

**DIVISIONAL SEMINAR FOR JUDICIAL OFFICERS POSTED IN SARGUJA**

**DIVISION**

**A PAPER ON**

**“PROVISION RELATING TO ARREST, REMAND AND BAIL WITH REFERENCE TO  
GUIDELINES ISSUED BY HON’BLE SUPREME COURT IN SATENDER ANTIL VS.  
CBI AND SIDDHARTH VS. STATE OF UP AND PROVISIONS RELATING TO  
DISPOSAL OF PROPERTY IN CRIMINAL CASE”**



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CHHATTISGARH

**BY**

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## **1. INTRODUCTION**

The powers of arrest, remand, and bail highlight the delicate balance required between individual liberties and societal security. An arrest represents a serious deprivation of personal liberty, and, as such, must be carried out with stringent checks and justifications. In democratic societies, wrongful or arbitrary arrests are viewed as a significant infringement of human rights, underscoring the importance of procedural safeguards. Moreover, the rights of those who are detained or arrested, such as the right to be informed of the grounds of arrest, right to counsel, and right to be presented before a magistrate within 24 hours, are enshrined not only in statutory law but also within the Constitution of India under Article 22.

Remand, or the detention of an accused person while the investigation is ongoing, similarly plays a critical role in the judicial process. While remand ensures that a suspect is available for investigation and trial, it also subjects the individual to prolonged detention, often without trial, which raises issues of due process and judicial accountability. To mitigate risks of prolonged detention, the BNSS provides strict guidelines on the duration of remand and periodic review of the necessity for continued custody.

Bail, on the other hand, serves as a protective measure against unjust pretrial detention, allowing the accused temporary liberty while ensuring that they appear for trial and do not interfere with the investigation. The right to bail underscores the principle of “innocent until proven guilty,” which remains a cornerstone of modern criminal jurisprudence. In India, the BNSS distinguishes between bailable and non-bailable offenses, granting bail as a right in the former and subjecting it to judicial discretion in the latter. Judicial discretion in non-

bailable cases considers factors such as the severity of the offense, prior criminal history, risk of tampering with evidence, and societal safety.

The judiciary has played a critical role in interpreting and refining the provisions related to arrest, remand, and bail. Through landmark judgments, Hon'ble courts have established important safeguards and guidelines to prevent arbitrary arrests, protect the dignity of individuals, and uphold the spirit of the Constitution. Cases like *D.K. Basu v. State of West Bengal*, *Joginder Kumar v. State of Uttar Pradesh*, and *Gurbaksh Singh Sibbia v. State of Punjab* have set standards for lawful procedures, holding authorities accountable and promoting a fairer justice system.

Globally, similar practices reflect the principles enshrined in the Universal Declaration of Human Rights (UDHR), where the right to liberty, security, and protection against arbitrary detention is emphasized. Comparative perspectives show that countries like the United States, United Kingdom, and Germany also struggle with balancing pretrial rights with effective crime prevention, adapting bail and remand practices to address issues like detention overreach and under-trial detentions.

In recent years, there has been a significant shift towards reforming arrest and bail practices to reduce overcrowding in prisons and to uphold the right to a speedy trial. Various Law Commission reports and judicial recommendations have advocated for streamlined bail procedures, particularly for non-violent and minor offenses. Technology-driven reforms, such as e-courts and digital tracking of case status, are also being considered to make bail and remand processes more efficient and transparent.

The provisions of arrest, remand, and bail form the core processes within the criminal justice system. They are crucial for upholding law and order, protecting society from crime, and ensuring the rights and liberties of individuals.

These processes need to balance two primary objectives: facilitating law enforcement and protecting individual freedoms.

## **2.Arrest**

### **2.1. Definition and Purpose of Arrest**

Arrest is the action by which a person's freedom of movement is restrained, usually as a response to an alleged crime. In criminal law, the purpose of arrest is not to punish but to ensure the suspect's presence for judicial proceedings. Arrest prevents potential absconding, interference with evidence, or continued criminal activity. While arrest should be made to serve justice, courts and law provide safeguards to prevent unlawful or excessive use of power, emphasizing a "reasonable" approach.

As per Section 35(1) of Bharatiya Nagrik Suraksha Sanhita, 2023, the police officer is required to issue notice directing the accused to appear before him and 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. Magistrate also needs to record his satisfaction for such an arrest while authorizing detention.

Section 35 (1) (b) of the BNSS has to be read along with sub-clause (ii) and therefore both the elements of 'reason to believe' and 'satisfaction qua an arrest are mandated and accordingly are to be recorded by the police officer while making arrest.

Referring to the provisions of Sec. 41 and Sec. 41A of the Cr.P.C., the Hon'ble Court reiterated that the police officer needs to record his reasons (Not a mere copy paste checklist but facts, reasons and its conclusions for arrest, Ref: **Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273**) in writing while making the arrest. Similarly, the police officer shall record reasons when he/she chooses

not to arrest. While considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance the same.

### **SECTION 90 AND 91 OF THE BNSS.:**

Courts will have to adopt the procedure in issuing summons first, thereafter aailable warrant, and then a non-ailable warrant may be issued, if so warranted. (Ref: Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1) Non-ailable warrant should be issued to bring a person to court when summons orailable warrants would be unlikely to have the desired result. This could be when it is reasonable to believe that the person will not voluntarily appear in court or the police authorities are unable to find the person to serve him with a summon, or It is considered that the person could harm someone if not placed into custody immediately.

### **SECTION 187 OF THE BNSS AND DEFAULT BAIL:**

Right to default bail cannot be suspended even during a pandemic situation. (Ref:- **S. Kasi vs. State, (2021) 12 SCC 1**). It is the duty of the courts to see to that an accused gets the benefit of Section 187 (2) of the BNSS

### **SECTION 190 OF THE BNSS.:**

In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 190 of the BNSS 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. It is not essential in every case involving a cognizable and non-ailable offence that an accused be taken into custody when the charge- sheet/final report is filed. (Ref:- **High Court of Delhi vs. State, (2018) 254 DLT 641**)

## **2.2. Types of Arrest**

1. Arrest with a Warrant: Section 72 of the BNSS allows magistrates to issue a warrant for an individual's arrest if there is probable cause. This is common in cases involving non-cognizable offenses, like minor assaults or fraud, where prior judicial review is essential.
2. Arrest without a Warrant: Under Section 35 BNSS, police officers have the power to arrest without a warrant for cognizable offenses, such as murder or rape. This immediate action is permissible only if the offense is serious enough to necessitate a swift response. Police are expected to justify this action with solid grounds, ensuring that arbitrary arrests are avoided.

## **2.3. Powers and Duties of Police Officers Regarding Arrest (Section 35 BNSS)**

Section 35 grants police officers authority to arrest individuals without a warrant in cases where the crime is cognizable. The officer must also document the necessity of arrest, especially for offenses punishable by imprisonment of less than seven years. This power is balanced by duties, such as informing the arrested person of their rights, avoiding unnecessary arrests, and refraining from any coercive or excessive measures.

