Part-I

Protection of Personal Liberty & Bail

(Article 21 of the Constitution)

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1(A). **Philosophy behind personal liberty & law of bails** : The personal liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A deocratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability formt he member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly thing which the society disapproves, the legal consenqueces are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law. See **: Neeru Yadav Vs. State of UP, 2015 (88) ACC 624 (SC)** *(para 16).*

1(B). **Article 21 Of the Constitution :** No person shall be deprived of his life or personal liberty except according to procedure established by law.

1(C). **International Covenant On Civil & Political Rights, 1966 :** 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.

2(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) Vikas Vs. State of Rajasthan, (2014) 3 SCC 321
(ii) District Registrar & Collector Vs. Canara Bank, AIR 2005 SC 186
(iii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740
(iv) Maneka Gandhi Vs. Union of India, AIR 1978 SC 597
(v) A.K. Gopalan Vs. State of Madras, AIR 1950 SC 27.

2(B). <u>Universal right of personal liberty enshrined in Sec 437 & 439 CrPC</u> : The Universal right of personal liberty emblazened by Article 21 of our Constituion, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to this pandect comprising Sections 437 & 439, and, therefore, predicates on the well established principles of interpretation of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Some salient features of these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification giving the world 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437

severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conundrum of 'Committal of cases of theCourt of Session' because of a possible hiatus created by the CrPC. See : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

3. **List of rights as to 'right to life' and 'personal liberty' under Article 21 :** In the case of (i) Unnikrishnan J.P. Vs. State of A.P., AIR 1993 SC 2178, (ii) Aadhar Case reported in AIR 2017 SC 4161 (Eleven-Judge Bench) and in other cases, noted below, the Hon'ble Supreme Court has enumerated following rights as the rights relating to 'right to life' and the 'right to personal liberty' :

(1) Right to go abroad : AIR 1967 SC 1836
(2) Right to privacy : AIR 2015 SC 3081 & AIR 2017 SC 4161
(3) Right against solitary confinement : AIR 1978 SC 1675
(4) Right against bar fetters : AIR 1978 SC 1514
(5) Right to legal aid : AIR 1978 SC 1548
(6) Right to speedy trial : AIR 1979 SC 1369
(7) Right against handcuffing : AIR 1980 SC 1535
(8) Right against delayed execution : AIR 2015 SC 715
(9) Right against custodial violence : AIR 1983 SC 378
(10) Right against public hanging : AIR 1986 SC 467
(11) Right to medical assistance : AIR 1989 SC 2039
(12) Right to shelter : AIR 1990 SC 630
(13) Right to sleep : (2012) 5 SCC 1
(14) Right against noise pollution, (2015) 4 SCC 801
(15) Right to healthy environment : 1955 AIR SCW 306
(16) Right to compensation for unlawful arrest : AIR 1983 SC 1086
(17) Right to freedom from torture : AIR 1978 SC 1675
(18) Right to earn livelihood : AIR 1986 SC 180
(19) Certain other rights also as declared by the Hon'ble Supreme Court in it's subsequent decisions.

4(A). **Presumption of innocence ends with the conviction and sentence by the lower court and does not continue thereafter**: When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the

sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it never existed and the sentence is set aside. **But that is not to say that the presumption of innocence continues, after the conviction by the trail court**. The conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well. See : **B.K. Kapur Vs. State of T.N., (2001) 7 SCC 231 (Five-Judge Bench)** *(para 40 .*

4(B). ***Presumption of innocence*** **of accused :** 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) Shabnam Vs. Union of India, (2015) 6 SCC 702.
(ii). Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)
(iii). Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three–Judge Bench)
(iv). Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.

4(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)

5. 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

6(A). Right to personal librty not available at the cost of life or liberty of others : 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.**

6(B).<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.**

6(C).<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.**

7. <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.

8(A). <u>Speedy trial & Protection of personal liberty under Art. 21 of the Constitution</u> : Speedy trial of the cases of under trial prisoners has also been declared by the Supreme Court as their fundamental right under Article 21 of the Constitution. See :

(i) **Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, (2013) 9 SCC 500**
(ii) **Vakil Prasad Singh Vs. State of Bihar, (2009) 3 SCC 355**
(iii) **A.R. Antulay Vs. R.S. Nayak, AIR 1992 SC 1701** (Seven-Judge Constitution Bench)
(iv) **Kadra Pehadiya Vs. State of Bihar, AIR 1981 SC 939**
(v) **Hussainara Khatoon Vs. State of Bihar, AIR 1976 SC 1360**

8(B). **No direction fixing time limit for disposal of criminal trials can be issued by courts :** A **Constitution Bench** of the Hon'ble Supreme Court in the case of **P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578 (Seven-Judge Bench)** has laid down that although speedy trial is a fundamental right of an accused/under trial under Article 21 of the Constitution but courts cannot prescribe any specific time limit for the conclusion of a criminal trial.

8(C). **Direction of the Hon'ble Supreme Court for taking administrative action against the delinquent Judicial Officers not conducting trial on day to day basis and granting adjournments u/s 309 CrPC** : Where the trial court (sessions court) had granted adjournment for two months for cross examination of a prosecution witness (who was subsequently won over by the accused and had completely contradicted in cross-examination his previous deposition in examination-in-chief), the Hon'ble Supreme Court has ruled thus : *"The dire need for the courts dealing with the cases involving serious offences is to proceed with the trial commenced on day to day basis in de die in diem until the trial is concluded. We wish to issue a note of caution to the trial courts dealing with sessions cases to ensure that there are well settled procedures laid down in the Code of Criminal Procedure as regards the manner in which the trial should be conducted in sessions cases in order to ensure the dispensation of justice without providing any scope for unscrupulous elements to meddle with the course of justice to achieve some unlawful advantage. In this respect, it is relevant to refer to the provisions contained in Chapter XVIII of the CrPC where u/s 231 it has been specifically provided that on the date fixed for examination of witnesses as provided u/s 230, the sessions judge should proceed to take all such evidence as may be produced in support of prosecution and that in his discretion may permit cross-examination of any witnesses to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination….. every one of the cautions indicated in the decision of this Court in* ***Raj Deo Sharma Vs. State of Bihar, (1998)7 SCC 507*** *was flouted with impunity. In the said decision a request was made to all the High Courts to remind all the trail judges of the need to comply with Section*

309 CrPC in letter and spirit. In fact, the High Courts were directed to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as per the law. It is unfortunate that in spite of the specific directions issued by this Court and reminded once again in ***State of UP Vs. Shambhu Nath Singh, (2001) 4 SCC 667*** *such recalcitrant approach was being made by the trial court unmindful of the adverse serious consequences flowing therefrom affecting the society at large. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial judge, as confirmed by the impugned judgment of the High Court****, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision in Raj Deo Sharma and reiterated in Shambhu Nath by issuing appropriate circular, if already not issued.*** *If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial courts without providing scope for any deviation in following the procedure prescribed in the matter of trial of sessions cases as well as other cases as provided under Section 309 CrPC. In this respect, the High Courts will also be well advised to use their machinery in the respective* ***State Judicial Academy*** *to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decision in Raj Deo Sharma which has been extensively quoted and reiterated in the subsequent decision of this court in Shambhu Nath and comply with the directions at least in the future years*." See : (1) **Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125** *(paras 33, 42 & 43),* (2) Mohd. Khalid Vs. State of W.B., (2002) 7 SCC 334, (3) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220 and (4) Judgment dated 28.11.2017 of the Supreme Court in Criminal Appeal No. 2045-2046 of 2017, Doongar Singh & Others Vs. State of Rajasthan.

8(D). <u>Granting of frequent adjournments u/s 309 CrPC deprecated by the Supreme Court :</u> Protraction of criminal trials because of grant of frequent adjournments u/s 309 CrPC by Judges and Magistrates has also been deprecated by the Supreme Court and directions for speedy trial of the cases of the accused or under trials has been issued in the following cases :

(i) **N.G. Dastane Vs. Shrikant S. Shinde, AIR 2001 SC 2028**
(ii) Swaran Singh Vs. State of Punjab, 2000 (11) U.P. Cr. Rulings 1 (SC)
(iii) Ramon Services Pvt. Ltd. Vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546

(iv) Raj Bahadur Vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All)(DB)

9(A). <u>Inordinate delay of 37 years in disposal of criminal appeal in the matter of attempt on life of the CJI deprecated by the Supreme Court</u> : Two live hand grenades were lobbed on 20.03.1975 at about 4.15 P.M. inside the car at the intersection of Tilak Marg and Bhagwan Dass Road at a stone's through distance from the Supreme Court of India, Delhi. The then Hon'ble CJI Mr. Justice A.N. Ray, his son Shri Ajoy Nath Ray (later on became Chief Justice of the Allahabad High Court), Driver of the car Inder Singh and Jamadar Jai Nand were travelling in the said car. Fortunately, the grenades did not explode and the occupants of the car including the CJI escaped unharmed. FIR was registered and the matter was investigated by the Crime Branch of Delhi police. On the same day one Santoshanand Avadhoot was arrested and later on an Advocate namely Ranjan Dwivedi was also arrested. Two other accused persons namely Sudevanand Avadhoot and Vikram @ Jaladhar Das, who were in jail for the murder of Shri L.N. Mishra, the then Minister of Railways in the Union Cabinet who was killed in a bomb blast two and half months before at the platform of Samastipur Railway Station, Bihar, were also arrested on 27.07.1975 in connection with the aforesaid incident of attempt on the life of the then CJI. The above accused persons were convicted on 28.10.1976 by the ASJ, Delhi for the offences u/s 307/120-B of the IPC and sentenced to 10 years rigorous imprisonment. The convicts preferred appeal to the Delhi High Court but the same remained undecided for the last 37 years. The convicts/appellants then approached the Hon'ble Supreme Court for justice. The Supreme Court, while expressing distress at the inordinate delay of 37 years in the disposal of the criminal appeal, observed that speedy, open and fair trial is a fundamental right of an accused under Article 21 of the Constitution. The Supreme Court further directed the Delhi High Court to ensure that the criminal appeals of the convicts named above were decided without further delay within a period of six months. See : **Sudevanand Vs. State through CBI, (2012) 3 SCC 387.**

9(B-1).<u>Delayed trial, protection of personal liberty & grant of bail</u> : Speedy trial is implicit in Article 21 of the Constitution. While it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty but at the same time a balance has to be struck between the right to individual liberty and the interest of the Society. No right can be absolute and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time. The court has also to take into consideration the other facts and circumstances such as the interest of the society. See….**Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451.**

9(B-2). <u>Delay in trial a ground for bail u/s 439 CrPC</u> : The Hon'ble Supreme Court has consistently recognised right of accused for speedy trial. Delay in criminal trial has been held to be in violation of right guaranteed to an accused under Article 21 of the Constitution. Accused persons even in cases under TADA have been released on bail on ground that they have been in jail for a long period of time and there was no likelihood of completion of trial at the earliest. In the present case, FIR was filed against the appellant-accused for his involvement in serious offences under TADA, IPC, Arms Act, Explosives Act and Explosive Substances Act. Admittedly, the appellant had been suffering incarceration for more than 12 years and there was no likelihood of completion of trial in the near future. Therefore, the Supreme Court granted bail to the appellant-accused, inter alia, on the aforementioned grounds. See : **Umarmia alias Mamumia Vs. State of Gujarat, (2017) 2 SCC 731.**

9(C). <u>Delay in framing of charges entitles the accused to be released on bail</u>: In a criminal trial, where there was seven months delay in framing of the charges against the accused, it has been observed by the Hon'ble Supreme Court that in a simple matter of framing of charges, the court should have taken more than seven months to frame the charges, is negation of principles of speedy trial and the grounds on which the case had been adjourned from time to time reflected poorly on the manner in his trial was being conducted. The Apex court directed the court to be careful in future in dealing with sich cases and not to take up the cases for framing of charges in such a casual manner and keep the pending for long periods while the accused languishes in custody and directed that the accused be released on bail. See… **Bal Krishna Pandey vs. State of UP, (2003) 12 SCC 186.**

10(A).<u>Bail and Parole distinguished</u> : Parole is a form of temporary release of a convict from custody which provides conditional release from custody and changes the mode of undergoing sentence . Parole has nothing to do with the actual merits of the matter i.e. the evidence which has been led against the convicted prisoner but parole is granted in cases of emergency like death, illness of near relative or in cases of natural calamity such as house collapse, fire or flood. Bail and parole operate in different spheres and in different situations. The CrPC does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States regulating the grant of parole. Thus, the action of grant of parole is generally speaking and administrative action. See : **S. Sant Singh Vs. Secretary, Home Department, Government of Maharashtra Mantralaya, 2006 CrLJ 1515 (Bombay)(Full Bench).**

10(B). <u>Court not empowered to release prisoner in police custody to attend marriage ceremony etc. of near relatives</u> : An important decision dated

28.04.2011 of the Hon'ble Allahabad High Court rendered in Criminal Misc. Application No. 13434 of 2011 **State of UP Vs. Udai Bhan Singh alias Doctor Singh** & Criminal Misc. Application No. 13566 of 2011 Smt. Ram Lali Mishra Vs. State of UP is quoted here as under :

"Prisoner Udai Bhan Singh alias Doctor Sing & his nephew Sandeep Singh alias Pintu Singh were detained in the District Jail, Mirzapur and were facing trial before the Court of Addl. Sessions Judge, Bhadohi at Gyanpur for the offences u/s 307, 120-B of the IPC. The prisoner Udai Bhan Singh alias Doctor Singh was already convicted in another Criminal Trial for having committed the offence of murder and was serving life imprisonment. An application was moved by the two under trials named above before the court of the ASJ, Bhadohi at Gyanpur with the prayer to allow them to go from the jail in police custody to attend the tilak ceremony of their sister's daughter. The ASJ allowed the application with the direction to the jail authorities to take the two prisoners named above in police custody to attend the tilak ceremony of their sister's daughter. The said order was immediately challenged by the jail authorities/the State of UP on Sunday itself (on 24.04.2011) by filing a petition u/s 482 CrPC before Hon'ble the Chief Justice of the Allahabad High Court at His Lordship's residence. His Lordship Hon'ble the Chief Justice at once constituted a Bench nominating Hon'ble Justice A.K. Tripathi to hear the petition on Sunday itself and pass appropriate order. After hearing the counsel for the State at his residence, His Lordship Hon'ble Justice A.K. Tripathi passed order dated 24.04.2011 staying the operation of the order of the ASJ Bhadohi and the said petition was thereafter transferred to the regular Bench of Hon'ble Justice Ravindra Singh. Finally allowing the above petition, His Lordship Ravindra Singh J. has observed that 'the impugned order shows that the trial court has passed such order deliberately so that the judicial custody warrants of the accused persons prepared and issued by the committal Magistrate u/s 209 CrPC may not come in the way of execution of the impugned order and that is why the order has been passed releasing the accused persons in police custody. The impugned order has been passed in the garb of the provisions of Section 439 or 309 CrPC to give the benefit to the accused persons which is not proper and is illegal. Section 309 CrPC was not applicable in the present case because the trial court was not empowered to remand the accused persons to police custody to a place other than the jail." The said order of the ASJ, Bhadohi at Gyanpur was consequently set aside by the Hon'ble High Court.

10(C). <u>Application seeking permission to attend marriage of sister in police custody rejected by High Court</u> : Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See….**Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad)(DB).**

10(D). <u>No short term bail to attend marriage etc</u> : Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See….**Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad)(DB).**

10(E). <u>Short term bail (parole) ganted for attending marriage of daughter</u> : A Division Bench of the Hon'ble Allahabad High Court vide its order dated **05.02.2014** passed in **Criminal Appeal No. 356/2010, Shiv Sagar Rai Vs. State of UP**, granted short term bail (parole) for three weeks to the convict/appeallant who was convicted by the lower court for the offences u/s 147, 148, 302/149, 201, 218 IPC to attend marriage of his daughter with the direction to the convict/appeallant to surrender before the CJM, Sonbhadra after expiry of the said period of three weeks.

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Part-II

L A W O F B A I L S

(Under CrPC & Special Acts)

1(A-1). Object of Bail u/s 437 or 439 CrPC : 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 deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper 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 accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. See…..**Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.**

1(A-2).Requirements for bail u/s 437 & 439 are different : Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonement for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. Parliament has carried out amendments to this pandect comprising Sections 437 to 439, and, therefore, predicates on the well established principles of interpretation

of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Soe salient features o these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severelly curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conuundrum of 'Committal of cases to the Court of Session' because of a possible hiatus created by the CrPC. See : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**

1(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 true 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).

1(C). **Refusal of bail & detention of under trial prisoner in jail to an indefinite period violative of Article 21 of the Constitution** : If bail to an accused under Section 437 or 439 of the CrPC is refused by the court and he is detained in jail for an indefinite period of time and his trial is likely to take considerable time, the same would be violative of his fundamental rights as to 'personal liberty' guaranteed by Article 21 of the Constitution. See…. **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.**

1(D-1). **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

by Article 21 of the Constitution. See : **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.**

1(D-2).<u>Doctrine of *"bail is rule, jail exception*" disapproved & modified by the Supreme Court</u>: While cancelling the bail granted to a history sheeter by the Allahabad High Court, modifying the earlier doctrine *"bail is rule, jail exception*", a Bench of Hon'ble Justice Dipak Misra and Hon'ble Justice Prafulla C. Pant of the Supreme Court has in the first week of October, 2015 ruled that "history-sheeters or habitual offenders are nuisance and terror to society and the courts should be cautious in granting bail to such individuals who are not at par with a first-time offender. Discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief. Criminal past of the accused must be checked before granting bail. Courts should not grant bail in a whimsical manner. The law expects the judiciary to be alert while admitting the plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society". Source : **Times of India, Lucknow Edition, Oct 4, 2015.**

Note : The Supreme Court's above observations came as it quashed the order of the Allahabad high court which had granted bail to a history-sheeter in a murder case without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder.

1(E). <u>Seriousness of the offence not to be treated as the only consideration in refusing bail</u> : 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).

1(F). <u>Personal appearance/custody of accused-- must for Bail</u> : 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 CrPCregarding 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 a person without his personal appearance before the court. See :

1. **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745**
2. **Vaman Narain Vs. State of Rajasthan, 2009 CrLJ 1311 (SC)**
3. **Sunita Devi Vs. State of Bihar, 2005(51) ACC 220 (SC)**
4. **Mukesh Kumar Vs. State of U.P., 2000(40) ACC 306 (All)**
5. **Kamlesh Parihar Vs. State of U.P., 1999 ALJ 1507 (All)(DB)**
6. **Niranjan Singh Vs. Prabhakar Rajaram, AIR 1980 SC 785**
7. **Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--LB)**

1(G). <u>Accused to be permitted to surrender even without report from police</u> : The practice of some of the subordinate Magistrates not to permit an accused to surrender when they make such request and simply ask the Public Prosecutor to report is not proper. When an accused surrenders in court and makes an application stating that he is wanted in the crime, his prayer should be accepted. The practice of postponing surrender application is not fair and cannot be approved. Things may, however, stand differently if the surrender application does not specifically mention that the person surrendering is wanted in a case or that the police may be asked to report if he is wanted at all. See : **Devendra Singh Negi Vs. State of U.P., 1993 ACrR 184 (All).**

1(H). <u>Bail during police custody remand</u> : 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 that 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 Vs. State of Maharashtra, 2011 CrLJ 2065 (Bombay).**

1(I-1). <u>An accused can directly surrender before High Court u/s 439 CrPC and apply for bail to the High Court</u> : Custody, in the context of Section 439 CrPC, is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. Accused can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody but he can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and may be enabled the accused persons to circumvent the principle of Section

439, CrPC. The Supreme Court observed that it might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. The Supreme Court further held that it would not proceed to upset the order on this ground. Had the circumstances been different, Supreme Court would have demolished the order for bail. The Supreme Court further held that it would have not granted the bail if the application seeking bail were moved before it but sitting under Article 136 of the Constitution, the Supreme Court would not interfere with a discretion exercised by the two courts below. It should not need belabouring that High Courts must be most careful and circumspect in concluding that a decision of a superior Court is per incuriam. And here, palpably without taking the trouble of referring to and reading the precedents alluded to, casually accepting to be correct a careless and incorrect editorial note, the single Judge has done exactly so. All the cases considered in Rashmi Rekha including the decision of the Constitution Bench in Gurbaksh Singh Sibbia Vs State of Punjab, AIR 1980 SC 1632, concentrated on the contours and circumference of anticipatory bail, i.e. Section 438 CrPC. The Supreme Court reiterated that the Appellant's prayer for anticipatory bail had already been declined by the Supreme Court, which is why he had no alternative but to apply for regular bail. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principles stated by this Court in State of U.P. v. Deoman Upadhyaya AIR 1960 SC 1125 to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of

the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, it cannot be accepted that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency. In this analysis, the opinion in the impugned Judgment of the High Court incorrectly concludes that the High Court is bereft or devoid of power to jurisdiction upon a petition which firstly pleads surrender and, thereafter, prays for bail. The High Court could have perfunctorily taken the Appellant into its custody and then proceeded with the perusal of the prayer for bail. In the event of its coming to the conclusion that sufficient grounds had not been disclosed for enlargement on bail, necessary orders for judicial or police custody could have been ordained. A Judge is expected to perform his onerous calling impervious of any public pressure that may be brought to bear on him. See : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 (para 20).**

1(I-2). <u>Bail application can directly be filed u/s 439 CrPC before the High Court:</u> The accused/applicant is not bound to file bail petition before the Sessions Judge before filing bail petition before the High Court. He can file Bail petition directly before the High Court. See…

(i) Balan vs.State of Kerala, 2003 RCR(Criminal) 733(Kerala)(DB)

(ii) Avnish Bajaj vs. State of NCT of Delhi, 2005 (30) AIC 650 (Delhi).

