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# THE NIA LEGAL BULLETIN



**ISSUE 4**

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## I. SUPREME COURT ON RIGHTS OF ACCUSED IN MATTERS OF ARREST

### 1. Satender Kumar Antil v. CBI 2025 LiveLaw (SC) 112

- **Brief Facts:** The Supreme Court was monitoring compliance with its earlier directions in *Satender Kumar Antil v. CBI (2022)* regarding unnecessary arrests and bail procedures. Concerns were raised about the police serving notices under Section 41A of CrPC (Section 35 of BNSS, 2023) via WhatsApp, email, SMS, and other electronic modes, particularly citing a Standing Order issued by the DGP, Haryana. The Senior Advocate referred to previous rulings (*Rakesh Kumar v. Vijayanta Arya and Amandeep Singh Johar v. State*), upheld by the SC, which held that electronic service of such notices is not legally valid.
- **Issue(s):**
  - a) Whether police can serve notices under Section 41A CrPC (Section 35 BNSS, 2023) and similar provisions via electronic modes instead of the prescribed legal procedures?
  - b) Whether such service circumvents the statutory mandate under the CrPC/BNSS?
- **Judgment/Order:**
  - a) The Court held that notices under Sections 41A (CrPC)/35 (BNSS) cannot be served via WhatsApp or other electronic modes as these are not recognized under Chapter VI of CrPC, 1973.
  - b) It barred police from using electronic service for notices under:
    - i. Section 41A CrPC / Section 35 BNSS (Notice to accused/suspect for appearance)
    - ii. Section 160 CrPC / Section 179 BNSS (Summons for witness examination)
    - iii. Section 175 CrPC / Section 195 BNSS (Power to summon persons)
  - c) All States/UTs must issue Standing Orders directing police to follow prescribed legal service modes.
  - d) High Courts must monitor compliance monthly and ensure reports are submitted.
- **Outcome:**
  - a) Ban on electronic service of notices under the mentioned provisions.
  - b) States/UTs directed to align police practices with CrPC/BNSS mandates.
  - c) Compliance to be monitored by High Courts, with reports to be submitted by March 18, 2025.

### 2. Vihaan Kumar v. State of Haryana and Ors., MANU/SC/0161/2025

- **Brief Facts:** The appellant, charged with the offences relating to forgery, was arrested without communication of the grounds for arrest to him. But his wife was informed of the same.
- **Issue:** Whether the grounds for arrest were communicated to the appellant? Whether the procedure was followed in communicating the grounds for arrest?
- **Judgment:**
  - a) It is mandatory under Article 22(1) to inform the person arrested of the grounds of arrest;
  - b) The information of the grounds of arrest must be provided to the arrested person in writing and in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

- c) When the arrested accused alleges non-compliance with Article 22(1), the burden to prove the compliance is on the Investigating Officer/Agency;
- d) Non-compliance with Article 22(1) also violates the accused's fundamental rights guaranteed under the said Article and the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with Article 22(1) vitiates the arrest of the accused and the remand order passed by the criminal court. However, the investigation, chargesheet and trial are not vitiated. At the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1).
- e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards have been made;
- f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

- **Outcome:** The arrest of the appellant was vitiated and he was released.

### **3. Marfing Tamang @ Maaina Tamang v. State (NCT of Delhi), 2025 LiveLaw (Del) 132**

- **Brief Facts:** The petitioner, arrested for offences under the IPC and the Immoral Traffic Act, was remanded to police custody for 2 days and then to judicial custody for 14 days. He alleged that the grounds of arrest were never communicated to him until after the filing of the remand application by the IO before the Magistrate.
- **Issue:** Whether furnishing the grounds of arrest just an hour before remand hearing satisfy section 50 of CrPC?
- **Judgment/Order:**
  - a) The Delhi High Court held that the word 'forthwith' appearing in section 50 CrPC must be interpreted strictly, meaning thereby that the grounds of arrest or the grounds for arrest must be communicated to an arrestee immediately and without delay, i.e., it mandates the Arresting Officer (AO) to serve upon an arrestee the grounds of arrest simultaneously with the issuance, or as part, of the arrest memo.
  - b) The Court also observed that sufficient time must be given to an arrestee after the grounds of arrest have been served upon him in writing, to enable the arrestee to engage and confer with legal counsel, the test being that the arrestee must have meaningful opportunity to resist his remand to police custody or judicial custody.
- **Outcome:** The arrest of the petitioner is vitiated for non-compliance with the mandate of section 50 of the CrPC and Article 22(1) of the Constitution. Also, the remand order was vitiated and set aside. The arrestee was directed to be released from custody.



