

**PROTECTION OF LIFE AND PERSONAL LIBERTY-CAUTIOUS APPROACH  
BY COURTS OF MAGISTRATES AND SPECIAL SESSIONS JUDGES**

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**Introduction:**

India is a developing country not only in terms of Economy but also in terms of enhancing the lives of People. This can be seen with the help of the Constitution of India which provide the fundamental right i.e., right to life to every individual whether a citizen or not. This is one of the most important right given to people which cannot be curtailed even in emergency situations. This right has been described as "Heart of Fundamental Rights" by the Supreme Court of India. It is a right which not only about the survival of person but also entails being able to live a complete life of dignity, meaning and educations. The most beautiful essence of this Article is that it is not a straight jacket rule instead it keeps on evolving with the change in time.

Among all the rights guaranteed under part III of the Indian Constitution, Article 21 guarantees a right which is the most important for the survival of the humankind. Article 21 states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law." The primary aim of this fundamental Right is to serve as a protection to counter infringement on a person's liberty or dignity. This assistance is accessible to every "person" whether or not they are nationals of India, as ascertained in the case of **The Chairman, Railway Board & Ors vs. Mrs. Chandrima Das & Ors (2000) 2 SCC 465.**

**Article 21 of Indian Constitution-Right to life and Personal Liberty:**

Amongst various verdicts of Supreme Court of India, that has changed the face of Indian polity and law; **Maneka Gandhi vs. Union of India AIR 1978 SC 597** is most noteworthy as far as the constitutional jurisprudence in independent India is concerned. Because of taking a broader outlook while interpreting the provision of Article 21, the provision got a wider scope and this is how, the protection ambit of this constitutional provision was extended to not only under-trials and prisoners but also the convicts. Thus, a new jurisprudence was developed through this case on the issue of prisoners' rights as far as the Indian constitutional

perspective is concerned. The safeguards of prisoner rights are as recognized under:

1. Right to live in humane and good condition: Every prisoner has the right to live in humane and good conditions while undergoing imprisonment.

In **Upendra Baxi vs. State of U.P, (1983) 2 SCC 308**, The Supreme Court of India held with various directions to ensure that the convicts of protective home at Agra did not continue to live in cruel and degrading conditions and that the right to live with human dignity as preserved in Article 21 to the Constitution was made significant and justified for them.

2. Right to Free Legal Aid—Right to Appeal: The right to first appeal from the Sessions Court to the High Court, as outlined in the Criminal Procedure Code, has been recognized as a component of fair procedure and fundamental to civilized jurisprudence. Every step that makes the right to appeal productive is held mandatory, and every action or omission that identifies it is unjust and unlawful, as held in **M.H. Hoskot vs. State of Maharashtra AIR 1978 SC 1548**. While holding the right to appeal as integral to fair procedure, the Court explained that two essential ingredients of the right to appeal are:
  - i. service of a copy of the judgment to the prisoner in time to file all appeal;
  - ii. Provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service.
3. Right to Speedy Trial: The "right to a speedy trial" is interpreted as part of the fundamental right to life and personal liberty. Article 21 states that a person's liberty may be denied only in accordance with the method established by law, which must be equitable, fair, and reasonable. A method cannot be rational, fair or just unless it ensures a timely trial for judgment of the guilt of the individual deprived of his liberty.

In **Hussainara Khatoon vs. Home Secretary, State of Bihar 1979 SCR (3) 532**, The bench of the Supreme Court was informed that an unusually large percentage of men, women, and children were imprisoned for years while seeking prosecution before a court of law. They were charged with minor offenses that, if established, would not have been punishable for more than a few months, possibly a year or two, however they were detained at periods ranging from three to ten years before the trial began. The Court took a serious look of the situation and stated that it was a dishonor to the court system that men and women could be arrested for such a long period without

being punished. Though the right to a speedy trial was never officially stated as a basic right in our Constitution, the Court decided that *"it is implied in the broad sweep and content of Article 21 as interpreted by the Court."* in **Maneka Gandhi vs Union of India AIR 1978 SC 597**. The Court observed that no procedure that does not provide for a reasonably quick trial can be considered 'reasonable, fair, or just' and would violate Article 21. The Court ruled that detaining under-trial prisoners in jail for longer than the punishment they would have received if convicted was unlawful since it violated Article 21. The Court thus ordered the release of all these under-trial detainees who were held in prison for a lengthier term than what were they could have been sentenced if they had indeed been guilty.

