



2025 INSC 909

REPORTABLE

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY APPELLATE JURISDICTION

IA NO. 63691 OF 2025
IN
MA NO.2034 OF 2022
IN
MA NO. 1849 OF 2021
IN
SPECIAL LEAVE PETITION (CRL.) NO. 5191 OF 2021

SATENDER KUMAR ANTIL

... PETITIONER

VERSUS

CENTRAL BUREAU OF INVESTIGATION
AND ANR.

... RESPONDENTS

ORDER

1. IA No. 63691 of 2025 has been filed by the State of Haryana seeking modification of the order dated 21.01.2025, passed by this Court in MA No. 2034/2022 in MA No. 1849/2021 in SLP (Crl.) No. 1591/2021.
2. Vide the aforesaid order, this Court had directed all the States and Union Territories to issue a Standing Order to their respective police machinery to issue notices under Section 41-A of the Code of Criminal Procedure, 1973

(hereinafter referred to as “**CrPC, 1973**”)/Section 35 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as “**BNSS, 2023**”) only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

3. It was held that service of the aforesaid notices through WhatsApp or other modes of electronic communication, cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.
4. It was also held that the Standing Orders must be issued strictly in accordance with the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v. State (NCT Delhi), 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51.

SUBMISSIONS ON BEHALF OF THE APPLICANT

5. At the outset, it is submitted by the learned counsel appearing on behalf of the Applicant/State of Haryana that a notice under Section 35 of the BNSS, 2023 is only an information to the concerned person that he is required to join the investigation, and is not liable to be arrested at that time. Service of notice through the mode of electronic communication is required to ensure that the

concerned person does not evade service of notice, and that precious resources of the State are not wasted.

6. Section 64 of the BNSS, 2023 has been brought to the attention of this Court.

Placing reliance on the Proviso to Section 64(2) of the BNSS, 2023 he submitted that it permits the service of summons via the mode of electronic communication also, which would indicate that there is no bar in serving of summons through the mode of electronic communication. Therefore, when BNSS, 2023 statutorily recognizes electronic mode of service of summons issued by the Court, then the notice issued under Section 35 of the BNSS, 2023 should also be permitted to be served through the electronic mode.

7. Placing reliance upon Section 71 of the BNSS, 2023, it is submitted that

sub-section (1) provides for service of summons to witnesses through the mode of electronic communication. Even if one were to contend that proviso to Section 64(2) of the BNSS, 2023 permits service of summons via the mode of electronic communication only in those cases where the summons bear the image of a Court's seal, Section 71 of the BNSS, 2023 is an overriding provision as there is no requirement of the Court's seal therein.

8. A careful reading of Section 64(2) and Section 71 of the BNSS, 2023 would

indicate that the former relates to system-generated summons, i.e., the e-

Summons App, hence the requirement of the Court's seal to make them look authentic, whereas, the latter relates to physical summons duly signed, scanned and transmitted electronically, because of which there is no separate requirement of any watermark seal. A notice under Section 35 of the BNSS, 2023 falls within the same category as a summons under Section 71 of the BNSS, 2023, and therefore must be permitted to be transmitted electronically.

9. Placing reliance upon Section 530 of the BNSS, 2023, it is submitted that the intent of the legislature is clear, relating to the use of technology in streamlining criminal proceedings. The aforesaid section lays down that trials, inquiries and proceedings may be held through the mode of electronic communication. Therefore, excluding service of notice under Section 35 of the BNSS, 2023 through the mode of electronic communication, would be an exception to the entire scheme of affairs.

10. Insofar as the guidelines issued by the Delhi High Court in *Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.*, 2021 SCC Online Del 5629 and *Amandeep Singh Johar v. State (NCT Delhi)*, 2018 SCC Online Del 13448, both of which were upheld by this Court in *Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51, it is submitted that these judgments were delivered when the CrPC, 1973 was in operation and the BNSS, 2023 had not come into effect. Unlike

the BNSS, 2023 the CrPC, 1973 had no provision that contemplated the service of summons or notice through the mode of electronic communication, and therefore such directions were issued. Hence, the guidelines issued in the aforesaid judgment have no bearing on or applicability to the provisions of BNSS, 2023.

SUBMISSIONS ON BEHALF OF THE AMICUS CURIAE

11.The learned Senior Counsel/Amicus Curiae submitted that notice served through WhatsApp or other modes of electronic communication is not contemplated as a mode of service under Section 35 of the BNSS, 2023 since the same is not in accordance with Chapter VI of the BNSS, 2023, and hence cannot be treated as a valid mode of serving notice under Section 35 of the BNSS, 2023.

12.It is submitted that summons are to be served personally on the person, as per the regular mode of service. The newly added proviso to Section 64(2) of the BNSS, 2023 permits the mode of electronic communication as a means to serve summons, only in those cases where the summons bear the image of the Court's seal. Since a notice issued under Section 35 of the BNSS, 2023 is not from the Court, the Investigating Agency must necessarily adhere to the regular mode of service.

