

Judgment reserved on 06.10.2026.

Judgment delivered on 26.10.2026.



A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL CANCELLATION APPLICATION No. -
362 of 2026

Arun Kumar

.....Applicant(s)

Versus

State of U.P. and 3 others

.....Opposite Party(s)

Counsel for Applicant(s)	: Ansar Ahmad, Sandhya Chaturvedi
Counsel for Opposite Party(s)	: G.A., Jeetendra Kumar Sharma

Court No. - 66

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Ansar Ahmad along with Ms Sandhya Chaturvedi, learned counsel for the applicant- first informant, Sri Jeetendra Kumar Sharma, Sri Rajrshi Gupta and Sri Nimish Dubey, learned counsel for the opposite party nos.2 to 4, Sri D.P.S. Chauhan, learned AGA for the State and Sri Jitendra Kumar Shishodia as well as Sri Ronak Chaturvedi, learned Amici Curiae and also Sri Chandan Sharma, learned counsel appearing for High Court Allahabad to assist the Court.

2. The present application has been filed to cancel the order of releasing the opposite parties no.2 to 4 on personal bond by the CJM Auraiya vide order dated 02.05.2026 in Case No.23724 of 2025 arising out of Case Crime No.692 of 2025, under Sections 85, 80(2), 115(2), 351(2) BNS and Section 3/4 D.P. Act, Police Station- Auraiya, District Auraiya.

3. This matter was heard on 23.09.2023, and on that date counsel for the applicant-first informant argued that the FIR was lodged against opposite party nos. 2, 3 and 4 under Sections 85, 80(2), 115(2), 351(2) BNS and Sections 3/4 D.P. Act. The opposite party nos. 2, 3 and 4 challenged the said FIR before this Court in Criminal Misc. Writ Petition No. 23622 of 2025, wherein this Court stayed the arrest of opposite party nos. 2 to 4 till submission of the police report. He further submitted that Opposite party nos. 2, 3, and 4 are the brother-in-law, mother-in-law, and father-in-law of the deceased, respectively. The husband of the deceased is also an accused in the aforesaid FIR and surrendered before the court and applied for bail. Subsequently, he was released on bail after the charge sheet was filed. On filing the charge sheet on 03.12.2025, cognisance was taken on 22.12.2025, and summons were issued to opposite party nos. 2 to 4. The charge sheet and summoning order were challenged before this Court by way of Application U/S 528 BNSS No.7121 of 2026. However, the Court did not grant any interim protection, and the matter remains pending. Thereafter, the Court issuedailable warrants against opposite parties No. 2 to 4 on 05.01.2026, 18.02.2026, 06.03.2026, and 22.04.2026. Thereafter, opposite parties No. 2 to 4 appeared before the court below on 02.05.2026 and filed an application to release them on personal bond in view of the judgment of the High Court in the case of **Bacchi Devi vs State of U.P. and another; 2025 SCC OnLine All 5286**, as the applicants were not arrested during investigation in view of the interim protection granted in Writ Petition No. 23622 of 2025 till submission of police report. Thereafter, the court below, relying on the judgment of **Bacchi Devi (supra)**, permitted opposite parties No. 2 to 4 to submit personal bonds of Rs. one lakh each without taking any surety, strictly relying on the judgment of **Bacchi Devi (supra)**.

4. Learned counsel for the applicant- first informant has submitted that the order impugned is absolutely erroneous and is not only contrary to provisions of law but also against the judgment of the Apex Court in the case of **Satender Kumar Antil vs Central Bureau of Investigation and another; (2022) 10 SCC 51** as well as in the case of **Musheer Alam vs State of Uttar Pradesh; 2025 SCC OnLine SC 116**. Counsel for the applicant further submitted that the judgment of **Bacchi Devi (supra)** is directly at odds with the judgment of **Satender Kumar Antil (supra)**, as well as **Musheer Alam (supra)**, and with the statutory provisions. Therefore, the judgment of **Bacchi Devi (supra)** deserves reconsideration.

5. Considering the aforesaid submissions, the matter was posted for the next date to consider the legal issue, whether the judgment of **Bacchi Devi (supra)** passed by a Co-ordinate Bench of this Court is against the law laid down in the case of **Satendra Kumar Antil (supra)** and **Musheer Alam (supra)** as well as against Sections 441 and 88 of Cr.P.C. This Court also requested Shri Jitendra Kumar Shishodia, Advocate and Sri Ronak Chaturvedi, Advocate, to assist the Court as Amicus Curiae on this legal issue. This Court, considering the importance of the legal issues involved herein, also requested Sri Chandan Sharma, learned Panel Lawyer of the High Court, to assist the Court.

6. Learned counsel for the applicant- first informant submitted that the directions in the case of **Bacchi Devi (supra)** to release mandatorily to a chargesheeted accused on personal bond, in view of judgement of the Apex Court in the case of **Musheer Alam (supra)** and **Satender Kumar Antil (supra)** if he has not been arrested during investigation, but in the case of **Satender Kumar Antil (supra)** provisions for releasing an accused, who was not arrested during investigation after filing of charge sheet, is about the offense

punishable up to seven years not in the serious offenses which are punishable more than seven years.

7. Learned counsel further submits that, for the applicant-first informant, the Apex Court in the case of **Yogendra Pal Singh Vs. Raghvendra Singh alias Prince and another; in Criminal Appeal No. of 2025 (arising out of SLP (Crl.)No.8075 of 2025)**, observed that dowry death is not merely an offence against the individual but a crime against society at large. Therefore, the Court should not lose sight of the fact that marriage in its true essence is a sacred and novel institution. No lenience should be granted while considering the bail application of such an accused involved in dowry death, thereby quashing the order of the Allahabad High Court by which the bail was granted to the accused in a dowry death case.

