Relating to Warrant in Compendium (I)

****

1. **General Letter No. 5 of 1946 (Criminal)**

The court directed that the number of the case should be specified in the form of modified warrant from No. (M)-75 at page 84 of the Court's General Rules and Circular Orders. This ensures proper identification and tracking of warrants.

2. **General Letter No. 1240, dated 19-2-1964**

Handcuffs are to be used only when the prisoner is violent, disorderly, obstructive, likely to attempt escape, or charged with serious non-bailable offences. This rule aims to limit the unnecessary use of restraints during the execution of warrants.

3. **General Letter No. 4695-XLVI-A-23/73**

It is not necessary to issue a fresh warrant simply because a previously issued warrant remains unexecuted, provided the original warrant is still valid. This rule aims to reduce redundant administrative work.

4. **General Letter No. 7030-XLIXD-62/74**

In summons cases, the accused may be called upon to execute a bond for appearance as per section 209 of the Code of Criminal Procedure, 1973. This bond should be forwarded to the Court of Session along with the records of commitment to ensure compliance with warrant procedures.

5. **General Letter No. 10594-IX-19/79**

Clarifies the registration process for applications filed in the Court of Sessions Judges against orders passed, ensuring proper documentation and tracking of warrant-related cases.

6. **General Letter No. 4506-XLIXD-49/82**

Instead of amending Form No. (M) 33, courts can make appropriate modifications when issuing warrants to accommodate bail conditions, ensuring flexibility in warrant execution.

7. **General Letter No. 10009-XI-4/86**

Courts issuing summons or warrants to police officers for evidence must provide sufficient time and ensure delivery to the officers' headquarters, facilitating efficient execution.

Relating to Warrant in Compendium (II)

1. Intimation of Arrest, Detention, and Release of Members of Legislative Assembly (MLAs)

Circular No. 11692 / Dated 28.09.1988

This circular, referencing a Supreme Court judgment (A.I.R. 1988, S.C.414), emphasizes the importance of accurately mentioning the age of the detenu in the Jail Warrant. It also includes instructions from the Government of Orissa, Home Department (No. 778/C), detailing the procedure for intimating the Speaker of the Orissa Legislative Assembly about the arrest, detention, or release of an MLA.

- Arrest (Rule 154): When an MLA is arrested on a criminal charge, for a criminal offense, sentenced to imprisonment, or detained under an executive order, the committing Judge, Magistrate, or executive authority must immediately inform the Speaker. This intimation should include the reasons for arrest/detention/conviction, the place of detention, and be in the prescribed Schedule-I form. Police officers (Officer-in-Charge of the Police Station and Superintendent of Police) are required to intimate the Speaker by Telegram/Wireless, followed by a written communication.
- Release (Rule 155): When an MLA is released on bail (pending appeal or otherwise) or from jail custody (by court order or completion of sentence), the concerned authority (Judge/Magistrate or Executive Authority, or Superintendent of Jail) must immediately intimate the Speaker using the appropriate form in Schedule-I. This should also be done via Telegram/Wireless, followed by a written communication.
- Information Required: All intimations must invariably include the date, time, and place of arrest/release, the relevant law, the authority ordering the action, the place of lodging (if remanded), and the name and designation of the intimating authority.

2. Return of Warrant for Release of Prisoner on Bail

Circular No. 51/ Dated 03.01.1991

This circular addresses the procedure for returning a warrant for the release of a prisoner on bail when the prisoner is unable to furnish bail. It refers to Rule 121 of the General Rules & Circular Orders (Criminal) Vol. I.

- Procedure: When an Appellate Court or Court of Revision directs a prisoner's release on bail, the warrant is sent to the Chief Judicial Magistrate (or Sub-divisional Judicial Magistrate/Judicial Magistrate concerned). The Magistrate must comply with bail orders on the day of receipt, noting reasons for non-compliance. If the prisoner cannot furnish bail, the warrant must be returned to the issuing Appellate or Revisional Court with an endorsement of the prisoner's inability to furnish bail.
- Time Limit: A time limit of 15 days is fixed for the return of the release order by the lower court to the Appellate or Revisional Court, counted from the date of receipt of the order by the concerned court.

