



सत्यमेव जयते

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Provisions relating to Arrest, remand and bail with reference to guidelines issued by honble Supreme court in Satender Antil vs. CBI and Siddharth Vs. State of UP and provisions relating to disposal of property in criminal case

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**PROVISIONS RELATING TO ARREST , REMAND
AND BAIL WITH REFERENCE TO GUIDELINES
ISSUED BY HON’BLE SUPREME COURT IN
SATENDER ANTIL VS CBI AND SIDDHARTH VS
STATE OF U.P.**

“Liberty is one of the most essential requirements of modern man. It is said to be delicate fruit of mature civilization. It is the very quintessence of civilized existence and essential requirement of a modern man.”

– John E.E.D. in “Essays on freedom and power”

INTRODUCTION & DEFINITION

Black’s Dictionary defines bail as- “Procuring the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court”.

Wharton's Law Lexicon, defines bail as: - "to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him."

Bail is defined under the new **BNSS Act** under **Section 2(c)** as "release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or bail bond." A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused either by the orders of the court or by the police or by the investigation agency. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect

that he would cooperate both with the investigation and the trial. The principle that bail is the rule and the jail is the exception has been well recognized through the repetitive pronouncements of Apex Court. This again is on the touchstone of the Article 21 of the Constitution of India.

Hon'ble Former Chief Justice of India D Y Chandrachud's observations on trial courts being reluctant to grant bail to accused are significant. Speaking at an event organised by the Bar Council of India, the Hon'ble CJI said the reason the higher judiciary is flooded with bail cases is because of a certain reluctance from trial courts to grant bail. The CJI spoke about a "sense of fear" in judges in district courts in granting bail, especially in cases involving heinous crime. "This sense of fear nobody talks about but, which we must confront because unless we do that, we are going to render our district courts toothless and our higher courts dysfunctional."

**GUIDELINES LAID DOWN FOR ARREST OF
ACCUSED DURING INVESTIGATION :**

In the landmark judgment of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr. 2022 SCC 825**, the Hon'ble Supreme Court reiterated the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar Vs. State of Bihar(2014) 8 SCC 273**.

Section 41 read with section 41A CrPC/Section 35 BNNS 2023 states that 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 offense punishable with imprisonment for a term which may be less than 7 years or which may be extend to 7 years whether with or without fine, then the police officer shall arrest the person only if following conditions are satisfied:-

Firstly, the police officer has reason to believe on the basis of such complaint, information or suspicion that such person has committed the said offense and secondly, the

police officer is satisfied that such arrest is necessary (a) to prevent such person from committing any further offense (b) for proper investigation of offense or (c) to prevent such person from causing the evidence of the offense to disappear or tampering with such offence in any manner or (d) to prevent such person for 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 as unless such person is arrested, his presence in the court whenever required could not be ensured.

The police officer shall record his reasons in writing. Therefore, it is apparent from the aforesaid provisions that even for a cognizable offence an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence punishable with imprisonment for a term which may be less than or extent to 7 years and arrest could follow only when he satisfied that there is a reason to believe or suspect the such person has committed an offence and there is necessity for arrest. The police officer is duty bound to record

the reasons for the arrest in writing. Similarly, the police officer shall record reasons when he or she chooses not to arrest. The police officer before arrest must put a question to himself why arrest?, Is it really required? What purpose will it serve? what object will it achieve? it is only after these questions are addressed and one or other conditions as enumerated above is satisfied the power to arrest needs to be exercised.

When a suspect is arrested and produced before a Magistrate for authorizing detention, the Magistrate has to address the question whether specific reasons have been recorded for the arrest and if so *Prima-facie* those reasons are relevant and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other condition stated above are attracted and to this limited extent, the Magistrate will make judicial scrutiny. Where the arrest of such person is not required under section 41 (1) CrPC/ Section 35 BNNS 2023 the police officer is required to issue notice directing the accused to appear before him at a specified place and time. It further mandates that if such an

accused complies with the terms of the notice he shall not be arrested unless for reasons to be recorded in writing the police officer is of the opinion that arrest is necessary. The Hon'ble Supreme Court strictly directed the police officer to forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest while producing the accused before the magistrate for further detention. The magistrate while authorizing further detention shall peruse the report furnished by the police officer in the terms of aforesaid and only after recording in its satisfaction the magistrate shall authorize detention.