1(J). <u>Bail application should normally not be filed directly before the High Court:</u> Bail application can be filed either before the Sessions Court or before the High Court. Both the courts have concurrent jurisdiction to grant bail u/s 439 CrPC. However, applications cannot be filed before both the courts simultaneously. However, it would be a sound exercise of judicial discretion not to entertain each and every application for either anticipatory or regular bail directly by the High Court by –passing the Court of Sessions. See…**Smt. Savitri Samson vs. State of Karnataka, 2001 (3) RCR (Criminal) 638 (Karnataka).**

2(A). <u>Distinction between bailable & non-bailable offences</u> : In the legislative history for the purposes of bail, the terms "bailable" and "non-bailable" are mostly used to formally distinguish one of the two classes of cases viz. "bailable" offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a

person is left by the legislature in the court's discretion. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by a system and subordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application under Section 319 CrPC. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

2(B).<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 CrPCare 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 CrPCinstead of taking bail from him. See :

(i) Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338
(ii) Vaman Narain Ghiya Vs. State of Rajasthan, 2009 CrLJ 1311 (SC)

2(C). <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 in force. The First Schedule the Code of Criminal Procedure consists of part 1 and part 2. While part 1 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).**

2(D). <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 436 CrPCfor a bailable offence except demanding security with sureties. See : **Vaman Narain Vs. State of Rajasthan, 2009 CrLJ 1311 (SC)**

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

"**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."

2(F-1). Offence u/s 506 IPC cognizable & non-bailable : A Full Bench of the Hon'ble Allahabad High Court has held that the U.P. State Government's Notification No.777/VIII-94(2)-87 dated 31.7.1989 issued u/s 10 of the Criminal Law Amendment Act, 1932 making the offence u/s 506 IPC as cognizable and non-bailable is valid. The offence u/s 506 IPC in U.P. is therefore cognizable and non-bailable. See :

(i) **Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031 (All)(Full Bench).**

(ii) Judgment dated 01.07.2013 of the Hon'ble Allahabad High Court passed on Application u/s 482 CrPC No. 20270/2013, Panjak Gupta Vs. State of UP.

(iii) Division Bench decision dated 23.05.2008 of the Hon'ble Allahabad High Court rendered in Criminal Misc. Writ Petition No. 3251/2008, Ravi Prakash Khemka Vs. State of UP.

2(F-2).Offence u/s 506 IPC non-cognizable & bailable : In the case noted below, a Division Bench of the Hon'ble Allahabad High Court (by not noticing its earlier Full Bench decision in the case of Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031) while declaring the U.P. State Government's Notification No.777/VIII-94(2)-87 dated 31.7.1989 issued u/s 10 of the Criminal Law Amendment Act, 1932, has declared the offence u/s 506 IPC in the State of UP as non-cognizable and bailable. See : **Virendra Singh Vs. State of UP, 2000 (45) ACC 609(All)(DB).**

Note : *In view of the Full Bench decision in the case of Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031 (All)(Full Bench), the aforesaid Division Bench decision in Virendra Singh Vs. State of UP, 2000 (45) ACC 609(All)(DB) does not lay down the law correctly and only the said Full Bench dicision in Mata Sewak Upadhyaya is binding.*

2(G). Person in custody in bailable offence on order of superior court not to be released on bail by inferior court : A person in custody in bailable offence on order of superior court cannot be released on bail by inferior court. But he can be released on bail only by the superior court under whose order he was detained in custody. See : **Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, AIR 1967 SC 1639.**

2(H).Bail by police officer : whether survives after submission of charge sheet? : 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 CrLJ 1299 (All—L.B.)**

2(I). **<u>Conditions for grant of bail u/s 437 CrP Care also relevant for grant of bail u/s 439 CrPC</u>:** Relying upon an earlier Three-Judge Bench decision of the Supreme Court in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, (2004) 7 SCC 528, it has again been held by the Supreme Court that the conditions/considerations laid down in Sec. 437(1)(i) CrPC are also relevant for grant of bail even u/s 439 CrPC. See : **Dinesh M.N. (SP) Vs. State of Gujarat, 2008 CrLJ 3008 (SC).**

2(J). **<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) Prima facie satisfaction of the court in support of the accusations
(2) Nature of accusation
(3) Evidence in support of accusations
(4) Gravity of the offence
(5) Punishment provided for the offence
(6) Danger of the accused absconding or fleeing if released on bail
(7) Character/criminal history of the accused
(8) Behavior of the accused
(9) Means, position and standing of the accused in the Society
(10) Likelihood of the offence being repeated
(11) Reasonable apprehension of the witnesses being tampered with
(12) Danger, of course, of justice being thwarted by grant of bail
(13) Balance between the rights of the accused and the larger interest of the Society/State
(14) Any other factor relevant and peculiar to the accused.
(15) 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. See :

(1) Lachhman Dass Vs. Resham Chand Kaler, AIR 2018 SC 599
(2) Virupakshappa Gouda Vs. State of Karnataka, AIR 2017 SC 1685(para 16)
(3) State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178
(4) Sanghian Pandian Rajkumar Vs. CBI, 2014 (86) ACC 671 (SC) (Three-Judge Bench)
(5) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 *(para 24)*

(6) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933
(7) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
(8) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949
(9) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189
(10) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475
(11) Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
(12) State of U.P. through CBI Vs. Amarmani Tripathi,(2005) 8 SCC 21
(13) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387
(14) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578
(15) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)
(16) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50
(17) Mansab Ali Vs. Irsan, (2003) 1 SCC 632.

2(K).<u>Discussions of evidence/merits of the case in bail order not to be done</u> :

Reasons must be recorded while granting the bail but without discussion of merits and demerits of evidence. Discussing evidence is totally different from giving reasons for a decision. Where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation is different from the ground that the acused misconducted himself or some new facts call for cancellation. 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. **National Investigation Agency Vs. Zahoor Ahmad Shah Watali, AIR 2019 SC 1734.**
2. **State of Orissa Vs. Mahimananda Mishra, AIR 2019 SC 302.**
3. **Anil Kumar Yadav Vs. State NCT of Delhi, (2018) 12 SCC 129.**
4. **State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178**
5. **CBI Vs. V. Vijay Sai Reddy, (2013) 7 SCC 452**
6. **Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296.**
7. **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three -Judge Bench)**
8. **Afzalkhan Vs. State of Gujarat, AIR 2007 SC 2111**
9. **Nira Radia Vs. Dheeraj Singh, (2006) 9 SCC 760**
10. **Ajay Kumar Sharma Vs. State of U.P., (2005) 7 SCC 507 (Three Judge Bench)**
11. **Chamanlal Vs. State of U.P., 2004 (50) ACC 213 (SC)**

2(L).<u>When charge sheet already filed, the application moved by accused u/s 167 (2) CrPC can be decided only on merits</u> : Where charge sheet has not been filed within the stipulated period and the accused moves an application before

concerned Magistrate for being released from 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 apprued 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 accruing 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)**

2(M). **<u>Seriousness of the offence not to be treated as the only consideration in refusing bail</u> :** 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).

2(N). **<u>Expression of opinion on merits of the case not to be done while considering the bail application:</u>** 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).**

2(O). **<u>Proviso to Sec. 437(1) CrPC & bail by Magistrate thereunder</u> :** In heinous offences, an accused even if a woman, sick and old aged person (in this case u/s 302, 201 IPC) cannot seek bail under the aforesaid proviso treating it to be mandatory as the provisions of the proviso to Sec. 437(1) CrPC are only directory/discretionary and not mandatory. See :

1. **Chandrawati Vs. State of U.P., 1992 CrLJ 3634 (All)**
2. **Pramod Kumar Manglik Vs. Sudha Rani, 1989 All Cr.J. 1772 (All)(DB) :** By this Division Bench decision, the contrary single Judge decision in the case of Shakuntala Devi Vs. State of U.P., 1986 CrLJ 365 (All) was overruled.

2(P). **<u>Bail u/s 169 CrPC</u> :** If the IO moves an application with the prayer not to further extend the judicial custody of the accused u/s 167 CrPC, the Magistrate has no other option except to direct the accused to be released from jail on furnishing his personal bond with or without sureties. Such an order is a provisional arrangement and comes in the purview of Section 169 CrPC but such order of Magistrate releasing the accused person on execution of a personal bond with or without sureties cannot be treated as an order passed u/s 437 CrPC granting bail to the accused. See : **Dr. Rajesh Talwar Vs. CBI, Delhi, 2011 CrLJ 3691 (All).**

2(Q). <u>Bail u/s 437(6) CrPC</u> : Where the accused was facing trial before the Magistrate for the offences u/s 419, 420, 467, 468, 471 IPC and the case was absolutely triable by Court of Magistrate and the accused was in jail since 18.05.2012 and charge was framed on 18.09.2012 but after elapse of 60 days since the trail had commenced but yet not concluded, the accused was granted bail (on second application) u/s 437(6) CrPC. See : **Surendra Singh Vs. State of UP, 2013 (82) ACC 867 (All).**

3(A-1).<u>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</u> : The Hon'ble High Court (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 Vs. 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 ha s 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."

3(A-2).<u>Non-observance of provisions of Section 41 and 41-A CrPC by Magistrate in offences punishable upto 7 years disapproved by the Supreme Court</u> : Where two accused persons, a doctor and a practicing advocate, both ladies, were arrested by the police for offences u/s 420/34 IPC read with Section 66D of the Information Technology Act, 2000 and the maximum sentence for offence u/s 66D of the IT Act, 2000 was three years and for offence u/s 420 IPC was 7 years and the bail of the accused persons was also rejected by the Magistrate, it has been held by the Hon'ble Supreme Court that the conditions precedent of procedure of arrest stipulated u/s 41 and 41-A CrPC was not followed by the police officer and the fundamental right as to personal liberty of the accused persons guaranteed by Article 21 of the Constitution stood curtailed when their bail application was rejected. A compensation of Rs. 5 lacs was granted by the Supreme Court to each one of the accused persons. **See : Dr. Rini Johar Vs. State of M.P., AIR 2016 SC 2679.**

3(A-3).<u>Arrest not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years</u> : Sections 41 and 41-A CrPC place cheque on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years. Writ Court under Article 226 of the Constitution can in appropriate cases grant relief against pre-arrest but such power is not to be exercise in the State of UP liberally so as to bring back the provisions of Section 438 CrPC by back door. See : **Km. Hema Mishra Vs State of UP, AIR 2014 SC 1066.**

3(B-1). <u>Duty of Magistrates regarding remand and bail for offence u/s 498-A IPC and u/s 41(1)(b)(ii) CrPC and the guidelines of the Supreme Court</u>: Where the offence is not punishable with imprisonment exceeding 07 years and the offence is one u/s 498-A IPC, the Hon'ble Supreme Court, while interpreting the provisions.

(1) All the State Government to instruct its police officers not to automatically arrest when a case u/s 498-A of the IPC is registered but to satisfy themselves about the necessity for arret under the parameters laid down above following from section 41, CrPC.

(2) .All police officers be provided with a check list containing specified sub-clauses u/s 41(1)(b)(ii);

(3) The police officer shall forward the check lit duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention:

(4) The Magistrate while authorizing detention of the accused shall persue the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention:

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy of the Magistrate which may be extended by the Suprintendent of police of the District for the reasons to be recorded in writing:

(6) Notice of appearance in terms of section 41-A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by th Suprintendent of Police of the District for the reasons to be recorded in writing:

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerened liable for departmental action, they shall also be liable to be punished for contempt of Court to be instituted before High Court having territorial jurisdiction:

(8) Authorising detention without recording reasons as aforesaid by the Judical Magistrate concerned shall be liable for the departmental action by the appropriate high Court.

(9) We hasten to add that the directions aforesaid shall not only apply to the cases u/s 498-A of the IPC or section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than even years: whether with or without fine.

(10). We direct that a copy of this judgement be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. See : **Arnesh Kumar Vs. State of Bihar, 2014 (86) ACC 568 (SC).**

Note : *In compliance with the directions of the Hon'ble Supreme Court in Arnesh Kumar's case, the Govt. of UP has issued directions warning all the police officers of the State of UP to ensure compliance else they may be punished for contempt of the Hon'ble Supreme Court and also in departmental proceedings.*

3(B-2). <u>Bail u/s 498-A IPC & 3/4 DP Act & Division Bench decision dated 09.03.2011 of the Allahabad High Court in Criminal Misc. Writ Petition</u>

No. 3322/2010, Sanjeev Kumar & Others Vs. State of UP : In the case noted below, a Division Bench of the Hon'ble Allahabad High Court, has on 26.02.2010, issued following directions for bail etc for offences u/s 498-A of the IPC & u/s 3 & 4 of the Dowry Prohibition Act :

"That when a complainant approaches the police station or the concerned lower courts, with complaints about harassment, or violence against the wife, by the husband and in-laws, except in cases of extremely grave nature or in cases of serious violence and injuries, and where there are possibilities of repeated violence against the wife, the Courts or the police should first make an effort to try and bring about a reconciliation between the parties, by directing the parties to appear before the ***mediation centres*** *in the Courts, wherever they exist, or to the* ***mediation cells*** *with the police. If reconciliation is not possible, and the matter appears to be serious, or there is a probability of recurrence of violence, only in those cases should the police take immediate steps for arresting the accused in pursuance of the F.I.R."* See : **Sanjeev Kumar & Others Vs. State of UP, 2011 (2) ACR 1733 (All)(DB)=MANU/UP/1897/2011**

3(C). **No mechanical grant of remand by magistrate u/s 167 CrPC** : 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 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.**

4(A). **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. 33/2008, 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 437 CrPC 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 89 CrPC is much wider qua Sec. 436 and 437 CrPC

Thus, we are of the view that the "case which will be governed by the Sections 436 and 437 CrPCit is not necessary to apply the provisions of Sec. 88 of CrPCfor the reason that Sections 436 and 437 CrPC, are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPCis much wider as discussed above. The case in which Section 436 CrPC 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. 437 CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPC 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 89 CrPC 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 88 CrPC or the Court gives bail u/s 436 and 437 CrPC, the appearance of the person before the Court is must and can not be dispensed with at all."

4(B). A single Hon'ble Judge of Allahabad High Court had in the case of Vishwa Nath Jiloka Vs. Munsif Lower Criminal Court, Bahraich, 1989 AWC 1235 (All), ruled

that if an accused of a complaint case appears in court in response to summons, he should not be taken into custody and should be released on bail u/s 88 CrPC with or without sureties. But the abovenoted ruling has been overruled in the year 1995 by a Five Judge Bench decision of the Allahabad High Court rendered in the case of Dr. Vinod Narain Vs. State of U.P., 1995 ACC 375 (All—Five Judge Bench) by laying down that Sec. 88 Cr,P.C. applies only to a person who is present in court as witness etc. If a person appears in court for purposes of bail in accordance with the provisions of Sec. 437 CrPC and surrenders, then he becomes an accused and the provision u/s 88 CrPC does not apply to an accused.

5. **Bail in altered sections :** Where the accused was earlier granted bail for the offences u/s 324, 352, 506 IPC but during investigation the offences were altered by the I.O. to Sec. 304 IPC and during trial the charge against the accused was framed for the offence u/s 302 IPC and the Allahabad High Court allowed the accused to continue on bail on his previous bail bonds furnished for the offences u/s 324, 352, 506 IPC, the Supreme Court has held that the High Court illegally ordered the accused to continue to be on bail for the altered offences u/s 304 or 302 IPC on his previous bail bonds as the accused ought to have applied for fresh bail for the offences under the altered penal sections. See :

a. **Hamida Vs. Rashid, 2007 CrLJ 3422 (SC)**
b. **Bijendra Vs. State of U.P., 2006 (55) ACC 391 (All)**
c. **Suresh Vs. State of U.P., 2006 ALJ 52 (All)**
d. **Asha Ram Vs. State of U.P., 2005 (51) ACC 371 (All)**
e. **Rama Pati Yadav Vs. State of U.P., 2002 (1) JIC 819 (All)**

6(A). **Bail in altered session triable offences :** Where the accused was initially granted anticipatory bail u/s 438 CrPC by the Sessions Judge for the offences u/s 498-A, 406, 306 IPC and after investigation of the matter and receipt of charge sheet against the accused from I.O. for the offence u/s 302 IPC, the Magistrate issued NBW against the accused for appearance and the accused was again directed by the Sessions Judge u/s 438 CrPC to appear before the Magistrate and the Magistrate then granted bail to the accused for altered graver offence u/s 302 IPC, the Supreme Court has held as under :

"With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. In cases where the offence is punishable with death or imprisonment for life which is triable exclusively by a court of sessions, the Magistrate may, in his wisdom, refrain to exercise the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life." See : **Prahlad Singh Bhati Vs. N.C.T., Delhi, 2001 (42) ACC 903 (SC).**

6(B-1).<u>Bail by Magistrate u/s 437 CrPC for offences punishable with death or life imprisonment</u> : Section 437 CrPC severely curtails the powers of the Magistrate to grant bail in the contexts of the commission of non bailable offences punishable with death or life imprisonment for life while leaving that of the court of sessions and the High Court u/s 439 CrPC untouched and unfattered. This is the only logical conclusion that can be arrive that on a conjoint consideration of Section 437 & 439 CrPC. Obivously, in order to complete the picture so for as concerns the powers and limitations thereto of the court of sessions and the High Court, Section 439 CrPC would have to be carefully considered. And when this is done, it will at once be evident that the CrPC had placed an embargo against grantig relief to an accused (couched by us in the negative) if he is not in custody. It seems to us that any persisting ambivalance or doubt stands dispelled by the Proviso to this Section which mandates only that the public prosecutor should be put on notice. See **: Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

6(B-2).<u>Powe of Magistrate u/s 437CrPC drastically different from that of Sessions and High Court u/s 439 CrPC</u> : There is no provision in Code of Criminal Procedure curtailing the power of either the Sessions Court or High Court to entertain and decide pleas for bail. Furthermore, it is incongruent that in the face of the Magistrate being virtually disempowered to grant bail in the event of detention or arrest without warrant of any person accused of or suspected of the commission of any non-bailable offence punishable by death or imprisonment for life, no Court is enabled to extend him succour. Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim, viz. 'where there is a right there is a remedy'. The universal right of personal liberty emblazoned by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. Whilst Section 437 CrPC contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 CrPC empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or

detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in the context of commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. . See **: Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 (**Para 8**)**

6(B-3).<u>Bail by Magistrate in sessions triable offences</u> : Relaying upon the decision reported in vijay Kumar Vs. State of UP, 1989 (26) ACC 480 (All—DB), Prahlad Singh Bhati Vs. NCT Delhi, AIR 2001 SC 1444 & Gurcharan Singh Vs. Delhi Administration, AIR 1978 SC 179, it has been held by a Division Bench of the Allahabad High Court in the case noted below that the inhibition on the powers of the Magistrate to grant bail in view of section 437 CrPC applies to those Sessions triable cases which are punishable with imprisonment for life or with death. Thus the Magistrate is not incompetent to grant bail in appropriate sessions triable cases which are not punishable with imprisonment for life or death. See : **Sheoraj Singh alias Chuttan Vs. State of UP, 2009 (65) ACC 781 (All)(DB)**

6(C). <u>Magistrate to record reasons while rejecting bail in sessions triable cases</u> : In the case of **Sheoraj Singh alias Chuttan Vs. State of UP, 2009 (65) ACC 781 (All—DB),** a Division Bench of the Hon'ble Allahabad High Court comprising Hon'ble Justice Amar Saran and Hon'ble Justice Shri Kant Tripathi has ruled thus : "we accordingly direct the Magistrate concerned not to mechanically refuse bail by describing a matter as grave without giving a reasoned order on merit, or by simply declaring a case to be a Sessions triable matter where arrests may strictly not be necessary in the light of the observations in *joginder Kumar and Amarawati* and hereinabove or the nature of evidence against the accused is very weak and unreliable or there are no other attending circumstances disentitling the accused from bail. This will protect respectable persons from being unnecessarily harassed. …..In a minor case covered under Section 437 CrPC which is not punishable with imprisonment for life or death, and the exceptional circumstances mentioned above are absent, if the Magistrate has mechanically refused to allow bail without any good grounds or simply on the ground that it is a Sessions traiable case, it would be open to the Sessions Court to consider the prayer

for bail expeditiously even on the same day if it is possible, or even to release the accused on interim bail as observed in the decisions in *Amarawati and in Lal Kamlendra Pratap Singh*. ……These directions should be read as additional to the earlier directions in this regard in *Pradeep Tyagi's case (supra)* where inter alia it was held that in all cases where the Magistrates are not incompetent to grant bail in view of section 437 CrPC, if surrender applications are made, then the matter be postponed for about a week to enable the Court to seek instructions from the investigating officer through the public prosecutor. It was also clarified that once the bail application was pending consideration by the Magistrate the investigating officer should normally refrain from arresting an accused without permission of the Magistrate. In case on the date fixed, the court for any reason is unable to finally dispose of the bail application, it could even consider releasing the applicant on interim bail, if the case does not fall among the exceptional matters where grant of interim bail is discouraged."