3. Recall of Warrant of Arrest in Register (R) 10

Circular No. 2698(13)/ Dated 16.03.1991

This circular instructs that the fact of the recall of a warrant of arrest should be noted in the remarks column of Register (R) 10 (Register of processes issued to the Police Station). This avoids the need for a new column in the register.

4. Issuance of Non-Bailable Warrants (NBWs)
Circular No. 5523 Dated 22.07.1999

This circular highlights an issue where issuing courts were not providing detailed addresses and parentage of the warrantees on NBWs, leading to warrants being returned by Police Stations.

Courts are directed to ensure that detailed address, parentage, etc., are mentioned in the warrants to prevent such issues.

5. Service of Summons and Execution of Warrants in Forest and Excise Cases
Circular No. 9656 / Dated 24.08.2001

This circular addresses the execution of warrants and service of summons in Forest and Excise Cases, aiming to reduce the burden on the police.

Summons and warrants in Forest and Excise Department cases are to be sent to the concerned authorities of those departments for execution through their own departments. This instruction was approved by the High Court based on a decision from a High-Level meeting.

6. Non-production of Under-Trial Prisoners (UTPs)
Circular No. 10192(13)/ Dated 16.11.1993

This circular addresses the issue of non-production of Under-Trial Prisoners (UTPs) in court on due dates, particularly from outlying stations without jail facilities.

If UTPs are not produced on the fixed date without sufficient reason, the Judicial Officer of the concerned court should move the High Court through the Sessions Judge for appropriate steps.

7. Maintenance of Register of Cases with Stayed Proceedings
Circular No. 8024/ Dated 09.11.1995

This circular clarifies that the Register of Cases in which proceedings have been stayed (Form No. (R)-41), as prescribed in General Rules and Circular Order (Criminal), Volume-II, should also be maintained in the Courts of Session. This is because the Court of Session is also a Criminal Court under Section 6 of the Code of Criminal Procedure.

8. Obtaining Signature of Court's Sub-Inspector in Register (R) 10
Circular No. 9918/ dated 09.11.1993

This circular directs that the signature of the Court's Sub-Inspector should be obtained in the remarks column of Register (R) 10 (Register of processes issued to each police station) as an acknowledgment of receipt of warrants and processes issued to different police stations.

9. Guidelines for Arrest and Detention of Judicial Officers
Circular No. 4806(13) /Dated 29.06.1992

This circular forwards guidelines from the Ministry of Law and Justice (Department of Justice) based on a Supreme Court judgment (Delhi Judicial Service Association, Tiz Hazari Court, Delhi-V-State of Gujarat and Others).

- Key Guidelines:
  - Arrest of a Judicial Officer for an offense should be done with intimation to the District Judge or High Court.

- If immediate arrest is necessary, a technical or formal arrest may be effected, with immediate communication to the District and Sessions Judge and the Chief Justice of the High Court.
- A Judicial Officer so arrested should not be taken to a police station without prior order/direction of the District and Sessions Judge (if available).
- Immediate facilities for communication with family, legal advisers, and Judicial Officers (including District and Sessions Judge) must be provided.
- No statement should be recorded, nor panchnama drawn, nor medical tests conducted, except in the presence of the Judicial Officer's legal adviser or another Judicial Officer of equal or higher rank (if available).
- No handcuffing of a Judicial Officer unless violent resistance is offered or there is imminent danger to life/limb, requiring physical arrest. In such cases, an immediate report must be made to the District and Sessions Judge and the Chief Justice of the High Court, with the burden on the police to justify the action.
- No Judicial Officer should visit a Police Station on his own except for official and judicial duties, with prior intimation to the District and Sessions Judge.

10. Filing of Prosecution Reports/Complaints and Processes

Circular No. 3378(15) /Dated 06.04.1993 and Circular No. 3619/ Dated 14.04.1993

These circulars address the issue of prosecuting agencies not filing sufficient copies of prosecution reports/complaints and processes (like summons for accused and witnesses).

Prosecuting Agencies of various Government Departments (including Public Sector Undertakings) must file sufficient copies of Prosecution Reports/Complaints and pre-filled summons (leaving date columns blank for the court to fill) corresponding to the number of accused and witnesses. Subordinate Courts are instructed to ensure compliance with this directive.

