LAW OF BAIL
(For Magistrates)

S.S. Upadhyay
Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor

Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in

1. **Object of Bail u/s 437 or 439 CrPC** : It has been laid down from the earliest time that the object of Bail is to secure the appearance of the accused person at his trial by reasonable amount of Bail. **The object of Bail is neither punitive nor preventive**. Deprivation of liberty must be considered a punishment unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after convictions, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earlier times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such case 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the constitution that any persons should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty under Article 21 of the Constitution upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the

purpose of giving him a taste of imprisonment as a lesson. See: Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.

2. **Requirements for bail u/s 437 & are different :** Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonement for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. Parliament has carried out amendments to this pandect comprising Sections 437 to 439, and, therefore, predicates on the well established principles of interpretation of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Soe salient features o these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severelly curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conuundrum of 'Committal of cases to the Court of Session' because of a possible hiatus created by the CrPC. See : Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745

3. **Object of bail not punitive or preventive but to secure appearance of accused at trial** : The object of grant of bail to an accused of an offence is neither punitive nor preventive in nature. The true object behind grant of bail is to secure appearance of accused during trial. See: Sanjay Chandra Vs.

Central Bureau of Investigation, AIR 2012 SC 830 (Note: it was 2G Spectrum Scam Case).

4. **Refusal of bail & detention of under trial prisoner in jail to an indefinite period violative of Article 21 of the Constitution** : If bail to an accused under Section 437 or 439 of the CrPC is refused by the court and he is detained in jail for an indefinite period of time and his trial is likely to take considerable time, the same would be violative of his fundamental rights as to 'personal liberty' guaranteed by Article 21 of the Constitution. See:

(i) Satender Kumar Antil v. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 8 to 12)

(ii) Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.

5. **Bail is the rule, jail exception :** While considering an application for bail either under Section 437 or 439 CrPC, the court should keep in view the principle that grant of bail is the rule and committal to jail an exception. Refusal of bail is a restriction on personal liberty of the individual guaranteed by Article 21 of the Constitution. See:

(i). Arnab Manoranjan Goswami Vs State of Maharastra, (2021) 2 SCC 427 (PAra 70).

(ii).Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830.

(iii). State of Rajasthan Vs Balchand, (1977) 4 SCC 308.

6. **Seriousness of the offence not to be treated as the only consideration in refusing bail :** Seriousness of the offence should not to be treated as the only ground for refusal of bail. See: Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830 (Note: it was 2G Spectrum Scam Case).

7. **Personal appearance/custody of accused must for bail** : Bail application cannot be entertained/heard unless the accused is in the custody of the court. If the accused is already lodged in jail under some order of court, the bail application can be heard and disposed of even without physical appearance/production of the accused before the court. Since the provisions of Sec. 438 CrPCregarding anticipatory bail have been omitted in the State of U.P. vide U.P. Act No. 16 of 1976, so granting bail without seeking custody of the accused would amount to bring in vogue the omitted provisions of Sec. 438 CrPC. Even u/s 88 Cr.P.C., bail cannot be granted to a person without his personal appearance before the court. See:

1. Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745
2. Vaman Narain Vs. State of Rajasthan, 2009 Cr.L.J. 1311 (SC)
3. Sunita Devi Vs. State of Bihar, 2005(51) ACC 220 (SC)
4. Mukesh Kumar Vs. State of U.P., 2000(40) ACC 306 (All)
5. Kamlesh Parihar Vs. State of U.P., 1999 ALJ 1507 (All—D.B.)
6. Niranjan Singh Vs. Prabhakar Rajaram, AIR 1980 SC 785
7. Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--LB)

8. Accused to be permitted to surrender even without report from police : The practice of some of the subordinate Magistrates not to permit an accused to surrender when they make such request and simply ask the Public Prosecutor to report is not proper. When an accused surrenders in court and makes an application stating that he is wanted in the crime, his prayer should be accepted. The practice of postponing surrender application is not fair and cannot be approved. Things may, however, stand differently if the surrender application does not specifically mention that the person surrendering is wanted in a case or that the police may be asked to report if he is wanted at all. See: Devendra Singh Negi Vs. State of U.P., 1993 A.Cr.R. 184 (All).

9. **Bail during police custody remand** : Relying upon the Constitution Bench decision in the case of Shri Gur Vaksh Singh SibbiaVs. State of Punjab, AIR 1980 SC 1632, it has been held by the Bombay High Court that bail application u/s 439 of the CrPC is maintainable before the Sessions Court even if filed during the period of police remand of the accused granted by magistrate. Sessions Court can not reject application for bail on that ground. Bail application should be entertained and considered on merits even if there is order of police remand. See: Krushna Guruswami Naidu Vs. State of Maharashtra, 2011 CrLJ 2065 (Bombay).

10. **Bail in bailable offences u/s 436 CrPC:** The right of an accused to bail u/s 436 CrPC in bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 CrPCare imperative. As soon as it appears that the accused person is prepared to give bail, the police officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in Sec. 436 CrPCinstead of taking bail from him. See :

(i) Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338
(ii) Vaman Narain Ghiya Vs. State of Rajasthan, 2009 CrLJ 1311 (SC)

11.1 Offences punishable with imprisonment less than three years are bailable : The expression "bailable offences" has been defined in Section 2(a) of the CrPC. It means an offence which is either shown to be bailable in the First Schedule of the CrPC or which is made bailable by any other law for the time being in force. The First Schedule the Code of Criminal Procedure consists of part 1 and part 2. While part 1 deals with offences under the IPC, part 2 deals with offences under other laws. Accordingly, if the provisions of part 2 of the first schedule are to be applied, an offence in order to be cognizable and bailable would have to be an offence which is punishable with imprisonment for less than 3 years or with fine only, being the third item under the category of offences indicated in the said part. An offence punishable with imprisonment for 3 years and upwards, but not more than 7 years, has been shown to be cognizable and non-bailable. See : Om Prakash & another Vs. Union of India & another, 2012 (76) ACC 869 (SC) (Three-Judge Bench).

11.2 Bail application for purposes of Section 170 CrPC not required: In case where prosecution does not require custody of accused, there is no need for arrest when such case is sent to Magistrate. In such cases, there is not even a need for filing a bail application as the accused is merely forwarded to the court for framing of charges and issuance of process for trial. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 36)

12. No conditions to be imposed for bailable offences u/s 436 CrPC: Court has no discretion to impose any conditions while granting bail to an accused u/s 436 CrPCfor a bailable offence except demanding security with sureties. See : Vaman Narain Vs. State of Rajasthan, 2009 CrLJ 1311 (SC)

13. Bail in bailable offences : -when to be refused : Sec. 436(2) CrPC reads under--

"Sec. 436(2) CrPC : Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without

prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under Section 446."

14. **Offence u/s 506 IPC cognizable & non-bailable**: A Full Bench of the Hon'ble Allahabad High Court has held that the U.P. State Government's Notification No.777/VIII-94(2)-87 dated 31.7.1989 issued u/s 10 of the Criminal Law Amendment Act, 1932 making the offence u/s 506 IPC as cognizable and non-bailable is valid. The offence u/s 506 IPC in U.P. is therefore cognizable and non-bailable. See :

(i) Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031 (All)(Full Bench).

(ii) Judgment dated 01.07.2013 of the Hon'ble Allahabad High Court passed on Application u/s 482 CrPC No. 20270/2013, Panjak Gupta Vs. State of UP.

(iii) Division Bench decision dated 23.05.2008 of the Hon'ble Allahabad High Court rendered in Criminal Misc. Writ Petition No. 3251/2008, Ravi Prakash Khemka Vs. State of UP.

15. **Offence u/s 506 IPC non-cognizable & bailable :** In the case noted below, a Division Bench of the Hon'ble Allahabad High Court (by not noticing its earlier Full Bench decision in the case of Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031) while declaring the U.P. State Government's Notification No.777/VIII-94(2)-87 dated 31.7.1989 issued u/s 10 of the Criminal Law Amendment Act, 1932, has declared the offence u/s 506 IPC in the State of UP as non-cognizable and bailable. See : Virendra Singh Vs. State of UP, 2000 (45) ACC 609(All)(DB).

Note : *In view of the Full Bench decision in the case of Mata Sewak Upadhyaya Vs. State of U.P., 1995 AWC 2031 (All)(Full Bench), the aforesaid Division Bench decision in Virendra Singh Vs. State of UP, 2000 (45) ACC 609(All)(DB) does not lay down the law correctly and only the said Full Bench dicision in Mata Sewak Upadhyaya is binding***.**

16. **Person in custody in bailable offence on order of superior court not to be released on bail by inferior court :** A person in custody in bailable offence on order of superior court cannot be released on bail by inferior court. But he can be released on bail only by the superior court under whose order he was detained in custody. See : Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, AIR 1967 SC 1639.

17. **Bail by police officer : whether survives after submission of charge sheet? :** The power of a Police Officer in charge of a Police Station to grant bail and the bail granted by him comes to an end with the conclusion of the investigation except in cases where the sufficient evidence is only that of a bailable offence, in which eventuality he can take security for appearance of the accused before the Magistrate on a day fixed or from day to day until otherwise directed. No parity can be claimed with an order passed by Magistrate in view of enabling provision, contained in clause (b) of S. 209 CrPC under which the Committal Magistrate has been empowered to grant bail until conclusion of trial, which power was otherwise restricted to grant of bail by him during pendency of committal proceedings under clause (a) of S. 209 CrPC. See : Haji Mohd. Wasim Vs. State of U.P., 1992 CrLJ 1299 (All) (L.B.)

18. **Seriousness of the offence not to be treated as the only consideration in refusing bail :** Seriousness of the offence should not to be treated as the only ground for refusal of bail. See: Sanjay Chandra Vs. Central Bureau of Investigation, AIR 2012 SC 830 (Note: it was 2G Spectrum Scam Case).

19. **Expression of opinion on merits of the case not to be done while considering the bail application:** At the stage of considering bail, it would not be proper for the court to express any opinion on the merits or demerits of the prosecution case as well as the defence. See: Anwari Begum Vs. Sher Mohammad, 2005 CrLJ 4132 (SC).

20. **Bail u/s 169 CrPC :** If the IO moves an application with the prayer not to further extend the judicial custody of the accused u/s 167 CrPC, the Magistrate has no other option except to direct the accused to be released from jail on furnishing his personal bond with or without sureties. Such an order is a provisional arrangement and comes in the purview of Section 169 CrPC but such order of Magistrate releasing the accused person on execution of a personal bond with or without sureties cannot be treated as an order passed u/s 437 CrPC granting bail to the accused. See : Dr. Rajesh Talwar Vs. CBI, Delhi, 2011 CrLJ 3691 (All).

21. **BW/ NBW and Bail:** In the case noted below, the Supreme Court has ruled that BW or NBW against a person can be issued only under the following conditions :

(1) Non bailable warrant should be issued to bring a person to court when summons or bailable warrant would be unlikely to have the desired result. NBW can be issued when it is reasonable to believe that the person will not voluntarily appear in the court, or

(2) The police authorities are unable to find the person serve him with a summons, or

(3) It is considered that the person could harm someone if not placed into custody immediately.

As for as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in court, the summons or the bailable warrants should be preferred. **The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants.** In complaint cases, at the first instance, the court should direct serving of summonses. In the second instance, should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of NBW should be resorted to. See : Inder Mohan Goswami Vs. State of Uttaranchal, AIR 2008 SC 251.

22. **NBW when to be issued ? :** The Constitution, on the one hand, guarantees the right to life and liberty to its citizens under Article 21 and on the other hand imposes a durty and an obligation on the judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. ……There cannot be any straitijacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are, firstly, if it is reasonable to believe that the person will

not voluntarily appear in court; or secondly if the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.

23. Only summons or bailable warrant to be issued in the first instance in complaint cases : The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See :

(i) Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 31& 32)

(ii) Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.

24.1. NBW when to be issued ? : Where in a complaint case, the Magistrate had outright issued NBW against the accused persons, interpreting the scope of Article 21 of the Constitution in relation to the rights of personal liberty of a person, it has been held by the Supreme Court that the attendance of the accused could have been secured by issuing summons or at best by a bailable warrant. Detailed guidelines have been issued by the Hon'ble Supreme Court in this regard for observance by the courts and the Police Officers. A format of Register for entering therein the details of issue etc of NBWs has also been provided by the Hon'ble Supreme Court at the end of its judgment. See :

(i) Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 31& 32)

(ii)Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another, AIR 2011 SC 3393

24.2. Magistrate to give reasons while issuing warrant: Issuing a warrant may be an exception in which case the magistrate will have to give reasons. See:

(i) Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 37)

25. **Bail of warrantee** : Cases which would be governed by the Sections 436 and 437 CrPC, it is not necessary to apply the provisions of Sec. 88 of CrPC for the reason that Sections 436 and 437 CrPC are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPC is much wider as discussed above. The case in which Section 436 CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437 CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89 CrPC as such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s 88 CrPC or the Court gives bail u/s 436 and 437 CrPC, the appearance of the person before the Court is must and can not be dispensed with at all. See : The Division Bench Decision dated 23.3.2006 rendered in Criminal Misc. Application No. 8810 of 1989, Babu Lal Vs. Smt. Momina Begum & Criminal Misc. Application No. 8811 of 1989, Parasnath Dubey Vs. State of U.P., circulated by the Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33 / 2006, dated 7.8.2006.

26. **Penalty awardable against accused on breach of bail or bond to appear in court (Sec. 229-A IPC) :** The newly added sections 174-A IPC & 229-A IPC since 2006 provide penalty to an accused in case of non-appearance in response to a proclamation u/s 82 CrPC and breach of bail or bond to appear in court. Sec. 229-A IPC reads as under :

"Sec. 229-A IPC : Failure by person released on bail or bond to appear in Court : Whoever, having been charged with an offence and released on bail or bond without sureties, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation : The punishment under this section is :

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order for feature of the bond."

27.1 **Section 437(6) CrPC(now Section 480(6) of the BNSS) providing for grant of bail to the accused/under-trial if the trial does not conclude within sixty days is not mandatory**: Provisions of Section 437(6) of the CrPC(now Section 480(6) of the BNSS) providing for grant of bail to the accused/under-trial if the trial does not conclude within sixty days is not mandatory. Magistrate can refuse bail by recording reasons that grant of bail would not be proper. See: Subhelal Vs, State of Chhattisgarh, (2025)5 SCC 140 (Para 11)

27.2 Bail u/s 437(6) CrPC : Where the accused was facing trial before the Magistrate for the offences u/s 419, 420, 467, 468, 471 IPC and the case was absolutely triable by Court of Magistrate and the accused was in jail since 18.05.2012 and charge was framed on 18.09.2012 but after elapse of 60 days since the trail had commenced but yet not concluded, the accused was granted bail (on second application) u/s 437(6) CrPC. See : Surendra Singh Vs. State of UP, 2013 (82) ACC 867 (All).

28. Relevant considerations for grant or refusal of bail in non-bailable offences : Interpreting the provisions of bail contained u/s 437 & 439 CrPC, the Supreme Court has laid down following considerations for grant or refusal of bail to an accused in a non-bailable offence :

(1) Prima facie satisfaction of the court in support of the accusations
(2) Nature of accusation
(3) Evidence in support of accusations
(4) Gravity of the offence
(5) Punishment provided for the offence
(6) Danger of the accused absconding or fleeing if released on bail
(7) Character/criminal history of the accused
(8) Behavior of the accused
(9) Means, position and standing of the accused in the Society
(10) Likelihood of the offence being repeated
(11) Reasonable apprehension of the witnesses being tampered with
(12) Danger, of course, of justice being thwarted by grant of bail
(13) Balance between the rights of the accused and the larger interest of the Society/State
(14) Any other factor relevant and peculiar to the accused.

(15) While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, but if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. See :

(1a.). Mayakala Dharamaraja Vs. State of Telangana, (2020) 2 SCC 743
(1) Lachhman Dass Vs. Resham Chand Kaler, AIR 2018 SC 599
(2) Virupakshappa Gouda Vs. State of Karnataka, AIR 2017 SC 1685(para 16)
(3) State of Bihar Vs. Rajballav Prasad, (2017) 2 SCC 178
(4) Sanghian Pandian Rajkumar Vs. CBI, 2014 (86) ACC 671 (SC) (Three-Judge Bench)
(5) Nimmagadda Prasad Vs. CBI, (2013) 7 SCC 466 *(para 24)*
(6) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933
(7) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
(8) Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949
(9) Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189
(10) Gokul Bhagaji Patil Vs. State of Maharashtra, (2007) 2 SCC 475
(11) Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
(12) State of U.P. through CBI Vs. Amarmani Tripathi,(2005) 8 SCC 21
(13) Surinder Singh Vs. State of Punjab, (2005) 7 SCC 387
(14) Panchanan Misra Vs. Digambar Misra, 2005 (1) SCJ 578
(15) Chamanlal Vs. State of U.P., 2004(50) ACC 213 (SC)
(16) State of Gujarat Vs. Salimbhai Abdul Gaffar, (2003) 8 SCC 50
(17) Mansab Ali Vs. Irsan, (2003) 1 SCC 632.

