

Reserved on : 04.02.2026
Pronounced on : 25.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.981 OF 2026

R

BETWEEN:

MR. YUGADEV R.,
S/O M.RAJU,
AGED ABOUT 34 YEARS,
RESIDING AT NO. 42A,
IRUSAPPAN STREET,
CUDDALORE OT, CUDDALORE,
TAMIL NADU – 607 003
(JUDICIAL CUSTODY)

... PETITIONER

(BY SRI SYED KHALEEL PASHA, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY ADUGODI P.S.,
BENGALURU CITY,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT
BENGALURU – 560 001.

2 . ANKIT BHAWWALA
W/O SHIVAKUMAR BHAWWALA,

AGED ABOUT 35 YEARS,
RESIDING AT:NO.59,
10TH MAIN, 15TH CROSS,
WILSON GARDEN
BENGALURU – 560 030.

3 . SUBBAIAH K.G.,
S/O GANAPATHI K.,
MAJOR,
RESIDING AT PRIDE ENCHANTA
1ST MAIN ROAD,
RANGANATHAN COLONY
DEEPANJALI NAGARA,
BENGALURU – 560 026.

4 . PONAMMA UM
W/O ANKIT BHAWWALA,
AGED ABOUT 36 YEARS,
RESIDING AT NO.59,
10TH MAIN, 15TH CROSS,
WILSON GARDEN,
BENGALURU – 560 030.

... RESPONDENTS

(BY SRI K.NAGESHWARAPPA, HCGP FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BNSS, PRAYING TO a) QUASH THE ORDER DATED 19.01.2026 PASSED BY THE XXXIX ACJM COURT IN CR.NO.271/2025 BY ADUGODI P.S., THE 1st RESPONDENT POLICE AGAINST THE PETITIONER, WHO ARE ACCUSED NO.1, FOR THE OFFENCES P/U/S 66(C), 66(D) OF I.T ACT, 2000, AND U/S 318(4) OF BNS ACT, WHICH IS PENDING ON THE FILES OF HON'BLE XXXIX ACJM, BANGALORE COURT AT BANGALORE AND DISMISS THE COMPLAINT; b) DIRECT THE POLICE 1st RESPONDENT TO RELEASE THE ACCUSED PERSON.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.02.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.1 is before this Court calling in question an order dated 19-01-2026 passed by the Senior Civil Judge and XXXIX Additional Chief Judicial Magistrate, Bengaluru in Crime No.271 of 2025 registered for offences punishable under Section 66C and 66D of the Information Technology Act, 2000 ('the Act' for short) and Section 318(4) of the BNS.

2. Heard Sri Syed Khaleel Pasha, learned counsel appearing for the petitioner and Sri K. Nageshwarappa, learned High Court Government Pleader appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

3.1. Three complainants come together and register a complaint against two persons – one, the petitioner/accused No.1

and the other, wife of the petitioner/accused No.2. Petitioner along with his wife introduced themselves as Yoga teachers and started running a Company by name Jai Bhairavi Devi ('JBD') Financial Solutions. The investments were solicited by opening a website. The respondents/complainants were the investors. The complainants are said to have invested a total sum of ₹39,20,000/- on a bank transfer from their respective accounts. A total collection of ₹98/- lakhs was transferred from the petitioner's account to his wife's account. Alleging foul play, a complaint comes to be registered on 03-12-2025 for criminal breach of trust, misappropriation and causing wrongful loss. Based on the said complaint, a crime in Crime No.271 of 2025 comes to be registered for the afore-quoted offences on 09-12-2025. All the offences were punishable with imprisonment of seven years or less.

3.2. The Police wanted to serve notice under Section 35(3) of the BNSS and began to search for accused No.1. Accused No.1 dodged the police for more than 40 days and finally the Police traced him in Cuddalore, Tamil Nadu, and served the notice under Section 35(3) of the BNSS. Since the petitioner had refused to

cooperate, he was taken into custody at 5.45 p.m. on 17-01-2026. An arrest intimation was issued to the relatives along with grounds of arrest. He was produced before the Magistrate on 17-01-2026 at 9.32 p.m. at his home office, where the Advocate for the accused challenged the arrest contending that it was illegal. On 19-01-2026 he was produced before the jurisdictional Magistrate at Bengaluru and a remand application was filed. On 19-01-2026 the concerned Court passes an order of arrest. This is what is challenged in the case at hand.

