Relevant Case Laws for BNSS, 2023 / Cr.P.C. & other Important Points of Criminal Trial

(As on 1.10.2024)

(Girish Agrawal, Joint Director- MJA)

The binding precedents in cases decided under Cr.P.C, to the extent of pari materia provisions in B.N.S.S, may continue to hold the field even after 30.6.2024. As regards the new provisions / additions / modifications in new Act in comparison to Cr.P.C, they are open for interpretation, till they are considered and interpreted by Hon'ble High Courts and Hon'ble Supreme Court. Examine the relevant provisions and fact-situation of the case before applying the citations in this list.

Sr. No.	Citation	Proposition
1. S. 482/531 BNSS S. 438/484 Cr.P.C.	Chowgule & Co. Vs. Public Prosecutor 2024 SCC OnLine Bom 2501	i) When FIR is registered prior to 1.7.2024, provisions of Cr.P.C. shall continue to apply to investigation in respect of such FIR. ii) Bail application filed on or after 1.7.2024 has to be considered under BNSS, 2023, even if investigation continues under Cr.P.C. iii) Even under S. 482 of BNSS (old S. 438 Cr.P.C.), Sessions Court has inherent power to grant ad-interim anticipatory bail pending disposal of main application.
2. S. 187 BNSS/ S. 167 Cr.P.C.	CBI Vs. Anupam Kulkarni (1992) 3 SCC 141 Budh Singh Vs. State (2000) 9 SCC 266 (*Anupam Kulkarni* is followed in *Budh Singh* on the point of "no PC after first 15 days")	Accused cannot be remanded to police custody after expiry of first 15 days. **In *Anupam Kulkarni*** : Even at the stage of first production for remand, Magistrate can grant bail to accused if an application is made and if he is satisfied that there are no grounds to remand him to custody, but if he is satisfied that 'further' remand is necessary, then he should act as provided u/s. 167 Cr.P.C.
	Pradeep Ram Vs. State (2019) 17 SCC 326 Sushila Aggarwal Vs. NCT (2020) 5 SCC 1 (*Pradeep Ram* is followed in *Sushila's* case on the point of "grant of custody without cancellation of bail")	Accused against whom serious offence is added subsequently in the same crime & who is already on bail, one course of action is to cancel his bail & commit him to police custody, other option is to get him arrested and grant his custody without canceling bail u/s. 437(5) of Cr.P.C. **In *Sushila Aggarwal*** : Anticipatory bail is not limited to a fixed period and normally it should enure without restriction on time.

Sr. No.	Citation	Proposition
3. S. 187 BNSS/ S. 167 Cr.P.C.	V. Senthil Balaji Vs. State (2024) 3 SCC 51 → CBI Vs. Vikas Mishra (2023) 6 SCC 49 →	The ratio laid down in the Judgments of **Anupam Kulkarni** and **Budh Singh** is doubted and issue is referred to larger Bench. View taken in *Anupam Kulkarni* requires reconsideration.
4. S. 223 BNSS/ S. 200 Cr.P.C.	CREF Finance Vs. Shree Shanthi (2005) 7 SCC 467 Bhagat Ram Vs. Surinder (2004) 11 SCC 622 Ajit Kumar Vs. State 1963 Supp (1) SCR 953	Application of mind by the Magistrate for the purpose of proceeding u/s. 200 of Cr.P.C. and subsequent sections amounts to taking cognizance.
5. S. 187 BNSS/ S. 167 Cr.P.C.	Gautam Navlakha Vs. NIA (2022) 13 SCC 542 ED Vs. Kapil Wadhawan 2023 SCC OnLine SC 972	Period of custody commences not from time of arrest but from the time the accused is first remanded to PC or JC. The period of 60/90 days under 167 Cr.P.C. has to computed from the date when Magistrate authorizes remand.
6. S. 349 BNSS / S. 311-A Cr.P.C.	Ritesh Sinha Vs. State of U.P. (2019) 8 SCC 1 Sonvir Vs. State of Delhi (2018) 8 SCC 24	Magistrate has power to order a person to give his voice samples for purpose of investigation. Procedure to obtain fingerprint evidence of accused as per The Identification of Prisoners Act, 1920.
7. S. 43 BNSS/ S. 46 Cr.P.C.	Sunil Batra Vs. State (1978) 4 SCC 494 Prem Shankar Vs. Delhi Admin. (1980) 3 SCC 526 Citizens for Democracy Vs. State (1995) 3 SCC 743	Handcuffing of prisoners – discussed. Handcuffing of under trial prisoners is permissible only in very exceptional situations.
8. S. 183(6)(a) Proviso BNSS / S. 164 Cr.P.C.	State of Karnataka Vs. Shivanna (2014) 8 SCC 913	Statement of victim under 164 Cr.P.C. should be recorded, as far as possible, before lady Magistrate.
9. S. 175 BNSS/ S. 156(3) Cr.P.C.	Priyanka Srivastava Vs. State (2015) 6 SCC 287	The application seeking direction for registration of FIR must be supported by an affidavit.
10. S. 2(y), S. 230 BNSS/ S. 2(wa) Cr.P.C.	Jagjeet Singh Vs. Ashish Mishra (2022) 9 SCC 321	Victim's right to be heard and participate in hearing of bail and other criminal proceedings.

