

## White-Collar Crime & Corporate Investigations Monthly Newsletter

### BHARATIYA NAGARIK SURAKSHA SANHITA

#### **NOTICE UNDER SECTION 35(3) OF BNSS IS MANDATORY FOR OFFENCES UP TO 7 YEARS AND ARREST MUST ONLY BE MADE FOR REASONS DULY RECORDED**

The **Supreme Court** held that issuance of a notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), requiring a person to appear before a police officer in cases where arrest is not warranted under Section 35(1), is mandatory in respect of offences punishable with imprisonment of up to seven years. However, the Court clarified that a police officer may still proceed to arrest, where based on a complaint, information, or suspicion, the police officer believes that the person has committed an offence and that such an arrest is necessary, provided conditions stipulated under Sections 35(1)(b)(i) and (ii) are met, and reasons for such arrest are duly recorded. Further, a person may also be arrested where a person fails to comply with a notice issued under Section 35(3) under Section 35(6). However, this is an exception, and the police officer may proceed with arrest only if there exist sufficient materials or factors justifying arrest, particularly where such materials were not available at the time when the notice was originally issued.

[Satyendra Kumar Antil v. CBI](#)

#### **ANTICIPATORY BAIL ONCE GRANTED DOES NOT EXPIRE UPON FILING OF CHARGE-SHEET UNLESS THERE IS A CHANGE OF CIRCUMSTANCE**

The **Supreme Court** while setting aside an order rejecting anticipatory bail, reiterated that it is a settled position of law that the filing of a charge sheet, the taking of cognizance, or the issuance of summons does not, by itself, result in the termination of the protection granted by a court. In this regard, the Court relied on *Sushila Aggarwal & Ors. v. State (NCT of Delhi) & Anr.*, (2020) 5 SCC, *Md. Asfak Alam v. State of Jharkhand and Another*, 2023 SCC OnLine SC 892 and *Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011)1 SCC 694. The Court further clarified that if there is a change in circumstances, the investigating agency may seek modification or cancellation of bail in accordance with the provisions of the BNSS. The Court also clarified the position where, after bail is granted and the investigation is completed, additional cognizable and non-bailable offences are added. In such circumstances, the accused can surrender before the court and seek bail for additional offences; if bail is rejected, the accused may be arrested. In a case where the

accused has already been granted bail, the investigating agency in such a scenario, cannot arrest the accused solely based on the addition of new offences. Instead, it must obtain an order from the Court that granted the original bail for effecting such an arrest.

[Sumit v. State of Uttar Pradesh & Anr.](#)

#### **MAGISTRATE MUST RECORD REASONS BASED ON EVIDENCE BEFORE COMMITTING THE CASE TO SESSIONS COURT**

The **Bombay High Court** held that a Magistrate who is empowered to inflict punishment up to 7 years cannot mechanically commit the case to the Court of Sessions because the offence alleged against the accused prescribes a higher punishment (here it was up to life imprisonment). The Court observed that before committing the case, the Magistrate is required to form his opinion based on the facts and circumstances and the role attributed to the accused in the offence, before concluding why the accused is to be inflicted maximum punishment. It was further observed that under Section 323 of Code of Criminal Procedure, 1973 (“CrPC”) (which provides the procedure when matter should be committed), it is essential for the Magistrate to discuss the evidence before formulating the opinion of guilt and committing the case. The Magistrate is required to follow the same procedure as under Section 325 of CrPC, which provides the procedure for Magistrate to submit the case to Chief Magistrate where Magistrate cannot pass sentence sufficiently severe.

[Mohammed Javed Abdul Wahab v. State of Maharashtra](#)

#### **SC HOLDS THAT BAIL PRINCIPLES FOR HEINOUS CRIMES APPLY EQUALLY TO SERIOUS ECONOMIC OFFENCES**

The **Supreme Court** while setting aside the High Court’s order granting bail in a cheating and forgery case held that factors such as likelihood of offences being repeated, danger of justice being thwarted, potential threat to life and liberty of witnesses and economic well-being of the society are factors that must necessarily be considered while granting bail in serious economic offences. The Court observed that the accused in this case was a habitual offender with a number of diverse and unconnected aliases, fake ids and deliberate change of identity. There were multiple FIRs against him, which demonstrated that he was a menace to the society. Further, the High Court had mechanically granted bail on

parity without examining the accused's criminal antecedents. The Court held that parity cannot be applied alone and each accused's role and conduct must be independently assessed for granting bail.

[Rakesh Mittal v. Ajay Pal Gupta, alias Sonu Chaudhary & Anr.](#)

**HC HOLDS ADDING ACCUSED UNDER SECTION 319 CRPC REQUIRES EVIDENCE CAPABLE OF LEADING TO CONVICTION**

The **Bombay High Court** set aside the order invoking the power under Section 319 of the CrPC, adding the petitioner as accused in the trial. Relying upon *Hardeep Singh v. State of Punjab & Ors.*, AIR 2014 SC 1400, and *Hetram @ Babli v. State of Rajasthan*, the Court held that the power under Section 319 CrPC is extraordinary and the standard required to be applied while dealing with an application under this section is higher than the mere existence of a *prima facie* case, as is required at the stage of framing of charge. The High Court further held that the Court must determine whether the evidence on record, if left un rebutted, would be sufficient to lead to the conviction of the proposed accused and record its satisfaction in those terms. If such satisfaction cannot be arrived at on the basis of the material on record, the Court is

ought to refrain from exercising powers under Section 319 CrPC.

[Rukminibai Vishnu Karad & Ors. v. State of Maharashtra & Anr.](#)

**HC HOLDS THAT A PRIVATE COMPLAINT CANNOT BE RETURNED MERELY FOR WANT OF THE ACCUSED'S POSTAL ADDRESS**

The **Kerala High Court** held that a Magistrate cannot return or refuse to entertain a private complaint merely because the postal address of the accused is not furnished. The Court observed that the BNSS permits complaints even against unknown persons and does not prescribe the furnishing of a postal address as a condition precedent for filing a complaint. It noted that in cyber offences, offenders often operate through pseudonymous or partially disclosed identities, making it impossible to locate their postal addresses and insisting for postal address at the threshold would leave the victim remediless.

[Anagh v. State of Kerala & Ors.](#)

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## White-Collar Crime and Corporate Investigations Practice

We have a skilled team specialized in criminal law, corporate/ transactional law, Intellectual Property and technology law, with considerable experience in criminal defence and regulatory enforcement.

Our knowledge of the enforcement landscape and understanding of the approach employed by regulators and investigating agencies enables us to anticipate the litigation trajectory and take steps to avoid/mitigate liability where possible.

The WCC team also works closely with the larger litigation practice to combat the substantial civil litigation risks that often accompany criminal and regulatory issues.

### Competencies

Our subject matter competencies include the following:

- Fraud and Business Crime
- Money Laundering and FEMA
- Anti-Bribery, Anti-Corruption, and Investigations
- Securities Fraud
- Data Protection and Cyber Security
- Licensing Control
- Sanctions

### Agencies/Authorities

We have represented clients before the following agencies:

- Directorate of Enforcement (ED)
- Central Bureau of Investigations (CBI)
- Serious Fraud Investigation Office (SFIO)
- Crime Branch/ Economic Offence Wing (EOW)
- Police Cyber Units
- Adjudicating Authorities and Appellate Tribunals under PMLA
- State Adjudicating Authorities (appointed under the Information Technology Act, 2000)
- Securities and Exchange Board of India (SEBI)
- Reserve Bank of India (RBI)
- Directorate of Revenue Intelligence (DRI)

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