

**(2021) 10 Supreme Court Cases 773 : (2022) 1 Supreme Court Cases (Cri) 153 :
2021 SCC OnLine SC 922**

In the Supreme Court of India

(Record of Proceedings)

(BEFORE SANJAY KISHAN KAUL AND M.M. SUNDRESH, JJ.)

SATENDER KUMAR ANTIL . . Petitioner;

Versus

CENTRAL BUREAU OF INVESTIGATION AND ANOTHER . . Respondents.

SLP (Crl.) No. 5191 of 2021[±], decided on October 7, 2021

A. Criminal Procedure Code, 1973 — Ss. 439 and 437 — Grant of bail — Exercise of discretion by court — Guidelines issued therefor based on categorisation of offences made herein

— Held, offences have been categorised and the abovesaid guidelines have been issued for grant of bail, but without fettering the discretion of the courts concerned and keeping in mind the statutory provisions

— Further held, 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 benefit of the above guidelines cannot be given to such accused

— Lastly, held, it is not as if economic offences not covered by Special Acts, are completely taken out of the aforesaid guidelines but do form a different nature of offences — Thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor


— Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 37 — Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D — Prevention of Money-Laundering Act, 2002 — S. 45 — Crimes Against Women and Children — Protection of Children from Sexual Offences Act, 2012 — Ss. 3 to 18 — Companies Act, 2013, S. 212(6)

(Paras 1 to 11)

B. Criminal Procedure Code, 1973 — Ss. 439 and 437 — Interim bail while issuing notice to consider bail — Permissibility — Held, while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which did not warrant arrest — However, the bail application to be ultimately considered, would be guided by the statutory provisions and the guidelines issued herein (see Shortnote A)

(Para 6)

Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397, *followed*

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C. Criminal Procedure Code, 1973 — Ss. 439 and 437 — Bail — Forwarding accused along with charge-sheet — Held, not necessary, when the accused was not arrested during investigation and he cooperated throughout in the investigation including appearing before investigating officer whenever called

(Para 3)

Siddharth v. State of U.P., (2022) 1 SCC 676, *followed*

SK-D/68085/CR

Advocates who appeared in this case:

Sidharth Luthra, Senior Advocate [Akbar Siddique (Advocate-on-Record), Rajneesh

Chuni, Malik Javed Ansari, Chirag Madan, Hardik Rupal, Parv Garg, Adeel Talib, Fareed Siddiqui and Shashank Gaurav, Advocates], for the Petitioner;

S.V. Raju, Additional Solicitor General and Vikram Chaudhary, Senior Advocate [Ms Sairica Raju, Annam Venkatesh, Ms Priyanka Das, Udai Khanna, Arvind Kr. Sharma (Advocate-on-Record), Mahesh Agarwal, Pranjal Krishna, E.C. Agrawala (Advocate-on-Record), Harshit Sethi, Keshavam Chaudhri, Ms Anzu. K. Varkey (Advocate-on-Record), Ms Ria Khanna and Kapil Dahiya, Advocates], for the Respondents.

Chronological list of cases cited

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| 1. (2022) 1 SCC 676, <i>Siddharth v. State of U.P.</i> | 775a |
| 2. (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397, <i>Sanjay Chandra v. CBI</i> | 771 |

ORDER

1. Application for intervention is allowed.

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 and 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.*¹)

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.

Category 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, POCsO, etc."

4. Needless to say that the 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.



6. We may also notice an aspect submitted by Mr Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.

7. The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as "economic offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr Luthra that this Court in *Sanjay Chandra v. CBI*² has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- (a) seriousness of the charge, and
- (b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.

8. We appreciate the assistance given by the learned counsel and the positive approach adopted by the learned ASG.

9. The SLP stands disposed of and the matter need not be listed further.

10. A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial courts so that the unnecessary bail matters do not come up

to this Court.

11. This is the only purpose for which we have issued these guidelines, but they are not fettered on the powers of the courts.

12. Pending applications stand disposed of.

Court Masters

[†] Arising from the Final Judgment and Order in *Satendra Kumar Antil v. CBI*, 2021 SCC OnLine All 789 (Allahabad High Court, Criminal Misc. Anticipatory Bail Application under Section 438 CrPC No. 7598 of 2021, dt. 1-7-2021)

¹ *Siddharth v. State of U.P.*, (2022) 1 SCC 676

² *Sanjay Chandra v. CBI*, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397

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