Law of Arrest, Detention, Remand & Bail of Forest Offenders

(Lecture delivered at the IJTR, UP, Lucknow on 25.06.2013 & 24.06.2014 to IFS Probationers)

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1. Laws relating to Forests & Wild Life : The various laws relating to forests and wild lives are as under :

(1). The Indian Forest Act, 1927 (as amended by different States)
(2). The Forest (Conservation) Act, 1980
(3). The Forest (Conservation) Rules, 2003
(4). The National Forest Policy, 1988
(5). The Wild Life (Protection) Act, 1972
(6). The Wild Life (Stock Declaration) Central Rules, 1973
(7). The Wild Life (Transactions and Taxidermy) Rules, 1973
(8). The Wild Life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983
(9). The Wild Life (Protection) Rules, 1995
(10). The Wild Life (Specified Plants--Conditions for Possession by Licensee) Rules, 1995
(11). The Wild Life (Specified Plant Stock Declaration) Central Rules, 1995
(12). National Zoo Policy, 1998
(13). The Declaration of Wild Life Stock Rules, 2003
(14). The National Board for Wild Life Rules, 2003
(15). The National Tiger Conservation Authority (Salaries, Allowances and Other Conditions of Appointment) Rules, 2006
(16). The National Tiger Conservation Authority (Qualifications and Experience of Experts or Professional Members) Rules, 2006
(17). The Recognition of Zoo Rules, 2009
(18). Guidelines for appointment of Honorary Wild Life Wardens
(19). Central Government Orders Prohibiting Sale of Animals by Zoo
(20). The prevention of Cruelty to Animals Act, 1960
(21). The Prevention of Cruelty to Draught and Pack Animals Rules, 1965
(22). The Prevention of Cruelty to Animals (Licensing of Ferries) Rules, 1965
(23). The Prevention of Cruelty (Capture of Animals) Rules, 1972
(24). The Performing Animals Rules, 1973
(25). The Prevention of Cruelty to Animals (Application of Fines) Rules, 1978
(26). The Transport of Animals Rules, 1978
(27). The Prevention of Cruelty to Animals (Registration of Cattle Premises) Rules, 1978
(28). The Performing Animals (Registration) Rules, 2001
(29). The Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001
(30). The Prevention of Cruelty to Animals (Slaughter House) Rules, 2001
(31). The Prevention of Cruelty to Animals (Establishment and Regulation of Societies for Prevention of Cruelty to Animals) Rules, 2001
(32). The Animal Birth Control (Dogs) Rules, 2001
(33). The Environment (Protection) Act, 1986
(34). The Environment (Protection) Rules, 1986
(35). The National Environment Tribunal Act, 1995

(36). The National Environment Appellate Authority Act, 1997
(37). The National Environment Appellate Authority (Appeal) Rules, 1997
(38). The National Green Tribunal Act, 2010
(39). The Elephants Preservation Act, 1879
(40). The Fisheries Act, 1897
(41). The Biological Diversity Act, 2002
(42). The Protection of Plant Varieties and Farmers' Rights Act, 2001
(43). The Cattle Trespass Act, 1871

Note : Different States have their own State Acts and Rules etc. on forests.

2(A). "Offence" & its definition : According to Section 40 of the Indian Penal Code, an act made punishable under some law is called "offence". As per Section 2(n) of the Code of Criminal Procedure, 1973 "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871.

2(B). "Forest Offence" & its definition : According to Section 2(3) of the Indian Forest Act, 1927, "forest offence" means an offence punishable under the Indian Forest Act, 1927 or under any rule made thereunder.

3(A). Offences & Penalties under Indian Forest Act, 1927 : Different punishable offences under the Indian Forest Act, 1927 are as under **:**

Sl. No.	Penal Section	Description of Offence	Penalty
1	2	3	4
1	26	acts prohibited in forests	Imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both in addition to compensation for damage caused.
2	33	acts committed in contravention of notification u/s 30 or of Rules u/s 32	Imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.
3	42	breach of rules made u/s 41	Imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.
4	62	punishment to Forest Officer or Police Officer for wrongful seizure of property etc	Imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.

Note : *The above mentioned Penal Sections have been amended by different States and provide for different penalties.*

3(B).Offences & Penalties under Wild Life Protection Act, 1972 : Different punishable offences and the penalties under the Wild Life Protection Act, 1872 are as under :

Sl. No.	Penal Section	Description of Offence	Penalty
1	2	3	4
1	51(1)	breach of any provisions of the Act except Chapter V-A and Section 38-J	Imprisonment which may extend to three years or with fine which may extend to twenty five thousand rupees or with both.
2	51(1)	hunting in sanctuary or in	Imprisonment for a term not less

		national park	than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees.
3	51(1)	second or subsequent offence of the nature mentioned above	Imprisonment for a term not less than three years but may extend to seven years and also with fine which shall not be less than twenty five thousand rupees.
4	51 (1-A)	contravention of provisions of Chapter V-A of the Act	Imprisonment for a term not less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees.
5	51 (1-B)	contravention of provisions of Section 38-J of the Act	Imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both.
6	Proviso to 51 (1-B)	second or subsequent offence of the nature mentioned above	Imprisonment which may extend to one year or with fine which may extend to five thousand rupees.
7	51(1-C)	offences relating to the core area of a tiger reserve	Imprisonment for a term not less than three years but may extend to seven years and also with fine which shall not be less than fifty thousand rupees but may extend to two lacs rupees.
8	51(1-C)	second or subsequent offence of the nature mentioned above	Imprisonment for a term not less than seven years and also with fine which shall not be less than five lacs rupees but may extend to fifty lacs rupees.
9	51(1-D)	abetment of any offences under Section 51(1-C)	As provided for offences u/s 51(1-C)
10	52	attempt and abetment for contravention of the Act or Rules	As provided u/s 51 of the Act
11	53	wrongful seizure of property by officers under the Act	Imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.
12	58	offences by companies	As provided u/s 51, 52 & 53 of the Act

Note : *Section 360 CrPC or the Probation of Offenders Act, 1958 shall not apply to a convict of an offence regarding hunting in a sanctuary or National Park or any provision of Chapter V-A of the Act unless the convict is under 18 years of age.*

3(C). <u>Offences & penalties under The Forest (Conservation) Act, 1980</u> : Different punishable offences and penalties under the Forest (Conservation)Act, 1980 are as under **:**

Sl. No.	Penal Section	Description of Offence	Penalty
1	2	3	4
1	3A	Contravention or abetment for contravention of the provisions of Section 2 regarding restriction on the de-reservation of forests or use of	Simple imprisonment which may extend to fifteen days

		forest land for non forest purpose	
2	3B	Offences by authorities and Government departments	As provided under Section 3A of the Act

Note : *The above mentioned Penal Sections have been amended by different States and provide for different penalties.*

3(D).<u>Offences & Penalties under the Prevention of Cruelty to Animals Act, 1960</u> :

Sl. No.	Penal Section	Description of Offence	Penalty
1	2	3	4
1	11	treating animals cruelly	In the case of first offence, with fine which shall not be less than ten rupees but which may extend to 50 rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months or with both.
2	12	practicing phooka or doom dev	Fine which may extend to one thousand rupees or with imprisonment for a term which may extend to two years or with both.
3	20	breach of any condition imposed by the Committee for experiments on animals u/s 19 of the Act	Fine which may extend to two hundred rupees.
4	26	training as performing animal in the absence of registration etc.	Fine which may extend to five hundred rupees or with imprisonment which may extend to three months or with both.

3(E).<u>Offences & penalties under the UP Protection of Trees Act, 1976</u> :

Sl. No.	**Penal Section**	**Description of Offence**	**Penalty**
1	2	3	4
1	10	felling or removal of trees in contravention of Section 4 of the Act	Imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

4(A). <u>Special Procedure for Offences under Special Acts</u> : Section 4 & 5 of the Code of Criminal Procedure, 1973 provide for special procedure for investigation, inquiry and trial etc of the offences under Special Acts. Sections 4 & 5 of the CrPC are quoted here thus : **"Section 4 : Trial of offences under the Indian Penal Code and other laws :**

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment

for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 5 : Saving : *Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."*

4(B).<u>Provision as to offences punishable under two or more enactments</u> : Section 26 of the **UP General Clauses Act, 1904** provides that : "Where an act or omission constitutes an offence under two or more Uttar Pradesh Act, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

4(C). <u>Penalty when the same act punishable under two different statutes</u> : Where the accused was convicted for the offences u/s 111 & 135 of the Customs Act, 1962 and also u/s 85 of the Gold Control Act, 1968, the Supreme Court has held that if the ingredients of the two offences are different, the accused should be punished for both the offences under both the Acts and the bar of principle of double jeopardy contained u/s 300 CrPC as interpreted in V.K. Agarwal, Asstt. Collector of Customs vs. Vasantraj, AIR 1988 SC 1106 & P.V. Mohammed vs. Director, 1993 Suppl. (2) SCC 724 would not attract. If the offences are distinct, there is no question of the rule of double jeopardy as embodied in Art. 20(2) of the Constitution. See---

(i) A.A. Mulla vs. State of Maharashtra, AIR 1997 SC 1441

(ii) State of Bombay vs. S.L. Apte, AIR 1961 SC 578 (Four-Judge Bench)

4(D).<u>Rule Against Double Jeopardy</u> : Article 20(2) of the Constitution of India mandates that no person shall be prosecuted and punished for the same offence more than once. Section 300 of the Code of Criminal Procedure also provides for similar provisions.

4(E). <u>When same offence punishable under two penal laws or under special Act also</u> : When same offence is punishable under two penal laws or under special Act also, it has been held that the bar of Section 26 of the General Clauses Act, 1897 to second prosecution and punishment for the same offence would arise only where the ingredients of both offenses are the same. Initial burden is upon the accused to take necessary plea of autrefois convict and establish the same. See... **2011 CrLJ 427 (SC).**

4(F). <u>Accused also liable for prosecution for other offences under other laws</u> : Section 56 of the Wild Life Protection Act, 1972 provides that : *"nothing in the Wild Life Protection Act, 1972 shall be deemed to prevent any person*

from being prosecuted under any other law for the time being in force for any act or omission which constitutes an offence under the said Act or from being liable under such other law to any higher punishment or penalty than than provided by the said Act : provided that no person shall be punished twice for the same offence."

4(G). **<u>When the ingredients of the offence are different under two Acts</u>** : Where in the matter of **killing of an elephant**, the police, after due investigation had filed a final report to the effect that no offence was made out u/s 429 IPC but the Range Forest Officer filed a complaint for the offences u/s 9(1) & 51 of the Wild Life Protection Act, 1972, it has been held by the Supreme Court that an offence u/s. 51, 56, 9(1), 2(16), of the 1972 Act and u/s 429 IPC is not the same or substantially the same, as the offence envisaged by Sec. 91 r/w Sec. 2(16), 51 of the Wild Life Protection Act, 1972 in its ingredients and content, is not the same or substantially the same as Sec. 429 of the IPC. The ingredients of an offence u/s 9(1) r/w Sec. 51 of the 1972 Act require for its establishment certain ingredients which are not part of the offence u/s 429 IPC & vice- versa. Therefore, in the case of killing of an elephant, the fact that the police after due investigation, had filed a final report that no offence was made out u/s 429 IPC, would not bar the initiation of fresh proceedings u/s 9(1) r/w Sec. 51 of the Wild Life Protection Act, 1972. See : **State of Bihar vs. Murad Ali Khan, AIR 1989 SC 1**

4(H). **<u>Distinction between "inquiry" & "investigation"</u>** : Section 2(g) of the CrPC defines the word "inquiry" which means every inquiry, other than a trial, conducted under the CrPC by a Magistrate or Court. Section 2(h) of the CrPC defines the word "investigation" thus : 'investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a Magistrate in this behalf.

4(I). **<u>Procedure in Special Act to prevail over CrPC</u> :** In the cases of **State Vs. Ram Saran, AIR 2004 SC 481** and **Maru Ram Vs. Union of India, (1981) 1 SCC 107**, the Supreme Court has ruled as under :

(1) The Code covers matters covered by it :

(2) If a special or local law exists covering the same area, the said law is saved and will prevail;

(3) If there is a special provision to the contrary, that will override the special or local law. A "special law," as observed in Kaushalya Rani Vs. Gopal Singh, AIR 1964 SC 260, means a law enacted for special cases, in special circumstances, as distinguished from the general rules

of law laid down as being applicable to all cases dealt with by the general law."

