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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010511672026**

\+ **W.P.(CRL) 3342/2026 & & CRL.M.A. 33383/2026**

NEHA .....Petitioner

Through: Mr. Gopal Sankaranarayanan, Senior Advocate with Mr. Abhik Chimni, Mr. Pranjal Abrol, Mr. Ayan Das Gupta, Ms. Moksha Sharma, Mr. Gurupal Singh, Mr. Kartik Venu, Mr. Vishal Sinha, Mr. Kanish Garg, Ms. Indu Mugi C, Mr. Aayushman Aggarwal, Advs.

versus

THE STATE NCT OF DELHI .....Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Ashish K. Dixit, CGSC, Mr. Umar Hashmi, Mr. Amit Gupta, Mr. Shubham Sharma, Mr. Naman, Mr. Adhiraj Singh, Mr. Shaurya R. Rai, Advocates and Ms. Nupur Prasad, IPS, Mr Amit Goel, IPS, SI Chetan Rana, Insp. Pravesh Kaushik, Insp. Sube Singh, SI Vaishali Tushir
Mr. Prashant Prakash, Mr. Bhairav Dass, Advs.
Mr. Jai Anant Dehadrai, Ms. Yashvi Swani, Mr. Ram P.

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Dubey, Mr. Apurva Chatterji, Advs. for Intervenor

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. By way of the instant Writ Petition, the Petitioner seeks quashing of the Notice dated 17.10.2026 (*hereinafter called as the* 'Impugned Notice') issued by the Special Executive Magistrate, New Delhi District, New Delhi (*hereinafter called as the* 'SEM'), under Sections 126 and 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as the* 'BNSS') to show cause as to why the Petitioner be not required to execute a personal bond in the sum of Rs.10,000/- each with one surety in the like amount of Rs.10,000/- under Section 135(3) of the BNSS for keeping peace for a period of enquiry.

2. Facts of the case as stated in the instant Writ Petition reveal that the Petitioner is the National President of All India Students' Association (AISA) and claims to be a social activist.

3. In the month of October 2026, there were public protests in Delhi concerning the functioning of the Election Commission of India and the Special Intensive Revision of the electoral rolls. On 16.10.2026, admittedly, the Petitioner posted the following on Instagram, inviting people for gathering at Mandi House, New Delhi:-

> *"See you today at Mandi House, 5 PM!*
> *Jantar Mantar is not a site that you can denotify,*
> *it's a symbol of our resistance! Today, all of*

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*Central Delhi has become Jantar Mantar!"*

4. It is stated that on the very same day, i.e., 16.10.2026, at about 05:30 P.M., the Petitioner was detained by the Delhi Police from Mandi House, and released the following day, i.e., on 17.10.2026.

5. Material on record further indicates that on 17.10.2026, the Petitioner received the Impugned Notice to show cause as to why she may not be required to execute a personal bond of Rs.10,000/- with one surety in the like amount for Rs.10,000/- under Section 135(3) of the BNSS for breach of peace for the period of enquiry. It is this Notice which is under challenge in the instant Writ Petition.

6. The entire Impugned Notice is reproduced to read as under:-

*"**NOTICE UNDER SECTION 126/130 BNSS***

> *Whereas it has been made to appear to me by a credible information received from SHO/B.K. Road, New Delhi through SI Vaishali Tushir that you, Neha Bora D/o Hoshiyar Singh R/o H. No. 25, Meena Bagh, Maulana Azad Road, Delhi, created nuisance by shouting loudly in protest at round about Mandi House and you have already been involved in repeated protest related activity in and around Jantar Mantra, New Delhi, despite prohibitory orders 163 BNSS. You instigated people to participate in unauthorized demonstration at Central Park, Connaught Place which is not a designated protest site and also hoist the national flag without obtaining valid permission. There is every likelihood of apprehension of breach of public peace and tranquility within the jurisdiction of this court.*
>
> *That you are likely to commit a breach of peace*

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> *or to do a wrongful act which may probably converted in a breach of peace or disturbance of public tranquility within the local limits and jurisdiction of this court. You may take law in your hands and likely to do a wrongful act which may cause breach of peace and public tranquility in the area. I am satisfied that there are sufficient grounds to initiate proceedings against you u/s 126/169 BNSS.*
>
> *I, **MAHESH KUMAR MEENA**, Special Executive Magistrate, New Delhi, Distt. New Delhi hereby requires you to attend in person (or with a duly authorized agent) in my court on 19.10.2026 at 2.00 P.M to show cause as to why you may not be required to execute a Personal Bond in the sum of Rs. 10,000/- each with one surety in the like amount of Rs. 10,000/- U/S 135 (3) BNSS for keeping peace for a period of enquiry."*

7. It is stated that on 19.10.2026, the Petitioner prayed for exemption from personal appearance on health grounds and the Petitioner has now been called on 24.10.2026 at 02:00 P.M to appear before the SEM.

8. Advance notice has been served on the Respondent/State. Both sides are represented through their respective Counsel.

9. Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Petitioner, raises the following contentions:

i) The Impugned Notice does not meet the essential requirements prescribed by law under Section 126 of the BNSS. He states that the Impugned Notice is nothing but a mere mechanical

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reproduction of the ingredients of the said provision.

ii) It is submitted that while issuing a notice under Section 126 of the BNSS, it is imperative on the part of the SEM to enquire into the material and satisfy himself that the information received by him would lead to an apprehension of breach of peace and disturb public tranquillity. He states that without arriving at an independent opinion by conducting an enquiry on his own, the Impugned Notice could not have been issued by the SEM. He therefore submits that without arriving at an independent opinion, neither an order under Section 130 nor can a notice under Section 126 of the BNSS be issued.

iii) He draws the attention of this Court to the *kalandara* dated 17.10.2026, which according to him is the basis of the Impugned Notice, to submit that a notice under Section 126/130 of the BNSS cannot be issued only on the basis of a *kalandara*. He further states that the *kalandara* indicates that the Impugned Notice has been issued on the directions of "*senior officers*," meaning thereby, that the Impugned Notice has been issued as a performance of a command and not on the basis of an independent opinion arrived at by the SEM.