The decision not to arrest an accused should also be forwarded to the magistrate within 02 weeks from the date of institution of the case with the copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. Failure to comply with the direction given by the Hon'ble Supreme Court shall render the police officer concerned liable for departmental enquiry and they shall also be liable to be punished for contempt of court before the high court having

territorial jurisdiction. It was also added that the direction issued under Arnesh Kumar shall not only apply to the cases under Section 498-A IPC or section 4 of the Dowry Prohibition Act, rather it will apply to all such cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which made extent to 7 years weather with or without fine.

The above mentioned guidelines are also provided by Hon'ble Chhattisgarh High Court through Notification no. 11829/Rules/2023 dated 12.09.2023.

REMAND AND DEFAULT BAIL

According to section 57 CrPC/ section 58 BNSS,2023 it is mandatory for the police to present the accused before magistrate within 24 hours of arrest excluding the time to travel from the place of arrest to court. Under section 167 CrPC, the magistrate is empowered to to authorise further detention of accused. Section 167(2) Crpc was introduced in 1978, giving emphasis to the maximum period to complete the investigation. The provision has got a laudable object behind it, which is to ensure an expeditious investigation and

a fair trial and to set down a rationalised procedure that protects the indigent sections of the society. Article 21 of the constitution provides that ‘no person shall be deprived of his life and personal liberty except according to the procedure established by the law.’ The history of the enactment of section 167(2) CrPC and safeguard of default bail contained in the proviso thereto is intrinsically linked to Article 21.

It was held by hon’ble Supreme Court in **M. Ravindran Vs. Directorate of Revenue Intelligence (2021) 2 SCC 485** that right to default bail can not be taken away even during any unforeseen circumstances, such a recent pandemic.

Section 167(2) proviso states that the Magistrate may authorise detention of accused beyond the period of 15 days. However, the Magistrate shall not authorise the detention of accused for period of more than 90 days, where investigation relates to an offense punishable with death, life imprisonment or imprisonment for a term of less than 10 years. Period of detention may extend to 60 days where investigation relates to any other cases. In the matter of **Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67** the Apex Court observed

that 90 day limit is only available in respect of offences where minimum ten years imprisonment is stipulated. Section 187 BNSS enlarges the scope of the police custody. In the old law, the Magistrate may authorise police custody of accused only in initial 15 days from the time when accused is presented before the Magistrate. However, in BNSS the Magistrate is authorised to grant police custody beyond the period of 15 days till 60 or 90 days, as the case maybe. Once the abovementioned period is over and final report is not submitted before the Court, the right to default bail arises in the favour of accused.

GUIDELINES ISSUED IN SIDDHARTH VS. STATE OF UTTAR PRADESH

In the landmark Judgment of **Siddharth Vs. State of Uttar Pradesh (2022) 1 SCC 676** , the issue before the Court was whether anticipatory application of plaintiff ought to have been allowed. The fact emerged that the appellant along with 83 other private persons were roped in a FIR which were registered 07 years ago, interim protection until the filing of police report was provided by the Court to the accused. The

investigation officer was ready to file the charge sheet, but it is submitted that the trial Court had taken a view that unless the person is taken in custody, the charge sheet will not be taken in the record in the view of Section 170 of CrPC/Section 190 BNNS 2023.

Section 170 CrPC/Section 190 BNNS 2023 states that upon completion of investigation, if there is sufficient evidence or reasonable ground, the accused shall be forwarded under “custody” to magistrate empowered to take cognizance.

The Hon’ble Court interpreted the word ‘**custody**’ appearing in this section that it does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the investigation officer before the Court at the time of filing of the charge sheet, thereafter the role of Court starts. In case the police officer thinks that it is unnecessary to present the accused in custody for the reason that accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to

produce such an accused in custody.