Sr. No.	Citation	Proposition
11.	Basheshar Nath v. CIT 1958 SCC OnLine SC 7	Fundamental rights cannot be voluntarily waived by citizens.
12. S. 187 BNSS/ S. 167 Cr.P.C.	Directorate of Enforcement Vs. Deepak (1994) 3 SCC 440	Magistrate has jurisdiction u/s. 167(2) to authorize detention of a person arrested by authorized officer under special act.
13. S. 173 BNSS/ S. 154 Cr.P.C.	State of AP Vs. Punati 1994 Supp (1) SCC 590	Zero FIR : Police cannot refuse to record FIR on ground of lack of territorial jurisdiction – they should record the information and forward the same to police station having jurisdiction.
14. S. 531 BNSS/ S. 484 Cr.P.C.	State Vs. K. H. Annegowda (1977) 1 SCC 417 Janardan Rao Vs. State 1975 SCC OnLine Bom 109 State Vs. Ramprakash 1977 SCC OnLine Bom 78	S.484(2) Cr.P.C. - Trial pending before commencement of new code, shall be proceeded with in accordance with the provisions of old code. [S. 531 of BNSS is identical to S. 484 Cr.P.C. which had repealed the old code of 1898, except the proviso to sub-section(2)(a) and 2(d) which are omitted in S. 531]
15. S. 218 BNSS/ S.197 Cr.P.C.	D. Devaraja Vs. Owais (2020) 7 SCC 695	Sanction for prosecution, whether necessary and if so whether it has been obtained, may be determined at any stage of proceedings.
16. S.230 BNSS/ S.207 Cr.P.C.	Manoj Vs. State (2023) 2 SCC 353 Ponnusamy Vs. State 2022 SCC OnLine SC 1543 Sidharth Vashisht Vs State (2010) 6 SCC 1	Document and information ***not relied*** on by prosecution - As a matter of rule, in all criminal trials be furnished to the accused. Obligation of Prosecution to disclose evidence to accused- extent and scope.
17. S.187 BNSS/ S.167 Cr.P.C.	Ritu Chhabaria Vs. UOI 2023 SCC OnLine SC 1805 Judgebir Singh Vs. NIA 2023 SCC OnLine SC 543	Default bail is a fundamental right of accused - Right of accused cannot be scuttled by filing incomplete chargesheets. Default bail - Accused cannot seek default bail merely because charge-sheet is filed without sanction and cognizance has not been taken.
18. S.193 BNSS/ S.173 Cr.P.C.	State Vs. Hemendhra 2023 SCC OnLine SC 515	Alternatives before Magistrate when final report is filed. Further investigation is permissible u/s 173(8) even after the final report is laid before Magistrate and accepted.

Sr. No.	Citation	Proposition
19. S.193 BNSS/ S.173 Cr.P.C.	Vinubhai Malaviya Vs. State (2019) 17 SCC 1	To carry out further investigation even after filing of charge-sheet is a statutory right of the police. The law does not mandate taking prior permission of the Magistrate for such further investigation.
20. S.218 BNSS/ S.197 Cr.P.C.	A. Sreenivasa Vs. Rakesh Sharma (2023) 8 SCC 711	Sanction to public servant under special law and penal laws.
21. S. 392 BNSS / S.353 Cr.P.C.	R.C. Sharma Vs. Union of India, (1976) 3 SCC 574 Anil Rai Vs. State (2001) 7 SCC 318 International Vs. Registrar 2012 (2) Mh.L.J.	Delay in delivery of Judgment – Unexplained long interval between conclusion of arguments and delivery of Judgment shakes the confidence of people in the Judicial system and affects rights of parties under Article 21.
22. S. 52 BNSS / S.53-A Cr.P.C.	Krishan Kumar Vs. State (2011) 7 SCC 130 Chotkau Vs. State (2023) 6 SCC 742, **followed in :** Munna Pandey Vs. State 2023 SCC OnLine SC 1103	Sec. 53-A of Cr.P.C. --- DNA profiling of rape accused – relevance, necessity. In view of S. 53-A & 164-A of Cr.P.C., where DNA profiling has not been done or it is held back from the Trial Court, an adverse consequence would follow for the prosecution.
23. S.251 BNSS/ S.228 Cr.P.C.	Ghulam Hassan Vs. Mohammad Maqbool (2022) 12 SCC 657	Material that may be considered while framing charge and manner of consideration.
24. S.308 BNSS/ S.273 Cr.P.C.	State of Maharashtra Vs. Dr. Praful AIR 2003 SC 2053	Evidence can be recorded through VC and the presence of accused u/s. 273 of Cr.P.C. does not only mean physical presence.
25. S. 63 BSA/ S. 65-B Evidence Act	Arjun Khotkar Vs. Kailash (2020) 7 SCC 1 Anwar Vs. Bashir (2014) 10 SCC 473	Production of 65-B(4) Certificate is mandatory only in case of secondary electronic evidence.
26. S. 338 BNSS/ S. 301 Cr.P.C.	Rekha Murarka Vs. State (2020) 2 SCC 474	Extent of assistance by victim's counsel to prosecution would depend on facts of each case – scope & manner of assistance.

