ITEM NO.7 COURT NO.2 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Miscellaneous Application No. 2034/2022 in MA 1849/2021 in SLP(Crl) No. 5191/2021

SATENDER KUMAR ANTIL Petitioner(s)

VERSUS

CENTRAL BUREAU OF INVESTIGATION & ANR. Respondent(s)

(Mr. V.N. Raghupathy, Advocate for High Court of Karnataka; Mr. Tapesh Kumar Singh, Advocate for High Court of Jharkhand; Mr. P.I. Jose, Advocate for Gauhati High Court; Mr. Arjun Garg, Advocate for High Court of Madhya Pradesh; Mr. Amit Gupta, Advocate for High Court of Delhi; Mr. Sanjai Kumar Pathak, Advocate for High Court of Meghalaya; Mr. Sibo Sankar Mishra, Advocate for High Court of Orissa,Mr. Abhimanyu Tewari, Advocate for State of Arunachal Pradesh, Mr.Somanadri Gaud Katam, Advocate for High Court of Telengana; Mr. Aaditya A. Pande, Advocate for the State of Maharashtra; Mr. Ankur Prakash, Advocate for the State of Uttarakhand; M/s Arputham Aruna, Mr. Debojit Borkakati, Advocate for the State of Assam, Mr. S.N.Terdol, Advocate for the State of Ladakh,Mr. Avijit Mani Tripathi, Advocate for the State of Meghalaya, Mr. Manish Kumar, Advocate for the State of Bihar,Mr. Mahfooz A.Nazki, Advocate for the State of Andhra Pradesh, Mr. Maibam N.Singh, Advocate for the High Court of Manipur, Mr. Prashant S.Kenjale, Advocate for the High Court of Bombay, Mr. Ajay Pal, Advocate for the State of Punjab, Mr. Gagan Gupta, Advocate for High Court of Andhra Pradesh, Mr. Nishe Rajen Shonker, Advocate for the State of Kerala,Mr. SuvenduSuvasis Dash, Advocate for the State of Orissa, Mr. Pradeep Mishra, Advocate for the State of Uttar Pradesh, Mrs. Swati Ghildiyal,Advocate for the State of Gujarat, Mr. Pukhrambam Ramesh Kumar,Advocate for the Government of Manipur, Mr. Abhay Anil Anturkar, Advocate for the State of Goa, Mr. Anupam Raina, Advocate for the High Court of Jammu

IA No. 52669/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 52666/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 36585/2023 - CLARIFICATION/DIRECTION
IA No. 36697/2023 - EXEMPTION FROM FILING O.T.
IA No. 35729/2023 - INTERVENTION APPLICATION
IA No. 52662/2023 - INTERVENTION APPLICATION
IA No. 52655/2023 - INTERVENTION APPLICATION)
IA NO.54736/2023-DIRECTION
IA NO. 54707/2023-INTERVENTION

IA NO. 55890/2023-DIRECTION
IA NO. 56839/2023-INTERVENTION
IA NO. 56842/2023-DIRECTION
IA NO. 56846/2023-INTERVENTION
IA NO.56848/2023-DIRECTION

WITH

MA 2035/2022 in SLP(Crl) No. 5191/2021 (II)
(IA No. 166259/2022 – CLARIFICATION/DIRECTION)

Diary No(s). 10451/2023 (II)
(IA No. 51653/2023 - INTERVENTION APPLICATION)

Date : 21-03-2023 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE ARAVIND KUMAR

By Courts Motion

For Petitioner(s) **Mr. Sidharth Luthra, Sr. Adv. (AC)**
Mr. Akbar Siddique, AOR
Mr. Rajnessh Chuni, Adv.
Mr. Pankaj Singhal, Adv.
Mr. Ayush Anand, Adv.
Mr. Shakti Singh, Adv.
Mr. Parv. K Garg, Adv.
Mr. Animesh Mishra, Adv.
Mr. Abhishek Singh, Adv.
Mr. Hasan Zaidi, Adv.

Mr. Gopal Sankaranarayanan, Sr. Adv.
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Ms. Tanya Srivastava, Adv.
Mr. Sachin Pahwa, Adv.

For Respondent(s) **Mr. S.V. Raju, Ld. ASG**
Mr Sanjay Jain, Ld. aSG
Mr. Udai Khanna, Adv.
Mrs. Sairica Raju, Adv.
Mr. Annam Venkatesh, Adv.
Ms. Priyanka Das, Adv.
Mr. Mohd. Akhil, Adv.
Ms. Shraddha Deshmukh, Adv.
Mr. Pamesh Mishra, Adv.
Mr. Ritwiz Rishabh, Adv.
Mr. Padmesh Mishra, Adv.

