

Sri.Pavankumar vs State Of Karnataka on 19 February, 2025

Author: S.R.Krishna Kumar

Bench: S.R.Krishna Kumar

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NC: 2025:KHC:7751
CRL.P No. 2249 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR
CRIMINAL PETITION NO. 2249 OF 2025 (482(Cr.PC) /
528(BNSS) -)

BETWEEN:

SRI.PAVANKUMAR,
S/O SHRINIVASA
AGED ABOUT 25 YEARS,
OCC STUDENT,
R/AT NO 14/42-7, NEW BALAJI NAGAR,
RAILWAY STATION ROAD, HOSUR,
KRISHNAGIRI, TAMILNADU 535109

...PETITIONER

(BY SRI. GNANESHA N. I., ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ADUGODI P. S.,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
KALABURGI 585101

Digitally
signed by
LEELAVATHI
SR
Location:
High Court
of Karnataka

2. SRI SRINIVAS RAO BIKKAVOLU

S/O APPARAO,
AGED ABOUT 39 YEARS,
R/AT NO 104, SRI HANUMAN PG,
NO 13, 3RD CROSS, 2ND MAIN,
NEAR ACCENTURE,
NANJAPPA LAYOUT, ADUGODI,
BENGALURU 560030

...RESPONDENTS

(BY SMT. RASHMI JADHAV, ADDL. SPP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
CR.PC (FILED U/S 528 BNSS) PRAYING TO QUASH THE NOTICE
DATED 14.02.2025 ISSUED BY THE 1ST RESPONDENT POLICE TO

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CRL.P No. 2249 of 2025

HIM UNDER SECTION 35(3) OF BHARATIYA NAGARIK SURAKSHA
SANHITA IN RESPECT OF A CASE IN CR.NO.193/2024 REGISTERED
FOR THE OFFENCE PUNISHABLE UNDER SECTION 66(C), 66(D) OF
INFORMATION TECHNOLOGY ACT 2000 PENDING ON THE FILE OF
39TH ADDL.C.M.M (CJM) COURT BENGALURU CITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:

"Wherefore, the Petitioner most humbly prays that this Hon'ble Court be pleased to quash the notice dated 14.02.2025 issued by the 1st Respondent Police to him under Sec.35 (3) of Bharatiya Nagarik Suraksha Sanhita in respect of a case in Crime No.193/2024, registered for offence punishable under Sections 66(C), 66(D) of the Information Technology Act, 2000, pending on the file of 39th Additional CMM (CJM), Bengaluru City, in the interest of justice."

2. A perusal of the material on record will indicate that respondent No.1 has issued the impugned notice under Section 35(3) BNSS / 41(A) of Cr.P.C through Whats App, as is clear from the said notice dated 14.02.2025.

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3. Recently in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Anr., - Misc. Application No.2034/2022 in MA 1849/2021 in Slp (Crl) No.5191/2021, the Hon'ble Apex Court has categorically held that issuance and service of notice under Section 35(3) BNSS / 41(A) of Cr.P.C through Whats App is impermissible in law.

4. In the said judgment, it is held as under:

"We have heard the learned Amicus Curiae, Sh.

Siddharth Luthra, and the learned counsel appearing for the respective parties.

The learned Amicus has filed the compliance report dtd. 20.01.2025 before this Court after a detailed analysis of the Affidavits/Reports filed by the States, Union Territories (for short "UTs") and the High Courts, filed in pursuance of the directions passed by this Court vide earlier orders dtd. 11.07.2022, 03.02.2023, 21.03.2023, 02.05.2023, 13.02.2024, 06.08.2024 and 15.10.2024.

Certain additional directions were also issued by this Court vide order dtd. 15.10.2024 to all the States, UTs and the High Courts to make use of the Model Affidavit filed by the High Court of Meghalaya to ensure compliance of earlier directions in Para. F of the order dtd. 06.08.2024, so that an 'Institutional Monitoring Mechanism' can be set in place to ensure full and NC: 2025:KHC:7751 complete compliance of not only the earlier directions passed, but also of those directions that may be passed by this Court in the future as well.

The learned Amicus submitted that in pursuance of this Court's order dtd.11.12.2024, all the concerned parties have reported either full or part compliance of the directions issued by this court, except for the State of Mizoram (which has filed its Compliance Affidavit way beyond the deadline given by this Court) and the UT of Lakshadweep (which has merely refiled its earlier Compliance Affidavit dtd. 21.05.2023).

The learned Amicus has flagged off three broad issues for our consideration. They are as follows :

(i) Release of Undertrial Prisoners (for short "UTPs") on personal bond, based on verification of AADHAAR Card.

(ii) Service of Notice under Section 41-A of the Code of Criminal Procedure,1973 (for short "CrPC, 1973") and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS, 2023") is to be made in person, as contemplated under the statutes, and not through WhatsApp or other electronic modes.

(iii) Whether sufficient steps have been taken by the High Courts to set in place an "Institutional Monitoring Mechanism" in pursuance of the order dtd.06.08.2024 passed by this court?

NC: 2025:KHC:7751 SUBMISSIONS UNDER ISSUE (i) Under Issue (i), the learned Amicus submitted that in Para. 7 of its additional Compliance Affidavit dtd. 14.10.2024, the NALSA has accepted and recorded the suggestion of the Amicus regarding release of UTPs on personal bonds after verification of their AADHAAR Card details and depositing the same in the concerned Court, in cases where no application under Section 440 of CrPC, 1973 or Section 484 of BNSS, 2023 has been

preferred by the UTP, despite being informed about their right to move such an application.