8. Sri D.P.S. Chauhan, learned AGA, also submitted that Section 441 Cr.P.C. (485 BNSS) gives discretion to the Magistrate or concerned Judge to release an accused by taking one or more sureties, and the higher court cannot curtail that discretion. It is further submitted that though in the case of **Bacchi Devi (supra)**, the Court has issued directions for mandatory release a person on personal bond, without any formality to apply for bail itself contrary to the judgement of the Apex Court in **Musheer Alam (supra)** case, wherein the Apex Court observed that after filing the charge sheet accused should be asked to appear before the court concerned. He should furnish bail bond to the satisfaction of the trial court. Therefore, the judgment of **Bacchi Devi (supra)**, being contrary to the mandate of the Apex Court, deserves reconsideration.

9. Sri Jitendra Kumar Shishodia, learned Amicus Curiae, has submitted that Section 88 Cr.P.C. (91 BNSS) gives the concerned court discretion to release a person on personal bond, with or

without surety, and that the higher court cannot curtail this discretion through a general direction. He has also relied upon the judgment of the Apex Court in the case of **Pankaj Jain vs Union of India and another; (2018) 5 SCC 743**, wherein the Apex Court has considered that the word ‘may’ mentioned in Section 88 of Cr.P.C. (91 of BNSS) and observed that the Section 88 Cr.P.C. (91 of BNSS) does not confer any right to a person to appear before the court to release on bond as the word ‘may’ is discretionary. The court should exercise its discretion as per the facts and circumstances of each case. He has relied on paragraphs 22 and 30 of the **Pankaj Jain (supra)** case.

10. Sri Shishodia further submitted that by the direction no.38(1) of **Bacchi Devi (supra)**, all the District Judges as well as other courts concerned have been mandatorily directed to release an accused, who appear before the trial court, on personal bond, without applying for regular bail, if he was not arrested during investigation by the police or protective order granted by the High Court under Article 226 of the Constitution of India or 528 BNSS is itself not only against Section 88 of Cr.P.C. and Section 436 Cr.P.C. but against the judgment of the Apex Court in the case of **Satender Kumar Antil (supra)**, wherein the offenses have been categorized in four categories and the Apex Court very clearly observed that in case the person is not arrested during investigation and charge sheet has been filed and in case, offense is punishable up to seven years, in that case filing a bail application by accused on his appearance, he should normally be released on bail without taking him in physical custody and all the offense punishable more than seven years imprisonment. In that case, the bail application should be decided on its merits.

11. Sri Shishodia also submits that mandatory release of an accused on personal bond is provided under Section 436 Cr.P.C. (478 BNSS) only in the case of a bailable offence. However, in non-bailable offences, Section 436 Cr.P.C. (478 BNSS) itself gives the concerned Magistrate discretion to release the accused on bail on personal bond, with or without any surety. Therefore, the High Court cannot curtail this discretion vested in the court through a judgment.

12. Sri Ronak Chaturvedi, Advocate, also submitted that Section 441 Cr.P.C. (485 BNSS) provides that the court may release a person on bail with one or more sufficient sureties. Therefore, the statutory discretion given to the concerned court cannot be curtailed by limiting its power to one surety and deleting "or more sufficient sureties." It is further submitted that there may be several conditions, even the person is not arrested during investigation by the police or because of protection granted by the High Court in case of offence of serious nature is added in the charge sheet, then the mandates of para 38(1) of **Bacchi Devi (supra)** will not apply as the same would be against the judgement of Apex Court in the case of **Sumit vs State of U.P. and another; 2026 SCC OnLine Sc 186** wherein the Apex Court had observed that if other Section is added in the charge sheet, then accused has to apply for bail in that section also.

13. Sri Chandan Sharma, learned counsel appearing for High Court, Allahabad has submitted that so far as the guideline nos.46 and 47 of **Bacchi Devi (supra)** is concerned; to modify those guidelines modification application no.1 of 2026 has been filed by the High Court on the ground that Section 485 BNSS, itself gives discretion to the Magistrate of the concerned court to release a person on bail on one or more surety and statutory provision cannot be redrafted

or modify by judicial guidelines. It was further submitted that so far as the guidelines issued in paragraph no.47 regarding issuance of Circular/Guidelines by the High Court regarding sureties and bail bond is concerned that is within the exclusive domain of High Court under Chapter III, Rule 4, Part C, paragraph no.10 of the Allahabad High Court Rules, 1952. Chapter III, Rule 4(C), paragraph no. 10 further authorizes, Hon'ble Administrative Committee of High Court to issue Circular and general letter for the guidance of subordinate court, therefore, statutory discretion vested in Administrative Committee cannot be issued through judicial guidelines. It is further submitted that this modification application is still pending before the concerned court.

14. Sri Chandan Sharma, learned counsel appearing for the High Court, Allahabad, further submitted that so far as the guidelines of paragraph no.38(i) of **Bacchi Devi (supra)** are concerned, it is also against the law laid down by the Apex Court in the case of **Satender Kumar Antil (supra)** because in **Satender Kumar Antil (supra)**, while issuing the guidelines, the offences were categorised into four categories, category A, B, C and D, but in paragraph no. 38(1) of **Bacchi Devi (supra)**, no such categorisation is mentioned, and a general direction has been issued to release the accused on personal bond irrespective of the nature of the offence, provided the accused appears before the court after filing the chargesheet. It is further submitted that as per the **Satender Kumar Antil (supra)** case, the direction for non-insistence of bail application at the stage of 170 Cr.P.C. is about the offences punishable up to 7 years and even in those cases bail can be rejected on the ground mentioned in paragraph no.2(5) at page 73 of **Satender Kumar Antil (supra)**. It is also submitted that the Apex Court, in **Satender Kumar Antil (supra)**, clearly observed that where the offence does not fall under

Category A, the accused must apply for bail, and the application should be decided on merit.

