AGENDA

SCHEDULE OF III WORK-SHOP FOR THE YEAR 2025

CHAIRPERSON OF THE WORKSHOP
Hon'ble Sri Justice Ravi Cheemalapati
Judge, High Court of Andhra Pradesh and Administrative Judge of Vizianagaram District.

NODAL OFFICER
Smt.M.Babitha
PRINCIPAL DISTRICT AND SESSIONS JUDGE, VIZIANAGARAM
TOPIC: "Law relating to Remand of Accused"
VENUE:- District Court Complex, Vizianagaram.

On: 20.09.2025.

9.15 AM	Guard of Honour
9.20 AM	Group Photo
9.20 AM to 9.35 AM	BREAKFAST
9.35 AM to 9.40 AM	Inviting dignitaries on the Dias by **Ms.B.Kanaka Lakshmi** Civil Judge(Junior Division), Srungavarapukota.
9.40 AM to 09.45 AM	**Lighting of the Lamp**
9.45 AM to 9.50 AM	Address by **Smt. M.Babitha,** Principal District Judge, Vizianagaram with regard to III-Workshop
9.50 AM to 9.55 AM	INAUGURAL ADDRESS Addressing by **Hon'ble Sri Justice Ravi Cheemalapati garu,Judge, High Court of Andhra Pradesh and Administrative Judge of Vizianagaram District.**
9.55 AM to 10.00 AM	Profile of **Hon'ble Dr. Justice Y.Lakshmana Rao garu, Judge, High Court of Andhra Pradesh** and Resource person By **Sri. A.Vijay Raj Kumar** Civil Judge(Junior Division) Gajapathinagaram.

Session	Topic	Timings	Chosen Topic	Proceedings	Resource Person
I	I	10.00 AM to 11.30 AM	**Session No.1 :** **a)** Duties and powers of Judicial Magistrate to examine prima facie case and compliance of Sec. 41A Cr.P.C/Sec.35(3) to 35 (6) BNSS by Magistrate at the time of remand with reference to Arnesh Kumar's case. **b)** Transit remands in respect of Special Acts and Jurisdiction of the Judicial Magistrate of First Class, in general.	Paper presentation by **Smt. B.H.V.Lakshmi Kumari** Civil Judge(Senior Division) Vizianagaram Discussion by the Resource Person Interaction by the Participants Comments by the Resource Person	**Hon'ble Dr. Justice Y.Lakshmana Rao Judge, High Court of Andhra Pradesh**
(TEA BREAK 11.30 A.M. to 11.50 A.M)					
II	II	11.50 AM to 01.00 PM	**Session No. 2 :** **C)** Protection of life and personal liberty - cautious approach by the Courts of Magistrate and Special Sessions Judges	Paper presentation by **Sri. M.S.H.R.Teja Chakravarthi** I Additional Civil Judge(Junior Division)Vizianagaram Discussion by the Resource Person Interaction by the Participants Comments by the Resource Person	**Hon'ble Dr. Justice Y.Lakshmana Rao Judge, High Court of Andhra Pradesh**

Vote of thanks by Smt.Ch.Srividya, Special Judl. Magistrate of I Class for trail of Cases under A.P. Prohibition and Excise-Act-cum-III Additional Civil Judge(Junior Division), Vizianagaram

(LUNCH 01.00 P.M. to 01.45 P.M)					
01.45 PM to 01.50 PM				Profile of Dr. Soma Battacharjya, Assistant Professor, Damodaram Sanjeevayya, National Law University, Visakhapatnam. and Resource person By Smt. Hema Sravanthi Janakiram Principal Civil Judge(Junior Division), Bobbili.	
III	III	1.50 PM to 3.00 PM	**Session No. 3 :** • Power and duties of Magistrates, Sessions Judge and Special Sessions Judges pertain to bails. a) Default Bail b) Grounds on which Bail can be granted/rejected c) Imposition of conditions while granting bail d) Power to Modify conditions of bail	Paper presentation by **Dr.S. Vijaya Chandar** Civil Judge(Junior Division) Kothavalasa Discussion by the Resource Person Interaction by the Participants Comments by the Resource Person	**Dr. Soma Battacharjya Assistant Professor Damodaram Sanjeevayya National Law University Visakhapatnam.**
			(TEA BREAK 03.00 P.M. to 03.20 P.M)		
IV	IV	3.20 PM to 5.00 PM	**Session No. 4 :** e) Post convictional Bail f) Powers of Sessions Court to grant Anticipatory Bail	Paper presentation by **Smt. J.Sowmya Joshphine** I Additional Civil Judge(Junior Division)Parvathipuram Discussion by the Resource Person Interaction by the Participants Comments by the Resource Person	**Dr. Soma Battacharjya Assistant Professor Damodaram Sanjeevayya National Law University Visakhapatnam.**
Vote of thanks by Smt.Ch.Srividya, Special Judl. Magistrate of I Class for trail of Cases under A.P. Prohibition and Excise-Act-cum-III Additional Civil Judge(Junior Division), Vizianagaram					

**** All the Judges are requested to bring their Laptops****

Principal District and Sessions Judge,
Vizianagaram.

WORK SHOP –III

IN VIZIANAGARAM

UNIT

ON 20.09.2025

WORK SHOP- III
IN VIZIANAGARAM UNIT
ON 20.09.2025

Ex-Officio Chair Person of Work Shop
Hon'ble Sri Justice
Ravi Cheemalapati
Administrative Judge

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Session No.1 : **a)** Duties and powers of Judicial Magistrate to examine prima facie case and compliance of Sec. 41A Cr.P.C/Sec.35(3) to 35 (6) BNSS by Magistrate at the time of remand with reference to Arnesh Kumar's case. **b)** Transit remands in respect of Special Acts and Jurisdiction of the Judicial Magistrate of First Class, in general.			
1.	**1.**	**Smt. B.H.V.Lakshmi Kumari** Civil Judge(Senior Division) Vizianagaram	**05-20**
Session No. 2 : **C)** Protection of life and personal liberty - cautious approach by the Courts of Magistrate and Special Sessions Judges			
2.	**2.**	**Sri. M.S.H.R.Teja Chakravarthi** I Additional Civil Judge(Junior Division) Vizianagaram	**21-43**
Session No. 3 : **.** Power and duties of Magistrates, Sessions Judge and Special Sessions Judges pertain to bails. a) Default Bail b) Grounds on which Bail can be granted/rejected c) Imposition of conditions while granting bail d) Power to Modify conditions of bail			
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LAW RELATING TO REMAND OF ACCUSED

WORKSHOP

LAW RELATING TO REMAND OF ACCUSED

A). Duties and powers of Judicial Magistrates to examine prima facie case and compliance of Section 41A Cr.P.C. / Section 35 (3) to 35 (6) BNSS by Magistrates at the time of remand with reference to Arnesh Kumar's case.

B). Transit Remands in Respect of Special Acts and Jurisdiction of the Judicial Magistrate of First Class, in General

Presented by
Smt.B.H.V.Laxmi Kumari,
Civil Judge (Senior Division)
Vizianagaram.

The right of personal liberty is a basic human right, recognized by the General Assembly of United Nations, in its universal declaration of human rights. This right has also been prominently included in the convention on civil and political rights, to which India is a party. Our constitution also recognized this fundamental right in Article 21, which provides as under:

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

Thus, the personal liberty, being the corner stone of our social structure, legal provisions, relating to arrest, have special significance and importance and for that reason they have been incorporated in the Criminal Procedure Code.

When an accused person is produced for remand, the Magistrate's role is to act judicially and protect the liberty of accused.

This involves reviewing the police report and case diary to ensure the detention is necessary and not an abuse of power. The Magistrate must also inform the accused of their right to a lawyer, check for grounds for arrest, record reasons for granting or denying remand, and can authorize detention for a limited period.

Key Responsibilities of the Magistrate

- Judicial Mind and Evidence Review: The Magistrate must apply a judicial mind to the facts presented in the police report and case diary, not merely ministerial duties. They must look at the evidence on record to decide if there are sufficient grounds to order remand.

- Protection Against Abuse of Power: The process of remand is designed to safeguard the accused from unscrupulous police practices. The Magistrate ensures the police have provided sufficient material to justify continued detention.

- Informing Accused of Rights: The Magistrate must inform the arrested person of their right to consult and be defended by a legal practitioner. If

the accused cannot afford a lawyer, one should be provided at the State's expense.

- Reviewing Arrest Grounds: The Magistrate needs to ensure the police can provide clear and justified reasons for the arrest and continued detention.
- Authorizing Detention: The Magistrate can authorize detention in either police or judicial custody for a limited time, not exceeding 15 days at the initial instance.
- Recording Reasons: The Magistrate must record the specific reasons for either granting or denying the remand request.

The purpose of Remand is to Complete Investigation: Remand is used when the investigation cannot be completed within the initial 24 hours after arrest. To Ensure Proper Procedure: The process, particularly the requirement to appear before a Magistrate, is a crucial step to prevent arbitrary arrests and ensure that liberty is not deprived without proper legal procedure and to Safeguard liberty of accused.

Under Section 41A of the Code of Criminal Procedure, 1973, there is a provision for a notice of appearance before a police officer. This provision was inserted through an amendment in 2010 to provide certain safeguards to individuals and reduce unnecessary arrests. Section 41A(1) of the CrPC states that when a police officer receives information about the commission of a cognizable offense that is punishable with imprisonment for a term of up to seven years, he/she may issue a notice to the person against whom the information has been received. The notice under Section 41A of the Cr.P.C would require that person to appear before the police officer for investigation at a specified place and time. Offenses such as theft, cheating, forgery, assault, or other offenses with a maximum punishment of up to seven years of imprisonment fall under this provision.

The notice is typically initiated by the police officer upon receiving information about the commission of an offense that is punishable with imprisonment for a term of up to seven years. The notice issued under Section 41A of the Cr.P.C. should specify the place and time for the person to appear

before the police officer. It should also inform the person about their right to legal representation during the proceedings. Upon receiving the notice, the person is expected to appear before the police officer at the specified place and time. They may provide information, answer questions, or offer clarification regarding the alleged offense. After the person's appearance, the police officer will conduct a preliminary inquiry and assess the necessity of arrest or further action. If the police officer is satisfied with the information provided and finds no grounds for arrest, the person may be released. However, if the police officer deems it necessary, they may proceed with arrest or take other appropriate action.

The purpose of issuing a notice under section 41A of the Cr.P.C. for appearance is to enable the police officer to conduct a preliminary inquiry to determine the necessity of arrest. This provision allows for the opportunity to provide information or clarification before an arrest is made, thus reducing the automatic arrest in certain cases. It's important to note that this provision does not apply to cases involving offenses punishable with death, imprisonment for life, or imprisonment for a term exceeding seven years. In such cases, the police officer may still exercise the power of arrest without issuing a notice of appearance.

Effect of Non-compliance of notice under Section 41A of the Cr.P.C.:

If the person fails to comply with the notice without sufficient cause, the police officer may proceed with further action, which may include arrest. As per Section 41A(4) of the Cr.P.C., 'Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.'

Landmark cases on arrest:

- K. Basu v. State of West Bengal (1997): This landmark case highlighted the importance of protecting the rights of arrested individuals. The Supreme Court laid down guidelines to prevent custodial torture and

recommended the mandatory presence of a legal representative during the arrest and interrogation process.

- Joginder Kumar v. State of U.P. (1994): This case established guidelines to regulate the exercise of police powers of arrest. The Supreme Court emphasized that arrest should not be made in a routine manner and that the police must have reasonable grounds to believe that the arrest is necessary.
- Lalitha Kumari v. Government of U.P. (2013): This case dealt with the issue of mandatory registration of First Information Reports (FIRs). The Supreme Court held that an arrest cannot be made in a routine manner even if an FIR is filed. The police must conduct a preliminary inquiry to determine the veracity of the complaint before making an arrest.

Arnesh Kumar v. State of Bihar (2014): In this case, the Supreme Court emphasized that the power of arrest under Section 41 of the CrPC should be exercised sparingly and only when necessary. The Court highlighted the need for the police to objectively assess the need for arrest based on credible information and reasonable suspicion.

Duties and powers of Judicial Magistrate to examine primafacie case and compliance of sec.41 A Cr.P.C./Sec.35(3) to 35)6) BNSS at the time of remand:

While taking an accused person into remand, a magistrate under Section 41A CrPC (now largely replaced by BNSS provisions) must ensure that the police have complied with the requirements for issuing the notice, that the arrest is justified and supported by written reasons for the police to believe the person failed to comply with the notice, or otherwise that arrest was necessary

The magistrate must then apply their judicial mind, not just mechanically reproduce the reasons from the police report, to verify the validity of the arrest and the grounds for detention.

Key Considerations for the Magistrate

- Compliance with Notice Requirements: The magistrate needs to check if the police had issued a valid notice under Section 41A CrPC.

- Reasons for Arrest: The magistrate must verify that the police have recorded valid reasons for arresting the person, especially if the person claims to have complied with the notice's terms.
- Application of Mind: The magistrate's decision to authorize detention must be a result of an independent assessment of the facts and the materials presented, not a mechanical act.
- Necessity of Arrest: The magistrate must be satisfied that the arrest was truly necessary for the investigation and that the police had fulfilled the pre-conditions for arrest under Section 41 CrPC.
- Case Diary and Remand Report: The magistrate should scrutinize the case diary and remand report to understand the factual scenario and determine if there's a legitimate basis for extending the detention.
- Avoidance of Mechanical Remand: The magistrate should not authorize detention without proper consideration of the material presented by the investigating agency.
- Duty to Protect Liberty: The magistrate has a duty to protect the liberty of the individual and ensure that no person is detained illegally.
- Section 41 of the CrPC was amended in 2009 to divide the non-bailable and cognizable cases where the police has the power to arrest into two kinds. Those carrying imprisonment of seven years or less fall under Section 41(b), to be dealt with differently than those carrying a term higher than seven years, which come under Section 41(ba).

As per Section 41(b) CrPC, offences punishable with seven years or less are not to automatically lead to arrest. Before making an arrest in such a case, a police officer is required to record their satisfaction that the arrest is necessary to prevent the accused from absconding, repeating the offence, or tampering with the evidence.

Arnesh Kumar v State of Bihar (2014):

In Arnesh Kumar's case, the Hon’ble Supreme Court emphasized the importance of strict compliance with Section 41A CrPC. The Court directed Magistrates to ensure that the police provide a valid reason for not issuing a

notice under Section 41A and to scrutinize the police's decision to arrest the accused.

Section 41 CrPC permits arrest without warrant in specified situations. Yet, as the Hon'ble Supreme Court clarified in Arnesh Kumar, the mere existence of power does not translate into an obligation to arrest. A police officer must record in writing why arrest is necessary—whether to prevent further offences, ensure investigation, or secure the presence of accused. This insistence on written reasons was not a procedural formality but a constitutional necessity: it armed the Magistrate with material to judicially assess the legality of detention.

The statute's emphasis on the recording of reasons is to enable the magistrate before whom the accused is produced after arrest, to examine the necessity of arrest and continued custody. This is an obvious inference, but one that has also been elaborated by the Supreme Court in Arnesh Kumar v State of Bihar (2014):

"Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, 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. 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, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and

materials on the basis of which the police officer had reached its conclusion. Those 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. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny."

"The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

The duty of a Magistrate when the accused is produced before him/her for remand:

It is worth noting that when a person accused of an offence is first produced before a magistrate, the latter has a duty – and not the power of discretion – to release the accused if the preconditions of Section 41 are not met. Moreover, the magistrate is required to independently assess the factors, and not go by the police officer's claims. Likewise, an investigating officer's claim that there is non-compliance with a 41A notice (in a case punishable with seven years or less) is not sufficient for the magistrate to accept it as gospel. He or she has to independently assess the need for arrest and remand.

Custody – whether police or judicial – granted without an objective and sustainable conclusion by the magistrate about the necessity of arrest or continued remand would violate this duty which is, as the Supreme Court says, a

“solemn function”. It would be deprivation of liberty without procedure established by law. The magistrate’s “solemn function” helps safeguard the most vital of constitutional rights – the right to life and liberty. Therefore, it would follow that if the violation of such a magisterial duty is noted by any superior court, it should be immediately rectified.

By its order dated January 21, 2025, the Apex Court clarified that permissible modes of service of a Section 41A CrPC/ Section 35 BNSS notice under the CrPC do not permit service by WhatsApp/ Electronic modes. It was held that “It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognized as an alternative or substitute to the mode of service recognized and prescribed under the CrPC, 1973/BNSS, 2023.”

The Hon’ble Supreme Court further held that issuance of such a notice must be strictly in terms of the judgment in Rakesh Kumar,which, in turn, had held that service is to be as prescribed in Chapter VI CrPC (now BNSS). The court reaffirmed its previous judgment dated July 11, 2022, in SK Antil, which had, in turn upheld the Delhi High Court judgement in Rakesh Kumar,wherein it was held that service of a Section 41A CrPC notice is not permissible by WhatsApp. Thus, it has been categorically clarified that a notice under Section 41A CrPC/ Section 35 BNSS cannot be issued by WhatsApp and other electronic modes such as email, etc.

