APHC010522512026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3604]**
(Special Original Jurisdiction)

TUESDAY, THE 13th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

WRIT PETITION NO: 28366/2026

Between:

1. KESSIREDDY RAJASEKHAR REDDY, S/O KESSIREDDY UPENDER REDDY, AGED ABOUT 44 YEARS, OCC BUSINESS, R/O 1 A, JOURNALIST COLONY, JUBILEE HILLS, SHAIKPET, HYDERABAD, TELANGANA 500 033.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATI, GUNTUR DISTRICT. 522238
2. THE CRIME INVESTIGATION DEPARTMENT, THE STATE OF ANDHRA PRADESH, POLICE HEADQUARTERS, MANGALAGIRI, GUNTUR DISTRICT, REP., BY ITS DIRECTOR GENERAL OF POLICE. 522002
3. THE DIRECTOR GENERAL OF POLICE, ANDHRA PRADESH, POLICE HEADQUARTERS, MANGALAGIRI, GUNTUR DISTRICT. 522503
4. THE ADDITIONAL SUPERINTENDENT OF POLICE, SPECIAL INVESTIGATION TEAM, C.I.D., STATE OF ANDHRA PRADESH, CAMP AT VIJAYAWADA 520001 (INVESTIGATING OFFICER IN CRIME NO. 11 OF 2026)

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toissue an appropriate order or direction more particularly one in the nature of Writ of Mandamus Declaring the Notice, dated 28.09.2026 issued by the respondent No.4 under Section 179 of the BharatiyaNagarik Suraksha Sanhita, 2023 ('BNSS') in Crime No.11 of 2026 through Whatsapp on 28.09.2026 directing me to appear before the Respondent No. 4 at the SIT Office, Vijayawada on 30.09.2026 at 10.00 a.m., eventhough he has no jurisdiction to do so without the permission of the concerned Magistrate as held by the Hon'ble Supreme Court, in Jaskaran Jeet Singh Deol v. State of Punjab, 2026 I NSC 1022 and contrary to the provisions of the Section 179 of the BharatiyaNagarik Suraksha Sanhita, 2023 as arbitrary, illegal, colourable exercise of power apart from being violative of the Fundamental Rights guaranteed to me under Articles 14, 19, 21 and 22 of the Constitution of India and consequently set aside the the Notice, dated 28.09.2026 issued by the respondent No.4 under Section 179 of the BharatiyaNagarik Suraksha Sanhita, 2023 ('BNSS') in Crime No.11 of 2026 through Whatsapp on 28.09.2026 and further direct the respondents to follow the dicta laid down in Hon'ble Supreme Court, in Jaskaran Jeet Singh Deoi v. State of Punjab, 2026 I NSC 1022

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased stay the operation of the notice dated 28.09.2026 issued by the Respondent No.4 under Section 179 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to the Petitioner in Crime No. 11 of 2026 of CID Police ^ Station, Mangalagiri, and direct the Respondents not to re-arrest or take any coercive steps against the Petitioner in Crime No. 11 of 2026 otherwise than in compliance with paragraphs 24, 25, 25.1 and 36 of the judgment of the Hon’ble Supreme Court in Jaskaran Jeet Singh Deo! v. State of Punjab, 2026 INSC 1022,

Counsel for the Petitioner:

1. B.ABHAY SIDDHANTH MOOTHA

Counsel for the Respondent(S):

1. GP FOR HOME

2. JAVVAJI SARATH CHANDRA

The Court made the following:

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

WRIT PETITION NO: 28366 OF 2026

ORDER:

This petition is filed by the petitioner/accused No.4 under Article 226 of the Constitution of India seeking a writ of mandamus to declare the notice dated 28.09.2026 issued by the respondent No.4 under Section 179 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS") in Crime No.11 of 2026 of CID Police Station, Mangalagiri, sent through WhatsApp on 28.09.2026 directing the petitioner to appear before the respondent No.4 at the SIT Office, Vijayawada, on 30.09.2026 at 10:00 a.m. as arbitrary, illegal, and a colourable exercise of power, and as violative of Articles 14, 19, 21 and 22 of the Constitution of India, and consequently to set aside the same.

