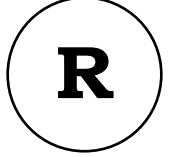




CNR: KAHC010598672026

**CRL.P NO. 13117/2026 (482(Cr.PC) /
528(BNSS))**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
[MR. K.N. MOHAN REDDY VS. STATE OF KARNATAKA AND
ANOTHER]



27.08.2026
(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

Heard Sri Angad Kamath, learned Counsel for the petitioner and Sri B.N.Jagadeesha, learned State Public Prosecutor - 1 for respondent No.1.

2. The Investigating Officer of the Whitefield Police Station is present before the Court.

3. The petitioner is before the Court calling in question registration of a crime in Crime No.586/2026 for offences punishable under Sections 61, 338 and 340(2) of the BNS.

4. What drove the petitioner to this Court was respondent No.1 - police taking the petitioner - accused No.2, a witness to a particular Will, which is pending adjudication before the competent civil Court, into custody.



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528(BNSS))

5. A crime comes to be registered in Crime No.586/2026 for the afore-quoted offences, by respondent No.2. The petitioner is drawn as accused No.2 in the said crime. The jurisdictional police *i.e.*, Whitefield Police Station issues a notice to the petitioner - accused No.2 under Section 35(3) of the BNSS. The notice comes to be issued on 25.08.2026, which reads as follows:

"ಸಂಖ್ಯೆ:ವೈ/ ಪೊ/ಮೊಸಂ./586/2026

ದಿನಾಂಕ:25/08/2026

ಪೊಲೀಸ್ ನೋಟೀಸ್

(ಭಾರತೀಯ ನಾಗರಿಕ ಸುರಕ್ಷಾ ಸಂಹಿತೆ ಕಲಂ:35(3) ಅಡಿಯಲ್ಲಿ)

ಭಾರತೀಯ ನಾಗರಿಕ ಸುರಕ್ಷಾ ಸಂಹಿತೆ ಕಲಂ: 35(3) ಅಡಿಯಲ್ಲಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಬಳಸಿಕೊಂಡು ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಿದ ತನಿಖಾಧಿಕಾರಿಯಾದ ನಾನು ನಿಮಗೆ ತಿಳಿಸುವುದೇನೆಂದರೇ, ಮೊ.ಸಂ.586/2026 ಕಲಂ:61, 338, 340(2) **BNS** ರೀತ್ಯಾ ಪ್ರಕರಣವು ದಿನಾಂಕ:10/08/2026 ರಂದು ವೈಟ್ ಫೀಲ್ಡ್ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ದಾಖಲಾಗಿರುತ್ತದೆ.

ತನಿಖೆಯಲ್ಲಿ ಕಂಡುಕೊಂಡಂತೆ ಸದರಿ ಪ್ರಕರಣದ ಕುರಿತಂತೆ ಸಂಗತಿಗಳನ್ನು ಮತ್ತು ಸಂದರ್ಭಗಳನ್ನು ತಮ್ಮಿಂದ ಖಚಿತಪಡಿಸಿಕೊಳ್ಳುವ ಬಗ್ಗೆ ನಿಮ್ಮನ್ನು ವಿಚಾರಿಸುವುದು ಅಗತ್ಯವಾಗಿದೆ ಎಂದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ನೀವು ದಿನಾಂಕ:27/08/2026 ರಂದು ಬೆಳಿಗ್ಗೆ 11-00 ಗಂಟೆಗೆ ವೈಟ್‌ಫೀಲ್ಡ್ ಪೊಲೀಸ್‌ಠಾಣೆಯಲ್ಲಿ ಈ ಕೆಳಗೆ ಸಹಿ ಮಾಡಿರುವ ತನಿಖಾಧಿಕಾರಿಯಾದ ನನ್ನ ಮುಂದೆ ವಿಚಾರಣೆ ಹಾಜರಾಗಲು ನಿರ್ದೇಶಿಸಿರುತ್ತೇನೆ.

ನೀವು ಈ ಕೆಳಕಂಡ ಎಲ್ಲಾ ನಿರ್ದೇಶನಗಳನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಪಾಲಿಸುವಂತೆ ಈ ಮೂಲಕ ನಿರ್ದೇಶಿಸಲಾಗಿದೆ.

