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RAIPUR DIVISION



A Paper Presentation on

**TOPIC:- PROVISIONS RELATING TO ARREST, REMAND AND BAIL
WITH REFERENCE TO GUIDLINES ISSUED BY HONORABLE SUPREME
COURT IN THE CASE OF SATENDER KUMAR ANTIL VS. CBI AND
SIDDHARTH VS. STATE OF UTTAR PRADESH AND PROVISIONS
RELATING TO DISPOSAL OF PROPRTY IN CRIMINAL CASES.**



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INTRODUCTION

In recent years, the Hon'ble Supreme Court has taken significant steps to recalibrate the criminal justice system in favour of constitutional safeguards and procedural fairness. Two landmark judgments—*Satender Kumar Antil v. CBI (2022)10 SCC 51* and *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676 s*—have reaffirmed the principles that arrest should not be compulsory, remand must be justified, and that bail, not jail, is the rule. These judgments emphasize that liberty is the cornerstone of justice and that cooperation with investigation, not custody, should be the guiding factor. Through this presentation, we explore how these decisions reshape pre-trial processes, ensure judicial accountability, and protect the right to life and liberty under Article 21 of the Constitution

ARREST:

Judicial Shift Against Arbitrary Action

The law relating to arrest and bail in India is governed by the Code of Criminal Procedure (CrPC), 1973, and its modern successor—the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Both frameworks aim to strike a balance between the rights of individuals and the needs of

effective criminal investigation. Under CrPC, the power to arrest without warrant is granted under Section 41, but the Supreme Court, in ***Arnesh Kumar v. State of Bihar (2014)8 SCC 273***, held that such power must not be exercised mechanically. BNSS retains this cautious approach, mandating that arrest should only be made when necessary, such as to prevent a further offence, ensure proper investigation, or avoid tampering with evidence. The arresting officer must record reasons for arrest in writing. BNSS enhances accountability by introducing mandatory procedural safeguards at the time of arrest, especially for offences punishable with less than seven years.

Arrest is a significant infringement of liberty and must be justified by law. In ***Satender Kumar Antil vs CBI (2022)10 SCC 51***, the Court categorized offences and clarified that for offences punishable up to 7 years, arrest should not be automatic. Police are required to issue a notice of appearance under Section 41A CrPC (now Section 36 BNSS) unless there is a risk of absconding or non-cooperation. The Court instructed that arrest should only occur if it is necessary for the investigation and not as a routine response. Similarly, in ***Siddharth v. State of Uttar Pradesh (2022)1 SCC 676***, the Court held that mere filing

of a chargesheet does not necessitate arrest if the accused is not absconding and has cooperated. These judgements collectively ensure that liberty is not sacrificed in the name of procedural formality.

REMAND

Ensuring Judicial mindfulness

Section 167 CrPC (now Section 187 BNSS) provides that the Magistrate must be satisfied of the need for remand and cannot mechanically authorize custody. The total period of custody—90 days for grave offences and 60 days for others—cannot be exceeded without bail being granted. *Satender kumar Antil vs CBI (2022)10 SCC 51* and *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* - have clarified that remand must serve a legal purpose and not be used coercively. The Magistrate must apply judicial mind, ensure physical or virtual presence of the accused, and comply with procedural safeguards. Notably, *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* clarifies that custody is not synonymous with arrest and emphasizes judicial discretion over prosecutorial preference.

Comparative Analysis: Section 167 CrPC and Section 187 BNS

Section 167 of the CrPC and Section 187 of the BNS deal with custodial detention when investigation cannot be completed within 24 hours. **As per new law of Section 187 of the BNS** magistrate may authorise the detention of accused beyond the period of fifteen days, if he is satisfied that adequate ground exist for doing so, but no magistrate shall authorise the detention of accused into custody for a total period exceeding 90 days (where offence is punishable with death, imprisonment for life or for a term of 10 years or more) and 60 days (where investigation relates to any other offences). However, Section 187 of the BNS introduces several modern upgrades to address systemic challenges. **First**, it provides a flexible custody window, allowing police custody at any time within the first 40 days (for offences for which remand period can extend not more than 60-day cases) or 60 days (for offences for which remand period can extend not more than 90-day cases), enhancing investigation flexibility. **Second**, it mandates video conferencing for all remand extensions beyond the initial physical production, thereby institutionalizing digital processes. **Third**, it empowers Executive Magistrates to authorize police custody for up to 7 days in the absence of Judicial Magistrates, ensuring continuity.

