LAW OF BAIL

(for Sessions Judges)

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PART-I
Philosophy Behind Protection of Personal Liberty

1.1. **Philosophy behind personal liberty and 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 democratic 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 form 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 consenqueces are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the

established parameters of law. See **:** Neeru Yadav Vs. State of UP, 2015 (88) ACC 624 (SC) *(para 16)*

1.2. '**Personal liberty' as 'human right' under the universal declaration of human rights by the United Nations on December 10, 1948:** Under Article 3 of the Charter of universal declaration of human rights by the United Nations, right to personal liberty of humans has been declared to be the human right. Artice 3 of the said Declaration made by the United Nations on December 10, 1948 reads thus: " *Everyone has the right to life, liberty and security of person."*.

1.3. International Covenant On Civil and 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.

1.4. Article 21 of the Constitution of India : No person shall be deprived of his life or personal liberty except according to procedure established by law.

1.5. 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(Seven-Judge Bench)**, Article 21 of the Constitution now protects the right of life and personal liberty of citizens 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

1.6.Universal right of personal liberty enshrined in Section 437 and 439 CrPC : The Universal right of personal liberty emblazened by Article 21 of our Constituion, being fundamental to the very existence of not only to a citizen

of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to the pandect comprising Sections 437 & 439 CrPC, 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 437CrPC contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439CrPC 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 the context of commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conundrum 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.

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

(1) Right to go abroad : AIR 1967 SC 1836
(2) Right to privacy : AIR 2015 SC 3081 & AIR 2017 SC 4161
(3) Right against solitary confinement : AIR 1978 SC 1675
(4) Right against bar fetters : AIR 1978 SC 1514
(5) Right to legal aid : AIR 1978 SC 1548
(6) Right to speedy trial : AIR 1979 SC 1369
(7) Right against handcuffing : AIR 1980 SC 1535
(8) Right against delayed execution : AIR 2015 SC 715

(9) Right against custodial violence : AIR 1983 SC 378
(10) Right against public hanging : AIR 1986 SC 467
(11) Right to medical assistance : AIR 1989 SC 2039
(12) Right to shelter : AIR 1990 SC 630
(13) Right to sleep : (2012) 5 SCC 1
(14) Right against noise pollution, (2015) 4 SCC 801
(15) Right to healthy environment : 1955 AIR SCW 306
(16) Right to compensation for unlawful arrest : AIR 1983 SC 1086
(17) Right to freedom from torture : AIR 1978 SC 1675
(18) Right to earn livelihood : AIR 1986 SC 180
(19) Certain other rights also as declared by the Hon'ble Supreme Court in it's subsequent decisions.

1.8. 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.

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

Note : The Supreme Court's above observations came as it quashed the order of the Allahabad high court which had granted bail to a history-sheeter in a murder case

without taking into account the criminal antecedents of the accused who was involved in seven other heinous offences including murder.

1.10. 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)

1.11. 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.

1.12. Requirements for bail u/s 437 & 439 are different : Section 437CrPC severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonement for life, the two higher Courts have only the procedural requirement of giving notice of the bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. Parliament has carried out amendments to the pandect comprising Sections 437 to 439 CrPC 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 of these

provisions are that whilst Section 437CrPC 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 CrPC severelly curtails the power of 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

1.13. Delayed trial, a ground for bail to under trial: 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:

(i) Prem Prakash Vs. Union of India, (2024) 9SCC 787 (Paras 13,14)

(ii). Manish Sisodia Vs. Enforcement Directorate, (2024) 12 SCC 660

(iii) Javed Gulam Nabi Shekh Vs.State of Mahrashtra, (2024) 9 SCC 813

(iv) Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.

2.1. Presumption of innocence ends with the conviction and sentence by the lower court and does not continue thereafter: When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it never existed and the sentence is set aside. **But that is not to say that the presumption of innocence continues**

after the conviction by the trail court. The conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well. See : B.K. Kapur Vs. State of T.N., (2001) 7 SCC 231 (Five-Judge Bench) *(para 40)* .

2.2. Presumption of innocence of accused : Presumption of innocence is a human right. Article 21of the Constitution in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. See :

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

2.3. 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)

2.4. 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

2.5. Right to personal librty not available at the cost of life or liberty of others :

Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in

Society can act in a manner by consequence of which life or liberty of others is jeopardized. See: Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.

2.6. '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.

2.7. 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 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.

2.8. 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 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 by 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.

3.1. Speedy trial and Protection of personal liberty under Article 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 Khatoon Vs. State of Bihar, AIR 1976 SC 1360

3.2. 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 noted below has ruled 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.See: P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578 (Seven-Judge Bench)

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

Shambhu Nath Singh, (2001) 4 SCC 667 such recalcitrant approach was being made by the trial court unmindful of the adverse serious consequences flowing therefrom affecting the society at large. Therefore, even while disposing of this appeal by confirming the conviction and sentence imposed on the appellant by the learned trial judge, as confirmed by the impugned judgment of the High Court**, we direct the Registry to forward a copy of this decision to all the High Courts to specifically follow the instructions issued by this Court in the decision in Raj Deo Sharma and reiterated in Shambhu Nath by issuing appropriate circular, if already not issued.** If such circular has already been issued, as directed, ensure that such directions are scrupulously followed by the trial courts without providing scope for any deviation in following the procedure prescribed in the matter of trial of sessions cases as well as other cases as provided under Section 309 CrPC. In this respect, the High Courts will also be well advised to use their machinery in the respective **State Judicial Academy** to achieve the desired result. We hope and trust that the respective High Courts would take serious note of the above directions issued in the decision in Raj Deo Sharma which has been extensively quoted and reiterated in the subsequent decision of this court in Shambhu Nath and comply with the directions at least in the future years." See :

(1) Akil Vs. State (NCT of Delhi), (2013) 7 SCC 125 (paras 33, 42 & 43),

(2) Mohd. Khalid Vs. State of W.B., (2002) 7 SCC 334,

(3) Vinod Kumar Vs. State of Punjab, (2015) 3 SCC 220

(4) Judgment dated 28.11.2017 of the Supreme Court in Criminal Appeal No. 2045-2046 of 2017, Doongar Singh & Others Vs. State of Rajasthan.

3.4. 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 been deprecated by the Supreme Court and directions for speedy trial of the cases of the accused under trials has been issued in the following cases :

(i) N.G. Dastane Vs. Shrikant S. Shinde, AIR 2001 SC 2028
(ii) Swaran Singh Vs. State of Punjab, 2000 (11) U.P. Cr. Rulings 1 (SC)
(iii) Ramon Services Pvt. Ltd. Vs. Subhas Kapoor, JT 2000 (Suppl. 2) SC 546
(iv) Raj Bahadur Vs. Commissioner, Agra Division, 2005 (4) AWC 3321 (All)(DB)

3.5. 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.

3.6. Delayed trial, protection of personal liberty and 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:

(i). Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)

(ii).Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451.

3.7.1. Delayed trial, not a ground for grant of bail: Where the accused was involved in commission of offences u/s 302, 307, 201, 120-B IPC and the High Court had granted him bail u/s 439 CrPC by non-speaking order by not taking into consideration the material collected by the investigating officer in support of the charge-sheet and the seriousness of the offences and the only ground taken by the High Court was that the trial might take long time to

conclude, the Supreme Court set aside the order of the High Court with the directions to it to decide the bail application afresh in accordance with law. See: Rahul Gupta Vs. State of Rajasthan, (2023) 7 SCC 781.

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

(i). Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)

(ii). Umarmia alias Mamumia Vs. State of Gujarat, (2017) 2 SCC 731**.**

3.8. 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 which 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 them 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.

4.1. 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 an administrative action. See : S. Sant Singh Vs. Secretary, Home Department, Government of Maharashtra Mantralaya, 2006 CrLJ 1515 (Bombay)(Full Bench).

4.2. Uttar Pradesh (Suspension of Sentences of Prisoners) (First Amendment) Rules, 2012: Vide UP Govt. Notification No.104 JL / 22-3-2013-21G /1989 Dated Lucknow, January 29, 2013, Rule 3(3) of the UP (Suspension of Sentences of Prisoners) Rules, 2007 has been amended as under :

Rule 3(3) w.e.f. 29.1.2013: The District Magistrate of the district to which the prisoner belongs may suspend the sentence of a prisoner upto 72 hours on the following grounds :

(a). Death of mother, father, husband or wife, son, daughter, brother or sister,

(b). Marriage of son, daughter, brother or sister.

4.3. 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.

4.4. 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).

4.5. 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).

4.6. 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.

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Part-II

L A W OF B A I L S

(Under Sections 437 & 439 CrPC and Special Acts)

1.1. Personal appearance/custody of accused must for bail u/s 436,437,439 CrPC : Bail application cannot be entertained and 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 or production of the accused before the court. Since the provisions of Section 438 CrPC regarding anticipatory bail have been omitted in the State of U.P. vide U.P. Act No. 16 of 1976 (now restored), granting bail without seeking custody of the accused would amount to bring in vogue the omitted provisions of Section 438 CrPC. Even u/s 88 CrPC, bail cannot be granted to a person without his personal appearance before the court. See :

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

1.2.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 ACrR 184 (All).

1.3. An accused can directly surrender before High Court or Sessions Court u/s 439 CrPC and apply for bail to the High Court : Custody, in the context of Section 439 CrPC, is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court. Accused can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody but he can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the

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

discovery of a fact having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, it cannot be accepted that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency. In this analysis, the opinion in the impugned Judgment of the High Court incorrectly concludes that the High Court is bereft or devoid of power to jurisdiction upon a petition which firstly pleads surrender and, thereafter, prays for bail. The High Court could have perfunctorily taken the Appellant into its custody and then proceeded with the perusal of the prayer for bail. In the event of its coming to the conclusion that sufficient grounds had not been disclosed for enlargement on bail, necessary orders for judicial or police custody could have been ordained. A Judge is expected to perform his onerous calling impervious of any public pressure that may be brought to bear on him. See :

(i). Niranjan Singh Vs. Prabhakar Rajaram, AIR 1980 SC 785

(ii).Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 (para 20).

1.4. Seeking extension of time by prosecution beyond 60 or 90 days for completion of investigation is not mere empty formality: Grant of extension of time to complete investigation by extending custody of accused by Court is not an empty formality. The Public Prosecutor has to apply his mind before he submits a report/ an application for extension. Firstly, in the report of the Public Prosecutor, the progress of the investigation should be set out and secondly, the report must disclose specific reasons for continuing the detention of the accused beyond the period of 90 days. Thus, prosecution has to make out a case in terms of both the aforesaid requirements and the Court must apply its mind to the contents of the report before accepting the prayer for grant of extension. It cannot be said that the accused is not entitled to raise any objection to the application for such extension. The scope of the objections however may be limited. The accused can always point out to the Court that the prayer has to be made by the Public Prosecutor and not by the investigating agency. Secondly, the accused can always point out the twin requirements of the report in terms of proviso added by Section 20 (2) Gujarat Control of Terrorism and Organised Crime Act (24 of 2019) of the 2015 Act to Section 167 (2) of CrPC. The accused can always point out to the Court that unless it is satisfied that full compliance is made with the twin requirements, the extension cannot be granted. See: **Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat, AIR 2022 SC 4641**

2.1.Bail application can directly be filed u/s 439 CrPC before the High Court: An accused/applicant is not bound to file bail petition before the Sessions Judge before filing it before the High Court. He can file bail petition directly before the High Court. See:

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

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

2.2. 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) KCR (Criminal) 638 (Karnataka).

3.1. 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. (SP) Vs. State of Gujarat, 2008 CrLJ 3008 (SC).