## **2.4. Rights of the Arrested Person**

- Right to Be Informed of Grounds of Arrest: Section 47 BNSS and Article 22(1) of the Constitution mandate that the police must inform the arrested individual of the grounds for their arrest immediately. This ensures that arrests are transparent and allows the detainee to prepare a defense.
- Right to Consult an Advocate: Article 22(1) provides the arrested individual with the right to counsel, ensuring a fair trial. This right, underscored in cases like *Nandini Satpathy v. P.L. Dani*, aims to prevent self-incrimination and ensure the detainee's defense.

- **Right to Be Produced Before a Magistrate Within 24 Hours:** This provision (Section 57 BNSS and Article 22(2) of the Constitution) protects individuals from prolonged, unlawful detention. Non-compliance can render detention illegal, holding police accountable for human rights violations.

## **2.5. Judicial Safeguards and Court Decisions Related to Arrest**

The landmark case *D.K. Basu v. State of West Bengal* set out procedural safeguards to prevent abuse during arrest. The Supreme Court mandates measures such as informing relatives, recording arrest time, and performing medical checks upon request. Failure to follow these safeguards can result in departmental action against the arresting officer, ensuring accountability and transparency in arrest processes.

## **3. Remand**

### **3.1. Concept of Remand and Its Legal Basis**

Remand refers to the process of keeping an arrested person in custody during an investigation. This ensures the accused is available for interrogation and prevents tampering with evidence. Section 187 of BNSS allows courts to remand an individual to police or judicial custody, providing judicial supervision to ensure fair treatment.

Section 58 of the *Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023* states that the police officer who arrests a person without a warrant shall not detain him in his custody for more than 24 hours without the special permission of a magistrate under section 187 of the BNSS. This special permission referred to in Section 58 is known as remand. It can also be known as pre-trial detention.

The word remand generally means to return or to send back but legally it can have two different meanings. Firstly, it means to send the accused back in the custody of

the competent authority and secondly, it means to send back the cases from the appellate court to the subordinate court.

The power of a court to remand an accused to custody is governed by a number of provisions of the BNSS, these being Sections of these 187(2), 232(b) and 342(2). Each provision is independent of each other and come into play at different stages of the criminal trial. The remand under Section 187(2) relates to the stage of investigation and is ordered for furthering the investigation and can be either in judicial custody or police custody. The remand under S.232(b) relates to the stage when the magistrate commits the case, he can remand the accused to the custody during and until the conclusion of the trial subject to the provisions of bail under the sahita and finally remand under S.342(2) relates to a stage after cognizance and can only be sent to judicial custody.

It has been held in the case of State rep. by Inspector of Police and Ors. vs. N.M.T. Joy Immaculate (A.I.R. 2004 S.C. 2282), that the remand under Section 232(b) and Section 346(2) of BNSS is for securing the presence of the accused during the trial. The Hon'ble Supreme Court in a very recent judgment dated 31st July, 2023 namely, Md. Asfak Alam vs. The State of Jharkhand & Anr., Criminal Appeal No(s). 2207 of 2023, directed all courts to follow the law laid down in Arnesh Kumar (supra) and reiterate the directions contained there under, as well as other directions:

*“I. 11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize 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 authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize 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 10 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. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court. We hasten to add that the directions aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the*

*case in hand, but also such cases where offense is punishable with imprisonment for a terms which may be less than seven years or which may extend to seven years, whether with or without fine.”*

### **3.2. Judicial and Police Custody (Section 187 BNSS)**

Under Section 187, police custody is permissible for the first 15 days post-arrest, mainly for interrogation. Judicial custody, however, is for up to 90 days (for offenses punishable with over 10 years) or 60 days (for lesser offenses), after which bail becomes a right if the investigation is incomplete. Judicial custody is supervised by magistrates, and police cannot freely interrogate detainees in judicial custody without specific permission, safeguarding the detainee’s rights.

### **3.3. Duration and Extension of Remand**

The maximum allowable duration of police custody is strictly capped at 15 days, but judicial custody can be extended upon judicial review. Each extension of remand is reviewed by the magistrate to prevent misuse of detention powers and ensure that investigation deadlines are respected.

### **3.4. Safeguards for the Accused During Remand**

During remand, accused individuals retain specific rights, such as the right to counsel and the right to meet family members under stipulated conditions. Courts, through rulings like *Sunil Batra v. Delhi Administration*, have emphasized that custodial rights include humane treatment, access to necessities, and protection from police misconduct.

### **3.5 Case Studies and Judicial Precedents on Remand**

In *Joginder Kumar v. State of Uttar Pradesh*, the Supreme Court held that arrest and remand should not serve as punishment but as a means to further justice. This ruling reinforced the principle that remand decisions require careful

scrutiny, and that the dignity of individuals must be upheld throughout the remand period.

#### **4. Bail**

*“The issue of bail is one of liberty, justice, public safety and burden of the public treasury, allof which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.”*

**– Justice V. R. Krishna Iyer**

#### **In Gudikanti Narasimhulu case, 1978 AIR 429**

The concept of bail is a basic part of the Indian criminal jurisprudence and it is well recognized principle among all the judicial systems of the world. More than four decades ago, in a celebrated judgment in State of Rajasthan vs. Balchand, MANU/SC/0152/1977 (1977) 4 SCC 308, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is 'bail, not jail'.

Bail is a release of the convicted person to submit a personal bond or assurance to comply with the conditions imposed by the court and to appear before the court. Just because a person is accused of a crime, an endless period is not required to hold the individual in custody. The Hon'ble Supreme Court of India held in Babua Tazmul Hossain vs. State of Orissa, Appeal (Crl.) 593 of 2002 that pre-trial detention should not be reinstated as a punishment measure.

The accused should also be granted the privilege of bail to better defend his case. In Black's Law Dictionary (4th Edn.), bail has been defined as “a security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date.” The Law Lexicon defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation.

Bail in law means the acquisition of the release from prison of a person awaiting trial or appeal by means of a security deposit to ensure that he is submitted to the legal authority at the time necessary. Bail is the procurement of release from prison of a person awaiting trial or an appeal by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security, also known as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property, or the bond of private persons or means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. Courts have greater discretion to grant or deny bail in the case of person's under criminal arrest.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 however, does not define bail, although the terms bailable offence and non-bailable offence have been defined in Section 2 (c) BNSS. Further, Sections 478 to 496 set out the provisions for the grant of bail and bonds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the BNSSs. Thus, it is the discretion of the court to put a monetary cap on the bond.

