

BNSS 2023 - LECTURE 20

Note - Security for keeping peace and good behavior

Introduction

One of the primary objectives of the BNSS is to provide a citizen centric approach and procedure for administration of substantive criminal law. Apart from investigation, investigation and trial, it is considered important to include certain pre-emptive measures for the safety and protection of the society. They are contained in Chapter IX and XI of the Bharatiya Nyay Suraksha Sanhita, 2023.

In this lecture we will deal with security proceedings against persons who cause a reasonable apprehension of breach of peace or public tranquility. This is administered in different conditions by both judicial and executive magistrates.

Based on the statement 'prevention is better than cure', these sections aim to

- i. Implement preventive justice,
- ii. Maintain societal order, and
- iii. to suppress the conduct of a person who is likely to commit breach of peace and disturb public tranquility

How

How is public peace, tranquility and good behavior ensured from a person who may commit a breach of peace? Just like ensuring the appearance of a person in court, it is done by taking security either through personal undertaking through a bond or personal undertaking along with security as in bail bond.

Security

Security under Chapter IX can be taken for two purposes which is for keeping peace and for keeping good behavior. Security for keeping peace is taken under Section 125 and 126 of BNSS, corresponding to Section 106 and 107 of the Cr.P.C. respectively. Security for keeping good

behavior is taken under Section 127-130 of the BNSS, corresponding to Section 108-111 of the Cr.P.C.

Security for keeping peace on conviction (Section 125 BNSS, Section 106 Cr.P.C.)

When a court convicts a person of an offence involving breach of peace, the court may in addition to the sentence order the offender to give security for keeping peace for a period not exceeding 3 years.

Under Section 125 of the BNSS 2023, any Court of Session, Judicial Magistrate first class under 125(2), or any revisional or appellate court under Section 125(4) at the time of conviction of a person may order him to execute a bond or a bail bond which shall not exceed three years in time.

But the conviction should be of either committing or abetting to commit offences mentioned under Section 125(2). They are :-

- i. Any offence coming under Chapter XI (offences against public tranquility) of BNS 2023.
- ii. Section 193 of BNS, 2023 (liability of owner/ occupier of land where unlawful assembly or riot takes place.)
- iii. Section 196 of BNS 2023. (Promoting enmity between different groups on different grounds)
- iv. Section 197 of BNS 2023 (Imputations, assertions prejudicial to national integration)
- v. Any offence which includes or consists of assault by criminal force or committing mischief
- vi. Any offence of criminal intimidation
- vii. Any offence which caused, or was intended to or known to cause breach of peace.

If the conviction of the person is set aside on appeal or otherwise, the bond shall become void.

This section only talks about security for keeping peace for persons who are convicted and it is given usually at the time of conviction. Thus this security is only taken by the Court and comes only from judicial officers whereas other securities can also be taken by executive magistrates. Also since here the conviction of the person acts like a proof that this person can disturb peace,

there is no need to give additional opportunities like show cause notices like other instances of taking security. Section 126 of BNSS deals with taking securities in other cases than conviction.

Security for keeping peace in other cases (Section 126 BNSS/ 107 Cr.P.C.)

The power for taking security is exercised by the Executive magistrate here. This is initiated when when the magistrate receives any information that a person may commit an act of breaching peace or may do something wrongful which will result in breach of peace or disturbing public tranquility.

If the magistrate considers the information received to provide him sufficient grounds for proceeding against the person, then he shall proceed against him in the manner provided in Section 130-143 of the BNSS. The executive magistrate shall order the person to execute a bond or a bail bond for the maximum period of a year. (Section 126(1))

The jurisdictions whose executive magistrate can exercise this power is :-

- i. the place where the breach of peace or disturbance of tranquility is expected.
 - ii. the place where the person who can or may cause a breach of peace or disturbance is present.
- The act of breach of peace may even be outside the jurisdiction of the executive magistrate.

For example, a person who is present in Patna may cause a breach of peace in Bihar Sharif. The executive magistrates of Patna as well as Bihar Sharif have the power issue to take security for breaching peace and tranquility.

After the magistrate receives information, he shall issue a show-cause to the person to show why he should not be ordered to execute a bond or bail bond. After the magistrate receives a reply, he shall conduct inquiry as specified later in Section 135 of BNSS, dealt with later.

Ram Narain v State of Bihar (1972)

In this case, a question arose whether a bond for keeping the peace should be required, especially when a significant time lapse existed between the incident and the proceedings.

The SC said that the proceedings can continue on sufficient grounds even after the time period of the bond has expired. Also, if during the proceeding the court feels that the person is not a danger to breaching peace anymore, he will be discharged and the proceedings will be dropped even before the time period of the bond expires.