4. Right to Bail: Right to bail is another aspect of right to life that is protected under Article 21 to the Constitution of India in so far application of this constitutional provision upon prisoners is concerned.

The judgment in the case of **Babu Singh vs State of U.P 1978 AIR 527** took the lead role in this regard. The Court held that refusal to grant bail to an accused without reasonable grounds would amount to deprivation of his "personal liberty" under Article 21. It was stated that since they were the sole bread earners members of their family and they all were in jail; their families are going to be in extreme troublesome position. Considering the stated facts and circumstances, the Supreme Court held the appellants eligible to be released on conditional bail. The Court reiterated with approval the views expressed by Justice Bhagwati in **Kashmira Singh vs. State of Punjab 1977 AIR 2147** the Court referred to the practice evolved by the High Courts' according to which a person, (whose guilt has been proved beyond reasonable doubt in lower court consequently to whom sentence of life imprisonment has been given as punishment) should not be set free till the time his conviction and sentence were not nullified. However, this practice makes sense in case such appeal gets disposed of within a reasonable time. Therefore, such practice becomes irrational as well as irrelevant where the Court could not dispose of the appeal for five to six years. In that case, it would ultimately result in vexation of justice. Having regard to the above consideration, the Apex Judicial body held that "right to bail" was included in the "personal liberty" under Article 21 and its refusal would be deprivation of that liberty which could be authorized as per procedure established by law.

5. Right to Anticipatory Bail: Anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973, /section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is a crucial safeguard for the right to life and personal liberty guaranteed under Article 21 of the Constitution. The power to grant pre-arrest bail ensures that individuals are not unnecessarily or vindictively deprived of their liberty at the instance of motivated complaints or arbitrary police action. The Supreme Court in **Gurbaksh Singh Sibbia vs. State of Punjab 1980 AIR 1632** held that anticipatory bail is not to be granted in a routine manner, but its liberal interpretation is essential to protect the dignity and freedom of individuals. The Court emphasized that while personal liberty is precious, the discretion to grant anticipatory bail must balance the interests of a fair investigation with the protection of individuals from unjustified incarceration.

This principle was further strengthened in the Constitution Bench judgment of **Sushila Aggarwal vs. State (NCT of Delhi) AIR 2020 SC 831**, where the Court held that anticipatory bail, once granted, need not be time-bound and ordinarily should continue till the end of the trial unless cancelled for valid reasons. The Court reiterated that the denial of anticipatory bail affects the very core of Article 21, since arrest curtails liberty even before guilt is adjudicated. Thus, anticipatory bail serves as a constitutional guardrail ensuring that "procedure established by law" remains just, fair, and reasonable, preventing misuse of arrest powers and preserving the presumption of innocence until proven guilty.

6. Right against Handcuffing and Bar Fetters: Putting handcuff on someone is an option forming part of punitive jurisprudence that law enforcement authorities are exercising so that individuals whose actions have the potential in causing threat to public safety. Handcuffing is a debatable issue in India. Numerous human rights spirited persons as well as organizations are of the viewpoint that it is a violation of individual's fundamental rights. So far as the application of right against handcuffing upon prisoners is concerned; it has been held to be needless and against the spirit of Article 21 to the Constitution of India by virtue of the jurisprudence of criminal justice as developed in **Prem Shankar vs Delhi Administration 1980 AIR 1535** The Court directed the Union of India to issue apt guidelines in this regard. The Court ruled that