3.2. Powe of Magistrate u/s 437CrPC drastically different from that of Sessions and High Court u/s 439 CrPC : There is no provision in the Code of Criminal Procedure curtailing the power of either the Sessions Court or High Court to entertain and decide pleas for bail. Furthermore, it is incongruent that in the face of the Magistrate being virtually disempowered to grant bail in the event of detention or arrest without warrant of any person accused of or suspected of the commission of any non-bailable offence punishable by death or imprisonment for life, no Court is enabled to extend him succour. Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim, viz. 'where there is a right there is a remedy'. The universal right of personal liberty emblazoned by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with

merely on a presumptive plane. Whilst Section 437 CrPC contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 CrPC empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and contour as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in the context of commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical but vitally and drastically dissimilar. . See **: Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 (**Para 8**)**

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

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

4.2 .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**

5.1. In the case of **Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773,** the Supreme Court has made categories of offences and issued guidelines for disposal of bail applications by the lower courts and the High Courts. The guidelines are as under:

Category/Type of Offences (A)

Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

Category/Type of Offences (B)

Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years. Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc. (D) Economic offences not covered by Special Acts.

(1) Accused not arrested during investigation.

(2) Not co-operated throughout in the investigation including appearing before investigating officer whenever called. (No need to forward such an accused along with the charge-sheet Siddharth v. State of U.P.1) Category A After filing of charge-sheet/complaint taking of cognizance (a) Ordinary summons at the 1st instance/including permitting appearance through lawyer. (b) If such an accused does not

appear despite service of summons, then bailable warrant for physical appearance may be issued. (c) NBW on failure to appear despite issuance of bailable warrant. (d) NBW may be cancelled or converted into a bailable warrant/ summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing. (e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided. Category B/D On appearance of the accused in court pursuant to process issued bail application to be decided on merits. Category C Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc. See: **Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773.**

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

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

(1a) Pinki Vs. State of UP, (2025) 7 SCC 314 (Para 57)
(1). Ms. Y Versus State of Rajasthan, AIR 2022 SC 1910
(2). Rekha Sengar Vs State of M.P., (2021) 3 SCC 729 (Three-Judge Bench)
(3). Rekha Sengar Vs State of M.P., (2021) 3 SCC 729 (Three-Judge Bench)
(4). Arnab Manoranjan Goswami Vs State of Maharashtra, AIR 2021 SC 1 (Paras 57,58,59)
(5). Mayakala Dharamaraja Vs. State of Telangana, (2020) 2 SCC 743
(6) Lachhman Dass Vs. Resham Chand Kaler, AIR 2018 SC 599
(7) Virupakshappa Gouda Vs. State of Karnataka, AIR 2017 SC 1685 (para 16)
(8) State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178

(9) Sanghian Pandian Rajkumar Vs. CBI, 2014 (86) ACC 671 (SC) (Three-Judge Bench)
(10) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 (para 24)
(11) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933
(12) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
(13) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949

(14) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189
(15) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475
(16) Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
(17) State of U.P. through CBI Vs. Amarmani Tripathi,(2005) 8 SCC 21
(18) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387
(19) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578
(20) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)
(21) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50
(22) Mansab Ali Vs. Irsan, (2003) 1 SCC 632.

6. **Seriousness of the offence not to be treated as the only consideration for refusal of bail :** Seriousness of the offence should not be treated as the only ground for refusal of bail. It needs to be balanced with the period of custody of the accused and likely period of completion of trial. See :
(i). Rekha Sengar Vs State of M.P., (2021) 3 SCC 729 (Three-Judge Bench)
(ii).Sanjay Chandra Vs. CBI, AIR 2012 SC 830 (Note: it was 2G Spectrum Scam Case).
7. **Heinous offences: What are?:** Only those offences which prescribe minimum sentence of seven years or more can be regarded as heinous offences. Offences not providing minimum sentence of seven years cannot be treated as heinous offences. See: Shilpa Mittal Vs. State NCT of Delhi, (2020) 2 SCC 787

8. Bail order to be speaking : Discretionary jurisdiction of courts u/s 437 and 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.**

10. Niranjan Singh Vs. Prabhakar Rajaram, AIR 1980 SC 785

9.1.Discussions of evidence or merits of the case in bail order not to be done : Reasons must be recorded while granting the bail but without discussion of merits and demerits of evidence. Discussing evidence is totally different from giving reasons for a decision. Where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation is different from the ground that the acused misconducted himself or some new facts call for cancellation. While disposing of bail applications u/s 437 or 439 CrPC, courts should assign reasons while allowing or refusing an application for bail. But detailed reasons touching the merit of the matter should not be given which may prejudice the accused. What is necessary is that the order should not suffer from non-application of mind. At this stage a detailed examination of evidence and elaborate documentation of the merit of the case is not required to be undertaken. Though the court can make some reference to materials but it cannot make a detailed and in-depth analysis of the materials and record findings on their acceptability or otherwise which is essentially a matter of trial. Court is not required to undertake meticulous examination of evidence while granting or refusing bail u/s 439 of the CrPC. See :

1a. Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)

1. National Investigation Agency Vs. Zahoor Ahmad Shah Watali, AIR 2019 SC 1734.
2. State of Orissa Vs. Mahimananda Mishra, AIR 2019 SC 302.
3. Anil Kumar Yadav Vs. State NCT of Delhi, (2018) 12 SCC 129.
4. State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178
5. CBI Vs. V. Vijay Sai Reddy, (2013) 7 SCC 452
6. Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296.
7. Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, 2005 CrLJ 2533 (SC)(Three -Judge Bench)
8. Afzalkhan Vs. State of Gujarat, AIR 2007 SC 2111
9. Nira Radia Vs. Dheeraj Singh, (2006) 9 SCC 760
10. Ajay Kumar Sharma Vs. State of U.P., (2005) 7 SCC 507 (Three Judge Bench)
11. Chamanlal Vs. State of U.P., 2004 (50) ACC 213 (SC)
12. Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785

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

10.1 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).**

10.2. **Order calling for expert opinion of astrologer on horoscope of girl showing her 'Mangali' stayed by Supreme Court:** Where a boy who had sexual relationship with the girl on the promise of marrying her had later on refused to marry her on the ground that the girl was astrologically a 'Mangali' and for that reason marriage of the boy with the said mangali girl was not possible given the belief of the family of the boy in astrology and FIR by the girl against the boy was got registered for having committed rape on her on false promise of marriage, the Lucknow Bench of the Allahabad High Court directed the boy and the girl to produce their respective horoscopes before the head of Department of Astrology of the Lucknow University directing the HOD to submit to the High Court his expert opinion whether the girl was really mangali as per her horoscope, the Hon'ble CJI who was celebrating his summer vacations in the month of June, 2023 in some European country came to know about the said order of the Lucknow Bench and constituted a special Bench of the two vacation judges of the Supreme Court via e-mail from Europe. The Special Bench of the Supreme Court took suo-moto cognizance of the order of the Single Judge of the Lucknow Bench and noticing it that the order calling for astrological report on the astrological status of the girl was disturbing and unknown to the law of bails stayed the operation of the order of the Single Judge of the Lucknow Bench. Law of Bails so far in India has been that at the time of hearing and disposal of the bail applications, only the material compiled by the Investigating Agency as contained in the case diary is considered by the courts and both the parties can also take their grounds of opposing or seeking the bail from the case diary only and no extraneous material which was neitheir complied by the Investigating Agency nor made part of the case diary could be looked into by the courts nor the court should call for any extraneous evidence for purposes of disposing of the bail application which was not made part of the case diary by the Investigating Agency. It has to be seen as to what final order is passed by the Supreme Court in the matter. See: **Order dated 23.05.2023 of the Lucknow Bench passed in Criminal Misc. Bail Application No. 13485/2022, Gobind Rai alias Monu Vs. State of U.P.**

10.3 Granting bail to accused after calling for scientific test reports like DNA, Narco analysis and Lie Detector deprecated by Supreme Court: In the case noted below, it was contended before the Hon'ble Supreme Court that while considering the bail application, the High Court traversed the settled principles of law by directing the accused/respondent no. 2 as well as the appellant, who was grandmother of the victim along with parents of the victim, to undergo scientific tests viz., lie detector, brain mapping and Narco-Analysis. After receiving the reports of the same, High Court examined the same before enlarging respondent no. 2 on bail vide impugned order dated 27.04.2018. The High Court had throughout the course of its order disclosed the identity of the "victim". The Supreme Court expressed surprise that the approach adopted by the High Court while considering the bail application was seriously violative of Section 228A of the IPC and also the principles of law of bails. The High Court ordering the abovementioned tests was not only in contravention to the principles of criminal law jurisprudence but also violated the statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein Court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case. In the instant case, by ordering the aforementioned tests and venturing into the reports of the same with meticulous details, the High Court had converted the adjudication of a bail matter to that of a mini-trial indeed. This assumption of function of a trial court by the High Court was deprecated. Taking note of the violation of settled principles of criminal law jurisprudence and statutory prescriptions vis à vis conversion of adjudication of bail application to a mini-trial and disclosure of identity of the "victim" by the High Court, the Supreme Court disapproved the manner in which the High Court had adjudicated the bail application and accordingly quash the order passed by the High Court. The Supreme Court further observed that the lethargic attitude of the State by not taking necessary steps to bring the matter to the notice of the Supreme Court by filing an appeal despite the clear violations of settled principles of criminal law jurisprudence and statutory prescriptions. The present Special Leave Petition was filed by the grandmother of the victim and it was only on her behest that the Supreme Court took notice of the matter. See: **Order dated 29.10.2018 passed by the Supreme Court in Criminal Appeal No.1309 of 2018, Sangitaben Shaileshbhai Datanta Vs State of Gujarat**

11. Affidavits of P.Ws. and 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).**

12.1. Hearing of public prosecutor and accused on bail application : Last Proviso added to Sec. 437(1) CrPC w.e.f. 2006 amendments reads thus : "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."

12.2. Hearing both paries on bail application necessary: 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 thus : "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 , 1998 (1) Crimes 270 (Allahabad).**

12.3. 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 : **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.**

12.4. Right of third person to hearing and 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).**

12.5. Third person unconnected with the case should normally be not allowed to be heard in a criminal proceeding : Court should be liberal in allowing any third party having bona fide connection with the matter to maintain appeal with a view to advance substantial justice. However, power of allowing third party to maintain appeal should be exercised with due care and caution. Persons unconnected with the matter under consideration or having personal grievance against accused should be checked. Strict vigilance is required to be maintained in such regard. See : **Amanullah Vs. State of Bihar, (2016) 6 SCC 699.**

13.1. Criminal History of accused and 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. Sunita Bhati Vs. State of UP, (2020) 6 SCC 556
2. Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
3. Brij Nandan Jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
4. Surendra Singh Vs. State of U.P., 2008 CrLJ (NOC) 924 (All)
5. Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
6. Sompal Singh Vs. Sunil Rathi, 2005 (1) SCJ 107
7. State of U.P. Vs. Amarmani Tripathi, (2005) 8 SCC 21
8. State of Maharashtra Vs. Sitaram Popat Vetal, AIR 2004 SC 4258

13.2.Opening of criminal 'history-sheet' as provided in Regulations 223 to 276 of Chapter XX of the UP Police Regulations under Heading "Registration & Surveillance of Bad Characters" : Criminal history-sheet of 'habitual criminals' is opened under Regulation 228 of the Police Regulations. Regulation 228 provides for two classes of history-sheets : Class-A and Class-B. The origin, history, procedure, necessity of opening of criminal history-sheets and their importance/relevance have been described at length by a Division Bench of the Hon'ble Allahabad High Court in **Nafis Ahmad Vs. State of UP, 2016 (92) ACC 161 (All)(DB).**

13.3.Criminal history not a ground for refusal of bail : Where the accused had committed murder punishable u/s 302 IPC and was involved in 56 other serious crimes, 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 Justice K.S. Rakhra).