Even before Section 41A of the CrPC kicks in, there must be an application of mind on whether arrest is at all necessary and reasons have to be recorded for the view taken. If a Section 41A notice has been given, and the police claims non-compliance with the same, this claim must be assessed to be valid by the magistrate before any remand to custody can be given, and this independent assessment must be reflected in the remand order¨

When presented with a case, Judicial Magistrates have a statutory duty to examine whether a prima facie case exists against the accused. This involves a careful analysis of the evidence collected by the police and determining whether there are reasonable grounds to believe the accused has

committed an offense. The Magistrate's role is not to conduct a mini-trial but to assess whether the prosecution has a plausible case that warrants further proceedings. The Magistrate, at the stage of remand, is thus entrusted with verifying the procedural aspects. It is not sufficient to merely ask whether a notice was issued; the Magistrate must probe whether it was duly served, whether compliance was ensured, and if arrest followed, whether reasons were contemporaneously recorded. A failure on any of these counts renders the arrest illegal and obligates the Magistrate to refuse remand.

Acting under Section 167 CrPC, the magistrate must order the release of the accused if the reason for arrest/custody is not established. Not authorising further custody is not the same as releasing the accused on bail; it is a simple refusal to authorise custody.

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Transit Remands in respect of Special Acts and Jurisdiction of the Judicial Magistrate of I Class, in general

The Law of Transit remand in India governs transferring an accused across the state borders. When police arrest some one outside the state where the crime occurred, they need a transit remand order from a judicial Magistrate. This order allows police to move the accused to the state where the case is filed. The law of transit remand in India ensures legal scrutiny. The Magistrate verifies the arrest legality and out of state police's authority. It authorises moving the accused from their home state. The law of transit remand in India protects against unlawful detention in unfamiliar places. Though not defined in BNSS, it stamps sections 187 and Article 22 of the constitution. It is a key criminal procedure safeguard.

The word "transit remand" is one of those terms which have not been expressly defined in Indian criminal laws. Though not expressly defined, it is used to denote a remand order passed by a Judicial Magistrate committing an accused to police custody in course of his transit to another state when arrested by the police officers of other states. To put it simply, the order accords legal sanctity to such an arrest and the subsequent custody in course of the transport. These orders find statutory backing in the provisions of Section 167 of the Code of Criminal Procedure, which lays down further procedures in case the

investigation cannot be completed in a span of 24 hours after arrest. It is also pertinent to note that the period of travel from the other state to the concerned home state is excluded from the period of 24 hours.

Following are the requisites as per Section 167 while seeking transit remand:

1. The accused has to be physically produced before the Magistrate before whom the application is being made.
2. A copy of the case diary is required to be forwarded to the concerned Magistrate (before whom the application is made).
3. The application for transit remand is to be made by a police officer who is of the rank of Police Sub-Inspector or above.
4. The Magistrate passing an order for transit remand should record reasons for doing so. In Manubhai Ratilal Patel vs. State of Gujarat [(2013) 1 SCC 314], the Apex Court had reiterated that it is necessary for the concerned Magistrate to apply his/her mind while considering an application for remand. This requirement applies to transit remand also.

Before understanding Transit Remand, it's essential to grasp the concept of remand itself. Article 22(2) of the Indian Constitution and Section 58 of Bharatiya Nagarik Suraksha Sanhita (BNSS) mandate that a person arrested without a warrant must be produced before the nearest magistrate within 24 hours. The special order for detention beyond 24 hours, referred to as remand, is crucial for further investigation during both pre-cognizance (Section 187 BNSS) and post-cognizance (Section 346 BNSS) stages.

The term "Transit Remand" is not explicitly defined in the BNSS but has evolved through common usage. In simple terms, it refers to the remand sought by the police to transfer the accused from one place to another in their custody. This is typically done to produce the accused before the jurisdictional magistrate who has authority over the case.

Section 187(4) of BNSS mandates the personal appearance of the accused before the magistrate while seeking police custody remand, a principle applicable to transit remand. The arrested person must be physically present or can be presented through the medium of electronic video linkage.

Additionally, Section 187(1) requires forwarding the case diary to the judicial magistrate, and Section 187(7) necessitates the magistrate recording reasons for granting police custody remand.

Legal Obligations and Discretion:

While transit remand is a common practice, it raises questions about whether the police have a legal obligation to seek it or if it falls within their discretion. While, the procedure of obtaining transit remand is not mandatory, the police must follow due process, including producing the accused before the magistrate for remand.

Case laws under CRPC on the concept of transit remand:

Gautam Navlakha vs. State of Delhi:

In this case, the petitioner was arrested in New Delhi by the Maharashtra Police for an alleged offence committed in Pune. The court, considering a writ of Habeas Corpus, set aside the transit remand granted by the court of C.M.M Saket, New Delhi. The judgment stressed that a Magistrate granting transit remand must ensure material in the case diary justifies the request.

The court also noted that while strict compliance is essential, rare instances may warrant deviation, provided the Magistrate is satisfied with the explanation for non-compliance.

R.K. Nabachandra Singh vs. Manipur Administration:

This case clarifies the time-sensitive nature of producing the accused before the magistrate. It emphasizes that unless a police officer believes the investigation can be completed within 24 hours, the accused must be

presented immediately. The judgment highlights that magistrates should insist on strict compliance with Section 167 CRPC, essence of which is now under Section 187 of BNSS and, if necessary, release the arrested person without delay.

The court also dispels the misconception that remand is a routine matter, affirming that magistrates should scrutinize adherence to Section 167, and non-compliance may warrant the immediate release of the arrested person.

Iqbal Kaur Kwatra vs. The Director General Of Police:

In a Writ of Habeas Corpus, this case addressed the actions of police officers who arrested an individual in Hyderabad, then sought transit remand in Maharashtra before proceeding to Jaipur. The court criticized the delay in producing the accused before a magistrate in Hyderabad, emphasizing the denial of the right to liberty. It ruled that when the police officer anticipates an investigation beyond 24 hours, the accused must be promptly presented before the magistrate.

This case laid down the obligation of police officers to prioritize presenting the accused before the nearest magistrate without waiting for the full 24 hours.

Transit remand, under Special Act like the Narcotics Drugs and Psychotropic Substances Act or the Prevention of Money laundering Act, is an order from a magistrate to allow police to transfer an arrested person across states to the jurisdiction where the case is filed. The Supreme Court has held that police are obligated to secure this remand by producing the accused before the nearest Magistrate, who verifies the legality of the arrest but cannot delve into the case's merits. This process ensures the accused' s rights are protected during transfer and is a critical aspect of inter-state investigations in India. A Transit remand order is a judicial magistrate's order to allow police to transport an accused person from the place of arrest to the state where the crime was registered and it is necessary when an arrest is made in a state different from where the case is lodged, ensuring legal oversight for the inter-state transfer.

Transit Remand under Special Acts NIA (2021), the Hon'ble Supreme Court held that even when arrested outside the jurisdiction of the Special Court, the accused must be produced before the nearest Magistrate for transit remand, but such Magistrate cannot go into the merits

Requirement of Transit remand in Special Acts:

- Jurisdictional Issues: Special laws often involve investigations and cases that span across multiple states, requiring the accused to be moved to the appropriate jurisdiction.
- Ensuring Due Process: The requirement of a transit remand ensures that the accused is not held unlawfully in unfamiliar locations and that a legal authority (the magistrate) reviews the arrest.

Key Aspects of Transit Remand

- Production Before Magistrate: The arrested person must be presented before the nearest jurisdictional magistrate, regardless of the court that will ultimately try the case.
- Magistrate's Role: The magistrate's function is to ensure the arrest's legality and the police's authority to transfer the person. They cannot decide the case's merits during this phase.
- Legal Obligation: The police are legally obligated to obtain a transit remand order to take the accused to the competent court where the offence is registered.

Relevant Legal Provisions and Cases

- Article 22 of the Indian Constitution: This constitutional provision necessitates safeguards for arrested persons, which transit remand helps to fulfill.
- Section 167 of the Code of Criminal Procedure (CrPC): This section, which the Bharatiya Nagarik Suraksha Sanhita (BNSS) updates, deals with the procedure when an investigation cannot be completed within 24 hours, including the mechanism for transit remand.
- Gautam Navlakha v. NIA (2021): A Supreme Court ruling affirmed that a magistrate must grant a transit remand even when the arrest is outside the Special Court's jurisdiction, but the magistrate's power does not extend to merits.

In India, any nearest Magistrate can issue a transit remand order to facilitate the transfer of an accused arrested outside the jurisdiction of the case to the police station in the place where the crime was registered. The Magistrate must verify that the police have valid grounds and supporting documents for the remand before authorizing the accused's movement to a jurisdictional court. This process ensures the accused's production before the competent magistrate without delay, as mandated by Article 22(2) of the Constitution.

- Bharatiya Nagarik Suraksha Sanhita (BNSS): Under the BNSS, Section 187 empowers a Magistrate to authorize transit remand. Section 82 BNSS outlines the procedure for arrests outside the issuing court's jurisdiction, requiring production before the nearest Magistrate for transit remand orders.

- Article 22(2) of the Constitution: Mandates the production of an arrested person before a Magistrate within 24 hours of arrest, excluding travel time.

Role of the Nearest Magistrate

- Verify Police Compliance: The Magistrate must ensure the police have a valid basis for transit remand, supported by entries in the case diary and other relevant documents like the FIR, arrest memo, and witness statements.

- Issue Transit Remand Order: If satisfied, the Magistrate can authorize the movement of accused to the police custody or judicial custody for the purpose of transport to the court with jurisdiction over the case.

- Not a Substitute for Substantive Remand: The transit remand is for transferring the accused and is distinct from the detention that occurs under the court with substantive jurisdiction.

Process for a Transit Remand

1. **Arrest Outside Jurisdiction:** A police officer arrests an accused in a place different from where the case is registered.

2. **Production Before Nearest Magistrate:** The arrested person is produced before the nearest Magistrate along with a prayer for transit remand.
3. **Magistrate's Application of Mind:** The Magistrate reviews the police's documentation and reasons for the transit remand.
4. **Issuance of Order:** The Magistrate issues an order for the accused to be moved to the police or judicial custody for transit.
5. **Production Before Jurisdictional Magistrate:** The police then must produce the accused before the court competent to take cognizance of the offence, without undue delay.

The law of transit remand requires Magistrates to apply judicial mind. In Manubhai Ratilal Patel v. State of Gujarath(2013), the Supreme Court held that remanding the accused is judicial function. Magistrates must justify transit remand based on materials. Mechanical orders are invalid. The law of transit in India mandates reviewing case diaries, arrest grounds and legal representation. In Sandeep Kumar v. State (2019) Delhi High Court quashed the Transit remand order for lacking scrutiny. It prevents arbitrary detention.

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WORKSHOP-III

Paper Presentation on

Protection of Life and Liberty- cautious approach by the courts of Magistrate and Special Sessions Judges

By
M.S.H.R.T.CHAKRAVARTHI
I Additional Civil Judge (Junior Division),
Vizianagaram

PROTECTION OF LIFE AND LIBERTY

The concept of right to ‘Life and Liberty’ as enshrined under Article 21 of the Constitution of India, being a guaranteed fundamental right undoubtedly is very wide in its scope and applicability and with the advent of the modern strides in jurisprudence, with revolutionary pronouncements by the Apex court in judgment after judgment, especially after Maneka Gandhi v. Union of India[1], over past three decades or so has assumed wider connotations and implication. The Supreme Court has not only overruled A.K.Gopalan v. Union of India AIR 1950 SC 27 case but has widened the scope of the words 'personal liberty' considerably. Bhagwati, J. (as he then was) observed:

"The expression 'personal liberty' in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Articel 19".

The Court said that the provision relating to fundamental rights should be interpreted widely; Bhagwati, J., said:

"The attempt of the Court should be to expand the reach and ambit of the Fundamental rights rather than to attenuate their meaning and content by a process of judicial construction".

Under this noble concept everyone in this country has been guaranteed the right to life and liberty. Indian Judiciary though is restrained, in many ways has evolved itself as a savior of mankind by applying its judicial activism. The realist movement the latest branch of sociological jurisprudence which concentrates on decisions of law courts, regard and contend that law is what Courts say. Public interest litigation changed the character of judicial process by expending the locus standi rule. Right to life and personal liberty is the most cherished and pivotal fundamental human rights. The Supreme Court of India has created major reforms in the protection of human rights. Taking a judicial activist role, the court has put itself in a unique position to intervene when it sees violations of these fundamental rights.

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1. AIR 1978 SC 597

The right to protection of life and liberty is the main object of Article 21 and it is a right guaranteed against state action as distinguished from violation of such right by private individual Under Art. 21 right to life includes the right to live with “Basic Human Dignity” with the necessities of life such as nutrition clothing, foods, shelter over the head, facilities for cultural and socio-economic well being of every individual. Art. 21 protects the “Right to life” a guaranteed and derived there from the minimum needs for existence including a better tomorrow. The liberty of an accused cannot be interfered with except under due process of law. The expression ‘due process of law’ shall deem to include fairness in trial. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of fair investigation and trial. Every effort should be made by the print and electronic media to ensure that the distinctions between trial by media and informative media should always be maintained. Trial by media should be avoided particularly, at a stage when the suspect is entitled to the Constitutional protections. Invasion of his rights is bound to be held as impermissible.

Personal liberty means freedom from physical restraint and coercion which is not authorised by law. The word 'liberty' is a very comprehensice word and if interpreted it is capable of including the rights mentioned in Art. 19. But by qualifying the word 'liberty' the Court said, the import of the word 'personal liberty' is narrowed down to the meaning given in English law to the expression 'liberty of the person'. The majority took the view that Arts. 19 an 21 deal with different aspects of 'liberty'. Art.21 is guarantee against deprivation (total loss) of personal liberty while Art. 19 affords protection against unreasonable restrictions (which is only partial control) on the right of movement. Freedom guaranteed by Art. 19 can be enjoyed by a citizen only when he is a freedom and not if his personal liberty is deprived under a valid law.

In Kharak Singh v. State of UP AIR 1963 SC 1295., it was held that the expression 'life' was not limited to bodily restraint or confinement to prison only but something more than mere animal existence. In that case the petitioner, Kharak Singh, had been charged in a dacoity case but was released as there was no evidence against him. Under the U.P. Police Regulations, the Police

opened a history-sheet for him and he was kept under police surveillance which included secret picketing of his house by the police, domiciliary visits at nights and verification of his movements and activities. 'Domiciliary visits mean visits by the police in the night to the private house for the purpose of making sure that the suspect is staying home or whether he has gone out. The Supreme Court held that the domiciliary visits of the policemen were an invasion on the petitioner's personal liberty. By the term 'life' as used here something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg. It is true that in Article 21 the word 'liberty' is qualified by a word 'personal but this qualification is employed in order to avoid overlapping between those incidents of liberty which are mentioned in Article 19. An unauthorised intrusion into a person's home and the disturbance caused to him is the violation of the personal liberty of the individual. Hence the Police Regulation authorising domiciliary visits was plainly violative of Article 21 as there was no law on which it could be justified and it must be struck down as unconstitutional.

But in Govind v. State of M.P[2] , the Supreme Court held that M.P. Police Regulations 855 and 856 authoring domiciliary visits were constitutional as they have the force of law. These Regulations were framed by the Government under Section 46(2)(e) of the Police Act. The petitioner challenged the validity of those Regulations on the ground that they were violative of his fundamental right guaranteed in Article 21 which also includes the 'right of privacy'. The Supreme Court held that Regulations 855 and 856 have the force of law and, therefore, they were valid. As regards the 'right of privacy' the Court said that the right to privacy would necessarily have to go through a process of case by case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an examination from them which can be characterised as a fundamental right, the right is not absolute. Depending upon the character and antecedents of the person subject to surveillance and the

2. AIR 1975 SC 1379

object and limitations under which surveillance is made, it cannot be said that surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. The impugned Regulation 855 empowers surveillance only of persons against whom reasonable material exists to include the opinion that they show 'a determination to lead a criminal life. The petitioner was shown to be a dangerous criminal whose conduct showed that he was determined to lead a criminal life'. The Regulations imposed reasonable restrictions on the fundamental right of petitioner guaranteed in Article 21 and therefore, they are valid.