2. The facts giving rise to the present litigation are that the petitioner served as an IT Advisor to the Government of Andhra Pradesh between 2019 and 2024. On 23.09.2024, the CID Police Station, Mangalagiri, registered Crime No.21 of 2024 alleging irregularities and manipulation concerning the excise policy, brand allocation, and procurement processes of the Andhra Pradesh State Beverages Corporation Limited (APSBCL) for the period between 2019 and 2024, in which the petitioner is arrayed as Accused No.1. Subsequently, the Directorate of Enforcement recorded ECIR/HYZO/33/2025 treating Crime No. 21 of 2024 as the predicate offence, and filed a Prosecution Complaint bearing P.C.S.C. No. 2962 of 2026 on 26.03.2026 before the learned Metropolitan Sessions Judge -cum-Special Judge (PMLA), Hyderabad. The petitioner was arrested in Crime No. 21 of 2024 on 21.04.2025 and remained in judicial custody for nearly twelve months until this Court granted him regular bail on 07.04.2026 in Criminal Petition No. 2235 of 2026, subject to specific conditions including appearance before the

Investigating Officer as and when required and on the second and fourth Sundays of every month.

3. While the petitioner was still in judicial custody in Crime No. 21 of 2024, the same police station registered Crime No. 11 of 2026, being a second crime on 10.02.2026 under Sections 409, 420, 468, and 471 read with Section 120-B of the IPC and Sections 111, 212, 217, and 317 of the Bharatiya Nyaya Sanhita, 2023, with offences under the Prevention of Corruption Act, 1988 added subsequently, relating to the centralised liquor transport tender awarded to M/s Sigma Supply Chain Solutions Pvt. Ltd., in which the petitioner is arrayed as Accused No. 4. The investigation was transferred to the Special Investigation Team (SIT), and the respondent No.4, Sri R. Srihari Babu, Additional Superintendent of Police, was appointed as the Investigating Officer. The petitioner has also filed Criminal Petition No. 5316 of 2026 seeking to quash Crime No. 11 of 2026 on the ground that it constitutes a second FIR on the same transaction.

4. Following his release on bail in Crime No. 21 of 2024 on 07.04.2026, the petitioner is stated to have cooperated with the investigation in Crime No. 11 of 2026. However, on 11.06.2026, the Directorate of Enforcement arrested him in a separate ECIR registered on the basis of Crime No. 11 of 2026. While he was in custody, the respondents obtained a production warrant, and the SIT took his physical custody on 20.07.2026 without furnishing the grounds of arrest in writing. The petitioner challenged the legality of the arrest and remand in Criminal Petition Nos. 6456, 6463 and 6467 of 2026. By a common order dated 13.08.2026, a coordinate Bench of this Court held that the grounds of arrest had not been furnished in writing, quashed the remand order and directed his release. The said order is under challenge before the Hon’ble Supreme Court in SLP (Crl.) Nos. 15850–15851 of 2026. No interim stay of the order has been

granted. Accordingly, the order continues to operate unless and until it is stayed or set aside by the Hon'ble Supreme Court. The pendency of the Special Leave Petitions, by itself, does not suspend its operation. This Court expresses no opinion on the merits of the challenge pending before the Hon'ble Supreme Court. The petitioner was subsequently granted regular bail in the PMLA case on 24.09.2026 by the learned Sessions Judge, Hyderabad, and was released from the Central Prison, Chanchalguda, on 25.09.2026, after depositing his passport and complying with the conditions imposed.