11. Imposition of Inadequate Sentence

Circular No. 3816/ Dated 21.04.1993

This circular notes that many Subordinate Courts were awarding inadequate sentences in cases under Labour Laws, Excise Act, and Forest Act.

Refers to earlier circulars (G.L. No.6 of 1967 (Criminal), Circular Letter No. 3845 dated 30.10.50, No. 712 dated 31.1.1967, and No. 2376 dated 5.3.83) and directs that the same principles against inadequate sentencing apply to Excise and Forest acts. Chief Judicial Magistrates and Sessions Judges are to verify records and report instances of inadequate sentences to the High Court with their comments.

12. Strict Adherence to Rules for Testing Gold, Silver, and Other Valuable Metals

Circular No. 9324/ Dated 28.10.1998

This circular emphasizes the strict observance of Rule-119(1) & (3) of the Police Manual Rules, 1940, regarding the testing of valuable metals from the panel of goldsmiths prepared by the Chief Judicial Magistrate (C.J.M.) and Superintendent of Police.

The instructions issued in Home Department Letter No. 51989 dated 18.10.85 (published at page-352 of the Compendium) should be strictly adhered to, and compliance reports submitted promptly.

13. Writing of Processes as per Criminal Procedure Code

Circular No. 11271(13)/ Dated 24.12.1993

This circular highlights the lack of uniform practice in writing processes as per Sections 230, 242(2), and 254(2) of the Criminal Procedure Code.

Judicial Officers are to follow the instructions issued in Court's Circular No. 370 dated 31.1.75.

14. Disposal of Cases of Under-Trial Prisoners (UTPs)

Circular No. 5757/ Dated 10.08.1994

This circular emphasizes the expeditious disposal of cases involving UTPs, particularly those pending for two years or more.

Sessions Judges and Chief Judicial Magistrates are to give personal attention to this matter, verify records periodically, and ensure these cases are disposed of as quickly as possible.

15. Expeditious Disposal of Cases under NDPS Act

Circular No. 3625 / Dated 09.05.1994

This circular directs that cases under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act should be disposed of expeditiously, giving them priority over other cases.

16. Remand of Accused under NDPS Act

Circular No. 1744(13)/ Dated 04.03.1997

This circular addresses instances where S.D.J.Ms./Magistrates were refusing to remand accused in NDPS Act cases.

Refers to a Full Bench decision of the Court in Banka Das and others-Vs-State of Orissa (1992) 5, O.C.R.555, and directs circulation of its provisions, particularly Section 36 (A) (1) (b) of the NDPS Act, to all subordinate courts.

17. Preservation of NDPS Act Case Records

Circular No. 5869/ Dated 16.08.1995

This circular specifies the period of preservation for records of NDPS Act cases disposed of by Special Courts.

Records of NDPS Act cases where the convict is sentenced to 20 years or more imprisonment shall be preserved until the lapsed jail warrants are received in the concerned courts.

18. Disposal of Material Objects in Court Malkhana

Circular No. 10257(14) / Dated 11.09.2001

This circular provides instructions for the disposal of material objects (M.Os.) lying in the Court Malkhana.

Disposal of properties in the Court Malkhana should be undertaken for cases instituted three years or more prior, subject to all conditions and guidelines enumerated in Court's Circular No. 7514 dated 26.06.1981.

19. Holding of Courts inside Jail Premises

Circular No. 11644(30)/ 09.11.2018 and Circular No. 12427(30)/ 05.12.2018

These circulars authorize trying Magistrates to hold courts inside jail premises for the disposal of cases where the maximum period of imprisonment is three years.

20. Commitment of Sessions Triable Cases

Circular No. 1641(14/ 04.03.2009) and Circular No. 11646/ 09.11.2018

These circulars emphasize the commitment of cases exclusively triable by the Court of Session within a stipulated period.

Every case involving offenses exclusively triable by the Court of Session should be committed within six months from the date of submission of the final form.

21. Furnishing Certificate in Bail Petition

Circular No. 6456(30)/ 24.07.2014

This circular directs that when a bail petition is filed under Section 439 of the Cr. P.C., a memorandum must be filed stating that no other bail application is pending in any other court.