The protection of Article 21 is available even to convicts in jails. The convicts are not by mere reason of their conviction deprived of all the fundamental rights which they otherwise possess. Following the conviction of a convict is put into the jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practise" a profession. But the Constitution guarantees to them other freedom like the right to acquire, hold and dispose of property for the existence of which detention can be no impediment. Likewise. even a convict is entitled to the precious right guaranteed by Article 21 and he shall not be deprived of his life or personal liberty except according to procedure established by law. In D.B.M. Patnaik v. State of A.P[3] the petitioners, who were naxalite undertrial prisoners, were undergoing the sentence in the Central Jail, Vishakhapatnam. They contended that the armed police guards posted around the jail and the live-wire electrical mechanism fixed on the top of the jail was an infringement of their right to 'life' and 'personal liberty' guaranteed by Article 21 of the Constitution. The Court, however, held that in the present case the convicts were not deprived of their fundamental rights by the posting of police guards outside the jail. 146 naxalite prisoners were lodged in jail as a result of which usual watch and ward arrangement proved inadequate. Some prisoners had escaped from the prison. It was decided thereafter to take adequate measures preventing the escape of prisoners from jail. The Court said, "A convict has no right, more than any one else, to dictate, where guard to be posted to prevent the escape of prisoners.

3. AIR 1974 SC 2092

The installation of live-wire mechanism does not offend their right. It is a preventive measure intended to act as a deterrent and cause death only if a prisoner causes death by scaling the wall while attempting to escape from lawful custody. The installation of live-wire does not by itself cause the death of the prisoner.

In Babu Singh v. State of U.P AIR 1978 SC 527., it was held that 'refusal to grant bail' in a murder case without reasonable ground would amount to deprivation of personal liberty under Article 21. In that case six appellants were convicted by the Sessions Judge in a murder case. In appeal by the State the High Court convicted the appellants and sentenced them to life imprisonment. Five appellants had suffered sentence of 20 months and sixth was on bail. These appellants were the entire male members of their family and all of them were in jail. As such their defence was likely to be jeopardised. During appeal before the High Court the State did not press for their custody. Moreover, there was nothing to show that during the long period of five years when the appellants have been out of prison pending appeal before High Court there had been any conduct on their part suggestive of disturbing the peace of the locality, threatening any one in the village or otherwise thwarting the life of the community or the course of justice. The appellants applied for bail during pendency of their appeal before the Supreme Court. The Court held that refusal to grant bail amounted to deprivation of personal liberty of accused persons. Personal liberty of an accused or convict is fundamental and can be taken away only in accordance with procedure established by law. So, deprivation of personal liberty must be founded on the most serious consideration relevant to the welfare objectives of the society specified in the Constitution. In the circumstances of the case, the Court held that subject to certain safeguards, the appellants were entitled to be released on bail.

In Suk Das v. Union Territory of Arunachal Pradesh[4] , the Court has held that failure to provide free legal aid to an accused at the State cost, unless refused by the accused, would vitiate the trial. He need not apply for the same. Free legal aid at the State cost is a fundamental right of a person accused of an offence and this right is implicit in the requirement of reasonable, fair and just

4(1986) 25 SCC 401

procedure prescribed by Art. 21. This right cannot be denied to him on the ground that he has failed to apply for it. The Magistrate is under an obligation to inform the accused of this right and inquire that he wishes to be represented on the State's cost, unless he refused to take advantage of it. In that case the appellant was tried and sentenced to two years imprisonment under Section 506 read with Section 34, IPC. He was not represented at the trial by any lawyer by reason of his inability to afford legal representation. The High Court held that the trial was not vitiated since no application was made by him. On appeal the Supreme Court set aside the conviction on the ground that he was not provided legal aid at the trial which was violative of Art. 21 of the Constitution.

In Sunit Batra (No. 1) v. Delhi Administration AIR 1978 SC 1575, the important question raised before the Supreme Court was whether 'solitary confinement' imposed upon prisoners who were under sentence of death was violative of Articles 14, 19 20 and 21 of the Constitution. In this case the two convicts who were confined in Tihar Central Jail filed two petitions under Article 32, challenging the validity of Section 30 and Section 56 of the Prisons Act. Sunil Batra was sentenced to death by the District and Sessions Judge and his sentence was subject to the confirmation by the High Court and to a possible appeal to the Supreme Court. Batra complained that since by date of his conviction by Session Judge that was on 6th July, 1976 he was kept in solitary confinement till the Supreme Court intervened on 24th February, 1978. Charles Sobhraj, a foreigner, an under-trial prisoners challenged the action of the Superintendent of Jail putting him into bar fetters. He was arrested on 6th July, 1976 and detained under Section 3 of MISA. Since the time he was lodged in Jail he was put in bar fetters notwithstanding of the recommendation of the jail doctor that bar fetters be removed. It was contended that Section 30 did not authorise prison authorities to impose the punishment of solitary confinement. The Supreme Court accepted the argument of the petitioners and held that Section 30 of the Prison Act did not empower the prison authorities to impose solitary confinement upon a prisoner under sentence of death. Under Section 73 and Section 74, I.P.C., solitary confinement is itself a substantive punishment which can be imposed by a court of law. It cannot be left within the caprice of prison

authorities. The Court held that the expression "prisoner under sentence of death" in the context of Section 30(2) could only mean the prisoner whose sentence of death had become final and could not be annulled or violated by any judicial or constitutional procedure. Thus a prisoner was not under sentence of death till he had the right to appeal against this sentence or to appeal for mercy. If by imposing solitary confinement there is total deprivation of comraderie (friendship) amongst co-prisoners comingling and talking and being talked to, it would offend Article 21 of the Constitution. The liberty to move, mix, mingle, talk, share company with co-prisoners if substantially curtailed would be violative of Article 21 unless curtailment has the backing of law. Although solitary confinement was held to be violative of Article 21, Section 30 was held to be valid because the procedure prescribed under it for the curtailment of prisoner's liberty in jail, was fair and just within the meaning of Article 21. If Section 30 is interpreted in this manner its obnoxious element is removed and it cannot be said that there is deprivation of personal liberty without the authority of law. In the case of Charles Sobhraj it was contended that Section 56 of the Prison Act justified putting him into bar fetters. The petitioner contended that Section 56 was violative of Articles 14 and 21 as conferred unguided and arbitrary powers on the Superintendent to confine a prisoner in irons. The Court held that continuously keeping a prisoner in fetters day and night reduces the prisoner from a human being to an animal and that this treatment was cruel and unusual that the use of bar fetters was against the spirit of the Constitution. Section 56 lays down certain conditions under which it can be done. Since these conditions were not present in the instant case therefore putting bar fetter cannot be justified. Section 56 is however valid. The petitions were therefore dismissed.

In Hussainara Khatoon (No. 1) v. Home Secretary, State of Bihar AIR 1979 SC 1360, a petition for a writ of habas corpus was filed by number of under-trial prisoners who were in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to a speedy trial" a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In United States speedy trial is one of the constitutionally guaranteed right under the Sixth

Amendment. Bhagwati, J., (as he then was) held that although, unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case. No procedure which does not ensure a reasonable quick trial can be regarded as 'reasonable, fair or just'. For this reason the Court ordered the Bihar Government to release forthwith the under-trial prisoners on their personal bonds. In Husainara Khatoon (No. 2) AIR 1979 SC 1369 and Husainara Khatoon (No. 3) AIR 1979 SC 1377 cases the Court reiterated the same view. In a significant judgment in Abdul Rehman Antuley v. R.S. Nayak AIR 1992 SC 1630, the Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21 is available to accused at all stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

The concerns underlying the right to speedy trial from the point of view of the accused are:-

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused shall not be subjected to unnecessary or unduly long detention point of his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trial shall be minimal; and

(c) undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

The court said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial.

As regards the time limit the Court said that it has to be decided by balancing the attendant circumstances and relevant factors, including nature of

offence, number of accused and witnesses, the workload of the court etc. No time limit can be fixed for speedy trial. If the court comes to the conclusion that the right to speedy trial of an accused has been infringed the charges for the conviction shall be quashed. But this is not the only course open. The nature of offence and other circumstances may be such that quashing of proceedings may not be in the interest of justice. In such case it may make an order that the trial may be concluded within a fixed time and where it is concluded reducing the sentence.

In Sunil Batra (No. 2) v. Delhi Administration AIR 1980 SC 1579, it was held that the practice of keeping under-trials with convicts in jails offended the test of reasonableness in Art. 19 and fairness in Art. 21. The under-trials are presumably innocent until convicted and if they are kept with criminals in jail it violates the test of fairness of Art. 21. Krishna Iyer, J., delivering the majority judgment, held that integrity of physical person and his mental personality is an important right of a prisoner, and must be protected from all kinds of atrocities. In that case the petitioner did not seek his release from the jail because he was undergoing a sentence of life imprisonment but he did seek protection from inhuman and barbarous treatment inflicted upon him in jail. The petitioner was subjected to physical torture by a warden of the Tihar Jail as means to extract money from the petitioner. Batra, a convict, came to know this act and brought the incident to the knowledge of the Court through a letter. The Court converted this letter into a habeas corpus petition and approved and reiterated the specific guidelines laid down by Supreme Court in Sunil Batra's case (No. 1) AIR 1978 SC 1675, before punishing a prisoner, the Court gave following directions to the Central and State Governments and the Jail authorities: (1) that the petitioner's torture was illegal and he shall not be subjected to any such torture until fair procedure is complied with, (2) No corporal punishment or personal violence on the petitioner shall be inflicted, (3) Lawyers nominated by the D.M., Session Judge, High Court and the Supreme Court will be given all facilities to interview, right to confidential communications with prisoners, subject to discipline and security considerations. Lawyers shall make periodical visit and report the concerned Court the result of their visits, (4) Grievance deposit boxes shall be

maintained in jails which shall be opened by D.M. and the Sessions Judges frequently. Prisoners shall have access to such boxes, (5) D.M. and Sessions Judges shall inspect jails once every week, shall make enquires into grievances remedial, and take suitable actions. (6) No solitary or punitive cell, no hard labour or dialatory charge, denial of privileges and amenities, no transfer to other prison as punishment shall be imposed without judicial approval of the Sessions Judge.

In Vakil Prasad Singh v. State of Bihar AIR 2009 SC 1822, the Court has again emphasised the need for speedy investigation and trial of constitutional protection enshrined in Article 21 of the Constitution.

In Prem Shankar v. Delhi Administration AIR 1980 SC 1535, the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. In that case the validity of certain clauses of Punjab Poclie Rules were challenged as violation of Arts. 14, 19 and 21 of the Constitution. Krishna lyer, J., delivering the majority judgment held that provisions in paras 26, 22 that every under-trial who was accused of a non-bailable offence punishable with more than three years jail-term would be handcuffed, were violative of Arts. 14, 19, 21 of the Constitution. Handcuffing should be resorted to only when there is "clear and present danger of escape" breaking out the police control and for this there must be clear material, not merely an assumption. In special circumstances the application of iron is not ruled out. But even where in extreme cases, handcuffing is to be put on the prisoner, the escorting authority must record simultaneously the reasons for doing so otherwise under Art. 21 of the procedure would be unfair and bad in law. This is implicit in Art. 21 which insists upon fairness, reasonableness and justice in the procedure for deprivation of life and liberty. His Lordship said:-

"Handcuffing is prima facie inhuman and, therefore, unreasonable, is overharsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Art. 21"

In Sunil Gupta v. State of M.P. (1990) 3 SCC 119, the petitioners were educated persons and social workers, who were remanded to judicial custody

were taken to court from jail and back from court to the prison by the escort party handcuffed. They had staged a 'dharna' for a public cause and voluntarily submitted themselves for arrest. They had no tendency to escape from the jail. In fact, they even refused to come out on bail but chose to continue in prison of the public cause. It was held that this act of the escort party was violative of Art. 21 of the Constitution. There was no reason recorded by the escort party in writing for this inhuman act. The Court directed the Government to take appropriate action against the erring escort party for having unjustly and unreasonably hand-cuffing the petitioners.

Law does not allow detention unless there is legal sanction for it. Detention in custody of the police is disfavoured, and even in the case of an accused, such detention can only be with the authority of a Magistrate. In the context of detained person, the legal term which is being used very commonly is “remand” which means to send back the arrested person who is waiting to conclude his trial, in the custody of competent authority. Remand is the process of keeping a person in custody before the actual process of trial. The object behind furthering detention is to keep the person away from the society, for the security of the society and the security of the person himself. It is also necessary that he is present for further investigation and inquiry and he does not evade the process of law. Remand is usually granted when the court is of the opinion that the required investigation cannot be completed in given time and there is reasonable doubt that the concerned person is involved in the commission of the offence.

Remand is an aid to the successful completion of an investigation. In other words, it is the remand where we send back the accused into the custody of police or that of the magistrate for collecting evidence and completion of investigation. In a nutshell, the purpose of remand is to facilitate completion of investigation.

In a landmark case in 2014, Arnesh Kumar v. State of Bihar the Supreme Court very clearly stated that: *The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier*

manner. Before a Magistrate authorises detention under section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied.

The Criminal Procedure Code 1973 does not authorise detention by the police for more than twenty-four hours after the arrest. Sections 56 and 57 of Cr.P.C make it quite clear. Section 56 provides that a police officer making an arrest without warrant shall, without unnecessary delay, take or send the person arrested before a magistrate. Article 22 (2) of the Constitution of India and Section 57 of Cr. P.C. give a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in the custody beyond the said period without the authority of a magistrate. These two provisions clearly manifest the intention of the law in this regard and therefore it is the magistrate who has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody. This is the point from where the role of magistrate comes into picture, and some powers are conferred by the statute for making an arrest by police subject to restraints and judicial supervision and scrutiny to protect the fundamental right to life under Article 21 of the Constitution of India. Imposition of such restraint is clearly the recognition of rights of the arrested person as has been held in a plethora of cases viz. *State (Delhi Admn.) v. Dharam Pal and others, 1982 Crl. L.J.1103; Central Bureau of Investigation vs. Anupam J. Kulkarni, 1992 AIR 1992 SCR (3) 158.*

Types of Remand (Under Cr.P.C.)

On the basis of custody, there are two types of remand:

(1) Police remand

(2) Judicial remand

(1) Police remand: In general, police remand comes first out of the above two. When an accused person is sent back to the police station for further inquiry and investigation, it is called police remand.

(2) Judicial remand: It refers to a situation where the accused is sent back to jail on being produced before the court within 24 hours after the registration of FIR in case of cognizable offence for further investigation.

Object & Scope of Section 167 Cr.P.C.

The object and scope of Section 167 Cr.P.C. is well-settled that it is supplementary to S. 57 Cr.P.C It is clear from S. 57 that the investigation should be completed in the first instance within 24 hours and if cannot be done, the arrested person should be brought by the police before a magistrate as provided under Section 167. In other words, the object of this provision is two-fold; firstly, that the law does not favour detention in police custody except in special cases and that too for reasons to be stated by the Magistrate in writing, and secondly, to enable such person to make a representation before a Magistrate.

Section 167 of Cr.P.C does not confer power on a Magistrate to dispense with police custody but what it does is to empower him to extend such custody beyond what is permitted under Section thereof. Reading these two sections together one can safely conclude that Section 167 comes into play only when:

1. The accused is arrested without warrant and is detained by a police officer (Section 41 Cr.P.C)

2. It appears that more than twenty-four hours will be needed for investigation,

3. There are grounds for believing that the accusation or information against him is well founded, and

4. The officer in charge of the police station or the investigating officer not below the rank of a Sub-Inspector forwards the accused before the nearest Magistrate along with a copy of entries in the diary.

When this happens, the Magistrate may authorise the detention of the accused detention either in police custody or judicial custody as such the Magistrate thinks fit, or the Magistrate may refuse to detain the accused if adequate grounds does not exist as per his satisfaction.

Procedure to be Followed by the Nearest Magistrate

In the matter of remand, the magistrate exercises discretionary functions, keeping in view all the facts and circumstances of the case including the nature of the charge, the gravity of the alleged offence, the area of investigation, the antecedents of the accused and all other relevant factors which may appropriately help the court in determining whether to keep the accused in custody or to release him on bail. The magistrate authorising detention of the accused under this section has complete freedom to remand the accused to whatever custody he thinks fit or to refuse remand if not required. While deciding an application of remand under this section, court must apply its mind on the material produced before it, and just to pass an order is not sufficient rather a reasoned order for the same is required. The magistrate has to exercise his judicial mind while deciding whether or not the detention of the accused in any custody is necessary. The magistrate should consider all available materials including the copy of the case diary before authorizing detention. The order of detention is not to be passed mechanically as a routine order on the request of the police for remand.

Firstly, magistrate has to scrutinise following things:

✓ First information report

✓ Case diary

✓ Duly signed Forwarding letter given by the officer in charge of police station or the police officer making investigation

✓ Whether arrest has been made as per section section 41 Cr.P.C. or not, and if not compliance of section 41A Cr.P.C. must be ensured.

✓ Memorandum of arrest prepared as per section 41B Cr.P.C, attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made; and countersigned by the person arrested; and shall contain the time and date of arrest.

Memorandum of evidence submitted by the police officer, and It is an obligation of the Magistrate to ensure that there must not be an infringement of

the indefeasible right of the accused to life or personal liberty, except in accordance with law. It is the duty imposed on the Magistrate, before whom the arrested person is produced, to satisfy himself that following requirements have been complied with:

✓ An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained. It is the duty of the police officer to inform the arrested person about this right when he is brought to the police station.

