

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 from the 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 consequences 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). Meaning of 'Personal Liberty' under Article 21 of the Constitution : The expression 'Personal Liberty' in Article 21 of the Constitution is of the widest amplitude and it covers a variety 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). Universal right of personal liberty enshrined in Sec 437 & 439 CrPC : The Universal right of personal liberty emblazoned 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 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 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 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.**

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

- (i) Right to go abroad
- (ii) Right to privacy
- (iii) Right against solitary confinement
- (iv) Right against bar fetters
- (v) Right to legal aid
- (vi) Right to speedy trial
- (vii) Right against handcuffing
- (viii) Right against delayed execution
- (ix) Right against custodial violence
- (x) Right against public hanging
- (xi) Right to medical assistance
- (xii) Right to shelter.
- (xiii) Right to sleep
- (xiv) Right against noise pollution, (2015) 4 SCC 801
- (xv) Certain other rights also as declared by the Hon'ble Supreme Court in its 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 trial 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). **Kailash Gour Vs. State of Assam, (2012) 2 SCC 34(Three-Judge Bench)**
- (ii). **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, (2005) 5 SCC 294 (Three-Judge Bench)**
- (iii). **Narendra Singh Vs. State of M.P., (2004) 10 SCC 699.**

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 liberty 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). 'Personal liberty' guaranteed under Article 21 when deemed to be not violated ? : 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). Refusal of bail when to be treated as not violative of right as to 'personal liberty' guaranteed under Article 21 ? : 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. Law interfering with the right as to 'personal liberty' must withstand certain tests : 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). Speedy trial & Protection of personal liberty under Art. 21 of the Constitution : 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 Khaton 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 trial 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 : **Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125** (paras 33, 42 & 43)*

8(D). Granting of frequent adjournments u/s 309 CrPC deprecated by the Supreme Court : 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- D.B.)**

9(A). 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 : 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). Delayed trial, protection of personal liberty & grant of bail : 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(C). Delay in framing of charges entitles the accused to be released on bail: 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 such 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).Bail and Parole distinguished : 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).Court not empowered to release prisoner in police custody to attend marriage ceremony etc. of near relatives : 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). Application seeking permission to attend marriage of sister in police

custody rejected by High Court : 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). No short term bail to attend marriage etc :

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). Short term bail (parole) ganted for attending marriage of daughter : 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.

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

1(F). Personal appearance/custody of accused-- must for Bail : Bail application cannot be entertained/heard unless the accused is in the custody of the court. If the accused is already lodged in jail under some order of court, the bail application can be heard and disposed of even without physical appearance/production of the accused before the court. Since the provisions of Sec. 438 CrPC regarding anticipatory bail have been omitted in the State of U.P. vide U.P. Act No. 16 of 1976, so granting bail without seeking custody of the accused would amount to bring in vogue the omitted provisions of Sec. 438 CrPC. Even u/s 88 Cr.P.C., 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 Cr.L.J. 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—D.B.)**
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). Accused to be permitted to surrender even without report from police :

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 A.Cr.R. 184 (All).**

1(H). Bail during police custody remand : Relying upon the Constitution Bench decision in the case of Shri Gur Vaksh Singh Sibbia Vs. 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). Bail application can directly be filed u/s 439 CrPC before the High Court:

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-D.B.)**

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

1(J). Bail application should normally not be filed directly before the High

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

- (1). **Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;**
- (2). **Nature of accusation and evidence therefor**
- (3). **Gravity of the offence and punishment which the conviction will entail**
- (4). **Reasonable possibility of securing presence of the accused at trial and danger of his absconding or fleeing if released on bail**
- (5). **Character and behavior of the accused**
- (6). **Means, position and standing of the accused in the Society**
- (7). **Likelihood of the offence being repeated**
- (8). **Reasonable apprehension of the witnesses being tampered with**
- (9). **Danger, of course, of justice being thwarted by grant of bail**
- (10). **Balance between the rights of the accused and the larger interest of the Society/State**
- (11). **Any other factor relevant and peculiar to the accused.**
- (12). **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 :**