- 1) ನೀವು ಯಾವುದೇ ಅಪರಾಧವನ್ನು ಮುಂದಿನ ದಿನಗಳಲ್ಲಿ ಮಾಡುವಂತಿಲ್ಲ.
- 2) ಈ ಪ್ರಕರಣದ ಸಾಕ್ಷಿಗಳ ಮೇಲೆ ಯಾವುದೇ ರೀತಿಯ ಪ್ರಭಾವ ಬೀರಬಾರದು.



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- 3) ನೀವು ಈ ಪ್ರಕರಣದ ಸಂಗತಿ ಮತ್ತು ಸಂದರ್ಭಗಳನ್ನು ಅರಿತ ಯಾವುದೇ ವ್ಯಕ್ತಿಗೆ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಅಥವಾ ಪೊಲೀಸ್‌ಅಧಿಕಾರಿಗಳ ಮುಂದೆ ಹೇಳಿದಂತೆ ಹೆದರಿಸುವುದಾಗಲೀ, ಒತ್ತಾಯಿಸುವುದಾಗಲಿ, ಪ್ರಲೋಭನೆ ನೀಡುವುದಾಗಲೀ ಮಾಡತಕ್ಕದ್ದಲ್ಲ.
- 4) ನೀವು ಅಗತ್ಯವಿದ್ದಾಗ ಮತ್ತು ನಿರ್ದೇಶಕ್ಕೊಳಪಟ್ಟಾಗ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರಾಗುವುದು.
- 5) ನೀವು ತನಿಖೆಗೆ ಸಹಕಾರ ನೀಡುವುದಲ್ಲದೆ ಅಗತ್ಯವಿದ್ದಾಗ ಈ ಪ್ರಕರಣದ ತನಿಖೆಯಲ್ಲಿ ಪಾಲ್ಗೊಳ್ಳುವುದು.
- 6) ಈ ಪ್ರಕರಣದ ತನಿಖೆಗೆ ಸೂಕ್ತ ರೀತಿಯಲ್ಲಿ ಹಾಗೂ ಸರಿಯಾಗಿ ಮುಕ್ತಾಯಗೊಳ್ಳುವಂತೆ ಸಹಕಾರ ನೀಡುತ್ತಾ ಯಾವುದೇ ಸಂಗತಿಗಳನ್ನು ಮರೆಮಾಚದೆ ಎಲ್ಲಾ ನಿಜ ಸಂಗತಿಗಳನ್ನು ತನಿಖಾಧಿಕಾರಿಗಳು ಕೇಳಿದಾಗ ನೀಡುವುದು ಮತ್ತು ಹೇಳುವುದು.
- 7) ನೀವು ತನಿಖೆಗೆ ಅಗತ್ಯವಾಗಿರುವ ಎಲ್ಲಾ ಸೂಕ್ತ ದಾಖಲಾತಿಗಳನ್ನು ಅಥವಾ ವಿಷಯಗಳನ್ನು ಹಾಜರಿಸುವುದು.
- 8) ನೀವು ಸಹ ಆರೋಪಿತರ ಗುರುತಿಸುವಿಕೆ ಮತ್ತು ಬಂಧನದ ಕುರಿತಂತೆ ನಿಮ್ಮ ಸಂಪೂರ್ಣ ಸಹಕಾರ ಮತ್ತು ಸಹಾಯವನ್ನು ನೀಡತಕ್ಕದ್ದು.
- 9) ಈ ಪ್ರಕರಣದ ತನಿಖೆ/ವಿಚಾರಣೆಗೆ ಸಂಬಂಧಿಸಿದ ಯಾವುದೇ ಸಾಕ್ಷ್ಯಧಾರಗಳನ್ನು ನಾಶಮಾಡತಕ್ಕದ್ದಲ್ಲ/ನಾಶ ಮಾಡಲು ಅನುವು ಮಾಡಿಕೊಡತಕ್ಕದ್ದಲ್ಲ.
- 10) ಮೇಲ್ಕಾಣಿಸಿದ ನಿರ್ದೇಶನಗಳನ್ನಲ್ಲದೆ ತನಿಖಾಧಿಕಾರಿಗಳು ಪ್ರಕರಣದ ಗಂಭೀರತೆ ಅನುಸಾರ ಇತರೆ ನಿರ್ದೇಶನ ಮತ್ತು ಷರತ್ತುಗಳನ್ನು ವಿಧಿಸಬಹುದಾಗಿರುತ್ತದೆ.