5. Shortly before his release, on 23.09.2026, the petitioner suffered severe pain in his left thigh and knee, prompting the prison authorities to take him to the Nizam's Institute of Medical Sciences (NIMS), Hyderabad, where scans revealed a lesion measuring approximately 2.0 x 2.7 x 5.8 cm in the left distal femur. He was advised not to travel. On 26.09.2026, a formal memo enclosing these medical reports was filed before the learned Special Judge for SPE & ACB Cases -cum-III Additional District Judge, Vijayawada, in Crime No. 21 of 2024, informing the Court and the SIT of his inability to travel for the fortnightly appearance scheduled for 27.09.2026.

6. Despite the aforesaid facts, on 28.09.2026, the respondent No.4 issued the impugned notice styled as "Order for attendance of witnesses, Notice U/s 179 BNSS (160 Cr.P.C.)" through WhatsApp, reciting that the petitioner failed to appear on 27.09.2026 pursuant to bail conditions and requiring his personal appearance at the SIT Office, Vijayawada, on 30.09.2026 at 10:00 a.m. Aggrieved by the notice, the petitioner has approached this Court under Article 226 of the Constitution of India.

7. Sri Nikhil Goel, learned senior counsel representing Sri B. Abhay Siddanth Mootha, learned counsel for the petitioner, contended that the impugned notice suffers from several legal infirmities. Firstly, Section 179 of the BNSS empowers the police to require the attendance of persons acquainted with the facts and circumstances of a case, whereas, the petitioner is arrayed as accused No.4 in Crime No.11 of 2026. It was contended that requiring an accused to attend under the guise of a witness notice would circumvent the safeguards applicable to accused persons and implicate the protection against self-incrimination under Article 20(3) of the Constitution as held by the hon'ble apex court in ***State rep. by Inspector of Police v. N.M.T Joy Immaculate***[1]. It was further contended that the notice was sent through WhatsApp, contrary to the directions of the Hon'ble Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation and Another***[2]***.*** Learned counsel also relied on ***Jaskaran Jeet Singh Deol v. State of Punjab***[3] in support of the submission that any subsequent arrest or custodial action following an arrest held unconstitutional must comply with the safeguards laid down by the Hon'ble Supreme Court. Lastly, it was submitted that the petitioner's absence on 27.09.2026 was due to medical reasons, which had been communicated to the competent court by a memo dated 26.09.2026 enclosing medical records.

8. Per contra, Sri B. Adinarayana Rao, learned senior counsel representing special public prosecutor for CID, would argue that the order passed by the coordinate bench of this court is under challenge, the Investigating Officer is empowered under Section 179 of the BNSS to require the attendance of persons connected with an investigation. It was further argued that the date fixed for appearance in the impugned notice, namely 30.09.2026, had elapsed during the

[1] 2004 (5) SCC 729
[2] (2022) 10 SCC 51
[3] 2026 INSC 1022

pendency of the writ petition and that no fresh notice had been issued. On that basis, it was contended that the challenge to the notice had become infructuous or otiose, while the investigating agency remained entitled to proceed with the investigation in accordance with law.

9. This Court has considered the submissions advanced on behalf of both sides and examined the material placed on record, in the light of the applicable statutory provisions and the relevant decisions of the Hon'ble Supreme Court.

10. The facts borne out from the record are, a case in Crime No.11 of 206 is registered of the offences under Sections 409, 420, 468, 471 r/w 120B IPC and Sections 111(1), 212, 217 and 317(1) BNS against the petitioner/accused No.4 and others alleging manipulation of the liquor transportation, tender process of APSBCL etc. Subsequently, prosecution filed memo adding offences under Sections 7, 7A, 8, 9, 10, 12, 13(1) and 13(2) of the Prevention of Corruption Act, 1988. The Enforcement Directorate arrested the petitioner in ECIR/HYZO/17/2026 on 11.06.2026. Since the petitioner was arrested by the Enforceable Directorate, prosecution filed a petition before the trial court, seeking production transit warrant and the same is allowed and accordingly, production transit warrant was issued. Consequently, petitioner/accused No.4 was taken into custody from the Central Prison, Chanchalguda and produced before the learned trial court and then, he was remanded to judicial custody. Feeling aggrieved by the said order, petitioner/accused No.4 preferred Crl.P.Nos.6463 and 6456 of 2026 along with other accused to quash the remand order dated 20.07.2026 and the same are allowed by the coordinate bench of this court *vide* order dated 13.08.2026 and feeling aggrieved by the said order, CID/respondent preferred SLP (Crl) Nos.15850-15851 of 2026 before the Hon'ble Supreme Court of India and the same is pending. The petition filed by the petitioner/accused No.1 seeking anticipatory bail in Crl.P.No.3077 of 2026 and the same is