iv) He contends that the Order dated 17.10.2026 passed by the SEM also indicates that only the *kalandara* was submitted by SI Vaishali Tushir, the Investigating Officer (*hereinafter called as the* 'SI Vaishali Tushir') and on the inspection of the *kalandara*, the Impugned Notice has been issued, which also is an indicator that without there being any enquiry as mandated

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at every stage of the proceedings under Chapter IX of the BNSS, the Impugned Notice has been issued.

v) Attention of this Court is also drawn to Annexure P-8 of the paper-book, which is an Order dated 23.08.2026 issued by the Assistant Commissioner of Police, Sub-Division, Parliament Street, New Delhi, to contend that Mandi House, where the protest was being called for by the Petitioner, did not fall in the area in which prohibitory orders under Section 163 of the BNSS had been passed, meaning thereby, that there was no restriction on any kind of protest to be carried out in that area.

vi) He further submits that a reading of the Impugned Notice indicates that the 'information' on which basis the same has been issued by the SEM is only hearsay material, which is not sufficient to initiate proceedings under Chapter IX of the BNSS.

vii) He further states that the Petitioner had never urged people to protest in the Central Park, Connaught Place, where the protest was called for by another group. He also states that staging a peaceful protest cannot lead to breach of peace and therefore, the entire basis of the proceedings under Chapter IX of the BNSS initiated by the SEM is unsustainable.

viii) Learned Senior Counsel for the Petitioner submits that the Impugned Notice does not conform to the law laid down by the Apex Court and other Courts. He has placed reliance on the Judgment passed by the Apex Court in Madhu Limaye v. Sub-Divisional Magistrate, Monghyr, **(1970) 3 SCC 746,**

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Judgments passed by this Court in Aldanish Rein v. State (NCT of Delhi), **2018 SCC OnLine Del 12207,** Asha Pant v. State, **2008 SCC OnLine Del 367,** Vivek Kumar v. State (NCT of Delhi), **2024 SCC OnLine Del 417** and Ramavtar v. State, **2025 SCC OnLine Del 8027**, the Judgment passed by the High Court of Madhya Pradesh in Medha Patkar v. State of M.P., **2007 SCC OnLine MP 591**.

10. *Per contra*, Mr. Chetan Sharma, learned ASG for the State, draws the attention of this Court to Section 126 of the BNSS to contend that the SEM has to be in receipt of some information; the information must be of such nature that a person is likely to commit a breach of peace and disturb the public tranquillity or do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity; and on this material, the SEM has to form an opinion that there is sufficient ground for proceeding against such person, requiring the person to show cause as to why he should not be ordered to execute the bond or bail bond to keep peace, for a period not exceeding one year.

11. The learned ASG states that there was sufficient information received by the SEM in the form of the *kalandara* dated 17.10.2026 as well as the accompanying material, on which basis the SEM had formed an opinion and issued the Impugned Notice upon the Petitioner. He also draws the attention of this Court to the Order dated 17.10.2026 passed by the SEM, which indicates that the SEM has inspected the *kalandara* dated 17.10.2026, considered all the other material submitted, heard SI Vaishali Tushir and only thereafter,

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formed the opinion for proceeding under Section 126 of the BNSS, meaning thereby, that the SEM has not just gone on hearsay but on the basis of the documentary material produced before him. He further contends that the material that was produced before the SEM was sufficient to form an opinion that there is an apprehension of breach of peace and disturbance of public tranquillity. In any event, the learned ASG submits that the 'opinion' formed under Section 126 of the BNSS is completely based on the subjective satisfaction of the SEM, which does not call for an interference by this Court under Article 226 of the Constitution of India.

12. The learned ASG further submits that the proper procedure envisioned under Chapter IX of the BNSS is that the person against whom the SEM proceeds under Section 126, 127, 128 or 129, would appear in person before the SEM, where a hearing would be given to such person to show cause as to why a bond or bail bond is not required to be executed. Thereafter, an enquiry is conducted by the SEM to look into the truth of the information which has been received by the SEM, where again, such person would be given an opportunity to show as to why a bond or bail bond is not required and after the enquiry is completed, an order under Section 136 or Section 137 of the BNSS, as the case may be, would be passed. He, therefore, submits that at this stage, where only a notice under Section 126/130 of the BNSS has been issued, the Court can only look into the presence of material and nothing beyond that. He submits that the necessity or otherwise of giving a bond or bail bond under Section 135 of the BNSS or at the time of final order under Section 136 of the

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BNSS, is anyway subject to judicial scrutiny, which remedy is always available to the Petitioner, and therefore, the instant Writ Petition at this nascent stage, should not be entertained.

13. The learned ASG further states that in the event the Petitioner is able to prove that the opinion formed by the SEM was not based on relevant and cogent material, and that the apprehension of breach of peace and disturbance of public tranquillity was baseless, the Petitioner can be discharged under Section 137 of the BNSS, and would not be required to execute any bond, or if the bond had been already executed, the same shall be discharged, and therefore, the present Writ Petition should not be entertained.

14. He further contends that there was a prohibitory order under Section 163 of the BNSS issued on 24.08.2026, covering the entire jurisdiction of the Police Station Barakhamba Road and Police Station Tilak Marg, falling within the Sub Division of Barakhamba Road, which also covers the Mandi House area where the Petitioner had called for a gathering. He submits that a reading of the *kalandara* dated 17.10.2026 discloses that on 16.10.2026, the Petitioner came at about 05:10 PM at Mandi House roundabout with about 40-50 protesters and then began moving towards Barakhamba Road raising slogans. He further highlights from the *kalandara* that the Petitioner and the fellow protestors were repeatedly warned over a loudspeaker that Section 163 of the BNSS was in force in the area and that any kind of *dharna*, demonstration, procession, or any gathering of five or more persons was unlawful and that they should disperse peacefully. However, it is stated that the Petitioner kept moving forward and she

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was stopped by the police officials after considerable effort. He, therefore, states that the Petitioner violated the said prohibitory order dated 24.08.2026 issued under Section 163 of the BNSS in marching towards Mandi House on 16.10.2026.