15. It was further submitted by Sri Chandan Sharma, so far as the guideline no.38 (iv) of the **Bacchi Devi (supra)** is concerned, that was in pursuance of the direction issued by the Apex Court in the case of **Gurbaksh Singh Sibbia (supra)** and **Sushila Aggarwal (supra)** but the guidelines per se are contrary to the judgement of **Gurbaksh Singh Sibbia (supra)** and **Sushila Aggarwal (supra)** wherein the Hon'ble Apex Court has also observed that normally anticipatory bail should continue till conclusion of trial but discretion was also left to the court to limit the period of protection in appropriate cases. Therefore, general direction to treat all protection orders whether in anticipatory bail or under Article 226 of the Constitution of India or u/s 528 of BNSS to continue till conclusion of trial irrespective of limited protection given by the court does not align with the judgement of the Apex Court in **Gurbaksh Singh Sibbia (supra)** and **Sushila Aggarwal (supra)**, therefore direction of 38(1) and 38(4) are per incuriam as relevant paragraphs of **Satender Kumar Antil (supra)** as well as **Gurbaksh Singh Sibbia (supra)** and **Sushila Aggarwal (supra)** were not placed before the coordinate bench by the concerned parties.

16. Learned counsel for opposite parties nos. 2 to 4 has submitted that the larger bench of the High Court has not set aside the direction in **Bacchi Devi (supra)**. The trial courts have to comply, and in the present case, the trial court also released opposite party nos. 2, 3, and 4 on personal bond as per the direction in the **Bacchi Devi (supra)** case, which is mandatory in nature; therefore, no illegality has been committed by the Court below. It is also submitted that even if the husband is released on bail, then the opposite party nos.2, 3 and 4, brother-in-law, mother-in-law and

father-in-law, need not be sent to judicial custody; therefore, they have been rightly released on personal bond. Therefore, the present cancellation application deserves rejection.

17. Sri Rajrshi Gupta, learned counsel for the first informant, submitted that the Court has discretion u/s 87 of Cr.P.C. to either issue a summons or a warrant and if the Court is of the opinion, on the appearance of the accused after filing the chargesheet his custody is required then it may exercise its discretion in the light of the judgement of **Satender Kumar Antil (supra)**. He has also submitted that, as per the guidelines of paragraph no.38(i) issued in **Bacchi Devi (supra)** case, it is observed that if, after getting a protection order during investigation, the applicant appears before the court after filing of the chargesheet in response to the summons, then the court should release him on bond with or without surety in view of Section 88 of Cr.P.C. except in exceptional circumstances. However, he clearly admitted that the direction of Section 38(1) of **Bacchi Devi (supra)** relates to cases where the accused appears in pursuance of summons. However, if the accused appears before the Court after filing of the chargesheet in pursuance of a warrant, then he has to file a bail application, and then the court can pass an order as per Section 88 of Cr.P.C. read with Section 437 C.P.C.

18. He further submitted that, regarding guideline no.38(4), it is correct that interim protection granted during investigation should continue during trial. However, as observed by the Apex Court in **Sushila Aggarwal (supra)**, in appropriate cases, the court can limit protection only up to a particular date or the chargesheet. In such cases, the accused must apply for further protection or bail before the Court.

19. Considering the submissions advanced by learned counsel for the applicant, learned Amici Curiae, and learned A.G.A., the following legal question arises for determination :

*1- Whether Direction of paragraph No. 38(i) of **Bacchi Devi (supra)** is per incuriam, being contrary to the judgments of the Hon'ble Apex Court in **Satender Kumar Antil (supra)**, **Mushir Khan (supra)**, **Sumit (supra)**, **Pankaj Jain (supra)** as well as to sections 88 and 436 of Cr.P.C. (91 and 478 of BNSS).*

*2- Whether the direction of paragraph No. 38(iv) of **Bacchi Devi (supra)** is in line with the judgment of **Gurubax Singh (supra)** and **Sushila Agarwal (supra)**.*

*3-Whether Direction of paragraph No. 46 of **Bacchi Devi (supra)** amounts to redrafting section 441 of Cr.P.C.(485 of BNSS), hence incorrect.*

20. Before proceeding to consider the aforesaid legal issue, it would be appropriate to quote Direction Nos. 38(i), 38(iv) and 46 of **Bacchi Devi (supra)**, which are reproduced as under :

*“38(i) All District Judges shall ensure that, in cases where the chargesheet has been filed without arrest-whether because custodial interrogation was not effected during investigation by Investigating Officer, or the accused had secured anticipatory bail/protective orders under Article 226 of the Constitution or Section 528 of the BNSS and duly cooperated during investigation-the trial court shall not remand the accused to judicial custody upon appearance pursuant to summons, nor insist upon filing of regular or anticipatory bail applications. The accused shall be permitted to appear and furnish a personal bond at the first instance, in terms of **Musheer Alam (supra)** and **Satender Kumar Antil (supra)**. The court may consider the requirement of surety under Section 91 BNSS subsequently, at its discretion, to ensure the accused's appearance.*

38(iv). For the sake of clarity, when the trial court encounters such anticipatory bail or protective orders under Article 226 or

*Section 528 BNSS specifying protection till the filing of the charge-sheet, or direct that “no coercive action”/“stay on arrest shall operate until filing of charge sheet”, these protections shall be deemed to continue until the conclusion of trial, in line with Gurbaksh Singh Sibbia (supra), **Sushila Aggarwal (supra)**, Sidharth (supra), **Satender Kumar Antil (supra)**, and **Musheer Alam (supra)** unless supported by with cogent reasons, making out an exceptional case. This direction aligns with the consistent position adopted by the Supreme Court, beginning with Gurbaksh Singh Sibbia (supra), affirmed in **Sushila Aggarwal (supra)**, clarified in Sidharth (supra), and reiterated in **Satender Kumar Antil (supra)** and **Musheer Alam (supra)**. A reference may be invited to paragraphs 43, 44, 46 and 47 of the order dated 11.7.2022; paragraph no. 3 of order dated 7.10.2021; paragraph no. 6 of order dated 16.12.2021; paragraph no. 4, 5 and 6 of order dated 21.3.2023; paragraph nos. 7(ii) of order dated 2.5.2023; paragraph nos. 229 to 239 of the order dated 13.2.2024; paragraph nos. 79 to 85 of the order dated 6.8.2024 passed in *Satender Kumar Antil v. CBI*, [all the orders mentioned hereinabove have been passed by Supreme Court in SLP (Crl.) No. 5191 of 2021].*

*46. Accordingly, it is hereby directed that the mandatory requirement of two sureties are dispensed with, and henceforth, (i) the accused(s)/convict(s), as the case may be, shall be released on a “**single surety**”, subject to the satisfaction of the Magistrate or the court concerned-the satisfaction shall drive from the socio-economic condition of the accused-and that the surety bond amount be fixed in accordance with the financial strength of the accused. In case, the accused(s) is unable to produce sound surety within seven days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute from para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release, besides other directions contained in order dated 31.1.2023 passed in *In Re: Policy Strategy for Grant of Bail (supra)*, and*

(ii) if the accused has been booked in multiple cases (FIRs) even across many states, the court shall forthwith release the accused-if secures bail in all cases-in the light of Girish Gandhi v. State of U.P. (supra)."

