

Relevant Rulings Under BNSS

The binding precedents in cases decided under Cr.P.C, to the extent of pari materia provisions in B.N.S.S, continue to hold the field even after 30.6.2024. As regards the new provisions / additions / modifications in BNSS in comparison to Cr.P.C, they are open for interpretation, till they are considered and interpreted by authoritative pronouncements of High Courts and Supreme Court. Many High Courts, including Bombay High Court, have interpreted some provisions of BNSS after 1st July 2024. It is necessary to examine the relevant provisions and fact-situation of the case before applying the citations in this list.

Sr. No.	Citation	Proposition
1. S. 482/531 BNSS S. 438/484 Cr.P.C.	Chowgule & Co. Vs. Public Prosecutor 2024 SCC OnLine Bom 2501	<ul style="list-style-type: none"> i) When FIR is registered prior to 1.7.2024, provisions of Cr.P.C. shall continue to apply to investigation in respect of such FIR. ii) Bail application filed on or after 1.7.2024 has to be considered under BNSS, 2023, even if investigation continues under Cr.P.C. iii) Even under S. 482 of BNSS (old S. 438 Cr.P.C.), Sessions Court has inherent power to grant ad-interim anticipatory bail pending disposal of main application.
2. S. 187 BNSS/ S. 167 Cr.P.C.	Hyder Ali Vs. State of Kant. <u>(Para 13 of HC website copy)</u> <u>(confirmed by Supreme Court,</u> <u>by a non-speaking order, both</u> <u>HC Judgment & SC Order</u> <u>attached below this list)</u>	<ul style="list-style-type: none"> 1) The maximum period of police custody u/s. 187 BNSS can be 15 days. 2) The words “ten years or more” in 187(3)(i) of BNSS would mean that minimum punishment imposable should be 10 years.
3. S. 223 BNSS/ S. 200 Cr.P.C.	Sri Basanagouda Vs. Sri Shivananda Cri. No. 7526/2024 (Karnataka High Court) indiankanoon.org/doc/148891090	<p>The taking of cognizance u/s 223 of BNSS would come after recording of statement of complainant. The Magistrate should examine the complainant on oath & other witnesses present & then issue notice to the accused for giving opportunity of hearing before taking cognizance.</p> <p><i>(Judgments of Supreme Court on “taking cognizance” be perused before relying upon this ruling. It is settled law that a Magistrate takes cognizance when he applies his mind and decides to proceed further in the complaint.)</i></p>

Sr. No.	Citation	Proposition
4. S. 483(3) BNSS/ S. 439(2) Cr.P.C.	Parvinder Vs. Directorate 2024 SCC OnLine SC 1765 (Gulabrao Deokar Vs. State followed) (2013) 16 SCC 190	Power of High Court or Sessions Court to stay an order granting bail during pendency of application for cancellation of bail – Scope of S. 483(3) BNSS / S. 439(2) of Cr.P.C. discussed.
5. S. 329(4) BNSS/ S. 293(4) Cr.P.C.	In Re : The Court in its own motion : 19.12.2011 2024 SCC OnLine Cal 6610	Direction to Union of India to take steps to notify National Institute of Bio Medical Generics (NIBMG) as a CFSL lab and its scientists as Govt. Scientific Experts u/s. 329(4) of BNSS / 293(4) of Cr.P.C.
6. S. 531 BNSS/ S. 484 Cr.P.C.	Abhishek Jain Vs. State 2024 SCC OnLine P&H 9874	Appeal/application/revision filed on or after 1.7.2024 shall be governed by BNSS and not by Cr.P.C.
7. S. 531 BNSS/ S. 484 Cr.P.C.	Abdul Khader Vs. State 2024 SCC OnLine Ker 3919 (Case of Abhishek Jain from Punjab & Haryana High Court followed except one point)	Appeal filed on or after 1.7.2024 shall be governed by BNSS and not by Cr.P.C. Wrong description of provision does not require dismissal, but amendment/correction can be allowed.
8. S. 531 BNSS/ S. 484 Cr.P.C.	Krishan Joshi Vs. State 2024 SCC OnLine Raj 2042	All pending matters prior to coming into force of BNSS, 2023 shall continue to be governed by the old Code i.e. Cr.P.C., 1973.
9. S. 531 BNSS/ S. 484 Cr.P.C.	Gurpreet Singh Vs. State 2024 SCC OnLine P&H 10531 (Case of Abhishek Jain from same High Court followed)	Petition filed under S. 482 of Cr.P.C. on 3.7.2024 is dismissed as not maintainable in view of repeal of Cr.P.C. w.e.f. 1.7.2024. (Please note that opportunity to amend/correct the cause title is not given to petitioner)
10. S. 531 BNSS/ S. 484 Cr.P.C.	Deepu Vs. State 2024 SCC OnLine All 4289	FIR registered on or after 1.7.2024 for offence committed prior to 1.7.2024, offence would be registered under IPC but investigation will continue as per BNSS.
11. S. 531 BNSS/ S. 484 Cr.P.C.	Vijay Sharma Vs. State 2024 SCC OnLine Raj 2897 (Above case of Deepu Vs. State from Allahabad HC followed)	Investigation starts from date of registration of FIR and if FIR is registered on or after 1.7.2024, investigation would start under BNSS.
12. S. 531 BNSS/ S. 484 Cr.P.C.	The Tug of War Around July 1, 2024 2024 SCC OnLine Blog Exp 67	Article on the enforcement of BNSS, 2023 w.e.f. 1.7.2024 & its effect on the pending cases.

