

Arshdeep Singh Alias Arsh And Another vs State Of Punjab on 30 August, 2024

Author: Anoop Chitkara

Bench: Anoop Chitkara

Neutral Citation No:=2024:PHHC:117309

CRM-M-42328-2024

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.42328 of 2024
Date of Decision: 30-08-2024

Arshdeep Singh alias Arsh and another

...Peti

Versus

State of Punjab

...Resp

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sant Pal Singh Sidhu, Advocate for the petitioner.

Ms. Swati Batra, DAG Punjab

Mr. Karanyog Singh Riar, Advocate for the Complainant

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
80	19.07.2024	Bhikhiwind, District Tarn Taran, Punjab	Sections 108 and 61 of BNSS, 2023, and 27 of the Arms Act, 1959

1. The petitioners, apprehending arrest for an incident dated July 18, 2024, as mentioned in the FIR captioned above, have come up before this Court under Section 438 of the CrPC, 1973. The CrPC, 1973, was repealed with effect from midnight of June 30, 2024, and was replaced by the BNSS, 2023.

2. Vide notification number S.O. 850(E), dated 23rd February 2024, the Central Government appointed the first day of July 2024 as the date on which the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS], except the provision of sub-section (2) of section 106, shall come into force. At 00:00:00 hours of 01-Jul-2024, [midnight], the 'Code of Criminal Procedure, 1973' [CrPC] stood repealed, and 'The Bharatiya Nagarik Suraksha Sanhita, 2023' came into force.

3. Chapter XX and Section 358 of the Bharatiya Nyaya Sanhita, 2023 [BNS], reads as follows:

CHAPTER XX REPEAL AND SAVINGS

358. (1) The Indian Penal Code is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub- section (1), it shall not affect,--

(a) the previous operation of the Code so repealed or anything duly done or suffered thereunder; or 1 of 8 Neutral Citation No:=2024:PHHC:117309 CRM-M-42328-2024 - 2-

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed. (3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita. (4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act,1897 with regard to the effect of the repeal.

4. A perusal of the above concludes that Indian Penal Code, 1860 eclipsed on the mid night of June 30, 2024, and the application of the Bharatiya Nyaya Sanhita, 2023 started to apply to all the incidents that have taken place w.e.f. 00:00:01 hours of July 01, 2024.

5. Section 531 of the BNSS, 2023, reads as follows:

531. (1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal--

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

2 of 8

Neutral Citation No:=2024:PHHC:117309

CRM-M-42328-2024

- 3 -

6. A perusal of the above concludes that Code of Criminal Procedure, 1973 eclipsed on the mid night of June 30, 2024, and the application of the Bharatiya Nagarik Suraksha Sanhita, 2023 started to apply to all the incidents that have taken place w.e.f. 00:00:01 hours of July 01, 2024 and the proceedings which have not been saved by S. 531 BNSS, 2023.

7. In Mandeep Singh vs Kulwinder Singh and another, 2024 LiveLaw (PH) 236 [CRR No. 2914 of 2023], decided on July 02, 2024, Punjab and Haryana High Court observed as follows, [14]. Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023 explicitly specifies that pending appeals shall

be disposed of or continued as if the new law had not yet taken effect, following the provisions of CrPC...

8. In *Krishan Joshi v. State of Rajasthan*, 2024 LiveLaw (Raj) 155 [2024 SCC OnLine Raj 2042], decided on July 9, 2024, Rajasthan High Court observed, Head Note of the petition herein reads as under:

"S.B. CRIMINAL MISC. PETITION UNDER SECTION 528 BNSS FOR FAIR, IMPARTIAL AND EFFECTIVE INVESTIGATION IN FIR NO. xxx FOR THE OFFENCE UNDER SECTION 420, 120-B IPC."

[2]. A perusal of the above clearly reveals that the FIR was registered on 02.02.2024 i.e. prior to coming into force of The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) with effect from 01.07.2024.

[3]. In the premise, in view of the savings clause contained under section 531(2)(a) of the BNSS, the petition ought to have been filed under the old corresponding Section 482 of Criminal Procedure Code, 1973, (Cr.P.C), and not under section 528 of the new Code (BNSS).

[5]. We are concerned here only with the savings clause contained in sub section 531(2)(a), *ibid*. A perusal thereof clearly reflect that, not only the pending trial/appeal, but even an inquiry and/or investigation, which is underway prior to coming into force of the BNSS, shall have to be dealt with in accordance with the provisions of Cr. P.C., 1973 and not under the BNSS, 2023.