## II. SUPREME COURT ON THE NIA ACT, 2008

### 4. Ankush Vipin Kapoor v. National Investigation Agency, 2024 INSC 986

- **Brief Facts:** Ankush Vipin Kapoor was implicated in a case involving the smuggling of 500 kilograms of heroin from Pakistan to India, which was transported to Punjab for sale. Initially, an FIR was registered under various sections of the NDPS Act and the Arms Act. Subsequently, the NIA took over the investigation, adding charges under the UAPA (scheduled offence under the NIA Act, 2008). Kapoor was granted bail by the Punjab and Haryana High Court. The NIA sought cancellation of this bail leading to the present proceedings.
- **Issues:**
  - a) Does the NIA have the authority to investigate offenses not listed in the schedule of the NIA Act (non-scheduled offenses) if they are connected to scheduled offences?
  - b) Was the cancellation of bail granted to Kapoor justified based on the NIA's expanded investigation?
- **Judgment/Order:** The Supreme Court held that the NIA is empowered to investigate non-scheduled offenses if they are connected to scheduled offenses under the NIA Act if the Central Government has issued an order u/s 6(5) of the NIA Act, 2008, in respect of the connected offence to be investigated by the NIA as well. The Court emphasized that the connection between the scheduled offense and the non-scheduled offense must be clearly established to justify the NIA's jurisdiction over the latter.
- **Outcome:** The Supreme Court affirmed the NIA's authority to investigate non-scheduled offenses connected to scheduled offenses, and the bail previously granted to Kapoor was cancelled, and he was remanded to custody to allow the NIA to conduct a comprehensive investigation into the alleged offenses. Resultantly, the SLP was dismissed.

### III. SUPREME COURT ON CERTIFICATE FOR ELECTRONIC EVIDENCE

#### 5. Chandrabhan Sudam Sanap v. State of Maharashtra, 2025 INSC 116

- **Brief Facts:** The case involved the conviction of the appellant for multiple offenses, including murder, rape, and destruction of evidence. A key piece of evidence relied upon by the prosecution was CCTV footage showing the accused with the victim. The defense challenged the admissibility of the CCTV footage, arguing that the prosecution failed to provide a certificate under Section 65B(4) of the Indian Evidence Act, 1872, which is a mandatory requirement for admitting electronic evidence.
- **Issues:**
  - a) Whether **electronic evidence (CCTV footage) can be admitted without a valid Section 65-B certificate.**
  - b) Whether failure to provide the certificate affects the **prosecution's case** and the accused's right to a fair trial.
- **Judgment/Order:**
  - a) The Supreme Court reiterated the mandatory nature and requirement of certificate under Section 65B(4), affirming that electronic evidence cannot be admitted without the requisite certificate.
  - b) The Court referred to its rulings in *Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473* and *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020) 7 SCC 1*, which clarified that:
    - i. A Section 65B certificate must accompany electronic evidence at the time of production.
    - ii. If the certificate is not available, the trial court must ensure its production before admitting the evidence.
    - iii. Oral testimony cannot substitute for the section 65B certificate.
  - c) The Court criticized the prosecution for failing to obtain the certificate, despite being aware of the requirement, especially since they had obtained a certificate for call detail records (CDRs) but not for the CCTV footage.
- **Outcome:** The Supreme Court held that the CCTV footage was inadmissible due to the lack of compliance with Section 65B(4). The exclusion of the footage significantly weakened the prosecution's case, leading to a re-evaluation of the chain of circumstantial evidence. The judgment reinforced the principle that electronic evidence without a proper certificate cannot be relied upon in criminal trials, particularly in cases involving severe penalties such as the death sentence.