15. Heard learned Counsel for the parties and perused the material on record.

16. Chapter IX of the BNSS deals with security for keeping the peace and good behaviour. Sections 126 to 137 of the BNSS reads as under:-

> *"**126. Security for keeping peace in other cases.***
>
> *(1)When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.*
>
> *(2)Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction.*

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***127. Security for good behaviour from persons disseminating certain matters.***

*(1)When an Executive Magistrate receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,-*

*(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,-*

*(a) any matter the publication of which is punishable under section 152 or section 196 or section 197 or section 299 of the Bharatiya Nyaya Sanhita, 2023; or*

*(b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Bharatiya Nyaya Sanhita, 2023;*

*(ii) makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 294 of the Bharatiya Nyaya Sanhita, 2023,*

*and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.*

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*(2)No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867) with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.*

***128. Security for good behaviour from suspected persons.***

*When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond or bail bond for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.*

***129. Security for good behaviour from habitual offenders.***

*When an Executive Magistrate receives information that there is within his local jurisdiction a person who-*
*(a) is by habit a robber, house-breaker, thief, or forger; or*
*(b) is by habit a receiver of stolen property knowing the same to have been stolen; or*
*(c) habitually protects or harbours thieves, or*

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*aids in the concealment or disposal of stolen property; or*

*(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter X of the Bharatiya Nyaya Sanhita, 2023, or under section 178, section 179, section 180 or section 181 of that Sanhita; or*

*(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace; or*

*(f) habitually commits, or attempts to commit, or abets the commission of-*

*(i) any offence under one or more of the following Acts, namely:-*

*(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);*

*(b) the Foreigners Act, 1946 (31 of 1946);*

*(c) the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);*

*(d) the Essential Commodities Act, 1955 (10 of 1955);*

*(e) the Protection of Civil Rights Act, 1955 (22 of 1955);*

*(f) the Customs Act, 1962 (52 of 1962);*

*(g) the Food Safety and Standards Act, 2006 (34 of 2006); or*

*(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption; or*

*g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show*

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*cause why he should not be ordered to execute a bail bond, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.*

***130. Order to be made.***

*When a Magistrate acting under section 126, section 127, section 128 or section 129, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number of sureties, after considering the sufficiency and fitness of sureties.*

***131. Procedure in respect of person present in Court.***

*If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.*

***132. Summons or warrant in case of person not so present.***

*If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:*

*Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the*

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*Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.*

***133. Copy of order to accompany summons or warrant.***

*Every summons or warrant issued under section 132 shall be accompanied by a copy of the order made under section 130, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.*

***134. Power to dispense with personal attendance.***

*The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by an advocate.*

***135. Inquiry as to truth of information.***

*(1)When an order under section 130 has been read or explained under section 131 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 132, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.*

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*(2)Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.*

*(3)After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 130 has been made to execute a bond or bail bond, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond or bail bond is executed or, in default of execution, until the inquiry is concluded:*

*Provided that-*
*(a) no person against whom proceedings are not being taken under section 127, section 128, or section 129 shall be directed to execute a bond or bail bond for maintaining good behaviour;*

*(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 130.*

*(4)For the purposes of this section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may*

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*be proved by evidence of general repute or otherwise.*

*(5)Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.*

*(6)The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:*

*Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.*

*(7)Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.*

***136. Order to give security.***

*If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond or bail bond, the Magistrate shall make an order accordingly:*

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*Provided that-*

*(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 130;*

*(b) the amount of every bond or bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;*

*(c) when the person in respect of whom the inquiry is made is a child, the bond shall be executed only by his sureties.*

***137. Discharge of person informed against.***

*If, on an inquiry under section 135, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him."*

17. The scheme of Chapter IX of the BNSS indicates that when acting under Section 126, 127, 128 or 129 of the BNSS, the SEM deems it necessary to require a person to show cause under such section(s), he shall make an order in writing under Section 130 of the BNSS, setting forth the substance of the information received, the amount of bonds to be executed, the term for which it has to be in

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force and the number of sureties, after considering the sufficiency and fitness of sureties.

18. Section 126 of the BNSS gives the power to the Executive Magistrate to issue a show cause notice to any person who is likely to commit a breach of peace or disturb public tranquillity or to do any wrongful act that may probably occasion a breach of peace or disturb public tranquillity, as to why he should not be ordered to execute a bond or bail bond for keeping the peace for a period not exceeding one year.

19. Section 127 deals with the power of the Executive Magistrate who receives information that any person within his local jurisdiction who is either orally or in writing or in any other manner, intentionally disseminates or attempting to disseminate or abets the dissemination of any matter, the publication which is punishable under Section 152 or Section 196 or Section 197 or Section 299 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter called as '*BNS*'); or any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the BNS; or makes, produces, publishes or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter referred to in Section 294 of the BNS to show cause as to why he should not be ordered to execute a bond or bail bond, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

20. Section 128 of the BNSS gives the power to the Executive Magistrate who receives information that a person is taking

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precautions to conceal his presence and that he has reason to believe that such person has concealed his presence with a view to commit a cognizable offence. The Executive Magistrate can issue a show cause notice to the said person as to why he should not be ordered to execute a bond or bail bond for his good behaviour for such period, not exceeding one year, as the Executive Magistrate thinks fit.

21. Section 129 of the BNSS deals with the power of the Executive Magistrate to issue a show cause notice when he receives information that a person is in the habit of committing offences mentioned in the provisions given thereunder, then such person can be required to show cause as to why he should not be ordered to execute a bail bond, for his good behaviour for such period, not exceeding three years, as the Executive Magistrate thinks fit with security for good behaviour from habitual offenders.

22. The only differentiating factor between Sections 126, 127 and 128 of the BNSS to that of Section 129 of the BNSS is that in Section 129 of the BNSS, the bail bond is for a period of three years, while in Sections 126, 127 and 128 of the BNSS, the bail bond is one year. The show cause notice under Section 126, 127, 128 or 129 of the BNSS is therefore, based on the subjective satisfaction arrived at by the Magistrate on the material/information received by him.

