UTTHAN

UNIQUE TRANSFORMATIVE TECHNIQUE FOR HOLISTIC APPROACH AND NOVATION

SERIES – III

Law of Bail

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Topics

A. Protection of Life and Liberty
B. Anticipatory Bail
C. Arrest
D. Remand
E. Regular Bail

A. Protection of Life and Liberty

Article 21

Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22. Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe:

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4) Right against Exploitation

B. Anticipatory Bail

Distinction between Central Act (Criminal Law Amendment Act, 2018) & U.P. Act No. 4 of 2019

438 Cr.P.C. after Criminal Law Amendment Act, 2018	438 Cr.P.C. in UP by U.P. Act No. 4 of 2019
"438. Direction for grant of bail to person apprehending arrest.-(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. (2)When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required; (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; (iii) a condition that the person shall not leave India without the previous permission of the Court; (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section. 22. In section 438 of the Code of	"438. Direction for grant bail to person apprehending arrest.--(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely-- (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested; either reject the application forthwith or issue an interim order for the grant of anticipatory bail: Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without

Criminal Procedure, after sub-section (3), the following sub-section shall be inserted, namely: — "(4) 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 Indian Penal Code.".	warrant, the applicant on the basis of the accusation apprehended in such application. (2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely-- (i) that the applicant shall make himself available for interrogation by a police officer as and when required; (ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer, (iii) that the applicant shall not leave India without the previous permission of the Court; and (iv) such other conditions as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section. Explanation.--The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code. (3) Where the Court grants an interim order under sub-section (1), it shall

	forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court. (4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order. (5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application; (6) Provisions of this section shall not be applicable,-- (a) to the offences arising out of,-- (i) the Unlawful Activities (Prevention) Act, 1967; (ii) the Narcotic Drugs and Psychotropic Substances Act, 1985; (iii) the Official Secret Act, 1923; (iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. (b) in the offences, in which death sentence can be awarded. (7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of

	Session." [Vide U.P. Act No. 4 of 2019, S. 2 (Received the assent of the President on 1-6-2019 and published in the U.P. Gazette, Extra., Part 1, Section (Ka), dated 6-6-2019).]"

C. Arrest

On December 18, 1996 in **D. K. Basu v. State of West Bengal, (1997) 1 SCC 416 : (1997 AIR SCW 233)**, the Hon'ble Supreme Court laid down certain basic "requirements" to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent custodial violence. The requirements read as follows (para 36):

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

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

3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

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

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

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

8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

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

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

"The requirements mentioned above shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the requirements on All India Radio besides being shown on the National Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would in our opinion be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability. It is hoped that these requirements would help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation leading to custodial commission of crimes."

Arnesh Kumar *versus* **State of Bihar & Anr. (2014) 8 SCC 273**

"Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive".

(A) Anticipatory Bail -- Indian Penal Code, 1860 -- Section 498-A -- Dowry demand -- Anticipation of arrest in case of demand of dowry -- Directions to prevent unnecessary arrest given -- To police officers along with the Magistrates -- Held; that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. Directions given by Hon'ble Court to ensure the prevention of unnecessary arrest by police officers -- Directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. 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. Appeal allowed -- Dowry Prohibition Act, 1961 -- Section 4 -- Code of Criminal Procedure, 1973 -- Sections 41, 41(1)(b) & 167 -- Constitution of India, 1950 -- Article 22(2).

(B) Harassment/Arrest of husband & Relatives -- Section 498, I.P.C. -- The provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.

(C) Arrest -- Powers of police officers to arrest -- Apart from power to arrest, the police officers must be able to justify the reasons thereof -- No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person -- It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

(D) Code of Criminal Procedure, 1973 -- Sections 41, 41(1)(b) & 167 -- Powers of magistrate to authorize detention -- Conditions precedents for arrest to be satisfied by

police officer -- When an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest under Section 41 Cr. PC has been satisfied and it is only thereafter that he will authorise the detention of an accused -- Magistrate is duty bound not to authorise his further detention and release the accused -- The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order -- It shall never be based upon the ipse dixit of the police officer -- Those reasons shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused -- Condition precedent for arrest as envisaged under Section 41 Cr. PC has to be complied and shall be subject to the same scrutiny by the Magistrate -- Held; that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically -- Directions given by Hon'ble Court to ensure the unnecessary arrest by police officers.

Siddharth versus State of Uttar Pradesh & Anr. (2022) 1 SCC 676

Arrest of accused -- On filing of charge sheet -- Necessity of -- Power of arrest and justification to exercise the power -- Personal liberty is an important aspect of our constitutional mandate -- The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond -- Merely because an arrest can be made because it is lawful does not mandate that arrest must be made -- A distinction must be made between the existence of the power to arrest and the justification for exercise of it -- If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person -- If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, there should not be a compulsion on the officer to arrest the accused -- The word “custody” appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the chargesheet.

We are, in fact, faced with a situation where contrary to the observations in Joginder Kumar’s case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the charge-sheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

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)

ORDER DATED 31/01/2023

"1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."

We order that the aforesaid directions shall be complied with.

D. Remand

E. Regular Bail

Satender Kumar Antil versus Central Bureau of Investigation, (2021) 10 SCC 773, (2022) 10 SCC 51, order dated 21/03/2023 and 02/05/2023

Categories/Types of Offences

A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S. 37), PMLA (S. 45), UAPA (S. 43D(5), Companies Act, 212(6), etc.

D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

1) Not arrested during investigation.

2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an Accused along with the chargesheet (Siddharth v. State of UP, 2021 SCC online SC 615)

CATEGORY A

After filing of chargesheet/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 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 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 w/o. 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 Category B & D with the additional condition of compliance of the provisions of Bail under NDPS Section. 37, 45 PMLA, 212(6) Companies Act 43d(5) of UAPA, POSCO etc.

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the Accused have not cooperated in the investigation nor appeared before the Investigating Officers, 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 aforesaid approach cannot give them benefit, something we agree with.

We may also notice an aspect submitted by Mr. Luthra that 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.

The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic Offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra v. CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

a) seriousness of the charge and

b) severity of punishment.

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.

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments :

"a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months."

Guidelines of Supreme Court on disposal of bail applications involving offences against women: Aparna Bhat Vs. State of M.P., AIR 2021 Supreme Court 1492

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 behaviour, 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 behaviour 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, behaviour, 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.

In **Jameel Ahmad versus Mohammed Umair Mohammad Haroon and anr. Criminal Appeal No. 230 of 2022 decided on 15/02/2022, relying on Ram Govind Upadhyay versus Sudarshan Singh (2002) 3 SCC 598** the Hon'ble Supreme Court held that the relevant consideration for exercise of discretion, albeit, illustrative and not exhaustive, are:

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

P. Chidambaram versus **Central Bureau of Investigation, (2013) 20 SCC 337**

"The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:-

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of materials relied upon by the prosecution;
(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;
(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;
(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;
(v) larger interest of the public or the State and similar other considerations (vide **Prahlad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280**).
(vi) There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner."
(vii) At this stage itself, it is indicated that, "flight risk" of economic offenders should not be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country -- Same cannot be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case -- Hence, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

In **Sanjay Chandra versus Central Bureau of Investigation (2012) 1 SCC 40**,

26) When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

This Court, in the case of **State of Kerala Vs. Raneef (2011) 1 SCC 784**, has stated :-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course, this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

THANK YOU