ಒಂದು ವೇಳೆ ನೀವು ಈ ನೋಟೀಸಿನಲ್ಲಿ ನೀಡಿರುವ ಸೂಚನೆಗಳನ್ನು ಮತ್ತು ನಿರ್ದೇಶನಗಳನ್ನು ಪಾಲನೆ ಮಾಡದೇ ಹೋದಲ್ಲಿ ಅಥವಾ ಹಾಜರಾಗದೇ ಹೋದಲ್ಲಿ ನಿಮ್ಮನ್ನು ಭಾರತೀಯ ನಾಗರಿಕ ಸುರಕ್ಷಾ ಸಂಹಿತೆ ಕಲಂ:35(6) ಅಡಿಯಲ್ಲಿ ದಸ್ತಗಿರಿ ಕ್ರಮ ಕೈಗೊಳ್ಳಲಾಗುವುದು.

ಸಹಿ/-

(ಸುನಿಲ್ ಕುಮಾರ್ ಕೆ ಆರ್)
Police Sub Inspector
Whitefield Police Station
Bengaluru City"

(Emphasis added)



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The notice was thus unmistakable. The petitioner was granted time till 11.00 a.m. on 27-08-2026 to present himself before the Investigating Officer and join the investigation. What followed, however, turns the statutory safeguard on its head. Even before the appointed hour could arrive—indeed, nearly **48 hours before the petitioner could either comply with or breach the notice**—the Police descended upon his residence and took him into custody. The notice under Section 35(3) of the BNSS, which ought to have operated as a shield against unnecessary arrest, was thus rendered a mere piece of paper by the very authority that had issued it.

6. The notice was thus unmistakable. The petitioner was granted time till 11.00 a.m. on 27-08-2026 to present himself before the Investigating Officer and join the investigation. What followed, however, turns the statutory safeguard on its head. Even before the appointed hour could arrive—indeed, nearly **48 hours before the petitioner could either comply with or breach the notice**—the Police descended upon his residence and took him into custody. The notice under Section 35(3), which ought to have operated as a shield against unnecessary



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arrest, was thus rendered a mere piece of paper by the very authority that had issued it.

7. The sequence of events leaves little room for ambiguity. When the Police themselves commanded the petitioner to appear on 27-08-2026 at 11.00 a.m., the law necessarily afforded him until that hour to demonstrate compliance. **Non-cooperation cannot precede the opportunity to cooperate. Disobedience cannot be presumed before the command becomes enforceable.** Yet, in the case at hand, the petitioner was arrested before the clock could even begin to test his obedience to the notice.

8. Once the Investigating Officer elects to invoke Section 35(3) of the BNSS, he cannot, at his whim, simultaneously treat the notice as alive for the citizen and dead for himself. The statutory procedure binds both sides. The notice casts an obligation upon the noticee to cooperate; equally, it casts a corresponding restraint upon the Police against arrest except in circumstances recognised by law. **A statutory safeguard cannot become a trap laid by the State—inviting a citizen to appear tomorrow while arresting him today.**



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9. The petitioner was taken into custody on the morning of 25-08-2026 and was produced before the learned Magistrate at about 3.00 p.m. The matter was immediately brought before this Court complaining of an arrest ex facie contrary to Section 35 of the BNSS. This Court, noticing that the liberty of the petitioner had been taken away even before the date fixed for his appearance, directed his release forthwith and called upon the Investigating Officer to remain present before Court. The interim order recorded that the case presented a classical illustration of a citizen being arrested without rhyme or reason. The interim order granted on 25.08.2026, is as follows:

"Heard Sri.Angad Kamath, learned counsel appearing for the petitioner.

The petitioner is before the Court calling in question the illegal arrest of the petitioner. This Court has repeatedly observed that citizens are arrested without rhyme or reason. The case forms a classical illustration of such illegal arrest.