✓ An entry shall be required to be made in the diary as to who was informed of the arrest.

✓ 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 period of 8 to 12 hours after the arrest.

✓ 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.

✓ 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.

✓ It is the duty of Magistrate to inquire whether arrested person was given ill treatment by police as instructed in para 3(1) of chapter I of The Criminal Manual. This direction was also issued in the case of Sheela Barse vs. State of Maharashtra AIR 1983 SC 378.

✓ The arrestee should be subjected to medical examination by the 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 concerned State or Union Territory.

✓ Section 50 (2) Cr.P.C. lays down that if arrest is made without warrant in a bailable case, the accused should be informed of his right to be released on bail after furnishing sureties.

✓ Copies of all the documents including the memo of arrest, referred above, should be sent to the Magistrate for his record, in case accused was produced before the magistrate without jurisdiction

✓ Accused must be informed to have his counsel, and if he is unable to hire, legal aid would be ensured for him.

The **Hon'ble Supreme Court**, has in the case of **Arnesh Kumar Vs State of Bihar And Another (2014) 8 SCC 273**, held as follows: "Our endeavour in this judgement is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically". In this case the Hon'ble Supreme Court has issued following directions in respect of all offences which are punishable with imprisonment for a term which may be less than 7 years or which may extend to 7 years; whether with or without fine:

(a) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the I.P.C is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C;

(b) All police officers be provided with a check list containing specified subclauses under Section 41(1)(b)(ii);

(c) The police officer shall forward the check list duly filed and furnish the reasons and material which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(d) The Magistrate while authorizing 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;

(e) 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;

(f) Notice of appearance in terms of Section 41(A) of Cr.P.C 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;

(g) 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 High Court having territorial jurisdiction;

(h) Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate

concerned shall be liable for departmental action by the appropriate High Court.

Further it has also been said that the 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.

INFORMING THE GROUNDS OF ARREST:

Article 22 of the Constitution reads thus:

“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."

Clause (1) of Article 22 provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest.

Section 50 of CrPC (Section 47 of the BNSS), which reads thus:

"50. Person arrested to be informed of grounds of arrest and of right to bail.—

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

The Honourable Supreme Court of India has in catena of decisions held that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

Once a person is arrested, his right to liberty under Article 21 is curtailed. When such an important fundamental right is curtailed, it is necessary that the person concerned must understand on what grounds he has been arrested. the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are

not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law. The procedure established by law also includes what is provided in Article 22(1).

The Hon'ble Apex Court in Ram Kishore Arora Vs. Directorate of Enforcement 2024 (7) SCC 599, 'that the phrase 'as soon as may be' was considered by the Hon'ble Apex Court. It was held that it must be performed as soon as possible, at the outer most within 24 hours of arrest. In the case on hand, the petitioner was arrested on 20.09.2024. Above facts establish that on the same day, he was communicated with the grounds of arrest. Therefore, Article 22(1) of the Constitution as well as section 47(1) of BNSS, 2023 were complied with'

In-re Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551, Pankaj Bansal Vs. Union of India 2023INSC866 and Prabir Purkayastha Vs. State of NCT of Delhi 2024INSC414, Constitutional mandate declared by Apex Court in the above judgements is that "Any Officer arresting a person for any offence, as soon as may be informed him/her of grounds of arrest, as laid down in Article 22(1) of the Constitution of India and it is a safeguard to a person arrested on charges of committing an offence. Further, the arrested person be informed of the grounds of arrest in writing. It must be applied pari passu to a person arrested in a case under any law. Any infringement of this fundamental right would vitiate the process of arrest and remand". The Hon'ble Apex Court in Prabir Purkayastha's case at para 22 observed that "the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused". The Hon'ble Supreme Court in Madhu Limaye, Pankaj Bansal, Prabir Purkayastha and Vijay Madanlal Choudhary v. Union of India 2022 SCC Online

SC 929 held that right to be ‘informed’ on the grounds of arrest under Article 22(1) of the Constitution of India has no exception. If it is violated it would vitiate the whole process of arrest as well remand. The arrestee shall be released forthwith. It was further observed that mere fact that a charge sheet has been filed in the matter also would not valid the irregularity, and the unconstitutionality committed at the time of arresting the accused and remand. Therefore, undoubtedly, it shall be complied with when a person arrested under the provisions of IPC or any other law without any exceptions. The Hon’ble Apex Court in Prabir Purkayastha’s case explained the difference between the ‘reasons for arrest’ and ‘grounds of arrest’, stating that the grounds of arrest may convey to the arrested accused all basic facts, on which he was being arrested to provide him an opportunity of defending himself against the custodial remand and to seek bail. Thus, the grounds of arrest would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’, which are general in nature.

The Hon’ble Apex Court in Pankaj Bansal’s case, which relates to an offence under Prevention of Money Laundering Act, 2002 observed that in Madhu Limaye’s case a three judge bench observed that “it would be necessary for the State to establish that, at the stage of remand, Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest”. Therefore, to comply mandate of Article 22(1) of the Constitution of India and section 47(1) of BNSS, 2023 in its sprit, I am of the considered opinion that the grounds of arrest must be informed in writing conveying the basic facts, on which the accused was arrested to provide him an opportunity of defending himself against the custodial remand and to seek bail.

The Hon'ble High Court of Andhra Pradesh held in criminal petition No. 6807 of 2024 dt 28.10.2024 directed as follows:

> "49. In the light of judgments of the Hon’ble Apex Court in Pankaj Bansal and Prabir Purkayastha, this Court directs all the Magistrates/Judges in the District Judiciary, who are exercising power of remand in the State of Andhra Pradesh, shall record about their satisfaction of compliance or otherwise of the requirement, mandated under Article 22(1) of the Constitution of India and Section 47(1) of BNSS, 2023 without fail, in addition to the directives of this Court in Jitteboina Guravaiah and another Vs. Officer on Special Duty, Anti-Naxalite Squad, Kothagudem and others case."

There is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard.

The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court to seek release on bail, if he/she so chooses.

Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

WORK SHOP-III

Paper Presentation on 20-09-2025

By

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DEFAULT BAIL

Default bail is an indefeasible right of the accused, not a discretionary grant by the court.

The accused must apply for default bail after the time limit has expired but before the charge sheet is filed once the charge sheet is filed, the right to default bail is lost, even if it was filed after the stipulated time period Violation of Fundamental Rights:

The right to default bail is linked to Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

In summary: Default bail is a safety mechanism to prevent the state from detaining an individual for an extended period without sufficient grounds, and it is only available if the prosecution fails to complete the investigation within the mandated time frame.

Default bail is the right of an accused person to be released from custody if the investigating agency fails to complete the investigation and file a charge sheet within a legally specified period. Under Indian law, this period is generally 60 or 90 days, depending on the gravity of the offense, as outlined in Section 167(2) of the Criminal Procedure Code, corresponding under section 187(2) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The purpose of this provision is to protect the personal liberty of an individual from indefinite detention due to delays in the investigation process.

Default Bail and Charge-Sheet

Parul Thapaliyal*

Default Bail, also known as compulsive bail, is provided under Section 167(2) of the Criminal Procedure Code. Section 167 of the Code while enunciating the law on remand

also affords protection to accused against detention during inordinate delay in completion of investigation. It provides that, wherein the investigation is not completed within the prescribed period of 60 or 90 days, as the case may be, thereafter the accused can avail his right of default bail on the expiry of the said period. In other words, where the investigation agency has not filed a charge-sheet within a period of 60 days (or 90 days in the case of offences punishable with death or imprisonment for not less than 10 years) of the investigation then the accused becomes entitled to be released on bail. Thus, where no charge-sheet has been filed within the stipulated period the accused can no longer be detained in custody, on the expiration of such period. Hence on 61 or 91 day of remand, the right to seek default bail accrues in favour of the accused.

Conditions for grant of default bail :-

In Hitendra Vishnu Thakur vs. State of Maharashtra Hon'ble Apex Court held that “Parliament has introduced the amendment to Section. 167(2) Cr.P.C prescribing the outer limit within which the investigation is to be completed. If the same is not completed, the accused would acquire a right to be released on bail and such release on bail shall be deemed to be under Chapter XXIII of the Code.”

Though the accused becomes entitled to be enlarged on bail, in a situation contemplated by Section167, however it is essential that following conditions are met out:

1. Application by the accused: Though the accused becomes entitled to be released on bail where the charge-sheet has not been filed within the prescribed period of 60 or 90 days, however, in order to avail the benefit of default bail it is mandatory that the accused should file an application before the Court praying for his release on bail. The Court cannot exercise its jurisdiction and grant default bail merely on the completion of period in absence of an application by the accused. It often happens that the advocate of the accused orally apprise the court with the expiry of remand period and makes submission for grant of default bail however the mandate of Section 167 requires the advocate of the accused to formally file an application stating that since the period of remand has expired and no charge-sheet has been filed, the accused is liable to be

released on bail. Default bail is an indefeasible right of the accused but in order to enjoy the same the accused is required to approach the court in the procedure prescribed. Mere expiry of the period does not suffice the requirement of the grant of default bail and the accused will not be automatically released. In other words on the lapse of the period and non- filing of the charge-sheet the right of default bail becomes operative however to exercise the same an application before the magistrate is a must.

This aspect was explicitly dealt in Hitendra Thakur case wherein the Hon'ble Supreme Court observed that “thus we find that once the period for the charge-sheet has expired and either no extension of has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 read with Section 167 of the Code and the Designated Court shall release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA with section 167 of the Code, the Court must on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating prosecution agency…”

It was further held that the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail as directed by court.

Thus, it is imperative that the accused has to move an application to realize his right of default bail. Mere oral submission of the expiry of period and non-filing of challan will frustrate his right.

2. Investigation should be pending: Filing of charge-sheet under Section 173 of the Code results into culmination of investigation. Once the charge-sheet is filed the provision of Section 167 is no longer applicable since it is a cognizance stage. Therefore the accused can avail the benefit of default bail only if the charge-sheet has not been filed within the prescribed period. Default bail is available only during the pendency of the investigation. Thus it is important that the application for default bail should be filed before the filing of charge-sheet. If the accused fails to do so and charge-sheet is filed meanwhile then his right extinguishes. This proposition was

clarified by the Hon'ble Supreme Court in the landmark judgment of Sanjay Dutt vs. State in the following words:

“The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filling of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after filing of the challan. The custody of the accused after the challan is filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure.

If that right had accrued to the accused but it remained unenforced till the

filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because section 167 ceases to apply.”

The Court further said. “The indefeasible right of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which ensures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The right of the accused to be released on bail after filing on the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at the stage.”

Thus, as soon as the period of remand expires i.e the 61 or 91 day, the accused has to move an application under Section 167(2)CrPC if the charge-sheet has not been filed. Where he fails to do so and on 62 day charge-sheet is filed then his right extinguishes. Thereafter he cannot approach the court under Section 167(2) as that stage has been crossed. Post filing of charge-sheet the remand of accused is taken under Section 309 of the Code, therefore, the benefit under Section 167 cannot be re-visited.

In State vs. Mohd. Asrafat Bhat the Hon'ble Apex Court reiterated the settled position “such right (right of default bail) is enforceable only prior to the filing of the charge-sheet. But the accused did not avail himself of the right and charge-sheet in the meantime been filed, his right to obtain statutory bail under Section 167(2) proviso (a) or (b) has been extinguished.”

Thus, if an accused falls short of asserting his claim to be enlarged on bail for the failure of investigating agency to file challan within time permissible by law, then the accused cannot emphasize that he had an indefeasible right to exercise at any time notwithstanding the fact that in the meantime the charge-sheet is filed.

Furthermore, where once the default bail is allowed then subsequent filing of the charge-sheet does not ipso-facto result into cancellation of default bail. For the cancellation of the same the law regarding cancellation of the bail will have to be satisfied.

Hon'ble Supreme Court enunciated the above mentioned proposition in Mohammed Iqbal Madar and others vs. State of Maharashtra wherein the Court held, “It cannot be held that an accused charged of any offence, including offences under TADA, if released on bail because of the default in completion of the investigation, then no sooner the charge-sheet is filed, the order granting bail to such accused is to be cancelled. The bail of such accused who has been released, because of the default on the part of the investigating officer to complete the investigation, can be cancelled, but only on the ground that after the release, charge-sheet has been submitted against such accused for an offence under TADA. For cancelling the bail, the well-settled principles in respect of cancellation of bail have to be made out.”

Now after discussing the conditions it is pertinent to discuss one more aspect i.e when is accused is said to have 'availed of' his right of default. Is it when he applies or when he furnishes bond or when he is released on bail? It is important to discuss this very aspect to understand as to filing of charge-sheet in which stage bars the right of default bail. In Sanjay Dutt case the Court held that if the right of seeking default bail have not been already availed of prior to filing of the charge-sheet, by the accused, then this right no longer stays enforceable after filing of the charge sheet. Thereafter in Uday Mohanlal Acharya vs State of Maharashtra case Hon'ble Apex Court interpreted the term “availed of”. It was held that:

"Does it (availed) mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression "availed of" to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose to Section 167 (2) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not….an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of arrest of the accused."

The above interpretation have been reiterated by Supreme Court in

Union Of India Through CBI vs. Nirala Yadav @Raja Ram Yadav@Deepak and thus when the accused files an application for default bail within permissible time, willing and prepared to furnish bail bonds and no charge-sheet has been filed till that time, then it will be held that the accused has availed his right. Now if after this a charge-sheet is filed then the right of accused will not extinguish.

Charge-sheet and Application on same day:

Situation where application and charge-sheet is filed on the same day can it be said that the accused has availed of his right and is entitled to default bail. From the above discussed case laws it is a settled position that when accused files application and is prepared to offer bail on being directed then it is deemed that the accused has availed

of his right. But the Magistrate while entertaining the application has to satisfy himself that one, the statutory period for filing of charge-sheet has expired and second, that the charge-sheet has not been filed. It has already been discussed that as soon as the charge-sheet is filed the provision of Section 167 cease to apply.

The magistrate cannot ignore the charge-sheet in order to grant default bail.

Where both are filed on the same day the Magistrate will not entertain the application of the bail as the stage cease to exist. In Sanjay Dutt case Court held that:

“if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation…both of them should be considered together.”

This means that the application for extension will be considered, mere filing of application for bail does not make court to ignore application for extension. If an analogy is drawn from this, it can be safely held that if charge-sheet and bail applications are filed on the same day the Court cannot ignore the charge-sheet and go on to decide the application presuming absence of the charge-sheet. In fact, the Court has to consider the charge-sheet and not the bail application as by filing of the charge-sheet the stage for application of bail has expired. In this scenario however the accused has availed of his right but by filing of charge-sheet at the very same day, the application fails in satisfying all the conditions necessary for the grant of bail.

Similar contingency was discussed by Hon'ble Justice B.N Agrawal in his dissenting opinion expressed in Uday Mohalal Acharya case wherein he said:

“What will happen if on the 61 day an application for bail is filed for being released on bail on the ground of default by not filing the challan by the 60 day and on the 61 day the challan is also filed by the time the Magistrate is called upon to apply his mind to the challan as well as the petition for grant of bail? …such an application for bail has to be dismissed because the stage of proviso

to Section 167(2) is over, as such right is extinguished the moment the

challan is filed.”

Thus, even if we abide by the majority view that the accused has availed of his right by filing the application but in the given circumstance where both application and charge-sheet are filed on the same day, the dissenting opinion justifies that the stage for entertaining the application is over.

Similar situation was discussed by Hon'ble High Court of Delhi in Sanjay Bhatia vs. State wherein the charge-sheet and application for default bail was filed on same day i.e 31.1.2014. The Court held that: “The right under section 167 (2) of Cr.P.C to be released on bail on default if charge-sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of charge sheet…after the filing of the charge sheet, if the accused is to be released on bail, it can be only on merits.”

However, this is the view only when both applications and charge- sheet are filed on the same day. Once the application for bail is filed and charge-sheet has not been filed, the application needs to be disposed off without undue delay. It is not at all intended that the application is to be kept pending in order to provide opportunity to investigation agency to frustrate accused's right by filing a charge-sheet subsequently. Subsequent filing of charge-sheet has no bearing on default bail if already 'availed of'.

Thus, in order to conclude, it can be said that though liberty is the most sacrosanct right, however, to have a more cohesive society, it is required that individual liberty is regulated in the interest of all. The Constitution of India also subscribe to this idea wherein it provides that liberty can be curtailed by the procedure established by law. Rejection of default bail after filing of charge-sheet is under a well-established procedure laid down in Section 167 of the Code of Criminal Procedure, 1973.