Sr. No.	Citation	Proposition
13. S. 473 BNSS/ S. 432 Cr.P.C.	Mafabhai Vs. State 2024 SCC OnLine SC 2982	Drastic power of canceling / revoking order of remission cannot be exercised without serving show cause notice on the convict.
14. S. 479 BNSS/ S. 436-A Cr.P.C.	RE : Inhuman Conditions in 1382 Prisons WP (Civil) No. 406/2013 (Supreme Court)	Direction to Suptd. of Jails across the country for immediate implementation of S. 479 of BNSS, to process applications of under-trial accused persons upon their completion of one-half/one-third period as the case may be. (retrospective effect to S. 479 of BNSS)

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Relevant Case Laws for BNSS / Cr.P.C. on Important Points of Criminal Trial

Sr. No.	Citation	Proposition
15. S. 187 BNSS/ S. 167 Cr.P.C.	CBI Vs. Anupam Kulkarni (1992) 3 SCC 141 Budh Singh Vs. State (2000) 9 SCC 266 (<i>Anupam Kulkarni</i> is followed in <i>Budh Singh</i> on the point of “no PC after first 15 days”)	Accused cannot be remanded to police custody after expiry of first 15 days. In Anupam Kulkarni : Even at the stage of first production for remand, Magistrate can grant bail to accused if an application is made and if he is satisfied that there are no grounds to remand him to custody, but if he is satisfied that ‘further’ remand is necessary, then he should act as provided u/s. 167 Cr.P.C.
	 Pradeep Ram Vs. State (2019) 17 SCC 326 Sushila Aggarwal Vs. NCT (2020) 5 SCC 1 (<i>Pradeep Ram</i> is followed in <i>Sushila</i> ’s case on the point of “grant of custody without cancellation of bail”)	Accused against whom serious offence is added subsequently in the same crime & who is already on bail, one course of action is to cancel his bail & commit him to police custody, other option is to get him arrested and grant his custody without canceling bail u/s. 437(5) of Cr.P.C. In Sushila Aggarwal : Anticipatory bail is not limited to a fixed period and normally it should enure without restriction on time.
16. S. 187 BNSS/ S. 167 Cr.P.C.	V. Senthil Balaji Vs. State (2024) 3 SCC 51 → CBI Vs. Vikas Mishra (2023) 6 SCC 49 →	The ratio laid down in the Judgments of Anupam Kulkarni and Budh Singh is doubted and issue is referred to larger Bench. View taken in <i>Anupam Kulkarni</i> requires reconsideration.

Sr. No.	Citation	Proposition
17. S. 223 BNSS/ S. 200 Cr.P.C.	CREF Finance Vs. Shree Shanthi (2005) 7 SCC 467 Bhagat Ram Vs. Surinder (2004) 11 SCC 622 Ajit Kumar Vs. State 1963 Supp (1) SCR 953	Application of mind by the Magistrate for the purpose of proceeding u/s. 200 of Cr.P.C. and subsequent sections amounts to taking cognizance.
18. S. 187 BNSS/ S. 167 Cr.P.C.	Gautam Navlakha Vs. NIA (2022) 13 SCC 542 ED Vs. Kapil Wadhawan 2023 SCC OnLine SC 972	Period of custody commences not from time of arrest but from the time the accused is first remanded to PC or JC. The period of 60/90 days under 167 Cr.P.C. has to be computed from the date when Magistrate authorizes remand.
19. S. 349 BNSS / S. 311-A Cr.P.C.	Ritesh Sinha Vs. State of U.P. (2019) 8 SCC 1 Sonvir Vs. State of Delhi (2018) 8 SCC 24	Magistrate has power to order a person to give his voice samples for purpose of investigation. Procedure to obtain fingerprint evidence of accused as per The Identification of Prisoners Act, 1920.
20. S. 43 BNSS/ S. 46 Cr.P.C.	Sunil Batra Vs. State (1978) 4 SCC 494 Prem Shankar Vs. Delhi Admin. (1980) 3 SCC 526 Citizens for Democracy Vs. State (1995) 3 SCC 743	Handcuffing of prisoners – discussed. Handcuffing of under trial prisoners is permissible only in very exceptional situations.
21. S. 183(6)(a) Proviso BNSS / S. 164 Cr.P.C.	State of Karnataka Vs. Shivanna (2014) 8 SCC 913	Statement of victim under 164 Cr.P.C. should be recorded, as far as possible, before lady Magistrate .
22. S. 175 BNSS/ S. 156(3) Cr.P.C.	Priyanka Srivastava Vs. State (2015) 6 SCC 287	The application seeking direction for registration of FIR must be supported by an affidavit .
23. S. 2(y), S. 230 BNSS/ S. 2(wa) Cr.P.C.	Jagjeet Singh Vs. Ashish Mishra (2022) 9 SCC 321	Victim's right to be heard and participate in hearing of bail and other criminal proceedings.
24.	Basheshar Nath v. CIT 1958 SCC OnLine SC 7	Fundamental rights cannot be voluntarily waived by citizens.

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

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

Sr. No.	Citation	Proposition
40. S. 480/ 482/483 BNSS S. 437 /438/439 Cr.P.C.	Aparna Bhatt Vs. State AIR 2021 SC 1492 <u>Equivalent :</u> XYZ Vs. State of M.P. (2021) 16 SCC 179	Judicial sensitivity while dealing with sexual offences, gender sensitivity . (This case is arising out of direction of MP High Court to the accused to go to the house of victim and get tied rakhi from her also pay “shagun”.
41. S.173 BNSS/ S.154 CrPC	Lalita Kumari Vs. Govt. (2014) 2 SCC 1 Ramdev Food Vs. State (2015) 6 SCC 439	Sec. 154(1) of Cr.P.C. mandates registration of an FIR on receipt of information regarding commission of cognizable offence.
42. S.398 BNSS	Sunil Saini Vs. State 2023 SCC OnLine SC 968	Witness Protection Scheme – It is bounden duty of State to ensure that lives of its citizens and other persons are at all times protected.
43. S.349 BNSS/ S.311-A Cr.P.C.	Selvi Vs. State (2010) 7 SCC 263	Investigative techniques – Narcoanalysis, Polygraph and Brain Activation Profile - If done without consent, violate the right to remain silent under Article 20(3) & Article 21 of Constitution of India.
44. S.366 BNSS/ S.327 Cr.P.C.	State of Punjab Vs. Gurmit (1996) 2 SCC 384 Sakshi Vs. UOI (2004) 5 SCC 518	In-camera trial be held in rape cases and other cases of sexual abuse such as S. 354 & S. 377 of IPC. S. 354 & S. 377 of IPC added in the Judgment of <i>Sakshi</i> .
45. S. 396 BNSS/ S.357-A Cr.P.C.	Laxmi Vs. UOI (2014) 4 SCC 427	Victim Compensation Scheme (medical assistance, after care and rehabilitation of victims of acid attack).
46. S. 396 BNSS/ S.357-A Cr.P.C.	Ravada Sasikala Vs. State (2017) 4 SCC 546	Acid attack victim – Law discussed on compensation u/s. 357-A of Cr.P.C. (<i>Laxmi Vs. UOI</i> followed)
47. S. 346 BNSS / S.309 Cr.P.C.	Alakh Srivastava Vs. UOI (2018) 17 SCC 291	Speedy trial of cases under POCSO Act – Directions issued to all Special Courts to complete the Trial in a time-bound manner – Steps to provide child friendly atmosphere in Special Courts.