4. The learned counsel appearing for the petitioner would vehemently contend that the learned Magistrate has declined to accept plethora of submissions with regard to the illegal arrest of the petitioner. He would contend that the Police have failed to digitally or physically serve the notice under Section 35(3) of the BNSS on the petitioner; the Police have failed to observe the guidelines rendered by the Apex Court in **SATENDER KUMAR ANTIL v. CENTRAL BUREAU OF INVESTIGATION, [(2022) 10 SCC 51]**, in not serving notice under Section 35(3) of the BNSS which is mandatory and its violation would be violative of Article 22

of the Constitution of India. The Police have failed to serve grounds of arrest on the petitioner. In the event the petitioner has not cooperated, it is for the Police to draw a mahazar that he has refused to accept the notice, intimate to the higher authorities and then take him to custody. Even on merits, it does not disclose a dishonest intention at the inception. The matter is purely civil in nature. There is delay in lodging FIR. He would submit that his right of personal liberty under Article 21 is violated.

5. Per contra, the learned Additional State Public Prosecutor Sri B.N.Jagadeesha appearing for respondent No.1 would vehemently refute the submission to contend that there is no violation of guidelines laid down in **SATENDER KUMAR ANTIL's** case. The Police tried to serve notice under Section 35(3) of the BNSS on the petitioner several times. The Police made every effort since the date of registration of FIR by calling him for over 40 days. He kept on moving from one place to another to escape arrest. Finally, they got him at Cuddalore and when they tried to serve 35(3) notice, he refused to accept, did not cooperate with the police. Therefore, he was arrested. The arrest intimation and

grounds of arrest were furnished to the petitioner and he was produced before the Magistrate within 24 hours. There is no violation of any law for the petitioner to project.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts and link in the chain of events are a matter of record. It would suffice for a resolution of the *lis* to narrate facts, from the day on which the complaint comes to be registered. A complaint comes to be registered alleging cheating, fraud, misappropriation by the petitioner and his wife, accused Nos. 1 and 2. Based on the said complaint a crime come to be registered on 09-12-2025. The petitioner was not traceable. The learned Additional State Public Prosecutor has produced call record details and geo-location of the petitioner to contend that he has been moving from one place to another dodging service of notice. Finally, his location was found in Cuddalore. On 17-01-2026 after about 40 days of registration of crime Police moved to serve 35(3)

notice on the petitioner at Cuddalore. The CDR details also show that the Police were trying to call and contact the petitioner for the purpose of investigation. A notice that was sought to be served against the petitioner, one among the few, reads as follows:

"Notice U/s 35(3) Bharatiya Nagarik Suraksha Sanhita

Date:16/01/2026

To,

**Yugadev R
No-42A, Irusappan Street,
Cuddalore Tamilnadu-607003**

In exercise of the powers conferred under section 35(3) of BNSS, I hereby inform you that during the investigation of **FIR/Case No.271/2025 U/s 66(c) 66(d) Information Technology Act & 318(4) BNS** registered at Aduodi Police Station, Bangalore city, it is revealed that there are reasonable grounds to question you to as certain facts and circumstances from you, in relation to the present investigation. Hence you are directed to appear before me at 11:00 am on 18/01/2026 at Aduodi Police Station Bangalore City Karnataka.

You are directed to comply with all and/or the following directions.

- a) You will not commit any offence in future.
- b) You will not tamper with the evidences in the case in any manner whatsoever.
- c) You will not make any threat, inducement, or promise to any person acquainted with the fact of the case so has to dissuade him from disclosing, such facts to the court or to the police officer.

- d) You will appear before the court as and when required / directed.
- e) You will join the investigation of the case as and when required and will cooperate in the investigation.
- f) You will disclose all the facts truthfully without concealing any part relevant for the purpose of investigation to reach to the right conclusion of the case.
- g) You will produce all relevant documents/material required for the purpose of investigation.
- h) You will render your full co-operation/assistance in apprehension of the accomplice.
- i) You will not allow in any manner destruction of any evidence relevant for the purpose of investigation/ trial of the case.

