

PRINCIPAL DISTRICT COURT, EAST GODAVARI AT RAJAMAHENDRAVARAM  
DATED - 12.07.2023

**//COMMUNICATED//**

*Sankh*

*PRL.* DISTRICT JUDGE.

To

- 1) All the Judicial Officers in the Unit of District Judge, East Godavari.
- 2) Copy to the System Officer-In-charge, East Godavari is directed to upload the Order in the E-courts, East Godavari website.

*Dis Sol*  
*13-07-2023*



HIGH COURT OF ANDHRA PRADESH:: AMARAVATI

ROC.NO.99/SO/2023

Date. 19.06.2023

**CIRCULAR NO. 10/2023**

Sub: High Court of Andhra Pradesh – Judgment dated 11.07.2022 passed in Miscellaneous Application No.1849 of 2021 in SLP (Crl) No. 5191 of 2021 (***Satender Kumar Antil v. Central Bureau of Investigation and another***) by the Hon'ble Supreme Court of India — Letter dated.09.02.2023 addressed to all the Unit Heads for implementation of directions of the Hon'ble Supreme Court – Summary of guidelines for strict compliance of the directions issued by the Hon'ble Supreme Court – Reg.

Ref: Judgment dated 11.07.2022 passed in Miscellaneous Application No.1849 of 2021 in SLP (Crl) No. 5191 of 2021 (***Satender Kumar Antil v. Central Bureau of Investigation and another***) by the Hon'ble Supreme Court of India.

*2-10PC*

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The Hon'ble Supreme Court of India in its Judgment dated 11.07.2022 passed in Miscellaneous Application No.1849 of 2021 in SLP (Crl) No. 5191 of 2021 (***Satender Kumar Antil v. Central Bureau of Investigation and another***) issued certain directions for strict compliance and that the same have been communicated to all the Unit Heads vide High Court's letter dated 09.02.2023 requesting them to follow the directions.

All the Unit Heads are further informed that the Hon'ble Supreme Court of India in it's order dated 02.05.2023 passed in M.A.No.2034 of 2022 in M.A.No.1849 of 2021 directed to ensure compliance of the directions issued in earlier Judgment dated 11.07.2022.

*R-4638*  
*30.6.23*



Therefore, while inviting keen attention to the summary of the guidelines annexed hereto, all the Unit Heads/Principal District and Sessions Judges in the State of Andhra Pradesh, are requested to communicate the same to all the Judicial Officers working in your Unit and to the Presiding Officers of Labour Courts/Tribunals in the District working under the control of the High Court and ensure strict compliance of the directions issued by the Hon'ble Supreme Court in the matter and submit compliance report to the High Court **by 10.07.2023 without fail.**

Any deviation in this regard will be viewed seriously.

*J. Lakshminar Rao*  
19/06/2023  
**REGISTRAR GENERAL**

To:

1. The Registrar (I.T. cum C.P.C.) with a request to direct the concerned to upload the said circular in the High Court's website.
2. All the Unit Heads in the State of Andhra Pradesh.

**SUMMARY OF THE GUIDELINES ISSUED IN THE MATTER OF SATENDERKUMAR  
ANTIL vs. CBI BY THE HON'BLE APEX COURT.**

<b><u>Nature of offences</u></b>	<b><u>Conditions</u></b>	<b><u>Course to be adopted by courts</u></b>
Offences punishable with imprisonment of 7 years or less	1) Accused not arrested during investigation.  2) Cooperated throughout the investigation including appearance before Investigating Officer whenever called.	1) Summons (Appearance through lawyer permissible)  2) then, Bailable warrant  3) then, NBW  * Appearance of accused not necessary for cancellation of warrant.  * Bail application of accused arrested in N.B.W. to be decided without taking him into physical custody.
Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years	--	On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.
Special Acts containing stringent provisions for bail	--	Aforesaid guidelines have to be kept in mind.



\* Where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons, when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, then accused not to be benefited from above principles. It is further held that, while issuing notice to bail applications, court may grant interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest.

\* Two Factors to be taken into consideration while granting bail

a) seriousness of the charge and

b) severity of punishment

### **BAIL DURING INVESTIGATION AND BAIL DURING TRIAL**

\* Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial.

\* There has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an *ipso facto* cause to arrest the petitioner

\* The Hon'ble Court further followed ratio in **Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1**, to held that bail is right and jail in exception. Referring to the judgment in the matter of **Sanjay Chandra v. CBI (2012) 1 SCC 40**, the Hon'ble court reiterated that in a bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. The Hon'ble Court also emphasized on the principle of presumption of innocence.

### **ARREST**

\* As per Section 41(1) of the Code of Criminal Procedure, 1973 (for brevity "the Cr.P.C."), the police officer is required to issue notice directing the accused to appear before him and if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. Magistrate also needs to record his satisfaction for such an arrest while authorizing detention.

\* Section 41 (1)(b)(i) of the Cr.P.C. has to be read along with sub-clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction *qua* an arrest' are mandated and accordingly are to be recorded by the police officer while making arrest.

\* Referring to the provisions of Sec. 41 and Sec. 41A of the Cr.P.C., the Hon'ble Court reiterated that the police officer needs to record his reasons (**Not a mere copy paste checklist but facts, reasons and its conclusions for arrest**, Ref: Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273) in writing while making the arrest. Similarly, the police officer shall record reasons when he/she chooses not to arrest. While considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance the same.

### **DETENTION BY MAGISTRATE**

\* Before a Magistrate authorizes detention under Section 167 of the Cr.P.C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied.