- (ia) Sanghian Pandian Rajkumar Vs. CBI, 2014 (86) ACC 671 (SC) (Three-Judge Bench)
- (ib) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 (*para 24*)
- (ic) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933
- (ii) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
- (iii) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949
- (iv) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189
- (v) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475
- (vi) Anil Kumar Tulsyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
- (vii) State of U.P. through CBI Vs. Amarmani Tripathi, (2005) 8 SCC 21
- (viii) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387
- (ix) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578
- (x) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)
- (xi) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50
- (xii) Mansab Ali Vs. Irsan, (2003) 1 SCC 632

2(B). Conditions for grant of bail u/s 437 CrPC are also relevant for grant of bail u/s 439 CrPC: 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. (S.P.) Vs. State of Gujarat, 2008 Cr.L.J. 3008 (SC)**

2(C). Discussions of evidence/merits of the case in bail order : While disposing of bail applications u/s 437/439 Cr.P.C., 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(a). **CBI Vs. V. Vijay Sai Reddy, (2013) 7 SCC 452**
- 1(b). **Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296.**
- 1. **Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, 2005 Cr.L.J. 2533 (SC—Three Judge Bench)**
- 2. **Afzalkhan Vs. State of Gujarat, AIR 2007 SC 2111**
- 3. **Nira Radia Vs. Dheeraj Singh, (2006) 9 SCC 760**
- 4. **Ajay Kumar Sharma Vs. State of U.P., (2005) 7 SCC 507 (Three Judge Bench)**
- 5. **Chamanlal Vs. State of U.P., 2004 (50) ACC 213 (SC)**
- 3. **Seriousness of the offence not to be treated as the only consideration in refusing bail :** Seriousness of the offence should not to be treated as the only

ground for refusal of bail. See.... **Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830** (Note: it was 2G Spectrum Scam Case).

4. **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)**

5. **Defence plea at the time of disposal of Bail Application :** 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).**

6. **Affidavits of P.Ws. & Bail :** 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).**

- 7(A-1).**Hearing of prosecutor & accused on Bail Application :** Last proviso added to Sec. 437(1) CrPCw.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).**

7(A-2).Sessions Judge and High Court may ignore procedural requirement of giving notice of the bail application to the public prosecutor : 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 : **Sundeeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

7(B). Right of third person to hearing & oppose bail : 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).**

8(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 Cr.L.J. (NOC) 924 (All)**
4. **Anil Kumar Tulsyani 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 Vetel, AIR 2004 SC 4258**

8(B).Criminal history not a ground for refusal of bail : 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.

8(C).Bail granted by High Court without considering criminal history cancelled by Supreme Court : Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of

absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in Society can act in a manner by consequence of which life or liberty of others is jeopardized. See.... **Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.**

9(A). Second or successive bail applications : 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)**

9(B).ASJ dismissed for allowing second bail application : Where an Addl. Sessions Judge of district Etah 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).**

9(C).C.L. No. 2934/1988 dated 01.04.1988 : "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."

10(A-1).Verification of sureties & their papers/status—Relevant C.Ls. & judicial pronouncements thereon : 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**

10(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 accused 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 under the NDPS Act, the amount of surety bonds may be suitably reduced.”

10(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 Cr.P.C.—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.”

10(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 (All)

(ii) Moti Ram Vs. State of M.P., AIR 1978 SC 1594.

10(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**

11(A). 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 Kamendra 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 Kamendra 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 Punjab, 2010 CRLJ 1435(SC)**

11(B).Interim Bail by Magistrate or Sessions Judge When Not To Be

Granted : Interim bail pending hearing of a regular bail application ought not to be passed where :

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

11(C).Reasons must be recorded by court when adjourning the hearing of bail application and not granting interim bail :

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 Kamalend 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)**

12(A). Cancellation of bail in bailable offences--- 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**

12(B). Only Sessions Judge or High Court and not the Magistrate can cancel bail in bailable offences: 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)**

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

- 1(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**

12(D).Cancellation of bail on the ground of threat to witnesses---- 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**

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

12(DD).Witness may file complaint u/s 195A CrPC if threatened by accused or any other person : 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.

