

ADHERENCE
TO
SUPREME
COURT'S
DIRECTIONS
FOR
DEALING WITH
BAIL PETITION

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 *(Para- 53, 54, 55,56)*

When non-bailable warrants should be issued

Para 53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon;
or
- it is considered that the person could harm someone if not placed into custody immediately.

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1

Para 54- Courts should prioritize summons or bailable warrants over non-bailable warrants.

Non-bailable warrants must be issued only after full application of mind and scrutiny of facts, given their serious impact on personal liberty.

Para 55- Courts must follow a graduated process:

1. First, serve summons (with copy of complaint or FIR).
2. If the accused evades it, issue bailable warrant.
3. Only if the accused continues to evade, resort to non-bailable warrant.

Personal liberty is paramount, and non-bailable warrants should be a last resort.

Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1

Para 56- Courts must exercise their discretionary power judiciously, balancing personal liberty and public interest.

Non-bailable warrants are justified only in serious offences or where there's a real risk of:

- Evidence tampering
- Evasion of law

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

The Supreme Court directed that for offences punishable with up to 7 years' imprisonment (like Section 498A IPC), police should not automatically arrest the accused. Arrest should be made only if necessary, following the guidelines under Section 41 CrPC, and reasons must be recorded in writing.

- Magistrates must also ensure proper justification before authorizing detention.
- Both police and magistrates can face disciplinary action and contempt for non-compliance.
- These directions apply to all such offences, not just 498A or Section 4 of the Dowry Prohibition Act, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine. (para 12)
- The judgment must be circulated to all police stations and magistrates, and oversight mechanisms should be put in place to ensure compliance.

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

Guidelines to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically :

1. No Automatic Arrest (Para 11.1)
2. Reasons Must Be Recorded (Para 11.2)
3. Role of Magistrate (Para 11.3)
4. Action Against Police (Para 11.4)
5. Action Against Magistrate (Para 11.5)
6. Applies to All Similar Offences (Para 11.6)
7. Mandatory Circulation (Para 11.7)
8. Oversight Mechanisms (Para 11.8)

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

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

Para 11.4. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

Para 11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

Para 11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

Para 11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

Satender Kumar Antil v. CBI

(2021) 10 SCC 773

In the case of Satender Kumar Antil vs Central Bureau of Investigation the Supreme Court of India laid down clear guidelines for grant of bail and categorized offenses into four categories to guide Courts in bail decisions.

The 4 categories defined in the case are Category A, Category B/D and Category C.

Category A

After filing of charge-sheet/complaint taking of cognizance

- (a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.
- (b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.
- (c) NBW on failure to appear despite issuance of bailable warrant.
- (d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.
- (e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

- **Category A** deals with both police cases and complaint cases.
- Where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit.
- The trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc."

- **Siddharth v. State of U.P., (2022) 1 SCC 676 (para 6)**

" In a subsequent judgment the Division Bench of the Delhi High Court in High Court of Delhi v. State [High Court of Delhi v. State, 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641] relied on these observations in High Court of Delhi [High Court of Delhi v. CBI, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629] and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed."

- If the petitioner has cooperated in investigation and was not arrested, merely because chargesheet is filed, it cannot be a ground to arrest the petitioner.

Economic Offences not covered by Special Act

- Sanjay Chandra vs. CBI (2012) 1 SCC 40; (para 39)
- The Supreme Court reiterated that bail should not be denied merely because the offence is serious or involves economic implications.
- Bail should be denied only when there is a risk of absconding, tampering with evidence, or influencing witnesses.
- While determining whether to grant bail the following two aspects have to be taken into consideration:
 - i. Seriousness of the charge, and
 - ii. Severity of punishment.

Section 35 in Bharatiya Nagarik Suraksha Sanhita, 2023

35. When police may arrest without warrant

A police officer can arrest without a warrant only when necessary, based on:

- Presence during commission of the offence.
- Credible information or complaint about a cognizable offence (punishable with ≤ 7 years or more).

Arrest must be justified to:

- Prevent further offences
- Ensure proper investigation
- Prevent tampering with evidence or witnesses
- Ensure presence of accused in court

Notice Instead of Arrest (Mandatory in Minor Cases)

If arrest isn't needed, the police must:

- Issue a notice to the accused to appear before them.
- Not arrest the person if they comply with the notice.
- Record reasons in writing if arrest becomes necessary later

Section 35 in Bharatiya Nagarik Suraksha Sanhita, 2023

Arrest on Failure to Comply

If the person:

- Ignores the notice,
- Refuses to identify themselves, or
- Attempts to evade the process → Then police may arrest, with recorded reasons.

Protection for Senior Citizens & Infirm Persons

- If the offence is punishable with ≤ 3 years, then, arrest of a person who is above 60 years or infirm requires prior approval from an officer not below the rank of DSP.

Obligation to Record Reasons

Police officers must - Record reasons for making or not making an arrest in writing.