Fourth, it provides specific protections for women and juveniles—females under 18 must be kept in remand homes or recognized institutions. **Fifth**, it ensures accountability, requiring Magistrates (other than CJMs) to forward remand orders with reasons to the CJM. **Sixth**, it introduces a strict time limit for investigation in summons cases—six months unless extended with justification. **Lastly**, the provision clarifies that even after the 60/90 day period, an accused will remain in custody until bail is furnished, aligning the statutory position with prevailing judicial interpretation.

BAIL: Liberty as the Norm

As for **bail**, CrPC distinguishes between bailable and non-bailable offences through Sections 436 and 437 of crpc. respectively. Section 436 mandates bail in bailable offences. Section 437 of crpc. provides for bail in non-bailable offences with limitations. Section 438 of crpc allows anticipatory bail, and Section 439 of crpc gives higher courts wider discretion . BNSS preserves this framework while emphasizing the principle that "bail, not jail" is the rule, especially in cases involving undertrials. It encourages judicial officers to avoid unnecessary detention and stresses constitutional protections under Article 21. Moreover, BNSS

addresses delays in investigation by mandating time-bound completion in summons cases, and under Section 187 BNSS (analogous to Section 167 CrPC), it allows custody extensions via video conferencing and empowers Executive Magistrates in emergencies. The landmark judgement of *Satender Kumar Antil (2022)10 SCC 51* emphasized liberal bail in offences punishable upto 7 years of imprisonment and strict adherence to procedures under Section 41A of crpc. *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* reasserted that liberty must not be compromised at the stage of chargesheet if cooperation by accused person exists. These decisions protect individuals from arbitrary incarceration and encourage judicial fairness.

An In-Depth Analysis of *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* Revisiting Arrest, Remand, and Liberty in Criminal Procedure

The Indian criminal justice system, although structured with constitutional safeguards, has long grappled with the tension between law enforcement powers and the protection of personal liberty. Among the many facets of this challenge is the issue of **arbitrary and unnecessary arrests**, particularly at the stage of filing a charge sheet. The Supreme

Court's judgment *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* , offers significant clarification on this matter. It addresses a common yet controversial judicial practice—insisting that an accused must be arrested and taken into custody before a charge sheet can be filed and taken on record by the Magistrate under **Section 170 of the Code of Criminal Procedure, 1973** (now replaced by **Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023**). This case is a seminal ruling on the interpretation of "custody" and the need to respect **Article 21 of the Constitution**, which guarantees personal liberty.

The Court clarified that the term “custody” under Section 170 CrPC **does not imply that the accused must be arrested and brought in handcuffs or jail custody before the court**. Instead, it simply means that the accused must be present before the Magistrate when the charge sheet is filed so that further judicial proceedings, such as cognizance or summons, can proceed in accordance with law. The Court observed that there was **no statutory compulsion to arrest an accused merely because a charge sheet is being filed**, especially when the accused has **cooperated with the investigation**, has **not absconded**, and poses **no threat to public safety, evidence, or witnesses**.

In this case the supreme court has emphasized that **arrest should not be used as a tool of harassment** or as a **symbolic ritual to initiate trial proceedings**. The Court referred to previous judgments such as *Joginder Kumar v. State of U.P. (1994)* and *Arnesh Kumar v. State of Bihar (2014)8 SCC 273* to reiterate that **arrest must be the exception, not the rule**, and must be justified based on compelling circumstances. Merely because a person is named as an accused and there is sufficient material to file a charge sheet does not automatically mean that arrest is mandatory. The apex court was also concerned about the systemic tendency to arrest individuals unnecessarily, which leads to the overcrowding of prisons, particularly with undertrial prisoners, many of whom are eventually acquitted or released on bail.

The judgment in *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* thus holds immense significance. It is a strong judicial statement against the misuse of procedural provisions to curtail personal liberty. It reminds both the police and the judiciary that **the law must not be used to oppress**, and that **liberty cannot be sacrificed for administrative convenience**. The ruling sets a **clear precedent** for interpreting “custody” in Section 170 CrPC (now Section 193 BNSS) in a **non-custodial sense**, allowing the

accused to appear before the Magistrate without necessarily being arrested.