GROUNDS ON WHICH BAIL CAN BE GRANTED/ REJECTED

Bail can be granted or rejected based on the gravity of the offense, the accused's criminal history, and the risk of flight or interference. Courts will consider if granting bail poses a risk of the accused absconding, tampering with evidence, influencing witnesses, or committing further crimes. Conversely, bail may be granted if there is no evidence of these risks, especially for less serious offenses, but specific conditions may apply to ensure the accused's appearance in court

Grounds for Rejection of Bail: Common Reasons and How to Avoid Them

Introduction

Bail is a critical component of the criminal justice system, ensuring an accused individual's temporary release from custody while awaiting trial. The process is governed by principles of liberty and justice, aiming to balance individual rights with societal safety. However, obtaining bail is not guaranteed and can be denied under specific circumstances. In this blog post, we will explore the grounds for rejection of bail, common mistakes made during bail applications, and strategies to mitigate these risks. Drawing on real Indian case laws and legal interpretations, this guide is designed to empower advocates, litigants, and readers with a comprehensive understanding of the topic. Importance of Understanding Bail Denial

Bail denial can significantly impact an accused individual's life. Not only does it result in prolonged detention, but it may also harm their mental well-being and social standing. Moreover, a well-prepared bail application can mean the difference between freedom and incarceration during trial proceedings.

Background and Legal Framework

Under Indian law, bail is governed primarily by the Code of Criminal Procedure, 1973 (CrPC), with additional principles derived from constitutional protections such as Articles 14, 19, and 21 of the Constitution of India.

The CrPC outlines three primary types of bail:

- Regular Bail (Section 437 and 439): Granted to a person who is already under arrest and in custody.
- Anticipatory Bail (Section 438): Granted when a person apprehends arrest.
- Interim Bail: Temporary bail granted pending a final decision on a regular or anticipatory bail application.

Despite these provisions, courts exercise considerable discretion when deciding on bail, ensuring that it aligns with the principles of justice and the facts of the case.

Common Grounds for Rejection of Bail

1. Seriousness of the Offense

Courts often deny bail in cases involving grave offenses such as murder (Section 302 IPC), rape (Section 376 IPC), terrorism (under UAPA), or narcotics-related crimes

(NDPS Act). The rationale is that the severity of the crime raises concerns about societal impact and public safety.

Case Law Example: *State of Gujarat v. Mohanlal Jitamalji Porwal (1987)*

The Supreme Court emphasized that the seriousness of the offense is a crucial factor in bail considerations. The nature of the crime may outweigh other factors, especially if it involves heinous acts.

2. Likelihood of Tampering with Evidence

If the court believes the accused may influence witnesses or tamper with evidence, bail is often denied. This risk is particularly relevant in cases involving close personal or professional relationships between the accused and witnesses.

Case Law Example: *Nimmagadda Prasad v. CBI (2013)*

The Supreme Court held that granting bail should be avoided if there is a reasonable apprehension of the accused obstructing justice by tampering with evidence.

3. Risk of Absconding

Courts reject bail if there is a significant risk that the accused might flee to avoid trial. Factors influencing this decision include the accused's financial status, foreign connections, and previous conduct.

Case Law Example: *State of U.P. v. Amarmani Tripathi (2005)*

The court highlighted the need to assess the accused's propensity to abscond before granting bail.

4. Repeat Offender or Criminal History

An accused with a prior record of convictions or ongoing criminal cases may find it harder to secure bail. This is because such a history raises concerns about recidivism and public safety.

Case Law Example: *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (2005)*

The Supreme Court stated that a history of prior offenses is a valid consideration for denying bail.

5. Threat to Public Order or National Security

Cases involving threats to public safety, communal harmony, or national security often lead to bail denial. This includes crimes under special statutes like the Unlawful Activities (Prevention) Act (UAPA) and National Security Act (NSA).

Case Law Example: *Zahira Habibulla H Sheikh v. State of Gujarat (2004)*

The court observed that societal impact and public peace are vital considerations in bail matters.

Legal Strategies to Avoid Bail Rejection - (Grounds for Rejection of Bail: Common Reasons and How to Avoid Them)

While the rejection of bail is influenced by several factors, a well-prepared application and compelling arguments can significantly improve the chances of success. Below are legal strategies to mitigate the risks of bail denial:

1. Crafting a Strong Bail Application

A bail application is more than a procedural formality—it is the first impression the court has of the accused's case. To strengthen the application:

Highlight Lack of Prima Facie Evidence: Demonstrate that the evidence against the accused is weak or circumstantial. For example, in cases of anticipatory bail, argue that there is no credible evidence linking the accused to the crime.

Case Reference: *Sanjay Chandra v. CBI (2011)*

The Supreme Court granted bail, noting that the evidence presented did not conclusively establish guilt, and the accused's continued detention was unnecessary.

Emphasize the Accused's Cooperation: Include details of the accused's compliance with investigative authorities, such as attending interrogations and providing necessary documents.

Establish Community and Family Ties: Strong familial or community ties can demonstrate that the accused is unlikely to abscond. Provide supporting documents like residence proof or affidavits from family members.

2. Addressing the Court's Concerns

Anticipate the potential objections the prosecution may raise and proactively address them:

Risk of Absconding: Offer reasonable assurances, such as surrendering a passport, providing a permanent address, and agreeing to regular attendance at court hearings.

Case Reference: *Siddharam Satlingappa Mhetre v. State of Maharashtra (2010)*

The Supreme Court highlighted the importance of personal liberty and granted anticipatory bail on the condition that the accused would cooperate with the investigation.

Tampering with Evidence: Propose stringent conditions to reassure the court, such as restricting communication with witnesses or staying away from specific locations.

Gravity of the Offense: Argue proportionality, particularly in cases where the alleged offense does not warrant severe punishment. For instance, in economic offenses, highlight that the accused poses no physical threat to society.

3. Use of Case Laws to Strengthen Arguments

Quoting relevant and recent judgments can reinforce the bail application. Consider using precedents where the courts have upheld the principles of personal liberty:

For Anticipatory Bail:

Gurbaksh Singh Sibbia v. State of Punjab (1980)

The Supreme Court established that anticipatory bail is a right and should not be denied unless there are specific, compelling reasons.

For Regular Bail:

Arnesh Kumar v. State of Bihar (2014)

The court emphasized that arrest and detention should not be routine and granted bail to the accused in a dowry harassment case.

4. Presenting a Persuasive Argument in Court

Advocates play a crucial role in convincing the court to grant bail. To present a strong case:

Focus on the Presumption of Innocence: Remind the court that the accused is presumed innocent until proven guilty, and pre-trial detention should not be punitive.

Minimize Risk Perception: Argue that the accused is willing to abide by all bail conditions imposed by the court.

Highlight the Impact of Incarceration: Stress the potential harm caused to the accused's livelihood, family, and mental health if bail is denied.

5. Customizing Arguments Based on the Offense

Tailor your defense strategy according to the type of case:

Economic Offenses: Emphasize restitution or cooperation with investigations.

Criminal Cases: Argue that bail conditions can sufficiently mitigate risks without incarceration.

NDPS Cases: For minor or non-commercial quantities, highlight procedural lapses or lack of evidence of intent.

Case Reference: *State of Kerala v. Rajesh (2020)*

The Supreme Court held that under NDPS Act cases, bail can be granted if there is no prima facie evidence of commercial quantities.

Procedural Safeguards and Tips for Effective Representation in Bail Matters

Apart from preparing a strong application, it is crucial to follow proper procedures and adopt effective practices to enhance the chances of securing bail. Procedural errors or missteps can often lead to rejection, even when the merits of the case are strong.

1. Adhering to Procedural Requirements

Failure to comply with procedural safeguards can weaken the bail plea. Ensure that the following are in place:

Jurisdiction: File the application in the correct court based on the stage of the case (trial court, sessions court, or High Court).

Supporting Documents: Attach relevant documents, such as the FIR, charge sheet (if available), and any prior court orders. These documents provide context and help the court evaluate the case.

Verification and Affidavits: Ensure the application is properly verified and supported by affidavits wherever required.

Timely Filing: Avoid unnecessary delays in filing the application, as procrastination may be perceived as negligence or lack of urgency.

2. Ensuring Effective Representation

An advocate's ability to present a convincing case significantly influences the court's decision. Some best practices include:

Know the Facts Thoroughly: Have a detailed understanding of the case, including the allegations, evidence, and procedural status. Anticipate questions from the judge and prepare precise answers.

Argue on Legal and Constitutional Grounds: Stress the right to liberty under Article 21 and the presumption of innocence. Use case laws and statutory provisions to back your arguments.

Maintain Composure and Professionalism: A respectful and confident demeanor in court can leave a positive impression on the judge. Avoid confrontational arguments with the prosecution or the court.

3. Leveraging Procedural Loopholes

Procedural lapses by the prosecution can often work in favor of the accused. Identify issues such as:

Delay in Filing the Charge Sheet: If the investigation has not concluded within the stipulated period (60 days for most offenses and 90 days for serious offenses), the accused is entitled to statutory bail under Section 167(2) of the CrPC.

Case Reference: *Uday Mohanlal Acharya v. State of Maharashtra (2001)*

The Supreme Court held that statutory bail is an indefeasible right once the stipulated period lapses and no charge sheet is filed.

Failure to Follow Arrest Guidelines: Procedural safeguards such as those outlined in *D.K. Basu v. State of West Bengal (1997)* should be meticulously checked. Any violation can strengthen the bail plea.

4. Building on Favorable Case Law

Citing relevant and favorable judgments not only bolsters the bail plea but also showcases due diligence. Some notable judgments include:

For Bail in Economic Offenses:

P. Chidambaram v. Directorate of Enforcement (2019)

The court clarified that economic offenses, though grave, do not automatically preclude bail unless there is clear evidence of intent to abscond or tamper with evidence.

For Bail in Cognizable Offenses:

Jagmohan Bahl v. State (NCT of Delhi) (2014)

The court reiterated that mere registration of an FIR is not sufficient to deny anticipatory bail unless corroborated by prima facie evidence.

For Juvenile or Women Accused:

Sheela Barse v. Union of India (1986)

The court emphasized leniency in granting bail to juveniles and women accused, considering their vulnerability.

5. Common Missteps to Avoid

Several common errors can lead to bail rejection. Avoid these pitfalls:

Incomplete or Ambiguous Plea: Ensure the application is clear, precise, and addresses potential objections preemptively.

Overlooking Bail Conditions: Suggest reasonable conditions proactively, such as travel restrictions, periodic reporting to the police, or submission of sureties.

Ignoring Procedural Defaults: Failing to identify procedural lapses by the prosecution weakens the case.

Real-Life Case Studies and Conclusion

To provide a practical perspective on bail applications, let us analyze real-life case studies where courts in India dealt with crucial aspects of bail. These cases illustrate how legal principles and effective strategies influence the outcomes of bail applications.

Real-Life Case Studies

- Sanjay Chandra v. CBI (2011)

  Facts: The accused, involved in the 2G spectrum allocation case, sought bail while the trial was ongoing. The prosecution opposed bail, citing the seriousness of the economic offense.

  Court’s Decision: The Supreme Court granted bail, emphasizing the principle of proportionality. It held that denying bail solely based on the gravity of the offense, without evidence of tampering or absconding, would violate the accused’s right to liberty.

  Key Takeaway: Emphasize proportionality and argue against prolonged pre-trial detention when there is no risk of obstruction of justice.

- Arnesh Kumar v. State of Bihar (2014)

  Facts: The accused was charged under Section 498A of the IPC for alleged cruelty to his wife. The trial court denied bail, citing the offense’s cognizable nature.

Court’s Decision: The Supreme Court granted bail, stressing that arrest and custody are not mandatory in every case. The court also issued guidelines to avoid routine arrests in 498A cases.

Key Takeaway: Argue that the court should focus on the necessity of custody rather than the cognizable nature of the offense.

- State of Rajasthan v. Balchand (1977)

  Facts: The accused sought bail after being charged with a bailable offense. The prosecution opposed bail, raising concerns about public safety.

  Court’s Decision: The Supreme Court granted bail, stating, “Bail is the rule, jail is the exception.” It highlighted the presumption of innocence and the importance of personal liberty.

  Key Takeaway: Reinforce the presumption of innocence and use the “bail is the rule” principle to counter opposition.

- Moti Ram v. State of Madhya Pradesh (1978)

  Facts: The accused, unable to afford surety, was denied bail despite the magistrate's approval.

  Court’s Decision: The Supreme Court criticized the lower court’s decision, stating that bail conditions should be humane and not financially oppressive.

  Key Takeaway: Argue for reasonable bail conditions, particularly in cases involving economically disadvantaged individuals.

Conclusion

The bail process is a nuanced aspect of criminal law, balancing individual liberty with societal interests. While courts consider multiple factors before granting bail, understanding common grounds for rejection and adopting strategic approaches can significantly improve the likelihood of success.

Key insights to remember include:

- Focus on addressing the court’s primary concerns, such as risks of absconding, tampering with evidence, and public safety.
- Tailor arguments to the specific circumstances of the case, supported by robust legal reasoning and precedents.
- Proactively propose reasonable bail conditions to mitigate judicial apprehensions.
- Avoid procedural lapses by ensuring that the bail application is complete, precise, and well-supported with documentation.

By following these guidelines, advocates and litigants can navigate the complexities of bail applications more effectively, safeguarding the rights of the accused while upholding the principles of justice.

IMPOSITION OF CONDITIONS WHILE GRANTING BAIL

Courts may impose conditions while granting bail to ensure the accused attends court, doesn't commit further offenses, or tamper with evidence. Common conditions include appearing before the police at intervals, residing in a specific location, or staying away from the victim or certain areas. However, conditions that are excessive, impractical, or violate fundamental rights, such as restricting political engagement, are often struck down by higher courts, as they can effectively deny bail.

Purpose of Conditions

Ensure Compliance:

Conditions prevent the accused from absconding or evading the legal process.

Maintain Public Safety:

They can safeguard the victim, witnesses, and the public from potential harm by the accused.

Prevent Interference:

Conditions aim to stop the accused from threatening or bribing witnesses or tampering with evidence. Examples of Common Bail Conditions

Reporting to Police: The accused must report to a police station at specified intervals.

Location Restrictions: The court may direct the accused to reside in a particular area or stay away from a specific locality or victim's residence.

No Further Offenses: The accused must not commit any new offenses while on bail.

Evidence Tampering Prevention: The accused is prohibited from inducing, threatening, or making promises to witnesses to dissuade them from cooperating with the investigation or trial. Limitations on Conditions

Fundamental Rights:

Bail conditions cannot violate an individual's constitutional rights, such as the right to participate in political activities.

Excessive Conditions:

Stringent financial conditions or other strict requirements that make it impossible for a genuinely needy person to secure bail can be deemed as no bail at all and are liable to be set aside by higher courts.

Reasonable and Practical:

Conditions must be reasonable, practical, and tailored to the specific facts and circumstances of the case. When Conditions May Be Modified or Quashed

If a condition is found to be unconstitutional or violates fundamental rights, it can be quashed by a higher court.

Excessively burdensome conditions can be relaxed or set aside to ensure meaningful release on bail.

The court may set aside or modify conditions imposed by a lower court if they are found to be unnecessary or unjust.

Showing the contexts in which conditions for granting bail

> In W.P. No.13517 of 2015, wherein release of the detenu Sri Chavva Ramana Reddy is sought, it is stated that the detenu was granted unconditional bail in two, and conditional bail in four, of the 14 cases referred to in the grounds of detention, before the order of detention was passed; however, in the order and grounds of detention, it is erroneously stated that the detenu was granted bail only in the first two incidents; the sponsoring authority did not place the bail orders before the detaining authority; and, as the detaining authority was not aware of the bail orders, he had erroneously arrived at the subjective satisfaction of the need to detain the detenu. In the counter-affidavit, filed in W.P. No.13517 of 2015, it is stated that, as on the date of passing the order of detention, the detenu was granted bail only in two incidents i.e. O.R.No.94 of 2009-2010 and O.R.No.61 of 2010-2011; and both the bail orders with the bail applications were placed before the detaining authority. In the reply affidavit, it is stated that the detenu was granted conditional bail on 04.03.2015 in Crime Nos.58 of 2014, 74 of 2014, 2 of 2015 and 11 of 2015; and though conditional bail was granted to the detenu on 04.03.2015, in four of the nine incidents, before the detention order was passed on 12.03.2015, the detaining authority had not considered the orders granting conditional bail.

Unlike in Sunila Jain 45 where a copy of bail application, for an offence which was bailable, was not furnished and a copy of the order granting bail and the order of the remand were furnished to the detenu, in the present case the orders granting conditional/conditional bail were neither considered by the detaining authority nor were copies thereof furnished to the detenu. The conditional orders of bail restricted the movement of the detenus and required them to appear before the officer concerned periodically. If these conditional orders of bail had been brought to his notice, it may well have resulted in the detaining authority arriving at the subjective satisfaction that the detention of the detenus were unnecessary. Reliance placed by the Learned Advocate-General on Sunila Jain45 is, therefore, misplaced.