Section 35(3) in Bharatiya Nagarik Suraksha Sanhita, 2023

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

Satender Kumar Antil v. CBI (2022) 10 SCC 51 (para 28-29)

The Court emphasizes that the directions laid down in ***Arnesh Kumar*** must be followed in both letter and spirit, by both investigating (police) and prosecuting agencies (public prosecutors)

Non-compliance with Section 41 CrPC (conditions for arrest) is unacceptable, and its consequences—such as illegal arrest or wrongful detention—must not be ignored.

Courts are reminded that they must actively ensure that Section 41 and the Arnesh Kumar guidelines are followed, this duty must reflect in their judicial orders, i.e., the reasoning and findings in bail or remand orders should show that the Court has checked for compliance.

"This Court has clearly interpreted Sections 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of "reason to believe" and "satisfaction qua an arrest" are mandated and accordingly are to be recorded by the police officer." (Para 29)

Satender Kumar Antil v. CBI (2022) 10 SCC 51 (para 28-29)

In a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. (para 89)

1. No Need to Arrest for Chargesheet (Section 170 CrPC)
2. If the accused is already in jail, they will remain in custody, and then the rules of the special law (like UAPA, NDPS, etc.) will apply for further detention or bail.
3. If the accused was not arrested or is already on bail, there's no need for the court to order arrest again when the chargesheet is filed.
4. If the special law has a rule like Section 167(2) CrPC (which allows bail if the police don't file the chargesheet in time), the accused can still get default bail.
5. Even in such cases, the court must follow Section 440 CrPC, which says that bail amounts and conditions should not be too harsh.

Satender Kumar Antil v. CBI (2022) 10 SCC 51 (para 28-29)

All the State Governments and the Union Territories are directed to facilitate Standing Orders while taking note of the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A. **(Para 31)**

The courts are expected to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. The investigating agencies must keep in mind the law laid down in Arnesh Kumar, the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. **(Para 32)**

Satender Kumar Antil v. CBI (2022) 10 SCC 51

The Hon'ble Delhi High Court in **Rakesh Kumar v. Vijayanta Arya**, 2021 SCC OnLine Del 5629 held that WhatsApp is not a permissible mode to issue notice under Section 41A CrPC. The court noted that such a notice ought to be issued in the manner provided under Chapter VI of CrPC (titled Process to Compel Appearance) and that where the provision contemplates service personally, use of electronic means (email/WhatsApp) would not be permissible.

This judgement in Rakesh Kumar was affirmed by the Hon'ble Supreme Court in Satender Kumar Antil v. CBI (2022) 10 SCC 51.

Para 27- "9. ... *The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1)CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to **appear before the police officer** and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.*"

Section 440 of Cr.P.C.- Amount of bond and reduction thereof.

(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

An arrestee may not be held in custody pending trial unless the court has made an individualized determination that :

(1) the arrestee has the financial ability to pay, but nonetheless failed to pay, the amount of bail the court finds reasonably necessary to protect compelling government interests; or

(2) detention is necessary to protect victim or public safety, or ensure the defendant's appearance, and there is clear and convincing evidence that no less restrictive alternative will reasonably vindicate those interests. (Para 82)

Summary / Conclusion (Satender Kumar Antil(2022))

- The Supreme Court has provided directions for the investigating agencies and the Court to follow while dealing with matter relating to bail.
- Para 100.1 – 100.3: Mandatory Compliance with CrPC Arrest Rules.
- Para 100.4 – 100.6: Structural and Procedural Measures.
- Para 100.7 – 100.9: Categorization and Speedy Trial.
- Para 100.10 – 100.12: Monitoring, Training & Accountability.
- Investigative agencies must strictly follow CrPC Sections 41/41A, using checklists and documented justification for every arrest.
- Magistrates and courts must ensure no mechanical detentions, and bail should be the norm, with timely decisions (within 2 weeks for regular bail, 6 weeks for anticipatory).
- Structural directives include: issuance of standing orders, classification of offences, speedier trial mandates, accountability via monitoring bodies, and continuous training of police/prosecutors.

Satender Kumar Antil v. CBI, 2023 SCC OnLine SC 758

It is for the High Courts to ensure that whenever in certain districts there is non-compliance, necessary steps are taken to ensure compliance.(Para-7)

- High Courts must actively monitor and report district-level compliance with Antil guidelines.
- Registrars must personally ensure implementation, and errant subordinate courts must be corrected.
- Prosecutors also held accountable—requiring training where necessary, to align with bail norms.

Satender Kumar Antil v. CBI (2022) 10 SCC 51

Para 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 [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] . Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

Para 100.3. The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail.

Para 100.6. There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423.

Para 100.8. The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

Satender Kumar Antil v. CBI, (2024) 9 SCC 198

Supreme Court laid down the directions to be complied with for High Court of Jharkhand(Para 99-104)

99. In terms of the directions issued in para 100.2, it is noted that in districts such as Godda and East Singhbhum, bail has been granted for non-compliance of Sections 41 and 41-A CrPC, while it has been mentioned that the conditions as stipulated in the statutory provisions are being complied with which are contradictory to each other. The High Court is directed to furnish information regarding such discrepancy.