*"Even if a person is charged with a serious offense, he cannot be handcuffed. He may be quite quiet, well behaved, submissive, or even*

*frightened. The mere fact that the offense is significant does not imply escape-proneness or a desperate temperament. Many other requirements specified in the police manual are inconsistent and must be considered unlawful. Tangible testimony, documentary or otherwise, or desperate behavior aimed at completing his escape, will be valid grounds for handcuffing and fettering, which can be avoided by raising the strength of the escorts or transporting the detainees in well-protected vans."*

When an escorting officer handcuffs a prisoner in court, he must show the grounds for doing so to the presiding judges and obtain their approval. Otherwise, there is no check over the arbitrary application of handcuffs and fetters. The police minions must create their security formulas with judicial approval. Furthermore, once the court orders that the handcuffs be removed, no escorting authority may overrule judicial direction. This implicit in Art 21 which insists upon fairness reasonableness and justice in the very procedure which authorizes stringent deprivation of life and liberty" In addition, concentrating on the right against Bar Fetters, it can be noted that the said right got developed through judicial activism in **Sunil Batra vs. Delhi Administration 1980 AIR 1579** in which The Supreme Court ruled that treating a human being in a way that violated human dignity, imposed needless agony, and lowered the man to the level of a beast was clearly arbitrary and may be challenged under Articles 21 and 14 of the Indian Constitution. As a result, putting bar fetters on a prisoner for an excessively lengthy period without regard for his or her safety or the prison's security would undoubtedly be unjustified.

7. Right against Solitary Confinement—Right to Socialize: Solitary detention is a form of imprisonment in which an imprisoned person lives in a single cell with little or no contact with other people. As far as the aspect of prisoners' right is concerned, right against solitary confinement is one important aspect of the same. Mere having the convict status does not disentitle a person of his fundamental rights. The conviction does not ipso facto convert him/her an entity whose exercise of fundamental rights are subject to the whims of prison administration. Therefore, observance and compliance of procedural safeguards serves the role of a condition precedent which needs to be fulfilled prior to imposing any major punishment within the prison system.

8. Right Against Custodial Violence: Amongst various rights that has been evolved in favour of prisoners as an outcome of a substantive change through the Maneka Gandhi case, the right against custodial violence is most noteworthy. Custodial violence refers to the abuse, torture or violence inflicted upon individuals in the custody of law enforcement authorities. It is a matter of serious concern, which demands attention because of its significant impact upon human rights, justice and society. From prisoners' perspective, it is a matter of entitlement to be free from custodial violence while undergoing imprisonment. As far as the evolved jurisprudence in the journey of Indian criminal justice system is concerned; the judicial activism to protect and promote the notion of right against custodial violence is mainly confined to two judgments of the Supreme Court of India which are noted below:

- i. **Sheela Barse vs. State of Maharashtra 1983 AIR 378**: In this case, the Supreme Court of India criticized brutality against women convicts in Bombay's police lockup. The Court emphasized the significance of legal representation for a poor or indigent accused that has been arrested and placed in peril of his life or personal liberty. Particular emphasis was placed on the necessity of establishing an arrangement for providing legal help to convicts in jail. The Court asked the Inspector General of convicts, Maharashtra, to send a circular to all Superintendents of Police in the state asking them to provide facilities and information to Legal Aid Committees so that under-trial convicts might receive legal help for prisoners.
- ii. **D.K. Basu vs. State of West Bengal 1997 AIR SCW 233**: In this case, the Supreme Court held that torture by police is an impediment in maintaining rule of law. It has been termed as "calculated assault" upon human dignity. The Court observed: "Custodial Death is one of the most serious crimes in a civilized society regulated by the rule of law. The rights guaranteed in Articles 21 and 22(1) of the Constitution must be guarded and conscientiously protected. We cannot wish the problem away. Any kind of torture or cruel, inhuman, or humiliating treatment would be prohibited under Article 21 of the Constitution, whether committed during an investigation, interrogation, or otherwise. The Court emphasized that the State must ensure that law enforcing agencies must act within the bounds of law and that there was need for developing scientific methods of investigation and interrogation of accused. The Court considered it apt to issue undernoted necessities to be complied with in all cases of arrest and

detention until legislative activism in this direction by means of codification:

- Police officers conducting arrests and interrogations should be clearly identified and wear their designated uniforms. All police officials who interrogate the arrestee must have their information recorded in a register.
- The arresting officer must prepare a memo of arrest and have at least one witness attest to it. Who could be a member of the arrestee's family or a reputable citizen from the area where the arrest was made. It must also be countersigned by the arrestee and include the time and date of arrest.
- If a person is arrested or detained in a police station, interrogation center, or other lock-up, they have the right to inform a friend, relative, or other person with an interest in their welfare as soon as possible, unless the attesting witness of the arrest memo is the arrestee's friend or relative. Within 8-12 hours of an arrest, the police must notify the arrestee's next friend or relative who lives outside the district or town through the legal aid organization in the district and the police station of the area concerned via telegraphic communication.
- Arrested individuals have the right to be informed of their arrest or imprisonment as quickly as possible.
- Make an entry in the arrest diary at the place of detention. Include the name of the person's next friend who was told of the arrest, as well as the names and details of the police authorities in custody.
- Arrestees may seek an examination at the moment of arrest, and any injuries on their body should be recorded. The "Inspection Memo" must be signed by both the arrestee and the police officer who made the arrest, and a copy must be delivered to the arrestee.
- During incarceration, the arrestee should get a medical examination every 48 hours by a trained doctor from an approved panel selected by the Director of Health Services in the relevant State or Union Territory. The Director of Health Services should prepare a similar penalty for all Tehsils and Districts.
- Send copies of all relevant documents, including the arrest memo, to the unlawful Magistrate for their records.

- Arrestees may be allowed to meet with their lawyer during interrogation, but not for the duration.
- District and state headquarters should have a police control room where officers can communicate arrest. The information should be displayed on a visible notice board."

The above necessities have now can be seen reflected in the chapter V of the Code of Criminal Procedure, 1973/Bharatiya Nagarik Suraksha Sanhita, 2023.

### **Cautious approach by Court of Magistrates and Special Sessions Judges in safeguarding the right to life and personal liberty:**

**A. Cautious approach by Court of Magistrates:** Magistrates occupy a foundational place in India's criminal justice system. They are the first line of judicial scrutiny when an accused is deprived of liberty through arrest, and thus, they act as primary guardians of the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. This role requires them to exercise caution, independence, and constitutional sensitivity in all stages of the process—whether authorizing remand, considering bail, recording confessions, or ensuring legal aid. A cautious approach means not acting mechanically or as an extension of the investigating agency, but instead ensuring that every restriction on liberty is strictly in accordance with the "procedure established by law" that is just, fair, and reasonable.

**1. Judicial Scrutiny at the stage of Arrest and Remand:** The most immediate responsibility of a Magistrate arises when an accused is first produced after arrest. Article 22(2) of the Constitution and Section 57 of Code of Criminal Procedure, 1973 / Section 58 of Bharatiya Nagarik Suraksha Sanhita, 2023 mandate that no person can be detained beyond 24 hours without the sanction of a Magistrate. Here, the Magistrate is expected to scrutinize the legality and necessity of the arrest rather than rubber-stamping the request of the police.

The Supreme Court in **Arnesh Kumar vs. State of Bihar AIR 2014 SC 2756** laid down emphatic directions to curb the rampant misuse of arrest powers, particularly in matrimonial and minor offences. The Court mandated that the police must record reasons justifying arrest under Section 41(1)(b) of Code of Criminal Procedure, 1973 / Section 35(1)(b) of Bharatiya Nagarik Suraksha Sanhita, 2023 and issue notice of appearance under Section 41A / Section 35 where arrest is not required. Importantly,



Magistrates were cautioned not to mechanically authorize remand without verifying that these statutory safeguards had been observed. By this judgment, the Court shifted responsibility onto Magistrates to act as a constitutional filter, ensuring that arrest is the exception, not the norm.