Failure to attend/comply with the terms of this notice, can render you liable for arrest under section 36 BNSS.

Enclosures:
Copy of FIR No.271/2025.

Investigation officer.

Sd/-
Police Inspector
Adugodi Police Station
Bengaluru - 560 030."

The Police have tried to issue notice to the petitioner in the past as well, which are found in the investigation papers. The petitioner was finally found on 17-01-2026. On 17-01-2026 the Police record the following:

"....

- ದಿನಾಂಕ: 17/01/2026 ರಂದು ಬೆಳಿಗ್ಗೆ ಆರೋಪಿ ಯುಗದೇವ್.ಆರ್, ವಾಸ ನಂ:42 ಎ, ಇರುಸವ್ವನ್ ಸ್ಟ್ರೀಟ್, ಕಡಲೂರು ಓಲ್ಡ್ ಟೌನ್, ತಮಿಳುನಾಡು ವಿಳಾಸವನ್ನು ಪತ್ತೆ ಮಾಡಿ ಸಿಬ್ಬಂದಿಗಳು ಬೆಳಿಗ್ಗೆ 06:40 ಗಂಟೆಗೆ ಮನೆಯ ಬಳಿ ತೆರಳಿ ಪ್ರಕರಣದ ಮಾಹಿತಿ ನೀಡಿ ದಿನಾಂಕ:18/01/2026 ರಂದು ವಿಚಾರಣೆಗೆ ಹಾಜರಾಗುವ ಬಗೆಗಿನ ಕಲಂ 35(3) ಬಿ.ಎನ್.ಎಸ್.ಎಸ್-2023 ಪೊಲೀಸ್ ನೋಟೀಸ್-ನೀಡಿದಾಗ ಸ್ವೀಕರಿಸದೆ ಅಸಹಕಾರ ವ್ಯಕ್ತಪಡಿಸಿ ಉದಾಘೆಯಿಂದ ವರ್ತಿಸಿದ್ದು, ಹಲವು ಬಾರಿ ತಿಳುವಳಿಕೆ ನೀಡಿದರು ಸಹ ಸ್ವೀಕರಿಸಲಿಲ್ಲ. ಸ್ಥಳೀಯ ಜನರನ್ನು ಸೇರಿಸಿ ಗಲಾಟೆ ಮಾಡಲು ಪ್ರಯತ್ನಿಸಿ ಅಲ್ಲಿಂದ ತಪ್ಪಿಸಿಕೊಂಡು ಹೋಗುವ ಪ್ರಯತ್ನ ಮಾಡಿರುತ್ತಾನೆ.
- ಸ್ಥಳೀಯ ಪೊಲೀಸರ ಸಹಕಾರದಿಂದ ಸ್ಥಳೀಯ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಬೆಳಿಗ್ಗೆ 07:45 ಗಂಟೆಗೆ ಬಂದಾಗ ಅಲ್ಲಿ ಸಹ ಆರೋಪಿಯ ಸ್ಥಳೀಯ ಪ್ರಭಾವ ಬಳಸಲು ಯತ್ನಿಸಿರುತ್ತಾನೆ.