Note : *The judgment dated 20.09.2010 delivered in the Criminal Misc. Writ Petition No. 6764/2009, Sheoraj Singh alias Chuttan Vs. State of UP, 2009 (65) ACC 781 (All—DB) has been circulated by the Hon'ble Court among the Judicial Officers of the State of UP for compliance vide letter No. 15335/2010/Admn.G-II dated : Allahabad 20.09.2010.*

7. **<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).**

8. **<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).**

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

9(A-2).<u>Sessions Judge and High Court may ignore procedural requirement of giving notice of the bail application to the public prosecutor</u> : The High Court and the Sessions Court u/s 439 CrPC have only the procedural requirement of giving notice of the bail application to the public prosecutor, which requirement is also ignorable if circumstances so demand. See : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

9(B). <u>Right of third person to hearing & oppose bail</u> : Any member of public acting bona fide without any extraneous motivations can help in dispensation of justice. He can approach court against any sufferance by a set of facts where alleged crime is an offence against society. See : **Atique Ahmed Vs. State of UP, 2012 (76) ACC 698 (All).**

9(C). <u>Appeal by third party/private party when to be entertained</u> ? : Court should be liberal in allowing any third party having bona fide connection with the matter to maintain appeal with a view to advance substantial justice. However, power of allowing third party to maintain appeal should be exercised with due care and caution. Persons unconnected with the matter under consideration or having personal grievance against accused should be checked. Strict vigilance is required to be maintained in such regard. See : **Amanullah Vs. State of Bihar, (2016) 6 SCC 699.**

10(A).<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 the Magistrate had not granted further remand of the accused u/s 167 CrPC, 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)**

10(B). Relying upon a Full Bench Decision of the Allahabad High Court in the case of Surjit Singh Vs. State of U.P., 1984 ALJ 375 (All—Full Bench), a Division Bench of the Allahabad High Court has held that recording of reasons for remand to custody u/s 309 CrPC is not necessary. Remand u/s 309 CrPC stands on a quite different footing than the one u/s 167 CrPC where the remand is sought pending investigation and the Magistrate or Judge is required to apply his judicial mind to consider whether on the materials collected by the I.O. remand is necessary and justified. Even if initial remand is invalid, the same can be rectified by subsequent remand orders. The word "custody" used u/s 309 CrPC embraces both legal as well as illegal custody. See **: Mohd. Daud Vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (All)(DB)**

11(A). **Criminal History of Accused & Bail :** 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 CrLJ (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**

11(B). **Opening of criminal 'history-sheet' as provided in Regulations 223 to 276 of Chapter XX of the UP Police Regulations under Heading "Registration & Surveillance of Bad Characters"** : Criminal history-sheet of 'habitual criminals' is opened under Regulation 228 of the Police Regulations. Regulation 228 provides for two classes of history-sheets : Class-A and Class-B. The origin, history, procedure, necessity of opening of criminal history-sheets and their importance/relevance have been described at

length by a Division Bench of the Hon'ble Allahabad High Court in **Nafis Ahmad Vs. State of UP, 2016 (92) ACC 161 (All)(DB).**

11(C).<u>Criminal history not a ground for refusal of bail</u> : Where the accused was allegedly involved in the commission of murder punishable u/s 302 IPC, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that if the accused is otherwise entitled to bail, the same should not be refused on the ground of his criminal antecedents. See : **Pawan Kumar Pandey Vs. State of UP, 2007 (1) JIC 680 (All : by Hon'ble K.S. Rakhra J.)**

Note ***: In the above case, the accused was involved in 56 criminal cases.***

11(D).<u>Bail granted by High Court without considering criminal history cancelled by Supreme Court</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.**

11(E).<u>Doctrine of *"bail is rule, jail exception*" not to be applied to an accused holding criminal history</u> : While cancelling the bail granted to a history sheeter by the Allahabad High Court, modifying the earlier doctrine *"bail is rule, jail exception*", a Bench of Hon'ble Justice Dipak Misra and Hon'ble Justice Prafulla C. Pant of the Supreme Court has in the first week of October, 2015 ruled that "history-sheeters or habitual offenders are nuisance and terror to society and the courts should be cautious in granting bail to such individuals who are not at par with a first-time offender. Discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief. Criminal past of the accused must be checked before granting bail. Courts should not grant bail in a whimsical manner. The law expects the judiciary to be alert while admitting the plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely

of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society". Source : **Times of India, Lucknow Edition, Oct 4, 2015.**

Note : The Supreme Court's above observations came as it quashed the order of the Allahabad high court which had granted bail to a history-sheeter in a murder case without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder.

11(F-1). <u>Relevance of acquittal of the accused in previous cases</u>: As regards the acquittal of the accused, it is reasonable to take the view that such information will not be of much relevance as acquittal prima facie implies that the accused is not connected with the crime or the prosecution has no legs to stand. It is not reasonable to expect that from the factum of prosecution resulting in the acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate contesting the elections. **See: Peoples Union for Civil Liberties Vs. Union of India, AIR 2003 SC 2363 (para 120)**

11(F-2). Acquittal in appeal or revision irrelevant with regard to the disqualification as to previous criminality: The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of the People Act, 1951 has to be determined by reference to the date of his election which date, as defined in Section 67A of the Act, shall be the date on which the candidate is declared by the returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 of the Act shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of nomination and not the date of judgement in an

election petition or in appeal thereagainst. See: **K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688 (Five-Judge Bench) (para 61)**

12(A).<u>BW/ 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.**

12(AA).<u>NBW when to be issued</u> ? : The Constitution, on the one hand, guarantees the right to life and liberty to its citizens under Article 21 and on the other hand imposes a durty and an obligation on the judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. ……There cannot be any straitijacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are, firstly, if it is reasonable to believe that the person will not voluntarily appear in court; or secondly if the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would

extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

12(C). <u>Only summons or bailable warrant to be issued in the first instance in complaint cases</u> : The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

12(D).<u>NBW when to be issued ?</u> : Where in a complaint case, the Magistrate had outright issued NBW against the accused persons, interpreting the scope of Article 21 of the Constitution in relation to the rights of personal liberty of a person, it has been held by the Supreme Court that the attendance of the accused could have been secured by issuing summons or at best by a bailable warrant. Detailed guidelines have been issued by the Hon'ble Supreme Court in this regard for observance by the courts and the Police Officers. A format of Register for entering therein the details of issue etc of NBWs has also been provided by the Hon'ble Supreme Court at the end of its judgment. See : **Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another, AIR 2011 SC 3393**

12(E).<u>Bail of warrantee</u> : Cases which would be governed by the Sections 436 and 437 CrPC it is not necessary to apply the provisions of Sec. 88 of CrPC for the reason that Sections 436 and 437 CrPC, are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPC is much wider as discussed above. The case in which Section 436 CrPC 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. 437 CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPC 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 89 CrPC 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 88 CrPC or the Court gives bail u/s 436 and 437 CrPC, 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.

12(F). <u>Arrest of accused must before submission of charge-sheet</u> : If the IO submits charge-sheet without arresting the accused person (unless he is on bail) it can be submitted only if he has been declared absconder and the case under Section 174-A of the IPC has also been registered as a result of such proclamation. Compliance with the provisions of Section 170 & 173 CrPC by the investigating officer is mandatory. If police report submitted u/s 173 CrPC falls short of above compliance, court will be justified in insisting on compliance before accepting the charge-sheet for cognizance or otherwise. IO is duty bound to inform the Magistrate whether the accused in jail or on bail or is being forwarded with the charge-sheet. If charge-sheet is submitted after declaring the accused as absconder, a case under Section 174-A of the IPC has to be registered. The IO is also duty bound to inform the complainant of the FIR about the result of the investigation whether he submits charge-sheet or final report. See : **Iqbal Vs. State of UP, 2013 CrLJ 1332 (All--LB)(by Hon'ble Sudhir Kumar Saxena, J.)**

12(G).<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 82 CrPC and breach of bail or bond to appear in court. Sec. 229-A IPC reads as under :

> **"<u>Sec. 229-A IPC</u> :** 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."

13(A). <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)**

13(B).<u>ASJ dismissed for allowing second bail application</u> : Where an Addl. Sessions Judge of district Etah had had granted bail to the accused persons in two different cases involving offences u/s 302 & 307 of the IPC by entertaining second and third bail applications despite the fact that in one of the two cases, the bail application of the accused persons was already rejected by the High Court and in the other one by the Sessions Judge Etah, an enquiry was ordered by the Hon'ble High Court against the ASJ and on being found guilty for having entertained and granted the successive bail applications for extraneous reasons, the ASJ was dismissed from service by the Full Court of the Hon'ble Allahabad High Court. The Writ Petition was filed by the ASJ challenging his dismissal from service was also dismissed by a Division Bench of the Hon'ble Allahabad High Court. See…**Ram Chandra Shukla Vs. State of UP & Others, (2001) 3 UPLBEC 2351 (All…DB).**

13(C).<u>C.L. No. 2934/1988 dated 01.04.1988</u> : "A Sessions Judge has no doubt concurrent jurisdiction in the matter of bail u/s 439 CrPC and is competent to entertain the bail application of accused on fresh grounds even after the rejection of his bail application by the High Court but the power has to be exercised by the Sessions Judge in exceptional circumstances. Normally, the Sessions Judges should keep their hands off in bail applications, which stand rejected by the High Court."

14(A-1).<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**

3. Pusai Vs. State (NCT) of Delhi, AIR 2004 SC 1184

14(A-2).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."

14(B).Sureties to furnish details of repeatedly standing surety— Sec. 441-A CrPC: Sec. 441-A CrPC as inserted since 2006 reads as under :

"Sec. 441-A CrPC—Declaration by sureties—Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

14(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.**

14(D).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**

14(E).Register of sureties containing complete details of sureties : In compliance of order dated 07.09.2017 of a Division Bench of the Allahabad High Court passed in Criminal Appeal No. 271/1990, Badri Vs. State of UP, the Circular Letter No. 7/Admin.G-II Dated : Allahabad : 23.02.2018 issued by the Allahabad High Court directs all the Judicial Officers of the State of Uttar Pradesh for maintenance of a Register on the following format to enter therein all the details of the sureties :

Surety/Sureties Register

Sl. No.	Date	Particulars of Case	Crime No. & PS	Name of Court Ganting Bail	Name of Accused Released on Bail	Name of Surety/ Sureties
1	2	3	4	5	6	7

Name of Surety/ Sureties	Amount of Surety Bond	Permanent Address of Surety/ Sureties	Temporary Address of Surety/ Sureties	Details of Property Mentioned in Surety Bond	Details of ID Proof	Remarks
8	9	10	11	12	13	14

15(A). Bail applications u/s 437 or 439 CrPC to be decided the same day unless notice to other side or deferment to next date for information from police station etc. is necessary : Referring the earlier decisions of the Hon'ble Allahabad High Court in **Amrawati Vs. State of UP, 2004 (50) ACC 742 (Seven-Judge Bench)** and **Lal Kamlendra Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC),** the Hon'ble Allahabad High Court in the case noted below has ruled thus : "Whenever bail application is filed before the Magistrate/Courts, as the case may be, whether under Section 437 or under Section 439 CrPC etc., the same shall be dealt with immediately and all out attempts shall be made to pass a reasoned order by application of mind thereon on that day, unless, of course, there is requirement of prior notice to other side and such notice has not been given or the other side did

not find sufficient time to collect releant information from the Police etc. for assisting the Court. On all these aspects the matter has been clarified by larger Bench of this Court in Smt. Amrawati & Another (Supra) and a Single Judge judgment on application No. 19926/2013 u/s 482 CrPC titled Trilok Chand which must be looked into and followed. However, in courts where Advocates are observing strike or otherise, abstaining from Court, bail applications shall not be adjourned for this reason alone and the same shall be dealt with on merits, as far as practicable. Some directions/guidelines in this regard are stated hereunder : ..... If in a particular Court, Strike in general continues, Magistrate/Court shall ensure hearing of bail applications in court/jail, as the case may be. .... If the accused is present in Court, the Court shall permit him/her to address it and after hearing him/her and perusal of record it shall pass appropriate order on the bail application. .....Deferment of bail application should be only if the accused makes, a statement, which shall be recorded in writing by the court concerned that bail application should be deferred till his/her Counsel is available and he/she is ready to continue in detention. ..... If the accused is not present in Court having not been brought from jail, the Court shall ensure its sitting in jail itself for disposal of bail application on that very date, and with the consent of accused in jail, his/her bail application be disposded of. There also deferment shall only be on statement made by the accused which shall be recorded by teh Court concerned. ..... If the Court finds that some relevant information is required from prosecution, and for valid reasons it is not available on the same day, the application may be taken up on the next day but there should not be a general long adjournment as a matter of course. .... Personal liberty of individuals must be given due credit, respect & Honour." See : **Ravi Kumar Agarwal & Another Vs. State of UP & Another, 2014 (86) ACC 515 (All).**

15(B-1).<u>Time limit prescribed by the Supreme Court vide its judgment dated 09.03.2017 for disposal of bail applications</u> : The Supreme Court has issued following directions to the Sub-ordinate Courts for disposal of bail applications :

(i) The High Courts may issue directions to the subordinate courts that :

(a) Bail applications be disposed off normally within one week

(b) Magisterial trails, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years.

(c) Efforts be made to dispose of all cases which are five years old by the end of the year

(d) As a supplement to Section 436A CrPC but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awardd if conviction is recorded such undertrial must be released

on personal bond. Such an assessment must be made by the concerned trial courts from time to time.

(e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports**.**

(ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest.

(iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts

(iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time.

(v) The High Courts may take such stringent measures as may be found necessary in the light of the judgment of the Supreme Court in Ex. Captain Harish Uppal Vs. Union of India, AIR 2003 SC 739. See : **Hussain Vs. Union of India, AIR 2017 SC 1362** (para 26)**.**

Note : The above directions of the Supreme Court in Hussain's case have been circulated amongst the Judicial Officers of the State of Uttar Pradesh by the Allahabad High Court vide C.L. No. 14/Admin.G-II, Dated : Allahabad : 15.05.2017.

15(B-2).<u>During strike by Advocates Juidicial Officers to hear and decide the bail applications in jail</u> : Referring the earlier decisions of the Hon'ble Allahabad High Court in **Amrawati Vs. State of UP, 2004 (50) ACC 742 (Seven-Judge Bench)** and **Lal Kamlendra Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC),** the Hon'ble Allahabad High Court in the case noted below has ruled thus : "Whenever bail application is filed before the Magistrate/Courts, as the case may be, whether under Section 437 or under Section 439 CrPC etc., the same shall be dealt with immediately and all out attempts shall be made to pass a reasoned order by application of mind thereon on that day, unless, of course, there is requirement of prior notice to other side and such notice has not been given or the other side did not find sufficient time to collect releant information from the Police etc. for assisting the Court. On all these aspects the matter has been clarified by larger Bench of this Court in Smt. Amrawati & Another (Supra) and a Single Judge judgment on application No. 19926/2013 u/s 482 CrPC titled Trilok Chand which must be looked into and followed. However, in courts where Advocates are observing strike or otherise, abstaining from Court, bail applications shall not be adjourned for this reason alone and the same shall be dealt with on merits, as far as practicable. Some directions/guidelines in this regard are stated hereunder :.... If in a particular Court, Strike in general continues, Magistrate/Court shall ensure hearing of bail applications in court/jail, as the case may be. ... If the

accused is present in Court, the Court shall permit him/her to address it and after hearing him/her and perusal of record it shall pass appropriate order on the bail application. .... Deferment of bail application should be only if the accused makes, a statement, which shall be recorded in writing by the court concerned that bail application should be deferred till his/her Counsel is available and he/she is ready to continue in detention. .... If the accused is not present in Court having not been brought from jail, the Court shall ensure its sitting in jail itself for disposal of bail application on that very date, and with the consent of accused in jail, his/her bail application be disposded of. There also deferment shall only be on statement made by the accused which shall be recorded by teh Court concerned. .... If the Court finds that some relevant information is required from prosecution, and for valid reasons it is not available on the same day, the application may be taken up on the next day but there should not be a general long adjournment as a matter of course. ..... Personal liberty of individuals must be given due credit, respect & Honour." See : **Ravi Kumar Agarwal & Another Vs. State of UP & Another, 2014 (86) ACC 515 (All).**

15(C).<u>Interim Bail By Magistrates</u> : 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 further 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 437 CrPC

(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)(DB)**
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)**

15(D). 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)**

15(E).<u>Interim Bail by Magistrate or Sessions Judge When Not To Be Granted</u> : 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 U.P. 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*)**.**

15(F).<u>Reasons must be recorded by court when adjourning the hearing of bail application and not granting interim bail</u> : Relying on the Seven-Judge Bench decision of the Hon'ble Allahabad High Court in Amrawati Vs. State of UP, 2004 (57) ALR 290 and the Apex Court decision in Lal Kamlend Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC) and avoiding to record strictures on the conduct of the concerned Magistrate, in the case noted below, the Hon'ble Allahabad High Court (Hon'ble Karuna Nand Bajpayee, J.) has observed thus : *"the need and desirability of hearing the bail applications on the same day is not difficult to gauge from the observations made by the Full Bench in Amrawati's case when it held that if*

on the application made u/s 437 CrPC, the Magistrate feels constrained to postpone the hearing of the bail application, he should release the accused on interim bail and if there are circumstances which impell the court not to adopt such a course, the court shall record its reasons for its refusal to release the applicant on interim bail." See : **Naval Saini Vs. State of UP, 2014 (84) ACC 73 (All)(para 7) .**

16(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 CrLJ 2519 (All)(DB)**
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**

16(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 CrLJ 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**

16(C-1).<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 446 CrPC 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 CrLJ 912 (All)**
3. **Saudan Singh Vs. State of U.P., 1987(2) Crimes 655 (All) :** Except u/s 445 CrPCwhich 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**

16 (C-2). <u>Direction for depositing cash as one of the conditions of bail held proper</u>: While granting bail to the accused involved in fraud and embezzlement u/s 439 CrPC, the High Court had imposed a condition to deposit Rs. 50 lac as cash with the court as a pre-condition of the bail, the Supreme Court held that mere deposit of Rs. 50 lac as cash was not sufficient and in addition to the said condition, the High Court should have imposed some more stringent conditions. See: **Bharat Star Services Pvt. Ltd. Vs. Harsh Dev Thakur, AIR 2019 SC 718.**

16(D).<u>Notice before forfeiture of Bail Bonds u/s 446 CrPC</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 446 CrPC 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 CrLJ 1439 (All)

16(E). <u>Remission of Bond amount u/s 446(3) CrPC</u>: "The Court may, after recording its reasons for doing so, remit any portion of the penalty mentioned and enforce payment in part only."

Note: Certain important case laws on Sec. 446(3) CrPC are quoted below :

(i) **Kishan Pal Vs. State of U.P., 2005 (52) ACC 859 (All)**

(ii) **Ayub Vs. State of U.P., 2005 (52) 830 (All)**

(iii) **Anil Narang Vs. State of Uttaranchal, 2004 (48) ACC 543**

(iv) **Hargovind Vs. State of U.P., 1980 ALJ 540 (All)**

(v) **State of Maharashtra Vs. Dadamiya Babumiya Shaikh, AIR 1971 SC 1722**

(vi) Subsequent events may be considered, under the circumstances of particular case, when a matter of remitting full or any portion of the penalty u/s 446(3) CrPC arises before the court concerned. Those prospective events and circumstances could not be considered in recourse to judge the validity or irregularity of the initial order forfeiting the bonds and ordering realization of their amount by way of penalty. See**--Badri Pandey Vs. State of U.P., 1984 AWC 592 (All)**

The Supreme Court has held that the forfeiture of bond u/s 446 CrPC entails penalty against each surety and each surety is liable to pay entire surety amount. Sureties cannot claim to share surety amount by half and half. However, court can remit the amount of bond of each surety if there are no allegations against the surety that he had connived with the accused jumping out the bail or for other satisfactory reasons. See : **Mohammed Kunju Vs. State of Karnataka, 2000 CrLJ 165 (SC)**

16(F). <u>Discharge of sureties u/s 444 CrPC</u>: Sec. 444 CrPC is relevant here which reads as under : -

"**<u>Sec. 444 CrPC</u> :** Discharge of sureties—

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as related to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail."