In the matter in question, the appellant had joined the investigation and the investigation was completed and he has been roped in after 9 years of registration of FIR therefore, the Court directed that there is no reason why at this stage the accused must be arrested before the charge sheet is taken on record. The accused has already stated before the Court that on summon being issued he shall put appearance before the Court and therefore, the requirement of arrest is not there.

It was observed by Hon'ble Supreme Court that refusal by criminal courts either through the learned Magistrate or through their office staff to accept the charge sheet without production of accused is not justified by any provision of law. Therefore, it should be impressed upon all the courts that they should accept the charge sheet whenever it is produced by the police with any endorsement to be made on the charge sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge sheet but when the police officer submits the charge sheet it is a duty of

magistrate to accept it especially in the view of the provisions of Section 468 CrPC/Section 514 BNNS 2023 which creates a limitation of taking cognizance of offence. If the investigation officer does not believe that the accused will abscond or disobey summons, he or she is not required to be produced in custody. The word 'custody' appearing in Section 170/Section 190 BNNS 2023 of the CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of accused by investigation officer before the Court while filing charge sheet.

GUIDELINES ISSUED IN THE CASE OF SATENDER

ANTIL Vs CBI

In the matter of Satender Antil, the main question which arose for consideration before the court was the regarding the procedure to be adopted by the Court upon presentation of final report in cases where the accused is not arrested during investigation and cooperated with the investigation. The Apex Court issued following guidelines:-

Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA

[Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS :-

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

CATEGORY A :

After filing of charge-sheet/complaint, the Court shall issue ordinary summons at the 1st instance including permitting appearance through lawyer. If such an accused does not

appear despite service of summons, then bailable warrant for physical appearance may be issued. Non bailable warrant may be issued on failure to appear despite issuance of bailable warrant.

Non bailable warrant may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing. Also, bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided. In this category, the court would be expected to better exercise of discretion in favour of accused.

CATEGORY B :

On appearance of the accused in court pursuant to process issued bail application to be decided on merits. These cases will have to be dealt with on a case-to-case basis keeping in view the general principle of law and provisions.

CATEGORY C :

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

CATEGORY D :

In cases of economic offences, it is required that all economic offences should not be clubbed in a category rather it has to be dealt from case to case basis. Trial court shall take in consideration the gravity and punishment of the offence, the object of the Special Act, and the attending circumstances of the case. These cases will have to be dealt with on a case-to-case basis keeping in view the general principle of law and provisions.

GENERAL PROVISIONS REGARDING BAIL.

Under section 437 CrPC/Section 480 BNNS 2023 when a person is accused of, or suspected of, the commission of any non bailable offence, is arrested or detained without warrant

or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but such person shall not be so released,

a) if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

b) if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non- bailable and cognizable offence,

c) He may be released if under the age of sixteen years or is a woman or is sick or infirm,

d) He may be released if it is satisfied that it is just and proper so to do for any other special reason.

Section 437 of the Code/ Section 480 BNNS 2023 is a provision dealing with bail in case of non-bailable offences by a court other than the High Court or a Court of Sessions. Here again, bail is the rule but the exception would come when the court is satisfied that there are reasonable grounds that the

accused has been guilty of the offence punishable either with death or imprisonment for life. Similarly, if the said person is previously convicted of an offence punishable with death or imprisonment for life or imprisonment for seven years or more or convicted previously on two or more occasions, the accused shall not be released on bail by the Magistrate.

Proviso to Section 437 of the Code/ Section 480 BNNS 2023 mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, that is something which is required to be taken note of. In a case pertaining to women, the court is expected to show some sensitivity. In many cases women who commit cognizable offences are poor and illiterate. They have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not

only with poverty but with crime as well.

The main provision contained in Section 437(1) which, by way of a positive direction, prohibits the Magistrate from releasing a person guilty of an offence punishable with either death or imprisonment for life. The object is to exclude the offence exclusively triable by the Court of Sessions. Section 439 CrPC reiterates the aforesaid provision to the exclusion of magistrate over an offence triable exclusively by a Court of Sessions. Therefore, if the Magistrate has got the jurisdiction to try an offence for which the maximum punishment is either life imprisonment or death, when such jurisdiction is conferred on the learned Magistrate, then the magistrate may exercise the power to release the accused on bail for the offence alleged. The Sessions court while dealing with the bail application under section 439 CrPC/ Section 483 BNNS 2023 has to take into consideration the first proviso to section 437 CrPC/Section 480 BNNS 2023 which facilitates a Court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though

introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be.