	Ms. Ashima Gupta, Adv. **Ms. Harshita Sukhija, Adv.** **Mr. Arvind Kumar Sharma, AOR**
	Mr. Maninder Singh, Sr. Adv. **Mr. Siddharth Aggarwal, Sr. Adv.** **Mr. Malak Manish Bhatt, AOR** **Mr. Arshdeep Singh Khurana, Adv.** **Ms. Neeha Nagpal, Adv.** **Mr. Vishvendra Tomar, Adv.** **Ms. Sowjhanya Shankaran, Adv.** **Ms. Arshiya Ghose, Adv.**
	Mr. Vikram Chaudhri, Sr. Adv. **Mr. Nikhil Jain, AOR** **Mr. Rishi Sehgal, Adv.** **Mr. Keshavam Chaudhri, Adv.** **Ms. Hargun Sandhu, Adv.** **Ms. Arveen Sekhon, Adv.** **Ms. Prabhneer Swani, Adv.** **Ms. Divya Jain, Adv.** **Mr. Sagar Juneja, Adv.**
	Mr. Vikram Choudhary, Sr. Adv. **Mr. Mahesh Agarwal, Adv.** **Mr. Arshit Anand, Adv.** **Mr. Pranjal Krishna, Adv.** **Mr. E. C. Agrawala, AOR**
	Mr. V.N. Raghupathy, AOR
H.C. Karnataka	
H.C. Jharkhand	**Mr. Tapesh Kumar Singh, AOR**
	Mr. P.I. Jose, AOR
HC Gauhati	**Mr. Jenis Francis, Adv.**
HC Madhya Pradesh	**Mr. Arjun Garg, AOR**
HC Delhi	**Mr. Amit Gupta, AOR**
HC Meghalaya	**Mr. Sanjai Kumar Pathak,AOR (NP)**
	Mr. Sibo Sankar Mishra, AOR
HC Orissa,	
	Mr. Abhimanyu Tewari, AOR
State of Arunachal Pradesh	
HC Telengana	**Mr.Somanadri Gaud Katam, AOR**

State of Maharashtra	**Mr. Bharat Bagla, Adv.** **Mr. Siddhrth Dharmadhikari, Adv.** **Mr. Aaditya A. Pande, AOR** **Mr. Sourav Singh, Adv.**
State of Uttarakhand	**Mr. Ankur Prakash, AOR** **Mr. Ashutosh Kumar Sharma, Adv.**
HC Sikkim	**Mr. Avneesh Arputham, Adv.** **Ms. Anuradha Arputham, Adv.** **For M/s Arputham Aruna,AOR**
State of Assam	**Mr. Nalin Kohli, Sr. AAG** **Mr. Debojit Borkakati, AOR** **Ms. Nimisha Menon, Adv.**
UT of Ladakh	**Mr. Jayant K Sud, ASG** **Mr. Neeraj Kumar Sharma, Adv.** **Mr. Shiv Mangal Shrma, Adv.** **Mr. Piyush Beriwal, Adv.** **Mr. Vatsal Joshi, Adv.** **Mr. Raghavendra S Srivatsa, Adv.** **Ms. Priyanka Sharma, Adv.** **Mr. Prahil Sharma, Adv.** **Mr. Harender Singh, Adv.** **Mr. Ambuj Saraswat, Adv.** **Mr. Piyush Beriwal, Adv.** **Mr. S.N.Terdol,AOR**
State of Meghalaya	**Mr. Avijit Mani Tripathi, AOR** **Mr. Sameer Abhyankar, SOR** **Ms. Vani Vandana C., Adv.** **Ms. Nishi S., Adv.**
State of Bihar	**Mr. Manish Kumar, AOR** **Mr. Mahfooz A.Nazki, AOR**
State of Andhra Pradesh	**Mr. Polanki Gowtham, Adv.** **Mr. T. Vijaya Bhaskar Reddy, Adv.** **Mr. K.V. Girish Chowdary, Adv.** **Ms. Niti Richhariya, Adv.** **Ms. Rajeshwari Mukherjee, Adv.**
HC Manipur	**Mr. Maibam N.Singh, AOR**
HC Bombay	**Mr. Prashant S.Kenjale, AOR**
State of Punjab	**Mr. Ajay Pal, AOR**