16(G). <u>Appeal u/s 449 CrPC against order passed u/s 446 CrPC</u>: Sec. 449 CrPC is as under : -

"<u>Sec. 449 CrPC</u>: Appeal from orders under Section 446 : All orders passed under Section 446, shall be appealable—

(vii) in the case of an order made by a Magistrate, to the Sessions Judge;

(viii) in the case of an order made by a Court of Sessions, to the Court to which an appeal lies from an order made by such Court."

16(H).<u>Penalty to accused for non appearance in court : Sec. 229-A IPC</u> : New inserted Sec. 229-A IPC since 2006 reads as under :

"<u>Sec. 229-A CrPC</u>: Failure by person released on bail or bond to appear in Court-- - Whoever, having been charged with an offence and released on bail or on 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."

16(I). <u>Effect of cancellation of bond/bail bond (Sec. 446-A)</u> An application for cancellation of bail is made to a Court of Session u/s 439(2) and to any other court u/s 437(5), CrPC When the Court is satisfied that there are good grounds for canceling the bail, it has to pass judicial order in terms of the aforesaid sections that the person who has been released on bail be arrested and committed to custody. A person may be released on executing personal bond only, but if he is released on bail, then he must, as required by Sec. 441(1), CrPC execute a personal bond as well as furnish surety bonds. It follows that on cancellation of bail and on being arrested and committed to custody, a direction must be given for discharging both the personal bond and the surety bond. It is legally not possible to cancel one of the two and keep the other alive and operative. This view is reinforced by the provisions of Sec. 443(3) and Schedule II Form 45 which show that the surety bond is discharged on the appearance of the accused pursuant to a warrant of arrest issued against him or on his voluntary surrender. The provisions of Schedule II, Form 25, CrPC show that personal bond is given by the accused for attending the Court on every day on which trial is held and surety bond is given for the purpose that the accused shall attend the Court on every day on which the trial is held and in case of default, the accused binds himself and the sureties bind themselves to forfeit to the Government certain sum of money. All or any of the sureties may apply u/s 444 to discharge the bond and on such application being made, warrant of arrest shall be issued against the accused and on the appearance of the accused pursuant to the warrant or on his voluntary surrender, the surety bond shall be discharged. When the accused for whose appearance the surety bond has been given, is taken into custody, the surety bond stands discharged. Therefore, it will not be in accordance with law to direct for the purpose of committing to custody a person, who has been released on bail that the bail is suspended and only the personal bond executed by him is cancelled and the surety bond furnished is not cancelled. See **: Ram Shankar Vs. State of U.P., 1990 CrLJ 2519 (All)(DB).**

17(A). <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(B). <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)**

17(C-1). **<u>Relevant considerations for cancellation of bail</u>** : 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(a). Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439
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

17(C-2).<u>Order granting bail without recording reasons liable to be cancelled u/s 439(2) CrPC</u> : Reasons must be recorded while granting the bail but without discussion of merits

and demerits of evidence. Discussing evidence is totally different from giving reasons for a decision. Where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation is different from the ground that the acused misconducted himself or some new facts call for cancellation. See **:**

1. **State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178 (para 15)**
2. **Puran Vs. Rambilas, (2001) 6 SCC 338.**

17(D).<u>Cancellation of bail on the ground of threat to witnesses</u> : - Bail granted to an accused u/s 437/439 CrPC 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**

<u>Note:</u> 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.

17(DD).**<u>Witness may file complaint u/s 195A CrPC if threatened by accused or any other person</u> :** Threatening any witness to give false evidence has been made offence w.e.f. 16.04.2006 punishable u/s 195A of the IPC with imprisonment upto 7 years or fine or with both. A witness threatened by the accused can file complaint u/s 195 CrPC as inserted w.e.f. 31.12.2009.

17(E).<u>Cancellation of bail on the basis of post bail conduct and/or supervening circumstances</u> : - For cancellation of bail granted to an accused u/s 437 or 439 CrPC, 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)**

17(F).<u>Cancellation of bail on protraction of trial by seeking unnecessary adjournments</u> : Bail granted to an accused u/s 437 or 439 CrPC 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**

17(G).<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 439 CrPC 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 439 CrPC, can cancel such bail granted by Sessions Judge u/s 439 CrPC 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

17(H).<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**

17(I).<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

17(J).<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**

17(K).<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

17(L).<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).**

17(M).<u>A bail granted by SJ or High Court not to be cancelled by the Magistrate :</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).**

17(N). <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).**

17(O).<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 the CrPC i.e. u/s 436 or 437 CrPC See : **P.K. Shaji Vs. State of Kerala, (2006) 2 SCC (Cri) 174**.

17(P).<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 CrLJ 806 (Raj)**

18(A-1). <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.

18(A-2).<u>Hearing to Public Prosecutor on bail application u/s 389 CrPC mandatory</u> : Service of copy of appeal and application for bail on public prosecutor and providing him opportunity of hearing is mandatory as required by the first proviso to Section 389 CrPC. In the event of non observance of the said provision, bail order has to be set aside by the superior court. See : **Atul Tripathi Vs. State of UP, 2015 (88) ACC 525 (SC).**

18(B).<u>Appellate court can order deposit of only part of the fine by the convict imposed by the trial court</u> : When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine and he moved the Superior Court for suspension of sentence the imposition of condition that part of the fine shall be remitted in Court within a specified time, was not improper. While suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the Court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the Court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In the present case considering the total amount of fine imposed by the trial Court (twenty lacs of rupees) there is nothing unjust or unconscionable in imposing a condition, to remit amount of four lacs for suspending the sentence. See : **Stanny Felix Pinto Vs M/s. Jangid Builders Pvt. Ltd. & Another, AIR 2001 SC 659.**

18(C).<u>Deposit of fine a pre-condition for grant of bail u/s 389(3) CrPC by trial court</u> : It is the privilege of the accused to insist for bail even after the order of conviction and sentence u/s 389(3) CrPC if the amount of fine has been paid and quantum of punishment is less than three years especially when there is no other reason to refuse the discretionary relief. See : **Vijaykumar Shantilal Tadvi Vs State of Gujarat, 2008 CrLJ 935 (Gujarat High Court).**

18(D).<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)**

18(E).<u>Relevant considerations for grant of bail u/s 389 CrPC</u>: During the pendency of an appeal, an appellate court is empowered u/s 389 CrPCto 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 389 CrPCare 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**

18(F). <u>Second bail application u/s 389 CrPC</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 362 CrPCis not attracted to entertaining a second bail application u/s 389 CrPCby the appellate court. There is no provision in CrPCcreating a bar against the maintainability of a second bail application u/s 389 CrPCin 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 CrLJ 4579 (All)(DB).**

18(G). <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.**

18(H). <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.**

18(I). <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.**

18(J). <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)**

18(K).<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)

18(L). <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."*

18(M). Appellate Court u/s 389 CrPC can suspend only the execution of the sentence or order and not the conviction or sentence: Overruling its previous two decisions reported in Shri Manni Lal Vs. Parmai Lal, AIR 1971 SC 330 and Vidya Charan Shukla Vs. Purshottam Lal Kaushik, AIR 1981 SC 547, a Constitution Bench of the Supreme Court has, in the case noted below, ruled thus: "What is relevant for the purpose of Section 8(3) of the Representation of the People Act 1951 is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the Court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A Court of appeal is empowered under Section 389 CrPC to order that pending an appeal by a convicted person the execution of the sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. Therefore, an appellate judgement of a date subsequent to the date of nomination or election, as the case may be, and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election as the case may be. See: K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688 (Five-Judge Bench) (paras 40, 41, and 42)

18(N). Disqualification due to conviction and sentence continues even after pardon or remission of sentence: A person convicted and sentenced to a term of rigorous imprisonment of more than two years is disqualified u/s 7(b) of the Representation of the people Act, 1951 when Five years have not passed after his release from jail and the disqualification has not been removed by the Election Commission. The remission of his sentence u/s 401 CrPC and his release from jail before two years of actual imprisonment would not relax his sentence into one of a period of less than two years and save him from incurring the disqualification u/s 7(b) of the above Act. An order of remission doesn't in anyway interfere with the order of the court. It affects only the execution of the sentence passed by the court and frees the

convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. See: Sarat Chandra Rabha & others. Vs. Khangendra Nath and others, AIR 1961 SC 334 (Five-Judge Bench) *(para 4).*

19. **Bail to foreigner :** 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).**

20(A). **Bail to under-trials u/s 436-A CrPC** : With the amendment in Sec. 436 CrPCvide amending Act No. 25 of 2005, a new Section 436-A has been inserted since ….. which deals with the bail matters of under trials. Sec. 436-A CrPCreads as under :

"436-A. Maximum period for which an under trial prisoner can be detained : Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further than no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation—In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

20(B). **Directions of Supreme Court for disposal of bail applications u/s 436-A CrPC** : The Supreme Court has issued following directions to all High Courts to issue diections to the subordinate courts for disposal of bail applications u/s 436-A CrPC : "As a supplement to Section 436-A CrPC but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports**.** The High Courts may prepare,

issue and monitor appropriate action plans for the subordinate courts. The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time. The High Courts may take such stringent measures as may be found necessary in the light of the judgment of the Supreme Court in Ex. Captain Harish Uppal Vs. Union of India, AIR 2003 SC 739. See : **Hussain Vs. Union of India, AIR 2017 SC 1362** (para 26) **.**

20(C).<u>Section 436-A CrPC not retrospective</u> : Section 436-A CrPC introduced w.e.f. 23.06.2006 is not retrospective. See…. **Pramod Kumar Saxena Vs. Union of India, 2008 CrLJ 4697 (SC)**

21(A). <u>Bail on the ground of long detention in jail</u> : An accused lodged in jail (even if he is a Member of Parliament) cannot be granted bail u/s 437, 439 CrPCon the ground of long detention in jail. Mere long period of incarceration in jail would not be per se illegal. If the accused has committed offence, he has to remain behind the bars. Such detention in jail even as an undertrial prisoner would not be violative of Article 21 of the Constitution. See :

1. **Bhagat Singh Vs. State of U.P., 2009 (66) ACC 859 (All)**
2. **Pramod Kumar Saxena Vs. Union of India, 2008 (63) ACC 115 (SC)**
3. **Ravi Khandelwal Vs. State of U.P., 2009 (67) ACC 148 (All)—*Accused in jail for the last one year for murder.***
4. **Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451 *(Case of M.P. in jail for more than six years)***
5. **Pradeep Kumar Vs. State of U.P., 2006 (6) ALJ (NOC) 1356 (All) : *Accused in jail for the last 60 days from the date fixed for evidence.***
6. **Ram Govind Upadhyay Vs. Sudarshan Singh, 2002 (45) ACC 45 (SC)—*accused was in jail for the last one year.***
7. **Prahlad Singh Bhati Vs. NCT, Delhi, 2001 (42) ACC 903 (SC)**
8. **Hari Om Vs. State of U.P., 1992 CrLJ 182 (All)-- *(Accused in jail for last 8 months)***

21(B). <u>Delayed trial a ground for bail</u> : Delay in conclusion of trial is an important factor for bail to be considered u/s 437 CrPC.See... **State of Kerala v. Raneef, AIR 2011 SC 340.**

21(C). <u>Delayed trail a ground for bail :</u> An under trial prisoner cannot be detained in jail to an indefinite period as it violates Article 21 of the Constitution. If the trial is likely to take considerable time and the accused will have to remain in jail longer that period of detention had they been convicted, it is not in the interest of justice that the accuse should be in jail for an indefinite period of time and in that event he should be granted bail u/s 437 or 439 of the CrPC. See…..

(i). Sanjay Chandra VS. Central Bureau of Investigation, A IR 2012 SC 830

(Note : it was 2G Spectrum Scam Case).

(ii) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949.

21(D).<u>Delay in framing of charges entitles the accused to be released on bail:</u> In a criminal trial, where there was seven months delay in framing of the charges against the accused, it has been observed by the Hon'ble Supreme Court that in a

simple matter of framing of charges, the court should have taken more than seven months to frame the charges, is negation of principles of speedy trial and the grounds on which the case had been adjourned from time to time reflected poorly on the manner in his trial was being conducted. The Apex court directed the court to be careful in future in dealing with sich cases and not to take up the cases for framing of charges in such a casual manner and keep the pending for long periods while the accused languishes in custody and directed that the accused be realeased on bail. See… **Bal Krishna Pandey vs. State of UP, (2003) 12 SCC 186.**

22. <u>Revision against grant or refusal of Bail</u> : A bail order being an interlocutory order within the meaning Sec. 397(2) CrPC, revision does not lie against bail orders. Grant or refusal of bail is only interlocutory order. Proper remedy is to move for cancellation of bail or to file petition u/s 482 CrPCto the High Court. See :

1. **Surendera Kumar Singh Vs. State of UP, 2016 (94) ACC 314(All)(LB)**
2. **Radhey Shyam Vs. State of UP, 1995 CRILJ 556 (All)**
3. **State of U.P. Vs. Karam Singh, 1988 CrLJ 1434 (All)**
4. **Bhola Vs. State of U.P., 1979 CrLJ 718 (All)(DB)**
5. **Amar Nath Vs. State of Haryana, AIR 1977 SC 2185.**

23(A-1). <u>Parity in Bail</u> : It is not universal rule that bail should be granted to co-accused on the ground of parity. Bail granted to co-accused on the basis of non-speaking order cannot form the basis for granting bail on the ground of parity. Similarly if co-accused is granted bail in ignorance or violation of well settled principles of law of bails, it cannot be the basis of parity. Parity cannot be the sole ground for bail. A Judge is not bound to grant bail on the ground of parity. See :

1. **Amarnath Yadav Vs. State of U.P., 2009 (67) ACC 534 (All)**
2. **Sanjay Vs. State of U.P., 2009 (67) ACC 190 (All)**
3. **Shahnawaz Vs. State of U.P., 2009 (66) ACC 189 (All)**
4. **Bhagat Singh Vs. State of U.P., 2009 (66) ACC 859 (All)**
5. **Sabir Hussain Vs. State of U.P., 2000 CrLJ 863 (All)**
6. **Chander Vs. State of U.P., 1998 CrLJ 2374 (All)**

23(A-2).<u>Doctrines of "*parity*" and *"bail is rule, jail exception*" not to be whimscically applied when the accused has criminal history</u> : While cancelling the bail granted to a history sheeter by the Allahabad High Court, modifying the earlier doctrine *"bail is rule, jail exception*", a Bench of Hon'ble Justice Dipak Misra and Hon'ble Justice Prafulla C. Pant of the Supreme Court has in the first week of October, 2015 ruled that "history-sheeters or habitual offenders are nuisance and terror to society and the courts should be cautious in granting bail to such individuals who are not at par with a first-time offender. Discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief. Criminal past of the accused must be checked before granting bail. Courts should not grant bail in a whimsical manner. The law expects the judiciary to be alert while admitting the

plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society". Source : **Times of India, Lucknow Edition, Oct 4, 2015.**

Note : The Supreme Court's above observations came as it quashed the order of the Allahabad high court which had granted bail to a history-sheeter in a murder case without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder.

23(B).<u>Benefit of parity when to be extended to co-accused ?</u> : Where in a daylight murder of two persons, two accused were already granted bail, the third accused, a student, in jail for more than one year, was also granted bail on the grounds of parity. See : **Ramesh Chander Singh Vs. High Court of Allahabad, (2007) 4 SCC 247.**

*(***Note:** *In the above case, Shri R.C. Singh, the then ASJ, Jhansi had granted bail to one of the accused persons involved in double murder and on complaint of having taken graft for the same, an enquiry was set up against him by the Hon'ble Allahabd High Court and was subsequently reversed to the post of Civil Judge, Senior Division. The Hon'ble Supreme Court set aside the penalty and directed for his promotion by holding that a judicial officer should not be punished merely because an order passed by him was wrong.)*

23(C).<u>ASJ terminated for granting bail to co-accused on parity basis</u> : Shri Naresh Singh was posted as Addl. Sessions Judge, Muzaffarnagar and had granted bail to an accused (husband) on 18.05.2006 for the offences u/s 498-A, 304-B IPC and u/s 3/4 Dowry Prohibition Act, on the ground of parity as the other co-accused persons (father-in-law & mother-in-law of the deceased wife) were already granted bail by the Hon'ble Allahabad High Court. Shri Naresh Singh was already transferred to the Allahabad High Court to join as OSD (Inquiries) but he had delayed in handing over his charge at Muzaffarnagar by 20 days and meanwhile when the District Judge, Muzaffarnagar had gone to High Court, Allahabad, and Shri Naresh Singh was acting as Incharge Sessions Judge, Muzaffarnagar, granted bail to the accused/husband on the ground of parity. A complaint was made against him to the High Court and on final inquiry conducted against him, he was found guilty for the charge of having granted the said bail to the accused/husband on artificially created ground of parity with the co-accused persons and was terminated by the Full Court on 16.05.2009. Shri Naresh Singh challenged his removal before the Lucknow Bench of the Hon'ble Allahabad High Court which partly allowed his petition and set aside the Full Court resolution dated

16.05.2009 regarding his removal from service. See : **Naresh Singh Vs. State of UP & Others, 2013 (1) ESC 429 (All-LB)(DB).**

23(D).<u>Benefit of parity when to be extended to co-accused ?</u> : Where one accused was already convicted & sentenced for offence u/s 20 of the NDPS Act, 1985 in one Criminal Trial and the question of sentencing of other accused in separate Criminal Trial had arisen and the principle of parity in awarding the penalty to the second accused was raised, it has been held by the supreme Court that for applying the principle of parity, following two condition should be fulfilled : **-(i)** The principle of parity in criminal case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to theco-accused. **(ii)** For applying the principle of parity both the accused must be involved in same crime and must be convicted in single trial and consequently, a co-accused is one who is awarded punishment along with the other accused in the same proceedings. See : **Ajmer Singh Vs. State of Haryana, 2010 (5) SCJ 451.**

24(A).<u>No appeal, revision or bail application etc. can be heard and decided by an Additional or Assistant Sessions Judge unless transferred to him by the Sessions Judge</u> : Expression "Court of Session" u/s 6 & 7 of the CrPC includes Sessions Judge and also Additional or Assistant Sessions Judge. Expression "Sessions Judge" however cannot be treated to include Additional or Assistant Sessions Judge unless the context otherwise requires. While the Sessions Judge presides over the Sessions Division, an Additional or Assistant Sessions Judge merely exercises jurisdiction in a Court of Session. The overall control of administration, in a given Sessions Division, rests in the Sessions Judge. Whereever the Code of Criminal Procedure intended that the power can be exercised only by a Sessions Judge, the Court has used the expression "Sessions Judge" and not the "Court of Session". Hearing of appeal by Additional or Assistant Sessions Judge or Judicial Magistrate shall be wholly without jurisdiction or nullity u/s 381(2) of the CrPC unless such appeal has been made over for hearing by the Sessions Judge. Power of revision u/s 397 and 400 CrPC is exercisable by the Sessions Court and the High Court and not by an Additional or Assistant Sessions Judge unless the Sessions Judge transfers the revision petition to the Additional Sessions Judge u/s 400 CrPC. Only Sessions Judge shall hear urgent bail applications u/s 438 and 439 CrPC. Only in the event of absence of the Sessions Judge or if he is unable to attend bail application for some other reason, such bail application can be taken up by the Additional or Assistant Sessions Judge. Without specific order by the Sessions Judge u/s 10(3) of the CrPC, an Additional or Assistant Sessions Judge cannot directly take up the bail application. Sessions triable case can be tried and decided by Additional or Assistant Sessions Judge on being directly committed to them by Magistrate u/s 194 CrPC if such trail is in terms of the order of the Sessions Court or High Court u/s 194 CrPC.

Otherwise without any order of the Sessions Judge or High Court, such trial by the Additional or Assistant Sessions Judge shall amount to an irregularity. Magistrate shall not commit any Sessions Triable Case u/s 193 and 194 CrPC to the Additional or Assistant Sessions Judge on his own. In case of committal of such case on his own to Additional or Assistant Sessions Judge, such error must be objected to at the earliest stages. Such error cannot be made ground for interference with the finding of guilt or otherwise recorded on the basis of trial when no failure of justice is occasioned by such error. See : **District Bar Association, Civil Court, Patna Vs. State of Bihar & Others, 2017 CrLJ 1 (Patna)(Full Bench).**

24(B).<u>Transfer of bail applications by Sessions Judges</u> : The practice having developed regarding transfer of important bail applications in serious matters and revisions at the admission stage in routine by the District and Sessions Judges <u>has been deprecated</u> by the Hon'ble Court and it has been desired that all the sensitive matters should invariably be tried by the District Judge himself or by the Senior Additional District Judge for exercising effective control on the administration of justice. Transfer of such work to Additional Courts would be permissible only in the unavoidable circumstances. See : **C.L. No. 60/2007 Admin (G), dated 13.12.2007**

25. <u>Cross-Cases & Bail</u> : When there are cross cases and both the sides have received injuries and one party has been released on bail the other party has to be released on bail as that is the settled view. The question as to which party was aggressor is a question of fact and that will have to be determined on the basis of evidence that is adduced in these cases. See : **Jaswant Singh Vs. State of U.P., 1977 (14) ACC 302 (All)**

26. <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, 439 CrPC 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.**

27. <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 CrLJ 3008 (SC).**

28(A). <u>Accused in jail beyond local territorial jurisdiction of court : Sec. 267 CrPC& 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. 439 CrPC, 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. 267 CrPC, 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)(DB) --** 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.