From a constitutional perspective, the decision upholds the values of **Article 21**, reaffirming that **procedural fairness is a component of the right to life and personal liberty**. It aligns with the **principle of ‘bail, not jail’**, particularly where the accused is not a threat to society or the judicial process.

In light of the recent **Bhartiya Nagarik Suraksha Sanhita, 2023**, which replaces the CrPC, it is noteworthy that **Section 193 BNSS retains the same wording and purpose as Section 170 CrPC**. Therefore, the interpretation laid down by the Supreme Court in *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676* will continue to apply and guide the functioning of the courts under the new law. The case serves as a reminder that **procedural provisions must be interpreted in light of constitutional values**, and not at the cost of individual dignity and freedom.

An In-Depth Analysis of *Satender Kumar Antil v. CBI* (2022)10 SCC

51 —Revisiting Arrest, Remand, and Liberty in Criminal Procedure

In the landmark judgment of ***Satender Kumar Antil v. Central Bureau of Investigation*** (2022)10 SCC 51, the Supreme Court issued comprehensive directions to reform the practice of arrest, remand, and bail in criminal cases. The Court strongly emphasized that arrest should not be automatic or mechanical, especially in cases where the offense is punishable with less than seven years of imprisonment and the accused is not likely to abscond or tamper with evidence. Investigating officers must apply their mind to the necessity of arrest and comply with the safeguards laid down in **Section 41 and 41A of the Code of Criminal Procedure (CrPC)**, as interpreted in *Arnesh Kumar v. State of Bihar*. A notice under Section 41A should be served instead of making an immediate arrest for such offenses.

The Court also made it clear that **magistrates should not authorize detention mechanically**. They are duty-bound to examine whether the arrest was necessary and lawful before granting remand. Failure to do so would amount to a violation of the constitutional rights of the accused

under **Article 21**. To guide the courts in granting bail, the Supreme Court categorized offenses into four groups (A to D), with **Category A offenses (punishable up to seven years)** requiring a more liberal approach toward bail. The Court reiterated the principle of "bail, not jail" and directed that bail applications be decided promptly and fairly.

Category B includes more serious offenses that are punishable with **more than seven years but do not attract life imprisonment or the death penalty**.

In such instances, while the gravity of the offense is higher than Category A, the Court still directed that the necessity of arrest must be independently evaluated. The courts should apply a cautious yet fair approach in bail decisions, ensuring that arrest and remand are not carried out mechanically but only when genuinely required.

Category C covers the most serious offenses, which are punishable with **life imprisonment or the death penalty**. In such cases, the Court acknowledged that a stricter approach is warranted. Arrest and remand may be necessary for the purpose of investigation, prevention of tampering with evidence, or ensuring public safety. Bail in such matters should be granted only after thorough judicial scrutiny of the facts and circumstances.

Category D refers to **economic offenses and those under special statutes**, including cases investigated by specialized agencies such as the **CBI ,ED, SFIO, etc.** These may involve complex white-collar crimes like money laundering, financial fraud, or offenses under the Prevention of Money Laundering Act (PMLA). While these offenses may not involve direct violence, their impact on the economy and society can be significant. The Court emphasized a **balanced and case-specific approach** in such cases, avoiding both blanket denial of bail and unwarranted leniency.

DISPOSAL OF PROPERTY

Disposal of Property in Criminal Cases:

The disposal of property in criminal proceedings is governed to prevent the decay or misuse of items seized during investigations. Under Section 451, 452 457 of the CrPC, the Court can pass interim or final orders concerning such property.

The Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat (2002)10 SCC 283* emphasized that the court should not keep seized vehicles or other properties in the police station for long durations as they are subject to natural decay and misuse. The Court held that valuable property or articles should not be left idle during the pendency

of trial and that interim custody should be granted under proper safeguards like personal bond, identification, and production guarantee. Key directions include proper documentation (panchnama, photographs), taking bonds, and considering storage in secure places like bank lockers or disposal in case of perishables. The decision prevents overburdening the police malkhana and ensures property is protected during the trial.

Changes brought in BNSS regarding disposal of property.

