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Supreme Court New Guidelines on Granting Bail

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ABSTRACT

In the case of Satender Kumar Antil v. CBI & Anr, the Divisional Bench of two Judges of the Supreme Court voiced the dissatisfaction with the possibility of regular arrests as well as thought it was important to set down a few guidelines in this regard and came up with new guidelines on granting bail.

The aim of these new guidelines is preventing the unnecessary arrest of the accused person during an investigation, or before as well as after filing of the chargesheet. Furthermore, the Supreme Court outlined four categories into which criminal offences should be classified.

These guidelines also provide some constructive suggestions to prevent the accused person from getting arrested during the investigation.

I. INTRODUCTION

According to Section 173 of the Code of Criminal Procedure², an investigation is completed after the filing of the police report by the investigation agency i.e., by producing the final findings before the court. Meanwhile, if the investigation agency asserts that they have obtained enough evidence to build a prima facie case, then according to Section 170 of the Code of Criminal Procedure³ the investigation agency may request the concerned Magistrate to remand the accused in judicial custody and thereafter, for the commencement of the trial. However, the accused may not be sent to judicial custody if capable to furnish a surety with some security amount or a Personal Bond with an undertaking that that he shall appear before the court whenever required.

II. ISSUE

The main issue that the Supreme Court came across is that of unnecessary arrest of the accused person during an investigation, or before as well as after filing of the chargesheet.

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² The Code of Criminal Procedure, 1973 Legislative Department, 173

³ The Code of Criminal Procedure, 1973 Legislative Department, 170

III. ORIGIN OF THE GUIDELINES

The procedure of arresting a person for custodial reason is very simple as the accused is arrested during the investigation for further investigation. However, Section 170 of CrPC tends to create a situation of confusion when the custody of the accused is not necessary at the beginning of the investigation but is necessary after filing of the chargesheet.

The Supreme Court held in the case of *Joginder Kumar v. State of U.P.*⁴, that according to Section 170 of CrPC, a police officer is not required to arrest each and every accused when a chargesheet is filed. The Supreme Court also observed that some of the trial courts kept insisting on the arrest of the accused person as a precondition for taking the charge on record.

In August 2021, the Divisional Bench of two judges of the Supreme Court had an opportunity to interpret Section 170 of CrPC in the case of *Siddharth vs State of U.P.*⁵ [decided on 16.08.2021]. In this case, the accused was duly served with an arrest warrant for his arrest upon the completion of the investigation by the investigation agency i.e., the police, so that the final report i.e., the chargesheet could be presented before the Court. Concerned more about the objective of this provision as well as the possibility of schedule arrests which it entailed, the Supreme Court upheld the boundary of High Court decisions that interpreted Section 170 of Crpc to have a certain discretionary power. In case there is no reason to believe by the police officer that the accused will abscond, then it is not necessary to arrest the person after completing the investigation.

Thereafter, in a corresponding proceeding relating to similar facts *Satender Kumar Antil v. CBI & Anr.*⁶ the same Divisional Bench of two Judges of the Supreme Court on to a previous date voiced the dissatisfaction with the possibility of regular arrests as well as thought it was important to "set down a few guidelines in this regard". When the verdict in the case of *Siddharth vs State of U.P.* was handed down, the Supreme Court recommended the council's assistance throughout this case. Additional Solicitor General, SV Raju recommended some guidelines while discussing with the Senior Counsel, Siddharth Luthra. Thereafter, on September 14, 2021, the suggestion relating to new rules shifted from principles to "Guidelines.". This process resulted in an order dated October 7, 2021, in the case of *Satender Kumar Antil v. CBI & Anr.*, in which the Court approved these same Guidelines recommended by the counsel.