13.4.Bail granted by Allahabad 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 seven 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.**

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

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

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

13.7.Acquittal in appeal or revision irrelevant with regard to the disqualification as to previous criminality: The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of the People Act, 1951 has to be determined by reference to the date of his election which date, as defined in Section 67A of the Act, shall be the

date on which the candidate is declared by the returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 of the Act shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of nomination and not the date of judgement in an election petition or in appeal thereagainst. See: **K. Prabhakaran Vs. P. Jayarajan, AIR 2005 SC 688 (Five-Judge Bench) (Para 61)**

14.1. 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)**

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

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

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

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

16.1. 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. Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118

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)

5. Suheb Vs. State of U.P., 2006 (6) ALJ (NOC) 1362 (All)

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

16.3. Sessions Judges should normally keep their hands off in allowing second or successive bail application: "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." **See: C.L. No. 2934/1988 dated 01.04.1988**

17.1. Arrest not mandatory as per Sections 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years : Sections 41 and 41-A CrPC place cheque on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto seven years. Writ Court under Article 226 of the Constitution can in appropriate cases grant relief against pre-arrest but such power is not to be exercise in the State of UP liberally so as to bring back the provisions of Section 438 CrPC by back door (now restored). See :

(i).Arnesh Kumar Vs State of Bihar, (2014) 8 SCC 273

(ii). Km. Hema Mishra Vs State of UP, AIR 2014 SC 1066

Note : *In compliance with the directions of the Hon'ble Supreme Court in the case of* ***Arnesh Kumar Vs State of Bihar,AIR 2014 SC2756*** *on Section 41 (1)(b)(ii) CrPC, the Govt. of UP has issued directions warning all the police officers of the State of UP to*

ensure compliance else they may be punished for contempt of the Hon'ble Supreme Court and also in departmental proceedings.

17.2 Communicating grounds of arrest in writing to arrested person mandatory: Communication of grounds of arrest in writing to the person arrested at the earliest as provided under Article 22 (1) and 22 (5) of the Constitution is sacrosanct and mandatory and cannot be breached under any situation. This is equally mandatory under Section 167 CrPC and under Sections 47 and 35 of the BNSS, 2023. Such illegality can be raised by the accused person at the time of his remand, detention and bail. **See: Prabir Purkayastha Vs. State NCT of Delhi, (2024) 8 SCC 254 (Paras 16,17,18)**

17.3. Directions / guidelines of the Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273: The Hon'ble Supreme Court has issued following directions regarding duty of police officers and magistrates in the matters of arrest, detention, remand and bail etc. of the accused persons for offences not exceeding seven years imprisonment. Paragraphs 11.1 to 11.8, 12 and 13 of the judgement are reproduced below:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii):

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the rest, while, forwarding/ producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused,, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

17.4 Directions / guidelines of the Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 on arrest and bail for offences u/s 498-A IPC and Section-4 Dowry Prohibition Act, 1961: In the said case, the Supreme Court has held that due to the rampant misuse of the provisions of Section 498-A IPC read with Section -4 of the Dowry Prohibition Act, 1961, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to geniuses of allegations. In paragraph 12 of the judgment, the Supreme Court has further held that besides the offences u/s 498-A IPC and Section-4 of the Dowry Prohibition Act, 1961, the directions in the Arnesh Kumar case shall apply to all those cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine. See: **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.**

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

18.1. Directions of Allahabad High Court regarding remand and bail in offences punishable with imprisonment upto seven years : The Hon'ble Allahabad High Court (in para 20) of its judgment noted below has issued its directions thus: "We therefore direct the Magistrates that when accused punishable with imprisonment upto seven years are produced before them, remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41- A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto seven years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in **Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437,** and **Sheoraj Singh @ Chuttan Vs. State of U.P. and others, 2009(65) ACC 781.** The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.The Magistrate may also furnish information to the Registrar of the High Court through the District Judge in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with term upto seven years in a mechanical or mala fide and dishonest manner in contravention of the requirements of sections

41(1)(b) and 41 A CrPC and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."See: Order dated 11.10.11 passed by Division Bench of Allahabad High Court in Shaukin Vs. State of UP, 2012 (76) ACC 159 (All)(DB)

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

19.1. BW/ NBW and Bail: In the case noted below, the Supreme Court has ruled that BW or NBW against a person can be issued only under the following conditions :

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

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

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

(4).As for as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in court, the summons or the bailable warrants should be preferred.

(5).**The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants.**

(6). In complaint cases, at the first instance, the court should direct serving of summonses. In the second instance, should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of NBW should be resorted to. See : **Inder Mohan Goswami Vs. State of Uttaranchal, AIR 2008 SC 251.**

19.2. NBW when to be issued ? : The Constitution, on the one hand, guarantees the right to life and liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. ……There cannot be any straitijacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are, firstly, if it is reasonable to believe that the person will not voluntarily appear in court; or secondly if the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

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

19.4. Only summons or bailable warrant to be issued in the first instance in complaint cases : The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing

which a non-bailable warrant should be issued. See : **Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.**

19.5. Bail of warrantee :In cases which would be governed by the Sections 436 and 437 CrPC, it is not necessary to apply the provisions of Sec. 88 of CrPC for the reason that Sections 436 and 437 CrPC are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPC is much wider as discussed above. The case in which Section 436 CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437 CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89 CrPC as such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s 88 CrPC or the Court gives bail u/s 436 and 437 CrPC, the appearance of the person before the Court is must and can not be dispensed with at all. See : The Division Bench Decision dated 23.3.2006 rendered in Criminal Misc. Application No. 8810 of 1989, Babu Lal Vs. Smt. Momina Begum & Criminal Misc. Application No. 8811 of 1989, Parasnath Dubey Vs. State of U.P., circulated by the Allahabad High Court amongst the judicial officers of the State of U.P. Vide C.L. No. 33 / 2006, dated 7.8.2006

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

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

20.2. Time limit prescribed by the Supreme Court vide its judgment dated 09.03.2017 for disposal of bail applications : The Supreme Court has issued following directions to the sub-ordinate courts for disposal of bail applications :

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

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

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

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

(d) As a supplement to Section 436-A CrPC but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awardd if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time.

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

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

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

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

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

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

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

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

21.1 Trail court has power to grant interim bail: While issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also, we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions. See: **Satender Kumar Antil Vs. CBI, (2021) 10 SCC 773 (para 6).**

21.2. 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.See:

(i). **Lal Kamlendra Pratap Singh Vs. State of UP, 2009(2) Crime 4 (SC)**

(ii). Smt. Amrawati Vs. State of U.P., 2005 (1) Crimes 44 (Allahabad)(Seven-Judge Bench) *which received approval by Supreme Court vide its order dated 23-03-2009 passed in criminal appeal no. 538/2009 Lal Kamlendra Pratap Singh Vs. State of U.P.) and circulated by the High Court amongst the Judicial Officers of the State of U.P. vide C.L. No.:44/2004, dated 16.10.2004*

21.3. Interim bail when not to be granted? : Interim bail pending hearing of a regular bail application ought not to be granted 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*).

21.4. 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 Kamlend Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC) and avoiding to record strictures on the conduct of the concerned Magistrate, in the case noted below, the Hon'ble Allahabad High Court (Hon'ble Karuna Nand Bajpayee, J.) has observed thus : *"the need and desirability of hearing the bail applications on the same day is not difficult to gauge from the observations made by the Full Bench in Amrawati's case when it held that if on the application made u/s 437 CrPC, the Magistrate feels constrained to postpone the hearing of the bail application, he should release the accused on interim bail and if there are circumstances which impell the court not to adopt such a course, the court shall record its reasons for its refusal to release the applicant on interim bail.*" See : Naval Saini Vs. State of UP, 2014 (84) ACC 73 (All)(para 7) .

21.5. No interim bail for offence of rape: No interim bail can be granted for the offence of rape. See : Pradeep Tyagi Vs. State of of UP, 2009 (65) ACC 443 (All)(DB)(*Para 12*).

21.6. No anticipatory bail for certain sexual offences: Sec. 438(4) CrPC w.e.f. 21.04.2018: Nothing in this Section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the IPC.

22.1. Cancellation of bail and its grounds: A bail once granted in non-bailable offences can be cancelled on one of the following grounds when :

(i).the accused misuses his liberty by indulging in similar criminal activity,

(ii).interferes with the course of investigation,

(iii).attempts to tamper with the evidence or witnesses

(iv). **threatens witnesses or indulges in similar activities which would hamper smooth investigation,**

(v). there is likelihood of his fleeing to another country,

(vi).attempts to make himself scarce by going underground or becoming unavailable to the investigating agency,

(vii). attempts to place himself beyond the reach of his sureties,

(viii). The above grounds are illustrative and not exhaustive. See:

(1) Pinki Vs. State of UP, (2025) 7 SCC 314 (Paras 61,63)

(2).Mayakala Dharamaraja Vs. State of Telangana, (2020) 2 SCC 743 (Para 8).

(3).Rghubir Singh Vs. State of Bihar, (1986) 4 SCC 481

21.2. Cancellation of bail cannot be ordered in a mechanical way: 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 :

(1a). Union of India Vs K. A. Najeeb, (2021) 3 SCC 713 (Three-Judge Bench)

(1). Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439
(2). Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 1891
(3). Hazari Lal Das Vs. State of W.B., 2009(6) Supreme 564
(4). Panchanan Misra Vs. Digambar Misra, AIR 2005 SC 1299
(5). Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890
(6). Union of India Vs. Subhash Chandra, 2002 (2) JIC 314 (All)
(7). Subhendu Misra Vs. Subrat Kumar Misra,2000 SCC (Cri) 1508
(8). Dolat Ram Vs. State of Haryana, 1995 SCC (Criminal) 237

21.3. Bail granted by Orissa High Court for offences under Arms Act and Explosive Substances Act cancelled by Supreme Court: The two instant appeals have been preferred by the State of Orissa and the de facto informant in FIR No. 180/2016, registered at Paradeep Police Station in Orissa State against the order dated 16.05.2017 of the High Court of Orissa at Cuttack, by which an application for bail filed by the respondent herein in connection with the aforementioned first information has been allowed. During the course of investigation, the

police recovered certain weapons as well as the motorcycle used for commission of the murder. According to the State, the investigation records, prima facie revealed that the respondent had paid certain amount of money as advance amount for commission of the murder. The state also relies upon a letter written by the deceased to the inspector, Paradeep Police Station, stating that he feared for his life and the life of his family, inasmuch as the respondent might make an attempt to take their life. According to the state, the said letter might be treated as a dying declaration of the deceased. The learned advocates appearing on behalf of the state as well as the de facto complainant, while taking the court through the material on record, submitted that the respondent was the kingpin of the conspiracy to murder the deceased and the murder had taken place as per his directions and plan. The preliminary charge-sheet was filed for the offences punishable under Section 302 and 120-B of the Penal Code, 1860 read with Sections 25(1)(B) and 27 of the Arms Act, 1959, as also under Section 3 and 4 of the Explosive Substances Act, 1908. They further brought to the notice of the court that the respondent, being a powerful and rich person, could have gone to any extent to influence the witnesses by intimidating them which prima facie revealed that he was a person who could have taken the law into his hands. He might even abscond in the future, which could delay the process of justice. According to them, the witnesses were already frightened and consequently might not go before the court to depose against the accused, in which event justice might suffer. The Supreme Court cancelled the bail granted to the accused by the Orissa High Court. See: State of Orissa Vs. Mahimananda Mishra, (2018) 10 SCC 516

21.3A.Recording of cogent reasons imperative for grant of bail u/s 439 CrPC:

In the present case, bail application involving offences under Section 302, 307 IPC, under Section 27 of Arms Act and offence under Explosives Act, 1884 was under consideration of the court. The Supreme Court held that grant of bail under Section 439 CrPC though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reasons cannot be sustained. Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital

facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at prima facie conclusion. See: Brijmani Devi Vs. Pappu Kumar, (2022) 4 SCC 497

21.3B. Bail granted by High Court for offences u/s Explosive Substances Act, UAPA and IPC on ground that trial is likely to take time not interfered with by Supreme Court: In the present case, respondent/accused was granted bail in case under Section 143, 147, 148, 120-B, 341, 427, 323, 324, 326 and 506 part II, 201, 202, 153-A, 212, 307, 149 IPC and Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. While passing impugned order of bail, though the High Court had not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him, but it exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. Reasons assigned by the High Court held apparently traceable back to Article 21 of the Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA. Resultantly, impugned order granting bail by the High Court was held by the Supreme Court as justified and the same declined to be interfered with by the Supreme Court. See: Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713

21.4. Reasons must be recorded for cancellation of bail u/s 437(5) or 439(2) CrPC : Reasons must be recorded while granting the bail but without discussion of merits and demerits of evidence. Discussing evidence is totally different from giving reasons for a decision. Where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation is different from the ground that the acused misconducted himself or some new facts call for cancellation. See **:**

1. Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118

2 .State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178 (para 15)

3. Puran Vs. Rambilas, (2001) 6 SCC 338.

21.5. Cancellation of bail on the ground of threat to witnesses: Bail granted to an accused u/s 437 or 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 threatens the PWs to turn hostile.

