WHETHER BONDS FOR APPEARANCE CAN BE ACCEPTED U/S 88 IN COGNIZABLE AND NON-BAILABLE OFFENCES

Analysis of the recent decision of Hon'ble Allahabad High Court in Amar Mani Tripathi, in light of the decision of the Hon'ble Supreme Court in Satender Kumar Antil.

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QUESTION

In light of the recent decision of the Hon'ble Allahabad High Court, in the case of Amar Mani Tripathi v. State of U.P. in Application u/s 482 No. 3614 of 2024, vide order dated 22nd March 2024, wherein the HC has held that bonds for appearance cannot be accepted u/s 88 of CrPC by the trial court in cases involving cognizable and non-bailable offences, what is the correct position in law?

AMAR MANI TRIPATHI DECISION

1. The HC, following several precedents, held that since cognizable and non-bailable offences are grave and serious, a person accused of such offences cannot be joined to the trial through bonds for appearance u/s 88 of the CrPC.
2. The correct way would be to file bail application u/s 439 of CrPC.
3. The bail application should be decided as per law laid down by the Supreme Court in Satender Kumar Antil.

ANALYSIS

The decision is sub-silentio on the guidelines laid down by the Supreme Court in Satender Kumar Antil regarding s. 88.

The decision presumes that in cases involving cognizable and non-bailable offences, custody of the accused is necessary and therefore bail u/s 439 is the correct remedy.

Notably, Satender Kumar Antil laid down the complete set of guidelines in the context of cognizable and non-bailable offences only.

GUIDELINES IN ANTIL DECISION

Forwarding the person into custody, as per s. 170, does not mean police or judicial custody, rather it refers to mere appearance. (Reliance placed on Siddharth v. State of U.P. (2022) 1 SCC 676).

Upon the appearance of the accused in Court, there is no need to take the person into custody compulsorily.

The Court has to decide, depending on the merits, whether it should take the person into custody or not.

GUIDELINES IN ANTIL DECISION [CONTD.]

If the Court decides to not take the person into custody, then the court may rely on s. 88 and accept bonds for appearance.

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.

PARAGRAPH 43 OF
THE ANTIL DECISION

GUIDELINES IN ANTIL DECISION [CONTD.]

If the Court, however, feels that a remand is required, it would have to hear the accused.

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 of being heard will have to be given to the accused persons, if the Court is of the prima facie view that the remand would be required.

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Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application.

PARAGRAPH 43 OF THE ANTIL DECISION

GUIDELINES IN ANTIL DECISION [CONTD.]

While issuing process (summons/warrant) u/s 204, the Court should resort to s. 88 of CrPC.

Section 204 of the Code speaks of issue of process while commencing the proceeding before the Magistrate.

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As this provision gives a discretion, and being procedural in nature, it is to be exercised as a matter of course by following the prescription of Section 88 of the Code.

PARAGRAPH 46 OF THE ANTIL DECISION

GUIDELINES IN ANTIL DECISION [CONTD.]

While committing the case to Sessions Court, the Magistrate can accept bonds for appearance under s. 88 of CrPC.

As we have already dealt with the definition of bail, which in simple parlance means a release subject to the restrictions and conditions, a Magistrate can take a call even without an application for bail if he is inclined to do so. In such a case he can seek a bond or surety, and thus can take recourse to Section 88. However, if he is to remand the case for the reasons to be recorded, then the said person has to be heard.

PARAGRAPH 47 OF THE ANTIL DECISION

GUIDELINES IN ANTIL DECISION [CONTD.]

Summary

The Court may conclude that it is NOT NECESSARY to take the person into custody. In such a case, either (i) the Court may just instruct the accused person to join the trial and make himself present in proceedings, or (ii) the Court may accept bond for appearance u/s 88.

The Court may conclude that it is NECESSARY to take the person into custody. In such a case, the Court would have to hear the accused person, and pass an order on bail.

CONCLUSION

Guidelines laid down in Satender Kumar Antil by the Supreme Court clearly provide for bonds for appearance u/s 88 if the Court decides not to take the person in custody.

The Antil decision deals with and is in the context of cognizable and non-bailable offences. For bailable offences, the decision does not hold any relevance or need.

CONCLUSION [CONTD.]

The correct test regarding applicability of s. 88 is NOT the nature of offence (whether cognizable/non-bailable or not), but the decision of the Court regarding the need to take the accused into custody.

There is no provision in CrPC which mandates the accused to be taken into custody upon appearance in Court – thus, mandating bail to be applied for is contrary to the law and Antil guidelines.

S. 170 of CrPC, which could have led to the assumption that custody is mandatory, has been now authoritatively interpreted in Siddharth v. State of U.P.

CONCLUSION [CONTD.]

Lastly, in cases where bonds for appearance u/s 88 have been accepted already in the past by the Court, the decision in Amar Mani Tripathi should not serve as a reason to cancel/forfeit such bonds because:

(a) persons have already joined trial and are beyond the stage of first appearance or s. 170
(b) there may not be any breach of bond conditions as required in s. 446A
(c) cancelling the bonds would not serve any purpose.

THANK YOU.

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