28.1. Supreme Court expects Central Government to enact a separate Act of Bails: Supreme Court has expected the Central Government to enact a separate Act for law of bails. Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 31& 32)

29. Heinous offences: What are?: Only those offences which prescribe minimum sentence of seven years or more can be regarded as heinous offences. Offences not providing minimum sentence of seven years cannot be treated as heinous offences. See: Shilpa Mittal Vs. State NCT of Delhi, (2020) 2 SCC 787

30.1 Conditions for grant of bail u/s 437 CrPCare also relevant for grant of bail u/s 439 CrPC: Relying upon an earlier Three-Judge Bench decision of the Supreme Court in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, (2004) 7 SCC 528, it has again been held by the Supreme Court that the conditions/considerations laid down in Sec. 437(1)(i) CrPCare also relevant for grant of bail even u/s 439 CrPC. See:

(i) Dinesh M.N. (S.P.) Vs. State of Gujarat, 2008 Cr.L.J. 3008 (SC)

(ii) Satender Kumar Antil v. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 56 &58)

30.2 refused to marry her on the ground that the girl was astrologically a 'Mangali' and for that reason marriage of the boy with the said mangali girl was not possible given the belief of the family of the boy in astrology and FIR by the girl against the boy was got registered for having committed rape on her on false promise of marriage, the Lucknow Bench of the Allahabad High Court directed the boy and the girl to produce their respective horoscopes before the head of Department of Astrology of the Lucknow University directing the HOD to submit to the High Court his expert opinion whether the girl was really mangali as per her horoscope, the Hon'ble CJI who was celebrating his summer vacations in the month of June, 2023 in some European country came to know about the said order of the Lucknow Bench and constituted a special Bench of the two vacation judges of the Supreme Court via e-mail from Europe. The Special Bench of the Supreme Court took suo-moto cognizance of the order of the Single Judge of the Lucknow Bench and noticing it that the order calling for astrological report on the astrological status of the girl was disturbing and unknown to the law of bails stayed the operation of the order of the Single Judge of the Lucknow Bench. Law of Bails so far in India has been that at the time of hearing and disposal of the bail applications, only the material compiled by the Investigating Agency as contained in the case diary is considered by the courts and both the parties can also take their grounds of opposing or seeking the bail from the case diary only and no extraneous material which was neitheir complied by the Investigating Agency nor made part of the case diary could be looked into by the courts nor the court should call for any extraneous evidence for purposes of disposing of the bail application which was not made part of the case diary by the Investigating Agency. It has to be seen as to what final order is passed by the Supreme Court in the matter. See: Order dated 23.05.2023 of the Lucknow Bench passed in Criminal Misc. Bail Application No. 13485/2022, Gobind Rai alias Monu Vs. State of U.P.

35.3 Granting bail to accused after calling for scientific test reports like DNA, Narco analysis and Lie Detector deprecated by Supreme Court: In the case noted below, it was contended before the Hon'ble Supreme Court that while considering the bail application, the High Court traversed the settled principles of law by directing the accused/respondent no. 2 as well as the appellant, who was grandmother of the victim along with parents of the victim, to undergo scientific tests viz., lie detector, brain mapping and NarcoAnalysis. After receiving the reports of the same, High

Court examined the same before enlarging respondent no. 2 on bail vide impugned order dated 27.04.2018. The High Court had throughout the course of its order disclosed the identity of the "victim". The Supreme Court expressed surprise that the approach adopted by the High Court while considering the bail application was seriously violative of Section 228A of the IPC and also the principles of law of bails. The High Court ordering the abovementioned tests was not only in contravention to the principles of criminal law jurisprudence but also violated the statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein Court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case. In the instant case, by ordering the aforementioned tests and venturing into the reports of the same with meticulous details, the High Court had converted the adjudication of a bail matter to that of a mini-trial indeed. This assumption of function of a trial court by the High Court was deprecated. Taking note of the violation of settled principles of criminal law jurisprudence and statutory prescriptions vis à vis conversion of adjudication of bail application to a mini-trial and disclosure of identity of the "victim" by the High Court, the Supreme Court disapproved the manner in which the High Court had adjudicated the bail application and accordingly quash the order passed by the High Court. The Supreme Court further observed that the lethargic attitude of the State by not taking necessary steps to bring the matter to the notice of the Supreme Court by filing an appeal despite the clear violations of settled principles of criminal law jurisprudence and statutory prescriptions. The present Special Leave Petition was filed by the grandmother of the victim and it was only on her behest that the Supreme Court took notice of the matter. See: Order dated 29.10.2018 passed by the Supreme Court in Criminal Appeal No.1309 of 2018, Sangitaben Shaileshbhai Datanta Vs State of Gujarat

36. **Affidavits of P.Ws. & Bail :** In considering bail applications, the Courts should not consider affidavits of prosecution witnesses filed denying the prosecution case. See: Jaswant Vs. State of U.P., 1994 ACC 424 (All).

37. **Hearing of prosecutor & accused on Bail Application :** Last proviso added to Sec. 437(1) CrPCw.e.f. 2006 amendments reads as under:

"Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor."

In a case u/s 302, 201 IPC, where the Sessions Judge had granted interim/short term bail without hearing the Public Prosecutor, the Allahabad High Court observed as under:

"Hearing of both the parties at the stage of bail is almost an essentiality. By granting an easy bail, or for that matter, interim bail, indirectly, the State is condemned. Therefore, State has a right to be heard in all cases, like bail, unless in some exceptional cases in which the court considers it proper to exempt itself from this obligation. In the instant case, the learned Sessions Judge has not mentioned any reason or exceptional circumstance which compelled him to pass the order for short term bail without hearing the counsel for the State. There is not even a faint suggestion as to what were the compelling circumstances which necessitated the grant of short term bail then and there." See : Sudhindra Kumar Singh Vs. Distt. & Sessions Judge, Allahabad & Ors., 1998 (1) Crimes 270 (All).

38. **Right of third person to hearing & oppose bail :** Any member of public acting bona fide without any extraneous motivations can help in dispensation of justice. He can approach court against any sufferance by a set of facts where alleged crime is an offence against society. See: Atique Ahmed Vs. State of UP, 2012 (76) ACC 698 (All).

39. **Criminal History of Accused & Bail :** While granting bail to an accused, the court should also take into consideration the criminal history of the accused. Criminal antecedents of an accused though always not determinative of question whether bail is to be granted or not, yet their relevance cannot be totally ignored. See:

1. Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
2. Brij Nandan Jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
3. Surendra Singh Vs. State of U.P., 2008 Cr.L.J. (NOC) 924 (All)
4. Anil Kumar Tulsiyani Vs. State of U.P., 2006 (55) ACC 1014 (SC)
5. Sompal Singh Vs. Sunil Rathi, 2005 (1) SCJ 107
6. State of U.P. Vs. Amarmani Tripathi, (2005) 8 SCC 21
7. State of Maharashtra Vs. Sitaram Popat Vetal, AIR 2004 SC 4258

40. **Criminal history not a ground for refusal of bail** : Where the accused was allegedly involved in the commission of murder punishable u/s 302 IPC, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that if the accused is otherwise entitled to bail, the same should not be refused on the ground of his criminal antecedents. See: Pawan Kumar Pandey Vs. State of UP, 2007 (1) JIC 680 (All---by Hon'ble K.S. Rakhra J.)

Note ***: In the above case, the accused was involved in 56 criminal cases.***

41. **Bail granted by High Court without considering criminal history cancelled by Supreme Court** : Where the accused, a history-sheeter with 30 serious criminal cases pending against him, was granted bail by the Hon'ble Allahabad High Court for the offences u/s 365 & 506 of the IPC without considering the criminal antecedents of the accused, the Supreme Court cancelled the bail and observed that though the High Court and the Court of Sessions have got power to grant bail to an accused u/s 439 of the CrPC but the concept of personal liberty of a person is not in realm of absolutism but is restricted one. The fact that the accused was lodged in jail for the last 07 months melts into insignificance. No element in Society can act in a manner by consequence of which life or liberty of others is jeopardized. See: Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446.

42. **Second or successive bail applications :** Second or successive bail applications can be moved only on two grounds noted below:

(i) On change of facts or circumstances

(ii) Change in law

Where the issues and grounds taken in the second or successive bail applications were already agitated and rejected by the court, the same cannot be ordinarily allowed to be re-agitated. Findings of higher courts or coordinate bench rejecting the earlier bail application must receive serious consideration at the hands of court entertaining a subsequent bail application as the same can be done only in case of change in factual position or in law. If the subsequent bail application is moved on the same grounds as in the previous bail application, the subsequent bail application would be deemed to be seeking review of earlier order which is not permissible under criminal law. See:

1. Suheb Vs. State of U.P., 2006 (6) ALJ (NOC) 1362 (All)
2. Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, 2005 (51) ACC 727 (SC) (Three-Judge Bench)
3. State of T.N. Vs. S.A. Raja, 2005 (53) ACC 940 (SC)
4. State of M.P. Vs. Kajad, 2002 (1) JIC 563 (SC)

43. ASJ dismissed for allowing second bail application : Where an Addl. Sessions Judge of district Etah had had granted bail to the accused persons in two different cases involving offences u/s 302 & 307 of the IPC by entertaining second and third bail applications despite the fact that in one of the two cases, the bail application of the accused persons was already rejected by the High Court and in the other one by the Sessions Judge Etah, an enquiry was ordered by the Hon'ble High Court against the ASJ and on being found guilty for having entertained and granted the successive bail applications for extraneous reasons, the ASJ was dismissed from service by the Full Court of the Hon'ble Allahabad High Court. The Writ Petition was filed by the ASJ challenging his dismissal from service was also dismissed by a Division Bench of the Hon'ble Allahabad High Court. See : Ram Chandra Shukla Vs. State of UP & Others, (2001) 3 UPLBEC 2351 (All) (DB).

44. Circular Letter on second bail application: A Sessions Judge has no doubt concurrent jurisdiction in the matter of bail u/s 439 CrPC and is competent to entertain the bail application of accused on fresh grounds even after the rejection of his bail application by the High Court but the power has to be exercised by the Sessions Judge in exceptional circumstances. Normally, the Sessions Judges should keep their hands off in bail applications, which stand rejected by the High Court.See: C.L. No. 2934/1988 dated 01.04.1988

45.1 Right to default bail u/s 167(2) CrPC is a fundamental right and not mere statutory right: Right to default bail u/s 167(2) CrPC is a fundamental right under Article 21 of the Constitution and not mere statutory right.See:Bikramjit Singh Vs State of Punjab, (2020) 10 SCC 616 (Three-Judge Bench)

45.1(a). Scope of Section 167(2) CrPC: Section 167(2) was introduced in the CrPC in the year 1978 giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21 of the

Constitution. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one inuring to the benefit of suspect. Such a right cannot be taken away even during any unforeseen circumstances such as the recent pandemic as held by this court in M. Ravindran Vs Directorate of Revenue Intelligence, (2021) 2 SCC 485. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 34)

45.1. Bail u/s 167(2) CrPC: when can be granted: Where charge sheet is not filed within a period of 60 or 90 days and the accused moves application for being released on bail u/s 167(2), Proviso (a) of the CrPC and offers to furnish bail, he can be said to have availed of indefeasible right for being released on bail. If the application of the accused moved u/s 167(2) CrPCis erroneously rejected by the Magistrate and the accused then approaches higher forum for bail and the charge sheet is filed in the meantime, it does not extinguish the accrued right of the accused to be released on bail u/s 167(2) CrPC. See :

1. Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910
2. Dinesh Kumar Jain Vs. State of U.P., 2001 CrLJ 2847 (All)

45.2.Submitting charge-sheet without sanction order: Where charge-sheet was filed in the court within 90 days without sanction order of the competent authority for prosecution of the accused and the accused had moved application for bail under section 167(2) CrPC on the ground of absence of sanction order along with the charge-sheet, the Supreme Court held that since the charge-sheet was filed in the court within 90 days, accused was not entitled to bail. What is necessary under section 167(2) CrPC is filing of the charge-sheet in the court within 60 or 90 days and not the sanction order which could be filed before the court even after filing of the charge-sheet. See:See: Judgment dated 13.2.2013 of the Supreme Court in Suresh Kumar Bhikamchand Jain Vs. State of Maharastra (Three-Judge Bench)

45.3 Accused not entitled to default bail u/s 167(2) CrPC if IO files charge-sheet within 60/90 days: The Supreme Court has ruled that an accused is not entitled to default bail u/s 167(2) Cr.P.C. if an investigating agency files its chargesheet within the time limit but without the sanction for prosecution. The question of sanction and its legitimacy would be considered by the court at the time of taking congisance of offences on the chargesheet. See: Judgement dated 01.05.2023 of Supreme Court comprising CJI Dr. D.Y. Chandrachuda and Justice Pardiwala.

45.4. Merits not to be considered while granting bail u/s 167(2) CrPC : It is well settled that when an application for default bail is filed u/s 167 (2) CrPC, the merits of the matter are not to be gone into. See:

(i) Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445
(ii) Union of India Vs. Thamisharasi, (1995) 4 SCC 190

45.5. Moving application by accused u/s 167(2) CrPC after submission of charge-sheet can be decided only on merits : Where charge sheet has not been filed within the stipulated period and the accused moves an application before concerned Magistrate for being released from jail and offers to furnish bail bonds then in such a case, even if the concerned Magistrate fails to pass any order on the bail application of the accused and keeps the same pending and in the meantime charge sheet is submitted the indefeasible right which has accrued to the accused under proviso to section 167 (2) CRPC shall not be extinguished. If however, an accused fails to enforce his right under proviso to Section 167 (2) CrPC and a charge sheet is submitted after the stipulated period in that case the indefeasible right accruing to an accused shall stand extinguished and his bail application shall be considered on merits only in accordance with the relevant provisions of the code. See:

(i).M. Ravindran Vs Intelligence Officer, (2021)2 SCC 485 (Three-Judge Bench)

(ii).Chandra Pal Vs. State of U.P., 2011 CrLJ 1124 (All)

45.6. Conditional bail u/s 167 (2) CrPC when permissible?: Condition to co-operate with the investigating agency and report to the police station can be imposed by the court while granting statutory bail u/s 167 (2) CrPC. But the condition to deposit certain amont before bail u/s 167 (2) CrPC cannot be imposed. See: Sarvanan Vs. State, (2020) 9 SCC 101 (Three- Judge Bench).

45.7. 60 days relevant for default bail u/s 167(2)(a)(i) CrPC if minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment : In all cases where minimum sentence is less thatn 10 years but maximum sentence is not death or life imprisonment, then Section 167(2)(a)(i) CrPC will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed**.** See :
(i) Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench)
(ii) Rajeev Chaudhary Vs. State NCT of Delhi, AIR 2001 SC 2369.

45.8.Section 167(2)(a)(i) CrPC when attracted ? : Section 167(2)(a)(i) CrPC is applicable only in cases where accused is charged with :
(i) offences punishable with death and any lower sentence
(ii) offences punishable with life imprisonment and any lower sentence.
(iii) offences punishable with minimum sentence less than ten years. See : Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).

45.9. Section 167(2)(a)(ii) CrPC when attracted ? : In all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment, then Section 167(2)(a)(ii) CrPC will apply and accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed. See : Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).

45.10.If minimum sentence is less than 10 years, accused is entitled to bail u/s Section 167(2)(i), Proviso (a) if charge-sheet is not filed within 60 days : Section 167(2)(i), Proviso (a) CrPC relates to an offence punishable with a minimum of 10 years imprisonments. Where the accused was charged for offence u/s 13(1) of the Prevention of Corruption Act, 1988 punishable with imprisonment which may extend to 10 years i.e. minimum sentence is less than 10 years, non submission of charge-sheet within statutory period of 60 days will entitle the accused to be released on default bail. See : Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).

45.11.Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i) & its meaning : In the matter of a criminal case involving offence u/s 386 of the IPC, the Supreme Court has clarified the meaning of the expression "Imprisonment for a term of not less than ten years in Sec. 167(2)(a)(i)" as under :

Sec. 386 IPC reads as under : "Extortion by putting a person in fear of death or grievous hurt : 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."

The Supreme Court has clarified that 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 authorize the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in case, where offence is punishable with imprisonment for 10 years or more, 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. U/.s 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) or Proviso (1) 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 lsess than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. U/s 386 of the 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. See **:** Rajeev Chaudhary Vs. State (NCT) of Delhi, AIR 2001 SC 2369

45.12. Sec. 306 IPC & application of 60 or 90 days : Where in a criminal case the investigation related to the offences u/s 306 and 498-A IPC it has been held that an offence u/s 306 IPC may extend to ten years and it cannot be said that the offence u/s 306 IPC is not punishable for a term of not less than ten years. Sec. 498-A does not pose any problem, the period of detention which is permissible in the present case where the applicant is charged for the offences u/s 498-A and 306 IPC is set aside. See : Sohan Lal Vs. State of U.P., 1991 A.Cr.R. 383 (All).

45.13. "Day": When commences and when ends ? : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O’ Clock midnight and continues until the same hour the following night. See: Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15

45.14. First day to be excluded in computing period of time for legal purposes : The Section 9 of General Clause Act says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. See :

(i) Tarun Prasad Chatterjee Vs. Dinanath Sharma, AIR 2001 SC 36 (Three-Judge Bench).

(ii) Manmohan Anand Vs. State of UP, (2008) 3 ADJ 106 (All).

45.15. Fraction of a day or a Legal Day when complete? : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See: Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15

45.16. 60 / 90 days u/s 167(2) begin from the date of order of first remand and not from the date of arrest : Period of 60 / 90 days u/s 167(2), proviso (a) CrPCbegins to run from the date of order of remand and not from the date of arrest. See :

(i) Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445

(ii) Chaganti Satyanarayana Vs. State of A.P., AIR 1986 SC 2130

45.17. In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included : In the case noted below, the accused had surrendered before the Cheif Judicial Magistrate, Kaimur on 05.07.2013 in connection with the FIR relating to

offences punishable u/s 302, 120-B of the IPC and u/s 27 of the Arms Act, 1959 and was remanded to judicial custody till 19.07.2013. His remand was extended u/s 167 CrPC from time to time and the last remand was granted till 03.10.2013 i.e. the 90th day from the date of first remand and the charge-sheet was filed in the court on 03.10.2013 itself. The question arose whether on 90th day i.e. on 03.10.2013, the accused was entitled to be released on bail u/s 167(2) CrPC ? In the backdrop of the said facts of the case, the Hon'ble Supreme Court ruled thus : "In the State of MP Vs. Rustam and Others, this Court has laid down the law that while computing period of ninety days, the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included. That being so, in our opinion, in the present case, date 05.07.2013 is to be excluded and, as such, the charge-sheet was filed on ninetieth day, i.e. 03.10.2013. Therefore, there is no infringement on Section 167(2) of the CrPC. For the reasons, as discussed above, in our opinion, the High Court has not erred in law in dismissing the petition under Section 482 of the CrPC, and upholding the refusal of bail to appellant prayed by him under Section 167(2) of the Code. See : Ravi Prakash Singh Vs. State of Bihar, AIR 2015 SC 1294 (paras 12 & 13).