Similarly, in **Joginder Kumar vs. State of U.P. 1994 SCC (4) 260**, the Court highlighted that arrest should not be made in a routine manner and that deprivation of liberty must be justified by necessity such as preventing absconding, tampering with evidence, or committing further offences. A cautious Magistrate, therefore, must demand from the investigating officer a clear explanation of why custody is essential and must record judicial reasons for authorizing it. The ruling in **Siddharth vs. State of U.P. 2022 1 SCC 676** further clarified that the mere filing of a chargesheet under Section 170 of Code of Criminal Procedure, 1973 / Section 193 of Bharatiya Nagarik Suraksha Sanhita, 2023 does not require that the accused be taken into custody. The Court observed that insisting on arrest at this stage, when the accused has cooperated with the investigation, violates personal liberty without any substantive purpose.

2. **Bail as a Rule, Jail as an Exception:** The bail jurisdiction of Magistrates is another critical area where caution and constitutional sensitivity must prevail. The principle that "bail is the rule and jail is the exception", first highlighted in **State of Rajasthan vs. Balchand 1977 AIR 2447**, has become a cornerstone of criminal jurisprudence under Article 21. In **Satender Kumar Antil vs. CBI (2022) 10 SCC 51**, the Supreme Court issued a detailed framework to guide Magistrates and trial courts in bail matters. The Court emphasized that unnecessary incarceration not only violates liberty but also burdens the criminal justice system with overcrowded prisons. The guidelines direct Magistrates to prefer summons over arrest in many categories of offences, issue bailable warrants in case of non-appearance, and resort to non-bailable warrants only as a last step. By adopting such a staged approach, Magistrates ensure that liberty is not curtailed mechanically. Another important safeguard lies in Section 436-A of Code of Criminal Procedure, 1973 / Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023, which provides for release of undertrials who have undergone detention for half of the maximum sentence prescribed for the offence. This statutory right, recognized as part of the right to speedy trial

since the **Hussainara Khatoon vs. State of Bihar 1980 (1) SCC 98** series of cases, must be proactively applied by Magistrates. Therefore, a Magistrate will not wait for undertrials to approach the court but will *Suo motu* review custody periods and order release, thereby preventing incarceration from becoming punishment before conviction.

The cautious approach to bail also extends to vulnerable cases. In **Arnab Manoranjan Goswami vs. State of Maharashtra (2021) 2 SCC 427**, the Supreme Court stressed that liberty cannot be put at peril merely because allegations are serious; courts must consider factors like cooperation, antecedents, and the proportionality of custody. Thus, Magistrates must record reasoned orders on bail, balancing investigation needs with the constitutional promise of liberty.

**3. Safeguards in Recording Confessions and Statements:** Magistrates are also entrusted with recording confessions and witness statements under Section 164 of Code of Criminal Procedure, 1973 / Section 183 of Bharatiya Nagarik Suraksha Sanhita, 2023. This is another stage where liberty is at stake, as coerced confessions can lead to wrongful convictions. The Supreme Court in **Shivappa vs. State of Karnataka 1995 SCC (2) 76** underscored that Magistrates must ensure voluntariness by giving the accused adequate time for reflection, keeping the police out of sight and hearing, and explaining the legal consequences of confessing. If any suspicion of coercion arises, the Magistrate must refuse to record the confession. Similarly, in **Dagdu vs. State of Maharashtra (1977) 3 SCC 68**, the Court held that confessions recorded without strict adherence to these safeguards are inadmissible. Thus, law requires Magistrates to be vigilant custodians of voluntariness, ensuring that confessions are not the product of pressure but of free will. This is part of protecting both the fairness of the trial and the dignity of the accused.