[6]. The reasons for the same are not far too seek. What has to be seen simply is the date of registration of the FIR and the law as applicable as on the date of such registration. Trite it may sound, but settled position is that, the moment an FIR is registered under section 154 of the Cr. P.C., criminal investigative/administrative machinery is set in motion under Chapter XII thereof. Thus, if an FIR is registered prior to 01.07.2023 under the Cr. P.C., it would amount to a pending enquiry/investigation within the meaning of section 531(2)(a) of BNSS. The entire subsequent investigation procedure and even 3 of 8 Neutral Citation No:=2024:PHHC:117309 CRM-M-42328-2024 - 4- the trial procedure qua such an FIR shall then be governed by Cr. P.C. and not BNSS.

[7]. No doubt, procedural laws can be applied retrospectively, subject of course to the judicial review, but in view of Section 531(2)(a) of the BNSS herein, it is amply clear that all the pending matters prior to coming into force of BNSS, 2023, as specifically mentioned in Section 531(2)(a) of BNSS shall continue to be governed by the old Code i.e. Cr. P.C., 1973. Therefore, the petition in hand also has to be treated under Section 482 Cr. P.C. [8]. It so transpires that learned counsel for the petitioner had though rightly filed the instant petition initially under Section 482 Cr. P.C. but on an objection raised by Registry of this Court, it was converted into one under section 528 of BNSS.

[9]. In view of the discussion in the preceding part hereinabove, the objection raised by the Registry is overruled. The present petition is resultantly treated as one under Section 482 Cr. P.C.

9. In A v. State of U.T. Chandigarh and another, 2024 LiveLaw (PH) 252 [2024-PHHC- 085784], decided on July 11, 2024, Punjab and Haryana High Court observed as follows, [9] III. Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of Cr.P.C., 1973 is non- maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed upto 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed upto 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non-maintainable.

[9] IV. Section 531 of BNSS shall apply to "revision", "petition" as also "petition of complaint" (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply to "appeal/application/trial/inquiry or investigation" in terms of Section 531 of BNSS:

10. In Prince v. State of Govt of NCT of Delhi, 2024 LiveLaw (Del) 800 [Bail Appln N. 2399-2024], decided on July 12, 2024, Delhi High Court observed, [3]. By way of the present petition filed under section 438 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner seeks anticipatory bail in case FIR No.318/2024 dated 18.05.2024 registered under sections 376/328/506 at P.S.: Punjabi Bagh.

[4]. Though the present petition has been filed under the provisions of the Code of Criminal Procedure 1973 ('Cr.P.C.'), in the opinion of this court, on a plain reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "... ..disposed of, continued, held or made...

4 of 8

Neutral Citation No:=2024:PHHC:117309

CRM-M-42328-2024

- 5 -

..." in accordance with the Cr.P.C. only in cases where such proceedings, viz."... ..any appeal, application, trial, inquiry or investigation... ..", was pending immediately before the date on which

the BNSS came into force, i.e. 01.07.2024.

[5]. In the circumstances, since the present petition has been filed after 01.07.2024, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 482 read with 528 of the BNSS.

[6]. It may be observed however, that any objection that may be taken in the above regard, is kept open to be decided subsequently.

11. In Abdul Khader v. State of Kerala, 2024 LiveLaw (Ker) 455, Decided on July 15, [1]. This is an appeal against conviction. The appellant invoked the provisions of Section 374(2) of the Criminal Procedure Code, 1973 (Code of 1973, for short) to file the appeal. The appeal was filed on 10.07.2024. A question arises whether this appeal could be filed under the provisions of the Code of 1973 or should have been filed under the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, for short). Section 415 of the BNSS is the provision corresponding to Section 374 of the Code of 1973.

[16]. The contents and substance of Section 374 of the Code of 1973 and Section 415 of the BNSS are identical. The changes in Section 415 are to suit the other provisions in the BNSS which do not affect the substratum of the precursor. To the same effect is Section 389 of the Code under which execution of sentence is suspended on the application of a convicted person and the corresponding provision in the BNSS ie. Section 430. Therefore, for the reason of stating wrong provision under which the appeal/application is filed, the same cannot be dismissed as not maintainable. In order to make the proceedings regular and proper the appellant/applicant shall be directed to amend/correct by adding correct provision in the appeal/application.

[17]. If an appeal requires representation owing to some filing defects or there is delay in filing the appeal what shall be the date of filing of the appeal is another question. What the Punjab and Haryana High Court held is that if in an appeal/application/revision/petition filed on or before 30.06.2024 there is a filing defect and such defect is cured on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly instituted on or after 01.07.2024 and not maintainable. I am unable to agree with that view also. Once the filing defect is cured and the appeal/application/revision/petition is properly represented, its date of filing shall relate back to the date of its first presentation. The applicable law shall be decided with reference to the date of its first presentation and not to its representation.

[18]. ...Accordingly, I hold that this appeal filed on 10.07.2024 should have been filed under Section 415(2) of the BNSS. The 5 of 8 Neutral Citation No:=2024:PHHC:117309 CRM-M-42328-2024 - 6-appeal, however, does not require a dismissal as not maintainable. The appellant shall file petition/s for amendment/correction of the memorandum of appeal and application appropriately. Ordered accordingly.