dismissed by this court vide order dated 07.09.2026. Feeling aggrieved by the same, petitioner filed SLP (Crl) No.07121 of 2026 and the same is also dismissed vide order dated 10.09.2026**.** In the mean while, petitioner was enlarged on bail in ECIR/HYZO/17/2026 vide Bail Criminal Miscellaneous Petition No.3904 of 2026 dated 24.09.2026. Thereafter, the investigating officer issued notice dated 28.09.2026 directing the petitioner to appear on 30.09.2026.

11. Coming to the first argument, Section 179 of the BNSS starts with the heading, 'Police Officer's power to require attendance of witnesses'. As per sub-section (1) of Section 179, any Police Officer making an investigation under Chapter XIII of the BNSS may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required. The judgment relied upon by the learned senior counsel for the petitioner in ***N.M.T. Joy Immaculate*** (*supra*) was rendered by a three-Judge Bench of the Hon'ble Apex Court. One of the Hon'ble Judges in the separate judgment held that Section 160 Cr.P.C. is applicable only to the witnesses and not to the accused. It was not the opinion of the majority in the said judgment. In this regard, as rightly argued by the learner senior counsel for the respondents, it is apposite to mention that the three-Judge of the Hon'ble Apex Court in the case of ***Nandini Satpathy v. P.L. Dani and Another***[4] had an occasion to decide whether the police have power under Section 161 Cr.P.C. to question a person, who, in future, may incarnate as an accused. The three-Judge Bench of the Apex Court unanimously held as follows:

> "We hold that 'any person supposed to be acquainted with the facts and circumstances of the case' includes an accused

[4] (1978) 2 SCC 424

> person who fills that role because the police suppose him to have committed the crime and must, therefore, be familiar with the facts. The supposition may later prove a fiction but that does not repel the section. Nor does the marginal note 'examination of witnesses by police' clinch the matter. A marginal note clears ambiguity but does not control meaning. Moreover, the suppositions accused figures functionally as a witness. 'To be a witness', from a functional angle, is to impart knowledge in respect of a relevant fact, and that is precisely the purpose of questioning the accused under Section 161 Cr.P.C. The dichotomy between 'witnesses' and 'accused' used as terms of art, does not hold good here. The amendment, by Act XV of 1941, of Section 162(2) of the Cr.P.C. is a legislative acceptance of the Pakala Narayana Swamy reasoning and guards against a possible repercussion of the ruling. The appellant squarely fell within the interrogational ring. To hold otherwise is to fold up investigative exercise, since questioning suspects is desirable for detection of crime and even protection of the accused. Extreme positions may boomerang in law as in politics."

12. As regards Article 20(3) of the Constitution of India also, the three-Judge Bench of the Hon'ble Apex Court held that it has no application to examination of the accused under Section 161 of Cr.P.C. Relying on the said judgment of ***Nandini Satpathy*** (*supra*), the Madras High Court in the case of ***Pulavar B.M. Senguttuvan & Others v. The State***[5] held as follows:

> "Therefore, there is no gainsaying that either the act of the respondent is against the law or against the spirit of Article 20(3) of the Constitution of India and hence even interpreting Section 160(1) Cr.P.C. in conformity with the above constitutional provision, the conclusion that could be arrived at is 'any person' mentioned in Section 160(1) Cr.P.C. means and includes 'any accused person' and they could be summoned to appear as witnesses since such a summons issued to an accused in a case under investigation by the Investigating Officer is not at all violative of the Article 20(3) of the Constitution of India.."