The BNSS introduces **time-bound and streamlined procedures** for disposal of property, improving upon the CrPC. **Section 497(5)** (analogous to **Section 451 CrPC**) mandates that courts must pass orders for **custody or disposal of property within 30 days of preparing a statement under Section 497(2)** of production of property. **Section 498** (corresponding to **Section 452 CrPC**) provides for **disposal of property at the end of trial**, with a **mandatory stay of 2 months** on such orders to protect appeal rights, unless the property is perishable. **Section 499** (in place of **Section 453 CrPC**) introduces a **6-month deadline from the date of order** to compensate **innocent purchasers** of stolen property. **Sections 504 and 505** (similar to **Sections 457 and 459 CrPC**) deal with **unclaimed and perishable property**, allowing magistrates to **order sale if no claimant**

appears within 6 months. Additionally, videography or photography of seized items is encouraged to maintain transparency and prevent tampering.

Chhattisgarh Excise Act, 1915

This Act permits confiscation of intoxicants, tools, and vehicles involved in offences. Section 46 allows for confiscation even of lawfully owned items if transported along with illegal ones. Section 47 mandates Magistrate-led confiscation but defers to the Collector under Section 47A when proceedings are initiated. Section 47D of the act bars court's jurisdiction once the Collector initiates confiscation proceedings.

Narcotics Drugs and Psychotropic Substance Act, 1985

Sections 60 to 62 of **Narcotics Drugs and Psychotropic Substance Act, 1985** provide for confiscation of narcotic drugs, articles, and vehicles used in offences. Confiscation is conditional: owners can prevent it by proving lack of knowledge. In *Jyoti Pratab Singh v. State*, the High Court held that Sections 451 and 457 of CrPC remain applicable for interim custody, even if confiscation is possible. The NDPS Act doesn't expressly bar such custody.

In *Union of India v. Mohanlal & Anr.* (2016) 3 SCC 379, the honorable Supreme Court expressed serious concern over the hazardous accumulation of such contraband in police godowns and malkhanas, which posed risks of theft, substitution, and health hazards. Recognizing the urgent need for a uniform and time-bound mechanism, the Court directed the establishment of state-level and district-level committees for monitoring disposal procedures.

A key direction was issued under **Section 52A of the NDPS Act**, mandating that an **inventory of the seized items, including photographs and samples, must be prepared and certified before a Magistrate**, who is empowered to treat such inventory as **primary evidence** during the trial. This provision allows for the **disposal of the actual seized substances** without affecting the evidentiary value, thus preventing unnecessary delays.

Chhattisgarh Agricultural Cattle Preservation Act, 2004 Section 6 of the **Chhattisgarh Agricultural Cattle Preservation Act, 2004** prohibits transport of agricultural cattle for slaughter. Section 6(3) of this act mandates a 6-month embargo on vehicle release by court once seized or before the judgement of court , whichever is earlier.

Essential Commodities Act, 1955

Section 6A of the **Essential Commodities Act, 1955** allows the Collector to confiscate essential commodities, packaging, and vehicles. Section 6B of this act ensures due process by requiring show-cause notices. Section 6E of this act bars any court from issuing orders on disposal or custody once confiscation is initiated.

Indian Forest Act, 1927

Under Section 52, of the **Indian Forest Act, 1927** states that forest officers can seize forest produce and tools or vehicles used in offences. Upon seizure, the property may be marked and reported to the Magistrate or an authorised officer. If the authorised officer is satisfied that a forest offence occurred, he may order confiscation under Section 52(3) of the act, with due notice and hearing as per Section 52(4). Section 52C of this act bars courts from interfering once confiscation proceedings are initiated.

CONCLUSION

In conclusion, The combined effect of *Satender Kumar Antil vs. CBI (2022)10 SCC 51* and *Siddharth v. State of Uttar Pradesh (2022)1 SCC 676*. has transformed the interpretation of arrest,

remand, and bail in India. They reaffirm that individual liberty is not negotiable and procedural law must be enforced with a humane touch. Courts and police are duty-bound to consider whether arrest is necessary, whether remand serves a legitimate purpose, and whether bail can be granted to protect liberty the disposal of property in criminal cases is not merely a procedural formality but a crucial aspect of criminal justice administration. Also Judicial precedents, including landmark rulings like *Sunderbhai Ambalal Desai v. State of Gujarat (2002)10 SCC 283* and *Union of India v. Mohanlal (2016) 3 SCC 379*, have emphasized that courts must act proactively to prevent unnecessary retention of property and safeguard against misuse or deterioration. It is the responsibility of investigating agencies, prosecutors, and the judiciary to ensure that the property seized during investigation does not become a burden on the system, but is dealt with justly, promptly, and in accordance with law.

THANK YOU