Sr. No.	Citation	Proposition
48. S.473 BNSS/ S.432 Cr.P.C.	UOI Vs. V. Sriharan (2016) 7 SCC 1	Life imprisonment means rest of life of convict -Power to impose sentence without remission for particular period can be exercised only by High Court and Supreme Court and not by Sessions Court.
49. S.473 BNSS/ S.432 Cr.P.C.	Sonu @ Ashwin Vs. State Cri. W.P. 865/2023 – 1.8.24 (indiankanoon.org/doc/151546847)	The GR providing special scheme for remission of sentence on the occasion of 125 years of Birth Anniversary of Dr. B. R. Ambedkar is clarified by Bombay High Court on the point of “cut-off date” mentioned in that GR and its applicability.
50. S.482 BNSS/ S.438 Cr.P.C.	Priya Indoria Vs. State (2024) 4 SCC 749	Transit (extra-territorial) anticipatory bail – Scope and power – Such power should be exercised in exceptional and compelling circumstances.
51. S. 480, 482 & 483 - BNSS/ S. 437, 438 & 439 - Cr.P.C.	Satender Antil Vs. CBI (2021) 10 SCC 773 2021 SC OnLine SC 3302 (2022) 10 SCC 51 2023 SCC OnLine SC 452 (2024) 9 SCC 177 (2024) 9 SCC 198 (Orders/Judgments in same Case)	i) Proper exercise of power to grant bail/anticipatory bail ii) Directions issued to investigating agency and Courts. iii) Guidelines based on categorization of offences issued for exercise of discretion by Court for grant of bail.
52. S.52 BNSS/ S.53-A CrPC	Ravi Ghumare Vs. State (2019) 9 SCC 622	Death sentence – Object of determining quantum of sentence has to be “society centric” – Great importance is of the standpoint of a victim which includes his/her guardian or legal heirs. “Y – STR” method of DNA analysis – It provides a unique way of isolating only the male DNA mixed with the DNA of victim – It is useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence in many cases.
53. S.173, 175, 223 BNSS / S.154, 156, 200 Cr.P.C.	HDFC Securities Vs. State (2017) 1 SCC 640	When a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged do not disclose commission of an offence.

Sr. No.	Citation	Proposition
54. S.175, 223 BNSS/ S.156, 200 Cr.P.C.	H. S. Bains Vs. State (1980) 4 SCC 631 Suresh Jain Vs. State (2001) 2 SCC 628 Lalaram Vs. State 2020 SCC OnLine All 1497	S. 156 & 200 Cr.P.C. - Options before the Magistrate - Exercise of discretion to select course of action.
55. S.193, 210, 223, 225 BNSS / S.173, 190, 200, 202 Cr.P.C.	Vishnu Tiwari Vs. State (2019) 8 SCC 27	Final police report and exoneration by Magistrate – Notice to informant mandatory - Independent application of mind - When protest petition may be treated as complaint for cognizance.
56. S.210, 225, 227 BNSS / S.190, 202, 204 Cr.P.C.	Mohd. Ataullah Vs. Ram Mahto (1981) 2 SCC 266 Banwarilal Vs. Ramdeo Baba 2004 (4) Mh.L.J. 341	Once Magistrate directs investigation by police u/s. 202 Cr.P.C., he must wait for the said report & not issue process on the basis of same material.
57. Art. 20(3) of Constitution of India / S. 161 Cr.P.C.	Nandini Satpathy Vs. P. L. Dani (1978) 2 SCC 424	Right against self-incrimination - right to remain silent – scope discussed.
58. S.91 BNSS/ S.88 CrPC	Tarsem Lal Vs Directorate 2024 SCC OnLine SC 971	Order accepting Bonds u/s 88 CrPC from the accused does not amount to grant of bail.
59. S.356 BNSS	Hussain Vs. Union of India (2017) 5 SCC 702	Trial in Absentia – provision for speedy trial in case of absconding accused – Bangladesh CrPC provision discussed.
60. S. 482 BNSS/ S. 438 Cr.P.C.	Prem Prasad Vs State (2022) 14 SCC 516	Normally when accused is absconding , Anticipatory Bail cannot be granted.
61.	Rahul Gandhi Vs. Purnesh (2024) 2 SCC 595	Imposition of maximum sentence without assigning reasons- Trial Judge expected to give proper reasons.

Sr. No.	Citation	Proposition
62. S. 335 BNSS/ S. 299 Cr.P.C.	Jayendra Thakur Vs State (2009) 7 SCC 104	Recording evidence in absence of accused - Conditions precedent for invoking S.299 CrPC
63. S. 335 BNSS/ S. 299 Cr.P.C.	Nirmal Singh Vs. State (2000) 4 SCC 41	All conditions must be established by Prosecution before invoking S.299 CrPC.
64. S. 335 BNSS/ S. 299 Cr.P.C.	Sukhpal Singh Vs. State 2024 SCC Online SC 800	Above two Rulings followed.
65. S. 531 BNSS/ S. 484 Cr.P.C.	Aires Vs. Vishwajeet (2017)11 SCC 62 Kahera Sayed Vs. State 2017 SCC OnLine Bom 445	Notifications issued by State Govt. under the Criminal Law Amendment Act, 1932 are saved by S. 484 of Cr.P.C. & S. 8 of General Clauses Act, they shall continue to operate despite repeal of Cr.P.C. 1898 & enactment of Cr.P.C. 1973.
66. S. 483(3) BNSS/ S. 439(2) Cr.P.C.	Gulabrao Deokar Vs. State (2013) 16 SCC 190	High Court or Sessions Court can exercise power under S. 439(2) of Cr.P.C. to set aside unjustified, illegal or perverse bail order which is an independent ground for cancellation of bail , in addition to the accused misconducting himself or committing breach of terms and condition on which bail is granted.
67. Art. 22(1) & (5) of Constitution of India	Prabir Purkayastha Vs. State, (2024) 8 SCC 254	Arrest of any person : Difference between the phrases " reasons for arrest " and " grounds of arrest ".
68.	Sharif Ahmed Vs. State 2024 SCC OnLine SC 726	Issuance of non-bailable warrants – Cannot be issued in a routine manner – Liberty of an individual cannot be curtailed unless necessary in the larger public interest.
69. S. 346 BNSS/ S. 309 Cr.P.C	Puranlal Dhurve Vs. State 2024 SCC OnLine Bom 3437	Prosecutor and Trial Judge are required to ensure strict compliance of S. 309 Cr.P.C. (S. 346 BNSS). Weekly program should be submitted and scrupulously followed.
70. S. 43 BNSS/ S. 46 Cr.P.C	Shahrukh Vs. State 2024 SCC OnLine Bom 3136	Magistrate has statutory power to grant permission to arrest a female after sunset and before sunrise.