45.18.In computing 60 / 90 days u/s 167 (2) CrPC, the day on which the accused was remanded to judicial custody should be excluded and the day on which challan is filed in the court should be included : In the case of Rustam, the Supreme Court has clarified the manner of computing the period of 60 or 90 days u/s 167(2) proviso. The facts of the case were thus : “Accused was detained in jail for the offence u/s 302 IPC, he was remanded to judicial custody on 3.9.1993, charge sheet was submitted in the court on 2.12.1993. For purposes of computing the period of 90 days u/s 167(2) CrPCthe Supreme Court held “period of 90 days would instantly commence either from 4.9.1993 (excluding from it 3.9.1993) or 3.12.1993 (including in it 2.12.1993). Clear 90 days have to expire before the right begins. Plainly put, one of the days on either side has to be excluded in computing the prescribed period of 90 days. Sections 9 and 10 of the General Clauses Act warrant such an interpretation in computing the prescribed period of 90 days. The period of limitation thus computed on reckoning 27 days of September, 31 days of October and 30 days of November would leave two clear days in

December to compute 90 days and on which date the challan was filed, when the day running was the 90th day. The High Court was, thus, obviously in error in assuming that on 2.12.1993 when the challan was filed, period of 90 days had expired. See : State of MP Vs. Rustam, 1995 Suppl (3) SCC 221.

45.19. In computating 60/90 days u/s 167(2) CrPC, one day can be excluded on either side : Relying upon the Supreme Court decision in State of M.P. Vs. Rustam, 1995 SCC (Cri) 830, it has been held by the Allahabad High Court that in counting 60 or 90 days u/s 167(2) CrPC, one day can be excluded on either side. See : Tinnu Vs. State of UP, 1999 AOR 201 (All), AOR = Allahabad Offence Reporter

45.20. Computation of 90 days u/s 167(2) CrPC : Where the first remand of the accused was granted on 20-10-2010 and no charge sheet was filed by IO till 17-01-2011 and the charge sheet was filed on 18-01-2011 and the accused sought bail u/s 167(2) CrPC on 17-01-2011 on the ground that 90 days had completed on 17-01-2011, it has been held that the first date of remand i.e. 20-10-2010 is liable to be excluded for purpose of calculation of 90 days. According to Sec. 9 of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time to use the word “from” and for the purpose of including the last in a series of days or any other period of time to use the word “or”. In view of the aforesaid provision, the period of 90 days commenced from the next date of remand i.e. 21-10-2010 and not from the date of remand i.e. 20-10-2010 and a such the period of 90 days from 21-20-2010 completed on 18-01-2011 and till 18-01-2011 the accused was not entitled to claim the benefit of the provisions u/s 167(2) CrPC. See: Irfan Ahamad Vs. State of U.P., 2011(2) ALJ 527 (All) (LB)

45.21. Computation of 60/90 days u/s 167(2) when accused released on interim bail on date of surrender : Day on which accused surrendered was released on interim bail. That date of surrender shall not be deemed to be the date of remand to judicial custody. Unless the accused is remanded either to judicial or to police custody by court, it will not be the date of remand within the meaning of Section 167(2) CrPC an accused on bail cannot be deemed to be in custody. An accused released on interim bail or regular bail by court cannot be deemed to be in custody when a person is not in actual physical control of the court, he cannot be remanded either to judicial custody or to

police custody if not in actual physical control of the court. Transfer of custody from judicial custody to police custody falls within the domain of the Court concerned. It would not be necessary that the accused should be brought first before Magistrate or Court. In the case noted below police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, bail application of the accused was rejected on 02.02.2013, application for police custody remand was moved on 05.02.2013, after several adjournments, remand application was fixed for disposal on 16.02.2013 and was allowed on 16.02.2013 itself and the police custody remand of the accused was granted from 9 a.m. of 17.02.2013 to 9 a.m. of 18.02.2013, it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that the said order remanding the accused to police custody from 9 a.m. of 17.02.2013 to mid night i.e. till 12 a.m. would be valid but police custody remand from zero hours to 9 a.m. on 18.02.2013 would be illegal and the aforesaid impugned order dated 16.02.2013 passed by the Magistrate granting police custody remand of the accused was partly set aside. See : Chandra Dev Ram Yadav & Another Vs. State of UP & Another, 2013 (83) ACC 350 (All).

45.22. Bail u/s 167(2) CrPC after filing of charge sheet : The Supreme Court has held that the statutory rights of accused to bail u/s 167(2) CrPC should not be defeated by keeping the application for bail pending till the charge-sheet is submitted. The Magistrate has to dispose of such application forthwith. Once charge sheet is filed and cognizance of the offence is taken, the court cannot exercise its power u/s 167(2) CrPC See :

1. Mithabhai Pashabhai Patel Vs. State of Gujarat, 2009 (4) Supreme 368
2. Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench).
3. Mohamed Iqbal Madar Sheikh Vs. State of Maharashtra, 1996 (1) Crimes 4 (SC) (Three-Judge Bench).

45.23. Application by accused claiming accrued right of bail u/s 167(2) CrPC not to be defeated after submission of charge sheet : The court should not keep an application filed under Section 167(2) CrPC pending after expiry of the statutory period to enable the investigating agency to file the charge-seet to defeat the indefeasible right of an accused. If a case is adjourned by the court granting time to the prosecution not adverting to the application filed on behalf of the accused, it would be a violation of the legislative mandate.

When the charge-sheet is not filed and the right under Section 167(2) CrPC has ripened earning the status of indefeasibility, it cannot be frustrated by the prosecution on some pretext or the other. The accused can avail his liberty only by filing application stating that the statutory period for filing of the charge-sheet has expired, the charge-sheet has not yet been filed and an indefeasible right has accrued in his favour and further he is prepared to furnish the bail bond. Once such a bail application is filed, it is obligatory on the part of the cort to verify from the records as well as from the Public Prosecutor whether the time has expired and the charge-sheet has been filed or not or whether an application for extension which is statutory permissible, has been filed. See : Union of India Vs. Nirala Yadav, (2014) 9 SCC 457.

45.24. No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day : Where the accused was detained in jail for offences under Section 363, 366, 504 IPC & no chage-sheet was filed within 60 days and the accused had filed his application for bail under section 167(2)(a)(ii) CrPC on 09.05.2011 and the charge-sheet was also filed in the court on the same day, it has been held by the Hon'ble Allahabad High Court that the right of the accused to be released on bail u/s 167 (2)(a)(ii) CrPC came to an end as soon as the challan was filed. See : Sukhai and Another Vs. State of UP and Another, 2011 (75) ACC 134 (All)(L.B.).

45.25. Oral request/oral application of accused for default bail u/s 167(2) maintainable : In the matters of personal liberty, it is not advisable to be formilistic or technical. If the accused has not made a written application u/s 167(2) CrPC but instead arguied orally without pleadings in regular bail, he is entitle to grant of default bail u/s 167(2), Proviso (a) CrPC**.** See **:**

(i) Bikramjit Singh Vs State of Punjab, (2020) 10 SCC 616 (Three-Judge Bench).

(ii) Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench).

45.26. No bail u/s 167 (2)(a)(ii) CrPC when bail application and charge-sheet are filed the same day : When charge-sheet and the bail application are filed on the same day and the charge-sheet was filed within 90 days from the date of remand and cognizance on charge-sheet had been taken, right of accused

to be released on bail u/s 167(2) CrPC stood extinguished. See : Pravin Kasana Vs. State of UP, 2013 CrLJ (NOC) 427 (All).

45.27.Cancellation of bail granted u/s 167(2) CrPC : Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439 CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) CrPC, the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled. See :

1. Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three- Judge Bench)
2. Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three -Judge Bench)
3. Ram Murti Vs. State of U.P., 1976 CrLJ 211 (All)

45.28.1.Bail granted u/s 167(2) CrPC not to be cancelled after submission of charge sheet : Bail granted u/s 167(2) CrPC is to be deemed to have been granted under chapter XXXIII of the CrPC, i.e. u/s 437 or 439 CrPC and the same will remain valid till it is cancelled u/s 437(5) or 439(2) CrPC. The receipt of charge sheet in court after grant of bail u/s 167(2) CrPC can by itself be no ground for cancellation of bail. Bail once granted u/s 167(2) CrPC cannot be cancelled merely for subsequent filing of charge sheet and the same can be cancelled only u/s 437(5) & 439(2) CrPC for the reasons like abuse etc. of the bail. See :

1. State through CBI Vs. T. Gangi Reddy, (2023) 4 SCC 253
2. Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three- Judge Bench)
3. Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three- Judge Bench)
4. Ram Pal Singh Vs. State of U.P., 1976 CrLJ 288 (All)

45.28.2. Default bail granted u/s 167(2) CrPC can be cancelled on different grounds like tampering of witnesses and evidence etc. : Default bail granted u/s 167(2) CrPC can be cancelled on different grounds like

tampering of witnesses and evidence etc. **See :** State through CBI Vs. T. Gangi Reddy, (2023) 4 SCC 253

45.29. Application must for bail u/s 167(2) CrPC: An accused must file application for bail u/s 167(2), Proviso (a) CrPCfor being released on bail. See :

1. Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three- Judge Bench)
2. Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three- Judge Bench)

45.30. Accrued right of bail u/s 167(2) CrPC : How long survives? No bail u/s 167(2) CrPCafter filing of charge sheet : Right of the accused to bail u/s 167(2) CrPC ensues on default of the I.O. in submitting the charge sheet within the statutory period of 60/90 days and is enforceable by the accused only from the time of default in the submission of charge sheet till the filing of the challan and it does not survive or remain enforceable on the challan being filed as after submission of charge sheet Sec. 167 CrPC ceases to apply and the custody of the accused is not governed by Sec. 167 CrPC but by different provisions in the CrPC. If the right to be released on bail u/s 167(2) CrPC had accrued to the accused but it remained un-enforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment the challan is filed. If after expiry of 60 or 90 days, the charge sheet is filed and the accused is in custody on the basis of order of remand then the accused cannot be released on bail on the ground that charge sheet was not submitted within the statutory period of 60 or 90 days. The bail application filed by the accused after the submission of charge sheet would be decided on merits and not u/s 167(2) CrPC. See :

1. Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445
2. Dinesh Dalmia Vs. CBI, AIR 2008 SC 78
3. Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 – Three Judge Bench (Also held that Sec. 37 of the NDPS Act, 1985 does not exclude applicability of Proviso (a) to Sec. 167(2) CrPC)
4. Hitendra Vishnu Thakur Vs. State of Maharashtra, (1994) 4 SCC 602
5. Sanjay Dutt Vs. State Through CBI, Bombay, (1994) 5 SCC 410(Five-Judge Bench)
6. Mustaq Ahmed Mohammed Isak Vs. State of Maharashtra, (2009) 7 SCC 480
7. Hari Om Vs. State of UP, 1992 CrLJ 182 (All)

45.31.Sec. 173(8) CrPC & Bail u/s 167(2) CrPC: Right to bail u/s 167(2) CrPC is available only till investigation is pending and no police report u/s 173(2) CrPC is submitted within the statutory period of 60/90 days. But this right is lost once charge sheet is filed. Such right to bail u/s 167(2) CrPC does not get revived only because further investigation u/s 173(8) is pending. See : Dinesh Dalmia Vs. CBI, AIR 2008 SC 78.

45.32. Statutory bail u/s 167(2) CrPC cannot be granted during **the pendency of application u/s 173(8) CrPC seeking extension of time for further investigation** : Public prosecutor filed application for extension of time to file charge-sheet against accused involved in MCOCA, 1999. Charge-sheet was filed within time before expiry of 90 days from the date of initial arrest. Period of 90 days lapsed and no decision was taken by the Court on application seeking extension of time. No right can be said to have accrued in favour of the accused for grant of statutory bail u/s 167(2) CrPC on the ground of default only after rejection of therefor extension of time sought, right is the favour of accused for statutory bail u/s 167(2) CrPC would ignite. Bail u/s 167(2) CrPC under the above circumstances cannot be granted to the accused. See : Rambeer Shokeen Vs. State of NCT of Delhi, AIR 2018 SC 688.

45.33. Bail bond in pursuance of order u/s 167(2) CrPC to be accepted even when charge sheet is submitted to the court before filing of bail bond: Bail bond in pursuance of order u/s 167(2) CrPC has to be accepted even when charge sheet is submitted to the court before filing of bail bond: See: M. Ravindran Vs Intelligence Officer, (2021)2 SCC 485 (Three-Judge Bench)

45.34. Bail bond in pursuance of order u/s 167(2) CrPC not to be accepted when charge sheet is submitted to the court before filing of bail bond : If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167 CrPC, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. See :

Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three-Judge Bench) *(para 13)*

45.35. Accused to be released from jail even when before filing of bail bonds in pursuance of bail order passed u/s 167(2) CrPC, charge sheet is filed in the court : An order for release on bail granted u/s 167(2) CrPC is not defeated by lapse of time, the filing of charge sheet or by remand to custody u/s 309(2) CrPC. There is no limit of time within which the bond may be executed after the order for release on bail u/s 167(2) CrPC is made. See : Raghubir Singh Vs. State of Bihar, (1986) 4 SCC 481.

45.36.Magistrate to inform the accused of his accrued right to bail u/s 167(2) CrPC: It is the duty of Magistrate to inform the accused of his accrued right to be released on bail u/s 167(2) CrPC. See :

(i) M. Ravindran Vs Intelligence Officer, (2021)2 SCC 485 (Three-Judge Bench)

(ii) Rakesh Kumar Paul Vs. State of Assam, AIR 2017 SC 3948 (Three-Judge Bench)

(iii) Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)

(iv) Hussainara Khatoon Vs. Home Secretary, State of Bihar, AIR 1979 SC 1377 (Three- Judge Bench)

45.37.No bail u/s 167(2) CrPCduring extended period of investigation beyond 60 / 90 days : Where the court extends time to complete investigation before expiry of 60 / 90 days, the court is empowered to remand accused to judicial or police custody during extended period and the right of the accused to be released on bail u/s 167(2) CrPCis lost. See : Ateef Nasir Mulla Vs. State of Maharashtra, 2005 (53) ACC 522 (SC)

45.38.Revision against order u/s 167(2) CrPC: Where after expiry of 90 days, the accused moved application for bail u/s 167(2) CrPCbut the Magistrate postponed the disposal of the application to next day when police filed charge sheet, it has been held that the Magistrate acted in violation of the provisions u/s 167(2) CrPCand revision lies against such an order. Where the court concerned adopts dilatory tactics to defeat the right of the accused accrued u/s 167(2) CrPC, it is open to the accused to immediately move the superior court for appropriate direction. See :

(i) Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three- Judge Bench)

(ii) Sudhakar Vs. State of U.P., 1985(1) Crimes 582 (All)

45.39. Accused to be released on bail u/s 167(2) CrPCwhen after filing of the application by the accused charge sheet is filed : Magistrate is obliged to grant bail to accused u/s 167(2) CrPCeven if after filing of the application by the accused, a charge sheet is filed by the investigating officer. See :

(i) Pragyna Singh Thakur Vs. State of Maharashtra, (2011) 10 SCC 445

(ii) Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three- Judge Bench)

45.40. Bail u/s 167(2) CrPCafter submission of charge sheet during the pendency of proceedings before the higher forum against the magisterial order rejecting the application u/s 167(2) CrPC: Where the application of the accused has been erroneously rejected by the Magistrate u/s 167(2) CrPCand the accused then moves the higher forum but during the pendency of the matter before that forum, a charge sheet is filed, the indefeasible right of the accused is not affected. However, if the accused fails to furnish the bail as directed by the Magistrate, his right to be released on bail would be extinguished. See : Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three- Judge Bench)

45.41. Submission of charge sheet after grant of bail u/s 167(2) CrPCbut before furnishing of bail bonds : If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proiso to sub-sec. (2) of Sec. 167 CrPC, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorized, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so called indefeasible right of the accused would stand extinguished. The Constitution Bench decision in the matter of Sanjay Dutt Vs. State through CBI, (1994) 5 SCC 410 should be understood in that sense. See : Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453 (Three Judge Bench)

45.42. Presiding Officers to write to SSP against the Investigating Officers failing in submitting police report u/s 173(2) CrPCwithin 60 or 90 days : Vide C.L. No.52/2007Admin(G), dated 13.12.2007, the Allahabad High

Court has issued following directions for compliance by the Judicial Officers of the State of U.P. :

"The Hon'ble Court has noticed that the delay takes place in submission of Police Report before the Magistrate on account of various reasons such as the investigating officer being biased in favour of accused, investigating officer being transferred from one police officer to another on account of their transfer. Such delay at times results in the accused getting undue advantage of being set at liberty due to non filing of Police report within the time stipulated u/s 167(2)(b) CrPCThe Hon'ble Court has been pleased to recommend that all the criminal courts shall write to SP/SSP. Concerned for necessary action against an investigating officer if he is found to be wanting in discharge of his duties deliberately in submitting the Police report within time as per mandate u/s 167(2)(C) of CrPC"

45.43. Accused not entitled to bail u/s 167(2) CrPC when charge-sheet filed on the last day (90th day) without full set of documents : Where the police report i.e. charge-sheet u/s 173(2) CrPC was filed by the IO before the court on the last day i.e. 90th day and the accused claimed bail u/s 167(2) CrPC on the ground that the IO had not filed the complete documents with the police report u/s 173(2) CrPC, it has been held by the Hon'ble Supreme Court that on the said grounds the accused was not entitled to bail u/s 173(2) CrPC particularly when the cognizance taking order on such police report was not challenged by the accused. The provisions of Section 173(5) requiring filing of full set of documents with the police report/charge-sheet is only directory and not mandatory. See **:** Narendra Kumar Amin Vs. CBI, (2015) 3 SCC 417.