Neither the order nor the grounds of detention refer either to the conditional or the unconditional orders of bail granted in favour of the detenus. As noted hereinabove failure of the detaining authority to consider the orders granting conditional bail would vitiate the orders of detention. It is, however, contended by the Learned Advocate General that the detaining authority has, in the counter-affidavit filed before this Court, asserted that he had considered the bail orders, and failure to refer to the bail orders, in the order or the grounds of detention, is of no consequence.

In Jayanta Jadav54 and L.M.S. Ummu Saleema55 the question, whether an order of detention can be sustained by way of an explanation in the affidavit filed before the Court later, did not arise for consideration. While the two judge bench of the Supreme Court, in G. Reddiah56, no doubt held that the subjective satisfaction of the detaining authority can be reflected in the affidavit justifying the detention order, the earlier Constitution bench judgments of the Supreme Court in Ram Manohar Lohia30 and Mohinder Singh Gill53, and the three judge bench judgment of the Supreme Court in Gordhan Das Bhanji52, were not noticed therein. It is settled law that all subsequent decisions by benches comprised of lesser number of Judges should be read in the light of the earlier Constitution Bench decisions. (N. Meera Rani v. Govt. of T.N.). In cases where a High Court finds any conflict between the views expressed by larger and smaller benches of the Supreme Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court, in such a case, is to try to find out and follow the opinion expressed by larger benches of the Supreme Court in preference to those expressed by smaller benches of the Supreme Court which practice, hardened as it has into a rule of law, is followed by the Supreme Court itself. (State of U.P. v. Ram Chandra Trivedi ; Union of India v. K.S. Subramanian). The legal position is that, in the hierarchical set up of Courts, the High Court is bound by the decisions of the Supreme Court. However, when a smaller bench of the Supreme Court lays down a proposition contrary to and without noticing the ratio decidendi of the earlier larger Benches, such a decision will not become the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution on all the Courts within the country. (Sakinala Harinath v. State of A.P.). Judicial discipline requires that the opinion expressed by larger benches of the Supreme Court, in preference to those expressed by smaller benches of the Supreme Court, should be followed. (K.S. Subramanian59; O.Ramachandra Reddi v. The Director, DRDL, Hyderabad). The order and the grounds of detention should reflect the material, on the basis of which the detaining authority arrived at the subjective satisfaction of the need to detain the detenu in preventive custody. As there is no reference therein to the orders passed by Courts granting conditional bail to the detents, the detention orders are vitiated by non-consideration of vital and relevant material. The assertion to the contrary, in the counter-affidavits filed before this Court, would not justify upholding the, otherwise, invalid detention orders. IV. SATISFACTION ARRIVED AT BOTH ON GROUNDS OF PUBLIC ORDER AND PUBLIC PEACE AND LAW AND ORDER: ITS CONSEQUENCE:

Stefan Mueller vs State Of Maharashtra on 23 June, 2010

Showing the contexts in which conditions for granting bail

3. The learned Counsel for the petitioner vehemently contended that as per the order dated 4.10.2008, the learned Special Judge, had specifically directed that the present petitioner be charged for the offence punishable under section 20(b)(ii)(A) and Section 27. Each of the said offences is punishable with imprisonment which may extend to six months, or with fine, or with both. The learned Counsel contends that in view of the amendment in the NDPS Act in the year 2001, the stringent conditions of grant of bail

as prescribed under Section 37(1)(b) are applicable only to the offences punishable under sections 19, 24 and 27-A and also to the offences involving commercial quantity. The said conditions are not applicable to any other offence. He also contended that section 37 does not declare in so many words that all the offences under the NDPS

The conditions imposed by clause (b) are not applicable to the offences punishable under sections 20(b)(ii)(a) and sec. 27.

6. Now the question is whether any conditions can be imposed while granting bail for these offences under the Cr.P.C. For that purpose, it will be necessary to find out whether these offences are bailable or non-bailable, as the language of Section 37(1) nowhere declares that all the offences under the NDPS Act shall be non-bailable. It will also be necessary to find out whether the conditions can be imposed under Cr.P.C. while granting bail for the offences under section 20(b)(ii)(A) and Sec.27 which are punishable with imprisonment which may extend to six months,or with fine,or with both.

> (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

From the language of sub-section (1)(a), it is clear that the High Court or the Court of Sessions may impose the conditions of granting bail, if the offence is of the nature specified in sub-section (3) of Sec.

437.Thus the legislature has made it clear that the conditions can be imposed only if the accused is facing the offence of a particular nature specified in Section 437(3). There are no such conditions which can be imposed while granting bail in a bailable offence under sec. 436.

15. Under Sec. 37(1)(b) of the NDPS Act, additional conditions or limitations under that Section are applicable only to specified offences in that section. The offences under Section 20(b)(ii) (A) and Sec. 27 are not such offences and therefore, the conditions or limitations put in Section 37(1)(b) are not applicable to them and as they are bailable offence under Cr.P.C. also, no conditions can be imposed except about appearance before a Court at particular place or on particular date. In view of this, it will be clear that the conditions not to travel abroad without permission of the Court is also not permissible under the law for these offences. As such, the conditions which were imposed by the Court while granting bail could not have been imposed. However, it mayl be noted that those conditions were imposed while granting bail to the accused on 21.3.2007 when the offence was registered under different provisions of the NDPS Act along with section 14 of the Foreigners Act. However, the learned Special Judge, while directing to frame charges by order dated 4.10.2008, has discharged the petitioner for the offence punishable under Section 14 of the Foreigners Act. In view of these circumstances, the conditions not to travel abroad without permission of the Court is liable to be quashed and the impugned order whereby the Special Judge had refused permission to the petitioner to travel abroad is also liable to be quashed.

POWER OF MODIFY CONDITIONS OF BAIL

The High Court and Court of Session in India hold the primary power to modify bail conditions under Section 439(1)(b) of the Criminal Procedure Code (CrPC), which allows them to alter or remove conditions set by a lower court, such as a Magistrate. While the High Court and Court of Session can also modify or relax their own imposed conditions, a lower court like a Magistrate generally lacks the power to review or alter its own bail orders or those of higher courts. Any modification of bail conditions is based on judicial discretion, focusing on fairness and the changing circumstances of the accused, but must align with the facts and legal principles of the case.

Who can modify bail conditions?

High Courts and Courts of Session:

These higher courts have extensive power under Section 439(1)(b) of the CrPC to modify or delete any conditions imposed by a Magistrate when releasing someone on bail.

The Granting Court:

The court that initially imposed the bail conditions has the inherent power to modify them if circumstances change, or if the conditions are found to be unjust or unreasonable.

Grounds for modification

Unjustified or Onerous Conditions:

If the imposed bail conditions are overly harsh, disproportionate, or become impossible to fulfill due to the accused's circumstances (e.g., financial hardship), a court may relax or alter them.

Fairness and Justice:

The power to modify conditions is exercised to ensure that the conditions are fair and reasonable, and that they align with legal principles and the specific facts of the case.

Inadvertent Mistakes:

Conditions may be modified if they were imposed due to a mistake or error, and their alteration would serve the interests of justice.

How to seek modification

An application is filed by the accused before the High Court or the Court of Session, highlighting the onerous nature of the conditions and demonstrating how their modification aligns with legal principles.

The application should reference relevant case law and statutory provisions to strengthen the argument for modification.

C. Pathummu W/O. Churrapilakkil Assain ... vs Commr. And Secy. To Govt. Home (Ssa) ... on 13 July, 1994

Showing the contexts in which modification of bail order

2. The detenu was arrested on 7.1.1993. He was initially remanded to custody by the Chief Judicial Magistrate, Trivandrum. On 14.1.1993, the detenu filed a petition for bail before the Additional Chief Judicial Magistrate, Ernakulam. In his bail application, the detenu has retracted the statement given by him before the Customs officers on the ground that it was involuntary and false. The Additional Chief Judicial Magistrate,

Ernakulam passed an order dated 19.1.1993 granting bail to the detenu on certain conditions which are set out therein. The detenu, however, could not comply with those conditions. He filed an application for variation of the bail order before the Additional Chief Judicial Magistrate, Ernakulam. By his order dated 11.2.1993, the Additional Chief Judicial Magistrate, Ernakulam modified the bail order. The detenu, however, could not comply even with the modified bail order. He filed an application before this Court on 23.2.1993 for further modification of the bail order. The bail order was, therefore, further modified by this Court. The detenu complied with the bail conditions and was released on bail. On 20.4.1993, an order has been passed by the Commissioner and Secretary to the Government of Kerala under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the 'COFEPOSA Act') for detention of the detenu. Pursuant to this order, the detenu was arrested on 6.5.1993. He was supplied with the grounds of detention and documents on 7.5.1993.

21. It is next urged that the grounds of detention do not refer to subsequent modifications of the bail order. Looking to the circumstances of the present case, we do not see how subsequent modifications of the bail order can be said to be material. As the modifications of the bail order were not relied upon in the grounds of detention, the same need not be supplied to the detenu. It was urged that the last application for modification of bail which was made before this Court contained a new version of the detenu to the effect that he had been given the box in question to carry by another passenger on the same flight and this version was not placed before the detaining authority. This belated version of the detenu in the last bail application is not reflected in either his first or second application. The earlier bail applications have merely contained a retraction of the statement made by the detenu before the Customs authorities. The detaining authority was fully aware of the fact that the detenu had retracted his statement which he had made before the Customs authorities. The third bail application, in our view, is not a material document in the present circumstances. As it is not relied upon in the present case a copy of that document need not be furnished to the detent.

23. Petitioner has relied upon the decision of the Supreme Court in Sita Ram v. State of Rajasthan . In that case, the documents which showed that the detenu was granted bail and that he had retracted the confession were not placed before the detaining authority. The Supreme Court said that this would vitiate the satisfaction arrived at by the detaining authority. This case will have no application to the facts of the present case where there is an express reference to the bail application in the detention order. The only question we have to consider is whether subsequent applications for modification of the order of release on bail and the subsequent order modifying the conditions for release on bail are to be considered as material documents. In the circumstances of the present case, we do not see how they are material documents.

24. Learned Advocate for the petitioner has also relied in this connection on the decision of the Supreme Court in State of U.P. v. Kamal Kishore Saini . In that case also, inter alia, the bail application and the facts mentioned therein were not placed before the detaining authority. This was one of the reasons for holding that the order of detention was vitiated. In the present case, the bail application was placed before the detaining authority. Only subsequent applications for modification of the bail have not been so placed. We do not see how the subjective satisfaction of the detaining authority has been in any manner vitiated by not placing these subsequent applications for modification of bail order before the detaining authority. Since these documents have not been considered by the detaining authority, they need not be furnished to the detenu.

PAPER PRESENTATION

(ON THE TOPIC OF POST CONVICTIONAL BAIL)

(ON THE TOPIC OF POWER OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL)

(Session No. 4)

(FOR THE III WORKSHOP TO BE HELD ON 20-09-2025)

by

J. SOWMYA JOSPHINE,
Additional Judicial Magistrate of First Class,
Parvathipuram.

POST CONVICTIONAL BAIL

1. Introduction:

Bail, in criminal law, is a process by which a person accused or convicted of a criminal offence is temporarily released from custody, either on personal recognizance or upon furnishing security or surety. The fundamental philosophy behind the grant of bail is anchored in the presumption of innocence until proven guilty. However, once a conviction occurs, this presumption is rebutted. Thus, post-conviction bail stands on a different legal footing than pre-trial or anticipatory bail. In Indian law, bail post-conviction is not a matter of right but of judicial discretion, guided by established principles, statutory provisions, and precedents.

2. Statutory Framework for Post-Conviction Bail

The primary statutes governing post-conviction bail are:

- **Code of Criminal Procedure, 1973 (CrPC)**
    - *Section 389(1)*: Empowers the appellate court to suspend the execution of the sentence during the pendency of an appeal and to release the convicted person on bail.
    - *Section 389(3)*: Provides for bail to a convict who was on bail during the trial and has been sentenced to imprisonment for a term not exceeding three years.
    - *Section 437 and 439*: These sections govern the general powers of Magistrates and High Courts/Sessions Courts to grant bail even after conviction in certain circumstances.
- **Indian Penal Code, 1860 (IPC)**: While the IPC defines offences, the punishment under these sections is relevant for determining the gravity of the offence and the discretion in granting bail.
- **Special Legislations**: Laws such as the NDPS Act, POCSO Act, UAPA, etc., have specific and often more stringent provisions regarding bail post-conviction.

3. Meaning and Scope of Post-Conviction Bail

Post-conviction bail refers to the temporary release of a convicted person from custody pending the outcome of an appeal against the conviction or sentence. It is distinct from pre-trial bail as the person has already been found guilty by a competent court. The scope of this bail includes:

- Bail pending appeal.
- Bail after conviction but before surrender (interim bail).

- Suspension of sentence and release on bail under Section 389 CrPC.
- Bail granted by appellate courts, including High Courts and the Supreme Court.

4. Judicial Discretion and Principles for Granting Post-Conviction Bail

The courts, while exercising discretion under Section 389 of CrPC, must balance the rights of the convict with the interest of justice. The following are key principles developed through judicial pronouncements:

- **Likelihood of Success in Appeal**: If the appeal has merit or substantial grounds, courts may consider suspending the sentence and granting bail.
- **Length of Sentence**: Shorter sentences (especially under 3 years) often result in bail under Section 389(3).
- **Delay in Hearing the Appeal**: If the appellate court is unlikely to hear the appeal for a long time, courts may release the convict on bail to prevent undue incarceration.
- **Health and Age**: Poor health, old age, or special conditions (like pregnancy) may be considered compassionate grounds for post-conviction bail.
- **Nature of the Crime**: Heinous offences like murder, rape, terrorism, or offences under special laws are less likely to result in post-conviction bail due to public interest and societal impact.
- **Conduct During Trial**: If the accused was on bail during trial and complied with conditions, it can favourably influence the court's decision.
- **Possibility of Absconding**: If the convict has a history of evasion or is likely to abscond, courts may deny bail.

5. Section 389(1) CrPC: Suspension of Sentence and Bail

This is the most commonly invoked provision for post-conviction bail. It empowers the appellate court to:

- **Suspend the Execution of Sentence**: It means that the court puts on hold the punishment awarded to the convict.
- **Release the Convict on Bail**: After suspension of sentence, the court may grant bail with or without sureties.
- The court must **record reasons in writing** for suspending the sentence.
- The power is **discretionary**, not automatic, and the convict must approach the appellate court with a formal application.
- This provision is frequently invoked in appeals before the Sessions Court, High Court, and Supreme Court.

6. Section 389(3) CrPC: Automatic Bail in Certain Cases

Section 389(3) CrPC provides for a sort of automatic or *mandatory bail* in limited cases:

- The convict must have been on bail during trial.
- The offence should not be punishable with death or life imprisonment or imprisonment exceeding three years.
- The court, upon conviction, may allow the convict to be released on bail for a sufficient period to allow him to file an appeal.
- This provision ensures **continuity of liberty** for convicts with minor sentences, especially those who complied with bail conditions during trial.

7. Role of Appellate Courts

The **Sessions Court**, **High Court**, and **Supreme Court** have inherent and statutory powers to grant bail post-conviction.

- **Sessions Court**: Can grant post-conviction bail if the appeal is filed before it.
- **High Court**: Has broader jurisdiction and can entertain bail applications, especially under Articles 226/227 or during appeals.
- **Supreme Court**: Under Article 136 (Special Leave Petition), the Supreme Court can grant bail in appropriate cases post-conviction.

The higher the forum, the more stringent the scrutiny typically is, especially in serious offences.

8. Relevant Judicial Pronouncements

Several landmark judgments have shaped the jurisprudence of post-conviction bail:

- **Kiran Kumar v. State of M.P. (2001)**: The Supreme Court held that sentence can be suspended if the appeal is likely to take time and the convict has already undergone a substantial part of the sentence.
- **Bhagwan Rama Shinde Gosai v. State of Gujarat (1999)**: Clarified that post-conviction bail is not to be denied mechanically and that liberty should not be curtailed unnecessarily.
- **State of Haryana v. Hasmat (2004)**: Reiterated the requirement for recording reasons before suspending sentence.
- **Dinesh Kumar v. State of Rajasthan (2008)**: Held that the court must balance personal liberty with public interest while granting bail post-conviction.

9. Post-Conviction Bail in Special Laws

Special statutes often impose stricter conditions for bail post-conviction. For instance:

- **NDPS Act, 1985**: Section 37 requires courts to be satisfied that there are reasonable grounds for believing that the accused is not guilty and is not likely to commit further offences.
- **UAPA, 1967**: Bail is extremely difficult due to the presumption against bail under Section 43D(5).
- **POCSO Act, 2012**: Courts are cautious in granting bail, especially in cases involving minors.

In such cases, the **general principles of CrPC are overridden by specific statutory conditions**, making bail less accessible post-conviction.