⁴ *Joginder Kumar v. State of U.P.*: 1994 AIR 1349, 1994 SCC (4) 260

⁵ *Siddharth vs State of U.P.*: SLP (CrI). No.5442/2021, LL 2021 SC 391

⁶ *Satender Kumar Antil v. CBI & Anr.*, SLP (CrI). 5191/2021

The following conditions should coexist for implementing the guidelines as prescribed in the case of *Satender Kumar Antil v. CBI & Anr.*:

- 1) That the Accused person shall not be arrested during the investigation.
- 2) That the accused person shall cooperate throughout the investigation process which also includes appearing before the investigating officer whenever called.

IV. CATEGORIES OF OFFENCES

Moreover, the Supreme Court outlined four categories into which criminal offences should be classified.

Category (A) Offences: -

Offences in category (A) are those that are punishable by a sentence of seven years or less in prison and do not fall into categories B or D. Both police and complaint cases are included in this category. For this category, the following guidelines are applicable: -

1. Summons issue at the first occurrence which also includes allowing the appearance through.
2. If on such issuing of summons the accused does not appear before the court, then the court may issue aailable warrant for physical appearance.
3. If the accused still fails to be present then NBW (Non-Bailable Warrant) may be issued by the court.
4. If an application is filed on behalf of the accused before the NBW is executed on an undertaking by the accused to appear physically on the next date/s of hearing, the NBW may be cancelled or converted into a Bailable Warrant/Summons without requiring the physical appearance of the accused.
5. Bail applications for such accused on appearance may be decided without the accused being taken into physical custody, or interim bail may be granted until the bail hearing.

Category (B) and (D) Offences: -

Offences in category (B) are those that are punishable by death, life imprisonment, or a sentence of more than 7 years in prison. Economic offences that are not covered by Special Acts fall into category (D). On the accused's appearance before the court, a bail application has to be issued and will be decided on merits.

Category (C) Offences: -

Offences in category (C) are those offences that are punishable by special acts pertaining to

strict bail provisions like Section 37 Of The Narcotic Drugs And Psychotropic Substances Act 1985⁷, Section 45 of Prevention of Money Laundering Act 2002⁸, Section 43d(5) of Unlawful Activities (Prevention) Act 1967⁹, Section 212(6) of Companies Act 2013¹⁰. The same rules apply as in Categories B and D, with the additional requirement of complying with the bail provisions under Section 37 of The Narcotic Drugs And Psychotropic Substances Act 1985, Section 45 of Prevention of Money Laundering Act 2002, Section 212(6) of Companies Act 2013, Section 43d(5) of Unlawful Activities (Prevention) Act 1967 and Protection of Children Against Sexual Offences.

The Court further decided to agree with the above suggestion that, while considering bail, the trial court is not prohibited from granting interim bail based on the accused's conduct during the investigation that did not include warrant arrest.

V. SUGGESTIONS

The court when deciding whether to grant bail or not to an accused, should begin by making an assumption that the accused person should be granted bail unless there is an appealing reason to deny it. While granting a bail to such an accused person, the court should consider these following grounds:

- 1 The court should consider and understand the nature and gravity of the offence committed by the accused person.
- 2 The court should also consider the defendant's character his/her and previous criminal record, as well as his affiliations and community ties.
- 3 The court must take into account the defendant's history of abiding to his bail conditions.
- 4 The court must check the strength of the evidence gathered against the defendant.

VI. CONCLUSION

There are general issues to be concerned about, which include understanding and interpreting the word “Cooperation” by the accused with the investigation agency as the meaning has not been defined by the Supreme Court. However, if we try to understand it, we can definitely conclude that it should be more than just appearing before the police whenever required.

But if we take an overall view upon the guidelines prescribed by the Supreme Court then we

⁷ Narcotic Drugs And Psychotropic Substances Act 1985, Legislative Department, 37

⁸ Prevention of Money Laundering Act 2002, Legislative Department, 45

⁹ Unlawful Activities (Prevention) Act 1967, Legislative Department, 43D(5)

¹⁰ Companies Act 2013, Ministry of Corporate Affairs, 212(6)

can conclude that the Court has brought these guidelines with an aim to put an end to the unnecessary arrest of the accused person during the investigation or before as well as after filing of the chargesheet.