The petitioner was served with a notice under Section 35(3) of BNSS, 2023. Once the notice is served under Section 35(3), the arrest could come about only if the noticee does not cooperate with the same.

The notice issued to the petitioner admittedly directed the petitioner to appear before the Police for the purpose of investigation on 27.08.2026, which date is yet to come, but the petitioner is taken into custody, which act on the face of it is illegal. The Investigating Officer whose act now is illegal, shall be present before the Court on 27.08.2026 at 2.30 p.m. to answer as to why exemplary cost should not be imposed on him, for the act



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which is done completely contrary to law taking the liberty of citizens for granted in this fashion.

Learned counsel appearing for the petitioner submits that the petitioner is arrested and proceedings are now going on before the Court of the learned Magistrate with regard to remanding to judicial custody or otherwise, be that as it may.

If the petitioner has been taken into custody by this illegal act of the Investigating Officer, the petitioner shall be released forthwith from custody.

Registry is directed to communicate this order to the prison authorities for the release of the petitioner, forthwith.

Hand delivery of this order is permitted.

List this matter on **27.08.2026 at 2.30 p.m."**

10. The submission of the learned counsel for the petitioner, therefore, does not merely merit acceptance; it stands fortified by the very documents generated by the Police themselves. The Investigating Officer issued the notice, fixed the date for appearance, arrested the petitioner before that date, produced him before the learned Magistrate and sought his remand. Each step is borne out by the record. What is conspicuous by its absence is the one thing that the law imperatively demanded—a **legally sustainable reason why arrest became necessary before the petitioner had even acquired an opportunity to comply with the notice.**



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11. The Apex court in the case of **SATENDER KUMAR ANTIL VS. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER** reported in **2026 SCC OnLine SC 162**, wherein it is held as follows:

" "

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—**



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- (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



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

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

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

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

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

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

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

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



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(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



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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



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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.



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

26. Hence, we give our imprimatur to the views expressed by the High Court of Bombay and, as already observed by us in this order that, as a matter of course, **a notice under Section 35(3) of the BNSS, 2023 is to be issued to an accused or any individual concerned, *qua* an offence punishable with imprisonment up to 7 years and, that, as long as a person to whom a notice under Section 35(3) of**



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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)



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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."

(Emphasis supplied)



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The principle that emerges is luminous. Arrest is not the inevitable companion of investigation. **The power to arrest is not a licence to arrest.** Section 35 of the BNSS, deliberately employs the expression “may”, for the law recognises a distinction—fundamental and constitutional—between the *existence of power* and the *necessity for its exercise*. The Supreme Court has emphasised that investigation may proceed without arrest and that the Investigating Officer must first ask himself why arrest is required.

12. If the aforesaid principles are applied to the facts at hand, the illegality becomes stark. The hour fixed for the petitioner to appear had not arrived. There was, therefore, no occasion for the Investigating Officer even to form an opinion that the petitioner had failed to cooperate. Yet his liberty was extinguished first and justification was apparently sought later.

13. The Investigating Officer is present before this Court. When queried as to what compelling circumstance warranted the arrest; what supervening material surfaced between issuance of the notice and the arrest; whether there existed any apprehension of abscondence, destruction of evidence,



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intimidation of witnesses or obstruction of investigation; or whether the action was at the behest of any superior officer—**there is no answer. Silence is the only answer.**

14. The Apex Court has made it clear that even *non-compliance* with a notice under Section 35(3) does not ipso facto result in arrest; arrest remains the last resort, to be preceded by an application of mind as to its necessity. If that be the law even after non-compliance, the action in the case at hand—**arrest before compliance became due**—can hardly find refuge under the statute. **“A notice to appear tomorrow cannot become a licence to arrest today. The State cannot command compliance with one hand and extinguish the opportunity to comply with the other.”**

15. Responsibility cannot, however, be conveniently confined to the hand that effected the arrest. A Police Station does not function as an island of individual discretion. The Station House Officer and the supervisory hierarchy—the Assistant Commissioner of Police and the Deputy Commissioner of Police concerned—are entrusted with the solemn responsibility of ensuring that coercive powers are exercised



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within the four corners of law. If an Investigating Officer can issue a notice commanding appearance on a future date and nevertheless arrest the noticee before that date, either the supervisory machinery was oblivious to what transpired or, worse, permitted it. **Neither possibility is comforting.**

16. Supervision in matters touching personal liberty cannot be ornamental. The higher officer cannot remain a silent spectator while a subordinate treats a statutory safeguard as dispensable paperwork and thereafter seek shelter behind the individual act of the Investigating Officer. The record itself attributes responsibility not merely to the Investigating Officer but also notices the supervisory dereliction of those manning the Police Station.