The Hon'ble Supreme Court in the matter of Satender Antil Vs. CBI issued following guidelines regarding disposal of bail application:

1. Bail applications be disposed of normally within one week.
2. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years.
3. Efforts be made to dispose of all cases which are five years old by the end of the year.
4. As a supplement to Section 436-A CrPC/Section 479 BNNS 2023, but consistent with the spirit thereof, if an under trial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such under trial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time.

SECTION 436 A CrPC/Section 479 BNNS 2023

Section 436-A CrPC/Section 479 BNNS 2023 states that where an accused, during the period of investigation, inquiry or trial undergoes detention for half of the maximum period of imprisonment specified for the offence, then the accused shall be released on bail unless the court thinks otherwise after hearing the public prosecutor. However, an accused can not be detained for more than maximum period of imprisonment provided for the alleged offence.

Section 436-A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an under trial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. The word "trial" will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal or revision is pending for a longer time, to bring it under Section 436-A/Section 479 BNNS 2023, the period of incarceration in all

forms will have to be reckoned. The word "shall" clearly denotes the mandatory compliance of this provision. There is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. While taking a decision the Public Prosecutor is to be heard and the court, If it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded.

Release of the accused on bail or his own personal bond

Under Section 440 CrPC/ Section 484 BNNS 2023 the amount of every bond executed under Chapter XXXIII is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed shall not be mechanical and uniform in all cases. It is a mandatory duty of the court to

take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible of compliance would be defeating the very object of the release. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power under Section 88/Section 91 BNNS 2023 of the Code also the said factum has to be kept in mind.

What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the under trial does not flee or hide himself from trial.

In determining which conditions of releases will reasonably assure appearance, the Court shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his

record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

CONCLUSION

It is important that the police officer should maintain a balance between individual liberty and societal order while exercising power of arrest. Filling of check list mechanically without providing reason or circumstances on the basis of which police officer reached on the conclusion must stop. It is duty of court to ensure that the guidelines provided by Hon'ble Supreme Court in Arnesh Kumar Vs. State of Bihar and Another regarding the pre-requisite condition for arrest of an accused must be followed in letter and spirit.

The Judgment in Satender Kumar Antil reiterates long standing principles pertaining to bail. The Apex Court has emphasized the need for investigative agencies and Magistrates to ensure greater procedural compliances and safeguard the right of the accused. The Supreme Court

condemned unnecessary arrest of accused where he cooperated in the investigation just for the sake of presentation of final report in the Court.

In essence both the above judgments goes a long way to protect the constitutional liberties of of the accused persons. While the Supreme Court has prominently reiterated that the burden rests upon the investigative agencies to comply with procedural safeguards, the real test is in its practical application by the magistrate and investigating agencies.

**PROVISIONS RELATING TO DISPOSAL OF
PROPERTY IN CRIMINAL CASE.**

OBJECT AND SCHEME

The **object and scheme** of the various provisions contained in the CrPC/BNNS 2023 appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary.

In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the delivery of the property to the owner or otherwise in the interest of justice. **The object of the Code of Criminal Procedure/BNNS 2023** seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal.

PROVISIONS UNDER BHARTIYA NAGRIK
SURAKSHA SANHITA 2023

Chapter 36 (i.e. Section 497 to section 505) of BNNS 2023 deals with “Disposal of Property”.

Section 497 BNNS 2023 provides provision for “Order for custody and disposal of property pending trial” And **Section 498 BNNS 2023** provides provision for “Order for disposal of property at conclusion of trial”.

Under Section 498, property can be disposed by three ways at conclusion of trial-

- I. Destruction
- II. Confiscation
- III. Delivery.

Section 501 BNNS 2023, provides for “Destruction of libellous and other matter”. It says that on a conviction under Section 294, 295, 356 (3) (4) of BNS 2023, The Court may order for destruction of all the copies related

to the offence.