In 2011, the Hon'ble Apex Court in **Sanjay Chandra vs. CBI, (2012) 1 SCC 40**, also opined that:

*“The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the*

*Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required”.*

Bail is a post arrest remedy aimed at the release of the arrested suspect till the date of his trial. Bail ensures the traditional right to freedom before the guilt is proved. Based on the common law principle of presumption of innocence, bail is allowed to prevent confinement of innocent persons which would otherwise result into a per-trial punishment. The principle of bail involves balancing of the two opposite aspects, one of which involves the individual freedom of the accused whereas the other one is the general public’s concern regarding safety and security from anti-social elements. Thus, focus of the courts should be to bring a balance between these two conflicting interests of the accused and society.

#### **4.1. Definition and Types of Bail**

Bail is a mechanism that allows the release of the accused from custody, subject to specific conditions to ensure their appearance in court. The types of bail include:

- Regular Bail: Granted post-arrest to enable temporary freedom.
- Anticipatory Bail: Pre-arrest protection under Section 482 BNSS, often sought when there is apprehension of false accusation.
- Interim Bail: Temporary bail pending a final bail hearing, offering short-term relief.

#### **4.2. Principles Governing Bail**

Courts determine bail based on factors like the seriousness of the offense, likelihood of tampering with evidence, and the accused’s criminal history. Section 478 BNSS deals with bailable offenses, mandating that bail be granted, whereas Section 480 BNSS grants discretionary bail for non-bailable offenses.

Court rulings, like in *Moti Ram v. State of M.P.*, emphasize the presumption of innocence and favor bail unless there's compelling reason otherwise.

#### **4.3. Bail in Bailable and Non-Bailable Offenses**

For bailable offenses, bail is a right, and refusal is rare. Non-bailable offenses involve judicial discretion, where courts assess various factors, such as public safety, the accused's previous conduct, and case merits. Judicial caution ensures that serious offenders are not easily granted bail while protecting rights in less severe cases.

#### **4.4. Bail for Juveniles and Women**

Special provisions under the Juvenile Justice Act and BNSS favor more lenient bail terms for juveniles and women, acknowledging their vulnerability. For juveniles, the focus is on rehabilitation rather than punishment, and bail is generally granted to ensure minimal harm to the youth's development.

#### **4.5. Guidelines for Bail as Set by Higher Judiciary**

Courts have laid down guidelines for bail, ensuring that it is neither punitive nor excessively lenient. The ***Gurbaksh Singh Sibbia v. State of Punjab*** case underscores the purpose of anticipatory bail as protective and not obstructive to justice. Courts are directed to consider social factors and potential repercussions before granting bail.

#### **4.6. Relevant Case Laws**

In ***Hussainara Khaton v. Home Secretary, State of Bihar***, the Supreme Court recognized the right to speedy trials and fair bail practices, ruling that prolonged detention without trial is unconstitutional. This case highlighted bail as a remedy for justice in overcrowded jails and a tool for maintaining human rights in criminal justice.

## **5. Satendra Kumar Antil Vs. Central Bureau of Investigation & Anr. (2021) 10 SCC 773**

### **5.1. Facts of the Case:**

Satendra Kumar Antil, the petitioner, was facing charges related to economic offenses under the Prevention of Money Laundering Act (PMLA), as well as other serious allegations investigated by the Central Bureau of Investigation (CBI). The petitioner had sought anticipatory bail, as well as bail after his arrest. The case was primarily concerned with whether he should be granted bail during the investigation process, especially considering the seriousness of the charges against him.

### **5.2. Legal Issues Involved:**

1. Whether an accused should be granted bail in cases involving economic offenses under the PMLA and other criminal charges?
2. What factors should courts consider when granting bail in serious economic offenses, particularly where the investigation is ongoing?
3. What is the impact of inordinate delay in investigation or charge sheet filing on the right of an accused to seek bail?

### **5.3. Court's Analysis and Ruling:**

1. Bail and the Seriousness of Economic Offenses: The Supreme Court clarified that the seriousness of the offense is an important factor, but it should not be the only factor in deciding whether bail should be granted. While economic offenses, especially those involving money laundering, are grave in nature, the court noted that this does not automatically justify denial of bail. The court stressed that the fundamental right to liberty, enshrined under Article 21 of the Constitution, should not be curtailed without sufficient grounds.

2. **Right to Bail and the Principle of Proportionality:** The Court emphasized the importance of the proportionality principle while deciding on bail applications. Even in cases involving serious economic offenses, the Court stated that bail should not be denied unless there are compelling reasons, such as the risk of the accused fleeing or tampering with evidence. If there is no such risk, the Court opined that detention cannot be justified merely because the offense is serious.
3. **Inordinate Delay in Investigation and Chargesheet Filing:** The Court also made an important observation regarding the delay in investigation and filing of the chargesheet. The Court noted that if there is an inordinate delay in the investigation process, this could be a valid ground for granting bail. Prolonged detention without filing a chargesheet could amount to an unreasonable deprivation of personal liberty. The Court observed that delays in investigations are often caused by inefficiency or procedural bottlenecks, but the detention of an individual in such cases should not be indefinite, and it must not be punitive in nature.

This finding was significant because it emphasized that investigative agencies should act swiftly and that prolonged detention without a chargesheet cannot be justified indefinitely. It placed responsibility on the authorities to conclude investigations within a reasonable time frame.

4. **Judicial Discretion and Considerations for Granting Bail:** The Court reiterated that bail decisions are ultimately based on judicial discretion, which should be exercised based on a case-by-case evaluation. The Court stated that when deciding whether to grant bail, judges should consider factors such as:
  - The severity of the offense.
  - The risk of the accused fleeing or absconding.

- The likelihood of the accused influencing witnesses or tampering with evidence.
- Whether the accused poses a threat to society or the investigation.

In this case, the Court found that there was no compelling evidence to suggest that the petitioner would attempt to influence the investigation or abscond. Therefore, the petitioner was entitled to bail under the principles of fairness and proportionality.

5. **Anticipatory Bail in Economic Offenses:** The issue of anticipatory bail also came into play in this judgment. Anticipatory bail is typically granted when an individual apprehends arrest and seeks protection before the actual arrest occurs. The Court reiterated the criteria for granting anticipatory bail, particularly in cases involving economic offenses, which generally carry a higher degree of scrutiny. The Court noted that anticipatory bail should not be denied purely based on the nature of the offense but should take into account whether the individual is likely to be arrested, whether their presence is necessary for the investigation, and whether they pose a flight risk.
6. **The Balance Between Personal Liberty and Societal Interests:** In economic offense cases, there is often a tension between the right to personal liberty and the need for effective investigation and protection of societal interests. The Court emphasized that while economic crimes must be dealt with strictly, it is also important to protect the personal liberty of the accused unless there are sufficient grounds for their detention. The Court discussed that economic offenses, such as money laundering, are serious but should not automatically lead to pretrial detention, especially in the absence of compelling evidence of the accused's likelihood to flee or interfere with the investigation.

