



CRA-S-3550-2025

- 1-

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

295

CRA-S-3550-2025

Date of decision: 03.12.2025

SUNIL

....Appellant

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. R.S. Chauhan, Advocate for the appellant.

Mr. R.K. Ambavta, DAG, Haryana.

YASHVIR SINGH RATHOR. J.(Oral)

1. The appellant has preferred the present appeal under Section 14-A (2) of the SC/ST Act against the order dated 30.10.2025, passed by learned Additional Sessions Judge, Faridabad, whereby, the regular bail application of the appellant was dismissed in case bearing FIR No.431 dated 13.08.2025, under Sections 126(2), 115(2), 351(3), 190, 191(3) BNS and Sections 3(1) (R), 3(2)(va) of SC/ST Act registered at Police Station Sector 58, Faridabad.

2. I have heard learned counsel for the parties and material on file has been perused.

3. The present case was registered on the basis of complaint given to the police by Deepak, son of Chhotelal, resident of Balajit Colony, Karnera with the allegations that on 12.08.2025 at about 8:30 am, he was going for his duty, when his neighbours Sunil, Anil and their friend Sachin alongwith four to five other boys, stopped him and assaulted him with sticks, batons and iron rods. Sachin hit him with an iron rod while Anil and Sunil beat him with sticks and batons. The other boys also punched and kicked him but he does not know their names. While



CRA-S-3550-2025

- 2-

going away, they were proclaiming that they have spared him, but if he will mess up with them again, he will be killed. He further alleged that he was assaulted without any reason. Hearing the commotion, his family members arrived and took him to the hospital and he sought action against the accused. Initially, the FIR was registered for the offences under Sections 126(2), 115(2), 351(3), 190, 191(3) BNS. Appellant Sunil was arrested and he was produced before the Area Magistrate and he was released on bail. Subsequently, offence under Section 3(2) (va) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SC/ST Act) was added. The Investigating Officer moved an application before the Area Magistrate seeking permission to re-arrest the accused-appellant on 16.10.2025, on which the following order was passed on 16.10.2025:-

“Investigating Officer has moved an application for re-arrest of the accused persons namely Sunil, Anil and Suraj and has submitted that initially FIR was registered under Sections 126(2), 115(2), 117(2), 190, 191(3), 351(3) BNS, but later on Sections 3(2)(Va) SC/ST Act have also been added in the present FIR and accordingly, a permission has been sought for re-arrest of the accused persons.

Heard. Material perused. A perusal of the record reveals that both the accused persons namely Sunil, Anil and Suraj were produced before the court in FIR No. 431 dated 13.08.2025 under Sections 126(2), 115(2), 117(2), 190, 191(3), 351(3) BNS on 21.08.2025 and were granted bail by the court. Thereafter, requisite bonds were furnished and since then the accused persons are on bail in the present case under Sections 126(2), 115(2), 117(2), 190, 191(3), 351(3) BNS. Thereafter, as per the Investigating Officer as well as record, Sections 3(2)(Va) SC/ST Act have also been added in the present FIR. Accordingly, requisite permission is granted to Investigating Agency to join the accused persons in investigation to conduct consequent proceedings including arrest, if required, in accordance with the provisions of BNSS relating to the arrest of persons in Chapter-V (from Section 35 to 62) and by adopting the due process of law as offences under Sections 3(2)(Va) SC/ST Act have also been added in the FIR No. 431 dated 13.08.2025, Police Station Sector-58, Faridabad. Accordingly, application at hand is hereby allowed subject to anticipatory bail



CRA-S-3550-2025

- 3-

by any Id. Appellant Court or Hon'ble High Court or Hon'ble Supreme Court. Application disposed of accordingly. Papers be tagged with the remand papers.”

4. Thereafter, appellant was re-arrested on the same day i.e. 16.10.2025 and was produced before the learned Magistrate and he was again remanded to judicial custody. Appellant applied for bail before the Additional Sessions Judge, Faridabad but the same was rejected vide order dated 30.10.2025.

5. Learned counsel for the appellant contended that initially the FIR was registered for the offences under Sections 126(2), 115(2), 351(3), 190, 191(3) BNS and he was arrested but was released on bail by the Court. Subsequently, an application was moved by the Investigating Officer before the concerned Area Magistrate, seeking permission to re-arrest him, which was allowed on 16.10.2025, without giving any opportunity of hearing to him and he was arrested on the same day. Learned counsel further contended that the Area Magistrate had specifically directed the police to join the appellant in the investigation to conduct further investigation including arrest, if required, in accordance with the provisions of Sections 35 to 62 of BNS. Learned counsel next contended that the offence under Section 3(2)(va) of SC/ST Act is punishable with maximum imprisonment upto six months which may extend to five years with fine but no notice under Section 35(3) of BNSS, 2023 was ever issued to him by the Investigating Officer before re-arresting him after the order dated 16.10.2025, was passed by the Area Magistrate allowing his re-arrest and there is violation of the aforesaid provision as well as violation of the law laid down by Hon'ble Supreme Court in 2014(8) SCC 273 **Arnesh Kumar Vs. State of Bihar and** (2022) 10 SCC 51 **Satender Kumar Antil Vs. CBI**. Learned Counsel next contended that Hon'ble Supreme Court in **Arnesh Kumar (supra)** has held that a police officer