Section 503 BNNS 2023, provides for “Procedure by police upon seizure of property”. Under this section only most of the Supurdnama applications are filled in the Court. This Section empowers Court to make order regarding a property seized by police officer and not produced before Court, either by disposal of property or delivery of such property to person entitled, under such conditions as Court may deem fit.

Section 504 BNNS 2023 provides for “Procedure where no claimant appears within six months”. If no one claims the seized property within six months, then the Magistrate may by order direct that the such property shall be at the disposal of the State Government and may be sold by the Government. **Rule 432 and 433 of C.G. Rules and Order (Criminal)** provides for the procedure to facilitate sale of the property through auction.

Section 505 BNNS 2023 provides for “Power to sell perishable property”. Where a property is subject to

speedy and natural decay and value of property is less than ten thousand rupees, the Magistrate may direct it to be sold. In the matter of **Agro Industries Vs. State of Punjab, 2009 CrLJ 387 (SC)** it was held that perishable items like rice etc. can be sold by court by public auction. In case of perishable items/goods like paddy/rice seized, the court would pass order for its sale by public auction or otherwise expeditiously.

Directions related to Supurdnama by Hon'ble Supreme Court in Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283

In **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2002(10) SCC 283**, Hon'ble Supreme Court has issued directions- "We hope and trust that the concerned Magistrates would take immediate action for seeing that the powers u/s 451 CrPC/ Section 497 BNNS 2023 are properly and promptly exercised and articles are not kept for a long time at the police station, in any case for not more than 15 days to

one month. This object can also be achieved if there is proper supervision by the registry of the concerned High Courts in seeing that the rules framed by the High Court with regard to such articles are implemented properly”.

Vehicles- it has been held that it is of no use to keep seized vehicles at the police stations for long period. It is for the Magistrate to pass appropriate orders by taking bond and guarantee as well as security for the return of the said vehicle.

Gold and Silver Articles- it has been held that it is of no use to keep such articles in police custody for years till the trial is over. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 CrPC/Section 497 BNNS 2023 at the earliest. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (1) preparing detailed proper panchanama of such articles.
- (2) taking photographs of such articles and a bond that such

articles would be produced if required at the time of trial; and (3) after taking proper security.

Liquor- It has been held that for articles such as seized liquor, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station.

**PROVISIONS AND CASE LAWS RELATED TO
DISPOSAL OF PROPERTY UNDER DIFFERENT
ACTS**

Mobile Phones- Mobile phones are electronic items. It has been held that the Courts have discretion in determining the custody of electronic items. If the data on the seized mobile phone is deemed critical for the case, the Court may order its extraction.

Vehicle/truck seized for non-production of papers should be released in favour of its registered owner : In **Ramesh Chand Jain Vs. State of Haryana, (2007) 15 SCC 126** it was held that where a truck was seized for non-production of papers, the truck should be released in favour of its registered owner.

In the event of dispute of title, vehicle should be released temporarily in favour of its ostensible name holder in the RC : In **Ashok Kumar Vs. State of Bihar, 2000 (41) ALR 170 (SC)** and **Rajendra Prasad Vs. State of Bihar, 2000 (2) JIC 440 (SC)** it has been held that In the event of dispute of title, vehicle should be released temporarily u/s 451 CrPC in favour of its ostensible name holder in the registration certificate till the stage when the court passes the order regarding disposal of property on conclusion of the trial. It is not necessary to keep seized vehicle in court compound indefinitely for a long time till disposal of the case. It is more advisable to entrust the vehicle to its registered owner on behalf of the Court.

Last registered person entitled to the custody of vehicle : In **Shafiq Ahmad Vs. State of UP, 2000 ALJ 428 (All)** it has been held that Where there are two or more registered owners of a vehicle, the last registered person in the registration certificate would be entitled for interim custody of vehicle u/s 451 CrPC/ Section 497 BNNS 2023.