4(J). <u>Complaint/Charge-sheet under the Indian Forest Act, 1927 where to be filed</u> ? : If the forest offences have been investigated by a police officer, a police report (charge-sheet) would be filed under Section 173(2) of the CrPC in the court of Judicial Magistrate concerned. If the forest offences have been inquired into by the forest officer under the Indian Forest Act, 1927, a complaint would be filed by him in the court of Judicial Magistrate concerned.

4(K). <u>Complaint to be filed by the competent officer under Section 55 of the Wild Life Protection Act, 1972</u> : Section 55 of the Wild Life Protection Act, 1972 provides that *"no court shall take cognizance of any offence under this Act on the complaint of any person other than the officers enumerated under the said Section."*

4(L). <u>Cognizance of offences under the Wild Life Protection Act, 1972 only on complaint</u> : Cognizance of an offence under the Wild Life Protection Act, 1972 can be taken by a Court only on the complaint of the officer mentioned in Section 55 of the said Act. The person who lodged complaint in the instant case claimed to be such an officer. In such circumstances even if the jurisdictional police purported to register a case for an alleged offence against the Act, Section 210(1) of the CrPC would not be attracted having regard to the position that cognizance of such an offence can only be taken on the complaint of the officer mentioned in that section. Even where a Magistrate takes cognizance of an offence instituted otherwise than on a police report and an investigation by the police is in progress in relation to same offence, the two cases do not lose their separate identity. The section seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once. But where, as here, cognizance can be taken only in one way and that on the complaint of a particular statutory functionary, there is no scope or occasion for taking cognizance more than once and, accordingly, Section 210 of the CrPC has no role to play. Therefore, in the circumstances it could not be said that the Magistrate acted without jurisdiction in taking cognizance of the offence and ordering issue of process against the accused, merely because an investigation by the police was in progress in relation to the same offence. See : **State of Bihar Vs. Murad Ali Khan, AIR 1989 SC 1.**

4(M). <u>Offences under the Prevention of Cruelty to Animals Act, 1860 are cognizable</u> : As per Section 31 of the Prevention of Cruelty to Animals Act, 1860, certain offences u/s 11(1) & 12 of the said Act are cognizable.

5(A). <u>Arrest & it's Procedure</u> : The general powers and procedures of Police Officers, Magistrates and of other persons for arrest of a person have been provided in Sections 41 to 60A of the Code of Criminal Procedure, 1973. A Police Officer may, without warrant from a Magistrate, arrest any person who commits or is suspect of having committed a cognizable offence. Under Section 43 of the CrPC, even a private person may arrest a person who has committed some non-bailable and cognizable offence or a proclaimed offender and hand over such arrestee to a police officer.

5(B). <u>Arrest by Forest Officers or Police Officers for forest offences (Section 64 of the Indian Forest Act, 1927)</u> : (1) *Any forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.*

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of Section 30."

5(C). <u>Arrest by the competent officers u/s 50 of the Wild Life Protection Act, 1972</u> : Section 50 of the Wild Life Protection Act, 1972 empowers the officers enumerated under the said Section 50 to effect arrest of a person without warrant from Magistrate who is suspect or accused of having committed any offence under the said Act. Section 50(4) of the said Act requires the arresting officer to produce the accused forthwith before a Magistrate to be dealt with according to law.

6(A). <u>State Government may empower Forest Officers to inquire into forest offences</u> : Section 72(1)(d) of the Indian Forest Act, 1927 provides that the State Government may empower the Forest Officers to hold an enquiry into forest offences and to receive and record evidence. Section 72(2) of the said

Act provides that any evidence recorded by the Forest Officer u/s 72(1)(d) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused persons.

6(B). <u>Power of investigation of competent officer u/s 50(8) of the Wild Life Protection Act, 1972</u> : Section 50(8) of the Wild Life Protection Act, 1972 confers power of investigation upon competent officers under the said Act and also (a) to issue search warrant (b) to enforce the attendance of witness (c) to compel the discovery and production of documents and material objects and (d) to receive & record evidence. As per Section 50(9) of the said Act, any evidence recorded by the competent officer u/s 50(8)(d) of the said Act shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.

7(A). <u>Rights of Arrestee & Duties of Arresting Officer</u> : Matter of arrest of a person by the police and other authorities and the treatment with him thereafter by such arresting officers have always been the matter of concern for the courts. In the case of **Joginder Kumar vs. State of U.P., (1994) 4 SCC 260**, the Hon'ble Supreme Court has clarified that an accused named in a FIR should not be arrested soon after the registration of the FIR. He should be arrested by the investigating officer only after collecting some evidence showing his involvement in the commission of the offence. In the famous cases of **D.K. Basu vs. State of West Bengal, (1997) 1 SCC 416** and **A.K. Jauhari v. State of U.P., (1997) 1 SCC 416,** the Hon'ble Supreme Court has issued following guidelines for the arresting officers to be observed at the time of arrest of a person and treatment thereafter with him…..

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) The police officers carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable member of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a

particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district and the police station of the area concerned telegraphically within a period of 8 to 10 hours after the arrest.

(5) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requires, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and it's copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director Health Services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the Memo Of Arrest referred to above should be sent to the Illaka Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all District and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room, it should be displayed on a conspicuous notice board.

7(B). <u>Liability for contempt of the Arresting Officer for breach of the guidelines of the Supreme Court issued in D.K. Basu's Case</u> : A Full Bench of the Allahabad High Court has in the matter of **Ajeet Singh v. State of UP, 2006 (6) ALJ 110 (Full Bench),** held that any violation of the guidelines issued by Hon'ble Supreme Court in the cases of **D.K. Basu and A.K. Jauhari** would not only provide a ground to the accused to question the correctness of his arrest but the arresting officer would also stand exposed to the contempt proceedings for non observance of the aforesaid guidelines of the Hon'ble Supreme Court. The guidelines issued by Hon'ble Supreme Court in the cases of D.K. Basu and A.K.

Jauhari in the year 1997 have now been incorporated in **Sec. 50-A of the CrPC** through the amendments since June, 2006. Under the newly added **Sec. 50-A (4),** a duty has been cast upon the Magistrates to ensure at the time of production of the arrested accused before them that the guidelines contained in Sec. 50-A of the CrPC have been complied with by the arresting officer. The introduction of these provisions in the CrPC through amendment is aimed at protecting the human rights of the arrestee from the tortures and atrocities committed by the police.

7(C). Arrest of accused not necessary for taking cognizance by Court on charge-sheet/complaint : Arrest or production of accused before court is not a pre-condition for taking cognizance of the offences on receiving charge-sheet or complaint. Magistrate cannot refuse to entertain the charge-sheet/complaint and take cognizance of the offences u/s 190 CrPC for want of arrest of accused. See : **Sarwan Kumar Tiwari Vs. State of UP, 2010 (5) ALJ 713 (All)**

7(D). Arrest when amounts to violation of human rights? : Irrational and indiscriminate arrests are gross violation of human rights. See : **Siddharam satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36**

7(E). Arrest of female accused : Respecting the human rights of the female accused a new **sub-section (4) to Sec. 46 CrPC** has been added since June, 2006 which provides that save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose jurisdiction the offence is committed or the arrest is to be made. However, in the case of **State of Maharashtra v. Christian Community Welfare Council of India, (2003) 8 SCC 546,** the Supreme Court while interpreting the provisions contained U/s 41 and 46 CrPC for the arrest of a female accused, has clarified that it is not necessary that a lady constable must be present at the time of her arrest and in case a lady constable is not present to effect the arrest of the female accused then the arrest can be made by the male police officer also provided there would be undue delay in the arrest of the female accused and that would impede the investigation.

7(F). Prohibition of Third Degree Methods & Application of Scientific Methods of Investigation : Instead of subjecting the accused or arrestee to physical tortures or applying third degree methods to elicit information, the scientific methods of investigation like Polygraph Test, DNA, Lie Detector Test etc. have been given judicial recognition by the apex Court in it's judicial pronouncements. In the year 2006, a new **Sec. 164-A** has been added in CrPC casting an obligation upon the investigating officer for medical examination of the victim of the sexual offences and if needed DNA should also be done of the victim or/and of the accused.

7(G). Legal aid to accused (Article 39-A of the Constitution of India & the Legal Services Authorities Act, 1987) : The Parliament has passed the Legal Services Authorities Act, 1987 to give effect to the provisions of Art. 39-A of the Constitution to provide free legal aid to the poor and the needy. The District Legal Services Authorities constituted under the aforesaid Act have been specially required to provide assistance to the poor litigants, convicts, under trials and the litigants belonging to the poor sections of the society in the form of court fees, expenses of the litigations and the Advocates fee etc. A litigant belonging to the aforesaid categories may apply to the Secretary of the DLSA to avail the free of cost assistance as noted above. These provisions are also aimed at protecting and promoting the basic human rights of the citizens.

7(H). No detention of arrestee in custody beyond 24 hours : Article 22(2) of the Constitution of India mandates thus : "Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."

7(I). Production of person arrested before Magistrate within 24 hours as per Section 64(2) of the Indian Forest Act, 1927 : Section 64(2) of the Indian Forest Act, 1927 provides thus : "every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station."

7(J). Remand of accused not to be granted under Section 167 CrPC beyond 15 days : Section 167(1) CrPC mandates for production of accused before the nearest Judicial Magistrate within 24 hours of his arrest. Section 167(2) CrPC authorizes the Judicial Magistrate to grant judicial or police custody remand of the accused for a period not exceeding 15 days. Section 167 (2A) CrPC empowers the Executive Magistrate also for granting remand of the accused for a period not exceeding 07 days.

7(K). Production of accused before Magistrate beyond 24 hours of detention : If the Police Officer is forbidden from keeping an arrested person beyond 24 hours without order of a Magistrate, what should happen to the arrested person after the said period ? It is a constitutional mandate under Article 21 of the Constitution that no person shall be deprived of his liberty except in accordance with the procedure established by law. Close to it's heels Article 22(2) of the Constitution directs that the person arrested and detained in

custody shall be produced before the nearest Magistrate within 24 hours of such arrest. The only time permitted by Article 22(2) of the Constitution to be excluded from the said period of 24 hours is "the time necessary for going from the place of arrest to the court of Magistrate." Only under two contingencies can the said direction be obviated. One is when the person arrested is an 'enemy alien'. Second is when the arrest is under any law for 'preventive detention'. In all other cases, the Constitution has prohibited pre-emtorily that no such person shall be detained in custody beyond 24 hours without the authority of a Magistrate. See… **Manoj Vs. State of M.P., AIR 1999 SC 1403.**

7(L). <u>No mechanical grant of remand by magistrate u/s 167 CrPC</u> : The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 CrPC is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner. See : **Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others, AIR 2013 SC 313.**

7(M). <u>Directions dated 11-10-11 issued by Division Bench of the Hon'ble Allahabad High Court in Criminal Misc. Writ Petition No. 17410/2011 Shaukin vs. State of UP & others regarding remand and bail of accused of offences punishable with imprisonment upto seven years:</u> The Hon'ble High Court has(in para 20) of its above judgment has issued following directions : "We therefore direct the Magistrates that when accused punishable with upto 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41 A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in

allowing the bail, as laid down in Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437, and Sheoraj Singh @ Chuttan v State of U.P. and others, 2009(65) ACC 781. The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.

The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."

7(N). <u>Magistrate can add/alter new Sections in remand order</u> ? : After perusal of the case diary the Magistrate can alter or add new penal sections in the remand order to be passed under Section 167 CrPC as the Magistrate is not bound by the opinion of the Investigating Officer. See….

(i) Arshad Vs. State of UP, 2008 (61) ACC 863 (All)
(ii) Harihar Chaitanya Vs. State of UP, 1990 CrLJ 2082 (All)
(iii) Dinesh Kumar Vs. State of UP, 1997 UP CrR 776 (All)
(iv) Anil Kumar Vs. State of UP, 1992 ACrR 520 (All)

7(O). <u>Non-production of accused on date of remand & it's consequences</u> : Though the physical production of the accused before the Magistrate is desirable yet the failure to do so would not per se vitiate the order of remand if the circumstances for non-production were beyond the control of the prosecution or the police. Remand order passed under Section 167 or 309 CrPC in the event of non-production of the accused would not be illegal. See…

(i) G. Shravan Kumar Vs. State of A.P., AIR 2002 SC 2392
(ii) Raj Narain Vs. Superintendent, Central Jail, New Delhi, AIR 1971 SC 178 (Seven-Judge Bench)
(iii) Gauri Shankar Jha Vs. State of Bihar, AIR 1972 SC 711
(iv) Sandeep Kumar Dey Vs. the Officer Incharge, AIR 1974 SC 871
(v) Ramesh Kumar Ravi Vs. State of Bihar, 1987 CrLJ 1489 (Patna---Full Bench).