7. **Stringent Bail Conditions:** The Court also addressed the issue of bail conditions. It stressed that while courts can impose stringent conditions when granting bail, they should be reasonable and not punitive. Conditions like surrendering passports, reporting to police stations, or providing sureties are commonly used to ensure that the accused does not evade the judicial process. However, the Court made it clear that bail conditions should not be excessive or overly restrictive.

#### **5.4. Key Principles Established in the Judgment:**

1. Bail should not be denied solely because the offense is serious — there must be other specific grounds like the risk of flight, tampering with evidence, or influencing witnesses.
2. An inordinate delay in the investigation process or in filing the chargesheet could be a ground for granting bail.
3. Judicial discretion in granting bail should be exercised based on a balanced assessment of the facts, not solely on the gravity of the offense.
4. Anticipatory bail in economic offenses should not be automatically denied; it requires a detailed assessment of the case, including the likelihood of the accused being arrested or absconding.
5. Personal liberty vs. societal interests — while economic crimes must be effectively investigated and prosecuted, individual liberty should not be sacrificed without due cause.
6. Conditions for bail must be reasonable and aimed at ensuring that the accused cooperates with the investigation without being overly restrictive.

## **6. Siddharth v. State of Uttar Pradesh (2021 SCC OnLine SC 615)**

Siddharth v. State of Uttar Pradesh is an important Supreme Court judgment that dealt with the issue of the arrest of an accused under Section 438 of the Code of Criminal Procedure (CrPC), i.e., anticipatory bail, and the proper application of arrest and the procedure for granting anticipatory bail in non-bailable offenses.

### **6.1. Facts of the Case:**

Siddharth, the petitioner, was accused of a serious crime under the Indian Penal Code (IPC), specifically in relation to criminal conspiracy and attempt to murder. He sought anticipatory bail under Section 438 of the CrPC, fearing arrest due to the serious nature of the allegations against him. The Allahabad High Court, however, denied anticipatory bail, and the matter was taken to the Supreme Court for consideration.

The primary issue was whether the High Court's decision to deny anticipatory bail was valid or if it could be overturned based on the circumstances presented by the petitioner.

### **6.2. Legal Issues Involved:**

1. Whether anticipatory bail should be granted when the allegations are grave but the accused has no criminal history?
2. How should courts approach granting anticipatory bail in cases involving serious charges like attempted murder or criminal conspiracy?
3. Whether the accused's conduct and likelihood of evading the process of justice should be considered when granting anticipatory bail?

### **6.3. Court's Analysis and Ruling:**

1. Principles of Anticipatory Bail (Section 438 CrPC): The Court reiterated the fundamental principles governing anticipatory bail under Section 438 of the CrPC. The provision allows an individual to seek protection from arrest if

they have a reasonable apprehension of being arrested for a non-bailable offense. The Court emphasized that anticipatory bail is a discretionary remedy, and it is to be granted only after considering the facts of the case.

2. **Granting Anticipatory Bail in Serious Offenses:** The Supreme Court acknowledged that serious offenses, such as attempt to murder and criminal conspiracy, typically attract a cautious approach when granting anticipatory bail. However, the Court noted that seriousness of the charge alone should not lead to the automatic denial of anticipatory bail. The Court emphasized that due process of law must be followed, and anticipatory bail must be considered on a case-by-case basis, taking into account the nature of the offense, the conduct of the accused, and the facts at hand.
3. **Consideration of Criminal History and Cooperation with Investigations:** A significant aspect of the judgment was the Court's focus on the lack of a criminal history of the accused. Siddharth did not have a prior record of criminal involvement or repeated offenses. The Court emphasized that the absence of prior criminal behavior could be a relevant factor in favor of granting anticipatory bail. Moreover, the Court noted that there was no evidence suggesting that the petitioner would abscond or interfere with the investigation if granted bail.
4. **Court's Discretion and the Role of Judicial Review:** The Court stressed that judicial discretion must be exercised while considering anticipatory bail, even in cases involving serious crimes. The trial courts and high courts must balance the rights of the accused with the need to ensure that justice is not thwarted by the risk of absconding or influencing witnesses.

In Siddharth's case, the Supreme Court found that the High Court had failed to exercise this discretion appropriately and had denied anticipatory bail without properly considering the facts of the case. The allegations were serious,

but the Court found no substantial evidence of Siddharth being a flight risk or attempting to interfere with the investigation. Therefore, the Court overturned the High Court's decision, granting anticipatory bail to the petitioner.

5. **Anticipatory Bail and Constitutional Rights:** The Supreme Court reiterated that anticipatory bail is not a matter of right but a judicial remedy aimed at protecting the fundamental right to personal liberty under Article 21 of the Constitution. The Court emphasized that personal liberty must be respected, and arrest should not be used as a tool of harassment in cases where there is no immediate threat of flight or interference with justice.

#### **6.4. Key Observations of the Supreme Court:**

- **Anticipatory Bail Is Not a Matter of Right:** The Court emphasized that anticipatory bail is a discretionary remedy, but that discretion must be exercised judiciously and not arbitrarily.
- **Serious Offenses Alone Do Not Justify Denial of Bail:** The mere fact that the offense is serious is not enough to deny anticipatory bail. The conduct of the accused, possibility of flight, and potential interference with the investigation must be considered in totality.
- **No Criminal History or Evidence of Interference with Investigation:** In this case, the absence of a criminal history and no substantial evidence of the accused fleeing or tampering with evidence weighed in favor of granting anticipatory bail.
- **Personal Liberty Under Article 21:** The Court underscored that the right to personal liberty is a fundamental right and must be safeguarded unless there are compelling reasons to restrict it.

## **7. DISPOSAL OF PROPERTY UNDER BNSS**

Sections 497 to 505 of the BNSS 2023, focus on handling, managing, and disposing of property involved in criminal cases. These sections offer procedural guidance on the interim custody, disposal, and delivery of property during the course of investigations or judicial proceedings. Here is a detailed overview of each section:

### **7.1. Custody of Property During Trial (Section 497)**

When property is presented before a criminal court or magistrate during an investigation, inquiry, or trial, Section 497(1) allows the court to decide on its temporary custody. This includes any form of property, whether physical objects or documents related to the case, and can extend to property involved in or affected by the alleged offense. For instance, items that were instrumental in a crime (such as weapons) or obtained through criminal activity (like stolen goods) fall under this category.

#### **7.1.1. Scope of “Property” Under BNSS (Explanation to Section 497)**

The BNSS provides an expansive definition of “property” under this section to include:

- Any physical item or document presented as evidence.
- Property associated with the offense, either as the instrument of the crime or a product of it.

This broad definition ensures that any relevant material, including digital evidence or sensitive documents, can be appropriately handled. This inclusiveness is critical for modern criminal cases, which often involve a range of evidence types, from digital files to financial records.