21. Direction No. 38(1) of **Bacchi Devi (supra)** mandates that if a person has not been arrested by the Investigating Officer during the course of investigation, or the accused has secured anticipatory bail or a protective order under Article 226 of the Constitution of India, he shall not be remanded to judicial custody upon his appearance pursuant to summons issued after the filing of the charge-sheet and shall be released on personal bonds without insisting upon the filing of a regular bail/anticipatory bail application. This direction applies where the charge-sheet has been filed, irrespective of whether a serious offence has been added in the charge-sheet or the offence is punishable with death, imprisonment for life, or imprisonment for a term exceeding seven years.

22. To deal with the aforesaid issue, it would be appropriate to note that the definition of 'bail' was not provided under the Cr.P.C. The Hon'ble Apex Court, in **Moti Ram v. State of M.P., (1978) 4 SCC 47**, observed that bail includes a bond with or without sureties. Paragraphs 25, 26 and 30 of Moti Ram (supra) are being quoted as under:

"25. Section 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond 'with or without sureties'. Section 441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively understood. Section 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release

with sureties will stultify the sub-section; for then, an accused released on his own bond without bail, i.e. surety, cannot be conditioned to attend at the appointed place. Section 441(2) uses the word "bail" to include "own bond" loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Section 441(1) compels a contrary meaning.

26. Section 441(2) and (3) use the word 'bail' generically because the expression is intended to cover bond with or without sureties.

30. If sureties are obligatory even for Juveniles, females, and sickly accused, while they can be dispensed with after being found guilty, if during trial, when the presence to instruct lawyers is more necessary, an accused must buy release only with sureties, while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean, viz. a generic expression used to describe judicial release from custodia juris. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both — release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables."

23. However, the definition of 'bail' has been provided under Section 2(1)(b) of the BNSS, which defines it as the release of an accused person from the custody of the law upon the imposition of conditions by an officer of the Court on a bond or bail bond. Section 2(1)(b) of the BNSS is being quoted as under :

"2. Definitions.—(1) In this Sanhita, unless the context otherwise requires,—

(b) “bail” means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond;”

24. From the aforesaid definition of bail under the BNSS, it is clear that bail means the release of a person from the custody of the law by an officer or Court, either on a bond or on a bail bond. The definition also makes clear that a person must be in custody to seek bail. Therefore, if a person is not in custody, there is no requirement to seek bail.

25. The word ‘custody’, for the purposes of Section 170 of the Cr.P.C. in the context of filing a charge-sheet, has been defined by the Hon’ble Apex Court in **Siddharth v. State of U.P., (2022) 1 SCC 677**, wherein it was observed that the word ‘custody’ appearing in Section 170 of the Cr.P.C. does not contemplate police or judicial custody but merely connotes the presentation of the accused before the Court while filing the charge-sheet. Although the word ‘custody’ is not defined in either the Cr.P.C. or the BNSS, since the present issue concerns custody after the filing of the charge-sheet, we shall confine ourselves to the meaning of custody as defined by the Hon’ble Apex Court in **Siddharth (supra)**. Though, after the enforcement of the BNSS, wherein the definition of bail has been provided, the aforesaid judgment requires reconsideration by the Hon’ble Apex Court.

26. Under the BNSS, the words ‘bail bond’ and ‘bond’ have been defined under Sections 2(1)(d) and 2(1)(e), respectively. As per Section 2(1)(d), a bail bond means an undertaking for release with surety, whereas, under Section 2(1)(e), a bond means a personal bond or an undertaking for release without surety. Therefore, under the BNSS, ‘bail bond’ refers to an undertaking for release with surety, whereas ‘bond’ refers to an undertaking for release without

surety. Sections 2(1)(d) and 2(1)(e) of the BNSS are being quoted as under:

“2. Definitions.—(1) In this Sanhita, unless the context otherwise requires,—

(d) “bail bond” means an undertaking for release with surety;

(e) “bond” means a personal bond or an undertaking for release without surety;”

27. Section 91 of the BNSS, corresponding to Section 88 of the Cr.P.C., confers discretion upon the Court, when any person appears before it, to require such person to execute a bond or bail bond for his appearance before the Court. The question that arises is whether Section 91 of the BNSS, (corresponding to Section 88 of the Cr.P.C.) is mandatory or discretionary in cases where a person appears before the Court upon receiving summons after the filing of the charge-sheet, particularly with regard to his release on a bond, with or without sureties, irrespective of the nature of the offence, without insisting upon the filing of a bail application.

28. This issue was considered by the Division Bench of the Hon’ble Apex Court in **Pankaj Jain v. Union of India, (2018) 5 SCC 743**, wherein the principal issue was whether it was obligatory for the Court to release a person by accepting a bond under Section 88 of the Cr.P.C. on the ground that he had not been arrested during the course of investigation. Paragraph 12 of **Pankaj Jain (supra)** is being quoted as under:

“12. The main issue which needs to be answered in the present appeal is as to whether it was obligatory for the Court to release the appellant by accepting the bond under Section 88 CrPC on the ground that he was not arrested during investigation or the Court has rightly exercised its jurisdiction under Section 88 in rejecting the application filed by the appellant praying for release by accepting the bond under Section 88 CrPC.”