10. Procedural Aspects of Filing Post-Conviction Bail

The following procedural steps are usually involved:

1. **Filing of Appeal**: The convict must file an appeal against conviction or sentence.
2. **Filing Bail Application**: Alongside the appeal or separately, the convict may file an application for suspension of sentence and bail.
3. **Grounds of Bail**: The application must specify the grounds such as delay in hearing, weak evidence, medical condition, etc.
4. **Notice to State/Public Prosecutor**: Courts usually issue notice to the prosecution to respond.
5. **Hearing and Order**: After hearing both parties, the court may allow or reject the bail application.

11. Conditions and Cancellation of Post-Conviction Bail

Courts may impose several conditions while granting bail:

- Regular attendance in court.
- Surrender of passport.
- Restrictions on leaving the jurisdiction.
- Reporting to the police station.

Bail can be **cancelled** if:

- The convict violates bail conditions.
- Tries to tamper with evidence.
- Absconds or commits another offence.

The prosecution or complainant may move an application for **cancellation under Section 439(2) CrPC** or **during the appeal**.

12. Human Rights Perspective and Post-Conviction Bail

The right to life and liberty under **Article 21 of the Constitution of India** continues even after conviction, though limited. Inordinate delay in disposal of appeals or continued incarceration of elderly, terminally ill, or vulnerable convicts has been frowned upon by courts. The **Supreme Court** has emphasized that jails are not warehouses and incarceration must have a purpose. Post-conviction bail, thus, is also a **tool of humanitarian justice**.

13. Historical Evolution and Comparative Perspective

The concept of **bail post-conviction** is not unique to Indian law. Its roots can be traced back to **English common law**, where appellate courts had discretion to suspend sentences and release convicts pending appeal. Indian law, largely modeled on the British legal system, has inherited this principle through the **Criminal Procedure Code (1898)**, which later evolved into the **CrPC, 1973**.

In comparison:

- In **the United States**, bail post-conviction is rare and highly discretionary; some states allow it for misdemeanors but not for felonies.
- In **the UK**, courts can grant bail pending appeal under the **Bail Act, 1976**, especially when there's a strong likelihood of success on appeal or delay in hearing.
- Indian courts, in contrast, have been more progressive in allowing post-conviction bail on humanitarian grounds, particularly in cases of health, age, or delay in justice.

14. Socio-Legal Dimensions of Post-Conviction Bail

The question of post-conviction bail is also deeply intertwined with broader **socio-legal issues**:

- **Overcrowding in Prisons**: A significant percentage of Indian prisons are overpopulated, and post-conviction bail helps reduce unnecessary burden on the prison system.
- **Access to Justice**: Convicts from poor or marginalized backgrounds may lack access to quality legal aid, and hence remain incarcerated even when they qualify for post-conviction bail.
- **Gendered Impact**: Women convicts, particularly mothers or pregnant women, face disproportionate hardships, and post-conviction bail can serve as a critical relief mechanism.

- **Rehabilitation and Reintegration**: Post-conviction bail can serve as an opportunity for the convict to reintegrate into society, especially where the appeal process takes years.

15. Post-Conviction Bail in Life Imprisonment or Death Sentence Cases

Granting bail in cases of **life imprisonment** or **death penalty** is extremely rare and done only in **exceptional cases**. However, courts have considered bail in such cases under the following circumstances:

- The appeal is not likely to be heard for several years.
- The convict has already served a significant portion of the sentence (e.g., 8–10 years).
- The convict is suffering from terminal illness.
- The convict is a senior citizen with poor health.
- In rare cases, where new evidence emerges that creates doubt over the conviction.

Case Law:

- *Shaheen Welfare Association v. Union of India* (1996): The Supreme Court held that when trial or appeal is unlikely to be concluded in the near future, continued detention would violate Article 21.

16. Bail Pending Special Leave Petition (SLP) in the Supreme Court

When a person is convicted and their appeal is dismissed by the High Court, they may file a **Special Leave Petition (SLP)** under **Article 136** of the Constitution. In such cases:

- The Supreme Court may grant **interim bail or suspension of sentence** pending the final decision on the SLP.
- The test applied is similar — merit in the SLP, delay in disposal, and humanitarian considerations.
- The application is filed along with or after the filing of the SLP.

This stage is often critical in high-profile or high-sentence matters.

17. Distinction Between Suspension of Sentence and Bail

Though often used interchangeably, **"suspension of sentence"** and **"grant of bail"** are distinct concepts:

- **Suspension of sentence** refers to temporarily halting the execution of punishment.
- **Bail** refers to release from custody on conditions.
- Under Section 389 CrPC, suspension must precede bail — i.e., once sentence is suspended, the court may consider bail.

- Courts must **record reasons** for both.

Understanding this difference is vital from a procedural point of view.

18. Challenges and Criticisms

Post-conviction bail, though well-intentioned, has certain criticisms:

- **Disparity in Access**: Often, well-connected convicts are able to get post-conviction bail more easily than the underprivileged.
- **Delay in Justice**: Some critics argue that granting bail post-conviction may undermine the deterrent effect of punishment.
- **Possibility of Misuse**: In certain cases, convicts misuse bail to delay proceedings, intimidate witnesses, or abscond.
- **Judicial Inconsistency**: Lack of clear statutory criteria leads to inconsistent decisions among courts.

These issues demand better **judicial training**, **uniform guidelines**, and **accountability mechanisms**.

19. Recommendations for Reform

To strengthen and streamline the jurisprudence on post-conviction bail, the following reforms are suggested:

1. **Framing of Judicial Guidelines**: Clear guidelines for granting bail post-conviction, especially in serious offences.
2. **Time-bound Appeals**: Fast-tracking appeals in which convicts are in custody.
3. **Improved Legal Aid**: Ensuring that convicts from marginalized communities have access to skilled legal assistance.
4. **Statutory Amendments**: Amending CrPC to expand Section 389(3) to include broader grounds for bail.
5. **Use of Technology**: Digital monitoring for convicts out on bail (e.g., GPS tracking) to reduce flight risk.

20. Conclusion

Post-conviction bail in Indian criminal law represents the intersection of justice, discretion, and the principle of proportionality. While the convict no longer enjoys the presumption of innocence, the judiciary plays a vital role in ensuring that liberty is not sacrificed unnecessarily. The procedure is not merely technical but must be approached with a balanced outlook — ensuring both **individual rights** and **societal interests**.

Post-conviction bail remains a **powerful tool** to balance the punitive needs of justice with the rehabilitative aspirations of criminal law. While the courts exercise caution, especially in heinous offences, they also recognize that prolonged incarceration,

especially when appeals are pending for years, can become a **punishment beyond the sentence** itself. A judicious, humane, and consistent approach, rooted in constitutional values, is the need of the hour to make post-conviction bail a meaningful component of Indian criminal justice.

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POWER OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL

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1. Introduction:

Anticipatory bail is a preventive relief granted under Section 438 of the Code of Criminal Procedure, 1973 (CrPC). It empowers a person who anticipates arrest in a non-bailable offence to apply for bail before actual arrest. The concept was introduced following the recommendations of the 41st Report of the Law Commission of India. It is an extraordinary yet essential safeguard under the Indian legal system that upholds the fundamental right to personal liberty under Article 21 of the Constitution.

The power to grant anticipatory bail is vested with the **Court of Session** and the **High Court**, thereby excluding the jurisdiction of Magistrates in this context. This paper aims to examine the scope, discretion, and limitations of the Sessions Court in granting anticipatory bail under the statutory and constitutional framework.

2. Legislative Background:

Section 438 of the CrPC reads as follows:

> "When 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; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail."

The phrase "if it thinks fit" underscores the discretionary nature of the relief. The provision was introduced to prevent undue harassment and arrest of individuals, especially when allegations are politically motivated or false.

3. Jurisdiction of the Sessions Court:

The Sessions Court has concurrent jurisdiction with the High Court to entertain an application under Section 438. The applicant may approach either court, although it is customary (and judicially advised) to approach the Sessions Court first.

Jurisdictionally, the Sessions Court may entertain an anticipatory bail application if the alleged offence was committed within its territorial limits or if the applicant apprehends arrest within that jurisdiction. Recent jurisprudence, particularly in *Priya Indoria v. State of Karnataka* (2023), has recognized even **transit anticipatory bail** in exceptional circumstances where the FIR is filed in another state.

4. Nature and Scope of Power:

The power to grant anticipatory bail is discretionary and must be exercised judiciously, based on material placed before the court. The discretion is not arbitrary but governed by legal principles developed through precedents.

The key considerations include:

- Nature and gravity of the accusation
- Role of the applicant in the alleged offence
- Likelihood of the applicant fleeing from justice
- Possibility of tampering with evidence or influencing witnesses
- Criminal antecedents, if any

It is neither possible nor desirable to lay down hard and fast rules for granting anticipatory bail, as held in *Gurbaksh Singh Sibbia v. State of Punjab* (1980).

5. Landmark Judgments Interpreting Section 438:

(i) Gurbaksh Singh Sibbia v. State of Punjab (1980)

A five-judge Constitutional Bench of the Supreme Court held that anticipatory bail is not limited to exceptional cases. It emphasized that the provision should be liberally construed to protect personal liberty. The Court ruled that discretion must be exercised judiciously, without mechanical adherence to rigid formulas.

(ii) Siddharam Satlingappa Mhetre v. State of Maharashtra (2010)

This case reiterated the liberal interpretation of Section 438 and emphasized that anticipatory bail can be granted even in cases of serious offences if the applicant satisfies the criteria. The Court discouraged unnecessary custodial interrogation.

(iii) P. Chidambaram v. Directorate of Enforcement (2019)

Here, the Court refused anticipatory bail citing the serious nature of economic offences. The judgment showed a trend toward a restrictive interpretation in certain high-profile or grave matters.

6. Procedure Before the Sessions Court:

An application under Section 438 must be supported by an affidavit outlining:

- Details of the FIR (if registered)
- Nature of the apprehension
- Grounds for seeking bail
- Undertakings or willingness to comply with conditions

The Sessions Court may issue notice to the Public Prosecutor, seek case diary, and allow for a hearing before deciding the application. Interim bail can be granted pending final disposal.

7. Imposition of Conditions:

Under Section 438(2), the Sessions Court may impose appropriate conditions, such as:

- Applicant shall make themselves available for interrogation
- Shall not leave the country without prior permission
- Shall not tamper with witnesses or evidence
- Shall furnish address and contact details to the Investigating Officer

These conditions must be **reasonable**, **relevant**, and **proportionate** to the apprehension of arrest and nature of the case.

8. Denial of Anticipatory Bail:

Anticipatory bail may be denied when:

- The accusation appears prima facie serious or well-founded
- The applicant has criminal antecedents
- There is a likelihood of absconding or influencing witnesses
- The offence involves national interest or sensitive matters (e.g., terrorism, sexual offences, economic fraud)

Courts have held that anticipatory bail should not be granted merely for the asking.

9. Transit Anticipatory Bail:

In *Sandeep Jain v. State (NCT of Delhi)* and later in *Priya Indoria v. State of Karnataka (2023)*, the Supreme Court recognized the power of Sessions Courts to grant **transit anticipatory bail**—i.e., temporary protection enabling the accused to approach the appropriate court in another jurisdiction. This is especially relevant in inter-state investigations.

This evolving jurisprudence extends the protective shield of Section 438 in the interest of justice and liberty.

10. Limitation and Duration:

Earlier, there was ambiguity whether anticipatory bail should be time-bound. However, the Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* (2020) clarified that anticipatory bail **need not be limited in duration** and can continue till the end of trial unless conditions warrant cancellation.

The Sessions Court may, however, impose a time-bound bail if the circumstances so require.

11. Difference Between Section 437, 438 and 439 CrPC:

Provision	Jurisdiction	Nature of Relief
Section 437	Magistrate	Regular bail in bailable/non-bailable

Provision	Jurisdiction	Nature of Relief
		offences
Section 438	Sessions Court / High Court	Pre-arrest bail (anticipatory bail)
Section 439	High Court / Sessions Court	Special powers to grant bail or cancel it

12. Cancellation of Anticipatory Bail:

Anticipatory bail can be cancelled under Section 439(2) CrPC by the Sessions Court or High Court if:

- There is misuse of liberty
- Applicant violates conditions
- New material emerges justifying arrest

The Court may direct surrender or direct the Investigating Officer to arrest if needed.

13. Constitutional Perspective:

The right to seek anticipatory bail is a facet of the right to life and personal liberty under **Article 21**. The provision serves as a bulwark against arbitrary arrest and custodial abuse. However, the Court must balance it with public interest, especially where arrest is necessary for effective investigation or public confidence.

The Sessions Court plays a vital role in upholding the constitutional mandate of personal liberty while also ensuring that justice is not hampered. The power under Section 438 CrPC is discretionary but must be exercised with responsibility and legal prudence.Judicial officers must weigh facts, assess risks, and ensure that bail orders under Section 438 protect both individual freedom and the integrity of the criminal justice system.

15. References:

1. Code of Criminal Procedure, 1973 – Section 438
2. Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565
3. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694
4. Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC

5. P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24
6. Law Commission of India – 41st Report
7. Priya Indoria v. State of Karnataka (2023)
8. Criminal Law Com

16. Detailed Procedural Aspects Before the Sessions Court:

Filing Procedure:

- Application must be submitted in the Sessions Court having territorial jurisdiction over the place of anticipated arrest.
- The applicant must file:
    - A detailed affidavit narrating the facts
    - Copy of FIR (if available)
    - Case diary or police communication (if arrest is anticipated)
    - Supporting documents, if any

Hearing Process:

- The Sessions Judge may issue notice to the Public Prosecutor.
- Interim relief (temporary protection from arrest) may be granted pending final hearing.
- The court hears both parties — defence and prosecution — before issuing final directions.

Final Order:

- If anticipatory bail is granted, it contains conditions under Section 438(2).
- The court may direct that bail be effective upon arrest, or may prevent arrest altogether if conditions are followed.

17. Guidelines for Drafting Anticipatory Bail Orders:

Judicial officers should ensure that anticipatory bail orders are:

- **Reasoned:** The order must record specific reasons for granting or denying relief.

- **Balanced:** It should reflect the balance between individual liberty and societal interest.
- **Conditional (when needed):** Conditions must not be oppressive but adequate to ensure cooperation.

Do's:

- Record prima facie findings of no custodial necessity
- Impose reasonable conditions (e.g., joining investigation)
- Provide protection for a limited or extended period as needed

Don'ts:

- Do not issue blanket protection in all future cases
- Avoid generic, unreasoned orders.

18. Comparative Analysis with Regular Bail:

Feature	Anticipatory Bail (Sec 438)	Regular Bail (Sec 437/439)
Timing	Pre-arrest	Post-arrest
Jurisdiction	Sessions Court / High Court	Magistrate (437), Sessions/HC (439)
Nature	Preventive	Curative
Custody	Not required	Already in custody
Conditions	Pre-emptive compliance	Based on conduct in custody

19. Abuse of Anticipatory Bail – Judicial Safeguards:

Some courts have raised concerns about misuse of anticipatory bail:

- Accused may misuse liberty to delay investigation
- Possibility of witness tampering or absconding

To safeguard against misuse:

- Courts conduct **preliminary scrutiny** of material
- Prosecution is given full opportunity
- Bail can be **cancelled** on violation of conditions

Judicial vigilance is necessary to ensure that anticipatory bail serves its purpose and doesn't become a shield for offenders.

20. Role of Sessions Court vs. High Court:

While both courts have concurrent jurisdiction, there are practical differences:

- Sessions Courts are **more accessible** to litigants, especially in rural areas
- High Courts may entertain complex or sensitive cases involving legal questions
- High Courts may be approached **in appeal or revision** if Sessions Court denies relief

It is judicially preferred to **approach the Sessions Court first**. Only in exceptional circumstances (bias, urgency, etc.) should the High Court be moved directly.

21. Cancellation of Anticipatory Bail – Expanded Grounds:

Under Section 439(2), the Sessions Court may cancel anticipatory bail if:

- New incriminating material is brought on record
- The accused misuses the liberty granted (e.g., threatens witnesses, absconds)
- Violation of any imposed condition
- Change in circumstances or conduct that warrants arrest

Illustration: If an accused was granted bail on the assurance of cooperation but later fails to appear before the IO, cancellation may be justified.

22. Situational Case Studies:

Case Study 1:

An accused anticipates arrest in a matrimonial cruelty case filed in another state. He applies for anticipatory bail in his local Sessions Court. Can it be granted?

The power of the Sessions Court to grant anticipatory bail under Section 438 of the Code of Criminal Procedure is both a constitutional safeguard and a judicial responsibility. While the statutory framework restricts the jurisdiction of the Sessions Court to grant anticipatory bail to cases where the offence is alleged to have been committed within its territorial jurisdiction, the evolving jurisprudence has recognized the practical and constitutional necessity of granting **transit anticipatory bail** in

appropriate cases. This remedy, though not expressly codified in the CrPC, is rooted in the broader interpretation of the **right to life and personal liberty under Article 21 of the Constitution**.