CRA-S-3550-2025

- 4 -

may without an order from a Magistrate and without a warrant, arrest any 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, if the police officer is satisfied that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer or unless such person is arrested, his presence in the Court whenever required cannot be ensured and the police officer shall record while making such arrest, his reasons in writing. Learned Counsel next contended that the offences for which applicant has been charged are punishable with imprisonment of six months which may extend to five years but no notice under Section 35(3) of BNSS, 2023 was ever issued to him and he was straightaway arrested. No reasons have been recorded by the investigating officer as to why his arrest was necessary and no check list was also prepared as required under Section 31(1) (b) BNSS. Learned Counsel further contended that directions issued by Hon'ble Supreme Court in **Arnesh Kumar's case (Supra)** have been further reiterated by Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)**" in which it has been further held that the investigating agency and their officers are duty bound to comply with the mandate of Section 41 and 41-A of the Code and any non-compliance will entitle the accused to be released on bail. The Courts shall have to satisfy themselves on the compliance of



CRA-S-3550-2025

- 5-

the aforesaid provisions and any non-compliance will entitle the accused to be released on bail. It has been further held that any dereliction on their part has to be brought to the notice of the higher authorities by the Court followed by appropriate action.

6. Learned counsel next contended that another accused namely Chanchal was also apprehended during investigation on 01.09.2025 but she was set free and was allowed to go in compliance with the judgment passed by the Hon'ble Supreme Court in **Arnesh Kumar's case (supra)**, as also admitted by the prosecution in its reply to the bail application. Learned counsel further contended that Additional Sessions Judge while dismissing the bail also did not take into consideration this aspect and since arrest of the applicant was illegal, he ought to have been released on bail even by the Magistrate and learned Additional Sessions Judge also gravely erred while dismissing the bail application. In fact, the provisions of BNS contained in Section 35(3) as well as the judgments rendered by the Hon'ble Supreme Court in **Arnesh Kumar's case (supra) and Satender Kumar Antil's case (supra)** have been violated, while dismissing the bail application. Learned counsel further contended that petitioner is in custody since 16.10.2025. The challan has not been presented as yet. Investigation and trial will take a long time to conclude and no useful purpose will thus be served by detaining the appellant in custody and he may be released on bail.

7. On the other hand, learned State counsel has opposed the bail and argued that appellant has committed a heinous offence and he does not deserve the concession of bail.

8. Appellant was initially arrested for the offences under Sections 126(2), 115(2), 351(3), 190, 191(3) BNS, 2023 and he was released on bail.



CRA-S-3550-2025

- 6-

Subsequently, permission was sought from the Magistrate to re-arrest him for the offence under Section 3(2)(va) of SC/ST Act, which was allowed vide order dated 16.10.2025 and the Investigating Officer/ACP Mujesar, Faridabad straight-away arrested him on the same day. Since the offence in question was punishable with maximum imprisonment upto 05 years, the point to be seen is as to whether the police was required to comply with the directions issued by the Hon'ble Supreme Court in **Arnesh Kumar's case (supra) and Satender Kumar Antil's case(supra)** or not and whether the compliance has been made or not. Relevant observations of Hon'ble Supreme Court in **Arnesh Kumar's case(supra)** are reproduced as under:-

“41. When police may arrest without warrant-(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) xxxxxxxx

(b) 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 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, if the following conditions are satisfied, namely:-

(i) xxxxxxxx

(ii) the police officer is satisfied that such arrest is necessary-to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while



making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

Xxxxxx From a plain reading of the aforesaid provision, it is evident that a person accused of 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 its satisfaction that such person had committed the offence punishable as aforesaid. 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 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. 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. Law further requires the police officers to record the reasons in writing for not making the arrest. 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 41 of Cr.PC.



CRA-S-3550-2025

- 8-

It has been further held by Hon'ble Supreme Court in **Arnesh Kumar's** case(supra) as under:-

“Another provision i.e Section 41A of the Code aimed to avoid unnecessary arrest or threat of arrest looming large on accused requires to be vitalized. Section 41A as inserted by Section 6 of the Code of Criminal Procedure(Amendment) Act, 2008, which is relevant in the context reads as follows:

“41A. Notice of appearance before police officer-(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section(1) of Section 41, issue a notice directing 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, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.” Aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.PC, 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 office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 Cr.PC has to be complied and shall be subject to the same scrutiny by the



CRA-S-3550-2025

- 9-

Magistrate as aforesaid.

9. Now, the aforesaid directions of the Hon'ble Supreme Court in **Arnesh Kumar's case (supra)** have been further reiterated by Hon'ble Supreme Court in **Satender Kumar Antil's case (supra)** in which it has been held that investigating agencies and their officers are duty bound to comply with the mandate of Section 41 and 41(A) of the Code and the directions issued in **Arnesh Kumar's case (supra)**. The Courts will have to satisfy themselves on the compliance of Section 41 and 41(A) erstwhile Cr.P.C and any non compliance will entitle the accused to be released on bail.