12(E).Cancellation of bail on the basis of post bail conduct and/or supervening circumstances---- For cancellation of bail granted to an accused u/s 437 or 439 Cr.P.C., 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)**

12(F).Cancellation of bail on protraction of trial by seeking unnecessary adjournments : 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**

12(G).Cancellation of bail on the basis of non-reasoned bail order passed by ignoring material on record : 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 Cr.P.C., 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**

12(H).Cancellation of bail by same Judge—Not necessary---- 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**

12(I).Who can move application for cancellation of bail---- 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**

12(J).Who can move application for cancellation of bail?--- 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**

12(K).Notice / hearing to accused before cancellation of bail--- 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**

12(L).Cancellation of bail on the ground of concealment of facts..... 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).**

12(M).A bail granted by SJ or High Court not to be cancelled by the Magistrate : 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).**

12(N). Order of Judicial Magistrate cancelling bail is revisable by SJ: 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).**

12(O).Cancellation of bail by Magistrate granted by Court of Sessions or High Court : 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.**

13(A-1).Bail u/s 389(3) CrPC by Trial Court on conviction :

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

“Sec. 389(3) Cr.P.C.--- 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.

13(A-2).Hearing to Public Prosecutor on bail application u/s 389 CrPC mandatory : 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).**

13(B).Appellate court can order deposit of only part of the fine by the convict imposed by the trial court : 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.**

13(C).Deposit of fine a pre-condition for grant of bail u/s 389(3) CrPC by trial court : 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).**

13(D).Section 439(2) CrPC not applicable to bail granted u/s 389 CrPC : 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)**

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

- (i) Nature of accusations made against the accused.
- (ii) Manner which the offence was committed.
- (iii) Gravity of the offence desirability of releasing the accused on bail keeping in view the seriousness of the offence committed by him
- (iv) See----

1. **State of Haryana Vs. Hasmat, (2004) 6 SCC 175**

2. **Vijay Kumar Vs. Narendra, (2002) 9 SCC 364**

3. **Ramji Prasad Vs. Rattan Kumar Jaiswal, (2002) 9 SCC 366**

13(F). Second bail application u/s 389 CrPC: 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 CrPC is not attracted to entertaining a second bail application u/s 389 CrPC by the appellate court. There is no provision in CrPC creating a bar against the maintainability of a second bail application u/s 389 CrPC in an appeal. A second bail application would be maintainable only on some substantial ground where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second application for bail would also be maintainable on the ground of unusual long delay in hearing of the appeal as in the event the appeal is not heard within a reasonable time and the convicted accused undergoes a major part of the sentence imposed upon him, the purpose of filing of the appeal itself may be frustrated. A strong humanitarian ground which may not necessarily pertain to the accused himself but may pertain to someone very close to him may also, in certain circumstances, be a ground to entertain a second bail application. These are some of the grounds on which second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second application for bail may be maintainable as it will depend upon peculiar facts and circumstances of each case. See--- **Dal Chand Vs. State of U.P., 2000 Cr.L.J. 4579 (All—D.B.).**

13(G). Bail by appellate court should be normally granted u/s 389 CrPC: 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. Of course, 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.**

13(H). Bail u/s 389 CrPC when not to be granted: 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.**

13(I). Pre-conditions for suspension of sentence u/s 389 CrPC: 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.**

13(J). Rectification of bail order: 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)**

13(K). Interim Bail u/s 389 CrPC by appellate court : 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 Kamendra 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)**

13(L). Appellate Court to require sureties & bail bonds from the appellant u/s 437-A CrPC : 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."*

14. 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).**

15(A). Bail on the ground of long detention in jail : An accused lodged in jail (even if he is a Member of Parliament) cannot be granted bail u/s 437, 439 CrPC on 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 Cr.L.J. 182 (All)-- (Accused in jail for last 8 months)**

15(B). Delayed trial a ground for bail : 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.**

15(C). Delayed trial a ground for bail : 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 accused 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.