17. The learned State Public Prosecutor-I has made a valiant endeavour to defend the action of the Investigating Officer. But advocacy, however able, cannot breathe legality into an act which the statute forbids. **What is inherently contrary to law cannot be sanitised by a subsequent explanation.** Liberty once unlawfully taken away does not



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become lawful merely because the period of deprivation was brief.

18. This Court, therefore, cannot adopt a hands-off approach. Constitutional Courts are not expected to watch from the sidelines when the executive converts a statutory safeguard into an empty ritual. Section 35 of the BNSS is not a ceremonial provision. It is an embodiment, in procedural law, of the constitutional promise contained in Article 21 of the Constitution of India. **An arrest is not an innocuous administrative act. It takes away liberty; it wounds reputation; it places the might of the State against an individual; and, even if the incarceration lasts only for a few hours, those hours cannot be restored to the citizen. Liberty is incapable of restitution in kind. Once lost, time in custody cannot be returned.** The only meaningful judicial response to an established invasion is one which not merely declares the illegality but makes the consequence of that illegality real.



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19. The arrest of the petitioner is, therefore, **declared illegal.**

20. The Investigating Officer cannot escape with a mere declaration of illegality recorded on paper. The act warrants exemplary costs as also departmental scrutiny, including examination of the role of the supervisory officers who permitted, directed or failed to prevent the arrest.

21. The question then is: who should bear the monetary consequence? Certainly not the ordinary taxpayer. If compensation or exemplary costs imposed for a demonstrably unlawful act are routinely drawn from the State exchequer, the wrongdoer remains untouched while the public pays for his transgression. That would produce the curious result of **the citizen compensating the citizen for an illegality committed by an errant public servant.**

22. The costs are, therefore, quantified at **₹3,00,000/- (Rupees Three Lakhs only)** and shall be paid to the petitioner by the Investigating Officer, the Assistant Commissioner of Police and Deputy Commissioner of Police, who are responsible for directing, permitting or facilitating the



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illegal arrest. The amount shall **not be borne by the State exchequer**. The original order itself records that the costs are to come from the officer rather than public money. This is not punishment for an error of judgment. It is the consequence of exercising coercive State power in the teeth of an express statutory safeguard.

23. There is yet another facet which makes the action against the petitioner more disturbing. The petitioner is admittedly only an **attesting witness to a Will**. The Will is the subject matter of adjudication before the competent civil Court in O.S.No.1708 of 2024. The parties also have the shadow of an earlier civil proceeding in O.S.No.10195 of 1995 hanging over them, and the later suit is projected as an offshoot of the earlier litigation.

24. The dispute, on its face, therefore bears the unmistakable complexion of a civil contest. Whether the Will is genuine, valid, duly executed or otherwise is a matter resting within the province of the competent civil Court. The petitioner is not the propounder of the Will. He is not its beneficiary. His admitted role is that of an attesting witness.



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25. An attesting witness witnesses execution; **he does not, merely by putting his signature to an instrument, inherit every allegation subsequently levelled against its maker or beneficiary.** To permit an attesting witness to be hauled into criminal proceedings merely because the instrument attested by him subsequently becomes contentious would place every witness to a document under the perpetual shadow of criminal prosecution.

26. The allegations concerning Sections 61, 338 and 340(2) of the BNS, as projected, are principally directed against accused No.1. Against the petitioner, the record discloses no role beyond attestation of the Will. This makes his precipitate arrest all the more inexplicable. The source order itself records that the dispute is facially civil and that the petitioner is only an attesting witness.

27. It is made clear that the protective order dated 25.08.2026 is confined exclusively to the petitioner–accused No.2 and shall not enure to the benefit of accused No.1.



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28. List the matter on **03.09.2026, in the fresh matters list.**

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

NVJ
List No.: 2 SI No.: 125