12. In *Chowgule and Company Pvt. Ltd. v. Public Prosecutor, (Bombay)(Goa Bench)* CWP 618 of 2024(F), Law Finder Doc Id # 2627229, decided on August 02, 2024, Bombay High Court observed as follows:

[45]. With the able assistance of the learned counsel appearing for the respective parties and after going through the entire record, decisions, provisions, or the relevant Acts, the points for determination are as under together with my findings against it:-

[45]. Point No.1- In a case where an FIR is lodged/registered prior to 01.07.2024, what could be the procedure of investigation that is whether it should be continued under the provisions of Cr.P.C. 1973 or under the provisions of BNSS 2023.

[72]. Applying the same analogy while deciding the point no. 1 about the repeal and saving clause under Section 531 of BNSS 2023 it is clear that what is saved is only pending application and not the applications to be filed subsequent to 01.07.2024, to be governed under the Code of Criminal Procedure 1973.

[73]. BNSS 2023 is admittedly a procedural law mostly governing the inquiries, investigation, bail, trial, appeals etc. As far as application of bail is concerned, it is a procedure to be followed under a specific Act or Code. Since the provisions of Section 438 of the Code of Criminal Procedure and that of Section 482 of BNSS are *pari materia*, the provisions of repeal would clearly apply to the matter in hand and accordingly, applications filed by Respondent/Accused persons on 06.07.2024 shall govern under the provisions of 482 of BNSS and not under Sections 438 of Cr.P.C.

[45]. Point No.2- Whether bail application filed by Respondent No.3 on 06.07.2024 would be governed by the provisions of Section 438 of Cr.P.C. or by Section 482 of BNSS 2023.

[74] ...Accordingly, it has to be accepted that the application filed on 06.07.2024 must be considered as an application under Section 482 of BNSS. The answer to point no.2 would be therefore as held above that such application must be considered as filed under Section 482 of BNSS 2023.

[45]. Point No. 3- If it is observed that such bail application has to be considered under Section 482 of BNSS 2023, whether the Court is empowered/having jurisdiction to grant ad interim bail pending decision of the main bail application.

[88]. Thus, there is absolutely no need of further discussion in respect of the power of the Session Court or of this Court with regard to grant of ad interim relief pending application for bail in anticipation of arrest. Such power clearly exists as inherent power 6 of 8 Neutral Citation No:=2024:PHHC:117309 CRM-M-42328-2024 - 7- under the provision of grant of bail. However, it is also clear that even while granting ad interim relief, there has to be a subjective satisfaction of the

Court and such ad interim relief should be on certain conditions and not blanket. It is required to be considered on the premise of Article 21 of the Constitution of India which is clearly traceable with an intent to protect life and liberty of a person and more particularly to avoid unnecessary arrest as well as to avoid any harassment in the hands of investigating agency.

13. In *Deepu v. State of U.P.*, 2024 LiveLaw (AB) 517 [2024:AHC:126843-DB], decided on August 06, 2024, a Division Bench of Allahabad High Court observed as follows:

[16]. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C.

14. Once a statute is repealed, it dies and loses all prospective legal force except that the legislature saved under the specific repealing provisions. *Leges posteriores priores contrarias abrogant*. Thus, the appropriate provision for any proceedings regarding applicable incidents that occurred after June 30, 2024, and did not form part of the transaction of the incidents that had taken place till June 30, 2024, would be BNSS, 2023, not CrPC, 1973. Just like no petitions are entertained if filed under the CrPC 1898, 7 of 8 Neutral Citation No:=2024:PHHC:117309 CRM-M-42328-2024 - 8- similarly, no petitions can be entertained if filed under CrPC 1973. Consequently, the appropriate

criminal code for the penal offenses committed under penal statutes, including under the BNS, 2023, from July 01, 2023, is BNSS, 2023, and the petitions that are filed for these incidents under the provisions of the CrPC, 1973, are just like flogging a dead horse and cannot be set into any motion.

15. Thus, in the light of the judicial precedents referred to above, the proposition involved in the present case that if an offense has occurred after 30th June 2024 under the provisions of BNS, 2023, then the correct provision for filing bail applications would be Sections 482 or 483 of BNSS, 2023 and not Sections 438 or 439 of CrPC, 1973.

16. However, unintentionally choosing a wrong legal remedy should not become a technical hindrance for exercising Constitutional and statutory rights in pursuit of Justice. Given this, the appropriate relief under these compelling circumstances is limited protection and relief to exercise the correct option. Resultantly, there shall be a stay on the petitioners' arrest for two weeks to enable them to file a petition under S. 482 BNSS, 2023.

17. Petition disposed of in terms mentioned above, with liberty reserved to file under S. 482 of BNSS, 2024. All pending applications, if any, stand disposed of.

(ANOOB CHITKARA)
JUDGE

30th August 2024
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	YES