100. The directions in para 100.5 have not been complied with in certain districts such as Bokaro, West Singhbhum, Godda, Chatra, Dumka. The High Court is directed to ensure compliance of the same and furnish information.

Satender Kumar Antil v. CBI, (2024) 9 SCC 198

101. In terms of the directions issued in para 100.7, the High Court is directed to ensure compliance and furnish information regarding the constitution of Special Courts and whether any steps are underway for creation of Additional Special Courts and at what stage.

102. The High Court is directed to ensure compliance with the directions of para 100.8 and furnish information on the steps taken to alleviate the situations of prisoners who are not able to furnish sureties despite grant of bail.

103. The High Court is directed to ensure compliance with the directions issued in para 100.9, and furnish information on the same.

104. To inform on whether the judgment in Satender Kumar Antil [Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1] is being applied to petitions under Section 438CrPC.

Mohd. Asfak Alam v. State of Jharkhand, (2023) 8 SCC 632

Once the chargesheet was filed and there was no impediment, at least on the part of the accused, the court having regard to the nature of the offences, the allegations and the maximum sentence of the offences they were likely to carry, ought to have granted the bail as a matter of course. (Para 15)

Birendra Jha v. State of Jharkhand, 2001 SCC OnLine Jhar 386

Grant of bail should be the rule; refusal is justified only when there is clear evidence of an offence.

Courts must be cautious while deciding on bail. Bail should only be refused if there are genuine, serious allegations clearly made out against the accused. The court should examine the accused's role, relationship with the victim, and the evidence in the police report or complaint. If it appears the prosecution is harassing the accused without sufficient grounds, bail should be granted.

Prem Prakash v. Enforcement Directorate, (2024) 9 SCC 787

*"12. All that Section 45 PMLA mentions is that certain conditions are to be satisfied. The principle that, **"bail is the rule and jail is the exception"** is only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied."*

In cases of arrest by ED, as well, the natural bail principle is to follow. The conditions of PMLA do not over ride Article 21.

Jitendra Oraon v. State of Jharkhand, 2020 SCC OnLine Jhar 434

Reasoned conditions imposed on grant of Bail

"25. the Court cannot impose 'any condition' he likes while granting bail. 'Any condition' or 'other condition' has to be in consonance with the object and purpose of grant of bail and as per the judgment of the Hon'ble Supreme Court in the case of Sumit Mehta (supra) and other cases cited above. The court is not conferred with absolute power to impose 'any condition' which he feels and chooses to impose, rather the same has to be reasonable and pragmatic. "

Need for a Proactive Approach

The judiciary must adopt a multi-pronged strategy involving supervision, training, accountability, and systemic reforms to ensure that the direction and guidelines regarding bail are followed at the grassroots level.

1. Judicial Monitoring and Supervision

- High Courts should regularly monitor compliance by Magistrates and Sessions Courts.
- Periodic reports from subordinate courts can be mandated to assess adherence.
- Establish special monitoring cells in each High Court for bail jurisprudence compliance.

2. Mandatory Judicial Training

- Include the Arnesh Kumar and Satender Antil rulings in judicial academies' training modules for newly appointed and sitting judges.
- Conduct courses and workshops on procedural safeguards, especially on Section 41A CrPC, non-arrest norms, and bail categorization.

3. Accountability of Investigating Officers

- Judicial officers should scrutinize arrest memos and Section 41A notices to ensure that police have followed due process.
- Magistrates should demand written justification for arrest in cases where 41A notice was applicable but not issued.
- Action should be taken against erring police officers, including recording adverse remarks.

4. Bail Application Checklists

Introduce standardized checklists in trial courts to be used while hearing bail applications, ensuring the judge considers:

- Nature of the offence and its categorization (per Satender Antil)
- Compliance with Armesh Kumar arrest conditions
- Previous conduct and role of the accused
- Police justification for arrest (if applicable)

5. Digitized Bail Compliance Dashboard

- Implement digital systems at the district court level to track compliance with bail-related judgments.

6. Legal Aid and Awareness

- Strengthen legal aid systems to ensure that undertrial prisoners and accused are aware of their rights.
- Spread awareness at the grassroots through legal services camps and NGOs, especially in rural and marginalized communities.

7. Supreme Court/High Court Directions

The Supreme Court/High Courts should issue periodic reminders or circulars reiterating compliance. In appropriate cases, contempt or disciplinary action should be initiated where gross violations are found.

8. Publication of Bail Statistics

- Require district courts to publish monthly bail statistics: number of arrests, 41A notices issued, bail granted/refused.
- Helps in identifying patterns of misuse or non-compliance.



THANK
YOU

A graphic featuring the words "THANK YOU" in a bold, outlined, sans-serif font. The text is centered within a white rectangular area. Surrounding the text are several short, black, radiating lines of varying lengths, creating a starburst or sunburst effect. The entire graphic is set against a solid blue background.