13.It is further submitted that Section 530 of the BNSS, 2023 states that all trials, inquiries and proceedings under the BNSS, 2023 may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. The legislature, in its wisdom, has excluded investigations from the scope of the aforesaid section, thereby meaning that the same have been consciously omitted from the purview of the procedures which are permissible through electronic means. Hence, the aforesaid section clearly does not permit service of notice under Section 35 of the BNSS, 2023 through WhatsApp or other modes of electronic communication.

14.Finally, it is submitted that since a notice under Section 35 of the BNSS, 2023 is issued by the Investigating Agency, and the breach thereof leads to arrest and deprivation of the liberty of an individual, it is appropriate that such a notice be served in person on the accused, and not through the mode of electronic communication.

DISCUSSION

15.The Legislature, envisaging the extensive reliance on modern means of communication in the present times, has recognised the mode of electronic communication within the ambit of the BNSS, 2023.

Section 2 of the BNSS, 2023**“2. Definitions**

(i) “electronic communication” means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio-video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government.”

16. Notably, the Legislature has clearly demarcated the extent of permissible usage of modes of electronic communication, under the BNSS, 2023. The same is evident from the language employed in Section 530 of the BNSS, 2023.

Section 530 of the BNSS, 2023

“530. Trial and proceedings to be held in electronic mode.—All trials, inquiries and proceedings under this Sanhita, including—

- (i) issuance, service and execution of summons and warrant;
- (ii) examination of complainant and witnesses;
- (iii) recording of evidence in inquiries and trials; and
- (iv) all appellate proceedings or any other proceeding,

may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.”

17. Section 530 of the BNSS, 2023 states that all trials, inquiries, and proceedings may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. Categories mentioned thereunder would clearly show that it is not only meant for the accused persons, but also for the

complainant and witnesses. Further, the mode of electronic communication is only one of the modes available, and its usage is discretionary.

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

NOTICES BY THE INVESTIGATING AGENCY

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

Section 35 of the BNSS, 2023

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

- (a) who commits, in the presence of a police officer, a cognizable offence; or
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
 - (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (ii) the police officer is satisfied that such arrest is necessary—
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

- (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
- (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

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

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

- (c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or
- (d) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or
- (e) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (f) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- (g) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (h) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (i) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or
- (j) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against

whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

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

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

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

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

(emphasis supplied)

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

21. Section 35(3) of the BNSS, 2023 mandates the service of a notice whenever the Investigating Agency, on the basis of a reasonable complaint, credible information or suspicion, determines that a person may have committed a cognizable offence, but does not deem the arrest of such person necessary. In

such a scenario, the Investigating Agency is mandated to issue a written notice directing the person to appear before it, or at such other place as may be specified in the notice.

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

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

24. Therefore, the abovementioned provision contains an element of substantivity, which becomes evident from the discretion provided to the Investigating Agency. The substantive element is in the nature of a safeguard, especially when the liberty of an individual is involved.
25. The protection of one's liberty is a crucial aspect of the right to life guaranteed to each and every individual, under Article 21 of the Constitution of India, 1950 (hereinafter referred to as the '**Constitution**'). The procedure encapsulated in Section 35(6) of the BNSS, 2023, seeks to secure this fundamental right, from encroachment by the relevant Authority, and therefore, any attempt to interpret the provision as a mere procedural one, would amount to rewriting the provision itself.
26. Thus, service of a notice under Section 35 of the BNSS, 2023 needs to be carried out in a manner that protects this substantive right, as non-compliance with the notice can have a drastic effect on the liberty of an individual.
27. The Legislature, in its wisdom, has specifically excluded the service of a notice under Section 35 of the BNSS, 2023 from the ambit of procedures permissible through electronic communication, that have been delineated under Section 530 of the BNSS, 2023.

- 28.** While interpreting a statute, the legislative intent is to be gathered from a plain and simple reading of the language employed in the provisions, in a purposive manner, thereby upholding the objective behind the enactment. On a plain reading of the BNSS, 2023, the restrictions imposed by the Legislature on the use of electronic communication, to only certain procedures, precludes the use of electronic communication for any other procedure, for which it has not been specifically permitted by the BNSS, 2023.
- 29.** This interpretation is countenanced by the objective sought to be achieved by the BNSS, 2023. As highlighted hereinbefore, the essence of Article 21 of the Constitution imbues the BNSS, 2023, which reflects the laudable objective of safeguarding the liberty of an individual, while facilitating the investigation into and adjudication of offences. The abovementioned restrictions on the usage of the mode of electronic communication, have been imposed in order to safeguard the right to life and personal liberty, guaranteed to an individual by the Constitution, from being impinged during the course of criminal investigation and proceedings.
- 30.** Hence, it is manifestly apparent that the Legislature has particularly specified the circumstances in which usage of modes of electronic communication is

permissible, being circumstances which do not have a bearing on the liberty of an individual.

SUMMONS BY THE COURT

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

32. We first wish to highlight the difference between investigation, inquiry and judicial proceedings, as contemplated under the BNSS, 2023.