21.6.Witness may file complaint u/s 195-A 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 195-A 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.

21.7. 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 CrPC, post bail conduct of the accused and supervening circumstances can also be taken into consideration. See : **State Through CBI Vs. Amarmani Tripathi, 2005 (53) ACC 484 (SC)**

21.8. 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**

21.9. 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 CrPC, can cancel such bail granted by Sessions Judge u/s 439 CrPC even if such bail order is interlocutory order. See :

1.Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296

2.Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
3.Brij Nandan jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
4.Puran Vs. Ram Bilas, (2001) 6 SCC 338

21.10. 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**

21.11. 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

21.12. Who and when 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**

21.13. Notice of 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**

21.14. 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).**

21.15.Bail granted by Sessions Judge or High Court not to be cancelled by 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).**

21.16. 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**

21.17. Only Sessions Judge or High Court and not 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).**

21.18. 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).**

21.19. No 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**.

21.20.Cancellation of bail by Magistrate granted by police : Referring the case of Free Legal Aid Committee, Jamshedpur Vs. State of Bihar, AIR 1982 SC 1463, the Rajasthan High Court has, in the case noted below, held that where the accused was granted bail by police officer during investigation, Magistrate does not have jurisdiction to order furnishing of fresh bail bonds after submission of charge sheet. There is no provision in the code of Criminal Procedure for asking an accused already released on bail

by the police officer to furnish fresh bail and bonds. The bail bonds submitted before the police officer are for purposes of appearing before the court and when this undertaking has already been given, fresh undertaking for the same effect is not to be asked for. Bail and bonds should ordinarily be for appearance not only before the court of Magistrate but also if the case is triable by the Court of Session before the Court of Session unless there are particular reasons for not doing so. See : **Monit Malhotra Vs. State of Rajasthan, 1991 CrLJ 806 (Raj)**

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

21.22. Supreme Court ruling on cancellation of bail under BNSS, 2023: Pointing out Sections 483, 480, 403 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Hon'ble Supreme Court has recently ruled that the law is well settled that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the court is satisfied that after being released on bail:

(i) the accused misused the liberty granted to him
(ii) the accused flouted the conditions of bail order

(iii) the bail was granted by the court in ignorance of statutory provisions restricting the powers of the court to grant bail

(iv) the bail was procured by the accused by misrepresentation or fraud. See: **Himanshu Sharma Vs. State of MP, (2024) 4 SCC 222** (Paras 10 & 11)**.**

21.23. Court can refuse to examine the case of the party on merits if it misleads the court and does not place before it all the material facts: If a party does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits and such a party requires to be dealt with for contempt of court for abusing the process of the court. See**: Kusha Vs. State of Odisha, (2024) 4 SCC 432**

21.24 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)**

22.1. 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 CrLJ 182 (All)-- *(Accused in jail for last 8 months)*

22.2 Accused entitled to bail u/s 439 CrPC on ground of his four months detention in jail: In the case noted below, the Supreme Court has held that where the accused was lodged in jail for more than four months for an offence punishable with five years imprisonment and there was no apprehension of tampering with the evidence and intimidating or influencing

the witnesses, the accused should have been released on bail with conditions. **See: Ratnambar Kaushik Vs. Union of India, (2023) 2 SCC 621.**

22.3. Delayed trail 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 than the 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 *(it was 2G Spectrum Scam Case).*

(ii).**State of Kerala v. Raneef, AIR 2011 SC 340**

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

22.4. 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 sich cases and not to take up the cases for framing of charges in such a casual manner and keep the pending for long periods while the accused languishes in custody and directed that the accused be realeased on bail. See: **Bal Krishna Pandey vs. State of UP, (2003) 12 SCC 186.**

23. 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.**

24. Mentally ill persons and 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 has 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.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 and sent to places of safe custody and action taken by the Judicial Magistrate thereon. The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened. See:
(i).Sheela Barse Vs. Union of India, (1993) 4 SCC 204
(ii).C.L. No.30/2006, dated 7.8.2006

25. 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).**

26. Cross-Cases and bail : When there are cross cases and both the sides have received injuries and one party has been released on bail, the other party also 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 during trial in these cases. See : **Jaswant Singh Vs. State of U.P., 1977 (14) ACC 302 (All)**

27.1. 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 CrLJ 863 (All)
6. Chander Vs. State of U.P., 1998 CrLJ 2374 (All)

27.2. Negative equality cannot be claimed to perpetuate further illegality: Even if a benefit was extended to some one in the past by mistake, similar benefit cannot be claimed by others subsequently. Negative equality cannot be claimed to perpetuate further illegality. See: **Pankjeshwar Sharma Vs State of J&K,(2021) 2SCC 188 (Three-Judge Bench)**

27.3. Doctrines of "*parity*" and *"bail is rule, jail exception*" not to be whimscically applied when the accused has criminal history : While cancelling the bail granted to a history sheeter by the Allahabad High Court, modifying the earlier doctrine *"bail is rule, jail exception*", a Bench of Hon'ble Justice Dipak Misra and Hon'ble Justice Prafulla C. Pant of the Supreme Court has in the first week of October, 2015 ruled that "history-sheeters or habitual offenders

are nuisance and terror to society and the courts should be cautious in granting bail to such individuals who are not at par with a first-time offender. Discretionary power of courts to grant bail must be exercised in a judicious manner in case of a habitual offender who should not be enlarged on bail merely on the ground of parity if other accused in the case were granted the relief. Criminal past of the accused must be checked before granting bail. Courts should not grant bail in a whimsical manner. The law expects the judiciary to be alert while admitting the plea of these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner. A crime, as is understood, creates a dent in the law and order situation. In a civilized society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society". Source : **Times of India, Lucknow Edition, Oct 4, 2015.**

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

27.4. 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.)*

27.5. 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).**

27.6. Benefit of parity when to be extended to co-accused ? : Where one accused was already convicted and 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.**

28.1. Bail u/s 389(3) CrPC by Trial Court on conviction : Section 389(3) CrPC empowers the trial court to grant bail to a convicted accused under the following conditions :

"Sec. 389(3) CrPC : 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.

28.2. 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).**

28.3. 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.**

28.4. 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).**

28.5. Conditional bail granted by court u/s 389 CrPC can be cancelled for breach of conditions: Conditional bail granted by court u/s 389 CrPC can be cancelled for breach of conditions.See: **Surinder Singh Deswal Vs. Virender Gandhi, (2020) 2 SCC 514**

28.6. 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)**

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

(i) Nature of accusations made against the accused.

(ii) Manner which the offence was committed.

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

(iv) See :

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

28.8. 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.**

28.9. 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. Ofcourse, appellate court can impose similar conditions when bail is granted. The sentence of imprisonment as well as the direction for payment of fine or capable of being executed. See… **Bhagwan Rama Shinde Gosai Vs. State of Gujarat, AIR 1999 SC 1859.**

28.10. 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.**

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

28.12. Membership of House of convict automatically comes to an end on award of sentence by court for not less than two years: On conviction and sentence with imprisonment for not less than two years, membership of the convicted MLA, MLC or MP of either House of the Legislature automatically comes to an end with immediate effect. See: Lily Thomas Vs. Union Of India (2013) 7 SCC 653

28.13. Candidate disqualified to contest election if only sentence is suspended by the appellate court and not the conviction: Conviction of the appellant

and award of sentence of three years and fine was challenged in appeal. The appellate court u/s 389 CrPC suspended only the execution of sentence and not the conviction. Nomination papers of the appellant for contesting the Lok Sabha elections-2019 were rejected by the Returnung Officer on the ground that the appellate court had stayed only the sentence and not the conviction. The appellant was found disqualified u/s 8(3) of the R.P.Act,1951. Order of the Returning Officer was held proper.See: Saritha S. Nair Vs Hibi Eden, AIR 2021 SC 483 (Three-Judge Bench)

28.14. Disqualification due to conviction and sentence continues even after pardon or remission of sentence: A person convicted and sentenced to a term of rigorous imprisonment of more than two years is disqualified u/s 7(b) of the Representation of the people Act, 1951 when Five years have not passed after his release from jail and the disqualification has not been removed by the Election Commission. The remission of his sentence u/s 401 CrPC and his release from jail before two years of actual imprisonment would not relax his sentence into one of a period of less than two years and save him from incurring the disqualification u/s 7(b) of the above Act. An order of remission doesn't in anyway interfere with the order of the court. It affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. See: Sarat Chandra Rabha & others. Vs. Khangendra Nath and others, AIR 1961 SC 334 (Five-Judge Bench) *(para 4).*

28.14. 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 CrPCis not attracted to entertaining a second bail application u/s 389 CrPCby the appellate court. There is no provision in CrPCcreating a bar against the maintainability of a second bail application u/s 389 CrPCin an appeal. A second bail application would be maintainable only on some substantial ground where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second application for bail would also be maintainable on the ground of unusual long delay in hearing of the appeal as in the event the appeal is not heard within a reasonable time and the convicted accused undergoes a major part of the sentence imposed upon him, the purpose of filing of the appeal itself may be frustrated. A strong humanitarian ground which may not necessarily pertain to the accused himself but may pertain to someone very close to him may also, in certain

circumstances, be a ground to entertain a second bail application. These are some of the grounds on which second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second application for bail may be maintainable as it will depend upon peculiar facts and circumstances of each case. See : **Dal Chand Vs. State of U.P., 2000 CrLJ 4579 (All)(DB).**

28.15. 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 Kamlendra Pratap Singh Vs. State of UP & others, 2009 (67) ACC 966 (SC)
(v) Smt. Amrawati and another Vs. State of UP, 2004 (50) ACC 742 (All) (Seven-Judge Bench)
(vi)

28.16. Appellate Court to require sureties and 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 shall stand forfeited and the procedure under section 446 shall apply."*

29.1. Entertaining bail application when accused in jail beyond local territorial jurisdiction of court : Section 267 CrPC: Relying upon the Supreme Court decision in **Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785**, the Allahabad High Court, while interpreting the provisions of Sec. 267 r/w. 439 CrPC, has held that where the accused was arrested by the police at Allahabad in relation to some crime registered at Allahabad and was detained in jail at Allahabad and the accused was also wanted for offences u/s 302, 307 IPC at Mirzapur, the Sessions Judge, Mirzapur had got jurisdiction to hear the bail application of the accused treating him in custody of the Court of Sessions Judge at Mirzapur. Physical production of the accused before the Court at Mirzapur or his detention in jail at Mirzapur was not required. See :

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

29.2. Only that court can consider bail application u/s 437 or 437 CrPC in whose custody the accused is for the time being: Relying on the Supreme Court ruling given in the case of **Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785**, it has been held by the

Allahabad High Court that only that court can entertain and consider the bail application u/s 437 or 439 CrPC in whose custody the accused is for the time being. Mere issuance of production warrant u/s 267 CrPC is not sufficient to deem the custody of the court which issued such warrant unless the accused is actually produced in that court in pursuance of the production warrant issued u/s 267 CrPC. See:

(i).Pawan Kumar Pandey Vs. State of UP, 1997 CrLJ 2686 (All).