Hire purchase agreement and release of vehicle : In **Ashok Leyland Finance Ltd Vs. State of U.P, 2011 CrLJ 2011(All) and Manipal Finance Corp. Ltd Vs. T. Bangarappa, AIR 2001 SC 372**, it has been held that Where the ownership of the vehicle was not absolute and the registration certificate was subject to hire purchase agreement which was indicative that ownership of said vehicle was subject to terms and conditions agreed between hirer and owner, it has been held that the vehicle ought to be released u/s 451 CrPC/ Section 497 BNNS 2023 in favour of the owner (revisionist) and not in favour of the hirer.

Vehicle seized under The Chhattisgarh Agricultural Cattle preservation Act 2004 : The Chhattisgarh Agricultural Cattle preservation Act 2004 has been enacted in the interest of the general public and to maintain communal harmony and peace, for prohibition of slaughter of agricultural cattle. **Section 6** provides prohibition on transport of agricultural cattle for slaughter.

Section 6 (3) Specifically bars the release of vehicle by the Court on bond or surety before the expiry of six months from the date of seizure or till the final judgment of the Court. Also there is provision for confiscation of vehicles seized under this act, at the conclusion of trial. **Hon'ble High Court of Chhattisgarh in Narayan Sahu vs State of Chhattisgarh Criminal Misc Petition No 234 of 2021** has made clear that in case Section 6(1) of the above Act is not applicable, i.e. in cases where the vehicle is not being used for transportation of cattles for purpose of slaughter then section 6(3) of the Act is not attracted and interim custody of vehicles can be granted without waiting for the period of six months.

Uninsured Vehicles- **Rule 240 A of the Chhattisgarh Motor Vehicles Rules 1994** says about “ Prohibition on release of motor vehicle causing accident”. This Rule has been clearly explained by the **Hon’ble High Court of Chhattisgarh in Garib ram vs Chhattisgarh State, CRMP No 924/2020 order dated 21-07-2020** and has held that if death or physical injury has been caused by an uninsured vehicle, then the Court would not release the vehicle unless the registered owner furnishes sufficient security to the estimated compensation, otherwise the said vehicle will be subjected to public auction and proceeds of the same will go to the Claims Tribunal of that area towards compensation. Therefore, the uninsured vehicle may be given in interim custody of the owner after furnishing sufficient security.

Vehicles seized under Excise Act- Under Section 47A of Excise Act Vehicles seized under Excise Act, can be confiscated by Collector. But if confiscation has not yet started then vehicles can be given in interim custody. **Hon’ble High Court of Chhattisgarh in Anil Kumar**

Narmada vs State of Chhattisgarh CrMp No 1017 of 2014 dated 06.01.2015 has held that once the confiscation procedure is initiated by the Collector under Section 47A and intimation has been made to the trial Court having jurisdiction to try the offences under clause (a) of sub section 3 of Section 47 A of the Act, then the trial Court ceases to have jurisdiction to make order from the date when he received intimation.

INTERIM CUSTODY OF PROPERTY UNDER
ESSENTIAL COMMODITIES ACT

Section 6E of the Act says that, if any essential commodity (as included in the list in the Act) has been seized or any package, covering or receptacle in which essential commodity is seized and the proceeding of confiscation under Section 6 A is pending, then Court, Tribunal or other authority shall not have jurisdiction to make orders with regard to possession, disposal, release or distribution of such Commodity.

Hon'ble High Court of Chhattisgarh in Sunil Kumar Jaiswal vs State of Chhattisgarh CrMp No 1213 of 2017 dated 07.03.2018 has held if confiscation proceeding has not been initiated the the Courts are independent to grant seized property.

**DISPOSAL OF NARCOTICS DRUGS UNDER NDPS
ACT**

Section 52A(2) in The Narcotic Drugs And Psychotropic Substances Act, 1985 says that- Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has been seized and forwarded to the officer-in-charge of the nearest police station, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances and make an

application, to any Magistrate for the purpose of—
(a) certifying the correctness of the inventory so prepared;
or (b) taking, in the presence of such Magistrate, photographs
of such drugs, substances or conveyances and certifying such
photographs as true; or (c) allowing to draw representative
samples of such drugs or substances, in the presence of such
Magistrate and certifying the correctness of any list of
samples so drawn.