45.44. Cancellation of bail granted u/s 167(2) CrPC : Grant of bail to an accused u/s 167(2) CrPCis different from bail granted o merits us. 437 or 439 CrPCCancellation of bail u/s 437(5) or 439(2) CrPCis different from refusal to grant bail. Cancellation involves review on merits of the decision granting bail. Therefore, unless there are strong grounds for cancellation of bail once granted u/s 167(2) CrPC, the same cannot be cancelled on mere production of charge-sheet. The ratio of Rajnikant Jivanlal Patel Vs. Intelligence Officer, NCB, New Delhi, (1989) 3 SCC 532 to the extent it was inconsistent with the law laid down in Aslam Babalal Desai Case have been held not to state the correct law and has been overruled. See :

(i) Dr. Bipin Shantilal Panchal Vs. State of Gujarat, (1996) 1 SCC 718 (Three Judge Bench)
(ii) Aslam Babalal Desai Vs. State of Maharashtra, (1992) 4 SCC 272 (Three Judge Bench)
(v) Ram Murti Vs. State of U.P., 1976 CrLJ 211 (All).

45.45. After denial of statutory bail u/s 167(2) CrPC, accused can move application for regular bail u/s 437 or 439 CrPC : After denial of statutory bail u/s 167(2) CrPC, accused can move application for regular bail u/s 437 or 439 CrPC. See : Rambeer Shokeen Vs. State of NCT of Delhi, AIR 2018 SC 688.

46. Submission of charge-sheet during the pendency of application u/s 167(2) CrPC: Once the accused files an application for default bail u/s 167(2) CrPC , he is deemed to have availed of or enforced his right to be released on default bail. This right continues to remain enforceable even if, while the bail application is pending, a charge-sheet or an application for extension of time is filed under the NDPS Act. But the actual release of the accused depends on the directions passed by the court granting the bail. So if the accused fails to furnish bail bonds or comply with the terms and conditions of the bail order his detention would continue. But if the accused fails to apply for the default bail u/s 167(2) CrPC when the right accrued to him and subsequently a charge-sheet or extension report is filed, then the right to default bail would be extinguished . See: the Three- Judge Bench order Dt. 17.11.2020 in Ravindran Vs. State of Tamil Nadu on bail u/s 167(2) CrPC in NDPS case where detention upto 180 days is permissible.

47.1. Bond money should not be excessive: Amount of bond should not be excessive. Imposing conditions impossible of compliance would only defeat the very object of bail. Reasonableness of bond and surety should be kept in mind by court whenever the same is insisted upon. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 62)

47.2 Depositing cheated money as condition for grant of anticipatory bail u/s 438 CrPC cannot be imposed: Inclusion of a condition for payment of money by the accused for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not

the purpose and intent of the provisions for grant of bail. See: Ramesh Kumar Vs. State NCT of Delhi, (2023) 7 SCC 461 (Para 25)

47.3 Verification of sureties & their papers/status: Relevant C.Ls. & judicial pronouncements thereon : Where the surety furnishes a surety bond alongwith an affidavit as required by Sec. 499(3), Criminal P.C., the Magistrate can accept his surety bond and can make further enquiry as well and for this purpose order verification from the Tehsil. In such a case the bond is accepted subject to further orders on the receipt of the Tehsil report. The provision in Sec. 500, sub-sec. (1) contemplates that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Hence, a formal acceptance of a surety bond on a future date does not in any way effect the surety's liability on the bond from the earlier date on which it was first accepted. See:

(i) Rajpal Singh Vs. State of U.P., 2003 AAC (Cri) 261 (All)
(ii) Bekaru Singh Vs. State of U.P., AIR 1963 SC 430

48. C.L. No. 3/Admin.(G), dated Allahabad 16.2.2009 now reads as under: Upon consideration of the direction of Hon'ble court in Criminal Misc. Case No. 4356/08 Shiv Shyam Pandey versus State of U.P. and others and in the wake of receipt of representation of the Bar complaining against considerable delay taking place in respect of verification of the address and status of the sureties filed before the Subordinate Courts, the Hon'ble Court has been pleased to direct that in supersession of earlier Circular Letter No. 44/98 dated 20.8.1998 and Circular Letter No. 58/98 dated 5.11.1998, the following guidelines shall be followed by the Judicial Officers of Subordinate Courts:

1. In serious cases such as **murder, dacoity, rape** and cases falling under **NDPS Act,** two sureties should normally be directed to be filed and the **amount of the surety bonds** should be fixed commensurate with the gravity of the offence.
2. The address and status verification of the sureties shall be obtained within reasonable time, say seven days in case of local sureties, 15 days in case of sureties being of other district and one month in case of sureties being of other State, positively from the concerned Police and revenue authorities and in case of non receipt of the report within

given time, the concerned court may call for explanation for the delay from the concerned authorities and take suitable action against them and at the same time may consider granting provisional release of the accused person in appropriate cases subject to the condition that in case of any discrepancies being reported by the verifying authorities, the accuses shall surrender forthwith.

3. The Courts must insist on filing of black and white photographs of the sureties which must have been prepared from the negative.

4. The copies of the title deeds filed in support of solvency of status should be verified.

5. In cases where the Court feels that there are chances of plantation of drugs to implicate a person in a case covered un der the NDPS Act, the amount of surety bonds may be suitably reduced."

49. Sureties to furnish details of repeatedly standing surety: Sec. 441-A CrPC: Sec. 441-A CrPCas inserted since 2006 reads as under:

"Sec. 441-A CrPC: Declaration by sureties: Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

50. Local sureties not to be insisted : Order rejecting surety because he or his estate was situate in a different district is discriminatory, illegal and violative of Art. 14 of the Constitution. Likewise, geographic allergy at the judicial level makes mockery of equal protection of the laws within the territory of India, India is one and not a conglomeration of districts, untouchably apart. See:

(i) Manish Vs. State of UP, 2008 CrLJ (NOC) 1123 (Alld)
(ii) Moti Ram Vs. State of M.P., AIR 1978 SC 1594.

51.1 Delayed release of accused from jail after grant of bail for error or omission to write a Section in bail order by High Court deprecated by Supreme Court: Delayed release of accused from jail after grant of bail for error or omission to write a Section in bail order by High Court has been deprecated by the Supreme Court with the direction to the State of UP to pay compensation to the accused for his further detention in jail for 28 days after the grant of bail. See: Judgment dated 25.06.2025 of the Supreme Court passed in the case of Aftab Vs. State of UP.

51.2 Delay in releasing the accused from jail not to be committed after grant of bail : Where there was delayed release of the accused despite grant of Bail and acceptance of his bonds and sureties by the Court, the Hon'ble Supreme Court issued notice to the Superintendent of jail requiring his explanation and on finding that delay took place on account of certain procedural formalities in giving effect to the bail order and not because of individual's laxity, the notice was withdrawn by the Hon'ble Court. See: Pusai Vs. State (NCT) of Delhi, AIR 2004 SC 1184

52A. Waiting copy of order by post and not releasing convict from jail depricated by Supreme Court: Where the accused persons who were juveniles on the date of offence and were released on interim bail by the Supreme Court but the Jail Superintendent, Agra did not release the prisoners even after three days from the date of knowledge of the order of the Supreme Court and waited for copy of the order by post, it has been held by the Supreme Court that the prisoners should have been immediately released from jail soon after the order was loaded on the site of the Supreme Court subject to fulfillment of the conditions in the order. The Supreme Court held that it was contemplating to introduce a system called 'FASTER' (Fast and Secure Transmission of Electronic Records) and invited the views of the State Governments and Union Territories thereon.See**:** Order dated 16.7.2021 by the Three-Judge Bench of the Supreme Court in the case of " In Re: Delay in the release of convicts after grant of bail by the Supreme Court paased in Suo Motu Writ Petition (Civil) No.4/2021"

52B. Jail Superintendent deprecated for not releasing the accused merely for an error in his name in release order: Bail application of the accused **Vinod Kumar Baruaar** was rejected by the court of the Addl. Sessions Judge/ Fast Track Court, Siddharthnagar in Crime No.101/2019 for the offences u/s 8/19 of the NDPS Act and u/s 4/411,413 IPC, Police Station Dumariyaganj, District: Siddarthnagar. High Court granted him bail by its order dated 09.04.2020 by the name of " **Vinod Baruaar."** But the jail superintendent refused to release him from jail and returned the release order to the court by saying that the name of the accused mentioned in the warrant u/s 167 CrPC did not match with the release order issued by the court and

sought correction of the same. Since the middle word ” Kumar “ was not written in the bail order of the High Court, the accused was directed by the lower court to seek correction of the same in the High Court. The accused then approached the High Court for correction of the name of the accused in its bail order dated 9.4.2020. Deprecating the conduct of the jail superintendent, the High Court directed the CJM and the superintendent jail to release the accused from jail forthwith without correction in his name. Jail Superintendent was summoned in person to explain to the High Court as to why the accused was not released from jail for such trivial mistakes in his name when the crime No. and other details of the accused were the same. See: Order dated 07.12.2020 of the Allahabad High Court passed on Criminal Misc.Bail Application No.3837/2020, Vinod Baruaar State of UP.

53.1. Directions dated 11.10.11 issued by Division Bench of the Hon’ble Allahabad High Court in Shaukin Vs. State of UP, 2012 (76) ACC 159 (All) (DB) regarding remand and bail of accused of offences punishable with imprisonment upto seven years : The Hon’ble High Court (in para 20) of its above judgment has issued following directions :

“We therefore direct the Magistrates that when accused punishable with upto 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrates satisfy themselves that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of sections 41(1)(b) and 41 A CrPC and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the accused in judicial custody as provided under section 170(1) and section 41(1)(b)(ii)(e) CrPC, prolonged imprisonment at this initial stage, when the accused has not been adjudged guilty may not be called for, and the Magistrates and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in Lal Kamlendra Pratap Singh V State of U.P., (2009) 4 SCC 437, and Sheoraj

Singh @ Chuttan Vs. State of U.P. and others, 2009(65) ACC 781. The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges in appropriate cases.

The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer ha s been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer."

53.2. Non-observance of provisions of Section 41 and 41-A CrPC by Magistrate in offences punishable upto 7 years disapproved by the Supreme Court : Where two accused persons, a doctor and a practicing advocate, both ladies, were arrested by the police for offences u/s 420/34 IPC read with Section 66D of the Information Technology Act, 2000 and the maximum sentence for offence u/s 66D of the IT Act, 2000 was three years and for offence u/s 420 IPC was 7 years and the bail of the accused persons was also rejected by the Magistrate, it has been held by the Hon'ble Supreme Court that the conditions precedent of procedure of arrest stipulated u/s 41 and 41-A CrPC was not followed by the police officer and the fundamental right as to personal liberty of the accused persons guaranteed by Article 21 of the Constitution stood curtailed when their bail application was rejected. A compensation of Rs. 5 lacs was granted by the Supreme Court to each one of the accused persons. See : Dr. Rini Johar Vs. State of M.P., AIR 2016 SC 2679.

53.3 Powers of police to arrest and notice of appearance: Explaining the scope of Sections 41(1)(b)(i) and 41(1)(b)(ii) of the CrPC, it has been held by the Supreme Court that both elements of 'reason to believe' and 'satisfaction as regards arrest' are mandatory and must be recorded by police officer before issuing notice of appearance or arresting suspect. See: Satender Kumar Antil Vs Central Bureau Of Investigation, AIROnline 2022 SC 956

53.4 Duty of arresting officer u/s 41(1)(b) CrPC and role of Magistrate: On the scope and objective of Section 41 and 41A CrPC, it is obvious that they are facets of Article 21 of the Constitution. We need not elaborate any further in light of the judgment of this Court in Arnesh Kumar Vs State of Bihar, (2014) 8 SCC 273 wherein in Para 7.1 has been held thus: "7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions which one may reach based on facts. 7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest. 7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. Before arrest, first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC. 8. An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey. 8.1. During the course of

investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner. 8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused. 8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused. 8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limitedextent the Magistrate will make judicial scrutiny. 9. The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section

41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid. 10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued. 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions: 11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC; 11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii); 11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention; 11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention; 11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing; 11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date

of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing; 11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction. 11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. 12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498- A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extendto seven years, whether with or without fine." See:

(i) Arnesh Kumar Vs State of Bihar, 2014 AIR SCW 3930

(ii)Satender Kumar Antil Vs Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 25)

53.5.1. Directions / guidelines of the Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273: The Hon'ble Supreme Court has issued following directions regarding duty of police officers and magistrates in the matters of arrest, detention, remand and bail etc. of the accused persons for offences not exceeding seven years imprisonment. Paragraphs 11.1 to 11.8, 12 and 13 of the judgement are reproduced below:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii):

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the rest, while, forwarding/ producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused,, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a

copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance.

53.5.2. Directions / guidelines of the Supreme Court in Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273 on arrest and bail for offences u/s 498-A IPC and Section-4 Dowry Prohibition Act, 1961: In the said case, the Supreme Court has held that due to the rampant misuse of the provisions of Section 498-A IPC read with Section -4 of the Dowry Prohibition Act, 1961, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to geniuses of allegations. In paragraph 12 of the judgment, the Supreme Court has further held that besides the offences u/s 498-A IPC and Section-4 of the Dowry Prohibition Act, 1961, the directions in the Arnesh Kumar case shall apply to all those cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine. See: Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

53.6. Non-compliance of Sections 41 & 41A CrPC by arresting officer to be brought to the notice of higher police authorities for action: Non-compliance of Sections 41 & 41A CrPC by arresting officer should be brought by Magistrate to the notice of higher police authorities for action against the arresting officer. See: Satender Kumar Antil Vs Central Bureau of Investigation, AIROnline 2022 SC 956.

53.7. **Non-compliance of Sections 41 & 41A CrPC by arresting officer will entitle accused to be released on bail:** Non-compliance of Sections 41 &

41A CrPC by arresting officer will entitle the accused to be released on bail. See: Satender Kumar Antil Vs Central Bureau of Investigation, AIROnline 2022 SC 956.

53.8. **State Governments and Union Territories directed by Supreme Court to issue instructions to police officers for compliance of Sections 41 & 41A CrPC:** State Governments and Union Territories have been directed by the Supreme Court to issue instructions to police officers for compliance of provisions of Sections 41 & 41A CrPC. See: Satender Kumar Antil Vs Central Bureau of Investigation, AIROnline 2022 SC 956.

53.9. Arrest not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years: Sections 41 and 41-A CrPC place cheque on arbitrary and unwarranted exercise of powers of arrest by police. Arrest is not mandatory as per Section 41 and 41-A CrPC in cognizable offences punishable with imprisonment upto 07 years. Writ Court under Article 226 of the Constitution can in appropriate cases grant relief against pre-arrest but such power is not to be exercise in the State of UP liberally so as to bring back the provisions of Section 438 CrPC by back door. See : Km. Hema Mishra Vs State of UP, AIR 2014 SC 1066.

53.10.1 No mechanical grant of remand by magistrate u/s 167 CrPC: The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical

manner. See : Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Others, AIR 2013 SC 313.

53.10.2 Communicating grounds of arrest in writing to arrested person mandatory: Communication of grounds of arrest in writing to the person arrested at the earliest as provided under Article 22 (1) and 22 (5) of the Constitution is sacrosanct and mandatory and cannot be breached under any situation. This is equally mandatory under Section 167 CrPC and under Sections 47 and 35 of the BNSS, 2023. Such illegality can be raised by the accused person at the time of his remand, detention and bail. See: Prabir Purkayastha Vs. State NCT of Delhi, (2024) 8 SCC 254 (Paras 16,17,18)

53.11 Trail court has power to grant interim bail: While issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also, we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions. See: Satender Kumar Antil Vs. CBI, (2021) 10 SCC 773 (para 6).

53.12. Interim Bail by Magistrate or Sessions Judge When Not To Be Granted : Interim bail pending hearing of a regular bail application ought not to be passed where **:**

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims and society at large and for protecting witnesses.

(ii) The case involves an offence under the U.P. Gangsters Act and in similar statutory provisions.

(iii) The accused is likely to abscond and evade the processes of law.

(iv) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.

(v) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

(vi) The offence is in the nature of a scam, or there is an apprehension that there may be interference with the investigation or for any other reason the Magistrate/Competent Court feels that it is not a fit case for releasing the appellant on interim bail pending the hearing of the regular bail.

(vii) An order of interim bail can also not be passed by a Magistrate who is not empowered to grant regular bail in offences punishable with death or imprisonment for life or under the other circumstances enumerated in Section 437 CrPC.