28(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.

28(C). Accused to be released if no fresh production warrant u/s 267 Cr PC is issued after expiry of date mentioned in the earlier production warrant : Where no fresh production warrant u/s 267 of the Cr PC was issued by the court after the expiry of the date mentioned in the earlier production warrant, it has been held that the accused is liable to be released from custody as the production warrant issued u/s 267 Cr PC cannot be treated as custody warrant for purposes of Sec. 167 of the Cr PC. See : **Nabbu Vs State of UP, 2006 Cr LJ 2260 (All-DB)**

28(D).Mere issuance of production warrant u/s 267 Cr PC not sufficient to entertain bail application unless the accused is in the custody of the court : Only that court can consider and dispose of the bail application either u/s 437 or u/s 439 Cr PC in whose custody the accused is for the time being and mere issuance of production warrant u/s 267 Cr PC is not sufficient to deem the custody of that court which issued such warrant unless the accused is actually produced in that court in pursuance of such production warrant. See :

1. **Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--L B)**
2. **Pramod Kumar Vs. Ramesh Chandra, 1991 Cr LJ 1063 (All)**

28(E).Accused summoned on production warrant u/s 267 CrPC not to be released even when granted bail : An accused detained in one case and produced before another court in pursuance of production warrant and granted bail in the

case pending before the transferee court is not entitled to be released despite grant of bail. See : **Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB)** *(paras 73)*

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.

28(F). Production warrant issued u/s 267 CrPC must be endorsed by an Executive Magistrate or a Police Officer not below the rank of SHO with in whose jurisdiction :

29(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 the CrPC 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) CrPCis 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 CrLJ 2847 (All)**

29(B-1). Merits not to be considered while granting bail u/s 167(2) CrPC : It is well settled that when an application for default bail is filed u/s 167 (2) CrPC, the merits of the matter are not to be gone into. See ....

(i) **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**
(ii) **Union of India Vs. Thamisharasi, (1995) 4 SCC 190**

29(B-2). 60 days relevant for default bail u/s 167(2)(a)(i) CrPC if minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment : In all cases where minimum sentence is less thatn 10 years but maximum sentence is not death or life imprisonment, then Section 167(2)(a)(i) CrPC will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed. See : **(i) Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench) and (ii) Rajeev Chaudhary Vs. State NCT of Delhi, AIR 2001 SC 2369.**

29(B-3). Section 167(2)(a)(i) CrPC when attracted ? : Section 167(2)(a)(i) CrPC is applicable only in cases where accused is charged with :

(i) offences punishable with death and any lower sentence
(ii) offences punishable with life imprisonment and any lower sentence.
(iii) offences punishable with minimum sentence less than ten years. See : **Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).**

29(B-4). Section 167(2)(a)(ii) CrPC when attracted ? : In all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment, then Section 167(2)(a)(ii) CrPC will apply and accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed. See : **Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).**

29(B-5). If minimum sentence is less than 10 years, accused is entitled to bail u/s Section 167(2)(i), Proviso (a) if charge-sheet is not filed within 60 days : Section 167(2)(i), Proviso (a) CrPC relates to an offence punishable with a

minimum of 10 years imprisonments. Where the accused was charged for offence u/s 13(1) of the Prevention of Corruption Act, 1988 punishable with imprisonment which may extend to 10 years i.e. minimum sentence is less than 10 years, non submission of charge-sheet within statutory period of 60 days will entitle the accused to be released on default bail. See : **Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).**

29(C). Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i) & its meaning : In the matter of a criminal case involving offence u/s 386 of the IPC, the Supreme Court has clarified the meaning of the expression "Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i)" as under :

Sec. 386 IPC reads as under : "Extortion by putting a person in fear of death or grievous hurt : Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

The Supreme Court has clarified that it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorize the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in case, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. U/.s 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider Clause (i) or Proviso (1) to Section 167(2) it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not lsess than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. U/s 386 of the IPC imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years. See **: Rajeev Chaudhary Vs. State (NCT) of Delhi, AIR 2001 SC 2369**

29(D). Sec. 306 IPC & application of 60 or 90 days : Where in a criminal case the investigation related to the offences u/s 306 and 498-A IPC it has been held that an offence u/s 306 IPC may extend to ten years and it cannot be said that the offence u/s 306 IPC is not punishable for a term of not less than ten years. Sec. 498-A does not pose any problem, the period of detention which is permissible in the present case where the applicant is charged for the offences u/s 498-A and 306 IPC is set aside. See : **Sohan Lal Vs. State of U.P., 1991 A.Cr.R. 383 (All).**

29(D-1). "Day"….When commences and when ends ? : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the

birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See-- **Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15**

29(D-2).<u>First day to be excluded in computing period of time for legal purposes</u> : The Section 9 of General Clause Act says that in any Central Act or Regulation made after the commencement 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 period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. See :

(i) **Tarun Prasad Chatterjee Vs. Dinanath Sharma, AIR 2001 SC 36 (Three-Judge Bench).**

(ii) **Manmohan Anand Vs. State of UP, (2008) 3 ADJ 106 (All).**

29(D-3).<u>Fraction of a day or a Legal Day when complete?</u> : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See--**Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15**

29(E-1).<u>60 / 90 days u/s 167(2) begin from the date of order of first remand and not from the date of arrest</u> : Period of 60 / 90 days u/s 167(2), proviso (a) CrPCbegins 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

29(E-2).<u>In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included</u> : In the case noted below, the accused had surrendered before the Cheif Judicial Magistrate, Kaimur on 05.07.2013 in connection with the FIR relating to offences punishable u/s 302, 120-B of the IPC and u/s 27 of the Arms Act,

1959 and was remanded to judicial custody till 19.07.2013. His remand was extended u/s 167 CrPC from time to time and the last remand was granted till 03.10.2013 i.e. the 90th day from the date of first remand and the charge-sheet was filed in the court on 03.10.2013 itself. The question arose whether on 90th day i.e. on 03.10.2013, the accused was entitled to be released on bail u/s 167(2) CrPC ? In the backdrop of the said facts of the case, the Hon'ble Supreme Court ruled thus : "In the State of MP Vs. Rustam and Others, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 05.07.2013 is to be excluded and, as such, the charge-sheet was filed on ninetieth day, i.e. 03.10.2013. Therefore, there is no infringement on Section 167(2) of the CrPC. For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the CrPC, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code. See : **Ravi Prakash Singh Vs. State of Bihar, AIR 2015 SC 1294 (paras 12 & 13).**

29(E-3).<u>In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included</u> : 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) CrPCthe 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. See : **State of MP Vs. Rustam, 1995 Suppl (3) SCC 221**.

29(E-4).<u>In computating 60/90 days u/s 167(2) CrPC, one day can be excluded on either side</u> : 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 UP, 1999 AOR 201 (All),** AOR = Allahabad Offence Reporter

29(F).<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)**

29(G).<u>Computation of 60/90 days u/s 167(2) when accused released on interim bail on date of surrender</u> : Day on which accused surrendered was released on interim bail. That date of surrender shall not be deemed to be the date of remand to judicial custody. Unless the accused is remanded either to judicial or to police custody by court, it will not be the date of remand within the meaning of Section 167(2) CrPC an accused on bail cannot be deemed to be in custody. An accused released on interim bail or regular bail by court cannot be deemed to be in custody when a person is not in actual physical control of the court, he cannot be remanded either to judicial custody or to police custody if not in actual physical control of the court. Transfer of custody from judicial custody to police custody falls within the domain of the Court concerned. It would not be necessary that the accused should be brought first before Magistrate or Court. In the case noted below police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, bail application of the accused was rejected on 02.02.2013, application for police custody remand was moved on 05.02.2013, after several adjournments, remand application was fixed for disposal on 16.02.2013 and was allowed on 16.02.2013 itself and the police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that the said order remanding the accused to police

custody from 9 a.m. of 17.02.2013 to mid night i.e. till 12 a.m. would be valid but police custody remand from zero hours to 9 a.m. on 18.02.2013 would be illegal and the aforesaid impugned order dated 16.02.2013 passed by the Magistrate granting police custody remand of the accused was partly set aside. See : **Chandra Dev Ram Yadav & Another Vs. State of UP & Another, 2013 (83) ACC 350 (All).**

29(H-1).<u>Bail u/s 167(2) CrPC after filing of charge sheet</u> : The Supreme Court has held that the statutory rights of accused to bail u/s 167(2) CrPC should not be defeated by keeping the application for bail pending till the charge-sheet is submitted. The Magistrate has to dispose of such application forthwith. Once charge sheet is filed and cognizance of the offence is taken, the court cannot exercise its power u/s 167(2) CrPC See :

1. **Mithabhai Pashabhai Patel Vs. State of Gujarat, 2009 (4) Supreme 368**
2. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench).**
3. **Mohamed Iqbal Madar Sheikh Vs. State of Maharashtra, 1996 (1) Crimes 4 (SC—Three-Judge Bench).**

29(H-2).<u>Application by accused claiming accrued right of bail u/s 167(2) CrPC not to be defeated after submission of charge sheet</u> : The court should not keep an application filed under Section 167(2) CrPC pending after expiry of the statutory period to enable the investigating agency to file the charge-seet to defeat the indefeasible right of an accused. If a case is adjourned by the court granting time to the prosecution not adverting to the application filed on behalf of the accused, it would be a violation of the legislative mandate. When the charge-sheet is not filed and the right under Section 167(2) CrPC has ripened earning the status of indefeasibility, it cannot be frustrated by the prosecution on some pretext or the other. The accused can avail his liberty only by filing application stating that the statutory period for filing of the charge-sheet has expired, the charge-sheet has not yet been filed and an indefeasible right has accrued in his favour **and further he is prepared to furnish the bail bond**. Once such a bail application is filed, it is obligatory on the part of the cort to verify from the records as well as from the Public Prosecutor whether the time has expired and the charge-sheet has been filed or not or whether an application for extension which is statutory permissible, has been filed. See : **Union of India Vs. Nirala Yadav, (2014) 9 SCC 457.**

29(I-1).<u>No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day</u> : Where the accused was detained in jail for offences under Section 363, 366, 504 IPC & no chage-sheet was filed within 60 days and the accused had filed his application for bail under section 167(2)(a)(ii)

CrPC on 09.05.2011 and the charge-sheet was also filed in the court on the same day, it has been held by the Hon'ble Allahabad High Court that the right of the accused to be released on bail u/s 167 (2)(a)(ii) CrPC came to an end as soon as the challan was filed. See : **Sukhai and Another Vs. State of UP and Another, 2011 (75) ACC 134 (All)(L.B.).**

29(I-2).<u>Oral request of accused for default bail u/s 167(2) maintainable</u> : In the matters of personal liberty, it is not advisable to be formilistic or technical. If the accused has not made a written application u/s 167(2) CrPC but instead arguied orally without pleadings in regular bail, he is entitle to grant of default bail u/s 167(2), Proviso (a) CrPC**.** See **: Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).**

29(J).<u>No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day</u> : When charge-sheet and the bail application are filed on the same day and the charge-sheet was filed within 90 days from the date of remand and cognizance on charge-sheet had been taken, right of accused to be released on bail u/s 167(2) CrPC stood extinguished. See : **Pravin Kasana Vs. State of UP, 2013 CrLJ (NOC) 427 (All).**

29(K). <u>Cancellation of bail granted u/s 167(2) CrPC</u> : Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439 CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) CrPC, the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled. See :

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)**
3. **Ram Murti Vs. State of U.P., 1976 CrLJ 211 (All)**

29(L).<u>Bail granted u/s 167(2) CrPCnot to be cancelled after submission of charge sheet</u> : Bail granted u/s 167(2) CrPC is to be deemed to have been granted under chapter XXXIII of the CrPC, i.e. u/s 437 or 439 CrPC and the same will remain valid till it is cancelled u/s 437(5) or 439(2) CrPC. The receipt of charge sheet in court after grant of bail u/s 167(2) CrPC can by itself be no ground for cancellation of bail. Bail once granted u/s 167(2) CrPC cannot be cancelled merely for subsequent filing of charge sheet and the same can be cancelled only u/s 437(5) & 439(2) CrPC for the reasons like abuse etc. of the bail. See :

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three-Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three-Judge Bench)**
3. **Ram Pal Singh Vs. State of U.P., 1976 CrLJ 288 (All)**

29(M).<u>Application must for bail u/s 167(2) CrPC</u>: An accused must file application for bail u/s 167(2), Proviso (a) CrPCfor being released on bail. See :

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**
2. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**

29(N).<u>Accrued right of bail u/s 167(2) CrPC : How long survives? No bail u/s 167(2) CrPCafter filing of charge sheet</u> : Right of the accused to bail u/s 167(2) CrPC ensues on default of the I.O. in submitting the charge sheet within the statutory period of 60/90 days and is enforceable by the accused only from the time of default in the submission of charge sheet till the filing of the challan and it does not survive or remain enforceable on the challan being filed as after submission of charge sheet Sec. 167 CrPC ceases to apply and the custody of the accused is not governed by Sec. 167 CrPC but by different provisions in the CrPC. If the right to be released on bail u/s 167(2) CrPC had accrued to the accused but it remained un-enforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment the challan is filed. If after expiry of 60 or 90 days, the charge sheet is filed and the accused is in custody on the basis of order of remand then the accused cannot be released on bail on the ground that charge sheet was not submitted within the statutory period of 60 or 90 days. The bail application filed by the accused after the submission of charge sheet would be decided on merits and not u/s 167(2) CrPC. See :

1. **Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445**
2. **Dinesh Dalmia Vs. CBI, AIR 2008 SC 78**
3. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 – Three Judge Bench (Also held that Sec. 37 of the NDPS Act, 1985 does not exclude applicability of Proviso (a) to Sec. 167(2) CrPC)**
4. **Hitendra Vishnu Thakur Vs. State of Maharashtra, (1994) 4 SCC 602**
5. **Sanjay Dutt Vs. State Through CBI, Bombay, (1994) 5 SCC 410(Five-Judge Bench)**
6. **Mustaq Ahmed Mohammed Isak Vs. State of Maharashtra, (2009) 7 SCC 480**
7. **Hari Om Vs. State of UP, 1992 CrLJ 182 (All)**

29(O-1).<u>Sec. 173(8) CrPC & Bail u/s 167(2) CrPC</u>: Right to bail u/s 167(2) CrPC is available only till investigation is pending and no police report u/s 173(2) CrPC is submitted within the statutory period of 60/90 days. But this right is lost once charge sheet is filed. Such right to bail u/s 167(2) CrPC does not get revived only because further investigation u/s 173(8) is pending. See : **Dinesh Dalmia Vs. CBI, AIR 2008 SC 78.**

29(O-2).<u>Statutory bail u/s 167(2) CrPC cannot be granted during the pendency of application u/s 173(8) CrPC seeking extension of time for further</u>

investigation : Public prosecutor filed application for extension of time to file charge-sheet against accused involved in MCOCA, 1999. Charge-sheet was filed within time before expiry of 90 days from the date of initial arrest. Period of 90 days lapsed and no decision was taken by the Court on application seeking extension of time. No right can be said to have accrued in favour of the accused for grant of statutory bail u/s 167(2) CrPC on the ground of default only after rejection of therefor extension of time sought, right is the favour of accused for statutory bail u/s 167(2) CrPC would ignite. Bail u/s 167(2) CrPC under the above circumstances cannot be granted to the accused. See : **Rambeer Shokeen Vs. State of NCT of Delhi, AIR 2018 SC 688.**

29(P-1).Bail bond in pursuance of order u/s 167(2) CrPC not to be accepted when charge sheet is submitted to the court before filing of bail bond : If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167 CrPC, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. See : **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench)** *(para 13)*

29(P-2).Accused to be released from jail even when before filing of bail bonds in pursuance of bail order passed u/s 167(2) CrPC, charge sheet is filed in the court : An order for release on bail granted u/s 167(2) CrPC is not defeated by lapse of time, the filing of charge sheet or by remand to custody u/s 309(2) CrPC. There is no limit of time within which the bond may be executed after the order for release on bail u/s 167(2) CrPC is made. See : **Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481.**

29(Q).Magistrate to inform the accused of his accrued right to bail u/s 167(2) CrPC: It is the duty of Magistrate to inform the accused of his accrued right to be released on bail u/s 167(2) CrPC. See :

1.A. **Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench)**

1. **Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)**
2. **Hussainara Khatoon Vs. Home Secretary, State of Bihar, AIR 1979 SC 1377 (Three Judge Bench)**

29(R).No bail u/s 167(2) CrPCduring extended period of investigation beyond 60 / 90 days : Where the court extends time to complete investigation before expiry of

60 / 90 days, the court is empowered to remand accused to judicial or police custody during extended period and the right of the accused to be released on bail u/s 167(2) CrPCis lost. See : **Ateef Nasir Mulla Vs. State of Maharashtra, 2005 (53) ACC 522 (SC)**

29(S). <u>Revision against order u/s 167(2) CrPC</u>: Where after expiry of 90 days, the accused moved application for bail u/s 167(2) CrPCbut the Magistrate postponed the disposal of the application to next day when police filed charge sheet, it has been held that the Magistrate acted in violation of the provisions u/s 167(2) CrPCand revision lies against such an order. Where the court concerned adopts dilatory tactics to defeat the right of the accused accrued u/s 167(2) CrPC, it is open to the accused to immediately move the superior court for appropriate direction. See :

1. **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**
2. **Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)**

29(T).<u>Accused to be released on bail u/s 167(2) CrPCwhen after filing of the application by the accused charge sheet is filed</u> : Magistrate is obliged to grant bail to accused u/s 167(2) CrPCeven if after filing of the application by the accused, a charge sheet is filed by the investigating officer. See :

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

(ii) Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)

29(U). <u>Bail u/s 167(2) CrPCafter submission of charge sheet during the pendency of proceedings before the higher forum against the magisterial order rejecting the application u/s 167(2) CrPC</u>: Where the application of the accused has been erroneously rejected by the Magistrate u/s 167(2) CrPCand the accused then moves the higher forum but during the pendency of the matter before that forum, a charge sheet is filed, the indefeasible right of the accused is not affected. However, if the accused fails to furnish the bail as directed by the Magistrate, his right to be released on bail would be extinguished. See : **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**

29(V).<u>Submission of charge sheet after grant of bail u/s 167(2) CrPCbut before furnishing of bail bonds</u> : If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proiso to sub-sec. (2) of Sec. 167 CrPC, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so called indefeasible right of the accused would stand extinguished. The Constitution Bench decision in the matter of Sanjay Dutt Vs. State through CBI, (1994) 5 SCC 410 should be understood in that sense. See : **Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)**

29(W).<u>Presiding Officers to write to SSP against the Investigating Officers failing in submitting police report u/s 173(2) CrPCwithin 60 or 90 days</u> : Vide C.L. No.52/2007Admin(G), dated 13.12.2007, the Allahabad High Court has issued following directions for compliance by the Judicial Officers of the State of U.P. :

"The Hon'ble Court has noticed that the delay takes place in submission of Police Report before the Magistrate on account of various reasons such as the investigating officer being biased in favour of accused, investigating officer being transferred from one police officer to another on account of their transfer. Such delay at times results in the <u>accused getting undue advantage of being set at liberty due to non filing of Police report within the time stipulated u/s 167(2)(b) CrPC</u>The Hon'ble Court has been pleased to recommend that all the criminal courts shall write to SP/SSP. Concerned for necessary action against an investigating officer if he is found to be wanting in discharge of his duties deliberately in submitting the Police report within time as per mandate u/s 167(2)(C) of CrPC"

29(x). <u>Accused not entitled to bail u/s 167(2) CrPC when charge-sheet filed on the last day (90th day) without full set of documents</u> : Where the police report i.e. charge-sheet u/s 173(2) CrPC was filed by the IO before the court on the last day i.e. 90th day and the accused claimed bail u/s 167(2) CrPC on the ground that the IO had not filed the complete documents with the police report u/s 173(2) CrPC, it has been held by the Hon'ble Supreme Court that on the said grounds the accused was not entitled to bail u/s 173(2) CrPC particularly when the cognizance taking order on such police report was not challenged by the accused. The provisions of Section 173(5) requiring filing of full set of documents with the police report/charge-sheet is only directory and not mandatory. See **: Narendra Kumar Amin Vs. CBI, (2015) 3 SCC 417.**

29(Y). <u>Cancellation of bail granted u/s 167(2) CrPC</u> : Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439 CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) CrPC, the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled. See :

1. **Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)**
2. **Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)**
3. **Ram Murti Vs. State of U.P., 1976 CrLJ 211 (All).**

29(Z).<u>After denial of statutory bail u/s 167(2) CrPC, accused can move application for regular bail u/s 437 or 439 CrPC</u> : After denial of statutory bail u/s 167(2) CrPC, accused can move application for regular bail u/s 437

or 439 CrPC. See : **Rambeer Shokeen Vs. State of NCT of Delhi, AIR 2018 SC 688.**

30. **Compromise & Bail :** 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 437/439 CrPCas the bail can be granted only on the grounds what have been provided u/s 437 & 439 CrPCThe 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. 437 CrPCSee **: Biman Chatterjee Vs. Sanchita Chatterjee, (2004) 3 SCC 388**

31(A). **Bail u/s 88 CrPC:** An accused of a complaint case, on appearance before court, cannot claim to be released u/s 88 CrPCon bail on his personal bond only. But the accused would have to apply for bail under chapter XXXIII CrPCi.e. Sec. 436, 437 CrPCand 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, 437 CrPCin 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. 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. 33/2008, 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 then High Court and the Court of Sessions u/s 437, CrPCsubject 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, CrPCis restricted and subject to certain conditions which cannot be made redundant by taking recourse to Sec. 88 CrPCwhere 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 of CrPCin 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 CrPCis 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 CrPCdeal only with the "accused person". Although the word 'person' has also been used in Sections 436 and 437 CrPCbut 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 89 CrPCis much wider qua Sec. 436 and 437 CrPC

Thus, we are of the view that the case which will be governed by the Sections 436 and 437 CrPCit is not necessary to apply the provisions of Sec. 88 of CrPCfor the reason that Sections 436 and 437 CrPC, are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPCis much wider as discussed above. The case in which Section 436 CrPCis 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. 437 CrPCalso. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPChas 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 89 CrPCas 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 88 CrPCor the Court gives

bail u/s 436 and 437 CrPC, the appearance of the person before the Court is must and can not be dispensed with at all."