[5] 2004 Cri.L.J.558

13. So, the contention relating to the bar under Article 20(3) of the Constitution of India has no legs to stand in view of the aforesaid judgment of the Hon'ble Apex Court. It does not amount to testimonial compulsion. Having regard to the aforementioned principles, this court is of the considered view that both accused persons and witnesses fall within the ambit of the expression 'any person' employed in Section 179 (1) of the BNSS. Therefore, the contention of the petitioner that the impugned notice is unsustainable on the ground that no such notice can be issued under the said provision cannot be accepted and as such, the impugned notice dated 28.09.2026 is legally sustainable.

14. Insofar as second argument of the learned senior counsel for the petitioner in respect of mode of service, the impugned notice dated 28.09.2026 is stated to have been transmitted through WhatsApp. The petitioner relies on the judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil (Supra)***, concerning service of notice under the corresponding provisions of the procedural law. Admittedly, the notice was sent to the petitioner through WhatsApp. The mode of service of notice under Section 41-A Cr.P.C/Section 35 BNSS and similarly, notices issued under Section 160 Cr.P.C/179 BNSS and Section 175 Cr.P.C/195 BNSS have come up for consideration before the Hon'ble Supreme Court in ***Satender Kumar Antil*** (*supra*). In an Order passed in Miscellaneous Application no. 2034/2022 in MA no. 1849/2021 in Special Leave Petition (Crl.)No.1591/2021, the Hon'ble Supreme Court has issued the following directions :

> "(a). All the States / UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973 / Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973 / BNSS, 2023. 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 CrPC, 1973 / Page No.# 10/12 BNSS, 2023.
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> (b). All the States / UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya [DCP] & Ors., 2021 SCC Online Del 5629 and Amandeep Singh Johar v. State [NCT Delhi], 2018 SCC Online Del 13448, both of which were upheld by this Court in Satender Kumar Antil v. CBI & Anr. [2022] 10 SCC 51.
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> (c). All the States / UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 Cr.P.C, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/ BNSS, 2023.
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> (d). All the High Courts must hold meetings of their respective Committees for 'Ensuring the Implementations of the Decisions of the Apex Court' on a monthly basis, in order to ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities. “

15. Subsequently, in another interlocutory application in I.A. No. 63691/2025 arising out of M.A.No.2034 of 2022, clarifications were sought with regard to the abovementioned directions. In response, the provisions of Section 35 of BNSS were brought to the notice of the Hon’ble Apex Court. It was observed that Section 35 of BNSS provides for the arrest of persons by the Investigating Agency, subject to the statutory safeguards including the requirement that the concerned persons appear before the investigating agency and cooperate with the investigation. Upon examining the consequences of non-compliance with a notice issued under Section 35 of BNSS, 2023, the Hon’ble Supreme Court

observed that service of such notice must be effected in a manner that safeguards are substantive right to personal liberty, as non compliance with the notice may have serious consequences for the liberty of an individual. The Hon'ble Court further noted that the Legislature had specifically excluded the notices issued under Section 35 of the BNSS, 2023 from the procedures that may be undertaken through electronic communication, as provided under Section 530 of the BNSS, 2023. While interpreting a statutory provision, the legislative intent must be ascertained from the plain and ordinary meaning of the language employed therein, keeping in view the purpose of the enactment and the objective sought to be achieved.