7(P). <u>Remand u/s 167 CrPC without application from IO</u> : Even in the absence of an application or request by Investigating Officer seeking further remand, a Magistrate can grant further remand of the accused under Section 167 CrPC. See….

(i) Ramesh Kumar Ravi Vs. State of Bihar, 1987 CrLJ 1489 (Patna---Full Bench).
(ii) Kuli Singh Vs. State of Bihar, 1978 CrLJ 1575 (Patna…Full Bench)

7(Q). <u>Police remand after expiry of 15 days not permissible u/s 167 CrPC</u> : After expiry of period of 15 days of police remand, order for police remand for a further period of 7 days was held as violative of Section 167 CrPC. See..

(i) Budh Singh Vs. State of Punjab, (2000) 9 SCC 266 (Three Judge Bench)

(ii) CBI Vs. Anupam J. Kulkarni, (1992) 3 SCC 141

7(R). <u>Subsequent remand order cures previous illegality in remand</u> : Any illegality committed by the court in passing the remand order stands cured if subsequently a legal remand order is passed. The custody of the accused is not illegal. See :

(i). Umakant Yadav Vs. Superintendent, District Jail, Azamgarh, 1995 CrLJ 906 (Allahabad…DB).

(ii). Mohd. Daud alias Mohd. Saleem Vs. Superintendent Jail, Moradabad, 1993 ALJ 430 (Allahabad…DB)

7(S). <u>Remand in Hospital & Jail</u> : Remand order can be passed under Section 167 CrPC by the Magistrate and surrender can be taken even in hospital or jail. See : **Smt. Rahmat Jahan Vs. State of UP, 1998 (37) ACC 718 (All)**

7(T). <u>Presumption in favour of validity of remand order u/s 167 CrPC</u> : Where the Magistrate had granted remand under Section 167 CrPC after perusing case diary, application and the case property (counterfeit currency notes), it has been held by the Hon'ble Allahabad High Court that it cannot be said that the same were not considered by the Magistrate while passing the remand order. Presumption would lie in favour of the Magistrate u/s 114(e) of the Evidence Act that judicial act of the Magistrate was done in accordance with the provisions of law. Discretion of the Magistrate to see whether remand be allowed or refused, cannot be interfered with at the stage when investigation was going on. Prayer for quashing of proceedings and the remand order was refused by the Hon'ble High Court u/s 482 CrPC. See…**Sanjeev Awasthi Vs. State of UP, 2011 (3) ALJ (NOC) 247 (Allahabad).**

7(U). <u>An illegal order of remand u/s 167 not to affect the decision during trial</u> : A remand order cannot affect the progress of the trial or it's decision in any manner. See….**State of T.N. Vs. NMT Joy Immaculate, AIR 2004 SC 2282.**

7(V). <u>Distinction between remand orders passed u/s 167, 267, 209, 309 CrPC</u> : A production warrant issued u/s 267 CrPC does not constitute a detention order authorizing detention of a person in prison. Sections 267 and 270 CrPC read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he has been brought for such attendance. The word 'custody' in Section 309 CrPC embraces both legal as well as illegal custody. Section 309 CrPC does not envisages or permit remand for an indefinite period. The remand order thereunder has to coincide with the duration of adjournment and not beyond it. The court is required to record it's reasons under Section 309 CrPC for postponement or adjournment of the trial and not for remanding the accused. It is because a remand under Section 309 CrPC stands on a quite different footing than one under Section 167 CrPC where remand is sought pending investigation and the Magistrate or Judge is required to apply his judicial mind to consider whether on the materials collected, remand is necessary and justified. See…. **Mohd. Daud alias Mohd. Saleem Vs. Superintendent Jail, Moradabad, 1993 ALJ 430 (Allahabad…DB)**

Note : *The decision in Mohd. Daud's case has been circulated by the Hon'ble Allahabad High Court for observance by the judicial officers in the State of UP vide C.L. No. 58/1992 dated 23.11.1992.*

7(W). <u>Pre & post police custody remand medical examination of accused</u> : The direction issued by the Supreme Court in the cases of **D.K. Basu vs. State of W.B., (1997) 1 SCC 416** and **A.K. Jauhari vs. State of U.P., (1997) 1 SCC 416** that the accused must be subjected to medical examination before and after the police custody remand granted by a Magistrate u/s. 167 of the CrPC is aimed at ensuring that no physical tortures or third degree treatment or other inhuman treatment is meted out to the accused during police custody. Provision of getting legal aid of a lawyer during police custody has also been made to provide the accused an opportunity to get proper legal advice of a lawyer of his choice.

8(A). <u>Article 21 Of the Constitution</u> : No person shall be deprived of his life or personal liberty except according to procedure established by law.

8(B). <u>International Covenant On Civil And Political Rights, 1966</u> : India is a signatory to the International Covenant On Civil And Political Rights, 1966 and, therefore, Article 21 of the Constitution has to be understood in the light of the International Covenant On Civil And Political Rights, 1966.

8(C). <u>Human Rights — what are</u> ? : Human rights are not conferred by any ruler, constitution or statute. A human being is born with human rights. Giving new dimensions to Art. 21 of the Constitution, the Supreme Court, in the cases noted below, has declared that right to live as guaranteed under Art. 21 is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The right to live is not restricted to mere animal like existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the **right to live with human dignity"**, and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. Anything which impedes the right to lead life with dignity and decency is violative of human rights. See :

1. **Francis Coralie vs. Union Territory of Delhi, AIR 1978 SC 597**
2. **Maneka Gandhi vs. Union of India, AIR 1981 SC 746**
3. **Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675**
4. **Peoples Union for Democratic Rights vs. Union of India, AIR 1982 SC 1473**

8.(D) <u>Definition of "human rights" under Protection of Human Rights Act, 1993</u> : Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines the words "Human Rights" as under .....

"Human Rights" mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

8(E). <u>All fundamental rights are human rights</u> : The Constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State policy in Part IV, which are fundamental to governance of the country. See--**Peoples Union for Democratic Rights vs. Union of India, (2005)2 SCC 436.**

9(A). <u>Meaning of 'Personal Liberty' under Article 21 of the Constitution</u> : The expression 'Personal Liberty' in Article 21 of the Constitution is of the widest amplitude and it covers a varity of rights which go to constitute the personal liberty of a person and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution. 'Personal Liberty' under Article 21 of the Constitution primarily means freedom from physical restraint of person by incarceration or otherwise. The concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" and it does not mean mere animal like existence of life. After the Supreme Court's decision rendered in the case of **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597**, Article 21 of the Constitution now protects the right of life and personal liberty of citizen not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law provided that the procedure is just, fair and reasonable. See….

(i) District Registrar & Collector Vs. Canara Bank, AIR 2005 SC 186
(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740
(iii) Maneka Gandhi Vs. Union of India, AIR 1978 SC 597
(iv) A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27.

9(B). <u>List of rights as to 'Personal Liberty' under Article 21</u> : In the case reported in **Unnikrishnan J.P. Vs. State of A.P., AIR 1993 SC 2178,** the Hon'ble Supreme Court has given the following list of the rights under Article 21 of the Constitution to be treated as rights as to 'personal liberty' :

(i) Right to go abroad
(ii) Right to privacy
(iii) Right against solitary confinement
(iv) Right against bar fetters
(v) Right to legal aid
(vi) Right to speedy trial
(vii) Right against handcuffing
(viii) Right against delayed execution
(ix) Right against custodial violence
(x) Right against public hanging
(xi) Right to medical assistance
(xii) Right to shelter.
(xiii) Right to sleep

(xiv) Certain other rights also as declared by the Hon'ble Supreme Court in it's subsequent decisions.

9(C). <u>Right to personal librty not available at the cost of life or liberty of others</u> : Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in Society can act in a manner by consequence of which life or liberty of others is jeopardized. See : **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.**

9(D).<u>'Personal liberty' guaranteed under Article 21 when deemed to be not violated</u> ? : Detention of a person accused of offences, which are non-bailable, during the pendency of trial unless enlarged on bail cannot be questioned as being violative of Article 21 of the Constitution as it is in accordance with law. See…. **Kalyan Chandra Sarkar Vs. Rajesh Ranjan (2005) 2 SCC 42.**

9(E).<u>Refusal of bail when to be treated as not violative of right as to 'personal liberty' guaranteed under Article 21</u> ? : Where the accused had allegedly deceived millions of countrymen who had invested their entire life's savings in fictitious and frivolous companies promoted by him and thousands of cases were pending against him in different parts of the country, it has been held by the Hon'ble Supreme Court that the accused cannot claim of violation of Article 21 of the Constitution on the ground that he is not being able to be released out of jail in view of different production warrants issued by different courts. See…**Narinderjit Singh Sahni Vs. Union of India, AIR 2001 SC 3810.**

9(F). <u>Law interfering with the right as to 'personal liberty' must withstand certain tests</u> : In the cases of **District Registrar & Collector Vs. Canara Bank, AIR 2005 SC 186** and **Maneka Gandhi Vs. Union of India, AIR 1978 SC 597** it has been ruled by the Hon'ble Supreme Court that any law interfering with the right as to 'personal liberty' guaranteed to a citizen or non-citizen under Article 21 of the Constitution must be just, fair and reasonable and must satisfy the following tests :

(i) It must prescribe a procedure

(ii) The procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 of the Constitution which may be applicable in a given situation.

(iii) It must also withstand the tests under Article 14 of the Constitution.

10(A). <u>Presumption of innocence of accused</u> : Presumption of innocence is a human right. Article 21 in view of its expansive meaning not only protects life and liberty but also

envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. See :

(i). Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)
(ii). Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)
(iii). Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.

10(B). Presumption of innocence lost on conviction : The accused is presumed to be innocent until proven guilty. The accused possesses this presumption when he is before the trial court. The trial courts acquittal blosters the presumption that he is innocent. See : **Arulvelu vs. State, 2010 (68) ACC 5 (SC).**

10(C).Presumption of innocence continues even upto the appellate stage : Every accused is presumed to be innocent unless proved guilty. Presumption of innocence of accused starts in the trial court and continues even upto the appellate stage. See--

(i) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra 2011 (72) ACC 699 (SC).
(ii) Jayabalan Vs. U.T. of Pondicherry, 2010 (68) ACC 308 (SC).

11. Fundamental principles under Article 21 of the Constitution in the context of bail : The fundamental principle of our system of justice is that a person **should not be deprived of his liberty except** for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution and, therefore, such refusal must be rare. See….

(i) Sanjay Chandra Vs. CBI, AIR 2012 SC 830
(ii) State of Rajasthan Vs. Balchand, AIR 1977 SC 2447
(iii) Gudikanti Narasimhulu Vs. Public Prosecutor, AP, AIR 1978 SC 429.

12(A).Bail by Forest Officers u/s Section 65 of the Indian Forest Act, 1927 : Section 65 of the Indian Forest Act, 1927 reads thus : "*Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of Section 64, may release such person on his executing a* **bond** *to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station."*

12(B).Sections 26, 33, 42 & 63 of the Indian Forest Act, 1927 are non-bailable in the State of UP since 2001 : *In the State of UP, certain amendments have been made in the year 2001 by the UP State Legislature in the said Act by adding a new Section 65-A and, the offences under Sections 26, 33, 42 & 63 have been made non-bailable.*

12(C).<u>Special provision for grant of bail under Wild Life Protection Act, 1972</u> : Section 51-A of the Wild Life Protection Act, 1972 provides that *"when any person accused of the commission of any offence relating to schedule I or part II of schedule II or offences relating to hunting inside the boundaries of national park or wild life sanctuary or altering the boundaries of such parks and sanctuaries, is arrested under the provisions of the Act, then notwithstanding anything contained in the Code of Criminal Procedure, 1973 no such person who had been previously convicted of an offence under the said Act shall be released on bail unless (a) the Public Prosecutor has been given an opportunity of opposing the release on bail and (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. "*

13(A). <u>Object of Bail u/s 437 or 439 CrPC</u> : It has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. **The object of Bail is neither punitive nor preventive**. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprive of his liberty under Article 21 of the Constitution upon only the belief that he will temper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accuse has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him

a test of imprisonment as a lesson. See…..**Sanjay Chandra VS. Central Bureau of Investigation, AIR 2012 SC 830.**

13(B). **Object of bail not punitive or preventive but to secure appearance of accused at trial** : The object of grant of bail to an accused of an offence is neither punitive nor preventive in nature. The two object behind grant of bail is to secure appearance of accused during trial. See…. **Sanjay Chandra VS. Central Bureau of Investigation, AIR 2012 SC 830** (Note: it was 2G Spectrum Scam Case).