“ಆರೋಪಿಯನ್ನು ಪತ್ತೆ ಮಾಡಿ ಖುದ್ದಾಗಿ ಕಲಂ 35(3) ಬಿ.ಎನ್.ಎಸ್.ಎಸ್-2023 ನೋಟೀಸ್ ಜಾರಿ ಮಾಡಲು ಎಲ್ಲಾ ರೀತಿಯ ಪ್ರಾಮಾಣಿಕ ಪ್ರಯತ್ನವನ್ನು ಪ್ರಕರಣ ದಾಖಲಾದ ದಿನಾಂಕ:09/12/2025 ರಿಂದ ದಿನಾಂಕ:16/01/2026 ರವರೆಗೆ ನಿರಂತರವಾಗಿ 40 ದಿನಗಳು ಮಾಡಲಾಗಿದೆ. ಆರೋಪಿಯು ಉದ್ದೇಶ ಪೂರ್ವಕವಾಗಿ ತನಿಖೆಯಿಂದ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ನಿರಂತರವಾಗಿ ತನ್ನ ವಾಸಸ್ಥಳವನ್ನು ಬದಲಾಯಿಸಿಕೊಂಡು ಗೈರು ಹಾಜರಾಗಿರುತ್ತಾರೆ. ದಿನಾಂಕ:17/01/2026 ರಂದು ಸಹ ಕಲಂ 35(3) ಬಿ.ಎನ್.ಎಸ್.ಎಸ್-2023 ನೋಟೀಸ್ ಜಾರಿ ಮಾಡಲು ಪ್ರಯತ್ನ ಮಾಡಿದರೂ ಸಹ ಅಸಹಕಾರ ತೋರಿ ಜನರ ಗುಂಪು ಸೇರಿಸಿ ತಪ್ಪಿಸಿಕೊಳ್ಳಲು ಪ್ರಯತ್ನ ಮಾಡುತ್ತಿದ್ದರಿಂದ ಬೇರೆ ದಾರಿ ಇಲ್ಲದೆ ವಶಕ್ಕೆ ಪಡೆಯಲಾಗಿದೆ. ಉದೇಶ ಪೂರ್ವಕವಾಗಿ ಕಲಂ 35(3) ಬಿ.ಎನ್.ಎಸ್.ಎಸ್-2023 ನೋಟೀಸ್ ಜಾರಿ ಮಾಡದೆ ಇರುವುದಿಲ್ಲ ಎಂಬುದನ್ನು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಬಿನ್ನವಿಸಿಕೊಳ್ಳಲು ಮಾನ್ಯರಲ್ಲಿ ಕೋರಿದೆ”

ತನಿಖಾಧಿಕಾರಿ

ಸಹಿ/-

ಪೊಲೀಸ್ ಇನ್ಸ್ ಪೆಕ್ಟರ್

ಆಡುಗೋಡಿ ಪೊಲೀಸ

ಬೆಂಗಳೂರು ನಗರ-30”

The arrest intimation was issued to the petitioner, which reads as follows:

"Arrest Intimation

You are here by informed that you are arrested on 17-01-2026, at 05:45pm in Adugodi Police Station Cr No. 271/2025 U/s 66(c), 66(d) IT Act & 318(4) BNS Act 2023. Arrest formalities are followed as per Honourable Supreme Court guidelines. You have a right to contact your relatives/friends/advocates in this regard.

Accused Signature:

A-1-Yugadev R S/o M Raju, 35 Years
No.424, Irusapan Street, Cuddalore OT, Cuddalore,
Tamil nadu-607003.
Sd/-

Investigating Officer
Sd/-
POLICE INSPECTOR
ADUGODI POLICE STATION
BANGALORE CITY - 560 030

Arrest Intimation to Relatives

You are here by informed that your relative Yugadev R S/o M Raju, 35 Years was arrested by following Honourable Supreme Court guidelines on 17/01/2026, at 05:45pm in Adugodi Police Station Cr No. 271/2025 U/s 66(c), 66(d) IT Act & 318(4) BNS Act 2023. He is kept in Adugodi Police Station until production before 39th ACJM Court, Bangalore city.

Accused Signature:

Accused Relative Signature:
Arrest Intimation given his father
through Phone his Mo
No.9629303506

Investigating Officer

Sd/- POLICE INSPECTOR ADUGODI POLICE STATION BANGALORE CITY-560030.
Medical Examination Memo You are here by informed that you are arrested on 17/01/2026, at 07:45 Hrs in Adugodi Police Station Cr No. 271/2025 U/s 66(c), 66(d) IT Act & 318(4) BNS Act 2023. Seeking your opinion whether you are interested to undergo medical examination or not? Accused Opinion: Needed/ Not needed Accused Signature: Sd/-
Investigating Office Sd/- POLICE INSPECTOR ADUGODI POLICE STATION BANGALORE CITY-560030"