(viii) If the Public Prosecutor/Investigating Officer can satisfy the Magistrate/Court concerned that there is a bona fide *need for custodial*

interrogation of the accused regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime, or for obtaining information leading to discovery of material facts, it may constitute a valid ground for not granting interim bail, and the Court in such circumstances may pass orders for custodial interrogation, or any other appropriate Pradeep Tyagi Vs. State of UP & Others, 2009 (65) ACC 443 (All…DB)(*Para 12*).*order.* See :

53.13. Magistrate having power to try offence punishable with death or life imprisionment has power to grant bail u/s 437 CrPc: Magistrate having power to try offence punishable with death or life imprisionment has power to grant bail under Proviso to Section 437 CrPc. See: Satender Kumar Antil v. Central Bureau Of Investigation, AIROnline 2022 SC 956(Paras 50,51,52 & 53)

53.14. Reasons must be recorded by court when adjourning the hearing of bail application and not granting interim bail : Relying on the Seven-Judge Bench decision of the Hon'ble Allahabad High Court in Amrawati Vs. State of UP, 2004 (57) ALR 290 and the Apex Court decision in Lal Kamlend Pratap Singh Vs. State of UP, 2009 (67) ACC 966 (SC) and avoiding to record strictures on the conduct of the concerned Magistrate, in the case noted below, the Hon'ble Allahabad High Court (Hon'ble Karuna Nand Bajpayee, J.) has observed thus : *"the need and desirability of hearing the bail applications on the same day is not difficult to gauge from the observations made by the Full Bench in Amrawati's case when it held that if on the application made u/s 437 CrPC, the Magistrate feels constrained to postpone the hearing of the bail application, he should release the accused on interim bail and if there are circumstances which impell the court not to adopt such a course, the court shall record its reasons for its refusal to release the applicant on interim bail.*" See : Naval Saini Vs. State of UP, 2014 (84) ACC 73 (All) (para 7)

54. Cancellation of bail in bailable offences: A person accused of a bailable offence is entitled to be released on bail pending his trial, but he forfeits his right to be released on bail if his conduct subsequent to his release is found to be prejudicial to a fair trial. And this forfeiture can be made effective by invoking the inherent powers of the High Court u/s 482 CrPCBail granted to an accused with reference to bailable offence can be cancelled only if the accused:

(1) misuses his liberty by indulging in similar criminal activity,

(2) interferes with the course of investigation,

(3) attempts to tamper with evidence or witnesses,

(4) threatens witnesses or indulges in similar activities which would hamper smooth investigation,

(5) attempts to flee to another country,

(6) attempts to make himself scarce by going underground or becoming unavailable to the investigation agency,

(7) attempts to place himself beyond the reach of his surety, etc.

However, these grounds are illustrative and not exhaustive. See**:** Rasiklal Vs. Kishore, (2009) 2 SCC (Criminal) 338.

55. Only Sessions Judge or High Court and not the Magistrate can cancel bail in bailable offences: An application for cancellation of bail in bailable offences can either be made before the Sessions Court or the High Court and not before the Magistrate as he has no power. See: Madhab Chandra Jena vs. State of Orissa, 1988 CrLJ 608 (Orissa) (DB).

56. Relevant considerations for cancellation of bail in non-bailable offences : Bail once granted to an accused cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Grounds for cancellation of bail may be based on satisfaction of court on (i) chances of accused absconding (ii) interference or attempt to interfere with due course of administration of justice and (iii) abuse in any manner of bail etc. When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in similar activities which would hamper smooth investigation or trial, bail granted can be cancelled. See:

1(a). Y.S. Jagan Mohan Reddy Vs. CBI, (2013) 7 SCC 439
1. Prakash Kadam Vs. Ramprasad Vishwanath Gupta, (2011) 6 SCC 1891.
2. Hazari Lal Das Vs. State of W.B., 2009(6) Supreme 564
3. Panchanan Misra Vs. Digambar Misra, AIR 2005 SC 1299
4. Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890
5. Union of India Vs. Subhash Chandra, 2002 (2) JIC 314 (All)
6. Subhendu Misra Vs. Subrat Kumar Misra,2000 SCC (Cri) 1508
7. Dolat Ram Vs. State of Haryana, 1995 SCC (Criminal) 237

57. Cancellation of bail on the ground of threat to witnesses: Bail granted to an accused u/s 437/439 CrPCcan be cancelled if the accused threatens the witnesses to turn hostile or tampers in any other manner with the evidence of the prosecution. See:

1. Panchanan Misra Vs. Digambar Misra, AIR 2005 SC 1299

2. Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890
3. Gurcharan Singh Vs. State of Delhi Admn., AIR 1978 SC 179

Note: Relying upon the abovenoted Supreme Court rulings, a Division Bench judgment of Hon'ble Allahabad High Court delivered in Cr. Misc. Petition No. 5695/2006, Karan Singh Vs. State of U.P., decided on 12.4.2007 and circulated amongst the judicial officers of the State of U.P., vide C.L. No. 6561/2007 Dated: April 21, 2007 directs the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile.

58. **Witness may file complaint u/s 195A CrPC if threatened by accused or any other person :** Threatening any witness to give false evidence has been made offence w.e.f. 16.04.2006 punishable u/s 195A of the IPC with imprisonment upto 7 years or fine or with both. A witness threatened by the accused can file complaint u/s 195 CrPC as inserted w.e.f. 31.12.2009.

59. Cancellation of bail on the basis of post bail conduct and/or supervening circumstances: For cancellation of bail granted to an accused u/s 437 or 439 Cr.P.C., post bail conduct of the accused and supervening circumstances can also be taken into consideration. See: State Through CBI Vs. Amarmani Tripathi, 2005 (53) ACC 484 (SC)

60.1 Cancellation of bail on protraction of trial by seeking unnecessary adjournments : Bail granted to an accused u/s 437 or 439 CrPCcan be cancelled if the accused indulges into deliberate protraction of trial or taking unnecessary adjournments. See**:** Lalu Prasad Yadav Vs. State of Jharkhand, (2006) 6 SCC 661

60.2 Supreme Court ruling on cancellation of bail under BNSS, 2023: Pointing out Sections 483, 480, 403 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Hon'ble Supreme Court has recently ruled that the law is well settled that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the court is satisfied that after being released on bail:

(i) the accused misused the liberty granted to him
(ii) the accused flouted the conditions of bail order
(iii) the bail was granted by the court in ignorance of statutory provisions restricting the powers of the court to grant bail
(iv) the bail was procured by the accused by misrepresentation or fraud. See: Himanshu Sharma Vs. State of MP, (2024) 4 SCC 222 (Paras 10 & 11)**.**

61. **Cancellation of bail on the basis of non-reasoned bail order passed by ignoring material on record**: An order granting bail u/s 437 or 439 CrPCby ignoring material and evidence on record and without reasons, would be perverse and contrary to the principles of law of bail. Such bail order would by itself provide a ground for moving an application for cancellation of bail. Such ground for cancellation is different from the ground that the accused mis-conducted himself or some new facts called for cancellation of bail. Discussing evidence while granting bail is totally different from giving reasons for grant of bail. High Court, u/s 482 or 439 Cr.P.C., can cancel such bail granted by Sessions Judge u/s 439 CrPCeven if such bail order is interlocutory order. See:

(i) Kanwar Singh Meena Vs. State of Rajasthan, AIR 2013 SC 296
(ii) Ash Mohammad Vs. Shiv Raj Singh, (2012) 9 SCC 446
(iii) Brij Nandan jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
(iv) Puran Vs. Ram Bilas, (2001) 6 SCC 338

62. **Cancellation of bail by same Judge not necessary:** Taking a different view than what was laid down earlier in the case of Harjeet Singh Vs. State of Punjab, 2002 (1) JIC 254 (SC), the Supreme Court, in the case noted below, has ruled that the conventional practice of placing the application for cancellation of bail before the Judge who had granted the bail is not necessary and need not be followed. See: **Mehboob Dawood Shaikh Vs. State of Maharashtra, AIR 2004 SC 2890**

63 . **Who can move application for cancellation of bail**? It is settled law that complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merits also and the complainant can question the merits of the order granting bail. Either State or any aggrieved party (in the instant case father of the deceased for offences u/s 498-A, 304-B IPC) can move application for cancellation of bail granted earlier to the accused. See:

(i) Brij Nandan jaiswal Vs. Munna Jaiswal, AIR 2009 SC 1021
(ii) Puran Vs. Ram Bilas, (2001) 6 SCC 338

64. **Who can move application for cancellation of bail?** The discretion of grant or cancellation of bail can be exercised either at the instance of the accused, the public prosecutor or the complainant on finding new material or

circumstances at any point of time. See: Siddharam satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36

65.1. Bail granted by Orissa High Court for offences under Arms Act and Explosive Substances Act cancelled by Supreme Court: The two instant appeals have been preferred by the State of Orissa and the de facto informant in FIR No. 180/2016, registered at Paradeep Police Station in Orissa State against the order dated 16.05.2017 of the High Court of Orissa at Cuttack, by which an application for bail filed by the respondent herein in connection with the aforementioned first information has been allowed. During the course of investigation, the police recovered certain weapons as well as the motorcycle used for commission of the murder. According to the State, the investigation records, prima facie revealed that the respondent had paid certain amount of money as advance amount for commission of the murder. The state also relies upon a letter written by the deceased to the inspector, Paradeep Police Station, stating that he feared for his life and the life of his family, inasmuch as the respondent might make an attempt to take their life. According to the state, the said letter might be treated as a dying declaration of the deceased. The learned advocates appearing on behalf of the state as well as the de facto complainant, while taking the court through the material on record, submitted that the respondent was the kingpin of the conspiracy to murder the deceased and the murder had taken place as per his directions and plan. The preliminary charge-sheet was filed for the offences punishable under Section 302 and 120-B of the Penal Code, 1860 read with Sections 25(1)(B) and 27 of the Arms Act, 1959, as also under Section 3 and 4 of the Explosive Substances Act, 1908. They further brought to the notice of the court that the respondent, being a powerful and rich person, could have gone to any extent to influence the witnesses by intimidating them which prima facie revealed that he was a person who could have taken the law into his hands. He might even abscond in the future, which could delay the process of justice. According to them, the witnesses were already frightened and consequently might not go before the court to depose against the accused, in which event justice might suffer. The Supreme Court cancelled the bail granted to the accused by the Orissa High Court. See: State of Orissa Vs. Mahimananda Mishra, (2018) 10 SCC 516

65.2. Recording of cogent reasons imperative for grant of bail u/s 439 CrPC: In the present case, bail application involving offences under Section 302, 307 IPC, under Section 27 of Arms Act and offence under Explosives Act, 1884 was under consideration of the court. The Supreme Court held that grant of bail under Section 439 CrPC though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reasons cannot be sustained. Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at prima facie conclusion. See: Brijmani Devi Vs. Pappu Kumar, (2022) 4 SCC 497

65.3. Bail granted by High Court for offences u/s Explosive Substances Act, UAPA and IPC on ground that trial is likely to take time not interfered with by Supreme Court: In the present case, respondent/accused was granted bail in case under Section 143, 147, 148, 120-B, 341, 427, 323, 324, 326 and 506 part II, 201, 202, 153-A, 212, 307, 149 IPC and Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. While passing impugned order of bail, though the High Court had not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him, but it exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. Reasons assigned by the High Court held apparently traceable back to Article 21 of the Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA. Resultantly, impugned order granting bail by the High Court was held by the Supreme Court as justified and the same declined to be interfered with by the Supreme Court. See: Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713

66. **Notice for hearing to accused before cancellation of bail**: An accused must be given notice and opportunity of being heard before the bail granted to him earlier is cancelled. See :

(i) P.K. Shaji Vs. State of Kerala, (2006) 2 SCC (Cri) 174
(ii) Gurdev Singh Vs. State of Bihar, (2005) 13 SCC 286

66. **Cancellation of bail on the ground of concealment of facts:** Bail granted on the basis of concealment of facts would be liable to be cancelled on this ground alone. See: Tufail Ahmed Vs. State of U.P, 2010 (5) ALJ 102 (All).

67. **A bail granted by SJ or High Court not to be cancelled by the Magistrate :** Where Bail was granted by a Sessions Judge, any cancellation or alteration of the conditions of bail can be made by the Sessions Judge himself or by the High Court only and not by a Magistrate. See: Ananth Kumar Naik Vs. State of AP, 1977 CrLJ 1797 (AP).

68. **Order of Judicial Magistrate cancelling bail is revisable by SJ:** An order passed by Judicial Magistrate cancelling bail is revisable before the Sessions Judge. See: Pandit Dnyanu Khot vs. State of Maharashtra, 2002 (45) ACC 620 (SC).

69. **Cancellation of bail by Magistrate granted by Court of Sessions or High Court :** The bail granted by Court of Sessions or by any other Superior Court cannot be cancelled by Magistrate unless so directed by the Court of Sessions or by any other Superior Court. The powers of High Court or the Sessions Court u/s 439(2) CrPCare very wide and it specifically empowers the Sessions Court or the High Court to cancel the bail granted by any of the subordinate courts under Chapter XXXIII of the CrPCi.e. u/s 436 or 437 CrPCSee: P.K. Shaji Vs. State of Kerala, (2006) 2 SCC (Cri) 174.

70. **Bail u/s 389(3) CrPCby Trial Court on conviction :** Sec. 389(3) CrPC empowers the trial court to grant bail to a convicted accused under the following conditions---

"Section 389(3) CrPC: Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall—

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail.

Order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

71. **Hearing to Public Prosecutor on bail application u/s 389 CrPC mandatory :** Service of copy of appeal and application for bail on public prosecutor and providing him opportunity of hearing is mandatory as required by the first proviso to Section 389 CrPC. In the event of non observance of the said provision, bail order has to be set aside by the superior court. See : Atul Tripathi Vs. State of UP, 2015 (88) ACC 525 (SC).

72. **Appellate court can order deposit of only part of the fine by the convict imposed by the trial court :** When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine and he moved the Superior Court for suspension of sentence the imposition of condition that part of the fine shall be remitted in Court within a specified time, was not improper. While suspending the sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the Court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the Court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In the present case considering the total amount of fine imposed by the trial Court (twenty lacs of rupees) there is nothing unjust or unconscionable in imposing a condition, to remit amount of four lacs for suspending the sentence. See : Stanny Felix Pinto Vs. M/s. Jangid Builders Pvt. Ltd. & Another, AIR 2001 SC 659.

73. **Deposit of fine a pre-condition for grant of bail u/s 389(3) CrPC by trial court :** It is the privilege of the accused to insist for bail even after the order of conviction and sentence u/s 389(3) CrPC if the amount of fine has been paid and quantum of punishment is less than three years especially when there is no other reason to refuse the discretionary relief. See : Vijaykumar Shantilal Tadvi Vs State of Gujarat, 2008 CrLJ 935 (Gujarat High Court).

74. **Section 439(2) CrPC not applicable to bail granted u/s 389 CrPC :** Section 439(2) CrPC for cancellation of bail cannot be invoked where accused convict has been granted bail in criminal appeal u/s 389(1) CrPC. The bail can be cancelled u/s 482 CrPC. Where pending appeal, prosecution witness was murdered by the accused convict, bail was cancelled. See: Rajpal Singh vs State of UP, 2002 CrLJ 4267 (All) (DB)

75. **Relevant considerations for grant of bail u/s 389 CrPC**: During the pendency of an appeal, an appellate court is empowered u/s 389 CrPCto release the convict/appellant on bail and may also, for the reasons to be recorded in writing, suspend the judgment of conviction and order of sentence passed by the lower court. The relevant considerations for releasing the convict/appellant on bail u/s 389 CrPCare as under:

(i) Nature of accusations made against the accused.

(ii) Manner which the offence was committed.

(iii) Gravity of the offence desirability of releasing the accused on bail keeping in view the seriousness of the offence committed by him. See:

1. State of Haryana Vs. Hasmat, (2004) 6 SCC 175
2. Vijay Kumar Vs. Narendra, (2002) 9 SCC 364
3. Ramji Prasad Vs. Rattan Kumar Jaiswal, (2002) 9 SCC 366

76. **Second bail application u/s 389 CrPC:** An order passed on a bail application is only an interlocutory order and cannot be treated as judgment or final order disposing of a case and the bar contained u/s 362 CrPCis not attracted to entertaining a second bail application u/s 389 CrPCby the appellate court. There is no provision in CrPCcreating a bar against the maintainability of a second bail application u/s 389 CrPCin an appeal. A second bail application would be maintainable only on some substantial ground where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second application for bail would also be maintainable on the ground of unusual long delay in hearing of the appeal as in the event the appeal is not heard within a reasonable time and the convicted accused undergoes a major part of the sentence imposed upon him, the purpose of filing of the appeal itself may be frustrated. A strong humanitarian ground which may not necessarily pertain to the accused himself but may pertain to someone very

close to him may also, in certain circumstances, be a ground to entertain a second bail application. These are some of the grounds on which second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second application for bail may be maintainable as it will depend upon peculiar facts and circumstances of each case. See: Dal Chand Vs. State of U.P., 2000 Cr.L.J. 4579 (All) (DB).

77. **Bail by appellate court should be normally granted u/s 389 CrPC:** When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances like any statutory restriction against suspension of sentence. Similarly, when the sentence is life-imprisonment the consideration for suspension of sentence could be of a different approach. When the appellate court finds that due to practical reasons, appeal cannot be disposed off expeditiously, the appellate court must bestow special concern in the matter of suspending the sentence so as to make the right of appeal meaningful and effective. Ofcourse, appellate court can impose similar conditions when bail is granted. The sentence of imprisonment as well as the direction for payment of fine or capable of being executed. See: Bhagwan Rama Shinde Gosai Vs. State of Gujarat, AIR 1999 SC 1859.

78. **Bail u/s 389 CrPC when not to be granted:** Possible delay in disposal of appeal and there being arguable points by itself may not be sufficient to grant suspension of a sentence. See: State of Punjab Vs. Deepak Mattu, (2007) 11 SCC 319.

78.1. **An unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would entitle the accused to be released on bail:** Sub-section (1) of Section 309 CrPC mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only

to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own. Sub-section (2) has to be read along with sub-section (1). The proviso to sub-sectio (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision under Section 436A of the Code which stands on a different footing. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 40 & 41)

78.2. Section 436A CrPC would apply to Special Acts also: Section 436A CrPC would apply to Special Acts also. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 64 & 66)

79. Pre-conditions for suspension of sentence u/s 389 CrPC: A person seeking stay of conviction u/s 389 should specifically draw the attention of the appellate court to the consequences if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of conviction, the person convicted cannot obtain an order of stay of conviction. See: Navjot Sidhu vs. State of Punjab, AIR 2007 SC 1003.

80. Rectification of bail order: If the Court had committed any mistake in passing a bail order, it has power to rectify the same. But the court would carry out necessary rectification/correction by giving an opportunity to the

accused of being heard.See: Rajendra Prasad Arya Vs. State of Bihar, 2000 (41) ACC 346 (SC)

81. **Bail to foreigner :** Where a case for bail is made out, bail would not be refused merely because the accused applicant is a foreign national. See: Agali E. Samki Vs. State NCT of Delhi, 2007 (57) ACC (Sum) 22 (Delhi).