13(C). **Bail is the rule, jail exception :** While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed under Article 21 of the Constitution. See…. **Sanjay Chandra VS. Central Bureau of Investigation, AIR 2012 SC 830.**

14. **Seriousness of the offence not to be treated as the only consideration in refusing bail :** Seriousness of the offence should not to be treated as the only ground for refusal of bail. See…. **Sanjay Chandra VS. Central Bureau of Investigation, AIR 2012 SC 830** (Note: it was 2G Spectrum Scam Case).

15. **Personal appearance/custody of accused-- must for Bail** : Bail application cannot be entertained/heard unless the accused is in the custody of the court. If the accused is already lodged in jail under some order of court, the bail application can be heard and disposed of even without physical appearance/production of the accused before the court. Since the provisions of Sec. 438 CrPC regarding anticipatory bail have been omitted in the State of U.P. vide U.P. Act No. 16 of 1976, so granting bail without seeking custody of the accused would amount to bring in vogue the omitted provisions of Sec. 438 CrPC Even u/s. 88 CrPC , bail cannot be granted to an accused without his personal appearance before the court. See :

1. **Vaman Narain Vs. State of Rajasthan, 2009 Cr.L.J. 1311 (SC)**
2. **Sunita Devi Vs. State of Bihar, 2005(51) ACC 220 (SC)**
3. **Mukesh Kumar Vs. State of U.P., 2000(40) ACC 306 (All)**
4. **Kamlesh Parihar Vs. State of U.P., 1999 ALJ 1507 (All—D.B.)**
5. **Niranjan Singh Vs. Prabhakar Rajaram, AIR 1980 SC 785**
6. **Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--LB)**

16. **Bail during police custody remand** : Relying upon the constitution bench decision in the case of **Shri Gur Vaksh Singh SibbiaVs. State of Punjab, AIR 1980 SC 1632**, it has been held by the Bombay High Court Bail application u/s 439 of the CrPC is maintainable before the Sessions Court even if filed during the period of police remand of the accused granted by magistrate. Sessions Court can

not reject application for bail on that ground. Bail application should be entertained and considered on merits even if there is order of police remand. See : **Krushna Guruswami Naidu v. State of Maharashtra, 2011 CrLJ 2065 (Bombay).**

17(A). <u>Bail in bailable offences u/s. 436 CrPC</u> : The right of an accused to bail u/s. 436 CrPC in bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 CrPC are imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Sec. 436 CrPC instead of taking bail from him. See :

(i) Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338

(ii) Vaman Narain Ghiya Vs. State of Rajasthan, 2009 Cr.L.J. 1311 (SC).

17(B).<u>Offences punishable with imprisonment less than three years are bailable</u> : The expression "bailable offences" has been defined in Section 2(a) of the CrPC. It means an offence which is either shown to be bailable in the First Schedule of the CrPC or which is made bailable by any other law for the time being enforce. The First Schedule the Code of Criminal Procedure consists of part 1 and part 2. While part1 deals with offences under the IPC, part 2 deals with offences under other laws. Accordingly, if the provisions of part 2 of the first schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than 3 years or with fine only, being the third item under the category of offences indicated in the said part. An offence punishable with imprisonment for 3 years and upwards, but not more than 7 years, has been shown to be cognizable and non-bailable. See : **Om Prakash & another Vs. Union of India & another, 2012 (76) ACC 869 (SC) (Three-Judge Bench).**

17(C). <u>No conditions to be imposed for bailable offences u/s. 436 CrPC</u> : Court has no discretion to impose any conditions while granting bail to an accused u/s. 436CrPC for a bailable offence except demanding security with sureties. See : **Vaman Narain Vs. State of Rajasthan, 2009 CrLJ 1311 (SC).**

17(D). <u>Bail in bailable offences----when to be refused</u> : Sec. 436(2) CrPC reads thus :

"Sec. 436(2) CrPC : Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any

such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446."

17(E). <u>Cancellation of bail in bailable offences</u> : A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail if his conduct subsequent to his release is found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of the High Court u/s. 482 CrPC Bail granted to an accused with reference to bailable offence can be cancelled only if the accused---

(1) misuses his liberty by indulging in similar criminal activity,

(2) interferes with the course of investigation,

(3) attempts to tamper with evidence or witnesses,

(4) threatens witnesses or indulges in similar activities which would hamper smooth investigation,

(5) attempts to flee to another country,

(6) attempts to make himself scarce by going underground or becoming unavailable to the investigation agency,

(7) attempts to place himself beyond the reach of his surety, etc.

However, these grounds are illustrative and not exhaustive. See **: Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338**

17(F). <u>Only Sessions Judge or High Court and not the Magistrate can cancel bail in bailable offences:</u> An application for cancellation of bail in bailable offences can either be made before the Sessions Court or the High Court and not before the Magistrate as he has no power. See…**Madhab Chandra Jena vs. State of Orissa, 1988 CrLJ 608 (Orissa..DB).**

18. <u>Bail by police officer--- whether survives after submission of charge sheet?</u> : The power of a Police Officer in charge of a Police Station to grant bail and the bail granted by him comes to an end with the conclusion of the investigation except in cases where the sufficient evidence is only that of a bailable offence, in which eventuality he can take security for appearance of the accused before the Magistrate on a day fixed or from day to day until otherwise directed. No parity can be claimed with an order passed by Magistrate in view of enabling provision, contained in clause (b) of S. 209 CrPC under which the Committal Magistrate has been empowered to grant bail until conclusion of trial, which power was otherwise restricted to grant of bail by him during pendency of committal proceedings under clause (a) of S. 209 CrPC See : **Haji Mohd. Wasim Vs. State of U.P., 1992 Cr.L.J. 1299 (All—L.B.).**

19. <u>Relevant Considerations for grant or refusal of bail</u> : Interpreting the provisions of bail contained u/s. 437 & 439 CrPC , the Supreme Court has laid down following considerations for grant or refusal of bail to an accused in a non-bailable offence----

(1). Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(2). Nature and gravity of the offence;
(3). Severity of the punishment in the event of conviction;
(4). Danger of the accused absconding or fleeing, if released on bail;
(5). Character and behavior,
(6). Means, position and standing of the accused in the Society;
(7). Likelihood of the offence being repeated;
(8). Reasonable apprehension of the witnesses being tampered with;
(9). Danger, of course, of justice being thwarted by grant of bail;
(10). Balance between the rights of the accused and the interest of the society;
(11). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.
(12). Any other factor relevant to the accused. See---

(i) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
(ii) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949
(iii) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189
(iv) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475
(v) Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
(vi) State of U.P. through CBI Vs. Amarmani Tripathi,(2005)8 SCC 21
(vii) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387
(viii) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578
(ix) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)
(x) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50
(xi) Mansab Ali Vs. Irsan, (2003) 1 SCC 632.

20. **Discussions of evidence/merits of the case in Bail Order** : While disposing of bail applications u/s. 437/439 CrPC , courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC. See :

1. Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296.
2. Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, 2005 Cr.L.J. 2533 (SC—Three Judge Bench)
3. Afzalkhan Vs. State of Gujarat, AIR 2007 SC 2111
4. Nira Radia Vs. Dheeraj Singh, (2006) 9 SCC 760
5. Ajay Kumar Sharma Vs. State of U.P., (2005) 7 SCC 507 (Three Judge Bench)
6. Chamanlal Vs. State of U.P., 2004 (50) ACC 213 (SC).

21. **when charge sheet already filed, the application moved by accused u/s 167 (2) CrPC can be decided only on merits :** Where charge sheet has not been filed within the stipulated period and the accused moves an application before concerned Magistrate for being released on jail and offers to furnish bail bonds then in such a case, even if the concerned Magistrate fails to pass any order on the bail

application of the accused and keeps the same pending and in the meantime charge sheet is submitted the indefeasible right which has occurred to the accused under proviso to section 167 (2) CrPC shall not be extinguished. If however, an accused fails to enforce his right under proviso to section 167 (2) CrPC and a charge sheet is submitted after the stipulated period in that case the indefeasible right acquiring to an accused shall stand extinguished and his bail application shall be considered on merits only in accordance with the relevant provisions of the code. See...**Chandra Pal Vs. State of U.P., 2011 CrLJ 1124 (All).**

22. **Expression of opinion on merits of the case not be done while considering the bail application:** At the stage of considering bail, it would not be proper for the court to express any opinion on the merits or demerits of the prosecution case as well as the defence. See… **Anwari Begum vs. Sher Mohammad, 2005 CrLJ 4132 (SC).**

23. **Directions dated 11.10.11 issued by Division Bench of the Hon'ble Allahabad High Court in Shaukin Vs. State of UP, 2012 (76) ACC 159 (All…DB) regarding remand and bail of accused of offences punishable with imprisonment upto seven years :** The Hon'ble High Court has (in para 20) of its above judgment has issued following directions :

"We therefore direct the Magistrates that when accused punishable with upto 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41 A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in **Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437** and **Sheoraj Singh @ Chuttan v State of U.P. and others, 2009(65) ACC 781.** The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.

The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections

41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."

24. **Bail in Complaint Cases—Relevant Circular Letters :** An accused of a complaint case, on appearance before court, cannot claim to be released u/s. 88 CrPC on bail on his personal bond only. But the accused would have to apply for bail under chapter XXXIII CrPC i.e. Sec. 436, 437 CrPC and in case the offence is non-bailable, he may or may not be granted bail. See **: Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All).**

Note: **(A)** Giving approval to the principles of law laid down in Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All) and interpreting the law of bail u/s. 436, 437 CrPC in complaint cases and bail to any other person like witnesses u/s. 88 CrPC , a Division Bench of Hon'ble Allahabad High Court in Criminal Misc. Application No. 8810 of 1989, Babu Lal & others Vs. Smt. Momina Begum & Criminal Misc. Application No. 8811 of 1989, Parasnath Dubey & others Vs. State of U.P. & others decided on 23.3.2006 and circulated by Hon'ble Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33/2006, dated 7.8.2008 has ruled as under---

"Where Sections 436 and 437 CrPC , under the provisions of Chapter XXXIII would be applicable would not be dealt with by the procedure u/s. 88, inasmuch as, the considerations for granting bail are different and includes several other aspects, which are not to be considered while applying Sec. 88. For example, where a person is accused of a bailable offence and process is issued, as and when he appears before the Court either after his arrest or detention or otherwise, if he shows his readiness to give bail to the Court, he shall be released on bail. Therefore, a person accused of a bailable offence needs to be personally present before the Court and has to be ready to give bail before he has to be released on bail. But where a person is accused of non-bailable offence, as and when he appears before the Court whether by arrest or detention or otherwise, he may be released on bail by a Court other than High Court and the Court of Sessions u/s. 437, CrPC subject to satisfaction of certain conditions, namely, that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail with respect to offence punishable with death or imprisonment for life is not applicable where such person is under 16 years of age or is a woman or is sick or infirm subject to the conditions, as the Court may deem fit, may be imposed. Therefore, the power to release on bail u/s. 437,CrPC is restricted and subject to certain conditions which cannot be made redundant by taking recourse to Sec. 88 CrPC where process has been issued taking cognizance on a complaint, where the allegations of commission of non cognizable offence has been made against person. These are illustrative and not exhaustive but are necessary to demonstrate that Sec. 88, in all such matters will have no application. This also shows that by necessary implication Sec. 88 in such general way, cannot be applied and has no scope for such application. Where there is overlapping power or provision, but one provision is specific while other is general, the law is well

settled that specific and special provision shall prevail over the general provision in the matter of accused. Since the procedure with respect to bail and bonds, is provided under Chapter 33 of CrPC in our view, Sec. 88 would not be attracted.