Sr. No.	Citation	Proposition
27. S. 480/482/483 BNSS S. 437/438/439 Cr.P.C.	Aparna Bhatt Vs. State AIR 2021 SC 1492 **Equivalent :** XYZ Vs. State of M.P. (2021) 16 SCC 179	Judicial sensitivity while dealing with sexual offences, gender sensitivity.
28. S.173 BNSS/ S.154 CrPC	Lalita Kumari Vs. Govt. (2014) 2 SCC 1 Ramdev Food Vs. State (2015) 6 SCC 439	Sec. 154(1) of Cr.P.C. mandates registration of an FIR on receipt of information regarding commission of cognizable offence.
29. S.398 BNSS	Sunil Saini Vs. State 2023 SCC OnLine SC 968	Witness Protection Scheme – It is bounden duty of State to ensure that lives of its citizens and other persons are at all times protected.
30. S.349 BNSS/ S.311-A Cr.P.C.	Selvi Vs. State (2010) 7 SCC 263	Investigative techniques – Narcoanalysis, Polygraph and Brain Activation Profile - If done without consent, violate the right to remain silent under Article 20(3) & Article 21 of Constitution of India.
31. S.366 BNSS/ S.327 Cr.P.C.	State of Punjab Vs. Gurmit (1996) 2 SCC 384 Sakshi Vs. UOI (2004) 5 SCC 518	In-camera trial be held in rape cases and other cases of sexual abuse such as S. 354 & S. 377 of IPC. S. 354 & S. 377 of IPC added in the Judgment of *Sakshi*.
32. S. 396 BNSS/ S.357-A Cr.P.C.	Laxmi Vs. UOI (2014) 4 SCC 427	Victim Compensation Scheme (medical assistance, after care and rehabilitation of victims of acid attack).
33. S. 396 BNSS/ S.357-A Cr.P.C.	Ravada Sasikala Vs. State (2017) 4 SCC 546	Acid attack victim – Law discussed on compensation u/s. 357-A of Cr.P.C. (*Laxmi* Vs. *UOI* followed)
34. S. 346 BNSS/ S.309 Cr.P.C.	Alakh Srivastava Vs. UOI (2018) 17 SCC 291	Speedy trial of cases under POCSO Act – Directions issued to all Special Courts to complete the Trial in a time-bound manner – Steps to provide child friendly atmosphere in Special Courts.
35. S.473 BNSS/ S.432 Cr.P.C.	UOI Vs. V. Sriharan (2016) 7 SCC 1	Life imprisonment means rest of life of convict -Power to impose sentence without remission for particular period can be exercised only by High Court and Supreme Court and not by Sessions Court.

Sr. No.	Citation	Proposition
36. S.473 BNSS/ S.432 Cr.P.C.	Sonu @ Ashwin Vs. State Cri. W.P. 865/2023 – 1.8.24 **(indiankanoon.org/doc/151546847)**	The GR providing special scheme for remission of sentence on the occasion of 125 years of Birth Anniversary of Dr. B. R. Ambedkar is clarified by Bombay High Court on the point of "cut-off date" mentioned in that GR and its applicability.
37. S.482 BNSS/ S.438 Cr.P.C.	Priya Indoria Vs. State (2024) 4 SCC 749	Transit (extra-territorial) anticipatory bail – Scope and power – Such power should be exercised in exceptional and compelling circumstances.
38. S. 480, 482 & 483 - BNSS/ S. 437, 438 & 439 - Cr.P.C.	Satender Antil Vs. CBI (2021) 10 SCC 773 2021 SC OnLine SC 3302 (2022) 10 SCC 51 2023 SCC OnLine SC 452 **(All 4 Orders/Judgments in same Case)**	i) Proper exercise of power to grant bail/anticipatory bail ii) Directions issued to investigating agency and Courts. iii) Guidelines based on categorization of offences issued for exercise of discretion by Court for grant of bail.
39. S.52 BNSS/ S.53-A CrPC	Ravi Ghumare Vs. State (2019) 9 SCC 622	Death sentence – Object of determining quantum of sentence has to be "society centric" – Great importance is of the standpoint of a victim which includes his/her guardian or legal heirs. "Y – STR" method of DNA analysis – It provides a unique way of isolating only the male DNA mixed with the DNA of victim – It is useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence in many cases.
40. S.173, 175, 223 BNSS / S.154, 156, 200 Cr.P.C.	HDFC Securities Vs. State (2017) 1 SCC 640	When a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged do not disclose commission of an offence.
41. S.175, 223 BNSS/ S.156, 200 Cr.P.C.	H. S. Bains Vs. State (1980) 4 SCC 631 Suresh Jain Vs. State (2001) 2 SCC 628 Lalaram Vs. State 2020 SCC OnLine All 1497	S. 156 & 200 Cr.P.C. - Options before the Magistrate - Exercise of discretion to select course of action.

