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Crl.O.P.(MD)No.9247 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.O.P.(MD) No.9247 of 2025

and

Crl.M.P.(MD) No.6722 of 2025

H.Raja

... Petitioner

Vs.

State of Tamil Nadu
through the Inspector of Police,
C-2, Subramaniapuram Police Station,
Madurai City,
Crime No.63 of 2025.

... Respondent

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records in connection to the impugned notice under Section 35 of BNSS, 2023 dated nil issued by the respondent in Crime No.63 of 2025, quash the same.

For Petitioner : Mr.M.Ramamoorthi
for M/s.APN Law Associates

For Respondent : S.Vinoth Kumar
Government Advocate (Crl.Side)



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ORDER

Heard the learned counsel on either side and perused the materials placed on record.

2. The Criminal Original Petition has been filed seeking to quash the impugned notice dated —Nil— issued by the respondent-Police under Section 41-A of the Code of Criminal Procedure, 1973 (Cr.P.C.)/Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) in Crime No.63 of 2025 on the file of the respondent Police.

3. The main ground of challenge raised by the petitioner is that the impugned notice is not in the format prescribed under Form No.2 of the Second Schedule to the BNSS, 2023. It is the further submission of the petitioner that any deviation from the prescribed format renders the notice liable to be quashed, as strict compliance with procedural safeguards relating to arrest and issuance of notice is mandatory.

4. At the outset, it must be noted that the Hon'ble Supreme Court,



while reiterating the safeguards incorporated in Section 41-A

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Cr.P.C./Section 35 BNSS, has categorically directed that notices must be

issued strictly in the manner prescribed by law. In ***Kumar Antil v. CBI &***

Anr., [(2022) 10 SCC 51], the Hon'ble Supreme Court, while dealing

with the procedural lapses in arrest and summons, specifically directed as

follows:

"26. Section 41-A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, and arrest is not required under Section 41(1). Section 41-B deals with the procedure of arrest along with mandatory duty on the part of the officer.

27. On the scope and objective of Sections 41 and 41-A, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further, in light of the judgment of this Court in *Arnesh Kumar v. State of Bihar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] : (SCC pp. 278-81, paras 7-12)

"7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in



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any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41CrPC.

8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is



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not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167CrPC, 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. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other



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conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. ... The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1)CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that 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. At this stage also, the condition precedent for arrest as envisaged under Section 41CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

10. We are of the opinion that if the provisions of Section 41CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);



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11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”

28. We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by



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the court, which is expected to be reflected in the orders.

29. Despite the dictum of this Court in *Arnesh Kumar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 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.

30. It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41-A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 7-2-2018 [*Amandeep Singh Johar v. State (NCT of Delhi)*, 2018 SCC OnLine Del 13448] , followed by order dated 28-10-2021 in *Rakesh Kumar v. Vijayanta Arya* [*Rakesh Kumar v. Vijayanta Arya*, 2021 SCC OnLine Del 5629] , wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a Standing Order has been passed by Delhi Police viz. Standing Order 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in *Amandeep Singh Johar v. State (NCT of Delhi)* [*Amandeep Singh Johar v. State (NCT of Delhi)*, 2018 SCC OnLine Del 13448] dated 7-2-2018, this Court has also passed an order in *Abhyanand Sharma v. State of Bihar* [*Abhyanand Sharma v. State of Bihar*, (2022) 10 SCC



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819 : 2022 SCC OnLine SC 784] dated 10-5-2021 (*sic* 10-5-2022) directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41-A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in *Mahesh Kumar Chaudhary v. State of Jharkhand* [*Mahesh Kumar Chaudhary v. State of Jharkhand*, 2022 SCC OnLine Jhar 620] dated 16-6-2022.

31. Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate Standing Orders while taking note of the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various courts as they may not even be required for the offences up to seven years.

32. We also expect the courts to come down heavily on the officers effecting arrest without due compliance of Section 41 and Section 41-A. We express our hope that the investigating agencies would keep in mind the law laid down in *Arnesh Kumar* [*Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449], the discretion to be exercised on the touchstone of presumption of innocence, and the safeguards provided under Section 41, since an arrest is not mandatory. If discretion is exercised to effect such an arrest, there shall be procedural compliance. Our view is also reflected by the interpretation of the specific provision under Section 60-A of the Code which warrants the officer concerned to make the arrest strictly in accordance with the Code."

As certain conditions were not scrupulously followed, the Hon'ble Supreme Court, in Miscellaneous Application No.2034/2022 in M.A.



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No. 1849/2021 in SLP (Crl.) No. 5191/2021, by order dated 21.03.2025,

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“All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of Cr.P.C./Section 35 of BNSS, 2023 only through the mode of service as prescribed. 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 of service recognised and prescribed under the Cr.P.C./BNSS.”

5. In the present case, it is not in dispute that the impugned notice was served on the petitioner in person, and such notice has been acknowledged by the petitioner himself. The acknowledgment is placed on record at page No.10 of the typed set of papers. Hence, the contention regarding improper service through electronic mode does not arise in the present case.

6. The core challenge relates to the form and contents of the notice. The main contention of the petitioner is that the notice issued is



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not in consonance with Form No.2 of the Second Schedule to the BNSS,

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7. However, the said contention was strenuously opposed by the learned Government Advocate (Crl.Side), who submitted that the notice was issued to the petitioner under the prescribed format as per Section 41 A Cr.P.C./ 35(3) BNSS, 2023.

8. No doubt, the issuance of notice must be in strict conformity with the prescribed format, both in letter and spirit. At the same time, the issuance of such notice, even if defective in form, cannot be automatically quashed if it serves the substantive purpose of requiring the presence of the person for the purpose of enquiry/investigation, unless such defect causes serious prejudice or vitiates the legal safeguards. However, the question of defective notice does not arise in the present case. A perusal of the records shows that in the present case, the respondent-Police issued notice to the petitioner scrupulously following the provisions of Section 41 A Cr.P.C/ 35(3) BNSS, 2023. It could be further seen that the notice issued by the respondent-Police was



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acknowledged by the petitioner by affixing his signature on the notice on 13.02.2025, and hence, no prejudice is shown to have been caused thereby. The petitioner, instead of complying with the notice and appearing for enquiry, has directly approached this Court. Such a practice is impermissible in law, particularly when the investigation is at a preliminary stage.

9. As far as the petitioner is concerned, the records disclose that he is facing investigation in Crime No.63 of 2025 for the offences punishable under Sections 196(1)(a), 196(1)(b), 352, 353(1)(a) and 353(1)(b) of the BNS, 2023. The Police have summoned him for enquiry under the statutory provisions. There is no bar for such enquiry, and the petitioner is duty-bound to co-operate with the same. The Court cannot interfere at this premature stage unless there is manifest illegality or mala fide, which is not established here.

10. For the foregoing reasons, this Court is not inclined to quash the impugned notice by invoking Section 528 BNSS, 2023. However, liberty is reserved to the petitioner to raise all legally available grounds



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in the event of any coercive steps being taken in violation of law.

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11. Accordingly, the Criminal Original Petition stands dismissed.

The petitioner is directed to appear before the respondent Police and co-operate for the enquiry/investigation as the case may be. Consequently, connected miscellaneous petition is closed.

23.06.2025

Index : Yes/No

Neutral Citation Case : Yes/No

Speaking Order : Yes/No

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To

1. The Inspector of Police,
C-2, Subramaniapuram Police Station,
Madurai City.
2. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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