29. The Hon'ble Apex Court, in **Pankaj Jain (supra)**, after considering the definitions of the word 'may' given by various authors, as well as the earlier judgments of the Hon'ble Apex Court, observed that ordinarily, the word 'may' implies discretion. However, where 'may' is coupled with a duty imposed on an authority or a Court, it may be construed as 'shall', thereby imposing an obligation on such authority or Court. Thereafter, the Hon'ble Apex Court observed that the word 'may' used in Section 88 of the Cr.P.C. does not confer any right upon a person appearing before the Court and, therefore, the exercise of power under the said provision is discretionary. Paragraphs 16, 22 and 30 of **Pankaj Jain (supra)** are being quoted as under:

"16. Although, ordinary use of word "may" imply discretion but when the word "may" is coupled with duty on an authority or court, it has been given meaning of shall that is an obligation on an authority or court. Whether use of the word "may" is coupled with duty is a question, which needs to be answered from the statutory scheme of a particular statute. The principles of interpretation have been laid down by Lord Cairns in Julius v. Lord Bishop of Oxford [Julius v. Lord Bishop of Oxford, (1880) LR 5 AC 214 : (1874-80) All ER Rep 43 (HL)] where Lord Cairns enunciated principles of statutory interpretation in the following words: (LR pp. 221-223, 225 & 244)

"... there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.

... where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised.

... The enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right."
22. Section 88 CrPC does not confer any right on any person who is present in a court. The discretionary power given to the court is for the purpose and object of ensuring appearance of such person in that court or to any other court into which the case may be transferred for trial. Discretion given under Section 88 to the court does not confer any right on a person who is present in the court; rather, it is the power given to the court to facilitate his appearance, which clearly indicates that use of the word "may" is discretionary and it is for the court to exercise its discretion when the situation so demands. It is further relevant to note that the word used in Section 88, "any person", has to be given a wide meaning, which may include persons who are not even accused in a case and appeared as witnesses.

30. We thus conclude that the word "may" used in Section 88 confers a discretion on the Court whether to accept a bond from an accused from a person appearing in the court or not. The both Special Judge, CBI as well as the High Court has given cogent reasons for not exercising the power under Section 88 CrPC. We do not find any infirmity in the view taken by the Special Judge, CBI as well as the High Court in coming to the conclusion that the accused was not entitled to be released on acceptance of bond under Section 88 CrPC. We thus do not find any error in the impugned judgment of the High Court."

30. The Hon'ble Apex Court, in **Pankaj Jain (supra)**, after making the aforesaid observations, further held that a person who has not

been arrested during the course of investigation must, after the filing of the charge-sheet, apply for bail before the concerned Court, and such application shall be considered by the concerned Court on its own merits. Paragraph 34 of **Pankaj Jain (supra)** is being quoted as under:

“34. There are two reasons why we are unable to accept the appellant's request to consider bail in the present proceedings. Firstly, this Court on two earlier occasions had granted liberty to the appellant to make an application for bail before the trial court, the appellant has not filed any application for bail before the trial court and had insisted on releasing him on acceptance of bond under Section 88 CrPC. Secondly, in the facts of this case, trial court is to first consider the prayer of grant of bail of the appellant. We, thus, are of the view that as and when the appellant files a bail application, the same shall be considered forthwith by the trial court taking into consideration his claim of disability and other relevant grounds which are urged or may be urged by the appellant before it.”

31. Therefore, from the ratio laid down in **Pankaj Jain (supra)**, it is clear that where a person has not been arrested during the course of investigation, he has no indefeasible right to be released on a bond upon the filing of the charge-sheet. The Court may release him on bond, with or without sureties, or require him to file a bail application, which it will decide on the merits of the case.

32. The aforesaid judgment in **Pankaj Jain (supra)** was also considered by the Hon'ble Apex Court in paragraph 37 of **Satender Kumar Antil (supra)**, without disputing the ratio laid down therein.

33. The Hon'ble Apex Court in the case of **Siddharth (supra)** has also observed that if an accused is not arrested during investigation, the Investigating Officer is not under an obligation to arrest him and produce him before the court concerned at the time of filing of the charge-sheet under Section 170 Cr.P.C. The Hon'ble Apex

Court further observed that the word “custody” mentioned in Section 170 Cr.P.C. does not contemplate either police custody or judicial custody, but simply means the presentation of the accused before the court concerned at the time of filing of the charge-sheet. Paragraphs 9 and 10 of **Siddharth (supra)** are being quoted as under:

“9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word “custody” appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary, or it is a heinous crime, or where there is a possibility of influencing the witnesses or the accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it [Joginder Kumar v. State of U.P., (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] . If arrest is made routine, it can cause incalculable harm to the reputation

and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

34. The Hon’ble Apex Court, while disposing of the case of **Siddharth (supra)**, also observed that, as the applicant had received summons after the filing of the charge-sheet by the Investigating Officer, he should appear before the court concerned. However, the Hon’ble Apex Court did not observe that the applicant would not be required to file a bail application before the court concerned. Paragraph 12 of **Siddharth (supra)** is being quoted as under:

“12. In the present case, when the appellant has joined the investigation, investigation has been completed, and he has been roped in after seven years of registration of the FIR, we can think of no reason why at this stage he must be arrested before the charge-sheet is taken on record. We may note that the learned counsel for the appellant has already stated before us that on summons being issued, the appellant will put the appearance before the trial court.”

35. The Hon’ble Apex Court, in the case of **Satender Kumar Antil (supra)**, which arose out of the rejection of the applicant’s anticipatory bail application by the Allahabad High Court in a case involving Section 120-B IPC and Section 7 of the Prevention of Corruption Act, laid down guidelines for the grant of bail. In this case, the Hon’ble Apex Court took note of cases seeking bail after the filing of the charge-sheet, irrespective of the nature of the offence.