15(D). Delay in framing of charges entitles the accused to be released on bail: 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 such 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.**

16. Revision against grant or refusal of Bail : A bail order being an interlocutory order within the meaning Sec. 397(2) Cr.P.C., 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 CrPC to the High Court. See-----

1. **Radhey Shyam Vs. State of U.P., 1995 CRI. L.J. 556 (All.)**
2. **State of U.P. Vs. Karam Singh, 1988 CRI. LJ 1434(All.)**
3. **Bhola Vs. State of U.P., 1979 CRI.L.J. 718 (All--DB)**
4. **Amar Nath Vs. State of Haryana, AIR 1977 SC 2185**

17(A). Parity in Bail : 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 Cr.L.J. 863 (All)**
6. **Chander Vs. State of U.P., 1998 Cr.L.J. 2374 (All)**
- 7.

17(B). Benefit of parity when to be extended to co-accused ? : 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.)

17(C). ASJ terminated for granting bail to co-accused on parity basis : 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).**

- 17(D). Benefit of parity when to be extended to co-accused ? :** 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.**
- 18. Transfer of bail applications by Sessions Judges :** 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 has been deprecated 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**
- 19. Cross-Cases & Bail :** 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)**
- 20. Bail on medical ground :** 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.**
21. **Appeal against grant of bail---not maintainable** : An appeal against grant of bail is not maintainable. Use of expression “appeal in respect of an order of bail” in some judgments is in the sense that the accused can move higher courts. See--- **Dinesh M.N. (S.P.) Vs. State of Gurajat, 2008 Cr.L.J. 3008 (SC).**
- 22(A). **Accused in jail beyond local territorial jurisdiction of court--- Sec. 267 CrPC & Bail** : 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 Cr.P.C., 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 Cr.P.C., see---

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

- 22(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.

22(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--- **Nabhu Vs State of UP, 2006 Cr LJ 2260 (All-DB)**

22(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)**

22(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.

22(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 :

23. **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 CrPC as the bail can be granted only on the grounds what have been provided u/s 437 & 439 CrPC. The subsequent cancellation of bail by the High Court on the ground of breach of assurance to compromise has also been held impermissible by the Supreme Court by laying down that bail once granted cannot be cancelled on a ground alien to the grounds mentioned in Sec. 437 CrPC. See--- **Biman Chatterjee Vs. Sanchita Chatterjee, (2004) 3 SCC 388**

24(A).Bail u/s 88 CrPC: 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: 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 CrPC in complaint cases and bail to any other person like witnesses u/s 88 Cr.P.C., 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, Paras Nath 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 Cr.P.C., 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 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 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 Cr.P.C., he may also be governed by Sec. 88 Cr.P.C., 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 applicability 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 Cr.P.C.

Thus, we are of the view that the case which will 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 Cr.P.C., 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 Cr.P.C., the appearance of the person before the Court is must and can not be dispensed with at all.”

24(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 CrPC 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(1) CrPC and surrenders, then he becomes an accused and the provision u/s 88 CrPC does not apply to an accused.

25. 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 CrPC cannot be granted bail u/s 88 CrPC as once a person has been arraigned as accused u/s 319 CrPC he stands on the same footing as the other accused against whom police had filed charge sheet, therefore, it is obligatory for the Court to send him to judicial custody on his appearance. See--- **Mumkad Vs. State of U.P., 2003 Cr.L.J. 4649 (All)**

26. Bail order to be speaking : Discretionary jurisdiction of courts u/s 437 & 439 CrPC should 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.**

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

- (i) that there are reasonable grounds for believing that the release is likely to bring him into association with any known criminals or
- (ii) that he would be exposed to moral, physical or psychological danger or,
- (iii) that his release on bail would defeat the ends of justice.

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

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

Note: In the cases of *Mohd. Amir Vs. State of U.P.*, 2002 (45) ACC 94 (All) & *Sant Das alias Shiv Mohan Singh Vs. State of U.P.*, 2002 (45) ACC 1157 (All), Allahabad High

Court has held that if the JJ Board is not constituted the accused/juvenile may move his bail application u/s 437 of the CrPC before the Magistrate having jurisdiction and in case the bail application is rejected by the Magistrate, the juvenile may move his application u/s 439 of the CrPC before the Sessions Judge but he cannot directly move his bail application before the High Court u/s 439 CrPC. Likewise where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s 437 Cr.P.C., the same cannot be directly heard by the Sessions Judge u/s 439 Cr.P.C.