### **7.1.2. Documentation of Property (Section 497(2))**

Within 14 days of receiving the property, the court or magistrate must prepare a formal statement detailing the item's description. This record-keeping process follows standards prescribed by the State Government, ensuring uniformity in handling evidence across jurisdictions.

The State Government's rules dictate the format and specifics of this description, which may include dimensions, unique identifiers, and other distinguishing characteristics. This documentation serves as an official record that helps establish the chain of custody—a crucial element in ensuring that evidence presented during a trial remains unaltered and authentic.

### **7.1.3. Photography and Videography (Section 497(3))**

To further safeguard the integrity of the property, the court or magistrate must photograph or, if needed, create a videographic record. This visual record can be taken using mobile phones or other electronic media, capturing the property's condition and features at the time of its presentation to the court.

This measure serves several purposes:

- **Verification:** Provides visual proof of the property's original state.
- **Evidence Preservation:** Digital documentation can serve as supplementary evidence if the physical item is lost, stolen, or deteriorates.
- **Security:** Helps prevent tampering by establishing a clear reference point.

Such imaging can be crucial, especially in cases involving items subject to natural decay or if the property needs to be returned before the trial concludes.

### **7.1.4. Use of Documented Records in Trials (Section 497(4))**

The BNSS allows the documented statement and visual records to be used as evidence in any subsequent inquiry, trial, or legal proceeding. This provision acknowledges the role that digital and documented evidence can play in maintaining the integrity of the trial process.

For example, if a piece of property is lost or needs to be disposed of due to its perishability, the photos, videos, and official description can substitute as evidence. This use of visual records provides a balance between preserving evidence and adhering to practical constraints in handling sensitive or perishable items.

#### **7.1.5. Final Disposal of Property (Section 497(5))**

Once the documentation and photography/videography are complete, Section 497 mandates that the court determine the final disposition of the property within 30 days. The court or magistrate has several options, including:

- **Return:** The property may be returned to its rightful owner if it is no longer needed for the case.
- **Destruction:** Items that may pose a danger or have no lasting value might be destroyed.
- **Confiscation:** The property could be confiscated if it was used in or acquired through criminal activity.
- **Alternative Disposition:** In certain cases, especially if it's in the public's interest or if the item has no inherent value, the court may choose another method of disposal.

The requirement for a decision within 30 days emphasizes timely resolution, which can prevent property-related issues from slowing down case proceedings. It

also ensures that individuals do not experience prolonged deprivation of their property without cause.

## **7.2. Section 498 - Order for Disposal of Property at the Conclusion of Trial**

Section 498 governs the disposal of property after the conclusion of a trial. Upon reaching a verdict, the court can order the property in question to be returned to its rightful owner, confiscated, or destroyed if necessary. This section allows the court flexibility to dispose of property in various ways, depending on the outcome of the case. If the property is no longer required as evidence, the court typically returns it to the person entitled to it. In cases where property is tied to illegal activities, it may be confiscated or destroyed.

The court has interpreted this section as allowing for a range of actions to maintain justice and public safety, and orders can include the delivery of items to specific people, government retention, or even auctioning for public benefit.

## **7.3. Section 499-Payment to Innocent Purchaser of Money Found on Accused**

Under Section 499, if money or valuables found on an accused person are later determined to belong to an innocent third party, the court may order that they be returned or the innocent party compensated. This section protects the rights of individuals who, without knowledge, purchase property that turns out to be involved in a crime. When such a person has acted in good faith and is not complicit in the crime, the court can direct compensation to uphold fairness.

## **7.4. Section 500- Appeal against Orders under Section 498 or Section 499**

Section 500 provides an option for appeal against orders made under Sections 498 and 499, allowing individuals dissatisfied with the court's decision on property disposal or restitution to seek a higher authority's review. This appeal

mechanism ensures that parties with a legitimate claim to property can contest any decision they believe to be unjust. The appeals process gives an additional level of scrutiny to protect rightful claimants and maintain a fair judicial process.

#### **7.5. Section 501 - Destruction of Libellous and Other Matters**

Section 501 allows a court to order the destruction of offensive or illegal material used in the commission of a crime. This section is often invoked in cases involving libelous publications, counterfeit currency, or illegal substances. The primary goal of this section is to eliminate harmful materials from circulation. By allowing destruction, the court ensures that such items do not pose a future threat to public safety or order.

#### **7.6. Section 502- Power to Restore Possession of Immovable Property**

Section 502 addresses immovable property, such as land or buildings, involved in criminal activities. If a person has been wrongfully dispossessed of such property due to a criminal act, this section enables the court to restore possession to the legitimate owner or occupant. This provision is essential for safeguarding property rights, as it empowers the court to reinstate an individual's lawful possession, often before a civil court can intervene. This section plays a significant role in maintaining stability and protecting property owners from being deprived of their rights due to criminal actions.

#### **7.7. Section 503 - Procedure by Police upon Seizure of Property**

Section 503 outlines the responsibilities of the police upon seizing property. When the police seize property during an investigation, they must report the details to a magistrate. The magistrate then decides on the property's custody or interim disposal. This section emphasizes judicial oversight in police procedures related to seized property, ensuring that items are handled lawfully and responsibly.

The involvement of the judiciary under Section 457 also serves as a check on potential abuses of power by law enforcement, as the court ensures that seized property is managed with transparency and accountability.

#### **7.8. Section 504- Procedure when No Claimant Appears within Six Months**

Section 504 applies when property has been seized, and no one claims it within six months. In such cases, the court can order the property's disposal. This section prevents items from remaining indefinitely in judicial or police custody. If a legitimate owner does come forward later, they must provide valid proof of ownership. This section's goal is to streamline procedures for unclaimed property, preventing unnecessary clutter in judicial storage facilities while still leaving a window for claimants to present themselves.

#### **7.9. Section 505 - Power to Sell Perishable Property**

Section 505 provides specific guidance for perishable items seized by law enforcement. Given the nature of such property, it must be sold quickly to prevent loss of value. Courts are empowered to order immediate sale, ensuring that the proceeds are preserved and available if a rightful owner later appears. This section balances the practical concerns associated with perishable goods while ensuring justice by securing the item's monetary value.

These sections collectively underscore a system of fair and orderly management of property within criminal proceedings, ensuring that items are preserved, claimants are considered, and properties related to crimes are appropriately handled. They reflect a balance between preserving property value, protecting ownership rights, and facilitating the efficient administration of justice. The CrPC provisions aim to maintain public order by ensuring responsible handling, whether it involves return to rightful owners, disposal through sale, or destruction of harmful materials.

