

Refresher Course on Criminal Laws & Procedures for CJMs/ACJMs  
(from 12.03.204 to 16.03.2024)

At

UJALA, Bhowali (Nainital)

Topic

Production (B) Warrant

Presented by: Sachin Kumar, Chief Judicial Magistrate, Chamoli

# Production (B) Warrant

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## Introduction -

Generally, the practice of Parcha talbi and warrant B is prevalent not only in the state of Uttarakhand but in the entire Country. Even though in the Code of Criminal Procedure 1973 ([The Bharatiya Nagarik Suraksha Sanhita, 2023](#)) there is a provision in respect of production warrant. Section-266 to 271 ([Section 301-306](#)) deals with the concept of the production warrant. It is pertinent to mention here that section- 266 to 271 ([Section 301-306](#)) are not exhaustive in themselves but the provision of the Prisoners [Attendance In Courts] Act, 1955 and U.P. Prisoners Attendance in Courts Rules, 1956 are also very relevant for the proper discussion of the topic. The purpose of this article is to elaborate the consolidated concept of the production warrant and attendance of the prisoner before court.

# Difference between Cr. P.C 1973 and BNSS 2023

| Code of Criminal Procedure 1973 (Cr. P.C) | Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS) |
|---|---|
| Chapter, 22                               | Chapter, 24                                   |
| Section 266 - 271                         | Section 301 - 306                             |

## Related Provisions -

- [Code of Criminal Procedure 1973 \(Sections 266-271\),](#)
- [Prisoners \(Attendance in Courts\) Act 1955,](#)
- [U.P. Prisoners \(Attendance in Courts\) Rules 1956,](#)
- [Bhartiya Nagarik Suraksha Sanhita 2023 \(Section 301 - 306\),](#)
- [Bhartiya Sakshya Adhiniyam, 2023](#)

## Difference between Section under Cr. P.C 1973 and Section under BNSS 2023

| Sr. No. | Chapter Title  | Cr. P.C 1973 | BNSS 2023   |
|---------|--|--------------|-------------|
| 1       | <p><b>Definitions: In this, -</b></p> <p>(a) “detained” includes detained under any law providing for preventive detention;</p> <p>(b) “prison” includes,-</p> <p style="padding-left: 40px;">(i) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;</p> <p style="padding-left: 40px;">(ii) Any reformatory, Borstal institution or other institution of a like nature.</p> | Section 266  | Section 301 |

| Sr. No. | Chapter Title   | Cr. P.C 1973 | BNSS 2023   |
|---------|---|--------------|-------------|
| 2       | <p><b>Power to require attendance of prisoners –</b></p> <p>(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court-</p> <p style="padding-left: 40px;">(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or</p> <p style="padding-left: 40px;">(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.</p> <p>(2) Where an order under sub-Section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer-in-charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.</p> <p>(3) Every order submitted for countersigning under sub-Section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.</p> | Section 267  | Section 302 |

| Sr. No. | Chapter Title  | Cr. P.C 1973 | BNSS 2023   |
|---------|--|--------------|-------------|
| 3       | <p><b>Power of State Government or Central Government to exclude certain persons from operation of section 302 –</b></p> <p>(1) The State Government or Central Government, as the case may be, may, at any time having regard to the matters specified in Sub-Section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained and thereupon, so long as the order remains in force, no order made under <b>Section 302</b> (Section 267 Cr.P.C.), whether before or after the order of the State Government or Central Government, shall have effect in respect of such person or class of persons.</p> <p>(2) Before making an order under Sub-Section (1), the State Government or Central Government shall have regard to the following matters, namely;</p> <ul style="list-style-type: none"> <li>(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;</li> <li>(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;</li> <li>(c) the public interest, generally.</li> </ul> | Section 268  | Section 303 |

| Sr. No. | Chapter Title   | Cr. P.C 1973 | BNSS 2023   |
|---------|---|--------------|-------------|
| 4       | <p><b>Officer in charge of prison to abstain from carrying out order in certain contingencies –</b></p> <p>Where the person in respect of whom an order is made under <b>Section 302</b> (Section 267 Cr. P.C.) ,</p> <p>(1) is by reason of sickness or infirmity unfit to be removed from the prison; or</p> <p>(2) is under committal for trial or under remand pending trial or pending a preliminary investigation; or</p> <p>(3) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or</p> <p>(4) is a person to whom an order made by the State Government under <b>Section 303</b> (Section 268 Cr.P.C.) applies,</p> <p>the officer in charge of the prison shall abstain from carrying out the Court’s order and shall send to the Court a statement of reasons for so abstaining:</p> <p><b>Provided</b> that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometers distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).</p> | Section 269  | Section 304 |

| Sr. No. | Chapter Title  | Cr. P.C 1973 | BNSS 2023   |
|---------|--|--------------|-------------|
| 5       | <p><b>Prisoner to be brought to Court in custody –</b><br/> Subject to the provisions of <b>Section 304</b> (Section 269 Cr. P.C.), the officer in charge of the prison shall, upon delivery of an order made under Sub-Section (1) of <b>Section 302</b> (Section 267 Cr.P.C.) and duly countersigned, where necessary, under Sub-Section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.</p> | Section 270  | Section 305 |
| 6       | <p><b>Power to issue commission for examination of witness in prison –</b><br/> The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under <b>Section 319</b> (Section 284 Cr.P.C.), a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXIII shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.</p>  | Section 271  | Section 306 |



FORM No. 37

**Order Requiring Production in Court of Person in Prison for Answering to Charge of Offence**

(See section 302)

(See section 267 Criminal Procedure Code)

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To

The Officer in charge of the Jail at .....

WHEREAS the attendance of (name of prisoner) at present confined detained in the above-mentioned prison, is required in this Court to answer to a charge of (state shortly the offence charged) or for the purpose of a proceeding (state shortly the particulars of the proceeding);

You are hereby required to produce the said ..... under safe and sure conduct before this Court at .....on the .....day of ....., 20....., by ..... A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court had dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said of the contents of this order and deliver to him the attached copy thereof.

Dated, this .....day of.....20.....

(Seal of the Court)

(Signature)

Counter signed.

(Seal)

(Signature)

FORM No. 38

**Order Requiring Production in Court of Person in Prison for Giving Evidence**

(See section 302)

(See section 267 Criminal Procedure Code)

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To

The Officer in charge of the Jail at .....

WHEREAS complaint has been made before this Court that ..... (name of the accused) of has committed the offence of ..... (State offence concisely with time and place) and it appears that ..... (name of prisoner) at present confined detained in the above-mentioned prison, is likely to give material evidence for the prosecution/defence.

You are hereby required to produce the said ..... under safe and sure conduct before this Court at ..... on the ..... day of ....., 20....., by A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court had dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

And you are further required to inform the said of the contents of this order and deliver to him the attached copy thereof.

Dated, this .....day of.....20.....

(Seal of the Court)

(Signature)

Counter signed.

(Seal)

(Signature)

# Important Hyperlinks of related Provisions

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- [Code of Criminal Procedure 1973,](#)
- [Prisoners \(Attendance in Courts\) Act 1955,](#)
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Thank you