Security for keeping good behavior (Section 127-130)

General procedure

Section 127, 128 and 129 of the BNSS corresponding to Sections 108, 109 and 110 of Cr.P.C. provide for taking security for good behavior from certain groups of persons such as person disseminating seditious matters or matters amounting to intimidation or defamation of a judge, and from habitual offenders.

Section 130-143 of BNSS provides for a procedure to conduct such exercise which we will see in a summary right now and deal with individual sections later.

First of all, whenever the magistrate receives information and is satisfied that there is enough ground for proceeding against the person, he will serve a show cause to that person as has been given in Section 130. This gives an opportunity to the person suspected to be heard and to reply to any assertions raised against him.

Further inquiry on the information received to gauge the truth of that thing is inquired as provided in Section 135. If upon such inquiry security is needed, the person will be made to execute a bail or a bail bond as provided in Section 136 or will be discharged if it not proved that he should be made to execute a bond or bail bond as given under Section 137.

Now we will understand the different instances for keeping security for good behavior and take a closer look at the sections for procedure.

The instances where security is taken for good behavior is:-

- i. Section 127: Security for good behavior from persons disseminating certain matters
- ii. Section 128: Security for good behavior from suspected persons
- iii. Security 129: Security for good behavior from habitual offenders

Section 127: Security for good behavior from persons disseminating certain matters.

Section 127 of BNSS, corresponding to Section 108 of Cr.P.C., is a preventive measure to stop the dissemination of matters against integrity of India and other matters mentioned in Section 127. The dissemination of material is divided into two parts. For one set of offences under

Section 127(1)(i), to be ordered for security, the dissemination must be intentional whereas for the offences under Section 127(1)(ii), any kind of dissemination is punishable.

The offences for which intentional dissemination is punishable are :-

- i. Any matter whose publication is punishable under Section 152, 196, 197 or 299 of the Bharatiya Nyaya Sanhita.
- ii. Any matter concerning criminal intimidation or defamation of a judge acting in his official duties

The offences for which only dissemination is punishable is

- i. to make, produce or sell or convey or exhibit in any manner any obscene matter as defined in Section 294 of BNS.

When the magistrate receives information and finds that there are sufficient ground for proceedings against a person informed of disseminating materials, he will send a show cause to that person. The maximum period of which bail bond can be executed for by a person accused of disseminating certain materials is one year.

Section 127(2) provides an exception to Section 127(1). It exempts editor, proprietor, editor or publisher of any publication which is registered and published in conformity with the rules of under Press and Registration of Books Act, 1867. No action can be usually taken against them. Proceedings against them can only be initiated by an order or under authority of the State government.

Section 128: Security for good behavior from suspected persons

The object of these sections is to check and control the persons who are likely to commit offences and enables magistrates to check strangers lurking in their jurisdiction.

In order to attract this section, a person will have to satisfy two conditions. He must be:-

- i. taking precautions to conceal his presence; and
- ii. This hiding is done with a view to commit a cognizable offense.

If information about this is received by the magistrate, will require such person to show cause why a bond should not be issued against him. And if the magistrate after completing his inquiry feels that a bond or bail bond be taken against that person, he will do so.

The bond or bail bond should not extend beyond the period of one year.

Section 129: Security for good behavior from habitual offenders

Section 129 of BNSS corresponds to Section 110 of Cr.P.C. and is brought without change. The object of this section is to protect the public against hardened and habitual criminals.

When the magistrate receives an information that a person who

- i. is in the habit of committing offences mentioned under Section 129(a) to Section 129(f), or
- ii. is so desperate and dangerous as to render his being free as a danger to the society,

then the magistrate may order that person to show cause why he should not be made to execute a bond or bail bond.

If on following the steps, the magistrate finds that bond should be issued, then the bond can be of a maximum period of three years.

The offences committing whom is a habit for the persons are:-

129(a): By habit a robber, house-breaker, thief or forger

129(b): By habit knowingly receiving stolen property

129(c): Harboursing thieves or aiding in concealment of stolen property

129(d): Habitually attempts, abets or commits abduction, extortion, cheating or mischief or offences related to coin and currency notes (Chapter X, Bharatiya Nyaya Sanhita)

129(e): Habitually attempts, abets or commits offences involving breach of peace

129(f): Habitually attempts, abets or commits offences under one or more of Acts under Section 129(f)(i) or any other offence under any law for hoarding, profiteering, adulteration of food and corruption.

Apart from that 129(g) includes the other category of persons whose being free is hazardous to the security of the community.

Now that we have looked at the offences for which security can be taken and an overall view of the process of issuing and discharging one from security, we will look at how this process went about through the bare act.

Section 130: Order to be made

This section corresponds to Section 111 of Cr.P.C. with minor changes. This section talks about how the magistrate acts when he receives information under Section 126, 127, 128 or 129.