82. **Bail on the ground of long detention in jail :** An accused lodged in jail (even if he is a Member of Parliament) cannot be granted bail u/s 437, 439 CrPCon the ground of long detention in jail. Mere long period of incarceration in jail would not be per se illegal. If the accused has committed offence, he has to remain behind the bars. Such detention in jail even as an undertrial prisoner would not be violative of Article 21 of the Constitution. See:

1. Bhagat Singh Vs. State of U.P., 2009 (66) ACC 859 (All)
2. Pramod Kumar Saxena Vs. Union of India, 2008 (63) ACC 115 (SC)
3. Ravi Khandelwal Vs. State of U.P., 2009 (67) ACC 148 (All)—*Accused in jail for the last one year for murder.*
4. Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI, AIR 2007 SC 451 *(Case of M.P. in jail for more than six years)*
5. Pradeep Kumar Vs. State of U.P., 2006 (6) ALJ (NOC) 1356 (All)--- *Accused in jail for the last 60 days from the date fixed for evidence.*
6. Ram Govind Upadhyay Vs. Sudarshan Singh, 2002 (45) ACC 45 (SC)— *accused was in jail for the last one year.*
7. Prahlad Singh Bhati Vs. NCT, Delhi, 2001 (42) ACC 903 (SC)
8. Hari Om Vs. State of U.P., 1992 Cr.L.J. 182 (All)-- *(Accused in jail for last 8 months)*

83. **Delayed trial a ground for bail :** Delay in conclusion of trial is an important factor for bail to be considered u/s 437 CrPC.See:15(C).

84. **Delayed trail a ground for bail :** An under trial prisoner cannot be detained in jail to an indefinite period as it violates Article 21 of the Constitution. If the trial is likely to take considerable time and the accused will have to remain in jail longer that period of detention had they been convicted, it is not in the interest of justice that the accuse should be in jail for an indefinite period of time and in that event he should be granted bail u/s 437 or 439 of the CrPC. See:

(i). Sanjay Chandra VS. Central Bureau of Investigation, A IR 2012 SC 830
(Note : it was 2G Spectrum Scam Case)
(ii) . Dipak Shubhashchandra Mehta Vs. CBI, AIR 2012 SC 949
(iii). State of Kerala v. Raneef, AIR 2011 SC 340.

85. **Delay in framing of charges entitles the accused to be released on bail:** In a criminal trial, where there was seven months delay in framing of the

charges against the accused, it has been observed by the Hon'ble Supreme Court that in a simple matter of framing of charges, the court should have taken more than seven months to frame the charges, is negation of principles of speedy trial and the grounds on which the case had been adjourned from time to time reflected poorly on the manner in his trial was being conducted. The Apex court directed the court to be careful in future in dealing with sich cases and not to take up the cases for framing of charges in such a casual manner and keep the pending for long periods while the accused languishes in custody and directed that the accused be realeased on bail. See: Bal Krishna Pandey vs. State of UP, (2003) 12 SCC 186.

86. **Bail and Parole distinguished** : Parole is a form of temporary release of a convict from custody which provides conditional release from custody and changes the mode of undergoing sentence . Parole has nothing to do with the actual merits of the matter i.e. the evidence which has been led against the convicted prisoner but parole is granted in cases of emergency like death, illness of near relative or in cases of natural calamity such as house collapse, fire or flood. Bail and parole operate in different spheres and in different situations. The CrPC does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States regulating the grant of parole. Thus, the action of grant of parole is generally speaking and administrative action. See : S. Sant Singh Vs. Secretary, Home Department, Government of Maharashtra Mantralaya, 2006 CrLJ 1515 (Bombay) (Full Bench).

87. **Uttar Pradesh (Suspension of Sentences of Prisoners) (First Amendment) Rules, 2012:** Vide UP Govt. Notification No.104 JL / 22-3-2013-21G /1989 Dated Lucknow, January 29, 2013, Rule 3(3) of the UP (Suspension of Sentences of Prisoners) Rules, 2007 has been amended as under :

Rule 3(3) w.e.f. 29.1.2013: The District Magistrate of the district to which the prisoner belongs may suspend the sentence of a prisoner upto 72 hours on the following grounds :

(a). Death of mother, father, husband or wife, son, daughter, brother or sister,

(b). Marriage of son, daughter, brother or sister.

88. Court not empowered to release prisoner in police custody to attend marriage ceremony etc. of near relatives : An important decision dated 28.04.2011 of the Hon'ble Allahabad High Court rendered in Criminal Misc. Application No. 13434 of 2011 State of UP Vs. Udai Bhan Singh alias Doctor Singh & Criminal Misc. Application No. 13566 of 2011 Smt. Ram Lali Mishra Vs. State of UP is quoted here thus :*"Prisoner Udai Bhan Singh alias Doctor Sing & his nephew Sandeep Singh alias Pintu Singh were detained in the District Jail, Mirzapur and were facing trial before the Court of Addl. Sessions Judge, Bhadohi at Gyanpur for the offences u/s 307, 120-B of the IPC. The prisoner Udai Bhan Singh alias Doctor Singh was already convicted in another Criminal Trial for having committed the offence of murder and was serving life imprisonment. An application was moved by the two under trials named above before the court of the ASJ, Bhadohi at Gyanpur with the prayer to allow them to go from the jail in police custody to attend the tilak ceremony of their sister's daughter. The ASJ allowed the application with the direction to the jail authorities to take the two prisoners named above in police custody to attend the tilak ceremony of their sister's daughter. The said order was immediately challenged by the jail authorities/the State of UP on Sunday itself (on 24.04.2011) by filing a petition u/s 482 CrPC before Hon'ble the Chief Justice of the Allahabad High Court at His Lordship's residence. His Lordship Hon'ble the Chief Justice at once constituted a Bench nominating Hon'ble Justice A.K. Tripathi to hear the petition on Sunday itself and pass appropriate order. After hearing the counsel for the State at his residence, His Lordship Hon'ble Justice A.K. Tripathi passed order dated 24.04.2011 staying the operation of the order of the ASJ Bhadohi and the said petition was thereafter transferred to the regular Bench of Hon'ble Justice Ravindra Singh. Finally allowing the above petition, His Lordship Ravindra Singh J. has observed that 'the impugned order shows that the trial court has passed such order deliberately so that the judicial custody warrants of the accused persons prepared and issued by the committal Magistrate u/s 209 CrPC may not come in the way of execution of the impugned order and that is why the order has been passed releasing the accused persons in police custody. The impugned order has been passed in the garb of the provisions of Section 439 or 309 CrPC to give the benefit to the accused persons which is not proper and is illegal. Section*

309 CrPC was not applicable in the present case because the trial court was not empowered to remand the accused persons to police custody to a place other than the jail." The said order of the ASJ, Bhadohi at Gyanpur was consequently set aside by the Hon'ble High Court.

89. **Application seeking permission to attend marriage of sister in police custody rejected by High Court** : Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad)(DB)

90. **No short term bail to attend marriage etc :** Where the accused/husband was convicted along with his father for offences u/s 304-B, 498-A of the IPC and u/s 3/4 DP Act and was serving out sentence in jail and meanwhile father/convict was granted bail in appeal by the High Court, the co-accused/husband moved a second application for bail before the High Court. The Hon'ble Allahabad High Court not only rejected the prayer of the co-accused/husband for bail and short term bail but also rejected the prayer to allow him to go from jail to the venue of the marriage in police custody. See: Upendra Singh Vs. State of UP, 2012 (77) ACC 801(Allahabad) (DB).

91. **Short term bail (parole) ganted for attending marriage of daughter :** A Division Bench of the Hon'ble Allahabad High Court vide its order dated **05.02.2014** passed in Criminal Appeal No. 356/2010, Shiv Sagar Rai Vs. State of UP, granted short term bail (parole) for three weeks to the convict/appeallant who was convicted by the lower court for the offences u/s 147, 148, 302/149, 201, 218 IPC to attend marriage of his daughter with the direction to the convict/appeallant to surrender before the CJM, Sonbhadra after expiry of the said period of three weeks.

92. **Parity in Bail :** It is not universal rule that bail should be granted to co-accused on the ground of parity. Bail granted to co-accused on the basis of non-speaking order cannot form the basis for granting bail on the ground of

parity. Similarly if co-accused is granted bail in ignorance or violation of well settled principles of law of bails, it cannot be the basis of parity. Parity cannot be the sole ground for bail. A Judge is not bound to grant bail on the ground of parity. See:

1. Amarnath Yadav Vs. State of U.P., 2009 (67) ACC 534 (All)
2. Sanjay Vs. State of U.P., 2009 (67) ACC 190 (All)
3. Shahnawaz Vs. State of U.P., 2009 (66) ACC 189 (All)
4. Bhagat Singh Vs. State of U.P., 2009 (66) ACC 859 (All)
5. Sabir Hussain Vs. State of U.P., 2000 Cr.L.J. 863 (All)
6. Chander Vs. State of U.P., 1998 Cr.L.J. 2374 (All)

93.1 Benefit of parity when to be extended to co-accused ? : Where in a daylight murder of two persons, two accused were already granted bail, the third accused, a student, in jail for more than one year, was also granted bail on the grounds of parity. See : Ramesh Chander Singh Vs. High Court of Allahabad, (2007) 4 SCC 247.

*(***Note:** *In the above case, Shri R.C. Singh, the then ASJ, Jhansi had granted bail to one of the accused persons involved in double murder and on complaint of having taken graft for the same, an enquiry was set up against him by the Hon'ble Allahabd High Court and was subsequently reversed to the post of Civil Judge, Senior Division. The Hon'ble Supreme Court set aside the penalty and directed for his promotion by holding that a judicial officer should not be punished merely because an order passed by him was wrong.)*

93.2. Negative equality cannot be claimed to perpetuate further illegality: Even if a benefit was extended to some one in the past by mistake, similar benefit cannot be claimed by others subsequently. Negative equality cannot be claimed to perpetuate further illegality. See: Pankjeshwar Sharma Vs State of J&K,(2021) 2SCC 188 (Three-Judge Bench)

94. ASJ terminated for granting bail to co-accused on parity basis : Shri Naresh Singh was posted as Addl. Sessions Judge, Muzaffarnagar and had granted bail to an accused (husband) on 18.05.2006 for the offences u/s 498-A, 304-B IPC and u/s 3/4 Dowry Prohibition Act, on the ground of parity as the other co-accused persons (father-in-law & mother-in-law of the deceased wife) were already granted bail by the Hon'ble Allahabad High Court. Shri Naresh Singh was already transferred to the Allahabad High Court to join as OSD (Inquiries) but he had delayed in handing over his charge at Muzaffarnagar by 20 days and meanwhile when the District Judge, Muzaffarnagar had gone to High Court, Allahabad, and Shri Naresh Singh was acting as Incharge Sessions Judge, Muzaffarnagar, granted bail to the

accused/husband on the ground of parity. A complaint was made against him to the High Court and on final inquiry conducted against him, he was found guilty for the charge of having granted the said bail to the accused/husband on artificially created ground of parity with the co-accused persons and was terminated by the Full Court on 16.05.2009. Shri Naresh Singh challenged his removal before the Lucknow Bench of the Hon'ble Allahabad High Court which partly allowed his petition and set aside the Full Court resolution dated 16.05.2009 regarding his removal from service. See : Naresh Singh Vs. State of UP & Others, 2013 (1) ESC 429 (All-LB)(DB).

95. **Benefit of parity when to be extended to co-accused ? :** Where one accused was already convicted & sentenced for offence u/s 20 of the NDPS Act, 1985 in one Criminal Trial and the question of sentencing of other accused in separate Criminal Trial had arisen and the principle of parity in awarding the penalty to the second accused was raised, it has been held by the supreme Court that for applying the principle of parity, following two condition should be fulfilled:

(i) The principle of parity in criminal case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to the co-accused.

(ii) For applying the principle of parity both the accused must be involved in same crime and must be convicted in single trial and consequently, a co-accused is one who is awarded punishment along with the other accused in the same proceedings. See: Ajmer Singh Vs. State of Haryana, 2010 (5) SCJ 451.

96. **Cross-Cases & Bail :** When there are cross cases and both the sides have received injuries and one party has been released on bail the other party has to be released on bail as that is the settled view. The question as to which party was aggressor is a question of fact and that will have to be determined on the basis of evidence that is adduced in these cases. See: Jaswant Singh Vs. State of U.P., 1977 (14) ACC 302 (All)

97. **Bail on medical ground :** Where the accused was previously convicted for offences punishable with life imprisonment and was granted bail on medical grounds, it has been held by the Supreme Court that bail cannot be granted u/s 437, 439 CrPC to an accused on medical grounds as the medical treatment can be sought by the accused in jail from the jail authorities. See:

1. Ram Prakash Pandey Vs. State of U.P., 2001 ALJ 2358 (SC)
2. Bibhuti Nath Jha Vs. State of Bihar, (2005) 12 SCC 286.

98. **Mentally Ill Persons & Bail** : As regards the detention of mentally ill persons in jails, the Allahabad High Court in compliance with the directions of the Hon'ble Supreme Court in the matter of Sheela Barse Vs. Union of India, (1993) 4 SCC 204, has issued following directions vide C.L. No.30/2006, dated 7.8.2006 ---

(a) It is directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed by Executive Magistrate shall hereafter be performed only by Judicial Magistrate.

(b) The Judicial Magistrate, will, upon a mentally ill person being produced, have him or her examined by a Mental health professional/ Psychiatrist and if advised by such MHP/Psychiatrist send the mentally ill person to the nearest place of treatment and care.

(c) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and sent to places of safe custody and action taken by the Judicial Magistrate thereon.

99.1. **Accused in jail beyond local territorial jurisdiction of court: Sec. 267 CrPC& Bail :** Relying upon the Supreme Court decision in Niranjan Singh Vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785, the Allahabad High Court, while interpreting the provisions of Sec. 267 r/w. 439 Cr.P.C., has held that where the accused was arrested by the police at Allahabad in relation to some crime registered at Allahabad and was detained in jail at Allahabad and the accused was also wanted for offences u/s 302, 307 IPC at Mirzapur, the Sessions Judge, Mirzapur had got jurisdiction to hear the bail application of the accused treating him in custody of the Court of Sessions Judge at Mirzapur. Physical production of the accused before the Court at Mirzapur or his detention in jail at Mirzapur was not required. See:

1. Billu Rathore Vs. Union of India, 1993 L.Cr.R. 182 (All)
2. Chaudhari Jitendra Nath Vs. State of U.P., 1991(28) ACC 497 (All)

Note: For other cases on Sec. 267 Cr.P.C., see:

1. Ranjeet Singh @ Laddu Singh Vs. State of U.P., 1995 A.Cr.R. 523 (L.B.)

2. Mohd. Dawood Quareshi Vs. State of U.P., 1993 (30) ACC 220

3. Mohd. Daud Vs. Supdt. of Distt. Jail, Moradabad, 1993 ALJ 430 (All—D.B.):This judgment has been circulated amongst the judicial officers of the State of U.P. by the Allahabad High Court vide C.L. No. 58/23-11-1992 for observance.

99.2. Bail u/s 81 CrPC: As regards the question of grant of bail u/s 81 of the CrPC, the second proviso to Sec. 81(1) CrPCand the third proviso added in U.P. in 1984 to Sec. 81(1) CrPCread as under :

4. **Second Proviso** : "Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of Sec. 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of Section 78, to release such person on bail."

5. **Third Proviso** : "Provided also that where such person is not released on bail or where he fails to give such security as aforesaid, the Chief Judicial Magistrate in the case of a non-bailable offence or any Judicial Magistrate in the case of a bailable offence may pass such orders as he thinks fit for his custody till such time as may be necessary for his removal to the Court which issued that warrant."

99.3. Relying upon a Constitution Bench Decision of the Supreme Court in the matter of Sarabjit Singh Vs. The State of Punjab, AIR 1980 SC 1632 (SC : Constt. Bench), the Gauhati High Court has, in the case of State of Manipur Vs. Vikas Yadav, 2000 CrLJ 4229, held that power to grant bail u/s 81(1) CrPCis not available at pre-arrest stage. This power is available only at the post-arrest stage.

99.4. Second proviso to Sec. 81 is limited to the jurisdiction of court in the matter of granting bail to a person arrested in execution of a warrant issued u./s. 78 CrPCIf the accused is not arrested in execution of warrant issued u/s 78 CrPC, Magistrate having jurisdiction over place of arrest has no jurisdiction to grant bail to accused. See : Arun Kumar Singh Vs. State (NCT of Delhi), 1999 CrLJ 4021 (Delhi High Court).

100. Accused to be conveyed back to the prison from where he was brought on production warrant issued u/s 267 Cr PC : Sec. 267 & 270 of the Cr Pc read together contain a clear legislative mandate that when a prisoner already confined in a prison is produced before another criminal court for answering

to a charge of an offence, and is detained in or near such court for the purpose, on the court dispensing with his further attendance, has to be conveyed back to the prison from where he was brought for such attendance. See: Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) *(paras 69 & 70)*

Note: The ruling in Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) has been circulated by the Hon'ble Allahabad High Court amongst the Judicial Officers of the State of UP Vide C.L. No. 58/23-11-1992 for observance.