Sr. No.	Citation	Proposition
71. S. 47 BNSS/ S. 50 Cr.P.C.	Vishal Ravani Vs. State 2024 SCC OnLine Bom 3859	Grounds of arrest not communicated to the accused as per the requirement of law – his arrest declared illegal and he is directed to be released. (Offence u/s. 420, 406 IPC)
72. S. 47 BNSS/ S. 50 Cr.P.C.	Rajrishi Bindawat Vs. State 2024 SCC OnLine Bom 3660	In a serious offence, when presence of accused is established in the offending car which caused the mishap, and remand application clearly provided the reasons for his arrest, accused cannot take benefit that grounds of arrest are not communicated.
73. S. 187 BNSS/ S. 167 Cr.P.C.	Madhankumar Vs. Deputy 2024 SCC OnLine Mad 6902	Indefeasible right of accused to be released on default bail cannot be curtailed by imposing onerous condition.
74. S. 84 BNSS / S. 82 Cr.P.C S. 174-A IPC / S. 209 BNS	Daljit Singh Vs. State 2025 SCC OnLine SC 1	S. 174-A IPC (non-appearance in response to a proclamation u/s. 82 Cr.P.C.) is an independent substantive offence and can continue even if the proclamation issued u/s. 82 Cr.P.C. has extinguished.
75. S. 218 BNSS / S. 197 Cr.P.C	George Vs. State of Kerala 2024 SCC OnLine Ker 7431	The non-obstante clause in S. 19 of the POCSO Act is not inconsistent with S. 197 of Cr.P.C. / 218 BNSS and it does not exclude the applicability of S. 197 of Cr.P.C. / 218 BNSS.

Girish R. Agrawal,
Joint Director, MJA

* * * *

ITEM NO.8

COURT NO.13

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 18063/2024

[Arising out of impugned final judgment and order dated 13-12-2024 in WP No. 33526/2024 (GM-RES) passed by the High Court of Karnataka at Bengaluru]

HYDER ALI

Petitioner(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

Date : 08-01-2025 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU DHULIA
 HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. P P Hegde, Sr.Adv.
 Mr. Pai Amit, AOR

For Respondent(s) Mr. K Parmeshwar, Sr. Adv.
 Mr. Anand Dilip Landge, AOR
 Mr. Imtiaz Bantwal, Adv.
 Mr. Viraj Pawar, Adv.
 Mr. Sumit Kumar, Adv.
 Mr. Rahul Prakash Pathak, Adv.

**UPON hearing the counsel the Court made the following
 O R D E R**

Heard learned senior counsel appearing for the parties.

By this petition the petitioner-complainant seeks that the accused persons (respondent nos.2 to 4 herein) be sent to police custody. We are informed that the accused (respondent nos.2 to 4 herein) are already in judicial custody. The concerned Court itself came to the conclusion that police custody is not required and has

Dismissed the application(s) of the prosecution as well as the Complainant.

We see no reason to interfere with the order of the High Court, in exercise of our jurisdiction under Article 136 of the

Signature Not Available
 Digitally signed by
 Nirmala Negi
 Date: 2025.01.09
 17:10:26 IST
 Reason:

Constitution of India.

The present petition is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

**(NIRMALA NEGI)
COURT MASTER (SH)**

**(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR**

R

**Reserved on : 12.12.2024
Pronounced on : 13.12.2024**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.13459 OF 2024

C/W

WRIT PETITION No.33526 OF 2024 (GM – RES)

IN CRIMINAL PETITION No.13459 OF 2024

BETWEEN:

STATE OF KARNATAKA
BY KAVOOR POLICE STATION,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU – 560 001.

... PETITIONER

(BY SRI B.N.JAGADEESHA, ADDL.SPP)

AND:

- 1 . KALANDAR SHAFI
S/O LATE ISMMAIL,
AGED ABOUT 39 YEARS,
RESIDING AT NO. 11-29/1, NEAR GOODU,
B'MUDA VILLAGE,
BANTWAL TALUK,

D.K.DISTRICT – 574 211.

- 2 . MAHAMMAD MUSTHAFA @
PALKHAN MUSTHFA,
S/O LATE IDDINABBA,
AGED ABOUT 50 YEARS,
RESIDING AT NO. 7-44 B, 7TH BLOCK,
KRISHNAPURA, KATIPALLA,
MANGALURU - 575 030.
- 3 . SHOAIB,
S/O LATE UMMAR HUSSAIN,
AGED ABOUT 45 YEARS,
RESIDING AT NO. 7-216, SITE NO.298,
AYISHA IMAN, 7TH BLOCK,
KRISHNAPURA, KATIPALLA
MANGALURU - 575 030.

... RESPONDENTS

(BY SRI B.LETHIF, ADVOCATE FOR R-1 AND R-3;
SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI KARIAPPA N.A., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO SET ASIDE THE ORDER DATED 04.12.2024 PASSED IN CR.NO.150/2024 ON THE FILE OF THE JMFC (III COURT) MANGALURU AND CONSEQUENTLY ALLOW THE REQUISITION FILED BY THE PETITIONER AS PAYED FOR AND THEREBY GRANT POLICE CUSTODY OF THE ACCUSED NOS.3 TO 5 SO AS TO ENABLE THE POLICE TO CONDUCT FURTHER INVESTIGATION AND GRANT SUCH OTHER AND FURTHER RELIEF'S AS THIS HON'BLE COURT DEEMS FIT AND PROPER UNDER THE CIRCUMSTANCES OF THIS CASE.