23. Thereafter, when such person appears before the SEM under Section 131 of the BNSS, the order issued Section 130 is read over to him and if he so desires, the substance thereof is explained as well. In the event that such person does not appear before the SEM, summons or warrant, as the case may be, requiring the person to appear is issued

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by the SEM, along with the copy of the Section 130 Order, as per Sections 132 and 133 of the BNSS. At the same time, Section 134 empowers the SEM, if he sees sufficient cause, to dispense with personal attendance of such person and permit the person to appear through an advocate. Section 135 of the BNSS *inter alia* provides for enquiry by the SEM into the truth of the information on which basis action has been initiated against such person, the requirement or otherwise of execution of a bond or bail bond during pendency of the enquiry for keeping the peace or maintaining good behaviour and the period for completion of the enquiry. Thereafter, upon the conclusion of the enquiry, if it is proved that it is necessary for maintaining peace or good behaviour, the SEM, under Section 136 of the BNSS shall order such person to give security. On the other hand, such person shall be discharged under Section 137 of the BNSS if it is not proved upon enquiry, that it is necessary for such person to execute a bond or bail bond for maintaining peace or good behaviour.

24. Thus, it is evident that there are sufficient checks and balance given in Chapter IX of the BNSS, where a person to whom a show cause notice has been issued under Section 126, 127, 128 or 129 of the BNSS, is given more than one opportunity to defend himself as to why he should not be asked to furnish a bond or bail bond for maintaining good behaviour.

25. It is well settled that proceedings under Chapter IX of the BNSS are preventive and not punitive in nature [Ref: Prakash Chand Sachdeva v. State, **(1994) 1 SCC 471**], and that they are based on the subjective satisfaction of the SEM, which is based on information

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received regarding apprehension of breach of peace and disturbance of public tranquillity.

26. A combined reading of Sections 126 and 130 of the BNSS postulates that there has to be some information; that substance of information must show that such person is likely to commit breach of peace or disturb the public tranquillity or do a wrongful act that would probably occasion a breach of peace or disturb the public tranquillity; and if the opinion of the SEM based on such information is that there are sufficient grounds for proceeding under Chapter IX of the BNSS, then he will issue a Show Cause Notice as to why such person should not be ordered to execute a bond or a bail bond for such period not exceeding one year, as the SEM deems fit. Since the purport of Chapter IX of the BNSS is preventive in nature and not punitive, the object of the provisions is to prevent breach of peace and take such preventive steps to ensure that peace and tranquillity in the area is not disturbed. As such, the aim is not to take action after an incident has happened, but to prevent such an incident from happening. Therefore, at the stage where only a notice has been issued, enquiry of the Writ Court will be only be limited to examine as to whether there was any material/information before the SEM at all and whether the SEM applied its mind on such material/information received by him, for proceeding under Chapter IX of the BNSS. The Court, at this stage, does not sit on the arm-chair of the SEM to decide as to whether the material/information is sufficient or not and unless it is a case of *nil* material, which would shock the conscience of the Court, the Writ Court at the stage of issuance of a show cause notice, will not

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interfere.

27. The High Courts, time and again, have been warned by the Apex Court to not hold an enquiry before the enquiry by the authority takes place, especially in cases of preventive actions by the State. In a case emanating under the Foreign Exchange Regulation Act, 1973, and Foreign Exchange Management Act, 1999, the Apex Court in Special Director & Anr. v. Mohd. Ghulam Ghoushe & Anr., **(2004) 3 SCC 440**, while dealing with the show cause notice, observed as under:-

> *"**5** This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority*

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*to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.*

***6.*** *In the instant case, the High Court has not indicated any reason while giving interim protection. Though, while passing interim orders, it is not necessary to elaborately deal with the merits, it is certainly desirable and proper for the High Court to indicate the reasons which have weighed with it in granting such an extraordinary relief in the form of an interim protection. This, admittedly, has not been done in the case at hand."*

28. In another case arising under the Central Excise Tariff Act, 1985, and Central Excise Act, 1944, the parameters for interference by a writ court at the stage of issuance of a show cause notice, the Apex Court in Union of India & Anr. v. Vicco Laboratories, **(2007) 13 SCC 270,** has observed as under:-

*"**31.** Normally, the writ court should not interfere at the stage of issuance of show-cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the authorities concerned and to satisfy the authorities concerned about the absence of case for proceeding against the person against whom the show-cause notices have been issued. Abstinence from interference at the stage of issuance of show-cause notice in order to relegate the parties to the proceedings before the authorities concerned is the normal rule. However, the said rule is not without exceptions. Where a show-cause notice is issued either*

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> *without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show-cause notice. The interference at the show-cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out."*

29. The above paragraph has been quoted and relied on by the Apex Court in a recent Judgment in J. Sri Nisha v. Special Director, Adjudicating Authority, Directorate of Enforcement, **(2026) SCC OnLine SC 517**, wherein it has been observed as under:-

> *"**32.** Thus, a prima facie satisfaction was recorded by the Competent Authority that there was no evidence of the appellants being involved in foreign security transactions having any value. Consequently, it has to be taken that there did not exist the "reasons to believe" referred to in Sub-section (1) of Section 37A. These findings definitely support the cause of the appellants herein. It is not in dispute that the appeal preferred by the Department against the order dated 3rd February, 2021, is still pending consideration. The Division Bench of the High Court, while deciding the writ appeal, observed that the writ petition against the SCN is not entertainable. We feel that the said observation may not be correct in every situation. This Court has consistently held that although ordinarily a writ petition against an SCN may not be entertained, however, the said proposition is not an inviolable rule. Interference at the stage of*

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> *SCN is permissible in exceptional circumstances, such as where the notice suffers from patent lack of jurisdiction, reflects non-application of mind, is issued with a pre-determined or premeditated approach, amounts to an abuse of the process of law, or results in a violation of the principles of natural justice. In such situations, the High Court would be justified in exercising its jurisdiction under Article 226 of the Constitution to prevent manifest injustice…"*

30. What flows from above is that this that in any matter where the liberty of an individual is involved, the Writ Courts are stricter and more careful than in a case of domestic enquiry.