A medical examination was also drawn. Later, the grounds of arrest were also served upon the petitioner and the petitioner was produced before the Magistrate at Cuddalore at 9.32 p.m. The petitioner was then brought before the jurisdictional Magistrate at Bengaluru after conduct of a medical examination and on 19-01-2026 the impugned order is passed. It reads as follows:

"CR.No.271/2025

Accused was produced by PSI Raghavendra HC 11759, PC 16079 of Adugudi PS at 9:32pm on 17/1/2026 at home office Mr.SKP advocate filed memo and vakalath for accused by name

Yugadev aged 35 years. Accused advocate stated arrest is illegal apposed police custody which is sought by the IO. Heard

whether illegal arrest, order on 18/1/2026(Sunday) on 19/1/2026 (Monday) as necessary order has to be passed, whether arrest is illegal or not, hence accused if ordered to be taken back to be retained police station on legality of arrest.

Sd/-
19/1/2026

ORDER ON ARREST

Accused No.1 advocate has contended that accused No.1 was illegally arrested by not complying notice formalities to be given to accused as offence is punishable below 7 years as accused have been charge sheet for offence under section 66(c) 66(d) of Information Technology Act and under section 318(4) of BNS

The accused advocate has referred on citation of Hon'ble SC in Satander Kumar Antil VS CBI and another judgement of supreme court misapplication No.2034/2022 and MA 1849/2021 in SLP CC No.5191/2021. The accused advocate contend that physical copy of notice is required to be given to the accused, instead of whatsapp and other electronic mode of intimating accused about the charge offence alleged against the accused and to seek accused cooperation to investigation based on above citation.

On the other hand learned Sr APP has addressed arguments that CD has been produced wherein IO has gone to the cadlur of TamilNadu as accused keeps changing his address from Tamil Nadu by obtaining passport (From DCP) to travel to Tamil Nadu on 16/1/2026 as per record have reached TN and on 17/1/2026 at 6:40am on verification of accused address have gone to the residence address of accused No.1 and accused has been given the physical notice that accused No.1 is stated to have refused to receive physical notice, the Adugudi PS has produced CD, letter address to local Tamil Nadu police dated 17/1/2026 report on non cooperation of accused 1 on refusing to receive notice. The above documents reveal that accused No.1 has fail to serve notice which was taken by Adugudi PS to receive on the accused

The Learned S, APP has referred on (Asif Nasruddin Najjushan Diwan VS State of Gujarat where 318(4) anticipatory bail has been rejected observing that offence involved in white collar and socioeconomic offence which is not only against individual and if it observed offence against larger social interest.

In the present case the present crime involve around worth Rs.98,42,501/-belonging to one complainant has been alleged to have been taken by the accused, which is serious crime which is non bailable in nature.

As per section 35(4) when accused cooperate for investigation by receiving notice accused will not be arrested if accused refuse to receive notice in such an case ground of arrest are by the Adugodi PS as to why arrest has warranted in the present crime situation where accused 1 started to raise galata taking help of other local people and has not cooperated for investigation hence this court is of the opinion that arrest is warranted in this situation which does not effect the Article of the constitution.

The Adugodi PS has sought for police custody stating ground that the accused No.1 has transferred amount of Rs.98,42,501/- to his wife A2 and A2 has transferred to various shares to collect information about the above, to take account statement of A2, to check website launched by accused, upon which the complainant has believed to invest amount wherein the accused No.1 claimed that they had availed permission from SEBI to check the genuinity and precision CEBI and to take the trading account details wherein accused is stated to have invested amount of complainant to take unlawful gain hence the court opinion that the arrest in the present case is not illegal or it is the accused, when he is given opportunity to receive notice and cooperate to investigation has not cooperated for investigation which has warranted arrest and police custody.

Hence police custody is given to PS for a days with following condition till 27/1/2026 from 19/1/2026 condition are typed Above order is passed at 4:30pm on 19/1/2026 to avoid delay.

Received accused No.1

And PC warrant

Sd/- 6633

For the.....

Sr Civil Judge 39th ACJM

19/1/2026"

(sic)

(Emphasis added at each instance)

The petitioner challenges the said order on the aforesaid grounds.