**4. Ensuring Access to Legal Aid:** Access to legal representation at the earliest stage is also part of Article 21. The Supreme Court in **Khatri (II) v. State of Bihar 1981 SCC (1) 627** and **Suk Das vs. Union Territory of Arunachal Pradesh 1986 AIR 991** held that the right to free legal aid is a fundamental right under Article 21. Magistrates, therefore, must ensure that an unrepresented accused is immediately informed of this right and provided with counsel, especially during remand and bail hearings. A Magistrate

should not treat legal aid as a formality but as an essential safeguard. By ensuring representation, Magistrates protect the fairness of proceedings and prevent arbitrary deprivation of liberty at the hands of the State.

**5. Rejecting a Mechanical Role:** Underlying all these responsibilities is the idea that Magistrates must avoid functioning as a rubber stamp of the prosecution. In **Rini Johar vs. State of Madhya Pradesh 2016 (11) SCC 703**, the Court criticized the mechanical grant of remand without verifying compliance with arrest safeguards. A Magistrate must therefore, independently assess whether liberty has been curtailed in accordance with constitutional mandates.

This approach requires reasoned orders—whether in remand, bail, or confession proceedings—so that the judicial mind is visibly applied, ensuring accountability and reinforcing public trust. Liberty-oriented judicial reasoning not only protects the individual before the court but also strengthens the constitutional culture of justice.

**B. Cautious approach by Special Sessions Judges:** Sessions Judges and Special Courts occupy a pivotal position in the hierarchy of criminal justice. Unlike Magistrates, who are the first point of contact for an arrested person, Sessions Courts deal with more serious offences and exercise wider jurisdiction, including trials under “special statutes” such as the NDPS Act, UAPA, PMLA, SC/ST (Prevention of Atrocities) Act, and the POCSO Act. These statutes often impose stringent bail conditions and reverse certain presumptions. However, even within this framework, Sessions and Special Judges are constitutionally bound to adopt a cautious approach that safeguards the right to life and personal liberty under Article 21.

The Supreme Court has repeatedly stressed that statutory rigours cannot eclipse constitutional guarantees. Hence, Sessions Courts must harmonize legislative restrictions with fundamental rights by carefully scrutinizing the legality of custody, enforcing the principle of speedy trial, ensuring that bail is not denied mechanically, and passing reasoned, liberty-sensitive orders.

**1. Balancing Statutory Rigours with Article 21:** Special criminal laws such as the NDPS Act and UAPA prescribe stringent conditions for bail. For example, Section 37 of the NDPS Act requires that courts be satisfied there are “reasonable grounds” for believing the accused is not guilty and not

likely to commit further offences before granting bail. Similarly, Section 43D (5) of UAPA restricts bail unless the court finds that accusations are prima facie untrue. While these provisions appear strict, the Supreme Court has clarified that they cannot be interpreted in a way that nullifies Article 21. In **Union of India vs. K.A. Najeeb AIR 2021 SC 712**, the Court granted bail to an accused under UAPA despite the statutory restrictions, observing that prolonged incarceration and the right to a speedy trial override statutory bail limitation. The Court held that “liberty guaranteed by Part III of the Constitution cannot be rendered nugatory by delays in trial.”

Similarly in **Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 SCC OnLine SC 352**, dealing with the NDPS Act, the Court released the accused on bail after noting that he had already spent several years in custody while the trial was nowhere near completion. The Court reaffirmed that Article 21 requires balancing statutory rigour with constitutional mandates, ensuring that pre-trial detention does not become a form of punishment. Thus, a Special Judge must interpret statutory restrictions in light of constitutional rights, granting bail where delay or other circumstances would make further incarceration unjust.