31. The material which has been handed over by the Respondent/State indicates that on 17.10.2026, before issuance of the Impugned Notice, two orders were passed by the SEM. The Order dated 17.10.2026 is reproduced as under:-

> *"**17.10.2026** Today a Kalandra U/S 126/169 BNSS is submitted by IO/SI Vaishali Tushir, P.S. B.K. Road. After inspection of kalandra, the is accepted/Admitted by this court. Notice U/S 126/130 BNSS be issued to respondent and sent to police station B.K. Road for compliance. Put up on 19.10.2026."*

32. A perusal of the above Order indicates that the same was passed on the basis of *kalandara* dated 17.10.2026 produced before the SEM, along with the other supportive material. Along with the *kalandara* and the supportive material, the submission of SI Vaishali Tushir was also recorded by the SEM. The Order dated 17.10.2026 which records

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the proceedings reads as under:-

*"ORDER*

*SHO/B.K.Road. New Delhi has sent a Kalandra u/s 126/169 BNSS through I.O./SI Vaishali Tushir. I have carefully gone through the police report/kalandra which shows that Neha Bora D/o Hoshiyar Singh R/o H. No. 25, Meena Bagh, Maulana Azad Road, Delhi, created nuisance by shouting loudly in protest at round about Mandi House and she has already been involved in repeated protest related activity in and around Jantar Mantra, New Delhi, despite prohibitory orders 163 BNSS. She instigated people to participate in unauthorized demonstration at Central Park, Connaught Place which is not a designated protest site and also hoist the national flag without obtaining valid permission. There is every likelihood of apprehension of breach of public peace and tranquility within the jurisdiction of this court. I.O/SI Vaishali Tushir is present and briefs the facts of Kalandra.*

*From the reason recorded above. I have reached to the conclusion that there is sufficient grounds to initiate proceedings against the respondent u/s-126/169 BNSS. I, therefore, order that notice u/s-126/130 BNSS be given to the respondent asking him as to why she should not be required to execute Personal/Surety Bond in the sum of Rs.10,000/- with one surety in the like amount to keeping peace for a period of one year. Notice is being issued for appearance. The case has been fixed for 19.10.2026."*

33. The *kalandara* dated 17.10.2026 along with all the names of the witnesses is also reproduced as under:-

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*"**2. Act/Section***

*1. The Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023-Section 126*
*2. The Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023-Section 169*

***3. Brief Facts***

*The brief kalandra is as follows: yesterday, on 16/10/2026, the SHO/BK Road and other police staff were deployed at the Mandi House roundabout to prevent violation of Section 163 BNSS during a CJP protest to be held there. Section 163 BNSS was in force in the New Delhi District area. At about 05:10 PM, Neha Bora (AISA President) arrived at the Mandi House roundabout with about 40-50-protesters and from there began moving towards Barakhamba Road raising slogans. They were repeatedly warned over a loudspeaker that Section 163 BNSS was in force in the area, that any kind of dharna, demonstration or procession, or any gathering of five or more persons, was unlawful there, and that they should disperse peacefully. However, Neha Bora (AISA President) continued to incite people and kept moving forward, inciting the public and her supporters while raising slogans such as "Reclaim Jantar Mantar", "Gyanesh Kumar, resign" and "We do not accept any Section 163 BNSS, nor do we accept any such law." Her supporters/protesters were stopped by the police after considerable effort.*

*Neha Bora D/o Hoshiyar Singh has for quite some time been continuously holding demonstrations at Jantar Mantar, New Delhi, and the surrounding area despite Section 163 BNSS being in force, and*

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*has been involved in violations of Section 163 BNSS, in which principal members of the CJP have also taken part. Neha Bora has been involved in provoking and inciting people through her inflammatory language and social media posts, and several criminal cases have previously been registered against her in this regard, the details of which are attached. Neha Bora had called upon her supporters and members of the CJP to gather at Connaught Place on 16.10.2026 and hoist the Tiranga [national flag], for which no valid permission had been obtained. The police also had information and an apprehension that some anti-social elements might join her supporters and cause harm to life and property.*

*Connaught Place is a highly commercial area where entry and exit routes are limited. When a crowd gathers, movement to other areas quickly becomes obstructed, and in an emergency it becomes difficult for people to get out. If the main roads nearby are closed, traffic in the entire area is likely to be affected. There are a large number of showrooms, hotels, banks, offices and vendors in this area. Any disruption in the evenings or on weekends can affect the livelihood of traders and their employees. The livelihood of lakhs of traders and their employees in this area depends on its peaceful and orderly functioning.*

*Lakhs of people pass through Rajiv Chowk Metro Station every day. In such circumstances, the gathering of an additional crowd creates a risk of traffic jams and stampede-like situations. This area is also located near Parliament and the Central Secretariat. Because of old buildings and narrow lanes, the movement of ambulances and fire brigades is also likely to be affected. It is also*

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*noteworthy that Connaught Place is not a notified protest site.*

*For the above reasons, prohibitory orders under Section 163 BNSS are in force in the area, and their violation may attract legal action. Incidents of violence and damage to property have also occurred at previous events of AISA and CJP. Neha Bora had already been informed of all the above facts and circumstances, and it had been clearly explained to her that any kind of demonstration, procession, rally or use of a loudspeaker in and around Connaught Place is prohibited.*

*It is also noteworthy that, even before the incident of 16-10-2026, Neha Bora has been detained several times under Section 65 of the Delhi Police Act to prevent her from breaching the peace. Despite various FIRs having been registered, Neha Bora is not willing to cooperate with the police in maintaining law and order under any circumstances and keeps inciting people to unlawful assembly and demonstration. There is every likelihood that Neha Bora may, in the near future, again attempt to go with her associates to Jantar Mantar, Connaught Place and other prohibited places in New Delhi and try to provoke people. There is therefore a serious apprehension of breach of peace and law and order in the area, and a threat may arise to government property and to the life and property of the general public.*

*It is also necessary to mention the past conduct and activities of the respondent. She has from time to time openly violated the law and has continuously incited her supporters and the general public to violate the law. She has been*