8. The grounds of challenge need not detain this Court for long or delve deep into the matter. In its judgment dated 15-01-2026, the Apex Court in **SATENDER KUMAR ANTIL v. CBI**¹, has held as follows:

"..... .."

DISCUSSION

16. An investigation by a police officer generally begins with the recording of information regarding an offence. It is a process which is primarily aimed at the ascertainment of facts and circumstances surrounding an alleged crime and involves the police officer proceeding to the spot of occurrence to collect evidence and ends with the formation of an opinion as to whether, on the basis of the material collected, there is a case to place the accused before a Magistrate for trial and, if so, taking the necessary steps for the same by filing a charge-sheet. This

¹2026 SCC OnLine SC 162

has been succinctly dealt with by this Court in the case of *State of Uttar Pradesh v. Bhagwant Kishore Joshi*, (1964) 3 SCR 71 in the following manner:

"17. What is investigation is not defined in the Code of Criminal Procedure; but in H.N. Rishbud and Inder Singh v. State of Delhi [(1954) 2 SCC 934 : (1955) 1 SCR 1150, 1157-58] this Court has described, the procedure, for investigation as follows:

"Thus, under the Code investigation consists generally of the following steps, (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."

This Court, however, has not said that if a police officer takes merely one or two of the steps indicated by it, what he has done must necessarily be regarded as investigation. **Investigation, in substance, means collection of evidence relating to the commission of the offence. The Investigating Officer is, for this purpose, entitled to question persons who, in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled to search the place of the offence and to search other places with the object of seizing articles connected with the offence. No doubt, for this purpose he has to proceed to the spot where the offence was committed and do various other things. But the main object of investigation being to bring home the offence to the offender the essential part of the duties of an Investigating Officer in this connection is, apart from arresting the offender, to collect all material necessary**

for establishing the accusation against the offender. Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it..”

(emphasis supplied)

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

Section 35 of the BNSS, 2023

“35. When police may arrest without warrant.—

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

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

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

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

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

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

- (b) for proper investigation of the offence; or**
- (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or**
- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or**
- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,**

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

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

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

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

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

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

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

(h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which

he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

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

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

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

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

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

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

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

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

(emphasis supplied)

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

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

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

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

22. Suffice it is to state that an investigation can go on even without an arrest. While undertaking the exercise of collecting the evidence for the purpose of forming his opinion over the commission of a cognizable offence, a police officer shall pose a

question, to himself, on the necessity of an arrest. This safeguard is provided as, in any case, the power to arrest an accused person is always available with a police officer even after he records his reasons, in writing, for not doing so at an earlier stage.

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

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

(emphasis supplied)

23. Section 35(3) of the BNSS, 2023, once again, reiterates the object of the enactment that an arrest by a police officer is not mandatory in all cases. This provision applies to all cognizable offences. However, insofar as the offences punishable with imprisonment up to a period of 7 years are concerned, this provision will have to be read along with

Section 35(1)(b) of the BNSS, 2023, and its proviso which mandates the furnishing of reasons, in writing, for both, making an arrest and when there is no requirement to do so. As stated above, the requirement of not arresting an accused is *qua* the stage of issuing notice under Section 35(3) of the BNSS, 2023. Hence, it is amply clear that a harmonious construction of Section 35(1)(b) and Section 35(3) of the BNSS, 2023 needs to be made.

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

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

(emphasis supplied)

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

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

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

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

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

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

25. The **protection of one's liberty is a crucial aspect of the right to life guaranteed to each and every individual, under Article 21 of the Constitution of India (hereinafter referred to as the 'Constitution'). The procedure encapsulated in Section 35(6) of the BNSS, 2023, seeks to secure this fundamental right, from**

encroachment by the relevant Authority, and therefore, any attempt to interpret the provision as a mere procedural one, would amount to rewriting the provision itself.”