36. The Hon’ble Apex Court categorised the offences into four categories. Category ‘A’ consisted of offences punishable with imprisonment of seven years or less, which did not fall under Categories ‘B’ and ‘D’. Category ‘B’ consisted of offences

punishable with death, imprisonment for life, or imprisonment for more than seven years. Category ‘C’ consisted of offences punishable under special Acts, whereas Category ‘D’ covered economic offences. The relevant extract of paragraph 2 of **Satender Kumar Antil (supra)** is being quoted as under:

“2. After allowing the application for intervention, an appropriate order was passed on 7-10-2021 [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153]. The same is reproduced as under : (Satender Kumar Antil case [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153], SCC pp. 774-76, paras 2-11)

“2. We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior Counsel, and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

‘Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called. (No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc. '

4. Needless to say that Category A deals with both police cases and complaint cases.

*5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that **where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.***

37. The Hon'ble Apex Court, in paragraph 2 of **Satender Kumar Antil (supra)**, clearly observed that the guidelines would be applicable **where no arrest had been made during the investigation and the accused had cooperated with the investigation**. In such cases, after filing the charge-sheet, the accused's bail application, upon his appearance before the concerned court, may be decided without taking him into physical custody.

38. Therefore, if a person accused of an offence punishable with imprisonment of up to seven years was not arrested during the investigation, then, after the filing of the charge-sheet, he should not be arrested merely on that account. When he appears before the court concerned, he should ordinarily be released on bail, after considering his bail application, without being taken into physical custody.

39. However, an exception has also been provided in paragraph 2(5) of **Satender Kumar Antil (supra)**, wherein a bail application filed after the charge-sheet in an offence punishable with imprisonment of up to seven years may be rejected if the accused has not cooperated with the investigation, has not appeared before the Investigating Officer, has not responded to summons, or if the

court concerned considers that the accused's judicial custody is necessary for the completion of the trial, including where a possible recovery is required.

40. This Court has already considered the ratio laid down in **Satender Kumar Antil (supra)** in Krishna Alias Kishna v. State of U.P., 2025:AHC:197269. In the said judgment, this Court also considered the exceptions carved out in **Satender Kumar Antil (supra)**, namely, the circumstances under which a bail application in respect of an offence punishable with imprisonment of up to seven years may also be rejected. Paragraph 12 of Krishna Alias Kishna is being quoted hereinbelow:

“12. The Hon’ble Apex Court further stated that the guidelines for considering bail do not apply in all cases. A bail application may be rejected if the accused has not cooperated during the investigation. Additionally, if the court believes that judicial custody of the accused is necessary for the completion of the trial, or if further investigation or potential recovery is needed, the bail may also be denied. Paragraph No.5 of Satender Kumar Antil vs Central Bureau of Investigation and another, (2021) 10 SCC 773 is being quoted as under:-

“5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.”

41. The Hon’ble Apex Court, in the case of **Satender Kumar Antil (supra)**, further observed that, in cases falling under Categories ‘B’ and ‘D’, when the accused appears before the court concerned after

the filing of the charge-sheet in pursuance of the process issued by the court, his bail application shall be decided on merits.

42. Therefore, the ratio of Satender Kumar Antil (supra) is clear that when the charge-sheet has been filed without arresting an accused, the police should not arrest him merely because the charge-sheet has been filed, in view of the judgment in Siddharth (supra). However, upon the appearance of the accused before the court in an offence punishable with imprisonment of up to seven years, he may be released on a bail bond or personal bond under Section 88 Cr.P.C.(sec 91 of BNSS), without insisting upon a bail application and without taking him into custody, subject to the exceptions laid down by the Hon’ble Apex Court.

43. However, in cases involving offences punishable with imprisonment for more than seven years or economic offences, the court shall consider the bail application of the accused on merits when he appears before it after the filing of the charge-sheet. Paragraphs 43 and 85 of Satender Kumar Antil (supra) are being quoted as under:

“43. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423] This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can

fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.

Categories A & B

85. We have already dealt with the relevant provisions which would take care of Categories A and B. At the cost of repetition, we wish to state that, in Category A, one would expect a better exercise of discretion on the part of the court in favour of the accused. Coming to Category B, these cases will have to be dealt with on a case-to-case basis again keeping in view the general principle of law and the provisions, as discussed by us.”

44. In view of the above-quoted paragraphs of Satender Kumar Antil (supra), it is clear that Guideline No. 100.5 of Satender Kumar Antil (supra), regarding non-insistence upon a bail application while considering an application under Sections 88, 170, 204 and 209 Cr.P.C., relates to offences punishable with imprisonment of up to seven years. In cases involving offences punishable with imprisonment for more than seven years, the court has discretion to decide the matter on a case-to-case basis, as observed in paragraph 85 of the judgment.

45. The Hon'ble Apex Court, in the case of Musheer Alam (supra), has also observed that when a person is not arrested during investigation, and the charge-sheet is filed, the accused should be

asked to appear before the court to furnish bail to the satisfaction of the trial court. In view of the judgment in **Satender Kumar Antil (supra)**, in cases involving offences punishable with imprisonment of up to seven years, an accused may be released on a personal bond or a bail bond (bond with surety), except in the circumstances mentioned in paragraph 2(5) of **Satender Kumar Antil (supra)**. Paragraph 9 of **Musheer Alam (supra)** is being quoted as under:

*“9. We are of the view that once the investigation is over and the charge-sheet is filed then the accused should be asked to appear before the Court concerned and should **furnish bail to the satisfaction of the trial court.**”*

46. The Hon’ble Apex Court, in the case of **Sumit (supra)**, considered the issue of whether the protection granted by an anticipatory bail order during investigation would continue after the filing of the charge-sheet and the issuance of summons by the court concerned upon taking cognizance. The Hon’ble Apex Court observed that such protection would continue even after the filing of the charge-sheet. However, where the court granting anticipatory bail had limited the protection for special reasons, such limitation would not continue to operate even after the filing of the charge-sheet, and the accused would be required to appear before the trial court and furnish fresh bail bonds (bond with surety).