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*provoking the general public with the aim of creating distrust in rules, laws and prescribed procedures and of spreading anarchy. Therefore, in view of all the above facts and circumstances, the past conduct of the respondent Neha Bora, her previous involvement in such activities, and the information received that she had called on her supporters to gather and demonstrate at Connaught Place on 16.10.2026 without valid permission, a serious apprehension arose that if timely and necessary action is not taken against the respondent, she may in the near future again go to prohibited places, gather people, incite them to violate the law and breach the peace and law and order of the area. This may endanger the life and property of the general public and government and public property, and a cognizable offence may be committed.*

*All the above facts, circumstances and the possible law-and-order situation were brought to the notice of senior officers, and the entire situation was placed before them. As directed by the senior officers and in accordance with the rules, action under Section 126/169 BNSS against the respondent was found necessary to prevent the commission of a possible cognizable offence and to maintain public peace and law and order.*

*Therefore, the necessary documents and kalandra relating to the preventive action taken against the respondent Neha Bora D/o Hoshiyar Singh, R/o 20, Khetarpal Enclave, Amritsar, Punjab, have been prepared in accordance with the rules and are being submitted before the Hon'ble Court. The respondent may be bound down for the highest possible amount [literally "heaviest possible fine amount"; in context, the bond amount]. Sir, it is*

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*prayed that the necessary orders may kindly be passed in accordance with the rules.*

***4. List o Witnesses***

| ***S. No.*** | ***Witness Name*** | ***Address*** |
|---|---|---|
| *1* | *SI Vaishali Tushir* | *Present Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India Permanent Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India* |
| *2* | *WCT Narangi* | *Present Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India Permanent Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India* |
| *3* | *WCT Sunita* | *Present Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India Permanent Address: PS Barakhamba Road, Barakhama Road, New Delhi, Delhi, India* |

34. Along with the *kalandara*, General Diary entry being GD No. 19A dated 17.10.2026 regarding information under Section 65 of the Delhi Police Act, 1978, the General Diary entry being GD No. 20A dated 17.10.2026 recorded in Police Station Barakhamba Road under

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Section 126/169 of the BNSS, General Diary entry being GD No.111A dated 25.09.2026 has been recorded at Police Station Parliament Street, regarding information under Section 65 of the Delhi Police Act, the details of various FIRs against the Petitioner, were also produced before the SEM. The *kalandara* captures the instances given in the three general diary entries.

35. A perusal of the material on record shows that there are as many as six (06) FIRs, apart from the information under Section 65 of the Delhi Police Act, which finds mention of the Petitioner. These FIRs have been registered in Police Stations Parliament Street, Barakhamba Road and Connaught Place. Moreover, a perusal of the General Diary entries also shows the incidents which have taken place at various places.

36. Though this Court has also been handed over other material regarding the acts of the Petitioner which states that there are videos, they are not being referred to because it is not clear as to whether this material was produced before the SEM when he formed an opinion to proceed against the Petitioner. Suffice it to say that in the opinion of this Court, there was sufficient material before the Magistrate before action has been taken under Section 126 of the BNSS.

37. The Impugned Notice mentions the nuisance created by the Petitioner at Mandi House and instigation of people to participate in an unauthorized demonstration at Central Park, Connaught Place, which is not a designated protest site. It is apposite to note that the scheme of Chapter IX of the BNSS does not require the show cause notice to read like a judgment, but merely set out the substance of the

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information received by the SEM and the opinion formed thereof, which is reflected in Paragraphs 1 and 2 of the Impugned Notice. The satisfaction of the SEM regarding breach of peace in the area where the Petitioner was detained and where she was urging people to join her protest is a commercial area, receiving very high footfall from office goers, and there are important roads connecting the heart of the city to various other areas. There are a large number of hotels, banks, offices, vendors and therefore, it cannot be said that there was no material at all before the SEM before proceeding against the Petitioner under Sections 126 and Section 130 of the BNSS. This further gets fortified when prohibitory orders under Section 163 of the BNSS had been passed covering the said area, i.e., Mandi House.

38. At this juncture, this Court deems it necessary to direct the Respondent/State to provide all the material to the Petitioner on which reliance will be placed at the time of enquiry and on which basis the Impugned Notice has been issued, when the Petitioner appears before the SEM. The SEM is also directed to ensure that the principles of natural justice are not violated before passing any order directing furnishing of a bond.

39. A bare reading of the Impugned Notice shows that it is a composite notice under Sections 126 and 130 of the BNSS. In this regard, this Court deems it pertinent to refer to the following observations of the Full Bench of the Bombay High Court in the Judgment of Farhan Nasir Khan v. State of Maharashtra, **(2019) SCC OnLine Bom 1777**:-

> *"**9**. To put it simply, the requirement of law is that*

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> *the Magistrate has to form an opinion in writing contemplated by section 111 of the Criminal Procedure Code and thereafter proceed to issue a show cause notice as contemplated by section 107 and along with the show cause notice annex the opinion. But, in a given case, it may happen that the language in which the order/opinion contemplated under section 111 is not comprehensible to the noticee, then the notice may integrate the order/opinion and convey to the noticee in the language which the noticee comprehends.*
>
> ***10.*** *The purpose of the law is that the noticee is to be made known the factual matrix comprising either the complaint or the information received by the Magistrate and the reasons for the opinion formed by the Magistrate."*

40. This Court is aligned with the view taken by the Full Bench of the Bombay High Court in the above Judgment, which lays down that there need not be a separate show cause notice under Section 126 and a separate order under Section 130 of the BNSS, if the requirements of both the provisions are met with in a common notice.

41. Coming to the argument of the learned Senior Counsel for the Petitioner that Mandi House, where the Petitioner was protesting was not covered under the prohibitory order issued under Section 163 of the BNSS and therefore the Impugned Notice is vitiated as being without any substance, this Court has already noted above, based on the material shown by the Respondent/State that a prohibitory order dated 24.08.2026 was issued Section 163 of the BNSS by the Assistant Commissioner of Police, Sub-Division, Barakhamba Road,

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New Delhi, covering the entire jurisdiction of the Police Station Barakhamba Road and Tilak Marg falling within Sub-Division of Barakhamba Road, which also covers the Mandi House area. As such, this argument of the learned Senior Counsel for the Petitioner cannot be accepted.