10. Thereafter, notification No.159 dated 22.09.2023 has been issued by Punjab and Haryana High Court, Chandigarh, to ensure compliance of law laid down in **Arnesh Kumar's case (supra)** and judgment of Hon'ble Supreme Court dated 31.07.2023 passed in Criminal Appeal No.2207 of 2023 arising out of SLP (Crl.) No.3433 of 2023 titled as '**Md. Asfak Alam Versus The State of Jharkhand & Anr.**' as well as the provision of Section 41-A of Cr.P.C, which is reproduced as under:-

"In pursuance of the directions given by Hon'ble Supreme Court of India, in judgment dated 31.07.2023 passed in Criminal Appeal No. 2207 of 2023 arising out of SLIP (Crl.) No. 3433 of 2023 titled as Md. Asfak Alam Versus The State of Jharkhand & Anr.', following guidelines are framed by the High Court of Punjab and Haryana at Chandigarh to ensure that police officers do not arrest the accused unnecessarily and the Magistrates do not authorize detention casually and mechanically:-

1. The law as laid down in the judgment titled as 'Arnesh Kumar versus State of Bihar and another' reported as (2014) 8 SCR 128 shall be strictly followed.

2. In terms of the judgment in Md. Asfak Alam (supra), the



CRA-S-3550-2025

- 10-

State Government shall instruct its police officers not to automatically arrest when a case under Section 498-A Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters flowing from Section 41 of Code of Criminal Procedure, 1973.

3. All police officers will be provided with a check list containing specified sub-clauses under Section 41(1) (b) (ii) Code of Criminal Procedure, 1973.

4. 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.

5. The Magistrate while authorizing 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 authorize detention.

6. 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;

7. Notice of appearance, in terms of Section 41-A of Code of Criminal Procedure, 1973 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;

8. Failure to comply with the directions aforesaid 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;

9. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for



CRA-S-3550-2025

- 11-

departmental action by the appropriate High Court.

10. The directions aforesaid shall not only apply to the case under Section 498-A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, 1961, 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.

All the Sessions Courts and all other Criminal Courts in the districts of the States of Punjab, Haryana and Union Territory, Chandigarh dealing with various offences shall strictly follow the above guidelines.”

10. In the present case, Investigating Officer/ACP Mujesar has not made compliance of Section 41 as well as Section 41-A of erstwhile Cr.P.C and now, Section 35 of BNSS. No reasons have been recorded by the police officer as to why arrest of the applicant was essential. No notice was also issued under Section 35(3) of BNSS to the appellant, despite the fact that offence in question is punishable with maximum imprisonment of 05 years. No checklist perhaps has been prepared and infact, he was arrested on the same day i.e. 16.10.2025 when the permission to re-arrest was granted by the learned Magistrate, though subject to compliance of the provisions of Sections 35 to 62 BNSS. It is also pertinent to mention that another accused namely Chanchal was also joined in the investigation but she was not arrested in view of the directions issued by the Hon'ble Supreme Court in **Arnesh Kumar's case(supra)**. This fact has also been admitted in the reply/status report filed in the present case but the directions issued in the same very judgment have been violated in the case of appellant. As such, the arrest of the appellant on 16.10.2025 was apparently illegal and on this score only, he is entitled to be released on bail.



CRA-S-3550-2025

- 12-

11. In view of the above, the present appeal is allowed and the appellant is ordered to be released on bail on furnishing bail bonds and surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned, on usual terms and conditions.

12. As already discussed above, Investigating Officer/ACP Mujesar has not complied with the directions issued by the Hon'ble Supreme Court in **Arnesh Kumar's case (supra)** and **Satender Kumar Antil's case (supra)**, regarding compliance of Section 41 and 41A of erstwhile Cr.P.C as well Section 35 of BNSS and he straight-away arrested the appellant, without issuing any notice to him or preparing a checklist. The Investigating Officer as well as the Court of Additional Sessions Judge have not only ignored the law laid down in **Satender Kumar Antil's case (supra)** but have also violated the directions issued by the High Court in Notification No.159 Gaz.II(17) dated 22.09.2023 as reproduced in the preceding paragraph and they have thus rendered themselves liable under Contempt of Courts Act as well as for departmental action, as mentioned in Clause 8 of the said Notification. However, this Court is refraining from initiating the proceedings under Contempt of Courts Act but copy of this judgment be sent to Hon'ble Administrative Judge of Faridabad, Sessions Division through Registrar General of the High Court for intimation as well as to Home Secretary and DGP, State of Haryana for initiating action against the erring police officers/Investigating Officer under intimation to this Court.

(YASHVIR SINGH RATHOR)
JUDGE

03.12.2025
amandeep

Whether speaking/reasoned. :
Whether Reportable. :

Yes/No
Yes/No