In today's context of increased inter-state mobility and the ease with which FIRs can be registered in remote jurisdictions, often driven by forum shopping or strategic harassment, courts must remain vigilant to prevent misuse of the criminal justice system. Transit anticipatory bail serves as an important judicial innovation to prevent arbitrary arrest and custodial abuse, especially when the accused resides in a different state and has genuine reasons for being unable to immediately approach the court having territorial jurisdiction over the FIR.

The role of the Sessions Court in such circumstances is not to conduct a detailed inquiry into the merits of the case, but to assess whether the applicant has made out a prima facie case of imminent arrest and hardship. The Sessions Court may, in the interest of justice and to protect personal liberty, grant **time-bound, conditional, and narrowly tailored protection**, typically for a few days, to allow the accused to approach the competent court for regular anticipatory bail.

However, this power must be exercised with caution. It should not be used to bypass or undermine the authority of the court having jurisdiction over the FIR. Nor should it become a tool for habitual offenders to delay investigation or evade due process. Transit anticipatory bail must remain an **extraordinary and limited relief**, justified by compelling circumstances, and used sparingly.

Ultimately, the Sessions Court must act as a **guardian of personal liberty** while maintaining the **delicate balance between the rights of the accused and the interests of investigation and public justice**. The judicial officer must apply sound discretion, consider evolving jurisprudence, and ensure that procedural justice does not defeat substantive justice. In doing so, the court not only enforces the letter of the law but also upholds the spirit of the Constitution.

Case Study 2:

The accused is a government officer charged with corruption under the PC Act. He seeks anticipatory bail from Sessions Court?

The grant or refusal of anticipatory bail in cases involving offences under the Prevention of Corruption Act requires a careful and nuanced approach by the Sessions Court. Corruption offences, by their very nature, constitute serious economic crimes that

strike at the heart of public trust and governance. The judiciary has repeatedly recognized that such offences cannot be treated on par with ordinary criminal cases because they have a far-reaching impact on society, governance, and the economy at large. Therefore, the power of anticipatory bail in these matters must be exercised with heightened caution and judicial prudence.

However, the seriousness of the offence alone is not an absolute bar to granting anticipatory bail. The Constitution guarantees the right to personal liberty under Article 21, which cannot be unduly curtailed without just cause. The Sessions Court must balance this fundamental right with the larger public interest in ensuring effective investigation and prosecution of corruption. The decision must weigh whether custodial interrogation of the accused is indispensable for the collection of evidence, prevention of tampering with witnesses, or recovery of property, against the possibility of misuse of arrest as a tool of harassment.

Furthermore, the discretion to grant anticipatory bail should be exercised based on the facts of each case. Factors such as the nature of the allegations, the role and rank of the accused in the public service, the sufficiency of evidence on record, the conduct of the accused during investigation, and the potential threat to the integrity of the investigation must be carefully examined. If the accused is likely to obstruct justice or abscond, bail must be refused to uphold the rule of law.

Where the Sessions Court decides to grant anticipatory bail in corruption cases, it must impose stringent conditions designed to protect the interests of justice and ensure cooperation with investigation. Such conditions may include periodic appearance before the investigating agency, prohibition on leaving the jurisdiction without permission, surrender of travel documents, and restrictions on influencing witnesses or tampering with evidence.

In conclusion, the Sessions Court acts as a crucial gatekeeper in corruption cases, safeguarding the constitutional rights of the accused while ensuring that the criminal justice system effectively combats the menace of corruption. The power to grant anticipatory bail must be exercised judiciously, balancing individual liberty with societal interest, and always guided by principles of fairness, integrity, and public trust.

Case Study 3:

An influential accused gets anticipatory bail and threatens the complainant. What can the Sessions Court do?

When an influential accused, who has been granted anticipatory bail, uses that liberty to intimidate, threaten, or harass the complainant or witnesses, it fundamentally undermines the very purpose of bail and the integrity of the criminal justice system. The Sessions Court, as the guardian of justice, must respond firmly to such conduct to protect victims and uphold the rule of law.

The power to **cancel or recall anticipatory bail** is a vital judicial tool under Section 438(5) of the CrPC, allowing the court to revoke bail if the accused misuses the privilege granted to them. The Sessions Court must act proactively on credible information of threats or intimidation. Cancellation proceedings are summary but must be conducted with fairness, giving the accused an opportunity to be heard while prioritizing the safety and dignity of the complainant.

The judge's role extends beyond merely adjudicating bail applications to actively **safeguarding the victims' rights and security** throughout the trial process. Courts should not treat victim harassment lightly but should impose stringent protective conditions as part of bail orders, such as prohibiting contact with the complainant, ensuring safe locations, or coordinating with law enforcement agencies for protection.

Judicial vigilance is paramount, especially in cases involving influential accused persons, who may wield power to intimidate or obstruct justice. The court must ensure that bail does not become a tool for victimization or coercion but remains a shield for liberty balanced against public interest and victim safety.

In conclusion, the Sessions Court must assert its authority firmly and decisively in cancellation proceedings to prevent abuse of bail. By doing so, it reinforces the confidence of victims in the judicial process, deters misuse of bail, and strengthens the administration of justice. The judiciary's commitment to victim protection is a critical

component of upholding the rule of law and ensuring that the fundamental rights of all parties—especially the vulnerable—are preserved and respected.

23.Provisions and Procedures to Get Anticipatory Bail under Criminal Law:

A procedure to Get Anticipatory Bail which is Anticipatory Bail is a legal provision that allows an individual to seek bail in anticipation of an arrest in connection with a non-bailable offence. It is a preventive measure that enables a person to avoid arrest,

detention, and harassment by the police. The provision of Anticipatory Bail is enshrined in Section 438 of **the Code of Criminal Procedure, 1973**[1], in India.

The objective of Anticipatory Bail is to protect the individual's fundamental rights and prevent the abuse of power by law enforcement agencies. The provision empowers the courts to grant **bail** to a person before his arrest, provided certain conditions are fulfilled. This allows the individual to participate in the investigation process without being taken into custody.

Anticipatory Bail is an important legal provision that ensures the protection of citizens' rights and is a significant tool in safeguarding against arbitrary arrests and detentions. It is an essential part of the criminal justice system that upholds the principles of fairness and justice

24. Legal provisions for Anticipatory Bail under Criminal Law:

The legal provision for Anticipatory Bail in India is enshrined in Section 438 of the Code of Criminal Procedure, 1973. This provision allows an individual to seek bail in anticipation of an arrest in connection with a non-bailable offence. The Section provides that a person can approach the High Court or the Court of Sessions for Anticipatory Bail.

According to Section 438, the court may grant Anticipatory Bail subject to certain conditions that it deems fit. These conditions may include the imposition of restrictions on the individual's movement, such as surrendering their passport or appearing before the police for questioning. The court may also require the individual to provide a surety or a bond.

The purpose of Anticipatory Bail is to enable a person to avoid arrest and to secure their release in anticipation of their arrest. This provision serves as a safeguard against arbitrary and wrongful arrests and detentions, protecting the individual's fundamental rights.

Over the years, landmark cases have clarified the legal provisions of Anticipatory Bail and provided guidance to the judiciary on how to interpret and apply these provisions. These cases have ensured that the provision is used in a fair and just manner and that it serves its intended purpose of protecting the individual's fundamental rights.

25. Eligibility Criteria for Anticipatory Bail:

The procedure to Get Anticipatory Bail in India, the following criteria must be met:

- **Person seeking Anticipatory Bail:**

The person seeking Anticipatory Bail must be the person who is likely to be arrested in connection with a non-bailable offence.

- **Nature of the Offence:**

The offence in question must be non-bailable. Non-bailable offences are those offences that are punishable by imprisonment for three years or more.

- **Reasonable Apprehension of Arrest:**

The person must have a reasonable apprehension of arrest in connection with the non-bailable offence. The apprehension must be based on concrete facts and circumstances that suggest that the person may be arrested.

- **Cooperation with the Investigation:**

The person seeking Anticipatory Bail must cooperate with the investigation. They must not obstruct the investigation or tamper with evidence.

- **Availability of Alternate Remedies:**

The person must not have any other remedy available to them under the law for seeking bail.

If these criteria are met, the person seeking Anticipatory Bail may approach the High Court or the Court of Sessions with an application for Anticipatory Bail. The court may grant Anticipatory Bail subject to certain conditions that it deems fit, such as the imposition of restrictions on the individual's movement, the provision of a surety or a bond, or the requirement to appear before the police for questioning those are the procedure to Get Anticipatory Bail.

26. Procedure for Filing Anticipatory Bail:

The procedure for filing an application for Anticipatory Bail in India is as follows:

- **Filing the Application:**

The person seeking Anticipatory Bail must file an application with the High Court or the Court of Sessions, depending on the jurisdiction in which the offence was committed. The application must contain details of the offence, the reasons for seeking Anticipatory Bail, and any other relevant information.

- **Supporting Documents:**

The application must be supported by an affidavit that contains the necessary details and documents, such as medical certificates, character certificates, or any other relevant documents that support the case for Anticipatory Bail.

- **Notice to the Public Prosecutor:**

The person seeking Anticipatory Bail must serve a copy of the application and the supporting documents to the public prosecutor. This notice must be served sufficiently in advance to allow the public prosecutor to prepare their arguments.

- **Notice to the Police:**

The person seeking Anticipatory Bail must also serve a copy of the application and the supporting documents to the police station concerned. This notice must be served to inform the police that the person has approached the court for Anticipatory Bail.

- **Hearing of the Application:**

The court will hear the application and the arguments presented by the person seeking Anticipatory Bail, the public prosecutor, and the police. The court may also ask the investigating officer to present their case.

- **Order of the Court:**

Based on the arguments presented, the court may grant or reject Anticipatory Bail. If the court grants Anticipatory Bail, it may impose certain conditions that the person seeking Anticipatory Bail must comply with. The court may also require the person to provide a surety or a bond.

If the person complies with the conditions imposed by the court, they may avoid arrest in connection with the non-bailable offence for which they have sought Anticipatory Bail which are the procedure to Get Anticipatory Bail.

27. Grounds for rejection of Anticipatory Bail:

There are several grounds on which an application for Anticipatory Bail may be rejected by the court. Some of these grounds are:

- **Non-Compliance with the Procedure:**

If the person seeking Anticipatory Bail does not comply with the procedure for filing an application, the court may reject the application.

- **Lack of Eligibility Criteria:**

If the person seeking Anticipatory Bail does not meet the eligibility criteria specified under the law, the court may reject the application.

- **Possibility of Tampering With Evidence:**

If the court believes that there is a possibility that the person seeking Anticipatory Bail may tamper with the evidence or influence witnesses, it may reject the application.

- **Likelihood of Absconding:** If the court believes that there is a likelihood that the person seeking Anticipatory Bail may abscond or flee from justice, it may reject the application.
- **Public Interest:** If the court believes that granting Anticipatory Bail would not be in the public interest or would be detrimental to the administration of justice, it may reject the application.

It is important to note that the decision to grant or reject Anticipatory Bail is at the discretion of the court and is based on the facts and circumstances of each case.

28. Difference between Anticipatory Bail and Regular Bail:

Anticipatory Bail and Regular Bail are two types of bail that can be granted to an accused under Indian criminal law. Here are some of the key differences between Anticipatory Bail and Regular Bail:

- **Meaning:**

Anticipatory Bail is granted to a person who anticipates arrest in a non-bailable offense, while Regular Bail is granted to a person who has been arrested in a non-bailable offense.

- **Purpose:**

The main purpose of Anticipatory Bail is to protect a person from unnecessary arrest and harassment, while the purpose of Regular Bail is to secure the release of a person who has been arrested.

- **Time of Filing:**

Anticipatory Bail can be filed by a person before arrest, while Regular Bail is filed after the arrest.

- **Eligibility Criteria:**

A person can apply for Anticipatory Bail only if there is a reasonable apprehension of arrest. In contrast, a person can apply for Regular Bail only after the arrest has taken place.

- **Procedure:**

The procedure for obtaining Anticipatory Bail involves filing an application before the court or police station with jurisdiction. In contrast, Regular Bail is applied for in court, after the arrest has taken place.

The conditions that come with Anticipatory Bail and Regular Bail may vary depending on the individual case. However, in general, Anticipatory Bail may require the accused to cooperate with the police investigation or impose conditions such as reporting to the police station periodically, surrendering of the passport, or prohibiting leaving the country, etc. Regular Bail may require the accused to produce a surety, provide their residential address, and not interfere with the evidence or witnesses in the case.In summary, the key difference between Anticipatory Bail and Regular Bail is that Anticipatory Bail is granted before arrest, while Regular Bail is granted after arrest. Anticipatory Bail is sought to avoid arrest, while Regular Bail is applied for to secure release after an arrest.

29. Notable Cases of Anticipatory Bail under Criminal Law in India:

There have been several notable cases of anticipatory bail under criminal law in India. Some of these cases include:

- **Sushila Aggarwal and others v. State (NCT of Delhi) and another:**

In this case, the Supreme Court of India held that a person cannot be granted anticipatory bail if they are likely to abscond and evade the investigation or trial.

- **Siddharam Satlingappa Mhetre v. State of Maharashtra:**

The Supreme Court held that the power to grant anticipatory bail should be exercised cautiously and only in exceptional cases, where the applicant can show that their arrest is imminent and the allegations against them are false or frivolous.

- **Gurbaksh Singh Sibbia v. State of Punjab:**

The Supreme Court held that anticipatory bail should not be denied merely because the crime is serious or the punishment is severe, and the court should consider factors such as the nature and gravity of the offense, the role of the accused, the possibility of the accused absconding, and the likelihood of the accused tampering with evidence.

- **Arnab Goswami v. State of Maharashtra:**

In this case, the Bombay High Court granted anticipatory bail to journalist Arnab Goswami in a case related to abetment of suicide, holding that the accused was not a flight risk and that there was no evidence of tampering with evidence or witness intimidation.

- **P. Chidambaram v. Directorate of Enforcement:**

In this case, the Delhi High Court granted anticipatory bail to former Finance Minister P. Chidambaram in a money laundering case, holding that the allegations were based on documentary evidence and that there was no evidence of tampering with evidence or intimidation of witnesses.

These cases have helped clarify the legal principles and procedures for granting anticipatory bail in India, and they have played an important role in protecting the rights of individuals accused of crimes.

30. Importance of Anticipatory Bail in Criminal Cases:

In conclusion, procedure to get Anticipatory Bail plays a crucial role in safeguarding the fundamental rights of individuals accused of crimes. It provides a mechanism for individuals to seek protection against arbitrary arrest and detention by the authorities. Anticipatory bail ensures that the individuals are not subjected to the trauma and humiliation of arrest and detention unless there are reasonable grounds for doing so.

Anticipatory bail is an important tool for preventing the misuse of power by the authorities, and it helps to ensure that justice is served in an impartial and fair manner. The eligibility criteria, procedure, and grounds for rejection of anticipatory bail have been carefully laid down by the courts to ensure that it is granted only in exceptional cases where the applicant can show that their arrest is imminent, and the allegations against them are false or frivolous.

In conclusion, procedure to get Anticipatory that the Citizens need to be aware of their rights and the legal provisions for seeking anticipatory bail to protect themselves against arbitrary arrest and detention. The judiciary also plays a crucial role in ensuring that anticipatory bail is granted only in deserving cases and that it does not impede the progress of a fair trial.

Overall, the importance of anticipatory bail in criminal cases cannot be overstated, and it remains a crucial safeguard against the abuse of power by the authorities.

31. Practical Challenges for Sessions Courts:

- **Police non-cooperation** in producing case diary
- **Delay tactics** by parties
- **Forum shopping** and multiple applications
- Misuse by **habitual offenders**

Judicial officers must be trained to identify genuine cases and pass well-reasoned orders while managing case load effectively.

Final Conclusion:

The power of the Sessions Court to grant anticipatory bail is a crucial safeguard enshrined in the criminal justice system, designed to protect personal liberty against arbitrary arrest while ensuring the effective administration of justice. This power is not unfettered but must be exercised with judicious discretion, balancing the rights of the accused with the broader interests of society, victims, and the rule of law. Sessions Courts serve as vital constitutional guardians, entrusted with the responsibility of interpreting and applying Section 438 CrPC in diverse and complex scenarios—from safeguarding liberty in cases of potential wrongful arrest, to upholding public trust in serious offences such as corruption, and ensuring victim protection against misuse of bail. The principles of territorial jurisdiction, the concept of transit anticipatory bail, and

the authority to cancel bail when misused, reflect the dynamic nature of this judicial power.Ultimately, the Sessions Court's role is to strike an equitable balance—preserving the fundamental right to liberty while preventing obstruction of justice and ensuring victims' rights are protected. Exercised with care, transparency, and fairness, the power to grant anticipatory bail upholds the core values of the Constitution and strengthens public confidence in the criminal justice system.

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