47. It was further observed by the Hon’ble Apex Court in **Sumit (supra)** that, where an offence of a serious nature is added in the charge-sheet, the accused who is on anticipatory bail should surrender before the court and apply for bail in respect of the newly added cognizable and non-bailable offence. However, the police cannot arrest the accused under the added sections without an order of the court which granted bail. Paragraphs 29 and 34 of **Sumit (supra)** are being quoted as under :

“29. Once the appellant is released by the Investigating Officer, he shall thereafter appear before the Trial Court and furnish fresh bail bond.

34. In such circumstances referred to above, we arrive at the following conclusions in respect of a circumstance whereafter the grant of bail to an accused, further cognizable and non-bailable offences are added:—

(i) The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In the event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the court under Sections 437(5) or 439(2) of Cr. P.C. respectively for arrest of the accused and his custody.

(iii) The Court, in exercise of its power under Sections 437(5) or 439(2) of Cr. P.C. respectively, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of its power under Section 437(5) as well as Section 439(2) respectively can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the Court which had granted the bail.”

48. It is clear that the issue of releasing a person on a bond, with or without surety, under Section 88 Cr.P.C. was considered by the Division Bench of the Hon’ble Apex Court in **Pankaj Jain (supra)**, wherein it was observed that such release is within the discretion of the court and does not confer any right upon the accused appearing

before it. The said judgment continues to hold the field and was also referred to in the Division Bench judgment in **Satender Kumar Antil (supra)**. The law is well settled, as per para 35 of **Union Territory of Ladakh v. Jammu and Kashmir National Conference (2024) 18SCC 643**, that where two contradictory judgments are delivered by Benches of the same strength, the earlier judgment is to be followed.

49. Therefore, the ratio laid down in **Pankaj Jain (supra)** is still required to be followed. A conjoint reading of the judgments in **Pankaj Jain (supra)**, **Satender Kumar Antil (supra)**, **Musheer Alam (supra)** and **Sumit (supra)** makes it clear that, after the filing of the charge-sheet, if the accused appears before the court concerned, the court may ordinarily release him on a bond, with or without surety, under Section 88 Cr.P.C., in cases involving offences punishable with imprisonment of up to seven years. However, even in such cases, the court may reject the accused's bail application in the exceptional circumstances mentioned in paragraph 2(5) of **Satender Kumar Antil (supra)**.

50. However, where a section providing punishment with imprisonment for more than seven years is added in the charge-sheet, the accused has to apply for bail in respect of the added offence by appearing before the court below. Further, in cases involving offences punishable with imprisonment for more than seven years, including those falling under Categories 'B', 'C' and 'D' of **Satender Kumar Antil (supra)**, the court concerned shall consider the bail application filed after the charge-sheet on its merits.

51. Therefore, Direction No. 38(i) of **Bacchi Devi (supra)**, insofar as it provides for the mandatory release of an accused appearing before the court even in cases involving offences punishable with

imprisonment of up to seven years, appears to be contrary to the judgments of the Hon'ble Apex Court in **Pankaj Jain (supra)**, **Satender Kumar Antil (supra)**, **Musheer Alam (supra)** and **Sumit (supra)**, because the discretion to release an accused on a bond, with or without surety, has been left to the court concerned. Paragraph 2(5) of **Satender Kumar Antil (supra)** also recognises an exception permitting rejection of bail, even in cases involving offences punishable with imprisonment of up to seven years. For offences punishable with imprisonment for more than seven years, **Satender Kumar Antil (supra)** lays down clear guidelines for cases falling under the relevant categories.

52. As the Judgement of Apex court in case of **Pankaj Jain (supra)** as well as relevant paragraphs of **Satendra Kumar Antil (supra)** were not brought to notice of co-ordinate bench at the time of hearing of **Bacchi Devi 's case** and also considering the ratio of recent judgement of the apex court in the case of **Sumit (supra)** this court with great respect to co-ordinate bench disagrees with the direction of para 38(i) of **Bacchi Devi's case (supra)** . There is a need for reconsideration by the larger bench.

53. Before proceeding to consider the second question, it is also apposite to mention that even as per the direction in Paragraph-38(1) of *Bacchi Devi (supra)*, the benefit of the direction is available only to an accused who appears before the Court upon receiving summons after the filing of the charge-sheet, and not to an accused who appears after the issuance of warrants.

54. So far as Direction No. 38(4), regarding the continuation of protection once granted during investigation, either by way of anticipatory bail or in a writ petition under Article 226 of the Constitution of India, is concerned, the question arises whether

such protection should automatically continue even after the filing of the charge-sheet.

55. The Hon'ble Apex Court, in **Gurbaksh Singh Sibbia and Others v. State of Punjab, (1980) 2 SCC 565**, observed that the normal rule of Anticipatory bail is not to limit the operation of an order granting protection to a particular period of time. However, in appropriate cases, the court has discretion to limit the period of protection when granting it. Paragraphs 33 and 43 of **Gurbaksh Singh Sibbia (supra)** are being quoted as under:

“33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, “the legislature in its wisdom” has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.

43. During the last couple of years this Court, while dealing with appeals against orders passed by various High Courts, has granted anticipatory bail to many a person by imposing conditions set out in Section 438(2) (i), (ii) and (iii). The court has, in addition, directed in most of those cases that (a) the applicant should surrender himself to the police for a brief period if a discovery is to be made under Section 27 of the

Evidence Act or that he should be deemed to have surrendered himself if such a discovery is to be made. In certain exceptional cases, the court has, in view of the material placed before it, directed that the order of anticipatory bail will remain in operation only for a week or so until after the filing of the FIR in respect of matters covered by the order. These orders, on the whole, have worked satisfactorily, causing the least inconvenience to the individuals concerned and least interference with the investigational rights of the police. The court has attempted through those orders to strike a balance between the individual's right to personal freedom and the investigational rights of the police. The appellants who were refused anticipatory bail by various courts have long since been released by this Court under Section 438(1) of the Code."