The learned Amicus also submitted that he seeks time to consult and deliberate with the learned counsel for the NALSA about the feasibility of coming up with an effective and efficient proposal for the release of UTPs on the aforementioned terms. Hence, the said issue may be taken up on the next date of hearing.

SUBMISSIONS UNDER ISSUE (ii) Under Issue (ii), the learned Amicus submitted and flagged off instances where notice(s) under Section 41-A of CrPC, 1973 were sent to the accused through WhatsApp, but the accused did not appear before the Investigating Officer(s). No action was taken against such erring officer(s). He has brought to the attention of this Court a Standing Order dtd. 26.01.2024 issued by the office of the DGP, Haryana which permits Police Officers to serve notices under Section 41-A of CrPC, NC: 2025:KHC:7751 1973/Section 35 of BNSS, 2023 in person or through WhatsApp, e-mail, SMS or any other electronic mode.

He further submitted that this Court in *Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51, approved and upheld the judgment passed by the Delhi High Court in *Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.* 2021 SCC Online Del 5629, wherein it was held that notice served through WhatsApp or other electronic modes is not contemplated as a mode of service under Section 41-A of CrPC, 1973 (which is now Section 35 of BNSS, 2023) since the same is not in accordance with Chapter VI of Cr.PC, 1973 (which is now Chapter VI of BNSS, 2023) and hence cannot be treated as a valid mode of serving notice under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023. Hence, the police machinery must not circumvent the mandate of Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 by serving notices through WhatsApp or other electronic modes, instead of following the normal mode of service. Reference is also made to Section 532 of BNSS, 2023 which states that all trials, inquiries and proceedings under BNSS, 2023 may be held in electronic mode, by use of electronic communication or use of audio-video electronic means. Even the aforesaid section does not permit notice under Section 35 of BNSS, 2023 to be served through WhatsApp or other electronic modes.

NC: 2025:KHC:7751 SUBMISSIONS UNDER ISSUE (iii) Under Issue (iii), the learned Amicus submitted that in order to ensure full and complete compliance of not only the past, but also the future directions that will be issued by this court, the Committee for "Ensuring the Implementations of the Decisions of the Apex Court" of the respective High Courts will have to regularly hold meetings to ensure compliance at all levels, and also ensure that monthly compliance reports are being submitted by the concerned authorities.

DIRECTIONS Having heard the parties and having deliberated upon the aforesaid submissions, this Court in furtherance of Paras. 100.2, 100.8 and 100.9 of *Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51, and its previous directions contained in earlier orders, deems it necessary to issue the following directions :

- a) All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS,

2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognised as an alternative or substitute to the mode NC: 2025:KHC:7751 of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

b) All the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 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.

c) All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

d) All the High Courts must hold meetings of their respective Committees for "Ensuring the Implementations of the Decisions of the Apex Court" on a monthly basis, in order to NC: 2025:KHC:7751 ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities.

e) We have taken note of the fact that the State of Mizoram has filed its Compliance Affidavit way beyond the deadline given by this Court and the UT of Lakshadweep has merely refiled its earlier Compliance Affidavit dtd.21.05.2023. Hence, the UT of Lakshadweep must ensure compliance of the earlier directions issued by this court and file a fresh Compliance Affidavit within a period of 2 weeks from today.

We make it amply clear that this is the last and final opportunity being given to the UT of Lakshadweep to comply with the earlier directions, barring which the Chief Secretary of the UT of Lakshadweep will have to remain physically present before this Court on the next date of hearing, if the aforesaid compliance (i.e. Direction e) is not made. The Registrar Generals of the respective High Courts and Chief Secretaries of all the States/UTs are directed to ensure that due compliance of the aforementioned directions (except Direction e) is made within a period of 3 weeks from today, and that the Compliance Affidavits be mailed within a period of 4 weeks from today to the dedicated email address for this purpose at complianceinantil@gmail.com.

NC: 2025:KHC:7751 Needless to state, though the outer limit of 4 weeks for filing the Compliance Affidavits has been granted, however the learned counsel appearing for the respective High Courts, States/UTs and the Union of India shall ensure that the Compliance Affidavits reach the learned Amicus Curiae well within the time granted by us. In case of non-compliance, appropriate consequences would follow and the requisite orders shall be passed on the next date of hearing.

Issue (i), as aforementioned, will be taken up on the next date of hearing.

List the matter on 18.03.2025 at 2 p.m."

5. In the instant case, a perusal of the impugned notice dated 14.02.2025 will indicate that the same has been issued through Whats App which is clearly impermissible in law in the light of the judgment of the Apex Court in the case of Satender Kumar Antil (supra) and the same deserves to be quashed.

6. In the result, I pass the following:

ORDER

i) The petition is hereby allowed.

ii) The notice dated 14.02.2025 issued by respondent No.1 Police to the petitioner under Section 35(3) of

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NC: 2025:KHC:7751 Bharatiya Nagarik Suraksha Sanhita in respect of the case in Crime No.193/2024 registered for offences punishable under Sections 66(C), 66(D) of the Information Technology Act, 2000, pending on the file of 39th Addl. CMM (CJM) Court, Bengaluru City, is hereby quashed.

iii) However, liberty is reserved in favour of respondent to issue fresh notice under Section 35(3) BNSS [41(A) of Cr.P.C] to the petitioner and proceed further in accordance with law.

Sd/-

(S.R.KRISHNA KUMAR) JUDGE MDS