

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CRIMINAL APPELLATE JURISDICTION

CR. ANTICIPATORY BAIL APPLICATION NO. 195 OF 2026

Sunil Vithhal Ranjane

...Applicant

Versus

The State Of Maharashtra And Anr.

...Respondents

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Adv. Chaitanya Pendse a/w Adv. Rohan Hogle, Adv. Shailesh Chavan and Adv. Sujit Nikam, for the Applicant.

Adv. Rushikesh Chandrashekhar Barge (though V.C.) a/w Adv. Viren S. Ghatge, Advocate for Respondent No.3-Intervenor.

Mr. Pankaj Deokar, learned APP for the Respondent-State.

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CORAM : PRAVIN S. PATIL, J.

DATE : 15th May, 2026.
(Vacation Court)

P.C. :

1. Heard.
2. By this application, the applicant is seeking anticipatory bail in connection with Crime No.83 of 2026 registered with the Satara City Police Station, Dist. Satara, for the offences punishable under Sections 316(2) and 318(4) of Bhartiya Nyaya Sanhita, 2023 (for short 'BNS').
3. The only issue raised by the Applicant in the present matter is that, as per the judgment of the Hon'ble Supreme Court in the case of

*Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.*¹, in cases where the offences are punishable with imprisonment up to seven years, issuance of notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”) is the rule, and the exception is contemplated under Section 35(6) of the BNSS. According to the learned counsel appearing for the Applicant, in the present case, though the offences registered against the present Applicant are punishable with imprisonment up to seven years, the offence came to be registered without issuing notice to the Applicant.

4. The perusal of the order passed by the learned Sessions Judge also clarified that notice under Section 35(3) of the BNSS was not issued to the present Applicant. However, the learned Sessions Judge in absence of any exceptional circumstances pointed out by Investigating Officer recorded that such notice under Section 35(3) of the BNSS can be dispensed with.

5. In the Background of this submission, the learned APP was asked to point out the reasons recorded by Investigation Officer for exempting the notice under Section 35(3) of the BNSS, 2023 to Applicant. However, learned APP could not point out from the record that the Investigating Officer has pointed out any substantial reasons to carve out the exception to issue notice to the Applicant. So also nothing is

1 (2026) SCC OnLine SC 162.

placed on record by the Investigating Officer to substantiate his submission.

6. The learned counsel Mr. R. C. Barge, who has moved the application to assist the prosecution, has taken this Court through various documents and pointed out that the present Applicant has allegedly fabricated several official documents, including circulars, public notices, final selection lists, recruitment schedules, and other related documents. He further pointed out that the said documents contain forged signatures in the name of the Assistant Secretary and Secretary of the relevant department. Hence, according to him, considering the documentary evidence on record, it is a fit case where notice was not required to be issued to the Applicant.

7. In view of this submission, this Court has considered the judgment of Hon'ble Supreme Court in the case of ***Satender Kumar Antil*** (*supra*), wherein the issue regarding issuance of notice under Section 35(3) of the BNSS was elaborately considered. The relevant observations contained in paragraph Nos. 28 to 33, which are relevant for the present matter, read as under:

“28. We have also clarified, on the earlier occasion, that the procedure contained in Section 35(6) of the BNSS, 2023 has been introduced on the touchstone of Article 21 of the Constitution of India. These inbuilt safeguards are required to be complied with by the police officer, in letter and spirit.

29. From a conspectus of the above, it is amply clear that even if the conditions mentioned under Section 35(1)(b) of the BNSS,

2023 are in existence, there can be no mandatory arrest, as a police officer still may or may not decide to do so.

30. While making an arrest under Section 35(6) of the BNSS, 2023, after the stage of issuing a notice seeking presence under Section 35 (3) of the BNSS, 2023, the circumstances and factors that were in existence at the time of issuing the said notice shall not be taken into consideration by a police officer while making an arrest subsequently. In other words, for effecting an arrest under Section 35(6) of the BNSS 2023, it must be based upon materials and factors which were not available with the police officer at the time of issuing a notice under Section 35(3) of the BNSS, 2023. Therefore, the power of arrest under Section 35(6) of the BNSS, 2023 is to be exercised rather sparingly, only under circumstances as aforementioned.

31. Hence, we have no hesitation to hold that a notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua an offence punishable with imprisonment up to 7 years, is the rule, while an arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, is a clear exception..

CONCLUSION

32. The power of arrest under Section 35(6) read with Section 35(1) (b) of the BNSS, 2023 must be interpreted as a strict objective necessity, and not a subjective convenience for the police officer. It does not mean the police officer can arrest to simply ask questions. However, it means that the police officer must satisfy himself that the investigation, qua an offence punishable with imprisonment up to 7 years, cannot proceed effectively without taking the concerned Individual into custody. Any interpretation to the contrary would clearly frustrate the purpose and legislative intent of Sections 35(1)(b) and Sections 35(3) to 35(6) of the BNSS, 2023.

33. On the basis of the interpretation given by us, we conclude as follows:

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.

b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an

accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35 (1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.”

From the perusal of Judgment of Hon’ble Supreme Court, the notice under Section 35(3) is mandatory.

8. The learned counsel for the Applicant further pointed out that, in such cases, where compliance of Section 35 (3) is not done then by issuing notice to the Applicant, an opportunity can be granted to submit a reply and thereafter the Investigating Officer may proceed to arrest the accused. For this purpose, the Applicant has relied upon the order dated 2nd March 2022 passed by a Co-ordinate Bench in Criminal Anticipatory Bail Application No. 288 of 2021 in the case of ***Kishore kumar Shrinivas Shetty Vs. The State of Maharashtra & Anr..*** In paragraph No.5 of the said order of this Court observed as under :

“5. In such circumstances, the Criminal Application is disposed of, at this stage. It will be open to the Investigating Officer to issue a clear three working days notice to the Applicants under Section 41-A of Cr.PC. in the event she intends to effect the arrest of the Applicants. If said notice is received by the Applicants, liberty to the Applicants to renew the request for anticipatory bail. The Criminal Application is disposed of, in the aforesaid terms. The Interim Application is also disposed of.”

9. In my opinion, the view taken by the Co-ordinate Bench can be made applicable to the present matter by considering the admitted

position that notice under Section 35(3) of the BNSS, 2023, was not issued to the Applicant in the present case. In the circumstances, the present application is disposed of at this stage by passing following order :

::ORDER::

- i. The Investigating Officer is permitted to issue a clear three working days' notice to the Applicant under Section 35(3) of the BNSS, 2023, in the event he intends to effect the arrest of the Applicant.
- ii. It is also made clear that, if such notice is received by the Applicant, liberty is granted to the Applicant to renew the request for anticipatory bail.
- iii. Accordingly, the present application stands disposed of in above terms. No order as to costs.

[PRAVIN S. PATIL, J.]