IN WRIT PETITION No.33526 OF 2024**BETWEEN:**

HYDER ALI
AGED ABOUT 52 YEARS
S/O B.M.AHAMMED BAVA
RESIDING AT FLAT NO.1904
ABHIMAN HILLS
LIGHTHOUSE HILL ROAD
MANGALURU – 575 003.

... PETITIONER

(BY SRI P.P.HEGDE, SR.ADVOCATE FOR
SRI VENKATESH SOMAREDDI, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY KAVOOR POLICE STATION
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA AT
BENGALRUU – 560 001.

- 2 . MR.KALANDAR SHAFI
AGED ABOUT 39 YEARS
S/O LATE ISMAIL
11-29/1 GOODINA BALI
MOODU GRAMA
BANTWAL – 575 003.

- 3 . MR.MOHAMMED MUSTAFA
AGED ABOUT 50 YEARS
S/O LATE IDINABBA
7-44B, 7TH BLOCK
KRISHNAPURA, KATIPALYA
MANGALURU – 575 003.

4 . MR.SHOIB
AGED ABOUT 45 YEARS
S/O LATE UMMER HUSSAIN
RESIDING AT 298, AYISHA IMAN
7TH BLOCK, KATIPALYA
MANGALURU – 575 003.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SRI B.LETHIF, ADVOCATE FOR R-2 AND R-4;
SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI KARIAPPA, N.A., ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO QUASH THE ORDER DTD. 04.12.2024 PASSED IN CRIME NO. 150/2024 OF KAVOOR POLICE STATION BY JMFC III COURT, MANGALURU VIDE ANNEXURE-D REJECTING THE APPLICATION OF R-1 SEEKING CUSTODY OF R-2 TO 4 VIDE ANNX-C AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.12.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Both these petitions call in question a solitary order dated 04-12-2024 passed by the Judicial Magistrate First Class (III Court) Mangalore, by which the Court rejects the requisition of the

prosecution for grant of Police custody of the accused. Writ Petition No.33526 of 2024 is preferred by the complainant and Criminal Petition No.13459 of 2024 is preferred by the State.

2. Heard Sri P.P. Hegde, learned senior counsel appearing for the petitioner in the writ petition No.33526 of 2024; Sri B N Jagadeesha, learned Additional State Public Prosecutor appearing for petitioner in Criminal Petition No.13459 of 2024 and for respondent No.1 in writ petition No.33526 of 2024; Sri B.Lethif, learned counsel appearing for respondents 2 and 4 in writ petition and respondents 1 and 3 in Criminal Petition and Sri Hasmath Pasha, learned senior counsel appearing for respondent No.3 in Writ Petition and respondent No.2 in Criminal Petition.

3. Facts, in brief, germane are as follows:-

On 06-10-2024 brother of the original complainant one B.M.Mumtaz Ali dies leading to registration of crime in Crime No.150 of 2024 for offences punishable under Sections 190, 308(2), 308(5), 351(2) and 352 of BNS. Pursuant to registration of crime

accused Nos.1 and 5 are arrested and produced before the learned Magistrate, after which, it appears, they were remanded to judicial custody. Subsequently, during investigation on 10-10-2024 accused Nos. 2, 3 and 4 were arrested and produced before the learned Magistrate and were also remanded to judicial custody. On 12-10-2024 the Investigating Officer causes arrest of accused No.6 and produced him before the learned Magistrate who has remanded him to judicial custody. The learned Magistrate then on a requisition made by the Police grants police custody of accused Nos. 1 to 3. In the course of investigation, the prosecution is said to have come across certain voice samples of accused persons which were recorded and which were within the knowledge of the Court. The prosecution then files an application seeking police custody. This comes to be objected to by the accused. On the application and the objection, the concerned Court passes the impugned order by which police custody that is sought by the prosecution comes to be rejected, on the ground that the period of investigation in the case at hand was 60 days and the police custody available in terms of Section 187 of BNSS is within 40 days. Those 40 days having lapsed, there was no warrant to grant police custody is the reason

rendered by the concerned Court to reject the application/requisition. Challenging these orders, the petitioners-State and the complainant - are before this Court in these petitions.

4. The learned senior counsel Sri P.P.Hegde, appearing for the complainant and the Additional State Public Prosecutor for the State would vehemently contend that the punishment imposable in the case at hand for an offence of abetment to suicide is ten years. Section 187 of BNSS, which is akin to Section 167 of the earlier regime Cr.P.C., would clearly permit investigation in an offence punishable with ten years or more to 90 days. The period for filing the charge sheet is 90 days and under Section 187 of the BNS if the period of investigation is 90 days, the police custody available in total for 15 days would be between day one to day 60. If it is interpreted that the offences are punishable with less than ten years, the police custody will be for 15 days between day one to day forty. Both the learned counsel would contend that Section 108 of BNS which deals with abetment to suicide is punishable up to ten years. Therefore, it should be construed that it is ten years or more

and the police custody must be extended to a period from day one to day 60 and not restricted to day one to day forty.

5. The learned Additional State Public Prosecutor would however add that many voice samples are procured during investigation which had to be put to the accused for which police custody is imperative. The prosecution has now filed an application to add the offence of abetment for ransom as obtaining under Section 140(2) of BNS which is akin to Section 364 of the earlier regime of IPC which is punishable with death or imprisonment for life. The application is yet to be considered at the hands of the learned Magistrate.

6. The learned senior counsel Sri P. P. Hegde appearing for the complainant would submit that investigation is yet to complete despite passing of 60 days from registration of crime. However, applications are moved before the concerned Court for grant of statutory bail and these people who have rendered themselves in heinous and horrendous offences will walk out of the prison on erroneous interpretation of Section 187 by the concerned Court.

7. Per-contra, the learned senior counsel Sri Hasmath Pasha appearing for the respondents would vehemently refute the submissions in contending that there is no change in Section 187 of BNSS in comparison to Section 167 of the Cr.P.C. What should be looked into is not Section 167 or 187, it is the offence that is alleged. The offence, in the case at hand, is the one punishable under Section 108 of the BNS which is Section 306 of the IPC. It is punishable up to ten years. If it is punishable up to ten years, the period of investigation is 60 days. If the period of investigation is 60 days, the police custody runs from day one to day forty totally for 15 days. The period is admittedly over. Therefore, the police custody cannot be sought after forty days in terms of Section 187 of BNSS. He would contend that the order of the learned Magistrate does not require any interference. Learned counsel Sri B. Lethif representing other accused would also toe the lines of the learned senior counsel and seek dismissal of these petitions.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. In furtherance whereof, what requires consideration and interpretation is the purport of statutory provisions. At the outset, I deem it appropriate to notice the order that has driven the petitioners to this Court in these petitions. The order reads as follows:

"....

