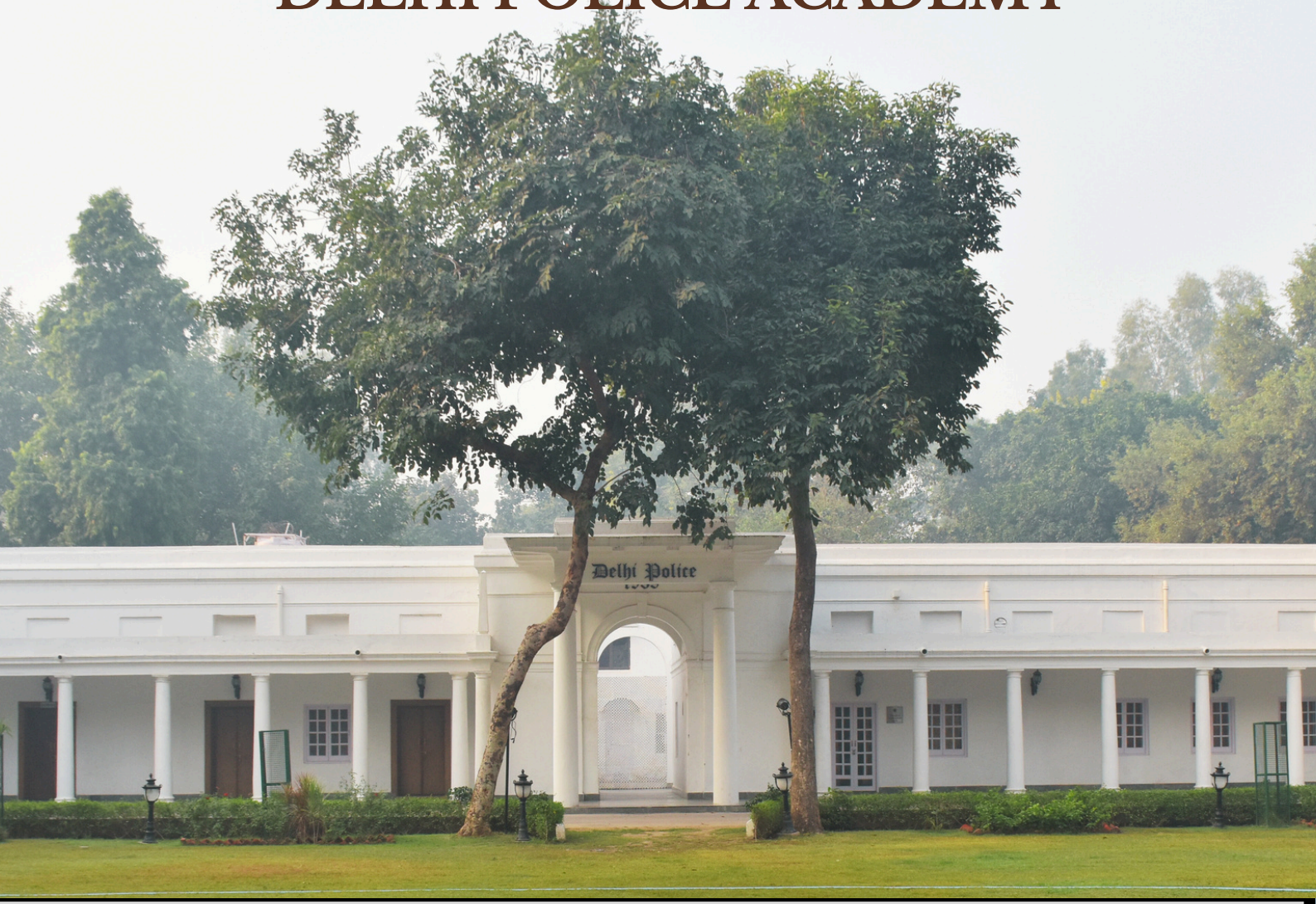
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DELHI POLICE ACADEMY