	Mr. Gagan Gupta, AOR
HC Andhra Pradesh	**Mr. Deepak Jain, Adv.**
	Mr. Nishe Rajen Shonker, AOR
State of Kerala	**Ms. Anu K Joy, Adv.**
	Mr. Alim Anvar, Adv.
State of Orissa	**Mr. SuvenduSuvasis Dash, AOR**
State of UP	**Ms. Garima Prasad, Sr. Adv./AAG**
	Mr. Pradeep Mishra, AOR
	Mr. Suraj Singh, Adv.
State of Gujarat	**Mrs. Swati Ghildiyal,AOR**
	Ms. Devyani Bhatt, Adv.
	Mr. Pukhrambam Ramesh Kumar,AOR
State of Manipur	**Mr. Karun Sharma, Adv.**
	Ms. Anupam Ngangom, Adv.
State of Goa	**Mr. Abhay Anil Anturkar, AOR**
HC Jammu	**Mr. Anupam Raina, AOR**
	Mr. Siddharth Kotwal, Adv.
	Ms. Ana Upadhyay, Adv.
	Ms. Manya Harija, Adv.
	Mr. Akash Singh, Adv.
	Mr. Nihar Dharmadhikari, Adv.
	Ms. Samprit Baksi, Adv.
	Mr. Nirnimesh Dube, AOR
	Mr. Akshay Amritanshu, AOR
	Mr. Divyansh Singh, Adv.
	Mr. Ashutosh Jain, Adv.
	Mr. Samyak Jain, Adv.
HC Himachal Pradesh	**Mr. Varinder Kumar Sharma, AOR**
	Mr. Shantanu Sharma, Adv.
	Ms. Deeksha Gaur, Adv.
State of Nagaland	**Mrs. K Enatoli Sema, AOR**
	Mr. Amit Kumar Singh, Adv.
	Ms. Chubalemla Chang, Adv.
	Mr. Prang Newmai, Adv.
	Mr. Lokesh Sinhal, Sr. AAG
	Dr. Nonika Gusain, AOR
	Mr. Abhay Anil Anturkar, Adv.
	Mr. Dhruv Tank, Adv.
	Ms. Surbhi Kapoor, AOR

	Ms. Pragya Baghel, Adv. **Ms. Pallavi langar, AOR** **Ms. Sonal Singh, Adv.**
HC Madras	**Mr. R Ayyam Perumal, AOR (NP)**
HC Rajasthan	**Ms. Manisha Ambwani, AOR**
HC Allahabad	**Mr. Yashvardhan, Adv.** **Ms. Smita Kant, Adv.** **Mr. Apoorv Shukla, AOR** **Mr. Puneet Chahar, Adv.** **Ms. Prabhleen A Shukla, Adv.** **Ms. Shivani Srivastava, Adv.**
HC Calcutta	**Mr. Kunal Chatterji, AOR** **Ms. Maitrayee Banerjee, Adv.** **Mr. Rohit Bansal, Adv.** **Ms. Kshitij Singh, Adv.**
State of Haryana	**Mr. Lokesh Sinhal, AAG** **Mr. Nikunj Gupta, Adv.**
Applicant(s)	**Ms. Manali Singhal, Adv.** **Ms. Sarthak Sachdev, Adv.** **Ms. Watan Sharma, Adv.** **Mr. Aditya Jain, AOR**
Applicant(s)	**Mr. Arshdeep Singh Khurana, Adv.** **Mr. Ayush Agarwal, Adv.** **Mr. Malak Manish Bhatt, AOR** **Ms. Neeha Nagpal, Adv.** **Mr. Vishvendra Tomar, Adv.** **Ms. Rooh-e-hina Dua, AOR**

UPON hearing the counsel the Court made the following

O R D E R

<u>COMPLIANCE BY THE HIGH COURTS</u>

(i) Mr. Siddharth Luthra, learned Amicus Curiae has taken us through the compliance reports filed by the High Courts. There are four High Courts listed for

non compliances i.e., Delhi, Meghalaya, Telangana and Uttarakhand. It appears that for Meghalaya and Uttrakhand, compliance reports were filed before the Court but copy not given. None appears for the two High Courts.

We see no reason why the orders of this Court cannot be complied with by serving a copy so that proper assistance is made available to us and even the counsels have not cared to appear. As far as Delhi and Telangana are concerned, counsels are present but compliance report of order dated 03.02.2023 not filed.

We have little option but to direct for the personal presence of the Registrars of all the four High Courts.

(ii) Counsels have produced before us a bunch of orders passed in breach of the judgment in the case of *Satender Kumar Antil Vs. CBI & Anr*. only as samples to show how at the ground level despite almost 10 months passing, there are a number of aberrations. It is not as if these judgments have not been brought to the notice of the trial Courts and in fact have even been noted, yet orders are being passed which have a dual ramification i.e., sending people to custody where they are not required to be so sent and creating further litigation by requiring the aggrieved parties to

move further. This is something which cannot be countenanced and in our view, it is the duty of the High Courts to ensure that the subordinate judiciary under their supervision follows the law of the land. If such orders are being passed by some Magistrates, it may even require judicial work to be withdrawn and those Magistrates to be sent to the judicial academies for upgradation of their skills for some time.