(ii).Ranjeet Kumar Singh Vs.State of UP, 1996 JIC 195(All)

(iii). Pramod Kumar Vs. Ramesh Chandra, 1991 Cr LJ 1063 (All)

29.3. 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.

29.4. 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.

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

30. Compromise and Bail : Where the High Court had granted bail to the accused on the basis of assurance to compromise the case with the victim and subsequently cancelled the bail of the accused on the ground of breach of assurance to compromise, the Supreme Court has held that grant of bail to an accused on the ground of assurance of compromise is not permissible u/s 437/439 CrPCas the bail can be granted only on the grounds what have been provided u/s 437 & 439 CrPCThe subsequent cancellation of bail by the High Court on the ground of breach of

assurance to compromise has also been held impermissible by the Supreme Court by laying down that bail once granted cannot be cancelled on a ground alien to the grounds mentioned in Sec. 437 CrPCSee **:**

(i). Biman Chatterjee Vs. Sanchita Chatterjee, (2004) 3 SCC 388

(ii). Aparna Bhat Vs State of MP, AIR 2021 SC 1492 (para 44).

30.1. 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. Sections 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).**

30.2. Bail u/s 88 and 319 CrPC: Relying upon an earlier decision of Allahabad High Court reported in Vedi Ram @ Medi Ram Vs. State of U.P., 2003 ALJ 55 (All), the Allahabad High Court has held that an accused who has been summoned by court u/s 319 CrPCcannot be granted bail u/s 88 CrPCas once a person has been arraigned as accused u/s 319 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 CrLJ 4649 (All**

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

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

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

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

31.2. Directions of Supreme Court for disposal of bail applications u/s 436-A CrPC : The Supreme Court has issued following directions to all High Courts to issue diections to the subordinate courts for disposal of bail applications u/s 436-A CrPC : "As a supplement to Section 436-A CrPC but consistent with the spirit

thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports**.** The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts. The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time. The High Courts may take such stringent measures as may be found necessary in the light of the judgment of the Supreme Court in Ex. Captain Harish Uppal Vs. Union of India, AIR 2003 SC 739. See : **Hussain Vs. Union of India, AIR 2017 SC 1362** (para 26) **.**

31.3. Section 436-A CrPC not retrospective : Section 436-A CrPC introduced w.e.f. 23.06.2006 is not retrospective. See: **Pramod Kumar Saxena Vs. Union of India, 2008 CrLJ 4697 (SC)**

BAIL UNDER SPECIAL ACTS

32.1. 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 CrPCbefore the Magistrate having jurisdiction and in case the bail application is rejected by the Magistrate, the juvenile may move his application u/s 439 of the CrPC before the Sessions Judge but he cannot directly move his bail application before the High Court u/s 439 CrPCLikewise where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s 437 CrPC, the same cannot be directly heard by the Sessions Judge u/s 439 CrPC

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

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

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

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

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

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

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

32.2. 5th bail application of juvenile allowed by High Court u/s 12 of the JJ Act : 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).**

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

FORM V

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

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

Whereas I…… being the parent, guardian, relative or fit person under whose care……..(name of the juvenile) has been ordered to be placed by the Juvenile Justice Board…… have been directed by the said Board to execute an undertaking/bond with surety in the sum of

Rs……(Rupees…….) or without surety. I hereby bind myself on the said…….being placed under my care. I shall have the said ……. Properly taken care of and I do further bind myself to be responsible for the good behaviour of the said…… and to observe the following conditions for a period of…… years w.e.f……..

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

Dated…….……this…….day

of……..20……

Signature of person executing the Undertaking/Bond.

(Signed before me)

Principal Magistrate, Juvenile Justice Board

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

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

Signature of Surety(ies)

(Signed before me)

Principal Magistrate, Juvenile Justice Board

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

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

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

I hereby bind myself as follows:

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

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

(Signature or thumb impression of the juvenile/child)

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

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

Signature and Designation of the certifying authority

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

33.1. 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) CrPCThe legislature had in mind that an accused may not be harassed twice over and, accordingly, the provisions of Section 8 of the 1986 Act have been made. While taking up the trial for an offence under the 1986 Act, it would be competent for the Special Judge to take up the charges of offences under other Acts also in the same trial. See : Ajai Rai Vs. State of U.P., 1995(32) ACC 477 (All)(DB)

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

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

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

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

33.2. Pre-conditions for applying Gangsters Act: From a bare perusal of Section 2(b)(i) of the Gangsters Act, it would become apparent that the person alleged to be the member of the gang should be found indulging in anti-social activities which would be covered under the offences punishable under Chapters XVI, or XVII or XXII of the IPC. There is no dispute that the case set up by the prosecution against the appellants, in so far as the offences under the Gangsters Act are concerned, is limited to Section 2(b)(i) and none of the other clauses of the provision have been pressed into service for the proposed prosecution. Needless to say that for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).There being no dispute that in the proceedings of the sole FIR registered against the appellants for the offences under Chapter XVII IPC being Crime Case No. 173 of 2019, the appellants stand exonerated with the quashing of the said FIR by the High Court of Judicature at Allahabad by exercising the powers under Section 482 of Code of Criminal Procedure, 1973, vide order dated 3rd March, 2023 passed in Application No. 7228 of 2023. Hence, the very foundation for continuing the prosecution of the appellants under the provisions of the Gangsters Act stands struck off and as a consequence, the continued prosecution of the appellants for the said offence is unjustified and tantamounts to abuse of the process of Court. As a consequence of the

discussion made herein above, the impugned orders dated 14th November, 2022 and 6th December, 2022 passed by the High Court of Judicature at Allahabad are quashed and set aside. Resultantly, the impugned FIR being Crime Case No.424 of 2022 for offence punishable under Section 3(1) of the Gangsters Act, registered at Police Station- Bhognipur, District- Kanpur Dehat and all the proceedings sought to be taken thereunder against the appellants are hereby quashed. See**: Judgment dated 19.02.2024 of the Supreme Court passed in SLP (Criminal) no 437 of 2023, Farhana Vs. State of UP**

32.3 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)**

33.3. 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)**

33.4.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).**

33.4a.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).**

33.5. 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).**

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

33.7. 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**

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

33.9. Gangster Act applicable even when there is only one case against the accused under Gambling Act : Gangster Act is applicable even when there is only one case against the accused under Gambling Act. **See :**

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

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

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

33.10. "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)*

33.11. Special Court of Gangster to try offences under NDPS Act along with offences under the UP Gangsters Act, 1986: The present provision is to be tested on the touchstone of the aforesaid constitutional principle. The provision clearly mandates that the trial under this Act of any offence by the Special Court shall have precedence and shall be concluded in preference to the trial in such other courts to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other case shall remain in abeyance, It is apt to note here that “any other case” against the accused in “any other court” does not include the Special Court. The emphasis 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. It is also worthy to note that the Special Court has been conferred jurisdiction under sub-section (1) of Section 8 of the Act to try any other offences with which the accused may, under any other law for the time being in force, have been

charged and proceeded at the same trial. See: Dharmendra Kirthal Vs. State of Uttar Pradesh and Another (2013) 8 SCC 368 (Para 32) .

Note: Rule 22 of the UP Gangsters Rules, 2021 provides for including the offences under NDPS Act with the offences under the UP Gangsters Act, 1986 and empowers the Special Court of Gangster to try the NDPS offences along with the offence under the UP Gangsters Act, 1986.

34.1. Special provision u/s 439 CrPC w.e.f. 21.4.2018 for bail for offences u/s 376, 376-AB,,376DA, 376DB IPC: Section 439 CrPC as amended w.e.f. 21.4.2018 reads as under:

"**Provided** further that the High Court or the court of sessions shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Section 376, 376AB, 376DA or 376DB of the IPC, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application."

(1A): The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail under sub-section(3) of Section 376, 376AB, 376DA or 376DB of the IPC."

34.2. Guidelines of Supreme Court on disposal of bail applications involving offences against women: Using tying Rakhi as a condition for bail transforms a molester into brother by a judicial mandate. This is wholly unacceptable and has the effect of diluting and eroding the offence of sexual harassment. The act perpetrated on the survivor constitutes an offence in law and is not a minor transgression that can be remedied by way of an apology. Rendering community service, tying a Rakhi, presenting a gift to the survivor, or even promising to marry her, as the case may be. The law criminalizes outraging the modesty of a woman. Granting bail, subject to such conditions, renders the court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes. The use of reasoning language which diminishes the offence and tends to trivialize the quakes is especially to be avoided under all circumstances. To say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or Indian women, or that she had called upon the situation by her behavior, etc. These instances are only illustrations of an attitude which should never enter judicial verdicts or orders or be considered relevant while making a judicial decision, they cannot be reasons for granting bail or other such relief.

Similarly imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non- compoundable offences, mandating as part of bail conditions, community service or requiring tendering of apology once or repeatedly, or in any manner regretting or being in touch with the survivor, is especially forbidden.