## **8. Judicial Interpretation and Impact of “*Sunderbhai Ambalal Desai vs. State of Gujarat*”**

The Supreme Court’s 2002 judgment in *Sunderbhai Ambalal Desai vs. State of Gujarat* further clarified and reinforced these CrPC sections, advocating for the timely disposal of property to prevent court congestion and property loss. The Court’s judgment emphasized the need for interim orders to prevent seized vehicles and other valuable assets from depreciating in police custody. This case highlighted the practical issues in handling seized property, underscoring the need for courts to act swiftly to avoid wastage and ensure judicial efficiency. Here are some key impacts of the judgment:

### **8.1. Enhanced Judicial Efficiency**

One of the primary impacts of the judgment was to improve efficiency within the judicial system. Prior to this ruling, seized property such as vehicles, perishable goods, and valuable items would often remain in police custody for years, leading to overcrowded police stations and court storage facilities. This prolonged custody led to logistical and administrative challenges, such as the need for storage space, security, and resources to maintain the seized items. By establishing clear guidelines for the interim disposal and return of property, the Supreme Court helped reduce these burdens, allowing courts and law enforcement agencies to focus more effectively on active investigations and case resolutions.

### **8.2. Protection of Property Value and Prevention of Deterioration**

The “*Sunderbhai Ambalal Desai*” ruling emphasized the need to prevent the loss of property value due to prolonged storage. For instance, vehicles seized as

evidence would often be stored outdoors or in poor conditions, leading to rust, mechanical degradation, and loss of market value. The Supreme Court directed that valuable or perishable items should be returned to rightful owners under certain conditions or disposed of quickly to prevent depreciation. This guideline has since enabled owners to reclaim and use their property, provided they guarantee its availability for the trial if required. This has helped avoid substantial financial loss and wastage of assets over time.

### **8.3. Streamlined Procedures for Property Disposal**

The judgment established a framework for property disposal that has been incorporated into legal protocols across the Indian judicial system. It recommended that courts should photograph and document seized items thoroughly, creating a reliable record for future reference. If the property was no longer needed as evidence, courts were instructed to allow for its disposal, either by returning it to the owner or auctioning it. This streamlined approach has become a standard practice, reducing administrative delays and enabling faster case management.

### **8.4. Reduction in Legal and Administrative Burdens**

Before this ruling, the process of handling seized property created significant legal and administrative burdens for police departments and courts. Prolonged custody meant increased responsibility for maintaining, securing, and accounting for each item. By setting a precedent for the interim release or disposal of property, the *\*Sunderbhai Ambalal Desai\** judgment helped reduce these burdens, allowing police to focus on law enforcement rather than property management. The judgment also reduced the number of appeals and disputes related to property custody, as it clarified the rights of owners and streamlined the legal framework governing seized property.

### **8.5. Enhanced Transparency and Rights of Claimants**

The guidelines established in this judgment also protect the rights of property claimants. By allowing for the interim release of property and setting conditions for its retrieval, the Court helped ensure that individuals with a legitimate claim to the property are not unjustly deprived of it. This has contributed to greater transparency in how seized property is managed and has reinforced due process in property rights. Claimants can now appeal decisions about property custody with a clear understanding of the legal framework governing such matters.

## **8.6. Judicial Reference for Subsequent Cases and Legislation**

The “Sunderbhai Ambalal Desai” judgment has become a key reference point for other legal proceedings involving seized property. It has influenced not only lower court rulings but also legislative reforms aimed at improving property management during criminal investigations. The recent Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which includes clear protocols for the custody and disposal of property, reflects principles similar to those outlined in this judgment. This indicates the lasting impact of the “Sunderbhai” case on Indian judicial practices and procedural law, particularly concerning property rights and the efficient handling of evidence.

In summary, the “Sunderbhai Ambalal Desai” judgment has brought about a more efficient, transparent, and property-conscious approach in the Indian criminal justice system, balancing the state’s needs with individual property rights.

## **9. Disposal Of Property under Various Acts**

### **9.1. C.G. Excise Act, 1915**

This Act contains special provision regarding confiscation of the intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed and the animals, carts, vessels, rafts or other conveyance.

#### **46. Liability of certain things to confiscation**

(1) Whenever an offence has been committed which is punishable under this Act, the intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed and the receptacles, packages and coverings in which any such intoxicant materials, still; utensil, implements or apparatus is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, rafts or other conveyance used in carrying the same shall be liable to confiscation.

(2) Any intoxicant lawfully imported, transported, manufactured, held in possession or sold alongwith, or in addition to any intoxicant liable to confiscation under sub-section (1), and the receptacles, packages and coverings in which any such intoxicant, materials, still, utensil, implements or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, rafts or other conveyance used in carrying the same, shall likewise be liable to confiscation.

#### **47. Order of confiscation**

(1) Where in any case tried by him the Magistrate, decides that anything is liable to confiscation under Section 46, he shall order confiscation of the same:

Provided that where any intimation under clause (a) of sub-section (3) of Section 47-A has been received by the Magistrate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of thing as

aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section (2) of Section (2) of Section 47-A, the Magistrate shall not pass any order in this regard.

(2) When an offence under this Act has been committed, but the offender is not known or cannot be found, the case shall be enquired into and determined by the Collector, who may order confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto, and the evidence (if any) which he may produce in support of his claim:

Provided further that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

**47A. Confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance etc**

(1) Whenever any offence covered by clause (a) or (b) of sub-section (1) of Section 34 is committed and the quantity of liquor found at the time or in the course of detection of offence exceeds [five bulk litre], every officer, empowered under Section 52, while seizing any intoxicants, articles, implements, utensils, materials, conveyance etc. under sub-section (2) of Section 34 or Section 52 of the Act, shall place on the property seized a mark indicating that the same has been so seized and shall without undue delay either produce the seized property before the officer not below the rank of District Excise Officer authorised by the

State Government by a notification in this behalf (hereinafter referred to as the Authorised Officer), or where having regard to its quantity or bulk or any other genuine difficulty it is not expedient to do so, make a report containing all the details about the seizure to him.

(2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds [five bulk litre] he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc so seized. He may, during the pendency of the proceedings for such confiscation also pass an order or interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.

(3) No order under sub-section (2) shall be made unless the Collector has –

- a) Sent an intimation in a form prescribed by the Excise Commissioner about initiation of proceedings for confiscation of seized intoxicants, articles, implements, utensils, materials, conveyance, etc. to the court having jurisdiction to try the offence on account of which the seizure has been made.
- b) issued a notice in writing to the person from whom such intoxicants, articles, implements, utensils, materials, conveyance, etc. have been

seized and to any person staking claim to it and to any other person who may appear before the Collector to have an interest in it:

- c) afforded an opportunity to the persons referred to in clause (b) above of making a representation against proposed confiscation.
- d) given to the officer effecting the seizure under sub-section (1) and to the person or persons who have been noticed under clause (b) a hearing.