18. In the present case accused persons were given to police custody as follows:

Accused no.1 Smt. Rehmath and accused no.2 Shohaib were given to police custody	From 4.15 PM of 09.10.2024 till 4.15 PM of 17-10-2024 (8 days)
Accused by name Abdul Sattar, Kalandar Shafi and Mohammed Musthafa were given to police custody	From 3.30 PM of 10.10.2024 till 3.30 PM of 17-10-2024 (7 days)
Accused persons by name Smt. Rehmath, Shohaib, Abdul Sattar, Kalandar Shafi and Mohammed Musthafa were given to police custody	Were produced in Home office at 17-10-2024 at 2.45 PM
Accused persons by name Smt. Rehmath, Abdul Sattar and Kalandar Shafi were given to police custody	From 3.30 PM of 22.10.2024 till 3.30 PM of 25-10-2024 (3 days)
Accused persons by name Smt. Rehmath, Abdul Sattar and Kalandar Shafi were produced	in Open Court on 25-10-2024 at 1.45 PM.

19. In Rakesh Kumar Paul, the Supreme Court by 2:1 majority (Justices Madan B Lokur and Deepak Gupta in majority, Justice Prafulla C Panth in dissent).

20. In Sec. 187(3)

(i) - 90 days where investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of 10 years or more.

21. But in the present case, maximum punishment for the alleged offences are imprisonment either description for a term which may extend to 10 years. This court relied on judgment of Hon'ble Supreme Court In **Rakesh Kumar Paul vs. State of Assam and Rajiv Choudary Vs. State (NCT) of Delhi**. As per the observation of the Hon'ble Apex Court this case is comes under the category of 187 (3)(ii) of B.N.S.S. Hence, as per the provision of B.N.S.S., I.O. must seek police custody within 40 days from the date of arrest. But in this case, I.O. seeks police custody after the lapse of statutory period. Hence requisition filed by the I.O. is hereby rejected."

The Court records the offences alleged. The offences alleged are the ones punishable under Section 108, 308(2), 308(5), 351(2) and 352 of BNS as on the date of consideration of application for Police custody before the learned Magistrate. The said provisions read as follows:-

"108. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

...

...

...

308. Extortion.—(1)

...

(2) Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

...

...

...

(5) Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

...

...

...

351. Criminal intimidation.—(1)

...

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

...

...

...

352. Intentional insult with intent to provoke breach of peace.—Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 108 of BNS punishes for abetment to suicide which is Section 306 of the earlier regime, IPC. The maximum term of punishment may extend to ten years. Section 308 deals with extortion. Section 308(2) punishes a person who commits extortion by a term up to 7 years and Section 308(5) if it is extortion putting the person in fear of death, the term may extend to ten years. The

other two provisions under Sections 351 and 352 have maximum punishment of 2 years. Therefore, the offences alleged in the case at hand, at this juncture, have their punishments to run up to a maximum of ten years and the phrases used "may extend to ten years". **Section 187 of BNSS** which deals with conduct of investigation reads as follows:

"187. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding—

- (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;**
- (ii) sixty days, where the investigation relates to any other offence,**

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.”

(Emphasis supplied)

Section 187 of BNSS deals with procedure when investigation cannot be completed within 24 hours. Section 187(3) which is Section 167(2) of the earlier regime forms the fulcrum of the entire *l/s.* The language deployed and the purport has slightly changed from the earlier regime. Now the period of investigation has twin conditions. The investigation, as was earlier obtaining, has its completion period of 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or

imprisonment for a period of ten years or more, for the remaining offences, it is 60 days. I now deem it appropriate to juxtapose with Section 167 of the Cr.P.C., Section 167 of the Cr.P.C., reads as follows:

"167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

- (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—**

- (i) **ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;**
- (ii) **sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;**
- (b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]
- (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2-A) Notwithstanding anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it to the Chief Judicial Magistrate.

(5) If in any case triable by Magistrate as a summons-case, the investigation is not concluded within a period of six

months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

(Emphasis supplied)

Section 167 (2) had also the same phraseology but it read as 90 days where investigation relates to an offence with death, imprisonment for life. These words are identical for imprisonment for a term of not less than ten years. The marked difference between Section 167 (2) of Cr.P.C., and Section 187 of BNSS is only in these words. **In Section 167(2), 90 days of investigation is permitted, where imprisonment is for a term not less than ten years. In BNSS, the same 90 days is permitted where imprisonment is for a term of ten years or more.** In the considered view of this Court, it is only a play of words. Section 167(2) using the words '**not less than ten years'**

would be, that the imposable punishment would be at ten years. Section 187(3) using the words '**ten years or more**', is to the same effect, it only depicts a threshold sentence of ten years.

10. Therefore, if the prosecution wanting 90 days to file their final report, it will only be for an offence which has minimum sentence of ten years. If the offence now alleged against these accused are noticed, it does not have a threshold minimum sentence of ten years, but it is extendable up to ten years. Therefore, the term can be between one year to ten years. If it is one year to ten years, Section 187(3) of BNSS cannot be pressed into service for the purpose of police custody or any other reason for that matter, as the investigation for offences punishable **upto** ten years must get completed in 60 days. I hasten to add that it is only in few cases where it relates to life, death or ten years or more, the investigation can be for 90 days. In all other offences under the IPC or BNS, investigation must complete within 60 days. In the considered view of the Court, there can be no other interpretation. The purport of the word 'up to five years or five

years and more or extendable up to five years, or up to ten years', have borne judicial interpretation from time to time.

11. The Apex Court in the case of **RAJEEV CHAUDHARY v. STATE (NCT) OF DELHI¹** interpreting Section 167(2) or the words found therein "imprisonment for a term of not less than ten years" has held as follows:

"....

6. From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. **Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be**

¹ (2001) 5 SCC 34

imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

(Emphasis supplied)

Later, the Apex Court in the case of **RAKESH KUMAR PAUL v. STATE OF ASSAM²** carrying forward the interpretation afore-quoted, has held as follows:

"....

71. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for "default bail" only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of "default bail" after 60 days in case charge-sheet is not filed.

72. Even if I were to assume that two views are possible and third category envisaged in Section 167(2)(a)(ii) is ambiguous, as suggested by learned Brother Pant, J., then also I have no doubt in my mind that a statute which curtails the liberty of a person must be read strictly. When any human right; a constitutional fundamental right of a person is curtailed, then the statute which curtails such right must be read strictly. **Section 167 of the Code lays**

² (2017) 15 SCC 67

down the procedure established by law by which a person can be deprived of his personal liberty guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being of being free."

(Emphasis supplied)

The Apex Court holds that even an assumption of two views emerging possible it should be in favour of the liberty under Article 21 of the Constitution of India. Later, the Apex Court in the case of

M. RAVINDRAN v. INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE INTELLIGENCE³ has held as follows:

"....

II. Section 167(2) and the Fundamental Right to Life and Personal Liberty

17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in *Uday Mohanlal Acharya [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760]* on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows : (SCC p. 472, para 13)

³ (2021) 2 SCC 485

"13. ... Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution."

17.1. Article 21 of the Constitution of India provides that "*no person shall be deprived of his life or personal liberty except according to procedure established by law*". It has been settled by a Constitution Bench of this Court in *Maneka Gandhi v. Union of India* [*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248], that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge-sheet was filed. The Law Commission of India in Report No. 14 on *Reforms of the Judicial Administration* (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody

without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

17.3. Hence the Law Commission in Report No. 14 recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that "*while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual*". Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on *The Code of Criminal Procedure, 1898* (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein "*the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner*". Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides

that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

"3. The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:

- (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
- (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
- (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. **Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.**

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional

commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three-Judge Bench of this Court in *Rakesh Kumar Paul v. State of Assam* [*Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , which laid down certain seminal principles as to the interpretation of Section 167(2) CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in *Rakesh Kumar Paul* [*Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a *minimum ten year*' imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in **lieu of a written application**. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows : (SCC pp. 95-96 & 99, paras 29, 32 & 41)

"29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, *the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a*

prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature. ...

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. *In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.*

41. *We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical.* The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

(emphasis supplied)

Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in *S. Kasi v. State* [*S. Kasi v. State*, (2021) 12 SCC 1 : 2020 SCC OnLine SC 529] , wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.

...

V. Rights of the Prosecutor under Section 167(2) CrPC read with Section 36-A(4), NDPS Act

20. There also appears to be some controversy on account of the opinion expressed in *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087]* that the Public Prosecutor may resist grant of default bail by filing a report seeking extension of time for investigation. The Court held that : (SCC p. 635, para 30)

"30. ... It is, however, permissible for the Public Prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court *without notice* to an accused to have his say regarding the prayer for grant of extension under clause (bb). *In this view of the matter, it is immaterial whether the application for bail on ground of "default" under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the Public Prosecutor first so long as both are considered while granting or refusing bail.* If the period prescribed by clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the Public Prosecutor made under clause (bb), the court *shall* release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within the extended period, the court *shall* have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court."

(emphasis in original and supplied)

This was affirmed by the Constitution Bench in *Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433]*, wherein it was held that the grant of default bail is subject to refusal of the prayer for extension of time, if such a prayer is made. This seems to have given rise to the misconception that *Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433]* endorses the view that the prosecution may seek extension of time (as provided for under the relevant special statute) for completing the investigation or file a final report at any time before the accused is released on bail, notwithstanding the fact that a bail application on ground of default has already been filed.

20.1. The observations made in *Hitendra Vishnu Thakur [Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 : 1994 SCC (Cri) 1087]* and *Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433]* to the effect that the application for default bail and any application for extension of time made by the Public

Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time *prior* to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the court that the prosecution has already obtained an order of extension of time from the court; or that the challan has been filed in the designated court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.

20.3. However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of "buying extra time" and facilitating filling up of lacunae in the investigation by the investigating agency."

(Emphasis supplied)

The Apex Court, in the afore-quoted judgment, dealt with interplay of Section 167(2), the fundamental right to life and personal liberty.

The Apex Court holds that resolution of the dilemma of interpretation of Section 167(2) should always be leaning towards the purport of Article 21 of the Constitution of India. The unmistakable inference of afore-quoted elucidation by the Apex Court is that when the punishment is up to ten years, the investigation is 60 days and in those cases, the accused were held entitled to statutory bail, if the investigation is not completed within 60 days. In Section 187 of BNSS the phraseology is offence punishable for ten years or more. As observed hereinabove, ten years or more would unequivocally mean that the threshold punishment is ten years, and not a punishment up to ten years.

12. Three decades ago, a learned single Judge of this Court in the case of ***DHARMASINGH v. STATE OF KARNATAKA***⁴, while interpreting the provisions of Narcotic Drugs and Psychotropic Substances Act has held as follows:

"....

5. The learned Government Pleader relied on 1991 Criminal Law Journal, 654 [Narcotics Control Bureau v. Kishan Lal.] wherein the Supreme Court has laid down as follows:—

⁴ **ILR 1992 KAR 3137**

"Section 37 as amended starts with a non-obstante clause stating that notwithstanding anything contained in the Code of Criminal Procedure, 1973 no person accused of an offence prescribed therein shall be released on bail unless the conditions contained therein were satisfied. The N.D.P.S. Act is a special enactment and it was enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. That being the underlying object and particularly when the provisions of Section 37 of NDPS Act are in negative terms limiting the scope of the applicability of the provisions of Cr. P.C. regarding bail, it cannot be said that the High Court's powers to grant bail under Section 439, Cr. P.C. are not subject to the limitation mentioned under Section 37 of the NDPS Act. The non-obstante clause with which the section starts should be given its due meaning and clearly it is intended to restrict the powers to grant bail. In case of inconsistency between Section 439, Cr. P.C. and Section 37 of the NDPS Act, Section 37 prevails. The provisions of Section 4, Cr. P.C. also make it clear that when there is a special enactment in force relating to the manner of investigation, enquiry or otherwise dealing with such offences, the other powers under Cr. P.C. should be subject to such special enactment. In interpreting the scope of such a statute the dominant purpose underlying the statute has to be borne in mind. Consequently the power to grant bail under any of the provisions of Cr. P.C. should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act."