……the power u/s. 88 is much wider. When the accused approaches the Court for bail, the Magistrate in its discretion may require him to execute bail bonds, since the language of statutes u/s. 88 CrPC is wider and the objective and purpose is to ensure the presence of the person concerned. Therefore, speaking generally, it may be said that where an accused is entitled to approach the Court for bail u/ss. 436 and 437 CrPC , he may also be governed by Sec. 88 CrPC , which is not qualified and encompass within its ambit an accused, a witness or any other person. However, Sections 436 and 437 CrPC deal only with the "accused person". Although the word 'person' has also been used in Sections 436 and 437CrPC but it is qualified with the word "accused" and therefore, the aforesaid provisions are applicable only to such category of persons, who are accused of bailable or non-bailable offence. It may thus be said, referring to Sec. 88, in respect of accused, that, it may have applicable where the Court has issued process to an accused but it has not actually been served upon him and yet if he appears before the Court, in such cases the Court is empowered to ask for bail bonds from such accused person to ensure his presence before the Court in future. This is one aspect and demonstrates that the scope of Sections 88 and 89CrPC is much wider qua Sec. 436 and 437CrPC

Thus, we are of the view that the "case which will be governed by the Sections 436 and 437CrPC it is not necessary to apply the provisions of Sec. 88 ofCrPC for the reason that Sections 436 and 437CrPC , are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89CrPC is much wider as discussed above. The case in which Section 436CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s. 436 and 437CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89CrPC as such, would not be attracted in such cases." However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s. 88CrPC or the Court gives bail u/s. 436 and 437CrPC , the appearance of the person before the Court is must and can not be dispensed with at all."

25. **<u>Defence plea at the time of disposal of Bail Application</u> :** Defence plea (like alibi etc.) taken by accused cannot be considered by the court at the time of hearing of the bail application. Plea of defence can be tested by the court at the stage of trial of the case and not at the stage of disposal of bail application. See : **Naresh Rav Vs. State of U.P., 2005 (53) ACC 148 (All).**

26. **<u>Affidavits of P.Ws. & Bail</u> :** In considering bail applications, the Courts should not consider affidavits of prosecution witnesses filed denying the prosecution case. See : **Jaswant Vs. State of U.P., 1994 ACC 424 (All).**

26. **<u>Hearing of prosecutor & accused on Bail Application</u> :** Last proviso added to Sec. 437(1)CrPC w.e.f. 2006 amendments reads under---

"Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor."

In a case u/s. 302, 201 IPC, where the Sessions Judge had granted interim/short term bail without hearing the Public Prosecutor, the Allahabad High Court observed as under---

"Hearing of both the parties at the stage of bail is almost an essentiality. By granting an easy bail, or for that matter, interim bail, indirectly, the State is condemned. Therefore, State has a right to be heard in all cases, like bail, unless in some exceptional cases in which the court considers it proper to exempt itself from this obligation. In the instant case, the learned Sessions Judge has not mentioned any reason or exceptional circumstance which compelled him to pass the order for short term bail without hearing the counsel for the State. There is not even a faint suggestion as to what were the compelling circumstances which necessitated the grant of short term bail then and there." See : **Sudhindra Kumar Singh Vs. Distt. & Sessions Judge, Allahabad & Ors., 1998 (1) Crimes 270 (All).**

27. **<u>Illegal remand, illegal custody or detention of accused & Bail</u> :** In the case noted below, the accused was into illegal judicial custody for the offences u/s. 498-A, 304-B IPC as Magistrate had not granted further remand of the accused u/s. 167CrPC , cognizance of the offence was not taken by the Magistrate on receipt of charge sheet from the I.O., no remand order was passed u/s. 209(b)CrPC , no order was passed remanding the accused to judicial custody, case was committed by the Magistrate to Court of Sessions ordering the production of the accused before the Court of Sessions, no order by the Magistrate was passed even on that date u/s. 209(b)CrPC , there was no remand order though case was pending before the Sessions Court but custody of the accused was continuing, then it has been held by the Allahabad High Court that the custody/detention of the accused without there being any remand order was naturally illegal but no law recognizes grant of bail to accused on the basis of such illegal custody/detention and the bail was consequently refused. Custody includes both legal and illegal imprisonment and court can rectify its mistake and transform the illegal custody/imprisonment of the accused into legal custody/imprisonment. See :

1. **Sheo Kumar Vs. State of U.P., 2001 (1) JIC 7 (All)**
2. **Surjit Singh Vs. State of U.P., 1984 ALJ 375 (All—Full Bench).**

28. **<u>Criminal History of Accused & Bail</u> :** While granting bail to an accused, the court should also take into consideration the criminal history of the accused. Criminal

antecedents of an accused though always not determinative of question whether bail is to be granted or not, yet their relevance cannot be totally ignored. See :

1. **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446**
2. **Brij Nandan Jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021**
3. **Surendra Singh Vs. State of U.P., 2008 Cr.L.J. (NOC) 924 (All)**
4. **Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)**
5. **Sompal Singh Vs. Sunil Rathi, 2005 (1) SCJ 107**
6. **State of U.P. Vs. Amarmani Tripathi, (2005) 8 SCC 21**
7. **State of Maharashtra Vs. Sitaram Popat Vetal, AIR 2004 SC 4258.**

29(A).<u>NBW and Bail</u> : In the case noted below, the Supreme Court has ruled that BW or NBW against a person can be issued only under the following conditions---

(1) Non bailable warrant should be issued to bring a person to court when summons or bailable warrant would be unlikely to have the desired result. NBW can be issued when it is reasonable to believe that the person will not voluntarily appear in the court, or

(2) The police authorities are unable to find the person serve him with a summons, or

(3) It is considered that the person could harm someone if not placed into custody immediately.

As for as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in court, the summons or the bailable warrants should be preferred. **<u>The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants.</u>** In <u>complaint cases</u>, at the first instance, the court should direct serving of summonses. In the second instance, should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of NBW should be resorted to. See : **Inder Mohan Goswami Vs. State of Uttaranchal, AIR 2008 SC 251.**

29(B).<u>Bail of warrantee</u> : Cases which would be governed by the Sections 436 and 437CrPC it is not necessary to apply the provisions of Sec. 88 ofCrPC for the reason that Sections 436 and 437CrPC , are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89CrPC is much wider as discussed above. The case in which Section 436CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s. 436 and 437CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89CrPC as such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s. 88CrPC or the Court gives bail u/s. 436 and 437CrPC , the appearance of the person before the Court is must and can not be dispensed with at all. See : The Division Bench Decision dated 23.3.2006 rendered in

Criminal Misc. Application No. 8810 of 1989, Babu Lal Vs. Smt. Momina Begum & Criminal Misc. Application No. 8811 of 1989, Parasnath Dubey Vs. State of U.P., circulated by the Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33 / 2006, dated 7.8.2006.

30. <u>Penalty awardable against accused on breach of bail or bond to appear in court (Sec. 229-A IPC)</u> : The newly added sections 174-A IPC & 229-A IPC since 2006 provide penalty to an accused in case of non-appearance in response to a proclamation u/s. 82CrPC and breach of bail or bond to appear in court. Sec. 229-A IPC reads thus : **"Sec. 229-A IPC :** Failure by person released on bail or bond to appear in Court--- Whoever, having been charged with an offence and released on bail or bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation : The punishment under this section is---

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order for feature of the bond."

31. <u>Second or successive bail applications</u> : Second or successive bail applications can be moved only on two grounds noted below---

(i) On change of facts or circumstances (ii) Change in law

Where the issues and grounds taken in the second or successive bail applications were already agitated and rejected by the court, the same cannot be ordinarily allowed to be re-agitated. Findings of higher courts or coordinate bench rejecting the earlier bail application must receive serious consideration at the hands of court entertaining a subsequent bail application as the same can be done only in case of change in factual position or in law. If the subsequent bail application is moved on the same grounds as in the previous bail application, the subsequent bail application would be deemed to be seeking review of earlier order which is not permissible under criminal law. See :

1. **Suheb Vs. State of U.P., 2006 (6) ALJ (NOC) 1362 (All)**
2. **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, 2005 (51) ACC 727 (SC) (Three-Judge Bench)**
3. **State of T.N. Vs. S.A. Raja, 2005 (53) ACC 940 (SC)**
4. **State of M.P. Vs. Kajad, 2002 (1) JIC 563 (SC).**

32(A). <u>Verification of sureties & their papers/status— Relevant C.Ls. & judicial pronouncements thereon</u> : Where the surety furnishes a surety bond alongwith an affidavit as required by Sec. 499(3), Criminal P.C., the Magistrate can accept his surety bond and can make further enquiry as well and for this purpose order verification from the Tehsil. In such a case the bond is accepted subject to further orders on the receipt of the Tehsil report. The provision in Sec. 500, sub-sec. (1) contemplates that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Hence, a formal acceptance of a surety bond on a future date does not in any

way effect the surety's liability on the bond from the earlier date on which it was first accepted. See :

1. **Rajpal Singh Vs. State of U.P., 2003 AAC (Cri) 261 (All)**
2. **Bekaru Singh Vs. State of U.P., AIR 1963 SC 430.**

32(B).**C.L. No. 3/Admin.(G), dated Allahabad 16.2.2009 now reads as under**---

"Upon consideration of the direction of Hon'ble court in Criminal Misc. Case No. 4356/08 Shiv Shyam Pandey versus State of U.P. and others and in the wake of receipt of representation of the Bar complaining against considerable delay taking place in respect of verification of the address and status of the sureties filed before the Subordinate Courts, the Hon'ble Court has been pleased to direct that in supersession of earlier Circular Letter No. 44/98 dated 20.8.1998 and Circular Letter No. 58/98 dated 5.11.1998, the following guidelines shall be followed by the Judicial Officers of Subordinate Courts:-

1. **In serious cases such as murder, dacoity, rape and cases falling under NDPS Act, two sureties should normally be directed to be filed and the amount of the surety bonds should be fixed commensurate with the gravity of the offence.**
2. The address and status verification of the sureties shall be obtained within reasonable time, say seven days in case of local sureties, 15 days in case of sureties being of other district and one month in case of sureties being of other State, positively from the concerned Police and revenue authorities and in case of non receipt of the report within given time, the concerned court may call for explanation for the delay from the concerned authorities and take suitable action against them and at the same time may consider granting provisional release of the accused person in appropriate cases subject to the condition that in case of any discrepancies being reported by the verifying authorities, the accuses shall surrender forthwith.
3. The Courts must insist on filing of black and white photographs of the sureties which must have been prepared from the negative.
4. The copies of the title deeds filed in support of solvency of status should be verified.
5. In cases where the Court feels that there are chances of plantation of drugs to implicate a person in a case covered un der the NDPS Act, the amount of surety bonds may be suitably reduced."

32(C).Local sureties---Not to be insisted : Order rejecting surety because he or his estate was situate in a different district is discriminatory, illegal and violative of Art. 14 of the Constitution. Likewise, geographic allergy at the judicial level makes mockery of equal protection of the laws within the territory of India, India is one and not a conglomeration of districts, untouchably apart. See :

(i) **Manish Vs. State of UP, 2008 CrLJ (NOC) 1123 (Alld)**
(ii) **Moti Ram Vs. State of M.P., AIR 1978 SC 1594.**

33. **Delay in releasing the accused from jail not to be committed after grant of bail :** Where there was delayed release of the accused despite grant of Bail and acceptance of his bonds and sureties by the Court, the Hon'ble Supreme Court issued notice to the Superintendent of jail requiring his explanation and on finding that delay took place on account of certain procedural formalities in giving effect to the bail order and not because of individual's laxity, the notice was withdrawn by the Hon'ble Court. See…**Pusai Vs. State (NCT) of Delhi, AIR 2004 SC 1184.**

34(A). Interim Bail By Magistrates : As regards the law of grant of Interim bail by Magistrates u/s 437 CrPC, referring to the cases of Lal Kamlendra Pratap Singh Vs. State of U.P. & Srimati Amravati Vs. State of U.P., a Division Bench of the Allahabad High Court(in the case noted below) has directed it's following guidelines to be circulated amongst the judicial officers of the state of U.P. for observance in letter and spirit by holding that the order granting Interim bail pending hearing of a regular bail application may be passed in appropriate cases, but it ought not to be passed where.....

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims and the society at large and for protecting witnesses.

(ii) The case involves an offence under the U.P. Gangsters Act and similar statutory provisions.

(iii) The accused is likely to abscond and evade the processes of law.

(iv) The accused is given to violent behaviour and is likely to commit furthur offences unless his movements are brought under restraint.

(v) The accused is habitual offender and unless kept in custody he is likely to commit similar offences again.

(vi) The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/Competent Court feels that it is not a fit case for releasing the appellant on interim bail pending the hearing of the regular bail.

(vii) An order of interim bail can also not be passed by the Magistrate who is not empowered to grant regular bail in offences punishable with death or imprisonment for life or under the other circumstances enumerated in section 437CrPC

(viii) If the Public Prosecutor/ Investigating Officer can satisfy the Magistrate/ Court concerned that there is a bonafide need for custodial interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons,if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate order.