Sessions Judges, Additional Session Judges, and Assistant Session Judges must strictly adhere to this and other relevant circulars (like No.3447 dated 30.03.1984 and No.6973 dated 01.10.1996) when dealing with bail petitions.

22. Implementation of Section 436(1) & 436(A) of Cr. P.C.

Circular No. 7749(14) / 09.09.2008

This circular pertains to the release of indigent prisoners on personal recognizance (P.R.) bond without sureties and the release of prisoners who have already undergone one-half of the maximum punishment period.

Emphasizes the implementation of these provisions for the release of prisoners.

23. Compliance of Supreme Court Order on UTPs

Circular No. 6320/24.04.2023

This circular forwards a Supreme Court order (dated 21.03.2023 in M.A. No.2034/2022) expressing concern over the disproportionately large number of under-trial prisoners unable to comply with bail conditions.

District & Sessions Judges are requested to ensure full compliance with the Supreme Court's directions issued in earlier judgments (dated 11th July, 2022 in SLP (Crl.) No. 5191 of 2021 (Satender Kumar Antil Vrs. C.B.I. & Anr.) in line with the directions in Arnesh Kumar Vrs. State of Bihar[(2014)8 SCC273], Sidharth Vrs. State of UP[(2021) 1SCC 676] and Bhim Singh Vs UOI [(2015) 13 SCC 605]), especially regarding bail matters under section 440 Cr.P.C. The order also needs to be circulated among all Judicial Officers for strict adherence.

Warrant Process Overview

The warrant process in criminal proceedings involves issuing summons, bailable warrants, or non-bailable warrants to secure an accused’s presence in court, as detailed across the provided documents. The focus here is on NBWs, which are issued as a last resort to compel appearance when less restrictive measures fail, ensuring compliance with Articles 21 (right to life and liberty) and 22 (protection against arbitrary arrest) of the Constitution of India.

1. Warrant Process in Satender Kumar Antil (2022) 10 SCC 51 communicated vide Hon'ble High Court Letter No. 6320/22 dated 24.04.2023

Relevant Provisions: Sections 87 and 88 CrPC (equivalent to Sections 82 and 83 BNSS).

- Guidelines for Issuing NBWs (citing Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1):

Sequential Approach:

- Courts must first issue a summons to secure the accused's appearance.
- If the summons fails, a bailable warrant should be issued.
- A non-bailable warrant (NBW) is issued only as a last resort when:
  - It is reasonable to believe the accused will not voluntarily appear in court.
  - Police authorities are unable to locate the accused to serve a summons.
  - There is a risk the accused could harm someone if not immediately taken into custody

Purpose: NBWs are meant to bring the accused to court, not to punish or arbitrarily detain, balancing individual liberty and judicial process requirements.

Safeguards

- Courts must exercise caution to avoid misuse of NBWs, ensuring compliance with *Article 21*.
- The decision to issue an NBW must be based on specific reasons, documented in the court's order, reflecting judicial discretion (Page 10).

2. NBW Guidelines from Criminal Appeal No. 1758 of 2011 communicated vide Hon'ble High Court Letter No. 8556(20)/16.11.2011

Standardized Procedures (referenced in Satender Kumar Antil):

- Form No. 2 (CrPC): NBWs must be issued using the standardized format prescribed in the CrPC to ensure clarity and uniformity.

Case Details: Courts must record detailed reasons for issuing an NBW, including the case number, accused's details, and grounds for necessity.

NBW Register: Courts are required to maintain a dedicated register to track NBWs, ensuring transparency and accountability.

Prompt Cancellation: If an NBW is cancelled (e.g., after the accused appears), courts must promptly communicate the cancellation to police authorities to prevent misuse, such as executing a cancelled warrant.

Objective: These measures prevent arbitrary arrests and protect the accused's rights under **Article 21, addressing issues like those in *Criminal Appeal No. 1758 of 2011, where a cancelled NBW was wrongly executed.