2. **Speedy Trial as a Component of Liberty:** The right to a speedy trial, recognized since the **Hussainara Khatoun vs. State of Bihar 1980 (1) SCC 98** line of cases, is an essential element of Article 21. Sessions and Special Courts, which often handle complex cases involving numerous witnesses and voluminous evidence, must be particularly mindful of this guarantee. In **K.A.Najeeb** and **Mohd. Muslim**, the Supreme Court underscored that undue delay cannot justify continued detention even under special statutes. The Court has also invoked Section 436-A of Code of Criminal Procedure, 1973 / Section 479 of Bharatiya Nagarik Suraksha Sanhita, 2023 (release of undertrials after half the maximum sentence) in special law cases, thereby extending constitutional protection into areas where statutes are otherwise rigid.

Therefore, law requires that Sessions and Special Judges monitor trial progress, enforce day-to-day hearings where required (as in the NIA Act), and grant bail if the State fails to proceed within a reasonable time. By doing so, the judiciary prevents liberty from being sacrificed to systemic delays.

**3. Anticipatory Bail as a Shield Against Arbitrary Arrest:** Sessions Courts are the principal forums for hearing applications for anticipatory bail under Section 438 of Code of Criminal Procedure, 1973 / Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023. This jurisdiction directly intersects with Article 21 because it protects individuals from arbitrary arrest at the instance of false or exaggerated accusations. In **Sushila Aggarwal vs. State (NCT of Delhi) AIR 2020 SC 831**, a Constitution Bench clarified that anticipatory bail, once granted, ordinarily continues till the conclusion of trial unless cancelled for supervening reasons. The Court rejected the earlier practice of granting anticipatory bail only for limited periods, recognizing that liberty cannot be left at the mercy of investigative discretion.

Thus, the approach of Sessions Judges should be to apply anticipatory bail jurisprudence with constitutional sensitivity: imposing conditions where necessary to ensure investigation, but not restricting liberty arbitrarily. Bail conditions must be tailored and proportionate, not onerous or excessive. This ensures that anticipatory bail functions as a genuine shield against unnecessary incarceration.

**4. Strict Scrutiny of Default Bail:** Section 167(2) of Code of Criminal Procedure, 1973 / Section 187(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 provides for “default bail” when the investigating agency fails to complete its investigation within the prescribed period (usually 60 or 90 days). The Supreme Court has consistently described this as an indefeasible right, part of Article 21. In **Uday Mohanlal Acharya vs. State of Maharashtra 2001 (5) SCC 453**, the Court held that once the statutory period lapses, the accused acquires a right to bail, which cannot be defeated by filing an incomplete or piecemeal chargesheet. This principle was reaffirmed in **M. Ravindran vs. Intelligence Officer AIR 2020 SC 5245** and **Ritu Chhabaria vs. Union of India 2023 SCC online SC 502**, where the Court struck down the practice of filing “incomplete chargesheets” to deny default bail.

The special court must therefore vigilantly enforce default bail provisions, rejecting prosecutorial tactics designed to prolong custody. Once the right accrues, the accused must be released upon furnishing bail, regardless of the gravity of allegations. This approach ensures that investigative delays do not erode the constitutional guarantee of liberty.

5. **Humane Grounds and Individual Circumstances:** A Sessions Court must also recognize that liberty is not an abstract principle but a lived reality. The Supreme Court has repeatedly granted bail on humanitarian grounds, such as illness, caregiving responsibilities, or the educational needs of dependents. For instance, in Arnab Goswami and other cases, interim bail was granted recognizing that liberty cannot be denied without compelling reasons. Special Judges must, therefore, consider the individual circumstances of the accused—age, health, family responsibilities, antecedents—when deciding bail or remand. This personalized application of Article 21 transforms caution into compassion, ensuring that justice does not become mechanical.
  
6. **Importance of Reasoned Orders:** A hallmark of the cautious judicial approach is the delivery of reasoned orders. Whether denying or granting bail, extending remand, or rejecting anticipatory bail, the Sessions Judges must record reasons that reflect independent judicial application of mind. The Supreme Court in Arnab Manoranjan Goswami stressed that liberty cannot be curtailed by perfunctory or mechanical orders. Reasoned decisions also provide transparency, enable appellate scrutiny, and instill public confidence. For Special Courts dealing with grave allegations, this requirement is especially vital, as reasoned orders demonstrate that constitutional values were balanced against the interests of justice.
  