Amongst the illustrative orders, very large number of them happens to be from Uttar Pradesh and we are informed that orders passed specially in Hathras, Ghaziabad and Lucknow Courts seem to be in ignorance of this law. We call upon the counsel for the High Court of Allahabad to bring this to the notice of the Hon'ble the Acting Chief Justice so that necessary directions are issued to ensure that such episodes don't occur, including some of the suggestions made by us above.

(iii) Another aspect which is sought to be pointed out by learned counsel is that not only is there a duty of the Court but also of the public prosecutors to plead correct legal position before the Court as officers of the Court. Illustrations are being given once again where the submissions of the public prosecutors are to the contrary. In this behalf Mr. Maninder Singh, learned senior counsel

submits that even in an earlier order passed by this Court in *Aman Preet Singh Vs. C.B.I.* Through Director, 2021 SCC Online SC 941 this aspect was flagged as under:

> **"7. Learned counsel for the appellant has brought to our attention to the proceedings recorded on 26.08.2021 before the Magistrate to submit that the highhandedness of the respondent is apparent from the fact that the public prosecutor, despite these orders from this Court, sought to plead that the appellant had not been allowed any bail, non bailable warrants had been issued against him, the direction of this Court for the appellant not to be arrested did not mean that he could not be sent to judicial custody and since this Court observed that he could attend virtually till physical hearing started, which had by then resumed, he should be sent to judicial custody. We may only note all these submissions are completely inappropriate and indefensible. Neither did the learned Additional Solicitor General seek to contend except stating that those are only submissions. We expect a public prosecutor to be conscious of the legal position and fair while making submissions before the Court. We say no more as at least the Chief Judicial Magistrate understood the order clearly and thus did not agree with the submission of the public prosecutor."**

Mr. S.V. Raju, learned ASG very fairly states that the Public Prosecutors are bound to bring the correct legal position before the Court and the C.B.I will issue directions to the public prosecutors in this behalf. In fact, we are of the view that all prosecuting agencies/State Governments/UTs should issue such directions to the Public Prosecutors so that neither in pleadings

nor in arguments, is a stand taken contrary to the legal position enunciated by this Court. The circulation in this behalf should be made through the Director of Prosecution and training programmes be organized to keep on updating the Prosecutors in this behalf.

(iv) Mr. Luthra, volunteers that the details as set out in the affidavits regarding undertrial prisoners will be handed over to the NALSA so that the NALSA can take further steps in this behalf so that the State Legal Services Authority can follow up in this behalf.

On perusal of the list we find that in some of the States there is a disproportionately large number of undertrial prisoners unable to comply with bail. The issue of Allahabad High Court has been flagged to the counsel. Other High Courts/States where the data stares us in face is of the Madras, Orissa and Gauhati High Court. We have to emphasize to the counsel for the Gauhati High Court and the Orissa High Court that possibly some special steps are necessary to tackle this problem and they assure us that the needful will be done. Insofar as the Madras High Court is concerned, none has even cared to attend the proceedings. Let the Registrar remain personally present in Court as even the arrangement for representation has not been made.

(v) Mr. Siddharth Aggarwal, learned senior Counsel seeks to bring to our notice an order passed yesterday by a Bench of this Court in Criminal Appeal No. 853/2023, *Mahdoom Bava vs. Central Bureau of Investigation* where the issue qua how the Court deals with anticipatory bail where a person has cooperated with investigation but never arrested and charge sheet has been filed has been dealt with. He referred to the observations in para 10 and 12 as under :

> **10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals.**
>
> **12. In view of the aforesaid, we are of the considered view that the appellants are entitled to be released on bail, in the event of the Court choosing to remand them to custody, when they appear in response to the summoning order. Therefore, the appeals are allowed and the appellants are directed to be released on bail, in the event of their arrest, subject to such terms and conditions as may be imposed by the Special Court, including the condition for the surrender of the passport, if any."**

Learned counsel submits that though there

is observation qua the correctness of the practice to be tested in an appropriate case, this case itself is the appropriate case as directions have already been passed and somehow they have been understood as if they will apply to cases for regular bail and not to anticipatory bail. We would like to clarify that what we have enunciated qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail.