### **SECTION 87 AND 88 OF THE CR.P.C.**

\* Courts will have to adopt the procedure in issuing summons first, thereafter a bailable warrant, and then a non-bailable warrant may be issued, if so warranted. (Ref: **Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1** )

\* Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

### **SECTION 167 OF THE CR.P.C. AND DEFAULT BAIL**

- \* Right to default bail cannot be suspended even during a pandemic situation.  
( Ref:- *S. Kasi v. State* , (2021) 12 SCC 1 )
- \* It is the duty of the courts to see to that an accused gets the benefit of Section 167 (2) of the Cr.P.C..

### **SECTION 170 OF THE CR.P.C.**

- \* In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Cr.P.C. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for framing of charges and issuance of process for trial.
- \* It is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed.  
(Ref:- ***High Court of Delhi v. State* 2018 SCC online Del 12306**)

### **SECTION 204 AND 209 OF THE CR.P.C.**

- \* Issuing a warrant u/s. 204 of the Cr.P.C. may be an exception in which case the Magistrate will have to give reasons.
- \* Bail, in simple parlance means a release subject to the restrictions and conditions. A Magistrate can take a call even without an application for bail if he is inclined to do so.

### **SECTION 309 OF THE CR.P.C.**

- \* Any delay on the part of court or prosecution for trial should be deprecated. Such a delay can be a ground of bail for U.T.P.
- \* Sec. 309(2) of the Cr.P.C. prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded .

### **PRECEDENTS**

#### **(Hussainara Khatoun & Ors. v Home Secretary, State Of Bihar, 1980 (1)SCC 81)**

If the Court is satisfied that accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:

1. The length of his residence in the community,
  2. his employment status, history and his financial condition,
  3. his family ties and relationships,
  4. his reputation, character and monetary condition,
  5. his prior criminal record including any record of prior release on recognizance or on bail,
  6. the identity of responsible members of the community who would vouch for his reliability,
  7. the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and
  8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.
- \* The decision as regards the amount of the bond should be an individualized decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors



- \* The inquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond.

**Hussain & Anr. vs. Union of India & Ors., 2017 (5) SCC 702**

- Bail applications be disposed of normally within one week;
- Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;
- Efforts be made to dispose of all cases which are five years old by the end of the year;
- As a supplement to Section 436-A of the Cr.P.C., but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence *likely to be awarded* if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;
- The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.
- Preparation of action plans

**SEC. 436A OF THE CR.P.C.**

- In a case where an appeal is pending for a longer time, to bring it under Section 436A of the Cr.P.C., the period of incarceration in all forms will have to be reckoned, and so also for the revision.
- The word 'shall' clearly denotes the mandatory compliance of this provision.
- There is even no need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused.

**SECTION 437 OF THE CR.P.C.**

- In a case pertaining to women, the court is expected to show some sensitivity.

- If the Magistrate has got the jurisdiction to try an offense for which the maximum punishment is either life or death, when such jurisdiction is conferred on the learned Magistrate, it goes without saying that the power to release the accused on bail for the offense alleged also can be exercised
- The jurisdictional Magistrate who otherwise has the jurisdiction to try a criminal case which provides for a maximum punishment of either life or death sentence, has got ample jurisdiction to consider the release on bail.

### **SECTION 440 OF THE CR.P.C.**

- It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that bond is not of excessive amount. Imposing a condition which is impossible of compliance would be defeating the very object of the release. In this regard Section 436, 437, 438 and 439 of the Cr.P.C. are to be read in consonance.

### **SPECIAL ACTS**

- The provision contained in Section 436A of the Cr.P.C. would apply to the Special Acts also in the absence of any specific provision.

### **ECONOMIC OFFENCES**

- The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis.

### **GUIDELINES REGARDING U.T.P.**

**(Supreme Court Legal Aid Committee v. Union of India (1994) 6 SCC 731)**

- (i) Where the undertrial is accused of an offence(s) under the N.D.P.S. Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged

with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.

- (ii) Where the undertrial accused is charged with an offence(s) under the N.D.P.S. Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.
- (iii) Where the undertrial accused is charged with an offence(s) under the N.D.P.S. Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.
- (iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the N.D.P.S. Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

The directives in clauses (i), (ii) and (iii) above shall be subject to the following general conditions:

- (i) The undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;
- (ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

- (iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;
- (iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;
- (v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;
- (vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;
- (vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and
- (viii) after the release of the undertrial accused pursuant to this order, the cases of those undertrials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Cr.P.C.

### **DUTY OF COURTS**

- \* It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.

### **SUMMARY AND DIRECTIONS**

- \* The Hon'ble Supreme Court issued the following directions meant for the investigating agencies and also for the courts which may be subject to State amendments:
  - a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.



- b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Cr.P.C. and the directions issued by this Court in *Arnesh Kumar v State of Bihar & Another (2014 (8) SCC 273)*. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.
- c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Cr.P.C. Any non-compliance would entitle the accused for grant of bail.
- d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Cr.P.C. while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Cr.P.C.
- e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Cr.P.C.
- f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in *Siddharth v. The State of Uttar Pradesh and another (LL 2021 SC 391)*.
- g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.
- h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Cr.P.C., facilitating the release.
- i) While insisting upon sureties the mandate of Section 440 of the Cr.P.C. has to be kept in mind.

- j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of Cr.P.C. both at the district judiciary level and the High Court as earlier directed by this Court in *Bhim Singh v. Union of India* followed by appropriate orders.
- k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

*J. Lakshmana Rao*  
19/06/2023  
**REGISTRAR GENERAL**