31(B). A single Hon'ble Judge of Allahabad High Court had in the case of Vishwa Nath Jiloka Vs. Munsif Lower Criminal Court, Bahraich, 1989 AWC 1235 (All), ruled that if an accused of a complaint case appears in court in response to summons, he should not be taken into custody and should be released on bail u/s 88 CrPCwith or without sureties. But the abovenoted ruling has been overruled in the year 1995 by a Five Judge Bench decision of the Allahabad High Court rendered in the case of Dr. Vinod Narain Vs. State of U.P., 1995 ACC 375 (All—Five Judge Bench) by laying down that Sec. 88 CrPCapplies only to a person who is present in court as witness etc. If a person appears in court for purposes of bail in accordance with the provisions of Sec. 437(1) CrPCand surrenders, then he becomes an accused and the provision u/s 88 CrPCdoes not apply to an accused.

32. **Sec. 88 & 319 CrPC:** 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 319 CrPCcannot be granted bail u/s 88 CrPCas once a person has been arraigned as accused u/s 319 CrPChe 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 CrLJ 4649 (All)**

33(A). **Bail u/s 81 CrPC:** As regards the question of grant of bail u/s 81 of the CrPC, the second proviso to Sec. 81(1) CrPCand the third proviso added in U.P. in 1984 to Sec. 81(1) CrPCread as under :

Second Proviso : "Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of Sec. 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of Section 78, to release such person on bail."

Third Proviso : "Provided also that where such person is not released on bail or where he fails to give such security as aforesaid, the Chief Judicial Magistrate in the case of a non-bailable offence or any Judicial Magistrate in the case of a bailable offence may pass such orders as he thinks fit for his custody till such time as may be necessary for his removal to the Court which issued that warrant."

33(B). Relying upon a Constitution Bench Decision of the Supreme Court in the matter of Sarabjit Singh Vs. The State of Punjab, AIR 1980 SC 1632 (SC : Constt. Bench), the Gauhati High Court has, in the case of State of Manipur Vs. Vikas Yadav, 2000 CrLJ 4229, held that power to grant bail u/s 81(1) CrPCis not available at pre-arrest stage. This power is available only at the post-arrest stage.

33(C). Second proviso to Sec. 81 is limited to the jurisdiction of court in the matter of granting bail to a person arrested in execution of a warrant issued u./s. 78 CrPCIf the accused is not arrested in execution of warrant issued u/s 78 CrPC, Magistrate having jurisdiction over

place of arrest has no jurisdiction to grant bail to accused. See : Arun Kumar Singh Vs. State (NCT of Delhi), 1999 CrLJ 4021 (Delhi High Court).

34. **<u>Bail order to be speaking</u> :** Discretionary jurisdiction of courts u/s 437 & 439 CrPCshould be exercised carefully and cautiously by balancing the rights of the accused and interests of the society. Court must indicate brief reasons for granting or refusing bail. Bail order passed by the court must be reasoned one but detailed reasons touching merits of the case, detailed examination of evidence and elaborate documentation of merits of case should not be done. See :

1. **Kumari Suman Pandey Vs. State of U.P., (2008) 1 SCC (Criminal) 394**
2. **Afzal Khan Vs. State of Gujarat, AIR 2007 SC 2111**
3. **Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav, 2005 (51) ACC 727 (SC).**
4. **Ajay Kumar Sharma Vs. State of U.P., (2005) 7 SCC 507 (Three Judge Bench)**
5. **State of Maharashtra Vs. Sitaram Popat Vetal, (2004) 7 SCC 521.**
6. **Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)**
7. **Mansab Ali Vs. Irsan and another, (2003) 1 SCC 632.**
8. **Mansab Ali Vs. Irsan, (2003) 1 SCC 632**
9. **Puran Vs. Ram Bilas, (2001) 6 SCC 338.**

35(A).<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)**

<u>Note</u>: 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 the CrPCbefore 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 the CrPCbefore the Sessions Judge but he cannot directly move his bail application before the High Court u/s 439 CrPCLikewise where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s 437 CrPC, the same cannot be directly heard by the Sessions Judge u/s 439 CrPC

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.

35(B).5th bail application of juvenile allowed by High Court u/s 12 : Where the age of a juvenile involved in the commission of offences u/s 302, 364-A, 201 of the IPC was not determined by the Addl. Sessions Judge, Ghaziabad and the four successive bail applications were rejected by treating the juvenile as major, the Allahabad High Court allowed the 5th bail application by holding the accused as juvenile. See : **Surendra Vs. State of UP, 2014 (84) ACC 60 (All)(DB).**

35(C).Form of Personal Bond & Bail Bonds for Juvenile : In case a juvenile is released on bail, rules 15 & 79 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 requires special personal bond on prescribed format (given below) from the juvenile and the guardian/parent/other fit person in whose custody the juvenile is placed :

FORM V

[Rules 15(5) and 79(2)]

UNDERTAKING/BOND TO BE EXECUTED BY A PARENT/GUARDIAN/RELATIVE/ FIT PERSON IN WHOSE CARE A JUVENILE IS PLACED

Whereas I…… being the parent, guardian, relative or fit person under whose care……..(name of the juvenile) has been ordered to be placed by the Juvenile Justice Board…… have been directed by the said Board to execute an undertaking/bond with surety in the sum of Rs……(Rupees……) or without surety. I hereby bind myself on the said…….being placed under my care. I shall have the said

……. Properly taken care of and I do further bind myself to be responsible for the good behaviour of the said…… and to observe the following conditions for a period of…… years w.e.f……..

1. That I shall not change my place of residence without giving previous intimation in writing to the Juvenile Justice Board through the Probation Officer/Case Worker;
2. That I shall not remove the said juvenile from the limits of the jurisdiction of the Juvenile Justice Board without previously obtaining the written permission of the Board;
3. That I shall send the said juvenile daily to school/to such vocation as is approved by the Board unless prevented from so doing by circumstances beyond control;
4. That I shall send the said juvenile to an Attendance Centre regularly unless prevented from doing so by circumstances beyond my control;
5. That I shall report immediately to the Board whenever so required by it;
6. That I shall produce the said juvenile in my care before the Board, if he/she does not follow the orders of Board or his/her behaviour is beyond control;
7. That I shall render all necessary assistance to the Probation Officer/Case Worker to enable him to carry out the duties of supervision;
8. in the event of my making default herein, I undertake to produce myself before the Board for appropriate action or bind myself, as the case may be, to forfeit to Government the sum of Rs. ……(Rupees……)

Dated……..…….this…….day of……..20……

Signature of person executing the Undertaking/Bond.

(Signed before me)

Principal Magistrate, Juvenile Justice Board

Additional conditions, if any, by the Juvenile Justice Board may entered numbering them properly;

I/We …… of……. (place of residence with full particulars) hereby declare myself/ourselves as surety/sureties for the aforesaid……. (name of the person executing the undertaking/bond) to adhere to the terms and conditions of this undertaking/bond. In case of ……. (name of the person executing the bond) making fault therein, I/We hereby bind myself/ourselves jointly or severally to forfeit to government the sum of Rs. ……. (Rupees……..)dated this the ……..day of…….. 20……. in the presence of……

Signature of Surety(ies)

(Signed before me)

Principal Magistrate, Juvenile Justice Board

FORM VI
[Rules 15(6) and 79(2)]
PERSONAL BOND BY JUVENILE/CHILD

Personal Bond to be signed by juvenile/child who has been ordered under Clause……. Of sub-section…….. of Section……. of the Act.

Whereas, I …….. inhabitant of …….. (give full particulars such as house number, road, village/town, tehsil, district, state)…… have been ordered to be sent back/restored to my native place by the Juvenile Justice Board/Child Welfare Committee…….. under section……. of the Juvenile Justice (Care & Protection of Children) Act, 2000 on my entering into a personal bond under sub-rule…….. of rule ……. and sub-rule …….. of rule ……. of these Rules to observe the conditions mentioned herein below. Now, therefore, I do solemnly promise to abide by these conditions during the period……..

I hereby bind myself as follows:

1. That during the period…… I shall not ordinary leave the village/town/district to which I am sent and shall not ordinarily return to …….. or go anywhere else beyond the said district without the prior permission of the Board/Committee.
2. That during the said period I shall attend school/vocational training in the village/town or in the said district to which I am sent;
3. That in case of my attending school/vocational training at any other place in the said district I shall keep the Board/Committee informed of my ordinary place of residence.

I hereby acknowledge that I am aware of the above conditions which have been read over/explained to me and that accept the same.

(Signature or thumb impression of the juvenile/child)

Certified that the conditions specified in the above order have been read over/explained to (Name of juvenile/child)……. and that he/she has accepted them as the conditions upon which his/her period of detention/placement in safe custody may be revoked.

Certified accordingly that the said juvenile/child has been released/relived on the……

Signature and Designation of the certifying authority

i.e. Officer-in-charge of the institution

36. <u>Bail by Magistrate under SC/ST (Prevention of Atrocities) Act, 1989</u> : Where the accused had allegedly committed offences u/s 323, 504, 506 IPC and 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989, the Allahabad High Court has ruled that since the offence u/s 3(1)(x) of the 1989 Act is punishable with sentence upto five years and fine only, Magistrate has got jurisdiction to grant bail for the offence u/s 3(1)(x) of the aforesaid Act irrespective of the fact that the offence is triable by the Court of Sessions.

See : - **Munna Pandey Vs. State of U.P., 2008 (62) ACC 637 (All)**

re cannot, therefore, make law to deprive the courts of their legitimate jurisdiction conferred under the procedure established by law. See : **Dadu Vs. State of Maharashtra, 2000 CrLJ 4619 (SC : -Three Judge Bench)**

37. <u>Bail under U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986</u> : (A) A Division Bench of the Allahabad High Court has ruled that when an accused has been charge-sheeted for offences under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 & also under the SC/ST (Prevention of Atrocities) Act, 1989, then only the special court constituted u/s 8 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 would be competent to try the offences under both the special Acts. For trial of the substantive offence under IPC, the ordinary courts may take cognizance while for an offence under the 1986 Act only special Court can hold the trial.

Even if there be a trial of the accused for substantive offences under the Indian Penal Code in an ordinary Criminal Court, he could be tried for a distinct offence under this Act by the Special Court as provided for u/s 300 (4) CrPCThe legislature had in mind that an accused may not be harassed twice over and, accordingly, the provisions of Section 8 of the 1986 Act have been made. While taking up the trial for an offence under the 1986 Act, it would be competent for the Special Judge to take up the charges of offences under other Acts also in the same trial. See : **Ajai Rai Vs. State of U.P., 1995(32) ACC 477 (All)(DB)**

Sec. 8 of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 reads as under : -

"Sec. 8- Power of Special Courts with respect to other offences : - (1) When trying any offence punishable under this Act a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial.

(2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorized by this Act or such rule or, as the case may be, such other law, for the punishment thereof."

"Sec. 300 (4) CrPC : - A person acquitted or convicted of any offences constituted by any acts may, notwithstanding such acquittal to conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged."

(A) Bail under Gangsters Act: Where in one case of crime the accused applicant was acquitted, in another case of crime he was not named in FIR and in rest of the criminal cases shown in the chart, he was already enlarged on bail and was in jail for the last Six months, it has been held that the accused was entitled to bail. See… **Naboo Vs State of UP, 2001 (43) ACC 367 (All)**

(B) Bail under Gangsters Act: Where the accused was on bail in all the criminal cases then there are reasons to believe that the accused had not committed the offences and that he would not indulge in similar activities if released on bail. See… **Israr vs State of Uttaranchal, 2004 (50) ACC 344 (Uttaranchal)**

(C) Bail under Gangsters Act: Where two criminal cases were shown against the accused applicant in the gang chart, it has been observed that involvement of the accused applicant into criminal cases shown in the gang chart may be due to personal enmity and accused was granted bail. See…**Bir Bahadur Singh Vs State of UP, 2005 (53) ACC 678 (All).**

(D) Bail under Gangsters Act when to be refused? Where the accused was found and arrested on the spot in making and facilitating illegal ISD/STD telephone calls on telephone numbers of other people, several articles were recovered from his possession, he was also the master mind of the plans, his bail application was rejected by observing

that since the accused applicant had master minded others, therefore, his case being different, he was not entitled to bail despite the fact that the other co-accused was released on bail. See…**Gopal Vs State of UP, 2002 (44) ACC 1144 (All).**

(E) **Bail under Gangsters Act:** Where the accused applicant was in jail since July, 1999 and trial had not proceeded, there was a case against him in the year 1996 in which list of seven cases had been considered and he was granted bail but again the same seven cases were cited against the accused in the gang chart, it has been held that the accused was entitled to bail. See…**Yakub Vs State of UP, 2001 (42) ACC 381 (ALL).**

(F-1). **Bail & restrictions u/s 19 of the Gangsters Act :** Section 19 of the UP Gangsters And Anti-Social Activities Prevention Act places bar on the power of the court in granting bail u/s 439 CrPC. See… **Rajesh Rai Vs. State of U.P., 1998 CrLJ 4163 (Alld).**

(F-2). **Section 12 of the Gangsters Act, 1986 mandates for trial under the said Act to have precedence over the trials of the accused under other Acts** : Section 12 of the Gangsters Act, 1986 mandates for trial under the said Act to have precedence over the trials of the accused under other Acts. See : **Dharmendra Kirthal Vs. State of UP, AIR 2013 SC 2569.**

(F-3). **Gangster Act applicable even when there is only one case against the accused under Gambling Act : Gangster Act is applicable even when there is only one case against the accused under Gambling Act. See :**

(i) **Guddu Vs. State of UP, 2016 (94) ACC 644(All) (DB)**

(ii) **Satyavir Vs. State of UP, 2010 (71) ACC 864 (All)(DB)**

(iii) **Rinku Vs. State of UP, 2001 (4) ACC 614 (All)(DB).**

(F-4). **POCSO Court to try both the cases where accused charged under SC/ST Act also :** A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may

also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See :

(i) **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** *(paras 14, 15, 16, 17, 19 & 20).*

(ii) **KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498**.

(F-4). <u>Presumption of accused being innocent not to be applied in bail for offences under the POCSO Act, 2012</u> : Where the offences committed by the accused involve statutory presumption of guilt, the general presumption of innocence of the accused is not applicable to the cases where there is contrary statutory presumption of guilt such as when the accused is prosecuted for offences u/s 3, 5, 7 and 9 of the Procection of Children from Sexual Offences Act, 2012. **State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178.**

(F-5). **<u>Section 12 of the Gangsters Act, 1986 prohibits simultaneous trial of accused in two courts i.e. one under the said Act and the other one under some other Act</u> :** Section 12 clearly mandates that the trial under Act of any offence by the Special Court shall have

precedence and shall be concluded in preference to the trial of other courts. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance. The emphasis in Section 12 is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. From the provision of Section 12 it is quite vivid that the trial is not hampered as the trial in other courts is to remain in abeyance by the legislative command. Thus, the question of procrastination of trial does not arise. As the trial under the Act would be in progress, the accused would have the fullest opportunity to defend himself and there cannot be denial of fair trial. Thus, Section 12 does not frustrate the concept of fair and speedy trial which are the imperative facts of Acticle 21 of the Constitution. See : **Dharmendra Kirthal Vs. State of UP, AIR 2013 SC 2569** *(paras 32 & 36)*

(FF-4).<u>Speedy disposal of POCSO cases</u> : In the case noted below, the Supreme Court has directed Registrars General of all High Courts to send intimation to the Registry about pendency of cases instituted under the POCSO Act, 2012 and status thereof. The Registrars General have been adviced constitute a team, if appropriate, after obtaining directions from the Chief Justices of their High Courts and prepare data districtwise. See : **Alakh Alok Srivastava Vs. Union of India, (2018) 5 SCC 651 (Three-Judge Bench)**

(F-5). <u>"Gangster"under the Gangsters Act, 1986 is distinct from an accused under other law</u> : A "gangster" under the provisions of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986 is distinct from an accused under other law. The differentiation made by the Gangster Act between an accused under the Gangster Act and an accused under other laws is not arbitrary and not violative of Article 14 of the Constitution. See : **Dharmendra Kirthal Vs. State of UP, AIR 2013 SC 2569** *(paras 43 & 45)*

(G). <u>Death penalty u/s 27(3) of the Arms Act, 1959 ultra vires</u> : Mandatory death penalty u/s 27 (3) of the Arms Act, 1959 is ultra vires the Constitution and void as it is in violation of Articles 13, 14 & 21 of the Constitution. See….**State of Punjab Vs. Dalbir Singh, (2012) SCC 346**

(H). <u>Bail in economic offences requires different approach</u> : Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. See :

(i) **Nimmagadda Prasad Vs. Central Bureau of Investigation, (2013) 7 SCC 466** *(para 23, 24 & 25)*

(ii) **Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933** *(para 15 & 16).*

38. <u>Bail under U.P. Control of Goondas Act, 1970 [U.P. Control of Goondas Rules, 1970] :</u> As held by Allahabad High Court, the Judicial Magistrate is empowered to grant remand of the accused u/s 167 CrPCto police or judicial custody for the offences under U.P. Control of Goondas Act, 1970. A Judicial Magistrate or the Sessions Judge or Addl. Sessions Judge are also empowered to hear and dispose of bail application of an accused under the 1970 Act as the provisions of bail contained in Chapter XXXIII of the CrPCi.e. Sec. 437 or 439 CrPCare applicable. Since the contravention of Sec. 3 of the Act is punishable u/s 10 of the 1970 Act which provides imprisonment upto three years but not less than six months and as such as per Sec. 2(x) of the CrPCprocedure for warrant cases would apply. Judicial Magistrate has also jurisdiction to take cognizance of the offences under the 1970 Act u/s 190 CrPCand has also jurisdiction to try the cases as warrant case as the penalty provided u/s 10 of the 1970 Act is imprisonment upto three years but not below six months and fine. See : **Mahipal Vs. State of U.P., 1998 (36) ACC 719 (All)**

<u>Note</u>: Certain other important rulings on U.P. Control of Goondas Act, 1970 are as under : -

1. **Jainendra Vs. State of U.P., 2007 (57) ACC 791 (All)(DB) : Requirement of notice u/s 3 of the 1970 Act discussed.**
2. **Ashutosh Shukla Vs. State of U.P., 2003 (47) ACC 881 (All)(DB) : Validity of notice u/s 3 of the 1970 Act discussed.**
3. **Rakesh Kumar Singh Vs. State of U.P., 1998 (37) ACC 48 (All)(DB) : Case on validity of notice u/s 3(1) of the 1970 Act.**
4. **Ramji Pandey Vs. State of U.P., 1982 (19) ACC 6 (All)(FB) (Summary)**

39. <u>Bail under Essential Commodities Act, 1955 (Sec. 10-A of the EC Act, 1955)</u> : - "Offences to be cognizable—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) every offence punishable under this Act shall be cognizable."

<u>Note</u>: 1. The words "and bailable" have been omitted in Sec. 10-A by Act. No. 30 of 1974 since 22.6.1974

<u>Note</u>: 2. After the word "cognizable" the words "and non-bailable" were inserted by Act 18 of 1981, Sec. 9 as amended by Act 34 of 1993, Sec. 3 for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. See Appendix – Sec. 9 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981). See :

(A) State of W.B. Vs. Falguni Dutta, (1993) 3 SCC 288 on the point of bail u/s 12-AA(1)(b), (c), (f), 12-A, 12-A(c), 7(1)(a), (ii) r/w. Sec. 167(2), Proviso (a) CrPC, held, applicable.

