

# The latest guidelines on arrests and bail orders

Why have fresh provisions been issued by the Supreme Court? What are the directions ordered with respect to undertrial prisoners?

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**The story so far:** On July 11, a division bench of the Supreme Court of India in *Satender Kumar Antil vs CBI* laid down fresh guidelines on arrests in order to have strict compliance with the provisions of Section 41 and 41A of the Code of Criminal Procedure, 1973. These guidelines are in addition to the earlier ones which the apex court had already laid down in the case of *Armesh Kumar vs State of Bihar* (2014). The Court in the present case has also emphasised upon separate legislation on the law relating to bail and has also issued specific directions in this regard. On July 16, even the Chief Justice of India (CJI) cautioned against “hasty and indiscriminate arrests”. He further commented on the delay in bails and the plight of undertrial prisoners.

## How is a person arrested?

Arrest in its simplest form is defined as, “when one is taken and restrained from his liberty”. The police has wide powers to arrest under the Code of Criminal Procedure, 1973. In the *Joginder Kumar* (1994) verdict, the Court had stated that

“arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person”. Further, in the case of *Armesh Kumar*, the apex Court had rightly observed that “arrest brings humiliation, curtails freedom and cast scars forever”. In recent times, there have been several controversies regarding the arrest and subsequent bail of accused persons.

With regard to the *Satender Kumar Antil* case, the Court has issued specific directions and has also called for a compliance report. The Court said that the investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A and the directions issued in the *Armesh Kumar* case.

## What are Sections 41 and 41A of the Code of Criminal Procedure?

Section 41 of the Code provides for the circumstances in which arrest can be made by the police without a warrant and mandates for reasons to be recorded in writing for every arrest and non-arrest. Section 41A of the Code provides for the requirement of a notice to be sent by the investigating agencies before making an arrest in certain conditions prescribed by



the Code. The Court stated that any dereliction on the part of the agencies has to be brought to the notice of the higher authorities by the court followed by appropriate action. The Bench further said that the courts will have to satisfy themselves on the compliance of Section 41 and 41A. Any non-compliance would entitle the accused for grant of bail.

## What are the guidelines with respect to bail?

Regarding bail, the Court has made a specific observation in the form of an obiter that the Government of India may

consider the introduction of a separate enactment, in the nature of a Bail Act, so as to streamline the grant of bails.

As part of the new guidelines, it is clearly stated that there need not be any insistence on a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code. The Court said that “there needs to be a strict compliance of the mandate laid down in the judgment of this court in *Siddharth*” (*Siddharth vs State of U.P.*, 2021). It is a clear direction of the Court that bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise – the exception being an intervening application. The Court also said that “applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application”.

## What steps need to be taken for compliance of these orders?

The State and Central governments will have to comply with the directions issued by the Court from time to time with respect to the constitution of special courts. The High Court in consultation with the State governments will have to

undertake an exercise on the need for special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously. The CJI has also raised the issue of vacant positions and infrastructural requirements in the judiciary.

## What about undertrial prisoners?

The High Courts have been directed by the apex court to identify undertrial prisoners who cannot comply with bail conditions. After doing so, appropriate action will have to be taken in the light of Section 440 of the Code, facilitating their release. Under Section 440, the amount of bond shall not be excessive, and high courts and sessions courts may reduce the amount prescribed by the magistrate or a police officer. An exercise will have to be done similarly to comply with the mandate of Section 436A of the Code, under which a person imprisoned during investigation or trial shall be released on bail on completion of half of the jail term prescribed for that offence.

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## THE GIST

■ A division bench of the Supreme Court in *Satender Kumar Antil vs CBI* has laid down fresh guidelines on arrests in order to have strict compliance of the provisions of Section 41 and 41A of the Code of Criminal Procedure, 1973.

■ Section 41 provides for the circumstances in which arrest can be made by the police without a warrant. Section 41A provides for the requirement of a notice to be sent by the investigating agencies before making an arrest in certain conditions.

■ The High Courts have also been directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with bail conditions.