SUPREME COURT OF INDIA

SATENDER KUMAR ANTIL Petitioner(s)
VERSUS
CENTRAL BUREAU OF INVESTIGATION & ANR. Respondent(s)

Notices U/S 41A CrPC / 35 BNSS Should Not Be Served via WhatsApp or Electronic Means

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Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP(Crl) No. 5191/2021
Date of Judgement: 21/01/2025

Click here to Read the Complete Judgement

Facts of the Case:

In this case, the applicant was accused in a corruption case investigated by the CBI. Despite the investigation being completed without his arrest, a chargesheet was filed, and the court issued a summons for his appearance. Instead of appearing, the accused filed for anticipatory bail, which was rejected, and a non-bailable warrant was issued against him. The case eventually reached the Supreme Court, where the petitioner explained that, under the prevalent system in Uttar Pradesh, even if no arrest occurred during the investigation, an accused was often sent into custody upon the filing of a chargesheet. The Supreme Court found this practice unacceptable and clarified that in such cases, where no arrest had been made during the investigation and the accused cooperated with the process, arrest should not be automatic. The Court issued guidelines specifying when arrest should be avoided and emphasized that bail should be the rule, not arrest.

The Hon'ble Court issued several directions including compliance with Sections 41 and 41A of the CrPC in letter and spirit i.e. issuing notices to appear instead of making arrests for offenses punishable by imprisonment of up to seven years, provided the accused cooperates with the investigation.

The high courts were also directed to ensure the Institutional Monitoring Mechanism for compliance of the directions of the Hon'ble Supreme Court regarding expeditious disposal of bail applications. The compliance reports were sought and reviewed vide proceedings at regular intervals. On 21/01/2025, this case was listed for reviewing the compliance reports.

Issues Advanced:

Is the service of notice under Section 41-A of the Code of Criminal Procedure, 1973 (CrPC, 1973) and Section 35 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, 2023) permitted through WhatsApp or other electronic modes, or must it be made in person, as mandated by the statutes?

Judgement:

During the hearing, besides other issues, the learned Amicus **submitted and flagged off instances where notice(s) under Section 41-A of CrPC, 1973 were sent to the accused through WhatsApp, but the accused did not appear before the Investigating Officer(s). No action was taken against such erring officer(s).**

He further submitted that the Hon'ble Apex Court in Satender Kumar Antil v. CBI & Anr. (2022) 10 SCC 51, approved and upheld the judgment passed by the Delhi High Court in Rakesh Kumar v. Vijayanta Arya (DCP) & Ors. 2021 SCC Online Del 5629, wherein it was held that notice served through WhatsApp or other electronic modes is not contemplated as a mode of service under Section 41-A of CrPC, 1973 (which is now Section 35 of BNSS, 2023) since the same is not in accordance with Chapter VI of CrPC, 1973 (which is now Chapter VI of BNSS, 2023) and hence cannot be treated as a valid mode of serving notice under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023. Hence, the police machinery must not circumvent the mandate of Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 by serving notices through WhatsApp or other electronic modes, instead of following the normal mode of service. Reference is also made to Section 532 of BNSS, 2023 which states that all trials, inquiries and proceedings under BNSS, 2023 may be held in electronic mode, by use of electronic communication or use of

audio-video electronic means. Even the aforesaid section does not permit notice under Section 35 of BNSS, 2023 to be served through WhatsApp or other electronic modes.

Having heard the parties and having deliberated upon the aforesaid submissions the Hon'ble Supreme Court in furtherance of its previous directions contained in earlier orders 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 the service of notice through WhatsApp or other electronic modes cannot be considered or recognized as an alternative or substitute to the mode of service recognized and prescribed under the CrPC, 1973/BNSS, 2023.**

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.

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 of CrPC, 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.**

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.

The Registrar Generals of the respective High Courts and Chief Secretaries of all the States/UTs were directed to ensure due compliance of the aforementioned directions and submit a compliance report.