7. **Harmonizing Severity of Offences with Liberty:** It is important to note that a cautious approach does not mean being lenient towards serious crimes. Instead, it means ensuring that severity of allegations does not automatically justify curtailment of liberty. In K.A.Najeeb, the Court emphasized that while national security and public order are vital, prolonged incarceration without trial is equally destructive to constitutional democracy.  
 Thus, Sessions and Special Judges must harmonize two competing concerns: protecting society from grave offences, and protecting individuals from unjust deprivation of liberty. The cautious approach lies in balancing these considerations through a fact-specific, reasoned analysis.

**Comparison table of Sections in BNSS, 2023 and CRPC, 1973**

<b>CrPC, 1973 Section</b>	<b>BNSS, 2023 Section</b>	<b>Topic / Subject</b>
Section 41(1)(b)	Section 35(1)(b)	Grounds of arrest without warrant
Section 41A	Section 35(1) Proviso & Section 39	Notice of appearance before police officer (instead of arrest)
Section 57	Section 58	Detention beyond 24 hours without Magistrate's approval
Section 164	Section 183	Recording of confessions and statements by Magistrate
Section 167(2)	Section 187(2)	Default bail (failure to complete investigation within time)
Section 170	Section 193	Cases to be sent to Magistrate when evidence is sufficient
Section 436-A	Section 479	Release of undertrial prisoners after half of maximum sentence
Section 438	Section 482	Anticipatory bail (pre-arrest bail)

**Conclusion:**

The right to life and personal liberty enshrined under Article 21 of the Constitution of India constitutes the bedrock of the Indian criminal justice system. Over the years, judicial interpretation has expanded its meaning from a narrow safeguard against unlawful deprivation of life to an all-encompassing protection of dignity, fairness, and justice. The jurisprudence developed by the Supreme Court, ranging from *Maneka Gandhi* to *D.K. Basu*, illustrates how Article 21 is a living provision that adapts to new challenges of liberty. The rights to speedy trial, free legal aid, humane prison conditions, bail, anticipatory bail, and protection against custodial torture are not merely statutory entitlements but constitutional guarantees that courts must vigilantly enforce.

In this context, the role of Magistrates and Sessions/Special Judges is of paramount importance. Magistrates, as the first point of judicial oversight, bear the primary duty of ensuring that arrests, remands, and bail decisions are not mechanical but grounded in fairness and necessity. Their scrutiny of police action, application of mind in authorizing custody, safeguarding voluntariness in confessions, and proactive enforcement of rights such as free legal aid and release under Section 436-A CrPC (now 479 BNSS) are vital checks on arbitrary deprivation of liberty. By insisting that "bail is the rule and jail is the exception," Magistrates protect not just individuals before them but the constitutional culture itself.

Sessions and Special Judges, on the other hand, operate within the demanding framework of serious offences and special statutes. While laws like the NDPS Act and UAPA impose strict bail conditions, constitutional courts have clarified that statutory rigour cannot overshadow the fundamental right to liberty. The law therefore requires Special Judges balancing legislative mandates with constitutional imperatives, particularly where prolonged incarceration, systemic delays, or humanitarian factors are involved. By granting default bail, applying anticipatory bail jurisprudence with sensitivity, and passing reasoned orders, Sessions Judges ensure that justice does not become a casualty of procedural rigidity.

Ultimately, the approach advocated for both Magistrates and Sessions Courts signifies a constitutional responsibility. It demands independence from investigative pressures, fidelity to fundamental rights, and a commitment to reasoned, transparent decision-making. The protection of life and liberty, as envisaged in Article 21, is not the responsibility of the Supreme Court alone but of every judicial authority. By discharging this duty with constitutional sensitivity, Magistrates and Sessions Judges reaffirm that liberty is the cornerstone of justice, and justice without liberty is an empty promise.

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