(B) Where after recovery of 90 bags of fertilizer FIR for offences u/s 3/7 of the E.C. Act, 1955 was lodged by Sub Inspector of Police, it has been held by a Division Bench of the Allahabad High Court that if there is no bar for initiation of prosecution by police officer in a cognizable case, the general powers given to a police officer in the CrPCin relation to investigation/arrest of the cognizable offence can always be exercised by police officer. See : **Ashok Vs. State of U.P., 1998 (37) ACC 157 (All)(DB)**

40(A).<u>Necessary conditions for grant of bail u/s 37 of the NDPS Act must be fulfilled</u> : The following twin conditions prescribed u/s 37(1)(b)(ii) of the NDPS Act, 1985 must be fulfilled before grant of bail to an accused of offences under the said Act :

(i) That there are reasonable grounds for believing that the accused is not guilty.

(ii) That the accused is not likely to commit any offence while on bail. See :

(i) Union of India Vs. Shiv Shanker Kesari, (2007) 7 SCC 798

(ii) Superintendent, Narcotics Central Bureau, Chennai Vs. R. Paulsamy, 2001 CrLJ 117 (SC)

40(B).<u>Bail by ASJ under NDPS Act, 1985</u> : When the Special Judge exercises power to grant bail, he is bound by Section 37 of the NDPS Act, 1985. He has to take into account the conditions laid down in Clauses (i) and (ii) of Clause (b) of Section 37(1) of the NDPS Act and if he satisfied that those conditions have been fulfilled, he can release a person on bail under this Section. The other conditions laid down in Section 37 will also apply to him when he intends to grant bail in such a case. **See….Union of India Vs. Rattan Mallik, (2009) SCC 624.**

40(C).<u>Offences under NDPS Act to be cognizable & non-bailable (Sec. 37, NDPS Act)</u> : According to Sec. 37 of the NDPS Act, 1985 offences under the Act are cognizable and non-bailable.

(i) **<u>Sec. 32-A, NDPS Act, 1985</u> :** Sec. 32-A of the NDPS Act, 1985 reads as under--

- "……"

(ii) <u>Sec. 32-A of the NDPS Act, 1985 partly declared unconstitutional</u> : In relation to Sec. 32-A of the NDPS Act, 1985, the Supreme Court has declared following law :

(i) Sec. 32-A of the NDPS Act, 1985 does not in any way affect the powers of the authorities to grant parole.

(ii) Sec. 32-A is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act.

(iii) A sentence awarded under the Act can be suspended by the Appellate Court only and strictly subject to the conditions spelt out in Sec. 37 of the Act. See : **Dadu Vs. State of Maharashtra, 2000 CrLJ 4619 (SC : -Three Judge Bench)**

40(D). <u>Bail u/s 389 CrPCafter conviction under NDPS Act</u> : Sec. 389 of NDPS Act, 1985 empowers appellate Court to suspend sentence pending appeal and release accused on bail. Sec. 32-A of NDPS Act in so far as it completely debars the appellate courts from the power to suspend the sentence awarded to a convict under the Act does not stand the test of constitutionality. Not providing at least one right of appeal, would negate the due process of law in the matter of dispensation of criminal justice. There is no doubt that the right of appeal is the creature of a statutes and when conferred, a substantive right. Providing a right of appeal but totally disarming the Court from granting interim relief in

the form of suspension of sentence would be unjust, unfair and violative of Article 21 of the Constitution particularly when no mechanism is provided for early disposal of the appeal. The pendency of criminal litigation and the experience in dealing with pending matters indicate no possibility of early hearing of the appeal and its disposal on merits at least in many High Courts. The suspension of the sentence by the appellate Court has, however, to be within the parameters of the law prescribed by the Legislature or spelt out by the courts by judicial pronouncements. The exercise of judicial discretion on well recognized principles is the safest possible safeguards for the accused which is at the very core of criminal law administered in India. The Legislatu cated was also ruled out, it has been held that the accused was not entitled to be released on bail for the offences under the NDPS Act, 1985. See : **Safi Vs. State of U.P., 2006 (6) ALJ (NOC) 1358 (All)**

40(E).Where huge quantity of contraband was recovered from the physical possession of the accused on due search and possibility of the accused being falsely imply

40(F). Where the accused was charged with the offence u/s 20 of the NDPS Act, 1985 for the recovery of 1 Kg. of smack from his possession and the total quantity of the smack recovered from the possession of the accused and the other co-accused was 4 Kg. and 300 gms. and the same was sealed in matchboxes in the absence of public witnesses, the bail of the accused was rejected. See : **Aman Vs. State of U.P., 2005 (53) ACC 893 (All)**

40(G). In compliance with the directions of Hon'ble Allahabad High Court (by Hon'ble Justice G.P. Srivastava) in the matter of Criminal Misc. Bail Application No. 5108 of 2006 Jagdish Vs. State of U.P., the Hon'ble Allahabad High Court has issued C.L. No. 36/2006/Admin 'G', dated 10.8.2006 which reads as under :

"It is hereby directed that all the recovered articles under NDPS Act as and when are recovered should be weighed either by the arresting officer or the S.H.O. of the Police Station concerned. In case both the authorities fail to discharge their duty, it is incumbent upon the Special Judge/Magistrate who grants first remand to the accused to get the recovered article weighed."

40(H).Jurisdiction of Magistrates and Special Judges under NDPS Act, 1985 :

As regards the jurisdiction of Magistrates and the Special Judges for conducting enquiries or trial or regarding other proceedings under the provisions of NDPS Act, 1985, the Hon'ble Allahabad High Court, in compliance with the directions of the Allahabad High Court (by Hon'ble Justice B.K. Rathi), in the matter of Criminal Misc. Application No. 1239 of 2002, Rajesh Singh Vs. State of U.P. vide C.L. No.31/2006, dated 7.8.2006 has issued following directions to the judicial officers in the State of U.P. :

"….the original provisions of the NDPS Act, 1985 has been substantially amended by the amending Act No. 9 of 2001, Section 36-A of the original Act provided for trial of offences under the Act by the Special Courts. This section has been amended and amended sub clause 1(a), which is relevant for the purpose of this petition is extracted below:

Section 36-A : "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government." Sub-clause (5) of the said section is also relevant and is extracted below:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this act with imprisonment for a term of not more than three years may be tried summarily."

4. From the perusal of the above provision alongwith Section 4 of the CrPC, it is clear that in case the punishment provided for the offence under the NDPS Act is more than three years, the offence is triable by Special Court and to that extent the provision of Section 36-A NDPS Act over rides the provisions of the CrPCThe trial for offences under the NDPS Act which are punishable for imprisonment of three years or less should be a summary trial by the Magistrate under Chapter XXI of the CrPCFor the purpose to further clarify the position of law it is also necessary to refer to Section 4 CrPCwhich is as follows:-

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, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, enquired 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, enquiring into, trying or otherwise dealing with such offences.

5. The above clause (2) therefore, show that all the offences should be tried according to the provisions of CrPCexcept where there is special provision in any other enactment regarding the trial of any offences. Section 36-A of NDPS Act only provide for trial by Special Courts for offences punishable under NDPS Act with imprisonment for a term of more than three years only. Therefore, if an offence is punishable with imprisonment for a term upto three years, it shall have to be tried by the Magistrate in accordance with the provision of Section 4(2) CrPC

6. It will not be out of place to mention that after the enforcement of amending Act No. 9 of 2001 this procedure for trial has to be followed for all the offences irrespective of the date of commission of the offence. It is basic principle of law that amendment in procedural law will apply to the pending cases also. Not only this there is also specific provision regarding it in amending Act No. 9 of 2001. Section 41 of the Act provides as follows:-

Section 41: "Application of this Act to pending cases—(1) Notwithstanding anything contained in sub section (2) of Section 1, all cases pending before the Courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment before such commencement, shall

be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force."

Now the next question that arise for decision s as to what is the punishment provided for the present offence under amended NDPS Act. It appears that the punishment for recovery of Narcotic Drugs or Psychotropic Substance has been divided in 3 categories as mentioned in the table given at the end of the Act. In this table 2 columns No. 5 and 6 are material, the first is regarding the small quantity and the other is regarding commercial quantity. The third category will follow from this table where the quantity is above small quantify but is less than commercial quantity. The ganja has been given at live No. 55 of this table, 1000 gm of ganja has been categorized as small quantity and 20 kg. of ganja has been categorized as commercial quantity. Accordingly to the third category in respect of recovery of ganja is above 1 kg. and below 20 kg."

41(A). <u>Bail under R.P.U.P. Act, 1966</u> : Offences u/s 3, 8 and 5 of the Railway Property (Unlawful Possession) Act, 1966 are bailable but all offences under the said Act are not bailable. Except for Section 5 of the said Act, Schedule 1 of the CrPCapplies which makes all offences punishable with imprisonment for 3 years and upward but not more than 7 years, cognizable and non bailable. Discretion to decide whether an offence is bailable or not is with the officer concerned which is statutorily prescribed. See….**Union of India Vs. State of Assam, (2004) 7 SCC 474.**

41(B). <u>Bail under Prevention of Corruption Act, 1988</u> : Apart from other relevant considerations, some of the considerations for grant or refusal of bail for the offences under the Prevention of Corruption Act, 1947 would be whether or not the ingredients of Sec. 5 of the Act are fulfilled. These ingredients are : - (i) abuse of position as public servant; (ii) obtaining for himself or for another any valuable thing or pecuniary advantage; (iii) by corrupt or illegal means. See : **R. Balakrishna Pillai Vs. State of Kerala, 2003 (46) ACC 837 (SC)**

42(A). <u>Bail under Prevention of Cow Slaughter Act, 1955</u> : Slaughtering of cow in public gauge is a public offence and it offends religious faiths of a section of society and such an act is liable to create communal tension between two communities and would disturb the public tranquility of the area and the harmony between the people of divergent sections of the society would be shattered. Act of cutting cows and calves pertains to public order and the accused has no rights to break law and violate the provisions of the U.P. Prevention of Cow Slaughter Act, 1955 r/w. U.P. Prevention of Cow Slaughter Rules, 1964 and the Prevention of Cruelty to Animals Act, 1960 as the attitude of the accused appeared to create communal tension. Such incidents are not only of law and order problem but detention of the accused under the provisions of National Security Act, 1981 has also been upheld by the Allahabad High Court. See :

1. **Naeem Vs. D.M., Agra, 2003 (47) ACC 185 (All)(DB)**
2. **Bhaddu Vs. State of U.P., 2002 (45) ACC 1085 (All)(DB)**
3. **Nebulal Vs. D.M., Basti, 2002 (45) ACC 869 (All)(DB)**
4. **Tauqeer Vs. State of U.P., 2002 (44) ACC 1088 (DB)**

42(B). Interpreting the provisions of Sec. 5 & 8 of the U.P. Prevention of Cow Slaughter Act, 1955, it has been held by the Allahabad High Court that there is nothing in the Act prohibiting preparation for cow slaughtering and. Transportation of bullocks is not an offence punishable under the Act as the Act prohibits slaughter of cows or bullocks and possession of beef. See **: Babu Vs. State of U.P., 1991 (Suppl.) ACC 110 (All)0**

42(C). Where the accused was found sitting by the side of flesh and bone of slaughtered cow with axe, knife wood and legs of cow, the slaughtering of cow was found proved. See : **Safiq Vs. State of U.P., 1996 ACC (Sum.) 39 (All)**

42(D). While dealing with a matter of release of cow progeny under the provisions of U.P. Prevention of Cow Slaughter Act, 1955 r/w. Prevention of Cruelty to Animals Act, Hon'ble Single Judge of the Allahabad High Court has made certain observations against the judicial officers of different cadres as under : - "Unfortunately the police of Uttar Pradesh is also helping such anti-social elements by seizing the animals and vehicles carrying them, even no offence under Cow Slaughter Act or Animals' Cruelty Act is made out. Even more unfortunate state of affairs in Uttar Pradesh is that the Magistrates and Judges in subordinate Courts are not looking in subordinate Courts are not looking to this matter and either due to excessive devotion to cow or lack of legal knowledge, they are not only declining to release the seized animals or vehicles carrying them, but without applying their mind, they are rejecting the bail applications also in such cases, although no offence under Cow Slaughter Act is made out and all the offences under Animals' Cruelty Act are bailable. While making inspection of Rampur judgeship is Administrative Judge, I found that a large number of bail applications in such cases were rejected not only by the Magistrate, but unfortunately the then Sessions Judge and some Additional Sessions Judges also did not care to see whether any offence under Cow Slaughter Act is made out or not and without applying the mind bail applications even in those cases were rejected where two or three bullocks were being carried on foot by the accused. This unfortunate practice of rejecting the bail applications by merely seeing sections 3, 5, 5-A and 8 of Cow Slaughter Act in FIR is prevalent almost in the whole Uttar Pradesh, which has been unnecessarily increasing the work load of High Court. By declining bail to the accused persons under Cow Slaughter Act, although no offence under this Act is made out and the offences punishable under Animals' Cruelty Act are bailable, the personal liberty of the accused protected under Article 21 of the Constitution of India is also unnecessarily curtailed till their release on granting bail by the High Court." See : **Asfaq Ahmad Vs. State of U.P., 2008 (63) ACC 938 (All).**

42(D). **<u>Bail under Prevention of Money Laundering Act, 2003</u> :** Conditions enumerated in Section 45 of Prevention of Money Laundering Act, 2003 will have to be complied with. The said special act has an overriding effect and are binding on court while considering application of bail u/s 439 CrPC. See **: Gautam Kundu Vs. Manoj Kumar, Assistant**

Director, Eastern Region Directorate of Enforcement (Prevention of Money Laundering Act) Govt. of India, AIR 2016 SC 106.

42(E).<u>Supreme Court rulings on various aspects of Prevention of Cow Slaughter Act</u> :

(i) Mohd. Hanif Quareshi case of Bihar, AIR 1958 SC 731 (Five-Judge Bench)
(ii) Mohd. Faruk Vs. State of Madya Pradesh, (1969) 1 SCC 853
(iii) Hazi Usman Bhai Hasan Bhai Qureshi, (1986) 3 SCC 12
(iv) State of West Bengal Vs. Ashutosh Lahiri, (1995) 1 SCC 189
(v) State of Gujarat Vs. Mirzapur Moti Kureshi, AIR 2006 SC 212 (Seven-Judge Bench)

43(A).<u>Plea of sanction u/s 197 CrPC at the time of Bail</u>: Sec. 197 CrPCand 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. 197 CrPC, 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**

43(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)**

43(C).<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) CrPCor remand of accused u/s 167 CrPCSee : **State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825**

44. <u>Bail under U.P. Dacoity Affected Areas Act, 1983 & the SC/ST (Prevention of Atrocities) Act, 1989</u> : As regards the trail of offences under the provisions of U.P. Dacoity Affected Areas Act, 1983 and the SC/ST (Prevention of Atrocities) Act, 1989, Sec. 6(2) of the U.P. Dacoity Affected Areas Act, 1983 is relevant which reads as under : -

"Sec. 6(2)—In trying any scheduled offences a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law for the time being in force."

45(A). <u>Bail u/s 7 Criminal Law Amendment Act, 1932</u> : Sec. 7 of the Criminal Law Amendment Act, 1932 reads as under :

"Sec. 7 : Molesting a person to prejudice of employment or business:- (1) Whoever—

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing obstructs or uses violence to or intimidates such person or any member of his family or person in his employment, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place, shall be punished with imprisonment for a term which may extend to six months, or with fine or which may extend to five hundred rupees, or with both.

Explanation—Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section.

(2) No Court shall take cognizance of an offence punishable under this section except upon a report in writing of facts which constitute such offence made by the police officer not below the rank of officer in charge of a police station."

45(B)."Sec. 9 : Procedure in offence under the Act : Notwithstanding anything contained in the Code of Criminal Procedure, 1898—

(i) no Court inferior to that of a Presidency Magistrate or the magistrate of the first class shall try any offence under this Act;

(ii) an offence punishable u/s 5 or 7 shall be cognizable by the police; and

(iii) an offence punishable u/s 7 shall be non-bailable."

45(C)."Sec. 10(2) : The State Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable u/s 188 or Sec. 506 of Indian Penal Code, 1860 shall be non-bailable."

46. A Division Bench decision dated 1.8.2002 of the Allahabad High Court passed in Criminal Misc. Writ Petition No. 4188/2002, Virendra Singh Vs. State of U.P. has held the U.P. Government's Notification No. 777/VIII-9-4(2)-87 dated 31.7.1989 issued u/s 10 of the Criminal Law Amendment Act, 1932 declaring the offence u/s 506 IPC as cognizable and non-bailable illegal and as per this Division Bench decision the offence u/s 506 IPC in the State of U.P. is non-cognizable and bailable. This Division Bench decision has been circulated amongst the judicial officers of the State of U.P. by the Allahabad High Court vide Letter No. 12889/2002, dated 6.9.2002.

47(A).Release order issued by Magistrate [Rule 63(a) of G.R. (Criminal)] : When an order for the release of a prisoner, on bail or otherwise, is issued by a magistrate, he shall see that it is entered in a peon book and sent to the Nazir Sadar by the time prescribed by the District Magistrate in this behalf. The Nazir shall enter in a peon book all the release orders received by him within the prescribed time and arrange to deliver them through a peon to the officer incharge of the jail by 4 p.m. in winter and 5 p.m. in

summer at the latest. In exceptional circumstances the order of release may be sent to the jail in the manner laid down in sub-rule (b).

47(B). Release order issued by SJ / ASJ [Rule 63(b) G.R. (Criminal)] : When an order for the release of a prisoner is issued by a court other than a magistrate, it shall be entered in a peon book and may be sent through one of the court peons to the officer incharge of the jail so as to reach the jail ordinarily not later than 4 p.m. in winter and 5 p.m. in summer.

47(C). Release order not to be sent to jail through private persons [Rule 63(c) G.R. (Criminal)] : A release order should in no case be made over to private persons for delivery to the jail authorities.

47(D). Release order by post & Radiogram when accused transferred & lodged in other jail : When an order for the release of a prisoner, who has already been transferred to another jail outside the district, is received and returned by the Superintendent of Jail to the issuing Court, with a report indicating the date of transfer and the name of the jail to which prisoner was transferred, the court shall then send the release order by post to the jail concerned and at the same time follow the procedure laid down as quoted below :

"When a release order is issued by post to a jail outside the district, the Presiding Officer of the Court shall immediately give an intimation about its dispatch by radiogram to the Superintendent of that jail." See : **C.L. No. 124 / VII-b-47, dated Allahabad, 24th October, 1979**

47(E). Defective release order & correction thereof : The Allahabad High Court, vide C.L. No. 53 / VIII-a-18-Admin 'G', dated Allahabad, 7th August, 1986, has issued directions that release orders must be prepared by the court clerks and not by the court moharrirs (police constables) and the papers relating to cases such as FIR, bail bonds, remand papers, final reports etc. must be kept in the custody of court clerks and not in the custody of court moharrirs.

Vide C.L. No. 114 / VII-b-47, dated Allahabad 7th October, 1978, it has been directed that the release orders must contain correct entries relating to case number, name of the police station, name of the accused, his father's name, age, residential address offences, crime number, Sections of IPC and other Acts, date of conviction etc.

Vide C.L. No. 124 / VII-b-47, dated Allahabad, 24th October, 1979 & C.L. No. 42 / VII-b-47, dated Allahabad 28th April, 1978, it has been directed that the remand order and the release orders passed by the courts of Magistrate and Judges must contain their full name, clear signature, designation and seal of the court as required under Rule 9, G.R. (Criminal).

48. Outlying Magisterial Courts & Bail & Remand in certain offences : relevant C.L. thereon : Vide C.L. No. 19/2006, dated 10.5.2006, the Allahabad High Court has directed that the committal, remand and bail work in sessions triable cases and also in certain other penal sections should not be assigned to outlying courts where there is no sub jail. The abovenoted circular letter reads as under :

(i) The committal and remand/bail work in sessions triable cases should not be assigned to the outlying court where there is no sub-jail.

(ii) The work of committal of cases and remand/bail for offences punishable u/s 302, 304, 304-B and 396 IPC and under the NDPS Act should be retained at the District Headquarter.

(iii) Committal and remand/bail of the offences of lesser gravity (other than Sec. 302, 304, 304-B and 396 IPC and under the NDPS Act), triable by the court of sessions, may be assigned to the outlying courts where there is sub-jail.

(iv) A sub-copying section should be made functional under the senior most judicial officer of the outlying court for copying case diary/document in respect of cases, committal proceeding of which to be handled there.

(v) The scheme of assignment of committal and remand/bail work, as proposed hereinabove, in some measure, should be kept flexible in case some modification is required, keeping in view the condition of a particular district. In that eventuality, the District Judge may approach the High Court setting out the detailed exceptional and special reasons seeking modification in the above scheme for his district.