101. Accused to be released if no fresh production warrant u/s 267 Cr PC is issued after expiry of date mentioned in the earlier production warrant : Where no fresh production warrant u/s 267 of the Cr PC was issued by the court after the expiry of the date mentioned in the earlier production warrant, it has been held that the accused is liable to be released from custody as the production warrant issued u/s 267 Cr PC cannot be treated as custody warrant for purposes of Sec. 167 of the Cr PC. See: Nabbu Vs State of UP, 2006 Cr LJ 2260 (All-DB)

102. Mere issuance of production warrant u/s 267 Cr PC not sufficient to entertain bail application unless the accused is in the custody of the court : Only that court can consider and dispose of the bail application either u/s 437 or u/s 439 Cr PC in whose custody the accused is for the time being and mere issuance of production warrant u/s 267 Cr PC is not sufficient to deem the custody of that court which issued such warrant unless the accused is actually produced in that court in pursuance of such production warrant. See:

1. Pawan Kumar Pandey Vs. State of UP, 1997 Cr LJ 2686 (All--L B)
2. Pramod Kumar Vs. Ramesh Chandra, 1991 Cr LJ 1063 (All)

103. Accused summoned on production warrant u/s 267 CrPC not to be released even when granted bail: An accused detained in one case and produced before another court in pursuance of production warrant and granted bail in the case pending before the transferee court is not entitled to be released despite grant of bail. See: Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) *(paras 73)*

Note : The ruling in Mohammad Daud @ Mohammad Saleem Vs. Superintendent of District Jail, Moradabad, 1993 Cr LJ 1358 (All—DB) has

been circulated by the Hon'ble Allahabad High Court amongst the Judicial Officers of the State of UP Vide C.L. No. 58/23-11-1992 for observance.

104. Production warrant issued u/s 267 CrPC must be endorsed by an Executive Magistrate or a Police Officer not below the rank of SHO with in whose jurisdiction :

105. Compromise & Bail : Where the High Court had granted bail to the accused on the basis of assurance to compromise the case with the victim and subsequently cancelled the bail of the accused on the ground of breach of assurance to compromise, the Supreme Court has held that grant of bail to an accused on the ground of assurance of compromise is not permissible u/s 437/439 CrPCas the bail can be granted only on the grounds what have been provided u/s 437 & 439 CrPCThe subsequent cancellation of bail by the High Court on the ground of breach of assurance to compromise has also been held impermissible by the Supreme Court by laying down that bail once granted cannot be cancelled on a ground alien to the grounds mentioned in Sec. 437 CrPCSee**:** Biman Chatterjee Vs. Sanchita Chatterjee, (2004) 3 SCC 388

106.1. No formal bail application should be insisted u/s 88 CrPC: An accused of a complaint case, on appearance before court, cannot claim to be released u/s 88 CrPCon bail on his personal bond only. But the accused would have to apply for bail under chapter XXXIII CrPCi.e. Sec. 436, 437 CrPCand in case the offence is non-bailable, he may or may not be granted bail. See:

(i) Satender Kumar Antil Vs Central Bureau Of Investigation, AIROnline 2022 SC 956

(ii) Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All).

106.2. No formal bail application should be insisted u/s 88, 170, 204 &209 CrPC: No formal bail application should be insisted u/s 88, 170, 204 &209 CrPC. See: Satender Kumar Antil Vs Central Bureau Of Investigation, AIROnline 2022 SC 956

107. Bail in complaint cases: Giving approval to the Principles of Law laid down in Chheda Lal Vs. State of U.P., 2002 (44) ACC 286 (All) and interpreting the law of bail to an accused person u/s 436, 437 CrPCin complaint cases and bail to any other person like witnesses u/s 88 Cr.P.C., a **Division Bench** of Hon'ble Allahabad High Court in Criminal Misc. Application No. 8810 of 1989, Babu Lal & others Vs. Smt. Momina Begum & Criminal Misc. No. 8811 of 1989, Parasnath Dubey & others Vs. State of U.P. & others decided

on 23.3.2006 and circulated by Hon'ble Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33/2008, dated 7.8.2008 has ruled as thus:"Where Sections 436 and 437 Cr.P.C., under the provisions of Chapter XXXIII would be applicable would not be dealt with by the procedure u/s 88, inasmuch as, the considerations for granting bail are different and includes several other aspects, which are not to be considered while applying Sec. 88. For example, where a person is accused of a bailable offence and process is issued, as and when he appears before the Court either after his arrest or detention or otherwise, if he shows his readiness to give bail to the Court, he shall be released on bail. Therefore, a person accused of a bailable offence needs to be personally present before the Court and has to be ready to give bail before he has to be released on bail. But where a person is accused of non-bailable offence, as and when he appears before the Court whether by arrest or detention or otherwise, he may be released on bail by a Court other then High Court and the Court of Sessions u/s 437, CrPCsubject to satisfaction of certain conditions, namely, that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail with respect to offence punishable with death or imprisonment for life is not applicable where such person is under 16 years of age or is a woman or is sick or infirm subject to the conditions, as the Court may deem fit, may be imposed. Therefore, the power to release on bail u/s 437, CrPCis restricted and subject to certain conditions which cannot be made redundant by taking recourse to Sec. 88 CrPCwhere process has been issued taking cognizance of a complaint, where the allegations of commission of non cognizable offence has been made against person. These are illustrative and not exhaustive but are necessary to demonstrate that Sec. 88, in all such matters will have no application. This also shows that by necessary implication Sec. 88 in such general way, cannot be applied and has no scope for such application. Where there is overlapping power or provision, but one provision is specific while other is general, the law is well settled that specific and special provision shall prevail over the general provision in the matter of accused. Since the procedure with respect to bail and bonds, is provided under Chapter 33 of CrPCin our view, Sec. 88 would not be attracted.

The power u/s 88 is much wider. When the accused approaches the Court for bail, the Magistrate in its discretion may require him to execute bail bonds, since the language of statutes u/s 88 CrPCis wider and the objective and purpose is to ensure the presence of the person concerned. Therefore, speaking generally, it may be said that where an accused is entitled to approach the Court for bail u/ss. 436 and 437 Cr.P.C., he may also be governed by Sec. 88 Cr.P.C., which is not qualified and encompass within its ambit an accused, a witness or any other person. However, Sections 436 and 437 CrPCdeal only with the "accused person". Although the word 'person' has also been used in Sections 436 and 437 CrPCbut it is qualified with the word "accused" and therefore, the aforesaid provisions are applicable only to such category of persons, who are accused of bailable or non-bailable offence. It may thus be said, referring to Sec. 88, in respect of accused, that, it may have applicable where the Court has issued process to an accused but it has not actually been served upon him and yet if he appears before the Court, in such cases the Court is empowered to ask for bail bonds from such accused person to ensure his presence before the Court in future. This is one aspect and demonstrates that the scope of Sections 88 and 89 CrPCis much wider qua Sec. 436 and 437 Cr.P.C.Thus, we are of the view that the case which will be governed by the Sections 436 and 437 CrPCit is not necessary to apply the provisions of Sec. 88 of CrPCfor the reason that Sections 436 and 437 Cr.P.C., are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPCis much wider as discussed above. The case in which Section 436 CrPCis applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437 CrPCalso. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPChas to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89 CrPCas such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s 88 CrPCor

the Court gives bail u/s 436 and 437 Cr.P.C., the appearance of the person before the Court is must and can not be dispensed with at all." See: Satender Kumar Antil Vs Central Bureau Of Investigation, AIROnline 2022 SC 956

108. **Sec. 88 & 319 CrPC:** Relying upon an earlier decision of Allahabad High Court reported in Vedi Ram @ Medi Ram Vs. State of U.P., 2003 ALJ 55 (All), the Allahabad High Court has held that an accused who has been summoned by court u/s 319 CrPCcannot be granted bail u/s 88 CrPCas once a person has been arraigned as accused u/s 319 CrPChe stands on the same footing as the other accused against whom police had filed charge sheet, therefore, it is obligatory for the Court to send him to judicial custody on his appearance. See: Mumkad Vs. State of UP, 2003 CrLJ 4649 (All)

109. **Bail to juvenile u/s 12 of the Juvenile Justice : (Care & Protection of Children) Act, 2000** : According to Sec. 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000, irrespective of the nature of the offence (bailable or non-bailable), a juvenile in conflict with law cannot be denied bail by the JJ Board or the court except for the following three reasons:

(i) that there are reasonable grounds for believing that the release is likely to bring him into association with any known criminals or

(ii) that he would be exposed to moral, physical or psychological danger or,

(iii) that his release on bail would defeat the ends of justice.

For the law of bail of juveniles, as quoted above, kindly see the rulings noted below:

1. Jaswant Kumar Saroj Vs. State of U.P., 2008 (63) ACC 190 (All)
2. Sanjay Chaurasia Vs. State of U.P., 2006 (55) SCC 480
3. Anil Kumar Vs. State of U.P., 2006 (6) ALJ 205 (Allahabad)
4. Ankita Upadhyay Vs. State of U.P., 2006 (55) ACC 759 (Allahabad)
5. Pratap Singh Vs. State of Jharkhand, AIR 2005 SC 2731
6. Pankaj Vs. State of U.P., 2003 (46) ACC 929 (Allahabad)

Note: In the cases of Mohd. Amir Vs. State of U.P., 2002 (45) ACC 94 (All) & Sant Das alias Shiv Mohan Singh Vs. State of U.P., 2002 (45) ACC 1157 (All), Allahabad High Court has held that if the JJ Board is not constituted the accused/juvenile may move his bail application u/s 437 of the CrPCbefore the Magistrate having jurisdiction and in case the bail

application is rejected by the Magistrate, the juvenile may move his application u/s 439 of the CrPCbefore the Sessions Judge but he cannot directly move his bail application before the High Court u/s 439 CrPCLikewise where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s 437 Cr.P.C., the same cannot be directly heard by the Sessions Judge u/s 439 Cr.P.C.

The relevant provisions regarding bail of juvenile contained under the Juvenile Justice (Care & Protection of Children) Rules, 2007 are as under:

Rule 13(1)(c): release the juvenile in the supervision or custody of fit persons or fit institutions or probation officers as the case may be, through an order in Form-I, with a direction to appear or present a juvenile for an inquiry on a next date.

Rule17(1): The officer-in-charge shall maintain a register of the cases of juveniles in conflict with law to be released on the expiry of the period of stay as ordered by the Board.

Rule 17(4): The timely information of the release of a juvenile and of the exact date of release shall be given to the parent or guardian and the parent or guardian shall be invited to come to the institution to take charge of the juvenile on that date.

Rule 17(6): If the parent or guardian, as the case may be, fails to come and take charge of the juvenile on the appointed date, the juvenile shall be taken by the escort of the institution; and in case of a girl, she shall be escorted by a female escort.

Rule 17(8): If the juvenile has no parent or guardian, he may be sent to an aftercare organization, or in the event of his employment, to the person who has undertaken to employ the juvenile.

Rule 17(13): Where a girl has no place to go after release and requests for stay in the institution after the period of her stay is over, the officer-in-charge may, subject to the approval of the competent authority, allow her stay till the time some other suitable arrangements are made.

110. 5th bail application of juvenile allowed by High Court u/s 12 : Where the age of a juvenile involved in the commission of offences u/s 302, 364-A, 201 of the IPC was not determined by the Addl. Sessions Judge, Ghaziabad and the four successive bail applications were rejected by treating the juvenile as

major, the Allahabad High Court allowed the 5th bail application by holding the accused as juvenile. See : Surendra Vs. State of UP, 2014 (84) ACC 60 (All)(DB).

111. Form of Personal Bond & Bail Bonds for Juvenile : In case a juvenile is released on bail, rules 15 & 79 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 requires special personal bond on prescribed format (given below) from the juvenile and the guardian/parent/other fit person in whose custody the juvenile is placed :

FORM V

[Rules 15(5) and 79(2)]

UNDERTAKING/BOND TO BE EXECUTED BY A PARENT/GUARDIAN/RELATIVE/ FIT PERSON IN WHOSE CARE A JUVENILE IS PLACED

Whereas I…… being the parent, guardian, relative or fit person under whose care……..(name of the juvenile) has been ordered to be placed by the Juvenile Justice Board…… have been directed by the said Board to execute an undertaking/bond with surety in the sum of Rs……(Rupees…….) or without surety. I hereby bind myself on the said…….being placed under my care. I shall have the said ……. Properly taken care of and I do further bind myself to be responsible for the good behaviour of the said…… and to observe the following conditions for a period of…… years w.e.f……..

1. That I shall not change my place of residence without giving previous intimation in writing to the Juvenile Justice Board through the Probation Officer/Case Worker;
2. That I shall not remove the said juvenile from the limits of the jurisdiction of the Juvenile Justice Board without previously obtaining the written permission of the Board;
3. That I shall send the said juvenile daily to school/to such vocation as is approved by the Board unless prevented from so doing by circumstances beyond control;
4. That I shall send the said juvenile to an Attendance Centre regularly unless prevented from doing so by circumstances beyond my control;
5. That I shall report immediately to the Board whenever so required by it;

6. That I shall produce the said juvenile in my care before the Board, if he/she does not follow the orders of Board or his/her behaviour is beyond control;
7. That I shall render all necessary assistance to the Probation Officer/Case Worker to enable him to carry out the duties of supervision;
8. in the event of my making default herein, I undertake to produce myself before the Board for appropriate action or bind myself, as the case may be, to forfeit to Government the sum of Rs. ……(Rupees……)

Dated…….…….this…….day

of……..20……

Signature of person executing the Undertaking/Bond.

(Signed before me)

Principal Magistrate, Juvenile Justice Board

Additional conditions, if any, by the Juvenile Justice Board may entered numbering them properly;

I/We …… of……. (place of residence with full particulars) hereby declare myself/ourselves as surety/sureties for the aforesaid……. (name of the person executing the undertaking/bond) to adhere to the terms and conditions of this undertaking/bond. In case of ……. (name of the person executing the bond) making fault therein, I/We hereby bind myself/ourselves jointly or severally to forfeit to government the sum of Rs. ……. (Rupees……..)dated this the ……..day of…….. 20……. in the presence of……

Signature of Surety(ies)

(Signed before me)

Principal Magistrate, Juvenile Justice Board

FORM VI
[Rules 15(6) and 79(2)]
PERSONAL BOND BY JUVENILE/CHILD

Personal Bond to be signed by juvenile/child who has been ordered under Clause……. Of sub-section…….. of Section……. of the Act.

Whereas, I …….. inhabitant of …….. (give full particulars such as house number, road, village/town, tehsil, district, state)…… have been ordered to be sent back/restored to my native place by the Juvenile Justice Board/Child Welfare Committee…….. under section……. of the Juvenile Justice (Care & Protection of Children) Act, 2000 on my entering into a personal bond under sub-rule…….. of rule ……. and sub-rule …….. of rule ……. of these Rules to observe the conditions mentioned herein below. Now, therefore, I do solemnly promise to abide by these conditions during the period……..

I hereby bind myself as follows:

1. That during the period…… I shall not ordinary leave the village/town/district to which I am sent and shall not ordinarily return to …….. or go anywhere else beyond the said district without the prior permission of the Board/Committee.
2. That during the said period I shall attend school/vocational training in the village/town or in the said district to which I am sent;
3. That in case of my attending school/vocational training at any other place in the said district I shall keep the Board/Committee informed of my ordinary place of residence.

I hereby acknowledge that I am aware of the above conditions which have been read over/explained to me and that accept the same.

(Signature or thumb impression of the juvenile/child)

Certified that the conditions specified in the above order have been read over/explained to (Name of juvenile/child)…… and that he/she has accepted them as the conditions upon which his/her period of detention/placement in safe custody may be revoked.

Certified accordingly that the said juvenile/child has been released/relived on the……

Signature and Designation of the certifying authority

i.e. Officer-in-charge of the institution

112.1. Death penalty u/s 27(3) of the Arms Act, 1959 ultra vires : Mandatory death penalty u/s 27 (3) of the Arms Act, 1959 is ultra vires the Constitution and void as it is in violation of Articles 13, 14 & 21 of the Constitution. See: State of Punjab Vs. Dalbir Singh, (2012) SCC 346

112.2. Convict having killed 30 persons granted bail by Patna High Court for offences under Arms Act, Explosive Substances Act and IPC on condition of keeping his mobile phone operative and reporting fortnightly to police station: In the case noted below, Patna High Court

granted bail to the accused who was convicted by the trial court for charges for having killed 30 persons in a carnage in which 21 persons were named in the FIR including the appellant/accused. The appellant has renewed his prayer for grant of bail during the pendency of the Sessions Trial No. 157 of 2017, arising out of Deokund (Uphara) P. S. Case No. 23 of 2000 for offences under sections 147, 148, 149, 341, 307, 302 and 120(B) of the Penal Code, 1860; Sections 27 of the Arms Act, 1959; Section 17 of the Criminal Law Amendment Act; Section 3(II)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Section 3 and 4 of the Explosive Substances Act, 1908. At the time of furnishing of the bail bonds, the Trial Court shall require the appellant to furnish an additional affidavit disclosing the mobile telephone no. which he shall keep in operative condition at all times till the trial is concluded. He would also, in such affidavit, give an undertaking that he shall be getting his presence marked fortnightly before the Officer In Charge of the concerned Police Station who is further directed not to unnecessarily detain the appellant and would endorse his presence in the Police Station promptly on the day he visits him. Before leaving the territorial confines of the State of Bihar, the appellant shall be required to obtain prior permission from the Trial Court. The absence of the appellant from the trial proceedings on two consecutive dates would render the bail granted to the appellant liable to be cancelled. Such conditions shall remain attached with this order till final conclusion of the trial. See: Vinod Kumar Vs. State of Bihar, 2022 SCC OnLine Patna 4451

113.1 Bail in economic offences requires different approach : Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. See :

(i) Nimmagadda Prasad Vs. Central Bureau of Investigation, (2013) 7 SCC 466 *(para 23, 24 & 25)*

(ii) Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, AIR 2013 SC 1933 *(para 15 & 16).*

113.2. Bail in economic offences: Gravity of offence, object of Special Act and attending circumstances are factors to be taken note of along with period of sentence. Economic offence cannot be classified as it may involve various activities and may differ from one case to another. It is not advisable on part of Court to categorize all offences into one group and deny bail on that basis. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 67 & 68)