3. Warrant Process in Trial Procedures

Relevant Provision: Section 204 CrPC (equivalent to Section 226 BNSS)

Process:

- In summons cases and warrant cases, if the Magistrate finds sufficient grounds to proceed after taking cognizance (Section 190 CrPC), they may issue:

- A summons for offenses triable as summons cases or where the accused is not in custody.
- A warrant (bailable or non-bailable) for warrant cases or if the accused is likely to abscond

Application:

- In warrant cases (offenses punishable by over two years), a warrant is typically issued if the accused fails to appear after a summons (Page 4).
- The trial document aligns with Satender Kumar Antil's sequential approach, emphasizing summons first, followed by bailable warrants, and NBWs only when justified (Page 4).

Judicial Scrutiny:

- Magistrates must ensure the necessity of a warrant, particularly an NBW, to avoid unnecessary liberty curtailment, as seen in State of Mizoram v. K.Lalruata (trial document, Page 5), where procedural fairness is emphasized.

4. Connection to D.K. Basu v. State of West Bengal (1997) (Satender Kumar Antil)

Relevance to NBWs:

- D.K. Basu guidelines apply to arrests, including those under NBWs, mandating:
  - An arrest memo with time, date, and witness attestation.
  - Recording arrest details in the case diary, including the next friend's name
  - An inspection memo for injuries, signed by the arrestee and police (Page 23).
  - Notification to a friend/relative and Legal Aid authorities

5. Procedure for handling long-pending Non-Bailable Warrants (NBWs) according to the guidelines from Hon'ble High Court Letter No. 4588/2018 dated January 30, 2018.

When a Non-Bailable Warrant has been pending for a long period, the Sessions Judge is required to take the following steps:

1. ***Report to the High Court***: The Sessions Judge must send a report to the Hon'ble High Court.
2. ***Provide Certified Copies***: This report must include certified copies of the order sheets for each individual case where an NBW is pending.
3. ***Suo Moto Action***: Based on these reports, the High Court will suo moto (on its own motion) register Criminal Miscellaneous Petitions (CRLMPs).
4. ***Impleadment of Police Officers***: The High Court will then implead (formally join as a party to the case) the concerned police officers to whom the NBW was originally issued. This process essentially holds the police officers accountable for their failure to execute the warrants.

Key Features of the Warrant Process

1. Sequential Issuance:

- Summons → Bailable Warrant → Non-Bailable Warrant (Satender Kumar Antil).
- NBWs are issued only when summons and bailable warrants fail, and specific conditions (non-appearance, untraceability, or risk of harm) are met.

2. Judicial Oversight:

- Magistrates must record reasons for issuing NBWs, ensuring necessity and proportionality (Antil; Criminal Appeal No. 1758 of 2011).
- Compliance with Section 204 CrPC requires sufficient grounds for issuing a warrant.

3. Procedural Safeguards:

- Use of Form No. 2, maintenance of an NBW register, and prompt cancellation communication (Criminal Appeal No. 1758 of 2011).
- D.K. Basu requirements (arrest memo, injury documentation, notification) apply to NBW arrests (Satender Kumar Antil).

4. BNSS Transition:

- Section 87 CrPC corresponds to Section 82 BNSS, and Section 88 CrPC to Section 83 BNSS, maintaining the same sequential approach (Satender Kumar Antil, referencing BNSS).

5. Trial Courts: Must follow the sequential process (summons, bailable warrant, NBW) in both summons and warrant cases, ensuring documentation and judicial reasoning (Antil).

6. Police: Execute NBWs with D.K. Basu safeguards, avoiding misuse (Satender Kumar Antil).

7. Avoiding Misuse: Prompt cancellation and clear communication prevent wrongful arrests, as emphasized in Criminal Appeal No. 1758 of 2011.

Conclusion

The warrant process, particularly for NBWs, is tightly regulated to protect individual liberty while ensuring judicial efficiency. The Satender Kumar Antil judgments, trial procedures document, and Vihaan Kumar emphasize a cautious, sequential approach (summons, bailable warrant, NBW) under *Sections 87, 88, and 204 CrPC* (or *Sections 82, 83, 226 BNSS). The *Inder Mohan Goswami and Criminal Appeal No. 1758 of 2011 guidelines ensure standardized forms, record-keeping, and prompt cancellation, while D.K. Basu safeguards apply to NBW executions.