(ix) It is expected that in all cases where the magistrate is not restrained from granting bail under section 437 CrPC, where an accused moves an application for consideration of his prayer for bail through his Counsel, even without orders of the High Court, the Magistrate may fix a convenient date for the appearance of the accused, and direct the Public Prosecutor to seek instructions from the Investigating Officer in the meanwhile. Between the date of moving of the surrender application and the date fixed for appearance of the accused by the Magistrate, the accused may not be arrested without permission of the Court concerned. In case the Magistrate is not in a position to finally dispose of the bail on the date fixed, he may consider releasing the appellant on **interim bail** till the date of final hearing of the bail application in the light of the observations hereinabove. This direction is needed to prevent all accused persons whose cases do not fall within the interdict of section 437 CrPC rushing to this Court seeking protection, and for this Court having to pass orders in each individual case, creating a huge backlog of criminal writ petitions which then engage the attention of a number of benches and come in the way of disposal of the large number of pending division bench murder and other appeals. See :

1. **Pradeep Tyagi Vs. State Of U.P., 2009(65) ACC 443(All)(D.B.)**
2. **Sheoraj Singh** alias **Chuttan Vs. State of UP, 2009 (65) ACC 781 (All—DB) & Circulated amongst the Judicial Officers of the State of UP vide Hon'ble High Court G.L.No 15335/2010/Admin. 'G-II' Dated 20.9.2010**.
3. **Tahseen Khan Vs. State of UP,** *decision dated 19.11.2010 rendered in Criminal Misc. Writ Petition No.21083/2010 by Division Bench of Allahabad High Court & circulated amongst the Judicial Officers of the State of UP.*
4. **Sukhwant Singh Vs. State of Pujab, 2010 CRLJ 1435(SC)**

34(B). Interim Bail by Sessions Judge/Addl. Sessions Judge : In the cases noted below, it has been laid down that Sessions Judges and Addl. Sessions Judges are empowered u/s 439 CrPC to grant interim bail to an accused of non-bailable offence keeping the bail application pending for disposal on merits----

1. **Lal Kamlendra Pratap Singh Vs. State of UP, 2009(2) Crime 4 (SC)**
2. **Smt. Amrawati & Others Vs. State of U.P., 2005 (1) Crimes 44 (All—Seven Judge Bench.....***which received approval by Supreme Court vide its order dated 23-03-2009 passed in criminal appeal no. 538/2009 Lal Kamlendra Pratap Singh Vs. State of U.P.) and circulated by the High Court amongst the Judicial Officers of the State of U.P. vide C.L. No.:44/2004, dated 16.10.2004*
3. **Sheo Raj Singh @ Chhuttan Vs. State of UP, 2009(65) ACC 781(All-DB)**
4. **Tahseen Khan Vs. State of UP,** *decision dated 19.11.2010 rendered in Criminal Misc. Writ Petition No. 21083/2010 by a Division Bench of the Hon'ble Allahabad High Court & circulated amongst the Judicial Officers of the State of UP.*
5. **Sukhwant Singh Vs. State of Pujab, 2010 CRLJ 1435(SC).**

34(C).Interim Bail by Magistrate or Sessions Judge When Not To Be Granted : Interim bail pending hearing of a regular bail application ought not to be passed where **:**

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse

confidence among the terror stricken victims and society at large and for protecting witnesses.

(ii) The case involves an offence under the UP Gangsters Act and in similar statutory provisions.

(iii) The accused is likely to abscond and evade the processes of law.

(iv) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(v) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

(vi) The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/Competent Court feels that it is not a fit case for releasing the appellant on interim bail pending the hearing of the regular bail.

(vii) An order of interim bail can also not be passed by a Magistrate who is not empowered to grant regular bail in offences punishable with death or imprisonment for life or under the other circumstances enumerated in Section 437 CrPC.

(viii) If the Public Prosecutor/Investigating Officer can satisfy the Magistrate/Court concerned that there is a bona fide *need for custodial interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate order.* See : **Pradeep Tyagi Vs. State of UP & Others, 2009 (65) ACC 443 (All…DB)**(*Para 12*).

35(A).<u>Release on P.B. only----when to be ordered (Sec. 436(2) & explanation added thereto since 2006)</u> : "Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

Explanation: Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso."

If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused---

(1) The length of his residence in the community,

(2) His employment status, history and his financial condition,

(3) His family ties and relationships,

(4) His reputation, character and monetary condition,

(5) His prior criminal record including any record or prior release on recognizance or on bail,

(6) The identity of responsible members of the community who would vouch for his reliability,

(7) The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and

(8) Any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appear. See :

1. **Ram Shankar Vs. State of U.P., 1990 Cr.L.J. 2519 (All—D.B.)**
2. **Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360 (Three Judge Bench)**
3. **Moti Ram Vs. State of M.P., AIR 1978 SC 1594.**

35(B).<u>Amount of P.B. & Bail Bonds</u> : The decision as regards the amount of the bond should be an individualized decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. The enquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. A surety bond is a contract. Surety bond serves a public purpose in criminal cases, Surety bond must not be so unduly strained and construed asto result in defeating it's essential purpose, such a bond is executed for the purpose of ensuring the presence of the accused in the court. The amount of surety bond should not be excessive. See :

1. **Mohd. Tariq Vs. Union of India, 1990 Cr.L.J. 474 (All)**
2. **Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360 (Three Judge Bench)**
3. **State of Maharashtra Vs. Dadamiya Babumiya Shaikh, AIR 1971 SC 1722.**

35(C).<u>Deposit of Bond amount in cash as condition for Bail</u> : Where the accused already released on bail committed defaults in appearing before the court and NBW was issued against him and was again ordered to be released on bail subject to deposit of Rs. 10,000/- as the amount of personal bond, the Allahabad High Court has held that the condition imposed by court regarding deposit of cash was illegal as no show cause notice u/s. 446CrPC was given to the accused and the amount of the bond was also not forfeited. See :

1. **Islam @ Kallu Vs. State of U.P., 2003 (2) JIC 940 (All)**
2. **Ganesh Babu Gupta Vs. State of U.P., 1990 Cr.L.J. 912 (All)**
3. **Saudan Singh Vs. State of U.P., 1987(2) Crimes 655 (All)---** Except u/s. 445CrPC which is in the alternative, there is no other provision that any amount either of P.B. or of the surety bond may be deposited in cash.
4. **Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360.**

36. <u>Notice before forfeiture of Bail Bonds u/s. 446CrPC</u> : Issuing notice to accused for showing cause or hearing before cancellation of his bail and bonds before forfeiture is not imperative. Court may or may not issue notice to the sureties before forfeiture of their bail bonds. Notice to sureties may be issued even after forfeiture of the bonds of the sureties. See : **Ashraf Ali Vs. State of U.P., 2001 (42) ACC 253 (All)**

The Supreme Court has held that before a surety becomes liable to pay the amount of the bond forfeited it is necessary to give notice why the amount should not be paid and if he fails to show sufficient cause only then can the Court proceed to recover the money. See : Ghulam Mehdi Vs. State of Rajasthan, AIR 1960 SC 1185

But in the cases noted below, it has been held by the Allahabad High Court that issuing notice to the surety before forfeiture of surety bond u/s. 446CrPC is mandatory and natural justice also requires that before any adverse order is passed, the person concerned should be given an opportunity of being heard. See :

1. **Abdul Mazid Vs. State of U.P., 1994(3) Crimes 437 (All)**
2. **Mahmood Hasan Vs. State of U.P., 1979 Cr.L.J. 1439 (All).**

37(A). **Grounds for cancellation of bail** : Bail once granted to an accused cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Grounds for cancellation of bail may be based on satisfaction of court on (i) chances of accused absconding (ii) interference or attempt to interfere with due course of administration of justice and (iii) abuse in any manner of bail etc. When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. See :

1. **Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 1891.**
2. **Hazari Lal Das Vs. State of W.B., 2009(6) Supreme 564**
3. **Panchanan Misra Vs. Digambar Misra, AIR 2005 SC 1299**
4. **Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890**
5. **Union of India Vs. Subhash Chandra, 2002 (2) JIC 314 (All)**
6. **Subhendu Misra Vs. Subrat Kumar Misra,2000 SCC (Cri) 1508**
7. **Dolat Ram Vs. State of Haryana, 1995 SCC (Criminal) 237.**

37(B).Cancellation of bail on the ground of threat to witnesses : Bail granted to an accused u/s. 437/439CrPC can be cancelled if the accused threatens the witnesses to turn hostile or tampers in any other manner with the evidence of the prosecution. See :

1. **Panchanan Misra Vs. Digambar Misra, AIR 2005 SC 1299**
2. **Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890**
3. **Gurcharan Singh Vs. State of Delhi Admn., AIR 1978 SC 179.**

Note: Relying upon the abovenoted Supreme Court rulings, a Division Bench judgment of Hon'ble Allahabad High Court delivered in Cr. Misc. Petition No. 5695/2006, Karan Singh Vs. State of U.P., decided on 12.4.2007 and circulated amongst the judicial officers of the State of U.P., vide C.L. No. 6561/2007 Dated: April 21, 2007 directs the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile.

37(C).Cancellation of bail on the basis of post bail conduct and/or supervening circumstances : For cancellation of bail granted to an accused u/s. 437 or 439CrPC , post bail conduct of the accused and supervening circumstances can also be taken into

consideration. See : **State Through CBI Vs. Amarmani Tripathi, 2005 (53) ACC 484 (SC).**

37(D).<u>Cancellation of bail on protraction of trial by seeking unnecessary adjournments</u> : Bail granted to an accused u/s. 437 or 439CrPC can be cancelled if the accused indulges into deliberate protraction of trial or taking unnecessary adjournments. See **: Lalu Prasad Yadav Vs. State of Jharkhand, (2006) 6 SCC 661.**

37(E).<u>Cancellation of bail on the basis of non-reasoned bail order passed by ignoring material on record</u> : An order granting bail u/s. 437 or 439CrPC by ignoring material and evidence on record and without reasons, would be perverse and contrary to the principles of law of bail. Such bail order would by itself provide a ground for moving an application for cancellation of bail. Such ground for cancellation is different from the ground that the accused mis-conducted himself or some new facts called for cancellation of bail. Discussing evidence while granting bail is totally different from giving reasons for grant of bail. High Court, u/s. 482 or 439CrPC , can cancel such bail granted by Sessions Judge u/s. 439CrPC even if such bail order is interlocutory order. See :

1(a). Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296
1. Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
2. Brij Nandan jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
3. Puran Vs. Ram Bilas, (2001) 6 SCC 338.

37(F).<u>Cancellation of bail by same Judge—Not necessary</u> : Taking a different view than what was laid down earlier in the case of Harjeet Singh Vs. State of Punjab, 2002 (1) JIC 254 (SC), the Supreme Court, in the case noted below, has ruled that the conventional practice of placing the application for cancellation of bail before the Judge who had granted the bail is not necessary and need not be followed. See : **Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890.**

37(G).<u>Who can move application for cancellation of bail</u> : It is settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also and the complainant can question the merits of the order granting bail. Either State or any aggrieved party (in the instant case father of the deceased for offences u/s. 498-A, 304-B IPC) can move application for cancellation of bail granted earlier to the accused. See :

1. Brij Nandan jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
2. Puran Vs. Ram Bilas, (2001) 6 SCC 338.

37(H).<u>Who can move application for cancellation of bail?</u> : The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or circumstances at any point of time. See : **Siddharam satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36**

37(I). <u>Notice / hearing to accused before cancellation of bail</u> : An accused must be given notice and opportunity of being heard before the bail granted to him earlier is cancelled. See :

1. **P.K. Shaji Vs. State of Kerala, (2006) 2 SCC (Cri) 174**
2. **Gurdev Singh Vs. State of Bihar, (2005) 13 SCC 286.**

37(J).<u>Cancellation of bail on the ground of concealment of facts</u>..... Bail granted on the basis of concealment of facts would be liable to be cancelled on this ground alone.See... **Tufail Ahmed Vs. State of U.P, 2010 (5) ALJ 102 (All).**

37(K).<u>A bail granted by SJ or High Court not to be cancelled by the Magistrate</u>

<u>:</u> Where Bail was granted by a Sessions Judge, any cancellation or alteration of the conditions of bail can be made by the Sessions Judge himself or by the High Court only and not by a Magistrate. See….**Ananth Kumar Naik Vs. State of AP, 1977 CrLJ 1797 (AP).**

37(L). <u>Order of Judicial Magistrate cancelling bail is revisable by SJ</u>: An order passed by Judicial Magistrate cancelling bail is revisable before the Sessions Judge. See… **Pandit Dnyanu Khot vs. State of Maharashtra, 2002 (45) ACC 620 (SC).**

37(M).<u>Cancellation of bail by Magistrate granted by Court of Sessions or High Court</u> : The bail granted by Court of Sessions or by any other Superior Court cannot be cancelled by Magistrate unless so directed by the Court of Sessions or by any other Superior Court. The powers of High Court or the Sessions Court u/s. 439(2)CrPC are very wide and it specifically empowers the Sessions Court or the High Court to cancel the bail granted by any of the subordinate courts under Chapter XXXIII of theCrPC i.e. u/s. 436 or 437CrPC See : **P.K. Shaji Vs. State of Kerala, (2006) 2 SCC (Cri) 174**.