Sr. No.	Citation	Proposition
42. S.193, 210, 223, 225 BNSS / S.173, 190, 200, 202 Cr.P.C.	Vishnu Tiwari Vs. State (2019) 8 SCC 27	Final police report and exoneration by Magistrate – Notice to informant mandatory - Independent application of mind - When protest petition may be treated as complaint for cognizance.
43. S.210, 225, 227 BNSS / S.190, 202, 204 Cr.P.C.	Mohd. Ataullah Vs. Ram Mahto (1981) 2 SCC 266 Banwarilal Vs. Ramdeo Baba 2004 (4) Mh.L.J. 341	Once Magistrate directs investigation by police u/s. 202 Cr.P.C., he must wait for the said report & not issue process on the basis of same material.
44. **Art. 20(3) of Constitution of India / S. 161 Cr.P.C.**	Nandini Satpathy Vs. P. L. Dani (1978) 2 SCC 424	Right against self-incrimination - right to remain silent – scope discussed.
45. S.91 BNSS/ S.88 CrPC	Tarsem Lal Vs Directorate 2024 SCC OnLine SC 971	Order accepting Bonds u/s 88 CrPC from the accused does not amount to grant of bail.
46. S.356 BNSS	Hussain Vs. Union of India (2017) 5 SCC 702	Trial in Absentia – provision for speedy trial in case of absconding accused – Bangladesh CrPC provision discussed.
47. S. 482 BNSS/ S. 438 Cr.P.C.	Prem Prasad Vs State (2022) 14 SCC 516	Normally when accused is absconding, Anticipatory Bail cannot be granted.
48.	Rahul Gandhi Vs. Purnesh (2024) 2 SCC 595	Imposition of maximum sentence without assigning reasons- Trial Judge expected to give proper reasons.
49. S. 335 BNSS/ S. 299 Cr.P.C.	Jayendra Thakur Vs State (2009) 7 SCC 104	Recording evidence in absence of accused- Conditions precedent for invoking S.299 CrPC
50. S. 335 BNSS/ S. 299 Cr.P.C.	Nirmal Singh Vs. State (2000) 4 SCC 41	All conditions must be established by Prosecution before invoking S.299 CrPC.
51. S. 335 BNSS/ S. 299 Cr.P.C.	Sukhpal Singh Vs. State 2024 SCC Online SC 800	Above two Rulings followed.

Sr. No.	Citation	Proposition
52. S. 531 BNSS/ S. 484 Cr.P.C.	Aires Vs. Vishwajeet (2017)11 SCC 62 Kahera Sayed Vs. State 2017 SCC OnLine Bom 445	Notifications issued by State Govt. under the Criminal Law Amendment Act, 1932 are saved by S. 484 of Cr.P.C. & S. 8 of General Clauses Act, they shall continue to operate despite repeal of Cr.P.C. 1898 & enactment of Cr.P.C. 1973.
53. S. 479 BNSS/ S. 436-A Cr.P.C.	RE : Inhuman Conditions in 1382 Prisons WP (Civil) No. 406/2013 (Supreme Court)	Direction to Suptd. of Jails across the country for immediate implementation of S. 479 of BNSS, to process applications of under-trial accused persons upon their completion of one-half/one-third period as the case may be. **(retrospective effect to S. 479 of BNSS)**
54. S. 223 BNSS/ S. 200 Cr.P.C.	Sri Basanagouda Vs. Sri Shivananda Cri. No. 7526/2024 (Karnataka High Court) **indiankanoon.org/doc/148891090**	The taking of cognizance u/s 223 of BNSS would come after recording of statement of complainant. The Magistrate should examine the complainant on oath & other witnesses present & then issue notice to the accused for giving opportunity of hearing before taking cognizance. (Judgments of Supreme Court at Sr. No. 4 of this list be perused before relying upon this ruling)

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