(vi) Mr. Luthra has also submitted a list of the High Courts which shows by reference to their compliance affidavits that there is part compliance. On our query, what is submitted is that this part compliance is arising where some of the Districts or some of the Courts may not have complied. The High Courts concerned must follow up the matter to ensure that full compliance takes places. The list where part compliance has taken place includes, Andhra Pradesh, Allahabad, Patna, Calcutta, Jammu & Kashmir and Ladakh, Jharkhand, Karnatka, Madras, Orissa, Guhati-Assam, Nagaland, Mizoram, Arunachal Pradesh, Madhya Pradesh, Gujarat, Tripura, Himachal Pradesh and Manipur.

(vii) Mr. Luthra also submits that since formally he has not been nominated as an Amicus Curiae, it creates a little problem in terms of affidavits

being supplied. We thus formally appoint Mr. Luthra as an Amicus Curiae assisted by Mr. Akbar Siddque, learned counsel to whom all compliance affidavits should be sent and they would be assisting us amongst other counsels to carry the matter forward.

COMPLIANCE BY THE STATES/UTs

16 States/prosecuting agencies have been enlisted in a chart submitted by Mr. Luthra as not having filed the compliance reports. Amongst them, it is stated that some of them have filed but copies not supplied. Copy should be supplied. Similarly C.B.I., the premier investigating agency, deemed it appropriate to file the compliance report only yesterday! A copy be supplied.

We grant last opportunity to the other States to file compliance reports within three weeks of order dated 03.02.2023 and if not filed let the Home Secretaries of all these States remain personally present in Court. The aforesaid chart also points out that some States have not issued standing orders namely, Tripura, Tamil Nadu, Himachal Pradesh and UT of Puducherry. Learned counsels for State of Himachal Pradesh and High Court of State of Himachal Pradesh submit that affidavits have been filed yesterday but standing

orders have not been issued and the same will be issued shortly. Thus, States are also granted three weeks' time to issue standing orders, failing which their Home Secretaries shall personally remain present in court.

List on 02.05.2023.

IA NOS. 35729/2023 AND 36585/2023 IN M.A. NO.2034/2022

Learned counsel for the State of UP submits that actually these cases relate to C.B.I.

Mr. Arvind Kumar Sharma, learned counsel for Mr. S.V. Raju, Ld. ASG accepts notice on behalf of C.B.I. and copies be supplied to him.

The response, if any, be filed within two weeks.

List along with the main matter.

We find that the applicant Bharat Kalra had appeared before the trial Court in compliance of the order dated 13.03.2023.

Interim order dated 13.03.2023 to continue till the next date.

IA No. 52666/2023 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 52662/2023 - INTERVENTION APPLICATION
IA No. 52655/2023 - INTERVENTION APPLICATION
IA NO. 52669/2023-DIRECTION

These applications are stated to be by two co-accused in the same crime as aforesaid and thus learned counsel seeks the same order.

Notice, which is accepted by learned counsel for the CBI and copies be supplied to him.

List along with the main matter.

In the meantime, the applicants will appear before the trial Court but shall not be arrested.

IA NO. 54736/2023-DIRECTION
IA NO. 54707/2023-INTERVENTION

There are four accused. Situation is same as aforesaid.

Notice, which is accepted by learned counsel for the CBI and copies be supplied to him..

List along with the main matter.

In the meantime, the applicants will appear before the trial Court but shall not be arrested.

IA NO. 55890/2023- DIRECTIONS

Situation is the same as aforesaid.

Notice, which is accepted by learned counsel for the CBI and copies be supplied to him..

List along with the main matter.

In the meantime, the applicant will appear before the trial Court but shall not be arrested.

IA NO. 56839/2023-INTERVENTION
IA NO. 56842/2023-DIRECTION

Learned counsel seeks same relief as situation is

same as aforesaid.

Notice, which is accepted by learned counsel for the CBI and copies be supplied to him..

List along with the main matter.

In the meantime, the applicants will appear before the trial Court but shall not be arrested.

IA NO. 56846/2023-INTERVENTION
IA NO.56848/2023-DIRECTION

Issue notice, which is accepted by counsel for the CBI.

It is stated that there is some urgency in this matter as the applicant is in custody and was never arrested during investigation. It is further submitted that her infected kidney was removed in the year 2012 by surgery and she has other medical issues. She is stated to be house wife aged 59 years. Learned ASG will obtain instructions.

List the applications on 29.03.2023.

IA NO. 51653/2023-INTERVENTION IN D. NO. 10451/2023

The situation not having arisen at this stage, learned counsel for the applicant does not press this application.

The application is dismissed as withdrawn with liberty to take out legal proceedings if such a

situation arises.

IA Nos. 59555/2023 for intervention/direction and IA No. 59556/2023 for appropriate directions to be listed along with main matter.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)