42. Reliance was also placed by the learned Senior Counsel for the Petitioner on the Judgment dated 25.06.2026 passed by the High Court of Orrisa in Sumitra Dhal v. State of Odisha, **CRL. M.C. 1410/2026** to highlight the facts in that case, which in the opinion of this Court, are purely distinguishable from the facts of the present case. Paragraph 14 of the said Judgment reads as under:-

> *"**14**. In the present case, a bare reading of the impugned notice reveals that it merely states that information has been received regarding a "law and order situation in the locality" and that proceedings are initiated for "keeping peace and tranquillity in the locality", followed by a direction to show cause as to why a bond should not be executed. However, the notice does not disclose even in summary form the substance of the information received, the nature of alleged incidents, or any basic factual foundation leading to apprehension of breach of peace. "*

43. Similarly, the Judgment dated 04.04.2025 passed by a Coordinate Bench of this Court in Anuj Suhag v. State (NCT of Delhi), **W.P.(CRL) 1568/2016,** wherein the SEM has passed an order only on the basis of a *kalandara* which contained a solitary incident. In the opinion of this Court, even these facts are distinguishable from

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the facts of the present Petition, wherein there are a number of General Diary entries, a number of FIRs alongside the prevalent prohibitory orders under Section 163 of the BNSS which were issued by the State.

44. A Coordinate Bench of this Court in Asha Pant v. State, **2008 SCC OnLine Del 367,** after placing reliance on another Judgment passed by this Court in Tavinder Kumar v. State, **1989 SCC OnLine Del 380,** has observed as under:-

> *"**17.** This Court in Tavinder Kumar v. State, (1990) 40 DLT 210 also emphasized the need for caution while exercising the powers under Section 107 and 111 CrPC After noticing the prevailing law on the topic and analyzing the scope of the powers under the above provisions, this Court observed as under:*
>
> *"(9) In nutshell the above provisions, of law show that on receipt of the information in the present case kalandra given by the police, the Magistrate was bound to record his opinion as contemplated by Section 107 and thereafter was to prepare the notice under Section 111 which must contain the substance of the information so received and was bound to send the copy of such notice along with the summons to the person concerned. The stage for passing any order under Section 116(3) could arise only after the summons and notice as required by Sections 111 and 113 had been served on the petitioners and the enquiry had commenced. It is really surprising that the learned Magistrate had got ready an order under Section 116(3) of the Code before, even be had applied his mind regarding holding of inquiry or before even commencement of the inquiry. This is not a judicial approach expected of a judicial officer who is bound to decide such matters in a judicial manner."*

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> ***18.*** *The sum total of the above discussion is that in every case, it would be incumbent upon the SEM to follow the steps envisaged in Section 107 strictly in accordance with the procedure outlined in the provisions of the CrPC set out thereafter. Such steps should be preceded by the formation of an opinion in writing by an Magistrate which should be discernable when the decision is challenged in the Court. Such formation of the opinion should, normally, be based on some preliminary enquiry that should be made by an SEM to justify the formation of an opinion. Of course this cannot be straitjacketed since there may be cases where an SEM may to form an opinion rightaway to prevent the breach of peace or public tranquility. However, that should be the exception and not the rule. For instance, as in the present case, where the dispute is essentially between the neighbors in a property, or between a landlord and tenant residing in the same premises, the notice under Section 107 CrPC should not be issued only upon a perusal of the Kalandara prepared by the police. Such a mechanical exercise without the SEM forming an independent opinion on the basis of some sort of a preliminary enquiry would render the exercise of the power vulnerable to being invalidated."*

45. All the judgments on which the learned Senior Counsel for the Petitioner places reliance to substantiate that the proceedings initiated by the SEM to show cause as to why the Petitioner should not be called upon to furnish a personal bond for maintenance of peace cannot be based only on *kalandaras*, are distinguishable. Proceedings under Chapter IX of the BNSS are initiated by the SEM not on the

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number of incidents, but the nature of the act and the attendant circumstances, which would aid the SEM to consider whether there is an apprehension that there is a propensity of breach of peace by such person. All this is purely based on the subjective satisfaction of the SEM. Even one incident is sufficient for initiating proceedings under Chapter IX of the BNSS, if the circumstances so suggest that there is an apprehension that such a person will indulge in further incidents of the same nature which can breach peace and disturb public tranquillity. In the present case, it has been recorded that the Petitioner has breached the orders under Section 163 of the BNSS despite being warned. This Court is not commenting further on the facts as it will adversely affect the rights of the Petitioner and the Respondent/State, but is only making this observation to consider as to whether there was sufficient material for the SEM to arrive at a subjective satisfaction to proceed under Chapter IX of the BNSS.

46. In the opinion of this Court, the SEM in the present case, has duly examined the information received by him, including the three (03) general diary entries along with *kalandara* dated 17.10.2026 and examined the three (03) witnesses, which would satisfy the requirements under Sections 126 and 130 of the BNSS. It is not necessary that the SEM has to investigate like a fact-finding authority while forming an opinion regarding apprehension of breach of peace under Chapter IX of the BNSS which is preventive and not punitive in nature.

47. As stated earlier, this case is only at the stage of show cause notice where this Court cannot substitute its conclusion to the one

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arrived at by the SEM on the basis of material before him. The present case is not based merely on hearsay material, as contended by the learned Senior Counsel for the Petitioner, but is also based on the *kalandara* dated 17.10.2026, which consists of the three (03) general diary entries registered at different Police Stations pertaining to different dates and events. As such, this Court cannot sit in the arm-chair of the SEM to test the subjective satisfaction of the sufficiency of material and as to whether the opinion has been correctly been arrived at by the SEM or not.