16. As a notice under Section 35 of BNSS could have an immediate bearing on the liberty of an individual in the event of non-compliance, it has been held that electronic communication is not a valid mode of service under Section 35 of the BNSS. Therefore, treating electronic communication as a valid mode of service of notice under Section 35 of the BNSS would be contrary to the legislative, as no such mode of service has been specifically provided for by the legislature. It has also been observed by the Hon'ble Supreme Court that the usage of electronic communication by the investigating agency has been provided for only in relation to the procedure contemplated under Sections 94 and 193 of the BNSS.

17. Section 179(1) of the BNSS provides that a person who has been served with a notice is required to attend as directed. In the absence of any specific provision in the BNSS prescribing the mode of service of notice under Section 179(1), service of such notice through WhatsApp or any other electronic mode cannot be considered a legally recognized alternative to, or substitute for, the mode of service prescribed under the BNSS. Accordingly, the impugned notice

sent through WhatsApp to the petitioner/accused No.4 is liable to be treated as an invalid.

18. As regards the third issue, the order dated 13.08.2026 passed by a coordinate Bench of this Court, declaring the petitioner's arrest and remand illegal, is under challenge before the Hon'ble Supreme Court in SLP (Crl.) Nos. 15850–15851 of 2026. As seen from the said order, Coordinate bench of this court held thus:

> "61. In view of the above precedents, which are constitutional guardrails, it can be held, without any hesitation that the order of the special judge that the detailed remand report/case record, the order of arrest, and the grounds of arrest contained in the remand order were read over to the petitioner doesn't amount to sufficient compliance and it totally violates Article 22 (1) of the Constitution of India, which attains high constitutional and legal significance."

This Court does not express any opinion on the merits of the challenge as it is pending before the Hon'ble Supreme Court.

19. As regards the fourth issue, although the date of appearance specified in the notice, namely 30.09.2026, has elapsed, the challenge raised pertains to the statutory authority invoked and the procedure adopted. The mere expiry of the date mentioned in the notice does not, by itself, answer these issues, particularly when the petitioner apprehends that the notice may be relied upon to allege non-cooperation. The record placed before this Court indicates that the petitioner's inability to appear on 30.09.2026 was attributed to medical reasons and that a representation along with relevant medical records, was submitted to the investigating officer. The investigating agency is required to consider such material in accordance with law and ought not treat the petitioner's absence as non-cooperation without duly considering the explanation offered and the supporting records. In this regard, learned senior counsel submitted that the

period specified in the notice has already elapsed and that, as of now, the investigating officer has not issued any fresh notice.

20. In these circumstances, although the date specified in the impugned notice has elapsed, this Court considers it appropriate to dispose of the writ petition by clarifying the obligations of the parties, so as to ensure that any further investigation proceeds in accordance with law and without prejudice to the petitioner's constitutional safeguards.

21. Accordingly, the writ petition is disposed of with the following findings and directions:

(i) The investigating agency can issue notice under Section 179 of BNSS to a person who is arrayed as accused.

(ii) The notice dated 28.09.2026 sent through Whatsapp is invalid and not binding on the petitioner/accused No.4.

(iii) The investigating agency shall not bypass the mandatory procedural safeguards and judicial mechanisms laid down by the Hon'ble Supreme Court and is bound to act in strict compliance with the applicable statutory provisions, constitutional safeguards and binding principles laid down by the Hon'ble Supreme Court in ***Jaskaran Jeet Singh Deol*** (supra). This direction shall not be construed as granting immunity from any lawful investigation or action taken in strict compliance with law.

(iv) If the investigating agency deems it genuinely necessary to secure the attendance or cooperation of the petitioner for the purposes of further investigation, a fresh notice shall be issued strictly in accordance with the provisions of BNSS and get it served through the formal modes prescribed under law, without resorting to informal electronic transmission through

WhatsApp. The petitioner shall fully cooperate with the ongoing investigation as and when a valid, lawful notice in accordance with law is served upon him, subject to genuine medical exigencies duly supported by contemporaneous medical evidence.

(v) There shall be no order as to costs.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

SUNITHA GANDHAM, J

13.10.2026

Vns