The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence. On basis of foregoing discussion, directions issued that bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should soak to protect the complainant from any further harassment by the accused. Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made. In addition to a direction to the accused not to make any contact with the victim. In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days. Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions

about women and their place in society, and must strictly be in accordance with the requirements of the CrPC. In other words, discussion about the dress, behavior, or past conduct or morals of the press, should not enter the verdict granting bail. The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions towards compromises between the press and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction.
See: Aparna Bhat Vs. **State of M.P., AIR 2021 Supreme Court 1492**

34.3. **Accused not to be granted bail for offence u/s 376 IPC merely on ground of detention of accused in jail:** Where the accused had allegedly committed grevous offence of rape u/s 376 IPC against his young niece aged 19 years for nearly three years and the accused was habitual offender and twenty cases were registered against him but the High Court of Rajasthan granted him bail on the ground that he was logged in jail for the last three months, the Supreme Court set aside the bail granted to the accused by holding that the accused could not have been granted bail in such a serious offence against woman merely on the ground that he was already in jail for the last three months. See: **Ms. Y Versus State of Rajasthan, AIR 2022 SC 1910**

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

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

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

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

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

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

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

35.5. **Quashment of FIR and Charge-sheet by High Court for offences under POCSO Act held improper:** The facts of the case noted below were that during the investigation, Superintendent of the hostel and four others, namely, Narendra Laxmanrao Virulkar, Sau Neeta alias Kalpana Mahadeo Thakare, Sau Lata Madhukar Kannake, Venkateswami Bondaiyaa Jangam were arrested and arraigned as accused in the crime. During the investigation, it was found that 17 minor girls were abused by the accused and on their medical examination rupture of hymen was found. The respondent herein is the Medical Practitioner appointed for treatment of girls admitted to the said Girls' hostel and the victim girls were taken to him. The investigation revealed that the respondent had knowledge about the incidents occurred, from the victims themselves as the victim girls revealed in their statements recorded under Section 161 of CrPC about their divulgation of sexual assault on them to the respondent. In fact, some of the victims had specifically revealed it in their statements recorded under Section 164 CrPC. The respondent who was under a legal obligation in terms of the provisions under Section 19(1) of the POCSO Act upon getting the knowledge about committing of an offence under the POCSO Act to provide such information either to the Special Juvenile Police Unit or the local police remained silent and did not provide such information to help the accused is the gist of the allegation against him. As already stated, after investigation, a charge sheet was also filed. The Respondent has been arraigned as accused No. 6 in the aforesaid crime. Apprehending arrest in connection with the said crime, the respondent herein filed an anticipatory bail application before the Ld. Sessions Judge on 10.06.2019 and the same was rejected on 25.06.2019. The said order was challenged before the High Court and the High Court allowed the appeal and granted him protection from arrest. Thereafter, the respondent herein filed Criminal Application (APL) No. 841/2019 under Section 482 of the CrPC seeking quashment of the FIR dated 12.04.2019 and the charge-sheet dated 08.06.2019 to the extent they are against him. The High Court passed the impugned judgment and quashed the FIR as also the charge-sheet qua the respondent. Hence, this appeal. Exercise of power under Section 482 CrPC is an exception and not the rule and it is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. This position has been stated and reiterated by the Supreme Court time and again. The Supreme Court in the decision in *R.P. Kapur* v. *State of Punjab*, AIR 1960 SC 866 held that the HighCourt could not embark upon an enquiry as to whether the evidence is reliable or not while exercising the power under Section 482 CrPC. In *State of Haryana* v. *BhajanLal*, 1992 Supp (1) SCC 335 (Para102) it has been held that quashing may be appropriate where the allegations made in the First Information Report or the complaint, even if taken at their

face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. which are statements of some of the victims recorded under Section 161/164 CrPC recorded much prior to the impugned judgment dated 20.4.2021 viz., in the year 2019 itself. We do so solely to verify the verity of the finding of the High Court to the effect that such statements do not disclose anything suggesting knowledge of the respondent about the commission of the crime. In truth, those statements did mention about divulgation of sexual assault on them by victims to the respondent. We may hasten to add, at the risk of repetition, that such statements recorded under Section 161/164 CrPC are inadmissible in evidence as held in *M.L. Bhatt's case* (supra) and in *Rajeev Kourav's case* (supra). In the light of the circumstances available as above and in the light of Section 59 of the Evidence Act, the High Court was not justified in bringing abrupt termination of the proceedings qua the respondent. The position revealed from the discussion above constrains us to hold that there was *prima facie* case against the respondent for the offence referred above and hence, the appeal is liable to succeed. (Paras 7,8 & 26) See: **State of Maharashtra and Another Vs. Dr. Maroti 2022 SCC OnLine SC 1503**

35.6. Guidelines of Supreme Court on disposal of bail applications involving offences against women: Using tying Rakhi as a condition for bail transforms a molester into brother by a judicial mandate. This is wholly unacceptable and has the effect of diluting and eroding the offence of sexual harassment. The act perpetrated on the survivor constitutes an offence in law and is not a minor transgression that can be remedied by way of an apology. Rendering community service, tying a Rakhi, presenting a gift to the survivor, or even promising to marry her, as the case may be. The law criminalizes outraging the modesty of a woman. Granting bail, subject to such conditions, renders the court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes. The use of reasoning language which diminishes the offence and tends to trivialize the quakes is especially to be avoided under all circumstances. To say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the accused, that she behaved in a manner unbecoming of chaste or Indian women, or that she had called upon the situation by her behavior, etc. These instances are only illustrations of an attitude which should never enter judicial verdicts or orders or be considered relevant while making a judicial decision, they cannot be reasons for granting bail or other such relief.

Similarly imposing conditions that implicitly tend to condone or diminish the harm caused by the accused and have the effect of potentially exposing the survivor to secondary trauma, such as mandating mediation processes in non- compoundable offences, mandating as part of bail conditions, community service or requiring tendering of apology once or repeatedly, or in any manner regretting or being in touch with the survivor, is especially forbidden.

The law does not permit or countenance such conduct, where the survivor can potentially be traumatized many times over or be led into some kind of non-voluntary acceptance, or be compelled by the circumstances to accept and condone behavior what is a serious offence. On basis of foregoing discussion, directions issued that bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions

should soak to protect the complainant from any further harassment by the accused. Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made. In addition to a direction to the accused not to make any contact with the victim. In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days. Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the CrPC. In other words, discussion about the dress, behavior, or past conduct or morals of the press, should not enter the verdict granting bail. The courts while adjudicating cases involving gender related crimes, should not suggest or entertain any notions towards compromises between the press and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction.
See: Aparna Bhat Vs. **State of M.P., AIR 2021 Supreme Court 1492**

35.7. **Directions of Allahabad High Court on procedure to be followed for disposal of bail application involving offences under POCSO Act:** In the case noted below relating to the procedure for hearing and disposal of application of bail involving offences under the POCSO Act, 2012, following submissions were made at the Bar:

(i). The practice of issuance of notices to the victim by the courts in bail applications is contrary to provisions of the Protection of Children from Sexual Offences Act, 20121 read with the Protection of Children From Sexual Offences Rules, 20202.

(ii). Practice of issuance of the notice of bail application to the victim by the court varies from court to court. This leads to inconsistencies in procedures, introduces uncertainty in the time frame for maturation of bail applications, and delays the hearing of bail applications.

(iii). Authorities need adequate time to perform their statutory duties under the POCSO Act, 2012 read with POCSO Rules, 2020 before a bail application becomes ripe for being placed before the Court. The time period of two days for maturation of a bail under the Rules of Court, 1952 of Allahabad High Court is insufficient in cases under the said enactment.

(iv). Various authorities need to sync up their functioning and work under a defined time frame to uphold the rights of victim and to protect the rights of the accused.

(v). Steps have to be taken by all stakeholders to protect the identity of the victim.

(vi). The judgements of the Delhi High Court in Reena Jha Vs. Union of India3 and Miss G (Minor) Thru. Her Mother Vs. State of NCT Delhi4 and the judgement of Bombay High Court in Arjun Kishanrao Malge Vs. State of Maharashtra5 are distinguishable in some respects and are not directly applicable in the State of U.P. The relevant provisions of law were not referred to the Court in Tanul Rastogi Vs. State of U.P.6 and the order is not a binding precedent.

The Hon'ble Allahabad High Court issued following directions for hearing and disposal of the applications for bail involving offences under the POCSO Act, 2012:

(i). The Director General of Police, UP Police/competent officer in the PHQ shall create a framework and standard operating procedures for the State of U.P. to

ensure compliance of the directions and strict adherence to the timeline of duties stated earlier. The framework shall include nomination of officials responsible for executing specific tasks with a corresponding time line.

(ii). The Senior Superintendent of Police/ Deputy Commissioner of Police/Superintendent of Police (in districts where there is no post of Senior Superintendent of Police) of the concerned district shall be the nodal officer, who shall supervise the staff charged with the duty of actually serving the bail notice upon the victim and the CWC, imparting information about entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 to the victim, and submitting the assessment (Form B) to the CWC and to furnish timely instructions to the Government Advocate/District Government Counsel in bail applications. In case, there is default on part of such official, the S.S.P./ D.C.P/ S.P. of the concerned district shall take immediate action in accordance with law against such erring official.

(iii). The Director General of Police shall create a State Level Committee headed by Officer not below than the rank of Additional Director General of Police. The aforesaid committee shall prepare biannual reports which review the working and implementation of the above said directions throughout the State of U.P., & examine the action taken against the officials who violate the directions.

(iv). The District Magistrate of the concerned district to ensure that the reports as directed in this order are produced by the CWC before the Court when the bail application is placed in Court. Appropriate action shall be taken against those who default.

(v). Biannual reports shall be prepared by the Principal Secretary/competent authority in the Ministry of Child Welfare, Government of U.P. regarding compliance of the directions by the CWCs in State of U.P. and the action taken against erring officials.

(vi). Reports under Direction Nos. III and V shall be placed before the High Court Legal Services Committee; High Court Committee for monitoring the expeditious disposal of rape and Protection of Children From Sexual Offences Act cases; High Court Committee for monitoring implementation of the provisions of Juvenile Justice (Care and Protection) Act, 2000, twice in an year.

(vii). The Director General of Police, U.P., the Principal Secretary, Child Welfare Committee, Government of U.P., L.R., Government of U.P. to respectively file compliance affidavits before the Registrar General, Allahabad High Court, Allahabad on or before 12.09.2021.

(viii). The Registry shall ensure that the child or its parents are not joined as parties to the bail application by name. It should also be ensured that any other information like address or neighbourhood which will reveal the identity of the child shall not be stated in the bail application. The aforesaid details shall be anonymised.

(ix). The Registrar General shall ensure compliance of all the directions, related to the Registry of this Court. See: **Judgment dated 09.07.2021 passed by Allahabad High Court on Criminal Misc. Bail Application no. - 46998 of 2020, Junaid Vs. State Of U.P.**

Note: Also see judgment dated 06.08.2021 passed by Allahabad High Court on Criminal Misc. Bail Application no. 8227 of 2021, Rohit Vs. State of U.P. which has been circulated by the State

Legal Services Authority, Uttar Pradesh, Lucknow (SLSA) among the judicial officers of the state of U.P. by its letter dated 08.09.2021 for compliance.

35.8. **Suggestions received by Supreme Court from various Amicus Curiae and NALSA, SALSA etc. for grant of bail, probation, remission and commutation of sentences and jail reforms:** The suggestions made are as under:—

"7.1 There are convicts in jails who are undergoing fixed term sentences. In such cases where the convict has been sentenced upto 10 years' imprisonment and is a first time offender and has undergone half the sentence, the State Government can consider whether the remaining sentence can be commuted under Section 432 CrPC. as a onetime measure. The State Government can obviously provide certain exceptions where this benefit would not be available to the convicts (especially heinous crimes rape, dowry death, kidnapping, PC Act, POCSO, NDPS, etc.). The State Government can impose conditions of good conduct upon the convict. In this regard, the provisions of Model Prison Manual, 2016, especially the Chapter XX dealing with "premature release' can be considered by the State Government, which lays down broad parameters for dealing with such cases. The Model Prison Manual was drafted by a very high Committee, including the officers of the Central Government, State Government, NALSA, NHRC and also the Civil Society and is a fairly progressive document, aimed at standardising prison administration throughout the country. Chapter XX of Model Prison Manual is enclosed as Annexure A2.

In this behalf the following suggestions have been made:—

"6.1 The following mechanism can be adopted as one-time measure to convicts who have been convicted for sentence of imprisonment for 10 years' or less and have no other criminal antecedent.

6.2 The High Court along with the High Court Legal Services Authority can make a list of cases with the following details:

i) Offences for which a convict has been sentenced and sentence imposed;

ii) Sentence undergone by the convict;

6.3 If the convict is in jail and has undergone 40% of the sentence, his case can be taken up by the District Legal Services Authority. The District Legal Services Authority, through a lawyer of sufficient seniority, can counsel the accused that if he is willing to accept his guilt, request can be made to the High Court to reduce the sentence or for releasing the convict on probation of good conduct for the remainder of the sentence. It should be clearly disclosed that the said acceptance of guilt is only for the purposes of closing the matter and in case the High Court is not inclined to accept the plea, then the matter would be considered by the High Court of its own merits and his plea would not come in the way of hearing of the appeal on merits.