37(N).<u>Cancellation of Bail by Magistrate granted by police</u> : Referring the case of Free Legal Aid Committee, Jamshedpur Vs. State of Bihar, AIR 1982 SC 1463, the Rajasthan High Court has, in the case noted below, held that where the accused was granted bail by police officer during investigation, Magistrate does not have jurisdiction to order furnishing of fresh bail bonds after submission of charge sheet. There is no provision in the code of Criminal Procedure for asking an accused already released on bail by the police officer to furnish fresh bail and bonds. The bail bonds submitted before the police officer are for purposes of appearing before the court and when this undertaking has already been given, fresh undertaking for the same effect is not to be asked for. Bail and bonds should ordinarily be for appearance not only before the court of Magistrate but also if the case is triable by the Court of Session before the Court of Session unless there are particular reasons for not doing so. See : **Monit Malhotra Vs. State of Rajasthan, 1991 Cr.L.J. 806 (Raj).**

38(A). <u>Bail u/s. 389(3)CrPC by Trial Court on conviction :</u>

18(A). Sec. 389(3)CrPC empowers the trial court to grant bail to a convicted accused under the following conditions---

<u>"Sec. 389(3)CrPC</u> --- Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail.

Order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

38(B).<u>Section 439(2) CrPC not applicable to bail granted u/s 389 CrPC :</u> Section 439(2) CrPC for cancellation of bail cannot be invoked where accused convict has been granted bail in criminal appeal u/s 389(1) CrPC. The bail can be cancelled u/s 482 CrPC. Where pending appeal, prosecution witness was murdered by the accused convict, bail was cancelled. See : **Rajpal Singh vs State of UP, 2002 CrLJ 4267 (All..DB).**

38(C).<u>Relevant considerations for grant of bail u/s. 389CrPC</u> : During the pendency of an appeal, an appellate court is empowered u/s. 389CrPC to release the convict/appellant on bail and may also, for the reasons to be recorded in writing, suspend the judgment of conviction and order of sentence passed by the lower court. The relevant considerations for releasing the convict/appellant on bail u/s. 389CrPC are as under----

(i) Nature of accusations made against the accused.

(ii) Manner which the offence was committed.

(iii) Gravity of the offence desirability of releasing the accused on bail keeping in view the seriousness of the offence committed by him

(iv) See :

1. **State of Haryana Vs. Hasmat, (2004) 6 SCC 175**
2. **Vijay Kumar Vs. Narendra, (2002) 9 SCC 364**
3. **Ramji Prasad Vs. Rattan Kumar Jaiswal, (2002) 9 SCC 366.**

38(D). <u>Second bail application u/s. 389CrPC</u> : An order passed on a bail application is only an interlocutory order and cannot be treated as judgment or final order disposing of a case and the bar contained u/s. 362CrPC is not attracted to entertaining a second bail application u/s. 389CrPC by the appellate court. There is no provision inCrPC creating a bar against the maintainability of a second bail application u/s. 389CrPC in an appeal. A second bail application would be maintainable only on some substantial ground where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second application for bail would also be maintainable on the ground of unusual long delay in hearing of the appeal as in the event the appeal is not heard within a reasonable time and the convicted accused undergoes a major part of the sentence imposed upon him, the purpose of filing of the appeal itself may be frustrated. A strong humanitarian ground which may not necessarily pertain to the

accused himself but may pertain to someone very close to him may also, in certain circumstances, be a ground to entertain a second bail application. These are some of the grounds on which second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second application for bail may be maintainable as it will depend upon peculiar facts and circumstances of each case. See : **Dal Chand Vs. State of U.P., 2000 Cr.L.J. 4579 (All—D.B.).**

38(E). <u>Bail by appellate court should be normally granted u/s 389 CrPC:</u> When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances like any statutory restriction against suspension of sentence. Similarly, when the sentence is life-imprisonment the consideration for suspension of sentence could be of a different approach. When the appellate court finds that due to practical reasons, appeal cannot be disposed off expeditiously, the appellate court must bestow special concern in the matter of suspending the sentence so as to make the right of appeal meaningful and effective. Ofcourse, appellate court can impose similar conditions when bail is granted. The sentence of imprisonment as well as the direction for payment of fine or capable of being executed. See… **Bhagwan Rama Shinde Gosai Vs. State of Gujarat, AIR 1999 SC 1859.**

38(F). <u>Bail u/s 389 CrPC when not to be granted:</u> Possible delay in disposal of appeal and there being arguable points by itself may not be sufficient to grant suspension of a sentence. See… **State of Punjab Vs. Deepak Mattu, (2007) 11 SCC 319.**

38(G). <u>Pre-conditions for suspension of sentence u/s 389 CrPC</u> : A person seeking stay of conviction u/s 389 should specifically draw the attention of the appellate court to the consequences if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of conviction, the person convicted cannot obtain an order of stay of conviction. See… **Navjot Sidhu vs. State of Punjab, AIR 2007 SC 1003.**

38(H). <u>Rectification of bail order</u> : If the Court had committed any mistake in passing a bail order, it has power to rectify the same. But the court would carry out necessary rectification/correction by giving an opportunity to the accused of being heard. **Rajendra Prasad Arya Vs. State of Bihar, 2000 (41) ACC 346 (SC).**

38(I).<u>Interim Bail u/s 389 CrPC by appellate court</u> : In case of pending consideration of final relief of bail, the power of appellate court under section 389 CrPC is preserved to grant interim bail even after addition of proviso to section 389 by Amending Act of 2005. See….

(i) **Smt. Tara Devi and another Vs. State of UP, 2011 (75) ACC 371(SC)**
(ii) Dadu @ Tulsi Das Vs. State of Maharashtra, 2000(41) ACC 911 (SC)
(iii) Lal Kamlendra Pratap Singh Vs. State of UP & others, 2009 (67) ACC 966 (SC)
(iv) Smt. Amrawati and another Vs. State of UP, 2004 (50) ACC 742 (All) (Seven-Judge Bench).

38(J). <u>Appellate Court to require sureties & bail bonds from the appellant u/s 437-A CrPC</u> : Section 437.A CrPC which came into force on 31.12.2009 reads as under :

"437A : Bail to require accused to appear before next appellate Court.--
(1) *Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months."*
(2) *If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."*

39. <u>Bail to foreigner</u> : Where a case for bail is made out, bail would not be refused merely because the accused applicant is a foreign national. See… **Agali E. Samki Vs. State NCT of Delhi, 2007 (57) ACC (Sum) 22 (Delhi).**

40. <u>Bail on medical ground</u> : Where the accused was previously convicted for offences punishable with life imprisonment and was granted bail on medical grounds, it has been held by the Supreme Court that bail cannot be granted u/s. 437, 439CrPC to an accused on medical grounds as the medical treatment can be sought by the accused in jail from the jail authorities. See :

1. Ram Prakash Pandey Vs. State of U.P., 2001 ALJ 2358 (SC)
2. Bibhuti Nath Jha Vs. State of Bihar, (2005) 12 SCC 286.

41. <u>Appeal against grant of bail---not maintainable</u> : An appeal against grant of bail is not maintainable. Use of expression "appeal in respect of an order of bail" in some judgments is in the sense that the accused can move higher courts. See **: Dinesh M.N. (S.P.) Vs. State of Gurajat, 2008 Cr.L.J. 3008 (SC).**

42(A). <u>Accused in jail beyond local territorial jurisdiction of court--- Sec. 267CrPC & Bail</u> : Relying upon the Supreme Court decision in **Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785**, the Allahabad High Court, while interpreting the provisions of Sec. 267 r/w. 439CrPC , has held that where the accused was arrested by the police at Allahabad in relation to some crime registered at Allahabad and was detained in jail at Allahabad and the accused was also wanted for offences u/s. 302, 307 IPC at Mirzapur, the Sessions Judge, Mirzapur had got jurisdiction to hear the bail application of the accused treating him in custody of the Court of Sessions Judge at

Mirzapur. Physical production of the accused before the Court at Mirzapur or his detention in jail at Mirzapur was not required. See :

1. **Billu Rathore Vs. Union of India, 1993 L.Cr.R. 182 (All)**
2. **Chaudhari Jitendra Nath Vs. State of U.P., 1991(28) ACC 497 (All).**

Note: For other cases on Sec. 267CrPC , see :

1. **Ranjeet Singh @ Laddu Singh Vs. State of U.P., 1995 A.Cr.R. 523 (L.B.)**
2. **Mohd. Dawood Quareshi Vs. State of U.P., 1993 (30) ACC 220**
3. **Mohd. Daud Vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (All—D.B.)---** This judgment has been circulated amongst the judicial officers of the State of U.P. by the Allahabad High Court vide C.L. No. 58/23-11-1992 for observance.

42(B).Accused to be conveyed back to the prison from where he was brought on production warrant issued u/s 267 Cr PC : Sec. 267 & 270 of the Cr Pc read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering to a charge of an offence, and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he was brought for such attendance. See : **Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB)** *(paras 69 & 70)*

Note---The ruling in Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) has been circulated by the Hon'ble Allahabad High Court amongst the Judicial Officers of the State of UP Vide C.L. No. 58/23-11-1992 for observance.

43(A).Bail u/s. 167(2) CrPC--- when can be granted : Where charge sheet is not filed within a period of 60 or 90 days and the accused moves application for being released on bail u/s. 167(2), Proviso (a) of theCrPC and offers to furnish bail, he can be said to have availed of indefeasible right for being released on bail. If the application of the accused moved u/s. 167(2)CrPC is erroneously rejected by the Magistrate and the accused then approaches higher forum for bail and the charge sheet is filed in the meantime, it does not extinguish the accrued right of the accused to be released on bail u/s. 167(2)CrPC See :

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910.**
2. **Dinesh Kumar Jain Vs. State of U.P., 2001 Cr.L.J. 2847 (All).**

43(B) Computation of 60 / 90 days : Period of 60 / 90 days u/s. 167(2), Proviso (a)CrPC begins to run from the date of order of remand and not from the date of arrest. See :

(i) **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**

(ii) **Chaganti Satyanarayana Vs. State of A.P., AIR 1986 SC 2130**

(iii) Relying upon the Supreme Court decision in State of M.P. Vs. Rustam, 1995 SCC (Cri) 830, it has been held by the Allahabad High Court that in counting 60 or 90 days u/s. 167(2)CrPC , one day can be excluded on either side. See : **Tinnu Vs. State of U.P., 1999 AOR 201 (HC—All).**

AOR = Allahabad Offence Reporter

In the case of Rustam, the Supreme Court has clarified the manner of computing the period of 60 or 90 days u/s. 167(2) proviso. The facts of the case were thus--- "Accused was detained in jail for the offence u/s. 302 IPC, he was remanded to judicial custody on 3.9.1993, charge sheet was submitted in the court on 2.12.1993. For purposes of computing the period of 90 days u/s. 167(2)CrPC the Supreme Court held "period of 90 days would instantly commence either from 4.9.1993 (excluding from it 3.9.1993) or 3.12.1993 (including in it 2.12.1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously in error in assuming that on 2.12.1993 when the challan was filed, period of 90 days had expired."