Samples also should be sent immediately to the
chemical analyzer so that subsequently contention may not be
raised that the article which was seized was not the same.

In cases of vehicle seized under NDPS Act, there is no
bar from granting interim custody of vehicle to the owner. In
the matter of **Bishwajit Dey Vs. State of Assam, 2025 (3)**
SCC 241 The Hon'ble Supreme Court observed that the
seized vehicles can be confiscated by the trial court only in
the conclusion of the trial, when the accused is convicted or
acquitted or discharged. Even, when the court is of the view
that the vehicle is liable for confiscation, it must give an

opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order for confiscation. In absence of any specific bar under NDPS Act and in view of section 51 of NDPS Act, the Court can invoke general power under section 451 CrPC/ Section 497 BNNS 2023 and 457 CrPC/ Section 503 BNNS 2023 for return of seized vehicle pending final decision of criminal case. Therefore, the trial court has the discretion to release the vehicle on supurdnama.

Broadly speaking there are 04 scenarios in which the drug or substance is seized from the vehicle:-

- a) The owner of the vehicle is the person from whose possession the contraband is recovered.
- b) Where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by owner.
- c) Where the vehicle has been stolen by the accused and the contraband is recovered from the stolen vehicle.
- d) Where the contraband is recovered from a third party occupant of the vehicle without any allegation by the police

that contraband was stored and transported in the vehicle with owner's knowledge or connivance.

It is only in the scenario a) and b) that the vehicle may not be released on supurdnama till reverse burden of proof is not discharged by the owner. However, in the scenario c) and d), where no allegation has been made in the charge sheet against the owner or his agent, the vehicle should normally be released in the interim custody. It was also observed in the matter that before final disposal of the property in NDPS, the owner of the vehicle should be heard.

CUSTODY OF CURRENCY NOTES

Parties to be directed to approach civil court when none of them could prove his entitlement to the property (currency notes) before the criminal court : In **District Co-operative Bank, Fatehpur Vs. State of UP, 2006 (56) ACC 640** it was held that Rs. four lacs were recovered in connection with an offence u/s 394 IPC. Accused was acquitted and the said amount was forfeited in favour of the State Govt. and the

application for its release was rejected by the Magistrate. In criminal revision filed against the order of the Magistrate, Addl. Sessions Judge was of the view that there was no sufficient material for passing the order regarding disposal of the money. The High Court held that proper procedure was to direct the parties to file a civil suit in respect of the title to the money and the same should have been directed to be returned to the party who succeeds in the civil suit but the amount could not have been forfeited in favour of the State Govt.

INTERIM CUSTODY OF PROPERTY UNDER FOREST ACT

Protection of Forest, environment, ecosystem and ecology is enshrined in Article 48 and 51 (g) of the Constitution Of India. The general law of CrPC is not always applicable regarding interim custody of articles seized under Forests Act. The principle *Generalia Specailibus Non Derogant* i.e. special provision must prevail over the general law, has been reinstated by Hon'ble Supreme Court on numerous occasions.

Section 52 of the Indian Forest Act 1927 deals with “Seizure of property liable to confiscation and procedure therefor”. Under Section 52(3) authorized officer has power to confiscate forest produce so seized together with tools, vehicles, boats, ropes, chains etc

Section 52C bars the Jurisdiction of Courts, tribunal or authority to make orders with regard to possession, delivery, disposal or distribution of property in regard to which proceeding for confiscation are initiated. In **Divisional Forest Officer Vs. Sudhakar Rao, AIR 1986 SC 328** it was held that merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise, did not necessarily entail in nullifying the order of confiscation of seized timber or forest produce by the authorized officer.

CONCLUSION

The object of the Code of Criminal Procedure/BNNS 2023 seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. Hon'ble Supreme Court in **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283** has give directions regarding release of property in interim custody in expeditious manner. Seizure of property by police amounts to entrustment of property to a Government servant, The idea is that property should be restored to the original owner after the necessity to retain it ceases.

In conclusion, any property seized in a criminal matter should be restored to the original owner, unless there is specific bar under the Law or property is required to prevent the tampering of evidence.

Thank You