6.4 The District Legal Services Authority would also facilitate the interaction of the convict with his lawyer so that an informed decision is taken by the convict.

6.5 If the accused is willing to accept the plea and make an application to the High Court, then the list of such accused should be forwarded to the Director General of Police to ascertain the criminal antecedent of the convict.

6.6 Such plea bargaining at post-conviction level would not be available to such offences which are notified by the Central Government/State Government. The said plea bargaining will not be available where the law provides for a minimum sentence to be undergone by the accused, for example under the NDPS Act or UAPA Act similar such Acts (State Law/Central Law). See: **Interim order dated 14.09.2022 of the Supreme Court passed in Suo Moto Writ Petition (Crl) No. 4/2021 In Re : Policy Strategy for Grant of Bail With MA 764/2022 in Criminal A. No. 491/2022 (II)**

36.1. 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**

36.2. Convict having killed 30 persons granted bail by Patna High Court for offences under Arms Act, Explosive Substances Act and IPC on condition of keeping his mobile phone operative and reporting fortnightly to police station:

In the case noted below, Patna High Court granted bail to the accused who was convicted by the trial court for charges for having killed 30 persons in a carnage in which 21 persons were named in the FIR including the appellant/accused. The appellant has renewed his prayer for grant of bail during the pendency of the Sessions Trial No. 157 of 2017, arising out of Deokund (Uphara) P. S. Case No. 23 of 2000 for offences under sections 147, 148, 149, 341, 307, 302 and 120(B) of the Penal Code, 1860; Sections 27 of the Arms Act, 1959; Section 17 of the Criminal Law Amendment Act; Section 3(II)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Section 3 and 4 of the Explosive Substances Act, 1908. At the time of furnishing of the bail bonds, the Trial Court shall require the appellant to furnish an additional affidavit disclosing the mobile telephone no. which he shall keep in operative condition at all times till the trial is concluded. He would also, in such affidavit, give an undertaking that he shall be getting his presence marked fortnightly before the Officer In Charge of the concerned Police Station who is further directed not to unnecessarily detain the appellant and would endorse his presence in the Police Station promptly on the day he visits him. Before leaving the territorial confines of the State of Bihar, the appellant shall be required to obtain prior permission from the Trial Court. The absence of the appellant from the trial proceedings on two consecutive dates would render the bail granted to the appellant liable to be cancelled. Such conditions shall remain attached with this order till final conclusion of the trial. See: Vinod Kumar Vs. State of Bihar, 2022 SCC OnLine Patna 4451

37.1. 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).*

37.2. Economic offences constitute a different category of offences as regards bail: Economic offences not covered under the Special Acts have been categorised as a separate set of offences called "economic offences". In the case of, Sanjay Chandra Vs. CBI, AIR 2012 SC 830, it has already been held by the Supreme Court that in determining whether to grant or not grant bail to accused the aspects like (a) seriousness of the charge, and (b) severity of punishment for the offence have to be considered by the court. Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor. See: **Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773 (para 7)**

37.3 Offences under Special Acts and guidelines of Supreme Court in Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773: The Supreme Court has held that in the matter of grant or refusal of bail for the offences under the Special Acts, some of them noted below, a different approach by

considering the seriousness of the offences and the severity of the punishment provided in the statute should be adopted by the courts:

(i) Terrorism and organized crimes
(ii) Unlawful Activities (Prevention) Act, 1967
(iii) Prevention of Money Laundring Act, 2002
(iv) Crimes against Wemen and Children
(v) Protection of Children from Sexual Offences Act, 2012 (POCSO)
(vi) Companies Act, 2013
(vii) NDPS Act, 1985

37.4. Benefits of guidelines issued by Supreme Court in Satendra Kumar Antil case when not to be extended to accused?: Where the accused have not cooperated in the investigation nor appeared before the investigating officer, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the benefits of the guidelines issued in Antil's case cannot be given to such accused. See: **Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773**

38. 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)**

39. Bail under Prevention of Money Laundering Act, 2003 : Conditions enumerated in Section 45 of Prevention of Money Laundering Act, 2003 will have to be complied with. The said special act has an overriding effect and are binding on court while considering application of bail u/s 439 CrPC. See **: Gautam Kundu Vs. Manoj Kumar, Assistant Director, Eastern Region Directorate of Enforcement (Prevention of Money Laundering Act) Govt. of India, AIR 2016 SC 106.**

40. 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) CrPC, held, applicable.

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

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

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

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

42.2. 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)

42.3. 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.**

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.

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

42.5. Bail under NDPS Act rejected: 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)**

42.5a Recovery of incriminating material by police to be mandatorily made by audio - video recording: Allahabad High Court has directed the DGP of Uttar Pradesh to issue detailed SOP as required by Rule 18(5) of the Uttar Pradesh BNSS Rules, 2024 for mandatory conducting audio vedio recording of search, seizure or possession of property or other incriminating material including the preparation of list of articles or property seized as well as signature of witnesses on E-Sakshya Portal and uploading the same or through other audio video electronic means including mobile phone of the police officer on duty and dirction may also be issued that failing to comply with the mandatory requirement of Section 105 of the BNSS read with Rule 18 of the BNSS Rules, 2024 may attract disciplinary proceedings against the concerned police officer so that on the one hand it would save innocent persons from false recovery of property or articles and on the other hand to prepare foolproof evidence against the criminals for hearing the bail application as well as during trial. See: Judment dated 05.01.2026 of the

Allahabad High Court passed on Criminal Misc. Bail Application No. 40989 of 2025, Shadab Vs State of UP, (2026 LiveLaw

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

Section 4 "Trial of offences under the Indian penal Code and other laws – (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences.

3.The above clause (2) therefore, show that all the offences should be tried according to the provisions of CrPCexcept where there is special provision in any other enactment regarding the trial of any offences. Section 36-A of NDPS Act only provide for trial by Special Courts for offences punishable under NDPS Act with imprisonment for a term of

more than three years only. Therefore, if an offence is punishable with imprisonment for a term upto three years, it shall have to be tried by the Magistrate in accordance with the provision of Section 4(2) CrPC

4. 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."

42.7. 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 statutes and when conferred, a substantive right. Providing a right of appeal but totally disarming the Court from granting interim relief in the form of suspension of sentence would be unjust, unfair and violative of Article 21 of the Constitution particularly when no mechanism is provided for early disposal of the appeal. The pendency of criminal litigation and the experience in dealing with pending matters indicate no possibility of early hearing of the appeal and its disposal on merits at least in

many High Courts. The suspension of the sentence by the appellate Court has, however, to be within the parameters of the law prescribed by the Legislature or spelt out by the courts by judicial pronouncements. The exercise of judicial discretion on well recognized principles is the safest possible safeguards for the accused which is at the very core of criminal law administered in India. The Legislatu cated was also ruled out, it has been held that the accused was not entitled to be released on bail for the offences under the NDPS Act, 1985. See : **Safi Vs. State of U.P., 2006 (6) ALJ (NOC) 1358 (All)**

42.8. **Grant of bail by NDPS court for failure of prosecution to show recovery of commercial quantity of psychotropic substance held proper by Supreme Court:** In the case noted below, the quantity of the psychotropic substance could not have been ascertained by the analyst. The trial court had for that reason granted bail to the accused on the ground that the prosecution failed to show that any commercial quantity of narcotic substance was recovered from the possession of the accused. But the High Court cancelled the bail granted to the accused u/s 439(2) CrPC. The Supreme Court held that the impugned order of the High Court cancelling the bail granted in favour of Bharat Chaudhary [A-4] is not sustainable in view of the fact that the records sought to be relied upon by the prosecution show that one test report dated 6 December, 2019, two test reports dated 17 December, 2019 and one test report dated 21 December, 2019 in respect of the sample pills/tablets drawn and sent for testing by the prosecuting agency conclude with a note appended by the Assistant Commercial Examiner at the foot of the reports stating that "quantitative analysis of the samples could not be carried out for want of facilities". In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substance as contemplated under the NDPS Act. Further, a large number of the tablets that have been seized by the DRI admittedly contain herbs/medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act. Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted either at the office or at the residence of A-4 at Jaipur on 16 March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited. In the absence of any psychotropic substance found in the conscious possession

of A-4, we are of the opinion that mere reliance on the statement made by A-1 to A-3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15 July, 2021. This is all the more so when such a reliance runs contrary to the ruling in Tofan Singh Vs. State of Madras,(2021) 4 SCC 1. The impugned order qua A-4 is, accordingly, quashed and set aside and the order dated 2 November, 2020 passed by the learned Special Judge, EC & NDPS Cases is restored. As for Raja Chandrasekharan [A-1], since the charge sheet has already been filed and by now the said accused has remained in custody for over a period of two years, it is deemed appropriate to release him on bail subject to the satisfaction of the trial Court. See: **Bharat Chaudhary Vs. Union of India, 2021 SCC OnLine SC 1235 (Three-Judge Bench)**

42.9. Bail for offences under NDPS Act may be cancelled if provisions of Section 37 of NDPS Act not observed: Bail granted for offences under the NDPS Act, 1985 may be cancelled if it has been granted without adhering to the parameters under Section 37 of the NDPS Act. Non-application of mind to the rival submissions and the seriousness of the allegations involving an offence under the NDPS Act by the High Court are grounds for cancellation of bail.

(i) Union of India Vs. M.D. Nawaz Khan, (2021) 10 SCC 100

(ii) Union of India Vs. Prateek Shukla, (2021) 5 SCC 430

(iii)Union of India Vs Shiv shanker Kesari, (2007) 7 SCC 798

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

43.2. 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**

43.3. 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)**

43.4. 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).**

43.5. Supreme Court rulings on various aspects of Prevention of Cow Slaughter Act :

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

44. Bail under U.P. Dacoity Affected Areas Act, 1983 & the SC/ST (Prevention of Atrocities) Act, 1989 : As regards the trail of offences under the provisions of U.P. Dacoity Affected Areas Act, 1983 and the SC/ST (Prevention of

Atrocities) Act, 1989, Sec. 6(2) of the U.P. Dacoity Affected Areas Act, 1983 is relevant which reads as under : -

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

45.1. Bail u/s 7 Criminal Law Amendment Act, 1932 : Sec. 7 of the Criminal Law Amendment Act, 1932 reads as under :

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

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

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

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

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

45.2. "Section 9 : **Procedure in offence under the Act :** Notwithstanding anything contained in the Code of Criminal Procedure, 1898(now 1973) —

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

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

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

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

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

has been circulated amongst the judicial officers of the State of U.P. by the Allahabad High Court vide Letter No. 12889/2002, dated 6.9.2002.

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

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

46.2. Accused not entitled to default bail u/s 167(2) CrPC if IO files charge-sheet within 60/90 days: The Supreme Court has ruled that an accused is not entitled to default bail u/s 167(2) Cr.P.C. if an investigating agency files its chargesheet within the time limit but without the sanction for prosecution. The question of sanction and its legitimacy would be considered by the court at the time of taking congisance of offences on the chargesheet. **Judgement dated 01.05.2023 of Supreme Court comprising CJI Dr. D.Y. Chandrachuda and Justice Pardiwala.**

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

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

47.1. Sureties to furnish details of repeatedly standing surety: Sec. 441-A CrPC: Sec. 441-A CrPC as inserted since 2006 reads thus: "Sec. 441-A CrPC: Declaration by sureties—Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

47.2. 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, untouchability apart. See :

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

47.3. 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**

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

Surety/Sureties Register

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

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

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

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

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

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

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

(3) His family ties and relationships,

(4) His reputation, character and monetary condition,

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

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

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

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

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

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

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

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

1. **Islam @ Kallu Vs. State of U.P., 2003 (2) JIC 940 (All)**

2. **Ganesh Babu Gupta Vs. State of U.P., 1990 CrLJ 912 (All)**
3. **Saudan Singh Vs. State of U.P., 1987(2) Crimes 655 (All) :** Except u/s 445 CrPCwhich is in the alternative, there is no other provision that any amount either of P.B. or of the surety bond may be deposited in cash.
4. **Hussainara Khatoon Vs. State of Bihar, AIR 1979 SC 1360**

47.8 Depositing cheated money as condition for grant of anticipatory bail u/s 438 CrPC cannot be imposed: Inclusion of a condition for payment of money by the accused for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail. See: Ramesh Kumar Vs. State NCT of Delhi, (2023) 7 SCC 461 (Para 25)

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

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

Explanation : The punishment under this section is :

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

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

1.