48. Learned Senior Counsel for the Petitioner has placed reliance on the Judgment rendered by a five Judges Bench of the Apex Court in Madhu Limaye v. Sub-Divisional Magistrate, Monghyr, **(1970) 3 SCC 746**. Paragraph 42 and 43 of the said Judgment reads as under:-

> *"**42.** In our opinion the words of the section are quite clear. As said by Straight J. in Emperor v. Babua, [ILR 6 All 132] the order under Section 112 is on hearsay but the inquiry under Section 117 is to ascertain the truth of the necessary information. Sub-section (1) contemplates an immediate inquiry into the truth of the information. It is pending the completion of the inquiry that an interim bond can be asked for if immediate measures are necessary, and in default it is necessary to put the person in custody. Therefore, as the liberty of a person is involved, and that person is being proceeded against on information and suspicion, it is necessary to put a strict construction upon the powers of Magistrate. The facts must be of definite character. In Nafar Chandra Pal v. King Emperor [28 CWR 23] there was only a petition and a report and these were not found sufficient material. In some of the cases*

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*before us no effort was made by the Magistrate to inquire the truth of the allegations. The Magistrate adjourned the case from day to day and yet asked for an interim bond. This makes the proceedings entirely one-sided. It cannot be described as an inquiry within an inquiry as has been said in some cases. Some inquiry has to be made before the bond can be ordered. We, therefore, approve of those cases in which it has been laid down that some inquiry should be made before action is taken to ask for an interim bond or placing the person in custody in default. In an old case reported in A.D. Dunne v. Hemchandra, [(1869) 12 WR (Cr) 60] a Full Bench of the Calcutta High Court went into the matter. The case arose before the present Code of Criminal Procedure and, therefore, there was no provision for an interim bond. But what Sir Barnes Peacock, C.J., said applies to the changed law also not only with regard to the ultimate order but also to the interim order for a bond. The section even as it is drafted today is hedged in with proper safeguards and it would be moving too far away from the guarantee of freedom, if the view were allowed to prevail that without any inquiry into the truth of the information sufficient to make out a prima facie case a person is to be put in jeopardy of detention. A definite finding is required that immediate steps are necessary. The order must be one which can be made into a final order unless something to the contrary is established. Therefore it is not open to a Magistrate to adjourn the case and in the interval to send a person to jail if he fails to furnish a bond. If this were the law a bond could always be insisted upon before even the inquiry began and that is neither the sense of the law nor the wording or arrangement of the sections already*

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*noticed.*

> ***43.*** *The power which is conferred under this Chapter is distinguished from the power of detention by executive action under Article 22 of the Constitution. Although the order to execute a bond, issued before an offence is committed, has the appearance of an administrative order, in reality it is judicial in character. Primarily the provision enables the Magistrate to require the execution of a bond and not to detain the person. Detention results only on default of execution of such bond. It is, therefore, not apposite to characterise the provision as a law for detention contemplated by Article 22. The safeguards are therefore different. The person sought to he bound over has rights which the trial of summons case confers on an accused. The order is also capable of being questioned in superior courts. For this reason, at every step the law requires the Magistrate to state his reasons in writing. It would make his action purely administrative if he were to pass the order for an in- terim bond without entering upon the inquiry and atleast prima facie inquiring into the truth of the information on which the order calling upon the person to show cause is based. Neither the scheme of the chapter nor the scheme of Section 117 can bear such an interpretation. We accordingly, hold in the case of Madhu Limaye (Writ Petition 307 of 1970 — Madhu Limaye v. Ved Murti that as the case was simply adjourned from time to time and there was no inquiry before remanding him to custody his detention was illegal. We may now briefly notice the remaining sections of the Chapter."*

49. *Per contra*, the learned ASG places reliance on Paragraphs 32,

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33, 35 and 36 of the said Judgment which are reproduced as under:-

> *"**32.** The gist of Section 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquilly or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. The Magistrate can proceed if the person is within his jurisdiction or the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.*
>
> ***33.** The section is aimed at persons who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquillity. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding one is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquillity. For this purpose Magistrates are*

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*invested with large judicial discretionary powers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.*

*xxx*

***35.*** *We have seen the provisions of Section 107. That section says that action is to be taken 'in the manner hereinafter provided' and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasise the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.*

***36.*** *The procedure begins with Section 112. It requires that the Magistrate acting under Section 107 shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquillity at his hands.*

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> *Although the section speaks of the "substance of the information" it does not mean that the order should not be full. It may not repeat the information bodily but it must give proper notice of who was moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word "substance" means the essence of the most important parts of the information."*

50. In the opinion of this Court, the principles laid down by the Apex Court in Madhu Limaye (Supra) have not been violated at this stage. The SEM shall ensure that the principles laid down by the Apex Court as well as by this Court and the provisions of Chapter IX of the BNSS are not given a go by at later stages of the proceedings against the Petitioner also.

51. In view of the foregoing discussion, this Court is of the opinion that the Impugned Notice meets the requirements of a show cause notice under Chapter IX of the BNSS. However, it is always open to the Petitioner to raise a challenge at an appropriate stage.

52. This Court, however, deems it fit to state that the SEM must necessarily keep in mind the import of Section 135 of the BNSS and leaves it open for the SEM to decide on the insistence of a bond at the first instance, as the provision provides for furnishing a bond only if there is an apprehension of breach of peace or disturbance after the commencement and before the completion of the enquiry. Needless to state, at the time of passing an order under Section 135(3) of the BNSS, the SEM will take into account the safeguards given by the five Judges Bench of the Apex Court in Madhu Limaye (Supra),

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followed by the Division Bench of this Court in Aldanish Rein (Supra).

53. It is further needless to state that there will be several opportunities to the Petitioner to take recourse to the remedies under law at different stages of enquiry, including after passing of the final order upon conclusion of the enquiry.

54. It is made clear that all the observations in this Judgment are only limited to the purport of interference by this Court under Article 226 of the Constitution of India at the stage of issuance of a show cause notice. Undoubtedly, the SEM would apply his own mind to the material/information placed before him and only then, arrive at a conclusion regarding furnishing of a personal bond or bail bond.

55. With these observations, the Writ Petition is dismissed, along with pending Application(s), if any.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 23, 2026**
Hsk/AP/ER