43(C).<u>Computation of 90 days u/s 167(2) CrPC</u> : Where the first remand of the accused was granted on 20-10-2010 and no charge sheet was filed by IO till 17-01-2011 and the charge sheet was filed on 18-01-2011 and the accused sought bail u/s 167(2) CrPC on 17-01-2011 on the ground that 90 days had completed on 17-01-2011, it has been held that the first date of remand i.e. 20-10-2010 is liable to be excluded for purpose of calculation of 90 days. According to Sec. 9 of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time to use the word "or". In view of the aforesaid provision, the period of 90 days commenced from the next date of remand i.e. 21-10-2010 and not from the date of remand i.e. 20-10-2010 and a such the period of 90 days from 21-20-2010 completed on 18-01-2011 and till 18-01-2011 the accused was not entitled to claim the benefit of the provisions u/s 167(2) CrPC. See : **Irfan Ahamad v/s State of U.P., 2011(2) ALJ 527 (All...LB).**

44. <u>Compromise & Bail :</u> Where the High Court had granted bail to the accused on the basis of assurance to compromise the case with the victim and subsequently cancelled the bail of the accused on the ground of breach of assurance to compromise, the Supreme Court has held that grant of bail to an accused on the ground of assurance of compromise is not permissible u/s. 437/439CrPC as the bail can be granted only on the grounds what have been provided u/s. 437 & 439CrPC The subsequent cancellation of bail by the High Court on the ground of breach of assurance to compromise has also been held impermissible by the Supreme Court by laying down that bail once granted cannot be cancelled on a ground alien to the grounds mentioned in Sec. 437CrPC See : **Biman Chatterjee Vs. Sanchita Chatterjee, (2004) 3 SCC 388.**

45(A).<u>Bail u/s. 88CrPC</u> : An accused of a complaint case, on appearance before court, cannot claim to be released u/s. 88CrPC on bail on his personal bond only. But the accused would have to apply for bail under chapter XXXIIICrPC i.e. Sec. 436, 437CrPC

and in case the offence is non-bailable, he may or may not be granted bail. See : **Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All).**

Note : Giving approval to the Principles of Law laid down in Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All) and interpreting the law of bail to an accused person u/s. 436, 437CrPC in complaint cases and bail to any other person like witnesses u/s. 88CrPC , a Division Bench of Hon'ble Allahabad High Court in Criminal Misc. Application No. 8810 of 1989, Babu Lal & others Vs. Smt. Momina Begum & Criminal Misc. No. 8811 of 1989, Parasnath Dubey & others Vs. State of U.P. & others decided on 23.3.2006 and circulated by Hon'ble Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33/2006, dated 7.8.2008 has ruled as under---

"Where Sections 436 and 437CrPC , under the provisions of Chapter XXXIII would be applicable would not be dealt with by the procedure u/s. 88, inasmuch as, the considerations for granting bail are different and includes several other aspects, which are not to be considered while applying Sec. 88. For example, where a person is accused of a bailable offence and process is issued, as and when he appears before the Court either after his arrest or detention or otherwise, if he shows his readiness to give bail to the Court, he shall be released on bail. Therefore, a person accused of a bailable offence needs to be personally present before the Court and has to be ready to give bail before he has to be released on bail. But where a person is accused of non-bailable offence, as and when he appears before the Court whether by arrest or detention or otherwise, he may be released on bail by a Court other then High Court and the Court of Sessions u/s. 437,CrPC subject to satisfaction of certain conditions, namely, that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail with respect to offence punishable with death or imprisonment for life is not applicable where such person is under 16 years of age or is a woman or is sick or infirm subject to the conditions, as the Court may deem fit, may be imposed. Therefore, the power to release on bail u/s. 437,CrPC is restricted and subject to certain conditions which cannot be made redundant by taking recourse to Sec. 88CrPC where process has been issued taking cognizance of a complaint, where the allegations of commission of non cognizable offence has been made against person. These are illustrative and not exhaustive but are necessary to demonstrate that Sec. 88, in all such matters will have no application. This also shows that by necessary implication Sec. 88 in such general way, cannot be applied and has no scope for such application. Where there is overlapping power or provision, but one provision is specific while other is general, the law is well settled that specific and special provision shall prevail over the general provision in the matter of accused. Since the procedure with respect to bail and bonds, is provided under Chapter 33 ofCrPC in our view, Sec. 88 would not be attracted.

……the power u/s. 88 is much wider. When the accused approaches the Court for bail, the Magistrate in its discretion may require him to execute bail bonds, since the language of statutes u/s. 88CrPC is wider and the objective and purpose is to ensure the presence of the person concerned. Therefore, speaking generally, it may be said that where an accused is entitled to approach the Court for bail u/ss. 436 and 437CrPC , he may also

be governed by Sec. 88CrPC , which is not qualified and encompass within its ambit an accused, a witness or any other person. However, Sections 436 and 437CrPC deal only with the "accused person". Although the word 'person' has also been used in Sections 436 and 437CrPC but it is qualified with the word "accused" and therefore, the aforesaid provisions are applicable only to such category of persons, who are accused of bailable or non-bailable offence. It may thus be said, referring to Sec. 88, in respect of accused, that, it may have applicable where the Court has issued process to an accused but it has not actually been served upon him and yet if he appears before the Court, in such cases the Court is empowered to ask for bail bonds from such accused person to ensure his presence before the Court in future. This is one aspect and demonstrates that the scope of Sections 88 and 89CrPC is much wider qua Sec. 436 and 437CrPC

Thus, we are of the view that the case which will be governed by the Sections 436 and 437CrPC it is not necessary to apply the provisions of Sec. 88 ofCrPC for the reason that Sections 436 and 437CrPC , are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89CrPC is much wider as discussed above. The case in which Section 436CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s. 436 and 437CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89CrPC as such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s. 88CrPC or the Court gives bail u/s. 436 and 437CrPC , the appearance of the person before the Court is must and can not be dispensed with at all."

45(B).<u>Sec. 88 & 319CrPC</u> : Relying upon an earlier decision of Allahabad High Court reported in Vedi Ram @ Medi Ram Vs. State of U.P., 2003 ALJ 55 (All), the Allahabad High Court has held that an accused who has been summoned by court u/s. 319CrPC cannot be granted bail u/s. 88CrPC as once a person has been arraigned as accused u/s. 319CrPC he stands on the same footing as the other accused against whom police had filed charge sheet, therefore, it is obligatory for the Court to send him to judicial custody on his appearance. See : **Mumkad Vs. State of U.P., 2003 Cr.L.J. 4649 (All).**

46. <u>Bail to juvenile u/s. 12 of the Juvenile Justice : (Care & Protection of Children) Act, 2000</u> : According to Sec. 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000, irrespective of the nature of the offence (bailable or non-bailable), a juvenile in conflict with law cannot be denied bail by the JJ Board or the court except for the following three reasons-----

(i) that there are reasonable grounds for believing that the release is likely to bring him into association with any known criminals or

(ii) that he would be exposed to moral, physical or psychological danger or,

(iii) that his release on bail would defeat the ends of justice.

For the law of bail of juveniles, as quoted above, kindly see the rulings noted below----

1. **Jaswant Kumar Saroj Vs. State of U.P., 2008 (63) ACC 190 (All)**
2. **Sanjay Chaurasia Vs. State of U.P., 2006 (55) SCC 480**
3. **Anil Kumar Vs. State of U.P., 2006 (6) ALJ 205 (Allahabad)**
4. **Ankita Upadhyay Vs. State of U.P., 2006 (55) ACC 759 (Allahabad)**
5. **Pratap Singh Vs. State of Jharkhand, AIR 2005 SC 2731**
6. **Pankaj Vs. State of U.P., 2003 (46) ACC 929 (Allahabad).**

Note: In the cases of Mohd. Amir Vs. State of U.P., 2002 (45) ACC 94 (All) & Sant Das alias Shiv Mohan Singh Vs. State of U.P., 2002 (45) ACC 1157 (All), Allahabad High Court has held that if the JJ Board is not constituted the accused/juvenile may move his bail application u/s. 437 of theCrPC before the Magistrate having jurisdiction and in case the bail application is rejected by the Magistrate, the juvenile may move his application u/s. 439 of theCrPC before the Sessions Judge but he cannot directly move his bail application before the High Court u/s. 439CrPC Likewise where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s. 437CrPC , the same cannot be directly heard by the Sessions Judge u/s. 439CrPC

The relevant provisions regarding bail of juvenile contained under the Juvenile Justice (Care & Protection of Children) Rules, 2007 are as under-----

Rule 13(1)(c)- release the juvenile in the supervision or custody of fit persons or fit institutions or probation officers as the case may be, through an order in Form-I, with a direction to appear or present a juvenile for an inquiry on a next date.

Rule 17(1)- The officer-in-charge shall maintain a register of the cases of juveniles in conflict with law to be released on the expiry of the period of stay as ordered by the Board.

Rule 17(4)- The timely information of the release of a juvenile and of the exact date of release shall be given to the parent or guardian and the parent or guardian shall be invited to come to the institution to take charge of the juvenile on that date.

Rule 17(6)- If the parent or guardian, as the case may be, fails to come and take charge of the juvenile on the appointed date, the juvenile shall be taken by the escort of the institution; and in case of a girl, she shall be escorted by a female escort.

Rule 17(8)- If the juvenile has no parent or guardian, he may be sent to an aftercare organization, or in the event of his employment, to the person who has undertaken to employ the juvenile.

Rule 17(13)- Where a girl has no place to go after release and requests for stay in the institution after the period of her stay is over, the officer-in-charge may, subject to the approval of the competent authority, allow her stay till the time some other suitable arrangements are made.

47(A). Plea of sanction u/s. 197CrPC at the time of Bail : Sec. 197CrPC and Sec. 19 of the Prevention of Corruption Act, 1988 operate in conceptually different fields. In cases

covered under the Prevention of Corruption Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Sec. 197CrPC , the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Sec. 19 of the Prevention of Corruption Act, 1988. Merely because there is any omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. See :

1. **Paul Varghese Vs. State of Kerala, 2007 (58) ACC 258 (SC)**
2. **Lalu Prasad Yadav Vs. State of Bihar through CBI, (2007)1 SCC 49**
3. **Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1**
4. **State by Police Inspector Vs. T. Venkatesh Murthy, (2004)7 SCC 763.**

47(B).<u>Subsequent sanction</u> : Where the accused was discharged of the offences (under POTA) for want of sanction, it has been held by Supreme Court can proceed against the accused subsequent to obtaining sanction. See :**Balbir Singh Vs. State of Delhi, 2007 (59) ACC 267 (SC).**

48. <u>Stage of raising plea of sanction</u> : Plea of sanction can be raised only at the time of taking cognizance of the offence and not against the registration of FIR, investigation, arrest, submission of police report u/s. 173(2)CrPC or remand of accused u/s. 167CrPC See : **State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825.**

49(A).<u>Release of vehicle etc. under Indian Forest Act, 1927 & Wild Life Protection Act, 1972</u> :

Section 52-D as amended in UP, ousts jurisdiction of all courts to release vehicles etc. & forest produce etc., seized u/s 52(1) of the Act.

49(B).<u>Release of vehicle etc. under Indian Forest Act, 1927 & Wild Life Protection Act, 1972</u> :

State of West Bengal Vs. Surjit Kumar Rana, AIR 2004 SC 1851

"release of vehicle--once the confiscations proceedings are initiated, the jurisdiction of criminal courts gets barred and even High Court u/s 482 CrPC cannot release the vehicle seized under the Forest Act in relation to the commission of an offence as to forest produce."

Arvind Kumar Dube Vs State of UP, 2005 (3) AWC 2970.

Confiscation of TRUCK found loaded with wood of forest department--driver arrested---owner of truck having no knowledge that his truck was used in commission of said offence--owner not accused in case--proper to release truck in favour of the owner of the truck with necessary conditions.

49(C).<u>Release of vehicle etc. under Indian Forest Act, 1927 & Wild Life Protection Act, 1972</u> : Release of vehicle after acquittal

Divisional Forest Officer Vs. Sudhakar Rao, AIR 1986 SC 328

"Merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise, did not necessarily entail in nullifying the order of confiscation of seized timber or forest produce by the authorized officer.

State of Karnataka Vs K.A. Kuuchindammed, (2002) 9 SCC 90.

The Magistrate while dealing with the case of any seizure of Forest produce under the Indian Forest Act, 1927, should examine whether the power to confiscate the seized forest produced is vested in the authorized officer under the Act and if he finds that such power is vested in the authorized officer then he has no power to pass an order dealing with interim custody/release of the seized material.

50. **Seizure & confiscation of vehicle/other property under Indian Forest Act, 1927 etc.** : Certain important rulings on seizure, confiscation and release etc of the forest produce and vehicle etc. are as under :

(i) State of Karnataka Vs. K. Krishnan, AIR 2000 SC 2729.

(ii) Indian Handicrafts Emporium & Others Vs Union of India, (2002) 7 SCC 589

(iii) Balram Kumawat Vs Union of India & Others, (2003) 7 SCC 628

(iv) State of Bihar & Another Vs Kedar Sao & Another, AIR 2003 SC 3650

(v) Indrapal Singh Vs State of UP, 2007 (66) ALR 728 (Alld).

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