Section 2 of the BNSS, 2023

“Section 2. Definitions-

(k) "inquiry" means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;

(l) "investigation" includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

(m) “judicial proceeding” includes any proceeding in the course of which evidence is or may be legally taken on oath;”

(emphasis supplied)

It is to be noted that the purpose of an investigation by an Investigating Agency, is markedly distinct from that of an inquiry or judicial proceedings

by the Court. While the former is to investigate an offence, the latter is a search towards the truthful determination of an occurrence. Therefore, the procedure of one cannot be read into the other.

Section 63 of the BNSS, 2023

“63. Form of summons.—Every summons issued by a Court under this Sanhita shall be,—

- (i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; or
- (ii) **in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.**

(emphasis supplied)

33.A summons under Section 63(i) of the BNSS, 2023 is issued by a Court in writing, in duplicate, which shall be signed by the presiding officer of such Court, or by such other officer as directed by the High Court from time to time, and shall bear the seal of the Court.

34.A new form of summons has been contemplated by the legislature in the BNSS, 2023. Under Section 63(ii) of the BNSS, 2023, a summons issued by a Court can be in an encrypted or any other form of electronic communication, and shall bear the image of the seal of the Court or digital signature.

Section 64 of the BNSS, 2023

“64. Summons how served.—(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant:

Provided that the police station or the registrar in the Court shall maintain a register to enter the address, email address, phone number and such other details as the State Government may, by rules, provide.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons:

Provided that summons bearing the image of Court's seal may also be served by electronic communication in such form and in such manner, as the State Government may, by rules, provide.”

(emphasis supplied)

35.Section 64 of the BNSS, 2023 pertains to how summons shall be served. We are concerned with Section 64(2) of the BNSS, 2023 which mandates that a summons shall be served personally on the person summoned, if practicable, by delivering or tendering one of the duplicates of the summons. The proviso to Section 64(2) of the BNSS, 2023 provides a discretion of also serving summons by electronic communication, only when they bear the image of the Court's seal in a manner and form that the State Government may provide by rules.

36.From a cumulative reading of Sections 63 and 64 of the BNSS, 2023, the argument on behalf of the applicant that Section 64(2) of the BNSS, 2023 relates to system-generated summons i.e., the e-Summons App, hence the requirement of the Court's seal to make them look authentic, falls to the ground because, irrespective of the summons being issued under Section 63(i) or Section 63(ii) of the BNSS, 2023, it shall necessarily bear the seal of the Court, or the image of the seal of the Court, when the summons is being served.

Section 71 of the BNSS, 2023

“71. Service of summons on witness.—(1) Notwithstanding anything contained in the preceding sections of this Chapter, **a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by electronic communication or by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.**

(2) When an acknowledgement purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received or on the proof of delivery of summons under sub-section (3) of Section 70 by electronic communication to the satisfaction of the Court, the Court issuing summons may deem that the summons has been duly served.”

(emphasis supplied)

37.Section 71 of the BNSS, 2023 provides for the service of summons on witnesses. We are concerned with sub-section (1) which states that a Court issuing a summons to a witness may direct a copy of such summons to be served by electronic communication.

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

of the individual in case of its non-compliance, as laid down under Section 35(6) of the BNSS, 2023.

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

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

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

Section 94(1) of the BNSS, 2023**“94. Summons to produce document or other thing-**

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

Section 193(3) of the BNSS, 2023**“193. Report of a Police Officer on the completion of investigation-**

(3)(i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether the accused has been released on his bond or bail bond;
- (g) whether the accused has been forwarded in custody under Section 190;
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 64, 65, 66, 67, 68, 70 or Section 71 of the Bharatiya Nyaya Sanhita, 2023;
- (i) the sequence of custody in case of electronic device;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.”

- 41.**The usage of electronic communication by the Investigating Agency, has only been provided for effecting the procedure under Sections 94 and 193 of the BNSS, 2023.
- 42.**Section 94 deals with issuance of summons, in an electronic form, to produce a document. Section 193 deals with the usage of electronic communication for forwarding the report to a Magistrate, upon completion of the investigation, or to inform the progress of the investigation to the informant or victim. None of these procedures have any bearing on the liberty of an individual.
- 43.**Hence, when viewed from any lens, we are unable to convince ourselves that electronic communication is a valid mode of service of notice under Section 35 of the BNSS, 2023, since its conscious omission is a clear manifestation of the legislative intent. Introducing a procedure into Section 35 of the BNSS, 2023, that has not been specifically provided for by the Legislature, would be violative of its intent.

44.For the aforesaid reasons, IA No. 63691 of 2025 seeking modification of the order dated 21.01.2025, stands dismissed. As a consequence, order dated 21.01.2025, passed by this Court in MA No. 2034/2022 in MA No. 1849/2021 in SLP (Crl.) No. 1591/2021 stands confirmed.

..... **J.**
(M. M. SUNDRESH)

..... **J.**
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
JULY 16, 2025