113.3 Offences under Special Acts and guidelines of Supreme Court in Satendra Kumar Antil Vs. CBI, (2021) 10 SCC 773: The Supreme Court has held that in the matter of grant or refusal of bail for the offences under the Special Acts, some of them noted below, a different approach by considering the seriousness of the offences and the severity of the punishment provided in the statute should be adopted by the courts:

(i) Terrorism and organized crimes
(ii) Unlawful Activities (Prevention) Act, 1967
(iii) Prevention of Money Laundring Act, 2002
(iv) Crimes against Wemen and Children
(v) Protection of Children from Sexual Offences Act, 2012 (POCSO)
(vi) Companies Act, 2013
(vii) NDPS Act, 1985

114. Bail under U.P. Control of Goondas Act, 1970 [U.P. Control of Goondas Rules, 1970] : As held by Allahabad High Court, the Judicial Magistrate is empowered to grant remand of the accused u/s 167 CrPCto police or judicial custody for the offences under U.P. Control of Goondas Act, 1970. A Judicial Magistrate or the Sessions Judge or Addl. Sessions Judge are also empowered to hear and dispose of bail application of an accused under the 1970 Act as the provisions of bail contained in Chapter XXXIII of the CrPCi.e. Sec. 437 or 439 CrPCare applicable. Since the contravention of Sec. 3 of the Act is punishable u/s 10 of the 1970 Act which provides imprisonment upto three years but not less than six months and as such as per Sec. 2(x) of the CrPCprocedure for warrant cases would apply. Judicial Magistrate has also jurisdiction to take cognizance of the offences under the 1970 Act u/s 190 CrPCand has also jurisdiction to try the cases as warrant case as the penalty provided u/s 10 of the 1970 Act is imprisonment upto three years but not below six months and fine. See: Mahipal Vs. State of U.P., 1998 (36) ACC 719 (All)

Note: Certain other important rulings on U.P. Control of Goondas Act, 1970 are as under----

1. Jainendra Vs. State of U.P., 2007 (57) ACC 791 (All) (D.B.): Requirement of notice u/s 3 of the 1970 Act discussed.
2. Ashutosh Shukla Vs. State of U.P., 2003 (47) ACC 881(All) (D.B.): Validity of notice u/s 3 of the 1970 Act discussed.
3. Rakesh Kumar Singh Vs. State of U.P., 1998 (37) ACC 48 (All) (D.B.): Case on validity of notice u/s 3(1) of the 1970 Act.
4. Ramji Pandey Vs. State of U.P., 1982 (19) ACC 6 (All) (F.B.) (Summary)

115.1. Bail u/s 37 of NDPS Act, 1985: Rigors provided under Section 37 of the NDPS Act, 1985 would not affect the power of the court under Section 439 CrPC to grant bail to the accused. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956(Paras 64 & 66)

115.2 Necessary conditions for grant of bail u/s 37 of the NDPS Act must be fulfilled : The following twin conditions prescribed u/s 37(1)(b)(ii) of the NDPS Act, 1985 must be fulfilled before grant of bail to an accused of offences under the said Act :

(i) That there are reasonable grounds for believing that the accused is not guilty.

(ii) That the accused is not likely to commit any offence while on bail.See:

(iii) Union of India Vs. Shiv Shanker Kesari, (2007) 7 SCC 798

(iv) Superintendent, Narcotics Central Bureau, Chennai Vs. R. Paulsamy, 2001 CrLJ 117 (SC)

115. Jurisdiction of Magistrates and Special Judges under NDPS Act, 1985 : As regards the jurisdiction of Magistrates and the Special Judges for conducting enquiries or trial or regarding other proceedings under the provisions of NDPS Act, 1985, the Hon'ble Allahabad High Court, in compliance with the order of the High Court (by Hon'ble Justice B.K. Rathi), in the matter of Criminal Misc. Application No. 1239 of 2002, Rajesh Singh Vs. State of U.P. vide C.L. No.31/2006, dated 7.8.2006 has issued following directions to the judicial officers in the State of U.P.---"….the original provisions of the NDPS Act, 1985 has been substantially amended by the amending Act No. 9 of 2001, Section 36-A of the original Act provided for trial of offences under the Act by the Special Courts. This section has been amended and amended sub clause 1(a), which is relevant for the purpose of this petition is extracted below:

Section 36-A --- "Notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (2 of 1974):

a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government." Sub-clause (5) of the said section is also relevant and is extracted below:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this act with

imprisonment for a term of not more than three years may be tried summarily."

4. From the perusal of the above provision alongwith Section 4 of the Cr.P.C., it is clear that in case the punishment provided for the offence under the NDPS Act is more than three years, the offence is triable by Special Court and to that extent the provision of Section 36-A NDPS Act over rides the provisions of the CrPCThe trial for offences under the NDPS Act which are punishable for imprisonment of three years or less should be a summary trial by the Magistrate under Chapter XXI of the CrPCFor the purpose to further clarify the position of law it is also necessary to refer to Section 4 CrPCwhich is as follows:-

Section 4 "Trial of offences under the Indian penal Code and other laws – (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, enquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, enquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences.

5. The above clause (2) therefore, show that all the offences should be tried according to the provisions of CrPCexcept where there is special provision in any other enactment regarding the trial of any offences. Section 36-A of NDPS Act only provide for trial by Special Courts for offences punishable under NDPS Act with imprisonment for a term of more than three years only. Therefore, if an offence is punishable with imprisonment for a term upto three years, it shall have to be tried by the Magistrate in accordance with the provision of Section 4(2) Cr.P.C.

6. It will not be out of place to mention that after the enforcement of amending Act No. 9 of 2001 this procedure for trial has to be followed for all the offences irrespective of the date of commission of the offence. It is basic principle of law that amendment in procedural law will apply to the pending cases also. Not only this there is also specific provision regarding it in amending Act No. 9 of 2001. Section 41 of the Act provides as follows:-

Section 41: "Application of this Act to pending cases—(1) Notwithstanding anything contained in sub section (2) of Section 1, all cases pending before

the Courts or under investigation at the commencement of this Act shall be disposed of in accordance with the provisions of the principal act as amended by this Act and accordingly, any person found guilty of any offence punishable under the principal Act, as it stood immediately before such commencement, shall be liable for a punishment before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of the commission of such offence:

Provided that nothing in this section shall apply to cases pending in appeal.

(2) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act has not come into force."

Now the next question that arise for decision s as to what is the punishment provided for the present offence under amended NDPS Act. It appears that the punishment for recovery of Narcotic Drugs or Psychotropic Substance has been divided in 3 categories as mentioned in the table given at the end of the Act. In this table 2 columns No. 5 and 6 are material, the first is regarding the small quantity and the other is regarding commercial quantity. The third category will follow from this table where the quantity is above small quantify but is less than commercial quantity. The ganja has been given at live No. 55 of this table, 1000 gm of ganja has been categorized as small quantity and 20 kg. of ganja has been categorized as commercial quantity. Accordingly to the third category in respect of recovery of ganja is above 1 kg. and below 20 kg."

116 .Bail under Prevention of Cow Slaughter Act, 1955 : Slaughtering of cow in public gauge is a public offence and it offends religious faiths of a section of society and such an act is liable to create communal tension between two communities and would disturb the public tranquility of the area and the harmony between the people of divergent sections of the society would be shattered. Act of cutting cows and calves pertains to public order and the accused has no rights to break law and violate the provisions of the U.P. Prevention of Cow Slaughter Act, 1955 r/w. U.P. Prevention of Cow Slaughter Rules, 1964 and the Prevention of Cruelty to Animals Act, 1960 as the attitude of the accused appeared to create communal tension. Such

incidents are not only of law and order problem but detention of the accused under the provisions of National Security Act, 1981 has also been upheld by the Allahabad High Court. See:

1. Naeem Vs. D.M., Agra, 2003 (47) ACC 185 (All) (D.B.)
2. Bhaddu Vs. State of U.P., 2002 (45) ACC 1085 (All) (D.B.)
3. Nebulal Vs. D.M., Basti, 2002 (45) ACC 869 (All) (D.B.)
4. Tauqeer Vs. State of U.P., 2002 (44) ACC 1088 (D.B.)

117. Transportation of bullocks not an offence: Interpreting the provisions of Sec. 5 & 8 of the U.P. Prevention of Cow Slaughter Act, 1955, it has been held by the Allahabad High Court that there is nothing in the Act prohibiting preparation for cow slaughtering and transportation of bullocks is not an offence punishable under the Act as the Act prohibits slaughter of cows or bullocks and possession of beef. See**:** Babu Vs. State of U.P., 1991 (Suppl.) ACC 110 (All)

118. Cow slaughtering found proved: Where the accused was found sitting by the side of flesh and bone of slaughtered cow with axe, knife wood and legs of cow, the slaughtering of cow was found proved. See: Safiq Vs. State of U.P., 1996 ACC (Sum.) 39 (All)

119. Bail and release of cow prgeny: : While dealing with a matter of release of cow progeny under the provisions of U.P. Prevention of Cow Slaughter Act, 1955 r/w. Prevention of Cruelty to Animals Act, Hon'ble Single Judge of the Allahabad High Court has made certain observations against the judicial officers of different cadres as under---- "Unfortunately the police of Uttar Pradesh is also helping such anti-social elements by seizing the animals and vehicles carrying them, even no offence under Cow Slaughter Act or Animals' Cruelty Act is made out. Even more unfortunate state of affairs in Uttar Pradesh is that the Magistrates and Judges in subordinate Courts are not looking in subordinate Courts are not looking to this matter and either due to excessive devotion to cow or lack of legal knowledge, they are not only declining to release the seized animals or vehicles carrying them, but without applying their mind, they are rejecting the bail applications also in such cases, although no offence under Cow Slaughter Act is made out and all the offences under Animals' Cruelty Act are bailable. While making inspection of Rampur judgeship is Administrative Judge, I found that a large number of bail applications in such cases were rejected not only by the Magistrate, but

unfortunately the then Sessions Judge and some Additional Sessions Judges also did not care to see whether any offence under Cow Slaughter Act is made out or not and without applying the mind bail applications even in those cases were rejected where two or three bullocks were being carried on foot by the accused. This unfortunate practice of rejecting the bail applications by merely seeing sections 3, 5, 5-A and 8 of Cow Slaughter Act in FIR is prevalent almost in the whole Uttar Pradesh, which has been unnecessarily increasing the work load of High Court. By declining bail to the accused persons under Cow Slaughter Act, although no offence under this Act is made out and the offences punishable under Animals' Cruelty Act are bailable, the personal liberty of the accused protected under Article 21 of the Constitution of India is also unnecessarily curtailed till their release on granting bail by the High Court." See: Asfaq Ahmad Vs. State of U.P., 2008 (63) ACC 938 (All)

120. **Plea of sanction u/s 197 CrPCat the time of Bail:** Sec. 197 CrPCand Sec. 19 of the Prevention of Corruption Act, 1988 operate in conceptually different fields. In cases covered under the Prevention of Corruption Act, 1988 in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Sec. 197 Cr.P.C., the substratum and basic features of the case have to be considered to find out whether the alleged act has any nexus to the discharge of duties. Position is not so in case of Sec. 19 of the Prevention of Corruption Act, 1988. Merely because there is any omission, error or irregularity in the matter of according sanction that does not affect the validity of the proceeding unless the Court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. See:

1. Paul Varghese Vs. State of Kerala, 2007 (58) ACC 258 (SC)
2. Lalu Prasad Yadav Vs. State of Bihar through CBI, (2007)1 SCC 49
3. Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1
4. State by Police Inspector Vs. T. Venkatesh Murthy, (2004)7 SCC 763

121. **Subsequent sanction :** Where the accused was discharged of the offences (under POTA) for want of sanction, it has been held by Supreme Court can proceed against the accused subsequent to obtaining sanction. See: Balbir Singh Vs. State of Delhi, 2007 (59) ACC 267 (SC)

122. Stage of raising plea of sanction : Plea of sanction can be raised only at the time of taking cognizance of the offence and not against the registration of FIR, investigation, arrest, submission of police report u/s 173(2) CrPCor remand of accused u/s 167 CrPCSee: State of Karnataka Vs. Pastor P. Raju, AIR 2006 SC 2825

123. Forged Bail Orders of High Court & Duty Of Subordinate Courts : Vide C.L. No. 13, dated March 13, 1996, the Allahabad High Court has directed that in case it comes to the notice of any subordinate court that some fake or forged bail order of the High Court has been produced before it, the same must be brought to the knowledge of the Hon'ble High Court for comprehensive enquiry and action.

124. Cautions in relation to forged bail orders : An accused or appellant should not be released on bail by a Magistrate only on production of a copy of the order of bail passed by High Court. It is necessary for a Magistrate to know the nature of an offence with which the person to be released has been charged. For this purpose he should consult his own records, or insist on the applicant supplying him with a copy of the grounds of appeal or of the application for bail whenever a copy of the bail order alone is produced. See: C.L. No. 7, dated 15th January, 1978.

125. Proviso to Sec. 437(1) CrPC & bail by Magistrate thereunder : In heinous offences, an accused even if a woman, sick and old aged person (in this case u/s 302, 201 IPC) cannot seek bail under the aforesaid proviso treating it to be mandatory as the provisions of the proviso to Sec. 437(1) CrPC are only directory/discretionary and not mandatory. See :

(i) Chandrawati Vs. State of U.P., 1992 CrLJ 3634 (All)

(ii) Pramod Kumar Manglik Vs. Sudha Rani, 1989 All Cr.J. 1772 (All)(DB)

126. Proviso to Sec. 437(1) CrPC & bail by Magistrate thereunder : In heinous offences, an accused even if a woman, sick and old aged person (in this case u/s 302, 201 IPC) cannot seek bail under the aforesaid proviso treating it to be mandatory as the provisions of the proviso to Sec. 437(1) CrPC are only directory/discretionary and not mandatory.See:

(i) Chandrawati Vs. State of U.P., 1992 CrLJ 3634 (All)

(ii) Pramod Kumar Manglik Vs. Sudha Rani, 1989 All Cr.J. 1772 (All)(DB) : By this Division Bench decision, the contrary single Judge decision in the case of Shakuntala Devi Vs. State of U.P., 1986 CrLJ 365 (All) was overruled.

127. **Bail in altered session triable offences :** Where the accused was initially granted anticipatory bail u/s 438 CrPC by the Sessions Judge for the offences u/s 498-A, 406, 306 IPC and after investigation of the matter and receipt of charge sheet against the accused from I.O. for the offence u/s 302 IPC, the Magistrate issued NBW against the accused for appearance and the accused was again directed by the Sessions Judge u/s 438 CrPC to appear before the Magistrate and the Magistrate then granted bail to the accused for altered graver offence u/s 302 IPC, the Supreme Court has held thus" With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. In cases where the offence is punishable with death or imprisonment for life which is triable exclusively by a court of sessions, the Magistrate may, in his wisdom, refrain to exercise the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life." See : Prahlad Singh Bhati Vs. N.C.T., Delhi, 2001 (42) ACC 903 (SC).

128. **Bail by Magistrate u/s 437 CrPC for offences punishable with death or life imprisonment :** Section 437 CrPC severely curtails the powers of the Magistrate to grant bail in the contexts of the commission of non bailable offences punishable with death or life imprisonment for life while leaving that of the court of sessions and the High Court u/s 439 CrPC untouched and unfattered. This is the only logical conclusion that can be arrive that on a conjoint consideration of Section 437 & 439 CrPC. Obivously, in order to complete the picture so for as concerns the powers and limitations thereto of the court of sessions and the High Court, Section 439 CrPC would have to be carefully considered. And when this is done, it will at once be evident that the CrPC had placed an embargo against grantig relief to an accused (couched by us in the negative) if he is not in custody. It seems to us that any

persisting ambivalance or doubt stands dispelled by the Proviso to this Section which mandates only that the public prosecutor should be put on notice. See **:** Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745.

129. **Power of Magistrate u/s 437CrPC drastically different from that of Sessions and High Court u/s 439 CrPC :** There is no provision in Code of Criminal Procedure curtailing the power of either the Sessions Court or High Court to entertain and decide pleas for bail. Furthermore, it is incongruent that in the face of the Magistrate being virtually disempowered to grant bail in the event of detention or arrest without warrant of any person accused of or suspected of the commission of any non-bailable offence punishable by death or imprisonment for life, no Court is enabled to extend him succour. Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim, viz. 'where there is a right there is a remedy'. The universal right of personal liberty emblazoned by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. Whilst Section 437 CrPC contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 CrPC empowers the Sessions Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in the context of commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. See **:** Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 **(**Para 8**)**

130. **Bail by Magistrate in sessions triable offences :** Relaying upon the decision reported in vijay Kumar Vs. State of UP, 1989 (26) ACC 480 (All—

DB), Prahlad Singh Bhati Vs. NCT Delhi, AIR 2001 SC 1444 & Gurcharan Singh Vs. Delhi Administration, AIR 1978 SC 179, it has been held by a Division Bench of the Allahabad High Court in the case noted below that the inhibition on the powers of the Magistrate to grant bail in view of section 437 CrPC applies to those Sessions triable cases which are punishable with imprisonment for life or with death. Thus the Magistrate is not incompetent to grant bail in appropriate sessions triable cases which are not punishable with imprisonment for life or death. See : Sheoraj Singh alias Chuttan Vs. State of UP, 2009 (65) ACC 781 (All)(DB)

131. Bail u/s 437(6) CrPC : Where the accused was facing trial before the Magistrate for the offences u/s 419, 420, 467, 468, 471 IPC and the case was absolutely triable by Court of Magistrate and the accused was in jail since 18.05.2012 and charge was framed on 18.09.2012 but after elapse of 60 days since the trail had commenced but yet not concluded, the accused was granted bail (on second application) u/s 437(6) CrPC. See : Surendra Singh Vs. State of UP, 2013 (82) ACC 867 (All).

132. Bail to require accused to appear before next appellate Court.--***(1)*** *Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months."*

(2) *If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."*

****