(vi) Such request of the District Judge concerned should be jointly examined by the Hon'ble Administrative Judge of that district and another Hon'ble Judge of the Administrative Committee, to be nominated by Hon'ble the Chief Justice. The report should then be placed before the Administrative Committee for appropriate orders as may be suggested by such two Hon'ble Judges.

49. **Mentally Ill Persons & Bail** : As regards the detention of mentally ill persons in jails, the Allahabad High Court in compliance with the directions of the Hon'ble Supreme Court in the matter of Sheela Barse Vs. Union of India, (1993) 4 SCC 204, has issued following directions vide C.L. No.30/2006, dated 7.8.2006 :

(a) It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed by Executive Magistrate shall hereafter be performed only by Judicial Magistrate.

(b) The Judicial Magistrate, will, upon a mentally ill person being produced, have him or her examined by a Mental health professional/ Psychiatrist and if advised by such MHP/Psychiatrist send the mentally ill person to the nearest place of treatment and care.

(c) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and sent to places of safe custody and action taken by the Judicial Magistrate thereon.

50(A).Forged Bail Orders of High Court & Duty Of Subordinate Courts : Vide C.L. No. 13, dated March 13, 1996, the Allahabad High Court has directed that in case it comes to the notice of any subordinate court that some fake or forged bail order of the High Court has been produced before it, the same must be brought to the knowledge of the Hon'ble High Court for comprehensive enquiry and action.

50(B). An accused or appellant should not be released on bail by a Magistrate only on production of a copy of the order of bail passed by High Court. It is necessary for a Magistrate to know the nature of an offence with which the person to be released has been charged. For this purpose he should consult his own records, or insist on the applicant supplying him with a copy of the grounds of appeal or of the application for bail whenever a copy of the bail order alone is produced. See—C.L. No. 7, dated 15th January, 1978.

51(A). Explanations sought for by the Hon'ble High Court from the ASJ & the Metropolitan Magistrate for releasing the convict/appellant on bail u/s 437-A CrPC :

From,

AB
Metropolitan Magistrate,
Court No. :
Kanpur Nagar.
(ID No. : -)

To,

The Registrar General
Hon'ble High Court of Judicature
at Allahabad

Through: The District Judge, Kanpur Nagar

Subject : Comments as required by the Hon'ble High Court vide its order dated 07.07.2015 passed in Criminal Revision No. 2256/2015, Sunil Sachan Vs. State of UP & Others.

Sir,

I most respectfully submit my comments on the subject noted above as under :

1. That while dismissing the Criminal Appeal No. 43/2013 titled Sunil Sachan Versus State of UP & Others by his judgment & order dated 04.05.2015, **Shri ..... the learned Addl. Sessions Judge,** Court No. : : -, Kanpur Nagar, upheld the judgment and order of the court of Metropolitan Magistrate--I, Kanpur Nagar whereby the accused Sunil Sachan was convicted by the said Magistrate for the offences u/s 7/16(1)(a)(1) of the PFA Act, 1954 and sentenced with the imprisonment of RI of six months and fine of Rs. 1000/-. The said learned Addl. Sessions Judge had, *inter alia,* passed following order on 04.05.2015 in the said Criminal Appeal No. 43/2013.

   ''अभियुक्त के अपीलीय न्यायालय में दाखिल जमानतनामे निरस्त किये जाते हैं एवं प्रतिभुओं को उनके दायित्व से उन्मोचित किया जाता है । अभियुक्त को तत्काल विद्वान मजिस्ट्रेट न्यायालय के समक्ष अग्रिम कार्यवाही हेतु पेश किया जाए । मूल पत्रावली इस निर्णय की प्रति के साथ अविलम्ब सम्बन्धित विद्वान मजिस्ट्रेट न्यायालय को प्रतिप्रेषित हो । अभियुक्त–अपीलार्थी को आदेशित किया जाता है कि वह धारा 437ए द.प्र.सं. के अन्तर्गत अतिरिक्त अपील या पिटीशन निस्तारित होने तक इस आशय की दो–दो प्रतिभूगण मुबलिग 25–25 हजार रूपये की इस आशय के साथ दाखिल करेगा कि वह माननीय उच्चतर न्यायालय में अतिरिक्त अपील या पिटीशन दाखिल होने की दशा में मा0 न्यायालय के निर्देशानुसार उपस्थित रहेगा । उपरोक्त जमानतनामे अतिरिक्त अपील या पिटीशन प्रस्तुत होने पर दिये गये निर्देशों या 6 माह तक प्रवर्तनीय रहेंगे ।''

2. That on 04.05.2015 itself, the convict/appellant Sunil Sachan had moved another application (**Annexure No. 1**) by annexing therewith his personal bond before the learned Addl. Sessions Judge named above with the following contents and prayer :

   "न्यायालय माननीय ADJ कोर्ट सं0 23 कानपुर नगर । क्रिमिनल अपील नं0 43 सन् 2013, सुनील सचान बनाम उ0प्र0 राज्य । श्रीमान्जी, सविनय निवेदन है कि प्रार्थी की अपील याचिका माननीय न्यायालय द्वारा निरस्त की गयी है । धारा 437 CrPC के अनुपालन में प्रार्थी आज अपना व्यक्तिगत बन्धपत्र प्रस्तुत कर रहा है । न्यायहित में माननीय न्यायालय द्वारा जमानतगीर प्रस्तुत करने हेतु एक सप्ताह का समय दिया जाना अति आवश्यक है । अतः विनम्र प्रार्थना है कि **प्रार्थी को व्यक्तिगत बन्ध पत्र पर रिलीज करने की कृपा करें तथा जमानतगीर**

दाखिल किये जाने हेतु एक सप्ताह का समय दिये जाने की कृपा करें । प्रार्थी/अपीलार्थी : सुनील सचान । दि0 4–5–15'' The learned Addl. Sessions Judge named above passed following order on 04.05.2015 (**kindly see on the Margin of Annexure No. 1**) itself on the margin of the above application dated 04.05.2015 :

''एक सप्ताह में दाखिल करें । Signed/Addl. Sessions Judge, 04.05.15"

3. That soon after the said judgment & order dated 04.05.2015 and the other order dated 04.05.2015 on the application dated 04.05.2015 of the convict/appellant were passed by the said learned Addl. Sessions Judge, the same were produced before me on 04.05.2015 itself as the Presiding Officer of the concerned Court of Metropolitan Magistrate-I was on leave and as per the order of the learned Chief Metropolitan Magistrate, Kanpur Nagar, I was the In-charge of the said court of the Metropolitan Magistrate-I.
4. That as is clearly visible from the above order dated 04.05.2015 passed by the said learned Addl. Sessions Judge on the application dated 04.05.2015 of the convict/appellant Sunil Sachan, the learned Addl. Sessions Judge named above had clearly directed for release of the convict/appellant Sunil Sachan on his personal bond alone with the direction to furnish the sureties and their bail bonds within a week.
5. That I had released the said convict/appellant Sunil Sachan on his personal bond only in compliance with the above order dated 04.05.2015 of the said learned Addl. Sessions Judge as I was bound by the said appellate order and had no other choice. I had acted bona fide and purely judicially with clean conscience. However, despite the said binding order dated 04.05.2015 passed by the said learned Addl. Sessions Judge on the application dated 04.05.2015 of the convict/appellant Sunil Sachan for releasing him on his personal bond only, I still most humbly request the Hon'ble Court to pardon me for the mistakes, if any, in releasing the said convict/appellant on his personal bond alone and I most conscientiously assure the Hon'ble Court not to repeat any such mistakes in future.
6. The aforesaid comments are hereby being submitted to your goodself with the request to place the same before the Hon'ble Court for its kind perusal.

With profound regards,

Yours sincerely,

Dated : July 10, 2016

(AB)
Metropolitan Magistrate,
Court No. : --
Kanpur Nagar.

Annexure : As above.

51(B). Certain Model Orders of Bail to be passed by Magistrates :

माडल आर्डर–1

(जमानतीय धाराओं में जमानत के आदेश का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

ह0/अभियुक्त	**04–10–2015** अपराध संख्या–622/2013, धारा 323, 504 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में अभियुक्त/प्रार्थी मोहन द्वारा प्रार्थनापत्र वास्ते जमानत प्रस्तुत है। अभियुक्त मोहन को न्यायिक अभिरक्षा में लिया जा चुका है। सुना। अपराध अन्तर्गत धारा 323, 504 भा. द.सं. जमानतीय है। अत्एव जमानत प्रार्थनापत्र स्वीकृत किया जाता है। अभियुक्त मोहन द्वारा रूपये 7,000/– का व्यक्तिगत बन्धपत्र तथा इतनी ही धनराशि के दो प्रतिभूगण व उनके बन्धपत्र प्रस्तुत करने पर उसे

	जमानत पर मुक्त कर दिया जाये। ह0 (रमेश कुमार) न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ। 04–10–2016

माडल आर्डर–2

(मजिस्ट्रेट द्वारा विचारणीय अजमानतीय धाराओं में जमानत प्रार्थनापत्र स्वीकृत करते हुए मजिस्ट्रेट द्वारा पारित आदेश का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

ह0/अभियुक्त	**04–10–2015** अपराध संख्या–624/2013, धारा– 452, 323, 504, 506 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में अभियुक्त/प्रार्थी मोहन द्वारा जमानत का प्रार्थनापत्र प्रस्तुत है। अभियुक्त को न्यायिक अभिरक्षा में लिया जा चुका है। अभियुक्त के विद्वान अधिवक्ता तथा विद्वान सहायक अभियोजन अधिकारी को सुना एवं अभियुक्त के जमानत प्रार्थनापत्र पर थाना गोमतीनगर की पुलिस से प्राप्त प्रस्तरवार टिप्पणी, चोटिल सुरेश व गणेश की उपहति आख्या व प्रकरण से संबंधित केस डायरी का अवलोकन किया। अभियोजन प्रपत्रों के अनुसार अभियुक्त मोहन के विरूद्ध यह मामला आरोपित है कि उसने दिनॉक 02–10–2015 को वादी मुकदमा राजेन्द्र प्रसाद के घर में घुसकर उसे तथा उसके पुत्रगण सुरेश व गणेश को लात घूसों व लाठी डण्डों से पीटकर उपहतियॉ पहुँचाईं तथा गालियॉ देते हुए उसे व उसके परिवारीजन को जान से मार देने की धमकी भी दी। अभियुक्त द्वारा अभियोजन कथानक का खण्डन करते हुए प्रष्नगत प्रकरण में वादी मुकदमा द्वारा शत्रुतावश गलत ढंग से आलिप्त किया जाना कहा गया है। चोटिलगण सुरेश व गणेश की उपहति आख्या के अवलोकन से स्पष्ट होता है कि उक्त चोटिलगण को साधारण प्रकृति की क्रमशः दो व तीन उपहतियॉ कारित की गयी हैं। अभियुक्त मोहन का कोई पूर्व आपराधिक इतिहास होना नहीं कहा गया है। इस आशय का कोई पर्याप्त व संतोषप्रद कारण नहीं दर्शाया जा सका है जिसके आधार पर यह कहा जा सके कि जमानत पर मुक्त होने की दशा में अभियुक्त अभियोजन साक्षीगण अथवा साक्ष्य के साथ किसी प्रकार की टैम्परिंग करेगा अथवा उपरोक्त प्रकृति के अपराध पुनः कारित करेगा अथवा विचारण के दौरान न्यायालय के समक्ष उपस्थित नहीं रहेगा अथवा न्यायालय की अधिकारिता से परे पलायित कर जावेगा। प्रकरण के तथ्यों व परिस्थितियो में अभियुक्त जमानत पर मुक्त हो पाने का अधिकारी होना पाया जाता है। अत्एव जमानत प्रार्थनापत्र स्वीकृत किया जाता है। अभियुक्त मोहन को रूपये 10,000/– का व्यक्तिगत बन्धपत्र तथा इतनी ही धनराशि के दो प्रतिभूगण व उनके बन्धपत्र प्रस्तुत करने पर धारा 437(3) द.प्र.सं. के अन्तर्गत निम्नांकित शर्तो के अधीन जमानत पर मुक्त किया जाता है––– 1. अभियुक्त मोहन नियत तिथियों पर न्यायालय के समक्ष उपस्थित रहेगा। 2. अभियुक्त प्रष्नगत अपराध की प्रकृति के अन्य अपराध कारित नहीं करेगा। 3. अभियुक्त अभियोजन साक्षीगण अथवा साक्ष्य के साथ किसी प्रकार की टैम्परिंग आदि नहीं करेगा। ह0 (रमेश कुमार) न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ। 04–10–2016

माडल आर्डर–3

(सत्र परीक्षणीय धाराओं में जमानत प्रार्थनापत्र निरस्त करते हुए मजिस्ट्रेट द्वारा पारित आदेश का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

ह0 / अभियुक्त	**04–10–2015** अपराध संख्या–623 / 2015, धारा–147, 148, 149, 307 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में अभियुक्त सोहन द्वारा जमानत का प्रार्थनापत्र प्रस्तुत है। अभियुक्त को न्यायिक अभिरक्षा में लिया जा चुका है। विद्वान सहायक अभियोजन अधिकारी तथा अभियुक्त के विद्वान अधिवक्ता को सुना एवं थाना–गोमतीनगर की पुलिस से प्राप्त रिपोर्ट व प्रकरण से संबंधित केस डायरी का अवलोकन किया। अभियुक्त सोहन के विरूद्ध यह मामला आरोपित है कि उसने चोटिल सुरेश कुमार की हत्या कारित करने के आशय से देशी तमन्चे से फायर करके उसे उपहति कारित की। अभियुक्त द्वारा कारित अपराध की प्रकृति नितान्त गम्भीर है। अभियुक्त की जमानत हेतु पर्याप्त व उचित आधार उपलब्ध नहीं हैं। अत्एव अभियुक्त सोहन का जमानत प्रार्थनापत्र बलहीन पाते हुए निरस्त किया जाता है। ह0 (रमेश कुमार) न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ। 04–10–2016

माडल आर्डर–4

(पूर्व में जमानत पर मुक्त रहे अभियुक्त के विरूद्ध निर्गत अजमानतीय वारन्ट को निरस्त करते हुए मजिस्ट्रेट द्वारा पारित आदेश का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या– 2, लखनऊ।

आदेश

04–10–2015

दण्डवाद संख्या–610 / 2015, राज्य प्रति मोहन आदि, धारा 452, 323, 504, 506 भा.द.सं. थाना–गोमती नगर, जनपद– लखनऊ के प्रकरण में अभियुक्त / प्रार्थी राजेन्द्र की ओर से प्रार्थना–पत्र मय शपथ–पत्र वास्ते निरस्त करने अजमानतीय वारन्ट प्रस्तुत है। अभियुक्त के प्रार्थना–पत्र व शपथ–पत्र का अवलोकन अभियोजन पक्ष की ओर से उपस्थित विद्वान सहायक अभियोजन अधिकारी द्वारा कर लिया गया है। अभियुक्त राजेन्द्र को न्यायिक अभिरक्षा में लिया जा चुका है।

अभियुक्त के विद्वान अधिवक्ता तथा विद्वान सहायक अभियोजन अधिकारी को सुना एवं पत्रावली का अवलोकन किया।

अभियुक्त राजेन्द्र तत्कालीन विद्वान पीठासीन अधिकारी द्वारा पारित जमानत के आदेश दिनांक 15.6.2012 के अन्तर्गत जमानत पर मुक्त रहा है। नियत तिथि 14.9.2015 पर न्यायालय के समक्ष उपस्थित नहीं आने पर उक्त अभियुक्त के विरूद्ध अजमानतीय वारन्ट जारी किया गया था। प्रार्थना–पत्र के समर्थन में प्रस्तुत शपथ–पत्र में अभियुक्त का कथन है कि अस्वस्थ हो जाने के कारण वह नियत तिथि पर न्यायालय के समक्ष उपस्थित नहीं हो सका था। अभियुक्त के शपथ पत्र में अंकित उसके उक्त कथनों का खण्डन अभियोजन पक्ष द्वारा नहीं किया गया है। जमानत के पूर्व आदेश दिनांक 15.6.2015 के अन्तर्गत अभियुक्त द्वारा प्रस्तुत प्रतिभूगण व उनके बन्धपत्र अभी भी यथावत हैं और उन्हें जब्त अथवा निरस्त नहीं किया गया है। अभियुक्त के विरूद्ध जमानत के पूर्व आदेश के दुरूपयोग का कोई मामला आरोपित नहीं है। अभियुक्त के अखण्डित शपथपत्र से समर्थित उसके प्रार्थना पत्र में अंकित कारण को पर्याप्त व संतोषजनक पाते हुए
ह0 / अभियुक्त प्रार्थना पत्र स्वीकृत किया जाता है। अभियुक्त राजेन्द्र द्वारा जमानत के पूर्व आदेश दिनांक 15.6.2014 के अनुपालन में पूर्व में प्रस्तुत किये गये प्रतिभूगण व उनके बन्धपत्र पर ही रू0 10,000 / – का व्यक्तिगत बन्धपत्र निष्पादित करने पर उसे जमानत पर मुक्त किया जाता है।

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(रमेश कुमार)
न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।
04–10–2016

नोटः *यदि अभियुक्त के प्रतिभूगण के बन्धपत्र जब्त किये जा चुके हों तो धारा 446–ए द.प्र.सं. के प्रावधानों के अनुसार अभियुक्त को केवल उसके व्यक्तिगत बन्धपत्र पर मुक्त नहीं किया जावेगा अपितु दो नये प्रतिभूगण व उनके बन्धपत्र भी लिये जावेंगे।*

माडल आर्डर–5

(मजिस्ट्रेट द्वारा धारा 167 द.प्र.सं. के अन्तर्गत अस्पताल में स्वीकृत अभियुक्त की न्यायिक अभिरक्षा के रिमाण्ड आदेष का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कक्ष संख्या–2, लखनऊ।

राज्य प्रति अषोक कुमार

अपराध संख्या– 308/2015
धारा 376, 506 भा.द.सं.
थाना–गोमतीनगर, जनपद–लखनऊ

आदेश

20–9–2009

अपराध संख्या–308/2015, धारा 376, 506 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में पुलिस द्वारा निरूद्ध अभियुक्त अषोक कुमार की न्यायिक अभिरक्षा के रिमाण्ड हेतु विवेचक द्वारा प्रस्तुत प्रार्थनापत्र की सुनवाई/निस्तारण के लिए आज अपराह्न 3.30 बजे विवेचक के अनुरोध पर जिला सिविल अस्पताल, लखनऊ आया। अभियुक्त अषोक कुमार, जो उक्त अस्पताल के सामान्य वार्ड में बेड संख्या–40 पर लेटा हुआ है, की पहचान प्रकरण के विवेचक द्वारा की गई। संबंधित विद्वान सहायक अभियोजन अधिकारी तथा अभियुक्त अषोक कुमार के विद्वान अधिवक्ता भी उपस्थित हैं। प्रकरण से संबंधित केस डायरी विवेचक द्वारा प्रस्तुत की गयी है। प्रकरण के विवेचक, विद्वान सहायक अभियोजन अधिकारी तथा अभियुक्त के विद्वान अधिवक्ता को सुना तथा विवेचक के आवेदन, संबंधित पुलिस प्रपत्रों, अभियुक्त अषोक कुमार की चिकित्सीय आख्या सहित प्रकरण से संबंधित केस डायरी का अवलोकन किया।

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प्रकरण से संबंधित प्रथम सूचना रिपोर्ट, विवेचक द्वारा धारा 161 द. प्र.सं. के अन्तर्गत पीड़िता के अंकित किए गए बयान तथा केस डायरी में संकलित सामग्री के अवलोकन के उपरान्त विवेचक का आवेदन वास्ते 14 दिवसीय न्यायिक अभिरक्षा का रिमाण्ड स्वीकृत किए जाने योग्य है। अत्एव विवेचक का आवेदन स्वीकृत किया जाता है। अभियुक्त अषोक कुमार की न्यायिक अभिरक्षा का रिमाण्ड दिनॉक 3–10–2015 तक के लिए स्वीकृत किया जाता है। चूँकि अभियुक्त अषोक कुमार वर्तमान में चिकित्सीय उपचार हेतु कारागार में भर्ती है, अत्एव विवेचक को निर्देष दिया जाता है कि चिकित्सीय उपचार के लिए जब तक आवष्यक हो तब तक अभियुक्त को अस्पताल में रखा जावे और तदुपरान्त उसे अस्पताल से जिला कारागार, लखनऊ स्थानान्तरित कर दिया जावे। अभियुक्त अषोक कुमार को नियत तिथि 3–10–2015 पर समक्ष न्यायालय प्रस्तुत किया जावे। चिकित्सीय उपचार हेतु अस्पताल में रखे जाने की अवधि में अभियुक्त अषोक कुमार की आवष्यक सुरक्षा विवेचक सुनिष्चित करें।

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(रमेष कुमार)

न्यायालय न्यायिक मजिस्ट्रेट, कक्ष संख्या–2,
लखनऊ।
20–9–2016

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