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Supreme Court of India clarifies issuance of notice is the rule and arrest an exception under Section 35 of the *Bharatiya Nagarik Suraksha Sanhita, 2023*

The Supreme Court of India (“**Supreme Court**”), in *Satender Kumar Antil vs. Central Bureau of Investigation*¹, delivered a significant ruling interpreting Section 35 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (“**BNSS**”).

The judgment authoritatively clarifies the interplay between the power of arrest under Section 35(1)(b) of the BNSS² and the mandatory issuance of notice under Section 35(3) of the BNSS³, particularly in cases involving offences punishable with imprisonment up to 7 (seven) years.

The decision settles the position of law by holding that issuance of notice under Section 35(3) of the BNSS is the rule in such cases, while arrest under Section 35(6)⁴ read with Section 35(1)(b) of the BNSS is a narrowly circumscribed exception. In doing so, the Supreme Court harmonised the statutory safeguards under the BNSS with the constitutional mandate under Article 21 of the Constitution of India, 1950 (“**Constitution**”).

Issues

The Supreme Court considered whether notices under Section 35(3) of the BNSS are mandatorily required to be issued in all cases involving offences punishable with imprisonment up to 7 (seven) years. A consequential question that arose for consideration was whether, in the absence of circumstances contemplated under Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS, would an arrest by a police officer in such cases be legally justified.

¹ 2026 INSC 115 (decided on January 15, 2026)

² S 35(1) – “Any police officer may without an order from a Magistrate and without a warrant, arrest any person – (a)...

(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 - ...”

³ S 35(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 S 35(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.”

Analysis and findings

Arrest is discretionary and not a matter of course

At the outset, the Supreme Court reiterated that the power of arrest under Section 35(1) of the BNSS is discretionary, as reflected by the use of the word 'may'. The existence of a statutory power to arrest is distinct from the justification to exercise that power. An arrest cannot be made merely because it is lawful to do so.

Relying upon established precedent, including *Joginder Kumar vs. State of UP and Ors.*⁵, the Supreme Court emphasised that arrest and detention have serious consequences on personal liberty and reputation, and therefore cannot be undertaken in a routine or mechanical manner. The investigating officer must apply his mind to the necessity of arrest and must be able to justify it independently of the mere existence of power.

The Supreme Court further observed that investigation is primarily concerned with the collection of evidence and formation of opinion regarding prosecution. An arrest is not an indispensable component of investigation. The statutory scheme recognises that investigation can proceed effectively even without taking the accused into custody.

Twin conditions under Section 35(1)(b) must coexist and be strictly complied with

The Supreme Court held that for offences punishable with imprisonment up to 7 (seven) years, the power of arrest under Section 35(1)(b) of the BNSS is conditioned upon strict compliance with two cumulative requirements.

First, under Section 35(1)(b)(i) of the BNSS, the police officer must have 'reason to believe', based on complaint, credible information or reasonable suspicion, that the person has committed the offence. This requirement is foundational and must be based on objective material.

Secondly, under Section 35(1)(b)(ii) of the BNSS, the police officer must be satisfied that arrest is necessary for one of the specified purposes, such as preventing further offence, ensuring proper investigation, preventing tampering with evidence, preventing inducement or threat to witnesses, or ensuring presence before the court.

The Supreme Court clarified that it is not necessary that all the conditions under Section 35(1)(b)(ii) of the BNSS be satisfied; the existence of any one would suffice. However, the requirement of necessity to arrest is substantive and not ornamental.

The Supreme Court reaffirmed the ratio laid down in *Arnesh Kumar vs. State of Bihar*⁶, and in *Satender Kumar Antil vs. Central Bureau of Investigation*⁷, observing that the twin requirements of 'reason to believe' and 'satisfaction as to necessity of arrest' must both be recorded in writing. Even where these conditions are present, arrest is not mandatory. The officer retains discretion and must exercise it on the touchstone of objective necessity and constitutional safeguards.

Notice under Section 35(3) of the BNSS is the rule; arrest under Section 35(6) of the BNSS is a narrow exception

The Supreme Court undertook a harmonious construction of Sections 35(1)(b), 35(3), 35(5)⁸, and 35(6) of the BNSS. It held that Section 35(3) of the BNSS, which mandates issuance of notice where arrest is not required under subsection (1), applies with full force to offences punishable with imprisonment up to 7 (seven) years.

The Supreme Court categorically held that issuance of notice under Section 35(3) of the BNSS is the rule in such cases. Once such notice is issued and the person complies with its terms and continues to do so, Section 35(5) creates an implied prohibition against arrest. Arrest at that stage can only be effected if the police officer records specific reasons

⁵ (1994) 4 SCC 260

⁶ (2014) 8 SCC 273

⁷ (2022) 10 SCC 51

⁸ S 35(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."

demonstrating that custody has become necessary.

With respect to Section 35(6) of the BNSS, the Supreme Court clarified that even in cases of non-compliance with notice, arrest is not automatic. Non-compliance merely enables the officer to consider arrest; it does not mandate it. The officer must independently assess whether arrest has become necessary for investigation. Importantly, the Supreme Court held that arrest under Section 35(6) of the BNSS must be based on fresh circumstances or material that were not available at the time of issuance of notice under Section 35(3) of the BNSS. The power is to be exercised sparingly and with circumspection.

The Supreme Court further observed that these statutory safeguards are rooted in Article 21 of the Constitution, and any interpretation that reduces them to procedural formalities would defeat the legislative intent. Arrest cannot be justified merely for the purpose of questioning. It must be based on strict objective necessity.

Conclusion

The Supreme Court concluded that in offences punishable with imprisonment up to 7 (seven) years, the statutory framework under Section 35 of the BNSS establishes a clear hierarchy; issuance of notice under Section 35(3) of the BNSS is the norm, while arrest under Section 35(6) read with Section 35(1)(b) of the BNSS is an exception.

An arrest is a statutory discretion and not a mandatory investigative step. The police officer must consciously ask whether arrest is truly necessary before exercising that power. Even where the statutory conditions exist, arrest should not be undertaken unless absolutely warranted.

This judgment fortifies the constitutional guarantee of personal liberty and ensures that the transition from the Code of Criminal Procedure, 1973 to the BNSS does not dilute the safeguards evolved through judicial interpretation. By reaffirming that 'notice is the rule and arrest the exception' in offences punishable up to 7 (seven) years, the Supreme Court has provided much-needed clarity and reinforced the principle that deprivation of liberty must always remain a measure of last resort.

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