(emphasis supplied)

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

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

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

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

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

CONCLUSION

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

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

- a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.
- b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.
- c. **For effecting an arrest, *qua* an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.**

- d. **A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, *qua* offences punishable with imprisonment up to 7 years, is the rule.**
- e. **Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.**
- f. **Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power."**

The Apex Court holds that Police can arrest a person for offences punishable with imprisonment up to 7 years, provided they have reason to believe under Section 35(1)(b)(i) of the BNSS that such arrest is required for the reasons which fall within Section 35(1)(b)(ii). Issuance of notice under Section 35(3) for offences punishable with imprisonment up to 7 years is the rule and arrest under Section 35(6) read with Section 35(1)(b) is an exception. The Apex Court holds that if Police have reasons to believe that the accused is not cooperating with the investigation, those reasons to believe can form the grounds of arrest. In the case at hand crime is registered on 09-12-2025. Crime may be of any kind, but they

are offences punishable with 7 years or less of imprisonment. Therefore, resort to arrest at the outset is not the power of the Police. It is only to serve a notice under Section 35(3) and direct the accused to participate in the investigation. At the time when the accused would not cooperate with receiving the notice or otherwise, the accused would become open to arrest.

9. In the case at hand, the accused had dodged service of notice for over 40 days. The call record details of the accused/petitioner reveal that he was roaming all over the place and finally the Police found him at Cuddalore after 40 days. The Police have drawn reasons for arrest that the accused has been absconding. The jurisdictional magistrate in the impugned order also records that the petitioner did not accept the notice under Section 35(3) of the BNSS and refused to cooperate with the investigation and his arrest. Therefore, the arrest that is made is in strict consonance with the findings of the Apex Court in the aforesaid judgment.

10. The next submission is that instead of searching the petitioner to serve the notice under Section 35(3) of the BNSS, it could have been very well sent electronically. The Apex Court while considering this very issue in its judgment dated 16-07-2025, in **SATENDER KUMAR ANTIL v. CBI**², has held as follows:

"..... .."

18. The issue before us lies within a narrow compass - **whether the usage of electronic communication can also be extended to the procedure governing the service of a notice, contemplated under Section 35 of the BNSS, 2023.** To answer the same, a purposive interpretation must be given to the BNSS, 2023, especially the aforementioned provision.

NOTICES BY THE INVESTIGATING AGENCY

19. The BNSS, 2023, keeping in tune with the erstwhile provisions of the CrPC, 1973 provides for situations where a person may be arrested by the Investigating Agency, without a warrant.

Section 35 of the BNSS, 2023

"35. When police may arrest without warrant.—

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

- (a) who commits, in the presence of a police officer, a cognizable offence; or
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without

²2025 SCC OnLine SC 1578

fine, if the following conditions are satisfied, namely:—

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

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

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

(b) for proper investigation of the offence; or

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

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

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders

as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

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

(emphasis supplied)

20. Section 35 of the BNSS, 2023 provides for arrest of persons by the Investigating Agency, ensuring that the concerned person appears before the Investigating Agency and cooperates with the investigation. The provision delineates the prerequisites that must be fulfilled before a person can be arrested without a warrant, keeping in mind the laudable objective of safeguarding the liberty of an individual. The legislative intent behind the provision is that of restricting arbitrary arrests.

21. Section 35(3) of the BNSS, 2023 mandates the service of a notice whenever the Investigating Agency, on the basis of a reasonable complaint, credible information or suspicion, determines that a person may have committed a cognizable offence, but does not deem the arrest of such person necessary. **In such a scenario, the Investigating Agency is mandated to issue a written notice directing the person to appear before it, or at such other place as may be specified in the notice.**

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

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

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

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

26. Thus, service of a notice under Section 35 of the BNSS, 2023 needs to be carried out in a manner that protects this substantive right, as non-compliance with the notice can have a drastic effect on the liberty of an individual.

27. The Legislature, in its wisdom, has specifically excluded the service of a notice under Section 35 of the BNSS, 2023 from the ambit of procedures permissible through electronic communication, that have been delineated under Section 530 of the BNSS, 2023.

28. While interpreting a statute, the legislative intent is to be gathered from a plain and simple reading of the

language employed in the provisions, in a purposive manner, thereby upholding the objective behind the enactment. On a plain reading of the BNSS, 2023, the restrictions imposed by the Legislature on the use of electronic communication, to only certain procedures, precludes the use of electronic communication for any other procedure, for which it has not been specifically permitted by the BNSS, 2023.

