of Lakshadweep must ensure compliance of the earlier directions issued by this court and file a fresh Compliance Affidavit within a period of **2 weeks** from today.

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

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

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

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

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

(ASHA SUNDRIYAL)
DEPUTY REGISTRAR

(POONAM VAID)
ASSISTANT REGISTRAR