In view of the interpretation of Section 37 by the Supreme Court in the said Ruling, the provisions of Cr. P.C. regarding bail are subject to the conditions mentioned in Section 37 of the Act. The learned Counsel for the petitioners have argued that Section 37 will be applicable only to a person who is accused of an offence which is punishable for a term of minimum 5 years or more. According to them if the offence is punishable for a term less than 5 years, Section 37 of the Act will not be attracted. The relevant provision of Section 37 of the Act lays down that no person accused of an offence punishable for the term of imprisonment for a period 5 years or more shall be released on bail unless the conditions laid down in sub-section (b)(1)(2) are satisfied. Now it will have

to seen whether the expression "an offence punishable for a term of imprisonment of 5 years or more under this Act" means that it refers to an offence for which the minimum punishment is 5 years or more. In A.I.R. 1988 SC 1875 [*Dr. Ajay Pradhan v. State of Madhya Pradesh.*] , the Supreme Court while dealing as to how the words in statutes are to be interpreted has laid down guidelines in the following words:—

"A rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider."

In A.I.R. 1954 SC 496 [*Tolaram v. State of Bombay.*] , the Supreme Court has given guidance as to how the penal provisions in an Act are to be interpreted in the following words:—

"If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature."

Interpreting the expression "punishable for a term of imprisonment of 5 years or more" in the light of the Supreme Court Ruling quoted above, I am of the opinion that the expression means that the offence should be punishable with minimum of 5 years or more because the words "or more" are added only to emphasise that the offences punishable with minimum 5 years or more are to be offence for which the provision of Section 37 of the Act is made applicable. The said expression means that the offence should be punishable with minimum of 5 years or more. The

words "or more" are to be read with reference to "5 years" in their grammatical meaning. "5 years or more" mean that the basis is 5 years and "or more" is the period that has to be considered with reference to the basis of "5 years". If the intention of the Legislature was to make Section 37 of the Act applicable to the offences which are punishable even upto 5 years or less, then the Legislature would not have used the expression "5 years or more". It could have simply said for any offences. It could not have qualified the words offence in Section 37 with the expression "punishable for a term of imprisonment for 5 years or more." Therefore the expression means that the offence must be punishable with the punishment which shall be not less than 5 years, but it can be more. The Ruling of the Supreme Court reported in 1991 Criminal Law Journal 654 [*Narcotics Control Bureau v. Kishan Lal.*] can be distinguished on the ground that the Supreme Court has not considered this aspect of Section 37 in that Ruling.

6. The offence alleged against the petitioner is punishable under Section 20 of the Act with a term which may extend to 5 years and shall also be liable to fine, which may extend to Rs. 50,000/-. The offence alleged against the petitioner is punishable in maximum upto 5 years and not for a term of imprisonment for 5 years or more. The maximum punishment provided is 5 years and Section 37 of the Act applies to the offences punishable with imprisonment which cannot be less than 5 years but it can be more. Therefore, the provisions of Section 37 of the Act will not be attracted to the offence under Section 20 of the Act as the maximum punishment provided for the offence is 5 years. If the punishment for the offence under Section 20 were to be not less than 5 years but 5 years or more, then Section 37 would have been attracted."

(Emphasis supplied)

A learned single Judge holds that five years and more would be, that the minimum sentence should be five years. Under Section 187(3) of BNSS the phrase used is ten years or more. It is axiomatic that the threshold punishment is ten years.

13. The petitioners have placed reliance upon certain judgments of this Court and that of Apex Court. In the case of **KNIT PRO INTERNATIONAL v. STATE OF NCT OF DELHI** reported in (2022) 10 SCC 221 the Apex Court holds that when the punishment can go up to three years, the maximum punishment imposable becomes three years. Therefore, those offences are cognizable. The same was the interpretation of this Court in the case of **ANI TECHNOLOGIES PRIVATE LIMITED v. STATE OF KARNATAKA** – W.P.No.32942 of 2017 decided on 20-12-2021. The language deployed of the statute i.e., BNSS projects no ambiguity. Therefore, the order rendered in terms of Section 187 does not also brood any ambiguity. There is no error, much less an error apparent on the face of the record. Therefore, it becomes a clear case where if the offence is punishable where term can be extended up to ten years, it could vary from one to ten. The police

custody in such cases would be available for 15 days within the first 40 days of investigation. **15 days could vary from day one to day forty, but the total would be 15 days.** If the offence is punishable with ten years or more with the minimum sentence being ten years, the police custody would range from day one to day sixty, 15 days in total.

14. If the offences now alleged are taken note of against these accused, the maximum punishment is that can be extended up to ten years. It is not ten years or more. Therefore, the police custody should be within forty days of investigation and final report is filed within 60 days of investigation. It is brought to the notice of the Court that the prosecution filed the application invoking Section 140 of BNS. If that has been invoked, it is for the concerned Court to pass orders by regulating its procedure. The interpretation that fell to the hands of the Court is interpreted as aforesaid.

SUMMARY OF FINDINGS:

- (i) A slight tweak in the new regime *qua* 187(3) of BNSS in juxtaposition to Section 167(2) of the earlier regime – the Cr.P.C. has not changed the purpose of the provision.
- (ii) The phraseology of the words 'ten years or more' found in sub-clause (i) of Section 187(3) of the BNSS would mean, the minimum threshold punishment imposable on an offence under the BNS should be ten years.
- (iii) The offence in the case at hand, does not bear a minimum threshold sentence of ten years, but is extendable or to an extent of ten years, which would mean, discretion available to the concerned Court to impose punishment up to ten years. Therefore, the minimum threshold is not ten years.
- (iv) Completion of investigation in a punishment which is up to ten years is undoubtedly 60 days. Rest of the other offences, be it death, life imprisonment of ten years and more, would be 90 days.
- (v) If the investigation is to complete within 60 days, the period of police custody would run from day one day forty of registration of the crime. If it is 90 days, it

would run from day one to day 60, **maximum period in both the cases is 15 days of police custody.**

- (vi) In the case at hand, the offence is punishable up to ten years, Therefore, the police custody is only from day one to day forty.

15. For the aforesaid reasons, finding no warrant to interfere with the order passed by the concerned Court, the petitions deserve to be rejected and are accordingly, rejected.

Pending application if any, also stand disposed.

**Sd/-
(M. NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