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.

27(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).**

27(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 theday 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

28. Bail under U.P. Gangsters and Anti-Social Activities (Prevention) Act,

1986 : (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) CrPC. The 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—D.B.)**

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) Cr.P.C.---- 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 (All)**.

(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). 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 : 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 Article 21 of the Constitution. See : **Dharmendra Kirthal Vs. State of UP, AIR 2013 SC 2569 (paras 32 & 36)**

(F-4). "Gangster" under the Gangsters Act, 1986 is distinct from an accused under other law : 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). Death penalty u/s 27(3) of the Arms Act, 1959 ultra vires : 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). Bail in economic offences requires different approach : 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).

29. Bail under U.P. Control of Goondas Act, 1970 [U.P. Control of Goondas Rules, 1970] : As held by Allahabad High Court, the Judicial Magistrate is empowered to grant remand of the accused u/s 167 CrPC to 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 CrPC i.e. Sec. 437 or 439 CrPC are 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 CrPC procedure for warrant cases would apply. Judicial Magistrate has also jurisdiction to take cognizance of the offences under the 1970 Act u/s 190 CrPC and 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)**

Note: 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—D.B.)---** Requirement of notice u/s 3 of the 1970 Act discussed.
2. **Ashutosh Shukla Vs. State of U.P., 2003 (47) ACC 881 (All—D.B.)---** 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—D.B.)---** 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—F.B.) (Summary)**
- 30. Bail under Essential Commodities Act, 1955 (Sec. 10-A of the EC Act, 1955)----** “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.”
- Note: 1.** The words “and bailable” have been omitted in Sec. 10-A by Act. No. 30 of 1974 since 22.6.1974
- Note: 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) Cr.P.C., 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 CrPC in 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—D.B.)**
- 31(A).Necessary conditions for grant of bail u/s 37 of the NDPS Act must be fulfilled** : 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)**
- 31(B).Bail by ASJ under NDPS Act, 1985** : 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.**

31(C).Offences under NDPS Act to be cognizable & non-bailable (Sec. 37,

NDPS Act) : According to Sec. 37 of the NDPS Act, 1985 offences under the Act are cognizable and non-bailable.

(i) **Sec. 32-A, NDPS Act, 1985** : Sec. 32-A of the NDPS Act, 1985 reads as under--
- “.....”

(ii) **Sec. 32-A of the NDPS Act, 1985 partly declared unconstitutional** : 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 Cr.L.J. 4619 (SC---Three Judge Bench)**

31(D). Bail u/s 389 CrPc after conviction under NDPS Act : 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 statute 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 Legislature 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)**

31(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

31(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)**

31(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.”

31(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 Cr.P.C., 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 CrPC which 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 CrPC except 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) Cr.P.C.
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.”

32. Bail under Prevention of Corruption Act, 1988 : 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)**

33(A).Bail under Prevention of Cow Slaughter Act, 1955 : 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—D.B.)**
2. **Bhaddu Vs. State of U.P., 2002 (45) ACC 1085 (All—D.B.)**
3. **Nebulal Vs. D.M., Basti, 2002 (45) ACC 869 (All—D.B.)**
4. **Tauqeer Vs. State of U.P., 2002 (44) ACC 1088 (D.B.)**

33(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**

33(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)**

33(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)**

34(A).Plea of sanction u/s 197 CrPCat the time of Bail: 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 Cr.P.C., 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**

34(B).Subsequent sanction : 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)**

34(C).Stage of raising plea of sanction : Plea of sanction can be raised only at the time of taking cognizance of the offence and not against the registration of FIR, investigation,

arrest, submission of police report u/s 173(2) CrPC or remand of accused u/s 167 CrPC See--- **State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825**

35. Bail under U.P. Dacoity Affected Areas Act, 1983 & the SC/ST (Prevention of Atrocities) Act, 1989 :As regards the trial 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.”

36. 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.

37(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.

37(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.