48.1. Verification of sureties and their papers and status: 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. **Pusai Vs. State (NCT) of Delhi, AIR 2004 SC 1184**
2. **Rajpal Singh Vs. State of U.P., 2003 AAC (Cri) 261 (All)**
3. **Bekaru Singh Vs. State of U.P., AIR 1963 SC 430**

48.2. Waiting copy of order by post and not releasing convict from jail depricated by Supreme Court: Where the accused persons who were juveniles on the date of offence and were released on interim bail by the Supreme Court but the Jail Superintendent, Agra did not release the prisoners even after three days from the date of knowledge of order of the Supreme Court and waited for copy of the order by post, it has been held by the Supreme Court that the prisoners should have been immediately released from jail soon after the order was loaded on the site of the Supreme Court subject to fulfillment of the conditions in the order. The Supreme Court held that it was contemplating to introduce a system called 'FASTER' (Fast and Secure Transmission of Electronic Records) and invited the views of the State Governments and Union Territories thereon.See: Order dated 16.7.2021 by the Three-Judge Bench of the Supreme Court in the case of " **In Re: Delay in the release of convicts after grant of bail by the Supreme Court paased in Suo Motu Writ Petition (Civil) No.4/2021**

48.3. Directions of High Court for verification of status etc.of sureties: C.L. No. 3/Admin.(G), dated Allahabad 16.2.2009 reads thus: "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:-

(i). 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.

(ii). The address and status verification of the sureties shall be obtained within reasonable time, say **seven days** in case of local sureties, **15 days** in case of sureties being of other district and **one**

month in case of sureties being of other State, positively from the concerned Police and revenue authorities and in case of non receipt of the report within given time, the concerned court may call for explanation for the delay from the concerned authorities and take suitable action against them and at the same time may consider granting provisional release of the accused person in appropriate cases subject to the condition that in case of any discrepancies being reported by the verifying authorities, the accuses shall surrender forthwith.

(iii).The Courts must insist on filing of black and white **photographs of the sureties** which must have been prepared from the negative.

(iii).The copies of the title deeds filed in support of solvency of status should be verified.

49.1. Issuing notice to accused for showing cause or hearing before cancellation of his bail and bonds before forfeiture is not imperative: In cases where the Court feels that there are chances of plantation of drugs to implicate a person in a case covered un der the NDPS Act, the amount of surety bonds may be suitably reduced."

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

49.3. Issuing show cause notice to surety before forfeiture of his bond money necessary: The Supreme Court has held that before a surety becomes liable to pay the amount of the bond forfeited, it is necessary to give notice why the amount should not be paid and if he fails to show sufficient cause only then can the Court proceed to recover the money. It has been held by the Allahabad High Court that issuing notice to the surety before forfeiture of surety bond u/s 446 CrPC is mandatory and natural justice also requires that before any adverse order is passed, the person concerned should be given an opportunity of being heard. See

(I). Ghulam Mehdi Vs. State of Rajasthan, AIR 1960 SC 1185

(2).Abdul Mazid Vs. State of U.P., 1994(3) Crimes 437 (All)

(3).Mahmood Hasan Vs. State of U.P., 1979 CrLJ 1439 (All)

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

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

(i) Kishan Pal Vs. State of U.P., 2005 (52) ACC 859 (All)
(ii) Ayub Vs. State of U.P., 2005 (52) 830 (All)
(iii) Anil Narang Vs. State of Uttaranchal, 2004 (48) ACC 543
(iv) Hargovind Vs. State of U.P., 1980 ALJ 540 (All)
(v) State of Maharashtra Vs. Dadamiya Babumiya Shaikh, AIR 1971 SC 1722

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

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

49.6.Discharge of sureties u/s 444 CrPC: Sec. 444 CrPC is relevant here which reads thus: "**Sec. 444 CrPC :** Discharge of sureties:

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

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

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

49.7. Appeal u/s 449 CrPC against order passed u/s 446 CrPC: Sec. 449 CrPC reads thus: **"Sec. 449 CrPC:** Appeal from orders under Section 446 : All orders passed under Section 446, shall be appealable:

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

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

50.1. Release order issued by Magistrate: Rule 63(a) of G.R. (Criminal) : When an order for the release of a prisoner, on bail or otherwise, is issued by a Magistrate, he shall see that it is entered in a peon book and sent to the Nazir Sadar by the time prescribed by the District Magistrate in this behalf. The Nazir shall enter in a peon book all the release orders received by him within the prescribed time and arrange to deliver them through a peon to the officer incharge of the jail by 4 p.m. in winter and 5 p.m. in summer at the latest. In exceptional circumstances the order of release may be sent to the jail in the manner laid down in sub-rule (b).

50.2. Release order issued by SJ / ASJ: Rule 63(b) G.R. (Criminal): When an order for the release of a prisoner is issued by a court other than a Magistrate, it shall be entered in a peon book and may be sent through one of the court peons to the officer

incharge of the jail so as to reach the jail ordinarily not later than 4 p.m. in winter and 5 p.m. in summer.

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

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

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

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

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

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

50.8. Jail Superintendent deprecated for not releasing the accused merely for an error in his name: Bail application of the accused **Vinod Kumar Baruaar** was rejected by the court of the Addl. Sessions Judge/ Fast Track Court, Siddharthnagar in Crime No.101/2019 for the offences u/s 8/19 of the NDPS Act and u/s 4/411,413 IPC, Police Station Dumariyaganj, District: Siddarthnagar. High Court granted him bail by its order dated 09.04.2020 by the name of " **Vinod Baruaar."** But the jail superintendent refused to release him from jail and returned the release order to the court by saying that the name of the accused mentioned in the warrant u/s 167 CrPC did not match with the release order issued by the court and sought correction of the same. Since the middle word " Kumar "

was not written in the bail order of the High Court, the accused was directed by the lower court to seek correction of the same in the High Court. The accused then approached the High Court for correction of the name of the accused in its bail order dated 9.4.2020. Deprecating the conduct of the jail superintendent, the High Court directed the CJM and the superintendent jail to release the accused from jail forthwith without correction in his name. Jail Superintendent was summoned in person to explain to the High Court as to why the accused was not released from jail for such trivial mistakes in his name when the crime No. and other details of the accused were the same. See: **Order dated 07.12.2020 of the Allahabad High Court passed on Criminal Misc.Bail Application No.3837/2020, Vinod Baruaar State of UP.**

50.9. Forged bail orders of High Court and duty of subordinate courts : Vide C.L. No. 13, dated March 13, 1996, the Allahabad High Court has directed that in case it comes to the notice of any subordinate court that some fake or forged bail order of the High Court has been produced before it, the same must be brought to the knowledge of the Hon'ble High Court for comprehensive enquiry and action.

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

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

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

51.2. 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 CrLJ 3008 (SC).**

52. Only authorization, not Vakalatnama, is required with bail application: CrPC does not contain any Section that makes filing a Vakalatnama mandatory for filing a bail application, whether it is regular bail, anticipatory bail and suspension of sentence after conviction. The CrPC only requires that the accused be represented by a duly authorized advocate. Moreover, though CrPC does not mandate,

however, the courts require some form of authorization for an advocate to act on behalf of the accused or convict and the providing of an NOC by the earlier counsel is a matter of 'good practice' rather than a matter of right, especially in criminal cases wherein life and liberty of a detenu is an issue and an accused or convict has a fundamental right guaranteed by Article 22(1) of the Constitution of India and reiterated in Section 303 and 41-D of the CrPC to be represented by an advocate of his or her choice as has been held by the Supreme Court in the case of Subedar Vs. State of UP, (2020) 17 SCC 765. See: Order dated 21.11.2025 passed by Division Bench of Lucknow Bench of Allahabad High Court in Criminal Appeal No. 1283/2021, Manorama Shukla Vs. State of UP

52. Model Orders of Bail to be passed by Magistrates :

माडल आर्डर–1

(जमानतीय धाराओं में जमानत के आदेश का नमूना)

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

ह0 / अभियुक्त	**04–10–2015** अपराध संख्या–622 / 2013, धारा 323, 504 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में अभियुक्त / प्रार्थी मोहन द्वारा प्रार्थनापत्र वास्ते जमानत प्रस्तुत है। अभियुक्त मोहन को न्यायिक अभिरक्षा में लिया जा चुका है। सुना। अपराध अन्तर्गत धारा 323, 504 भा. द.सं. जमानतीय है। अत्एव जमानत प्रार्थनापत्र स्वीकृत किया जाता है। अभियुक्त मोहन द्वारा रूपये 7,000 / – का व्यक्तिगत बन्धपत्र तथा इतनी ही धनराशि के दो प्रतिभूगण व उनके बन्धपत्र प्रस्तुत करने पर उसे जमानत पर मुक्त कर दिया जाये। ह0 (रमेश कुमार) न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ। 04–10–2016

माडल आर्डर–2

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

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

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

माडल आर्डर–3

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

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ।

आदेश

	04–10–2015 अपराध संख्या–623/2015, धारा–147, 148, 149, 307 भा.द.सं., थाना–गोमतीनगर, जनपद–लखनऊ के प्रकरण में अभियुक्त सोहन द्वारा जमानत का प्रार्थनापत्र प्रस्तुत है। अभियुक्त को न्यायिक अभिरक्षा में लिया जा चुका है। विद्वान सहायक अभियोजन अधिकारी तथा अभियुक्त के विद्वान अधिवक्ता को सुना एवं थाना–गोमतीनगर की पुलिस से प्राप्त रिपोर्ट व प्रकरण से संबंधित केस डायरी का अवलोकन किया। अभियुक्त सोहन के विरूद्ध यह मामला आरोपित है कि उसने चोटिल सुरेश कुमार की हत्या कारित करने के आशय से देशी तमन्चे से फायर करके उसे उपहति कारित की। अभियुक्त द्वारा कारित अपराध की प्रकृति नितान्त गम्भीर है।

ह0 / अभियुक्त	अभियुक्त की जमानत हेतु पर्याप्त व उचित आधार उपलब्ध नहीं हैं। अत्एव अभियुक्त सोहन का जमानत प्रार्थनापत्र बलहीन पाते हुए निरस्त किया जाता है। ह0 (रमेश कुमार) न्यायिक मजिस्ट्रेट, कोर्ट संख्या–2, लखनऊ। 04–10–2016

माडल आर्डर–4

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

न्यायालय न्यायिक मजिस्ट्रेट, कोर्ट संख्या– 2, लखनऊ।

आदेश

04–10–2015

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

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

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

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

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

माडल आर्डर–5

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

न्यायालय न्यायिक मजिस्ट्रेट, कक्ष संख्या–2, लखनऊ।

राज्य प्रति अशोक कुमार

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

आदेश

20–9–2009

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

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

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(रमेश कुमार)
न्यायालय न्यायिक मजिस्ट्रेट, कक्ष संख्या–2,
लखनऊ।
20–9–2016

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