56. Similarly, the Hon'ble Apex Court, in the case of **Sushila Agarwal (supra)**, again observed that, ordinarily, while granting anticipatory bail under Section 438 Cr.P.C., protection should not be limited to a fixed period. However, in view of the specific facts and circumstances of a case, the court may limit the duration of anticipatory bail in special or peculiar circumstances. Paragraphs 91.1 and 91.2 of **Sushila Agarwal (supra)** are being quoted as under:

"91.1. Regarding Question 1, this Court holds that the protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.

91.2. As regards the second question referred to this Court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can

continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.”

57. From the above-quoted paragraphs of **Gurbaksh Singh Sibbia (supra)** and **Sushila Agarwal (supra)**, it is clear that protection granted under Section 438 Cr.P.C. should ordinarily not be limited to a particular period, such as the filing of the charge-sheet. However, the court granting anticipatory bail may limit the period of protection in special or peculiar circumstances.

58. However, it needs to be clarified that the protection under Article 226 of the Constitution of India or Section 528 BNSS is granted in exercise of special powers, which cannot be limited by the High Court through a general guideline passed on the judicial side. Therefore, protection, no coercive measure, or stay against arrest granted under Article 226 of the Constitution of India or Section 528 BNSS can be limited up to a particular date or stage by the Court, as per its discretion, considering the facts and circumstances of the case. one more reason for holding the above is that power of court under article 226 of constitution of India and section 528 BNSS (482 Cr.P.C) were not subject matter of consideration in Gurubaksh Singh Sibbia and Sushila Agarwal’s case.

59. Therefore, where the court, for reasons to be recorded, consciously limits the protection granted in an anticipatory bail to a fixed period or until the filing of the charge-sheet, such protection cannot be deemed to continue automatically until the conclusion of the trial. The statutory discretion vested in a court/Magistrate cannot be curtailed by the higher court through a general direction in a judicial order. If a person is aggrieved by the period of protection specified in an order, he may challenge it before a higher

court or seek modification of the order before the court that passed it.

60. Therefore, with great respect to the co-ordinate bench, this court disagrees with Direction No. 38(4) of *Bacchi Devi (supra)* for the reason that it does not appear to be in consonance with the judgments of the Hon'ble Apex Court in *Gurbaksh Singh Sibbia (supra)* and *Sushila Agarwal (supra)*. Accordingly, the said direction deserves reconsideration by a Larger Bench.

61. So far as the direction of paragraph No. 46, regarding the mandatory release of an accused by dispensing with the requirement of two sureties and making it mandatory to release an accused on a single surety, irrespective of the nature of the offence, is concerned, Section 441 Cr.P.C. confers discretion upon the court concerned or the police officer to release a person on bail upon furnishing one or more sufficient sureties. The statute cannot be read down by a general direction.

62. The Hon'ble Apex Court, in *Saregama India Limited v. Next Radio Limited*, Civil Appeal Nos. 5985–5987 of 2021, observed that redrafting a statutory provision through a judicial order is unwarranted. It was further observed that a court, while exercising the power of judicial review, cannot supplant the terms of a statutory provision through judicial interpretation by rewriting the statutory language. Paragraph 21 of *Saregama India Limited (supra)* is being quoted as under:

“21. It is a settled principle of law that when the words of a statute are clear and unambiguous, it is not permissible for the court to read words into the statute. A Constitution Bench of this Court in Padma Sundara Rao v. State of T.N. [Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533] has observed : (SCC p. 542, paras 12 & 14)

“12. ... the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.”

63. Similarly, in **TGN Kumar v. State of Kerala and Others, (2011) 2 SCC 772**, the Hon’ble Supreme Court observed that a Magistrate's discretion cannot be circumscribed by laying down any general direction in that regard. Paragraph 11 of **TGN Kumar (supra)** is being quoted as under:

“11. In the light of the aforeextracted legal principles, the impugned order is clearly erroneous inasmuch as the discretion of the Magistrate under Section 205 of the Code cannot be circumscribed by laying down any general directions in that behalf. In Manoj Narain Agrawal v. Shashi Agrawal [(2009) 6 SCC 385 : (2009) 2 SCC (Cri) 1096] this Court, while observing that the High Court cannot lay down directions for the exercise of discretion by the Magistrate under Section 205 of the Code, had echoed the following views: (SCC p. 397, para 42)

“42. ... Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the learned Magistrate. We are sure

that the Magistrate would exercise his jurisdiction in a fair and judicious manner.”

64. In view of the above discussion, it is clear **that the statutory discretion conferred upon the Magistrate, or any court or the police officer regarding the acceptance of one or more sureties cannot be taken away by a judicial order.** Therefore, it appears that, at the time of hearing **Bacchi Devi (supra)**, the provisions of Section 441 Cr.P.C., as well as the above-mentioned judgments, which recognise the statutory discretion of the Magistrate, the court concerned or the police officer to require one or more sureties, having regard to the nature of the offence, were not placed before the co-ordinate bench.

65. Therefore, with great respect to the coordinate Bench which decided **Bacchi Devi (supra)**, this Court observed that the direction dispensing with the requirement of two sureties, as contemplated under Section 441 Cr.P.C. (485 of BNSS), amounts to rewriting the statute through a judicial order, which is not permissible in law. Accordingly, as this Court respectfully disagrees, this direction also requires reconsideration by a Larger Bench.

66. In view of the above disagreement of this Court, the matter is referred to a Larger Bench for consideration of the correctness of Direction Nos. 38(i), 38(iv) and 46 of **Bacchi Devi (supra)**. The matter shall be placed before the Hon’ble Chief Justice for constituting an appropriate Larger Bench to consider the correctness of the aforesaid directions.

67. Let a copy of this order be placed before the **Hon’ble Chief Justice** by the **Registrar (Listing)** within three days.

68. This matter be listed after receipt of the answer to the reference from the Larger Bench.

69. This Court also appreciates the valuable assistance rendered by the Amici Curiae, Mr. Jitendra Kumar Shishodia, Advocate, and Mr. Ronak Chaturvedi, Advocate, as well as Mr. Chandan Sharma, panel lawyer for the High Court of Allahabad.

(Arun Kumar Singh Deshwal,J.)

October 26, 2026

SA/A.Kr./S.C.