The magistrate shall make a show cause to the person about whom information is received. This order will be in writing and will contain :-

- i. substance of the information received
- ii. amount of the bond
- iii. timing for which the bond will last, and
- iv. number of sureties.

The number of sureties shall be determined by the magistrate after considering the fitness and sufficiency of the sureties.

After that, from **Sections 131-134**, we see that the magistrate shall serve the order to the person either in court or through summons if not present in court or warrant if the person is in custody along with the order. If immediate arrest is required to prevent breach of peace, the magistrate can also issue a warrant to arrest the person. If the magistrate feels so, he can also do away with the personal attendance for show cause and may permit that person to appear via advocate.

Section 135: Inquiry as to the truth of the information

This section corresponds to Section 116 of the Cr.P.C.

Section 135(1) says that when the show cause has been given to the person, the magistrate shall inquire into the truth of the information on which action has been taken.

Section 135(2) says that the magistrate shall conduct the inquiry in the manner provided for trial and taking evidence in summons-case. Thus the inquiry is a judicial inquiry.

Section 135(3) talks about an interim order that can be given after the inquiry starts but before it ends. If the magistrate thinks that immediate measures are necessary to prevent breach of peace or commission of any offence, he will direct an interim bond or bail bond to be executed. The reasons for such direction shall be recorded in writing. This interim order is applicable to persons being inquired under security for good behavior only, i.e. persons under Section 127, 128 and 129.

This bond or bail bond shall last till the inquiry is completed. The magistrate can also take the person into custody till the bond is executed. The amount of the bond or bail bond or number of sureties shall not exceed the amount given in the initial order under Section 130.

Section 135(4) says that the proof of a person being a habitual offender or a person being dangerous to be free in the society will be proved by that person's general repute. This should be scrutinised very carefully and cautiously as it is weak evidence.

Section 132(6) prescribes a time period for completing the proceedings. The inquiry shall be completed within 6 months of the date of its commencement and will terminate after that. It can be continued by the magistrate even after 6 months on special reasons recorded in writing.

But if the person has been kept in detention for that period of inquiry, the inquiry and detention shall terminate after 6 months and it cannot be extended.

Section 135(7) also provides a provision for the aggrieved party to apply to the Sessions judge to examine and terminate the inquiry after six months if the court feels that the special reasons for extension was not needed or was perverse.

Section 137: Discharge of a person informed against

This section corresponds to Section 118 of Cr.P.C.

If in an inquiry under Section 135, it is found that taking security from the person is not necessary, the magistrate shall release him from custody if he is in custody or discharge him and make an entry on record to that effect.

Section 136: Order to give security (Imp for pre)

This section corresponds to Section 117 of Cr.P.C.

After the inquiry is completed as per the process outlined in Section 135, if it is proved that execution of security is necessary to maintain peace and good behavior, the magistrate shall make an order for that.

The security to be executed will be the same as the nature and amount mentioned in the show cause order. The amount of bail and bail bond shall not be excessive and will be made according to the circumstances of the case.

In case of a child, the bond shall only be executed by his sureties.

Section 138: Commencement of period for which security is required

This section corresponds to Section 119 of Cr.P.C.

Time period for which security is required starts from the day of the order. It can start from any later date if the magistrate has sufficient reason to fix a later date.

If any person who is ordered to pay security is sentenced to, or is undergoing imprisonment at the time of order, the period of security shall start after the imprisonment has ended.

For mains answer writing, one can write upto Section 138.

Section 141: Imprisonment in default of security (Imp for pre)

This section corresponds to Section 122 of Cr.P.C.

On failure to pay security, the person can be arrested without warrant and shall undergo as much punishment as has been prescribed in his order. A person can also be imprisoned if he breaches his bond or bail bond. This order shall be given after examination of the proceedings by the Court of Session.

Section 141(7) and (8) talk about the nature of imprisonment to be undergone on failure to give security. For failure to give security for keeping peace, one will undergo simple imprisonment.

Failure to pay security for good behavior from persons disseminating certain matters (Section 127) will cause simple imprisonment to happen. But failure to pay security for good behavior in

cases of suspected persons or habitual offenders (Section 128 and 129) can result in either simple or rigorous imprisonment at the direction of the court or the magistrate.

Section 142: Power to release persons imprisoned for failing to give security (Imp for pre)

This section corresponds to Section 123 of Cr.P.C.

If a person has been imprisoned for default to pay security by the Executive magistrate under section 136, the District Magistrate has the power to release that person if he feels that it is not a danger to the community.

If the person has been imprisoned by any other order of a magistrate, he will be discharged by the Chief judicial magistrate if it feels that the person is not a danger to the community.

Both the above bonds can also be cancelled or modified by the High Court or Court of Session under Section 142(9).