#### **47D. Bar of jurisdiction of the Court under certain circumstances**

Notwithstanding anything to the contrary contained in the Act, or any other law for the time being in force, the Court having jurisdiction to try offences covered by clause (a) or (b) of sub-section (1) of Section 34 on account of which such seizure has been made, shall not make any order about the disposal, custody etc. of the intoxicants, articles, implements, utensils, materials, conveyance etc. seized after it has received from the Collector an intimated under clause (a) of subsection (3) of Section 47-A about the initiation of the proceedings for confiscation of seized property.

#### **9.1.1 Precedents / Case Laws of our own High Court on the point-**

- i. Anil Kumar Narmada Vs State of Chhattisgarh
- ii. Smt. RoopKumariSidar Vs State of Chhattisgarh
- iii. Ranjeet Kumar Gupta Vs State of Chhattisgarh

In the light of aforesaid provisions often the question comes before the Courts having jurisdiction to try offences covered by clause (a) or (b) of sub-Section (1) of Section 34 as to whether they would have the jurisdiction to grant custody of the vehicle seized, after it has received information from the Collector

under clause (a) of sub-Section (3) of Section 47A of the Chhattisgarh Excise Act, 1915 (henceforth the Act of 1915') about the initiation of the proceedings for confiscation of seized vehicle?

Answering aforesaid question in **Anil Kumar Narmada vs. State of Chhattisgarh**<sup>2</sup> it has been laid down that if the any vehicle was found involved in the commission of the excise offences under Section 34 of the Act, 1915 and the Collector having initiated proceedings for confiscation of the said vehicle under Section 47- A of the Act, 1915 and intimated to the trial Court having jurisdiction to try the offences under clause (a) of sub-Section 3 of Section 47-A of the Act, 1915 about the initiation of the proceedings for confiscation of the seized vehicle and, as such, the provisions of Section 47-D of the Act, 1915 squarely attracts expressly barring the jurisdiction of the trial Magistrate to grant interim custody under Section 457 of the Code and jurisdiction of trial Magistrate ceases to have existed from the date of receipt of such intimation. So, the two situations; receipt of intimation about initiation of confiscation proceedings and situation otherwise has to be treated differently. It is settled position of law that if the provisions of Act are complied with, then only, rigors thereof are applicable.

- **Smt. RoopKumar Sidar vs State Of Chhattisgarh**<sup>3</sup>

In this case petitioner being the owner of seized vehicle had an agreement with the accused in respect of said vehicle being operated by him on a lease of 11 months. During this period vehicle was seized under the Act. Owner asked for release on superdari. Same having been rejected was assailed before Hon'ble High Court. Hon'ble High Court while allowing the petition held that:-

*“Section 47-A(2) of the Chhattisgarh Excise Act itself very specifically holds that Collector firstly has to be satisfied that offence covered under the Act has been committed and this*

*satisfaction can only be reached after there is an order of conviction by the trial court. Unless there is an order of conviction, there can be no subjective satisfaction of the offence to have occurred for the reason that in the event if criminal case results in the acquittal of the accused, it would mean that an offence has not occurred, and therefore, under these circumstances, initiation of confiscation proceeding prior to the conclusion of the criminal case would not be justified.”*

While reaching to aforesaid conclusion Hon'ble Court took note of decision of Full Bench MP High Court in case of **Madhukar Rao Vs. State of MP & Others**,<sup>4</sup> which having been assailed by State, was upheld by Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs. Madhukar Rao**<sup>5</sup>. In the said decision Hon'ble Apex Court laid down the principle that the proceedings of confiscation would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded a finding that the seized vehicle/article was as a matter of fact used in the commission of offence.

- **Rajesh Patel Vs State of Chhattisgarh**<sup>6</sup>

Again reiterating the aforesaid principles in Rajesh Patel's case our own High Court while taking note of Sunderbhai case (supra) and General Insurance case of Hon'ble Supreme Court allowed the petition for release of vehicle and held that:-

*“No reasons have been assigned for rejection and only it is stated that since vehicle was found in transporting illicit liquor as such it is not feasible to hand over the vehicle to the petitioner. So for all practical purpose vehicle is lying at the disposal of*

authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road-worthiness when kept in stationery position. In facts of the case following the law laid down in case of **General Insurance Council and others Vs. State of Andhra Pradesh and others**<sup>7</sup>, wherein the earlier principles laid down in case of **Sunderbhai Ambalal Desai (supra)**, was reiterated, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the said principles, it is directed that the vehicle be released in favour of petitioner by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.”

## **9.2. Narcotics Drugs and Psychotropic Substances Act, 1985**

Akin to Excise Act, this Act also contains special provisions regarding confiscation etc. which are reproduced herein below for the ready reference:-

### **I. Liability of illicit drugs, substances, plants, articles and conveyances**

**to confiscation.**—1[(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.]

- Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or

psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub- section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

- Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub- section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

## II. **Confiscation of goods used for concealing illicit drugs or substances.**

—Any goods used for concealing any [narcotic drug, psychotropic substance or controlled substance] which is liable to confiscation under this Act shall also be liable to confiscation.

Explanation.—In this section –goods| does not include conveyance as a means of transport.

## III. **Confiscation of sale proceeds of illicit drugs or substances.**—Where any [narcotic drug, psychotropic substance or controlled substance] is sold by a person having knowledge or reason to believe that the drug or substance is liable to confiscation under this Act, the sale proceeds thereof shall also be liable to confiscation.

### **9.2.2 Precedents on the point:**

- I. JyotiPratab Singh vs State of Chhattisgarh
- II. Tikeshwer Singh vs State of Chhattisgarh

### III.Raju Suryawanshi vs State of Chhattisgarh

After having analyzed the above noted statutory provisions, considering the question that in the teeth of aforesaid provisions, whether general provisions of CrPC would apply or same debar their applicability, in “***JyotiPratab Singh Vs State of Chhattisgarh CRMP No.524 of 2017 decided on 25/07/2017***” Hon‘ble Single Judge of our High Court has ruled that a careful reading of the aforesaid provisions; it is quite vivid that all these provisions do not exclude the operation of Sections 451 or 457(1) of the Code of Criminal Procedure. Under sections 60 and 63 of the Act such an article or vehicle used for the purpose of commission of an offence under the Act, 1985 is liable for confiscation. In other words, the article or the vehicle must be available at the time of trial or at the end of trial for the purpose of confiscation. It does not debar the Court trying the offence to grant interim custody.

There is no provision under the Act of 1985 prohibiting interim custody on the ground that confiscation proceedings has already been initiated. Sections 451 & 457 of the Code of Criminal Procedure is not inconsistent with the provisions of the NDPS Act, as such, the Criminal Court has necessarily jurisdiction to pass an order for interim custody of vehicle so seized under Section 451 or 457(1) of the Cr.P.C. as the case may be, subject to certain terms and conditions, the interim custody of the vehicle, pending the trial. Section 451 or Section 457(1) of the Cr.P.C. is attracted only after the vehicle is seized and brought into safe custody, as provided under Section 55 of the Act. If that is so, it cannot be said that Section 451 or Section 457(1) of the Criminal Procedure Code is in any way inconsistent with the scheme of the Act.