29. This interpretation is countenanced by the objective sought to be achieved by the BNSS, 2023. As highlighted hereinbefore, the essence of Article 21 of the Constitution imbues the BNSS, 2023, which reflects the laudable objective of safeguarding the liberty of an individual, while facilitating the investigation into and adjudication of offences. The abovementioned restrictions on the usage of the mode of electronic communication, have been imposed in order to safeguard the right to life and personal liberty, guaranteed to an individual by the Constitution, from being impinged during the course of criminal investigation and proceedings.

30. Hence, it is manifestly apparent that the Legislature has particularly specified the circumstances in which usage of modes of electronic communication is permissible, being circumstances which do not have a bearing on the liberty of an individual.

SUMMONS BY THE COURT

31. Another line of reasoning presented before this Court, is regarding the permissibility of the usage of electronic communication for the issuance of summons by the Court, under the BNSS, 2023. To consider the same, this Court must delve into the nature of proceedings pertaining to a notice under Section 35 of the BNSS, 2023 *vis-a-vis* a summons under Sections 63, 64 and 71 of the BNSS, 2023.

.....

38. The contention of the applicant that a notice under Section 35 of the BNSS, 2023 falls within the same

category as a summons under Section 71 of the BNSS, 2023, and therefore, since the latter allows electronic mode of service, the former must also be permitted to be transmitted electronically, cannot be accepted, for the simple reason that a summons under Section 71 of the BNSS, 2023, has no immediate bearing on the liberty of an individual in case of its non-compliance. However, a notice under Section 35 of the BNSS, 2023 could have an immediate bearing on the liberty of the individual in case of its non-compliance, as laid down under Section 35(6) of the BNSS, 2023.

39. Furthermore, a summons issued by a Court under Sections 63 or 71 of the BNSS, 2023, and a notice issued by the Investigating Agency under Section 35 of the BNSS, 2023 travel on different footings and cannot be equated with each other. A summons issued by a Court is a judicial act, whereas a notice issued by the Investigating Agency is an executive act. Hence, the procedure prescribed for a judicial act cannot be read into the procedure prescribed for an executive act.

EXPLICIT MENTION OF THE USAGE OF ELECTRONIC MODE IN THE CONTEXT OF THE INVESTIGATING AGENCY

40. We further wish to take note of the fact that the BNSS, 2023 does not entirely preclude the use of electronic communication by the Investigating Agency. The Legislature has envisioned the use of electronic communication, during the course of investigation, and upon completion of investigation by the Investigating Agency, specifically provided for under Sections 94(1) and 193(3) of the BNSS, 2023 respectively.

.....

41. The usage of electronic communication by the Investigating Agency, has only been provided for effecting the procedure under Sections 94 and 193 of the BNSS, 2023.

42. Section 94 deals with issuance of summons, in an electronic form, to produce a document. Section 193 deals with the usage of electronic communication for forwarding the report

to a Magistrate, upon completion of the investigation, or to inform the progress of the investigation to the informant or victim. None of these procedures have any bearing on the liberty of an individual.

43. Hence, when viewed from any lens, we are unable to convince ourselves that electronic communication is a valid mode of service of notice under Section 35 of the BNSS, 2023, since its conscious omission is a clear manifestation of the legislative intent. Introducing a procedure into Section 35 of the BNSS, 2023, that has not been specifically provided for by the Legislature, would be violative of its intent."

(Emphasis supplied at each instance)

The Apex Court holds that electronic communication of the crime or any other communication is not what the legislature has thought of. Section 35(3) does not empower the Police to communicate an electronic copy or by whatsapp the notice or copy of the FIR. It has to be mandatorily given physically. Therefore, the Police have been searching the petitioner to hand over physical copy of 35(3) notice for 40 days. This would be enough circumstance to take the petitioner into custody for non-cooperative behaviour of the petitioner. No right of the petitioner, much less a constitutional right is lost, in the police taking the petitioner into custody. All the nuances of arrest are followed in the case at hand and the petitioner is then taken into custody. Therefore, the order

impugned suffers from no illegality and does not deserve to be quashed.

11. Finding no merit in the petition, the petition stands ***rejected.***

**SD/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