In spite of aforesaid law holding the field, in 2020 the same Hon‘ble Bench was again called upon to decide the similar issue in “***Tikeshwer Singh Vs State of Chhattisgarh***” when while reiterating its earlier view held

that Since the provisions of the CrPC including Section 451/457 have been expressly made applicable by virtue of Section 36- C of the NDPS Act to the proceedings before the Special Court (NDPS) and there is no express bar contained in the NDPS Act for grant of interim custody, therefore merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the NDPS Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly, unless expressly excluded.

Quite recently in again in “*Raju Suryawanshi Vs State of Chhattisgarh CRR NO.706 Of 2020 decided on12/03/2021*” Hon‘ble Single Judge of our High Court has held that although the vehicle under seizure is liable for confiscation under section 60 of the NDPS Act, but such procedure cant not be initiated at the present stage. The confiscation proceeding can be drawn in accordance with section 63 of the NDPS Act, only after completion of the trial of the accused.

### **9.3. CG Agricultural Cattle Preservation Act 2004**

Being the special Act, in this statute also special provisions have been enacted with regard to seizure etc. under section 6(3) of the Act, cap of Six month has been put before release of vehicle found involved for transportation etc. Section 6 of the act, prohibits transportation of agricultural cattle for slaughter.

While resolving the general confusion having been faced by trial courts in the State by having such cap of six months Hon‘ble Single Bench of our High Court in “*Narayan SahuVs State of Chhattisgarh*” settled the law that it is established legal position that if the agricultural cattle is being

transported for the purpose of slaughter in contravention of the Act of 2004, bar under Section 6(3) would apply and vehicle cannot be released on interim custody for a period of six months or till the judgment is pronounced whichever is earlier, but mere transportation of agricultural cattle from one place to another for the purpose other than slaughter is not an offence under the said Act and in case Section 6(1) of the Act of 2004 is not attracted, bar contained in Section 6(3) of the Act would not attract and interim custody can be granted without waiting for the period of six months as provided.

#### **9.4. Essential Commodities Act, 1955**

In this legislation the relevant provisions regarding seizure and confiscation of the essential commodity and other property, are section 6A, 6B, 6E. Section 6 A, 6B deals with the procedure of confiscation where as Section 6E puts bar on the Jurisdiction of courts in certain cases, regarding the property seized under this act.

Law on the point has been settled by our Honorable High court, while doubting the correctness of law laid down in Vishnu Prasad case, and another co-ordinate bench in Amit Dubey's case referred the matter to be placed before the larger bench.

Accordingly, the Hon'ble Division Bench decided the reference in the following terms:-

*“Pending appeal under Section 6-C of the Essential Commodities Act, 1955, in view of bar created under Section 6-E of the Act, the Judicial Authority appointed by the State Government as provided under Section 6- C alone is empowered to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering,*

*receptacle, animal, vehicle, vessel of other conveyance and no other Courts, Tribunal, or Authority has jurisdiction to make orders with regard to possession, delivery, disposal, release or distribution of seized essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”*

### **9.5. The Indian Forest Act, 1927**

This Act was enacted with a view to save the environment by regular assault by human being. For the purposes of applications connected with the offences in respect of Forest Act. As per section 52 of the act seized property are liable to be confiscation where as section 52C sets bar on Jurisdiction of courts in circumstances.

Considering the above noted statutory provisions Hon'ble Supreme Court in **State of M.P vs Uday Singh's case** held that a Magistrate has no jurisdiction under Section 451 CrPC to release a seized vehicle, once the Authorised Officer initiated confiscation proceedings. The court added that, "Upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4)(a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted. The scheme contained in the amendments enacted to the Indian Forest Act 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition under Section 482 of the CrPC, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction under Section 451 of the CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.

## 9.6. Wild Life Protection Act, 1972

With the same objective to preserve and protect our wild animals, this Act has been enacted. As Per the provision of Section 39 Wild animal etc are to be Government Property. Section 50 empowers the authorized Forest officer for entry, search, arrest and detention regarding the commission of any offence under this act. As per Section 50(4) of the act states that any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law under intimation to the Chief Wild Life Warden or the officer authorized by him in this regard.

In **State of M.P. &Ors. vs Madhukar Rao**<sup>14</sup>the pivotal question, before honorable supreme court, was whether a vehicle or vessel etc. seized under Section 50(1)(c) of the Wild Life (Protection) Act, 1972 is put beyond the power of the Magistrate to direct its release during the pendency of trial in exercise of powers under Section 451 of the Code of Criminal Procedure, 1973? Answering aforesaid proposition, Hon'ble Court ruled that the provision of ~~Section 39(1)(d)~~ would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Article 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations leveled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. Same view has been laid down in **RobinLal vs State of Chhattisgarh CRMP NO.306/2018 Decided on 11/07/2018** and In **Mohammad Shoaib and ors vs State of Chhattisgarh**.

In "**Mohammad Shoaib & Anr.Vs State Of Chhattisgarh**"our own High Court placing reliance on full bench decision of Hon'ble M.P. High Court in Madhukar Rao , held that any property including vehicle seized on

accusation or suspicion of commission of an offence under the Act can on relevant grounds and circumstances, be released by the Magistrate pending trial in accordance with Section 50(4) read with Section 451 of the Code of Criminal Procedure. Thus an application under Section 451 of the Cr.P.C. before the jurisdictional Magistrate is maintainable for interim custody of questioned vehicle.

## **10. CONCLUSION AND THE WAY FORWARD**

The Judiciary has shown utmost excellence and caliber in dealing with an extremely sensitive issue of Default Bail, which mandates maintaining a fine balance between various conflicting claims.

To make the situation even better, there is a need –

- I. To promote legal literacy
- II. To ensure that not even a single person is deprived of Right to Legal Aid
- III. To shift focus from financial securities to personal bond while granting bail

We must listen to each and every word of our Hon'ble Supreme Court as an alarm bell. We cannot afford to have another where the under trials had spent 6 years awaiting their trial and worst or where for some people, the period of imprisonment of under trials had exceeded the period of imprisonment prescribed for the offenses they were charged with.

Also the aforesaid discussion at length brings us to conclude, that although a property is allegedly seized during course of commission of crime or, as a tool for committing such crime, yet, pending trial, same may be released on supurdnama, depending upon facts and circumstances of each case. Courts seized of the matter should insist, that property should not lie either in the custody of police or, in the court's malkhana, so as to diminish their value with time decay and having remained unused for a longer period, being not taken care properly as well as occupying the space unnecessarily, particularly, when same is no longer needed by the court. In simple words it can be grasped that grant of such application should be the rule, whereas dismissal thereof, an exception, unless, grant is specifically barred by the special statute.