Divisional Judicial Seminar of all Judicial Officers posted in Bastar Division at Jagdalpur on 14/09/2025

TOPIC- BEHIND THE BARS OR FREE: An in depth analysis of provisions of Remand and Bail with special reference of the latest Hon'ble Apex Court

Presentation by District and Sessions Court

District- Kondagaon (C.G.)

Under The Able Guidance Of :

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Principal District and Sessions Judge,

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TABLE OF CONTENTS

§§§

INTRODUCTION

"We must in particular emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the 'subordinate judiciary'. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them."

- Justice Dr. D.Y. Chandrachud

In Arnab Manoranjan Goswami case, AIR 2021 SC 1

The administration of criminal justice in India rests on two fundamental pillars: the authority of the State to investigate and prosecute offences, and the duty of the law to safeguard the liberty of individuals. Within this framework, remand and bail occupy a crucial position. While remand ensures that investigating agencies are able to effectively gather evidence and prevent the accused from obstructing justice, bail guarantees that personal liberty is not sacrificed unnecessarily before guilt is proved. Both are mechanisms that seek to strike a balance between collective security and individual freedom.

Traditionally, these processes were governed by the Code of Criminal Procedure, 1973 (CrPC). However, with the enforcement of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), effective from 1 July 2024, India has witnessed significant reform in the procedural law of

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criminal justice. Although the BNSS retains much of the structure of the CrPC, it introduces several important modifications, particularly in the areas of remand, custody, and bail.

1. Concept of Remand

Meaning:-

The term remand refers to the process by which a Magistrate sends an accused person into custody, either police or judicial, during investigation or trial. The primary purpose of remand is to ensure proper investigation while preventing misuse of liberty by the accused.

Provisions under the CrPC:- Section 167(2), CrPC: If the investigation cannot be completed within 24 hours, the police must produce the accused before a Magistrate. The Magistrate may authorize custody, either police or judicial.

- **Police Custody:** Permitted only up to 15 days in total.
- **Judicial Custody:** Beyond the first 15 days, only judicial custody can be ordered, subject to overall limits of 60 or 90 days, depending on the gravity of the offence.
- **Default Bail:** If investigation is not completed within the prescribed period, the accused becomes entitled to bail.
- **Provisions under the BNSS:-** Section 187(2), BNSS: Retains the essential structure of CrPC but introduces a significant departure.

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- The 15-day period of **police custody** is no longer required to be consecutive. Instead, it can be broken up and spread across the initial 40 days (for less serious offences) or 60 days (for more serious offences).
- **Judicial Custody:** Remains available beyond the police custody period, subject to overall statutory limits.
- **Default Bail:** Explicitly recognized under Section 187(2), ensuring the accused cannot be detained indefinitely without filing of charge-sheet.

JUDICIAL SAFEGUARDS

- Magistrates are required to record reasons for granting remand.
- Production of the accused must take place either in person or through video linkage, as encouraged under BNSS.
- The principle of fairness and non-arbitrariness under the Constitution continues to guide remand proceedings.

The Hon'ble Supreme Court in a very recent judgement 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 and reiterate the directions contained there under, as well as other directions:

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- 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

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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.

CAN AN ABSCONDING ACCUSED BE ARRESTED AND REMANDED IN THE POLICE CUSTODY SUBSEQUENT TO SUBMISSION OF CHARGESHEET?

Yes, through various judicial decisions it has been settled that an absconding accused can be arrested and remanded into police custody in the course of further investigation subsequent to submission of chargesheet.

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In the case of **Central Bureau of Investigation vs. Rathin Dandapat and Ors. MANU/SC/0897/2015** that police remand can be sought under Section 167(2) Code of Criminal Procedure in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression 'accused if in custody' in Section 309(2) Crpc refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned, he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167……"

Meaning of Custody

Hon'ble Apex Court in Siddharth vs The State Of Uttar Pradesh on 16 August, 2021:- "15. Word "custody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the Investigating Officer before the Court at the time of filing of the chargesheet whereafter the role of the Court starts. Had it not been so the Investigating Officer would not have been

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vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

16. In case the police/Investigating Officer thinks it unnecessary to present the accused in custody for the reason that accused would neither abscond nor would disobey the summons as he has been co-operating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

- **Vihaan Kumar vs The State Of Haryana on 7 February, 2025**

Hon'ble Apex Court has addressed the critical issue of violation of fundamental rights under Article 22(1) of the Constitution of India. The Court ruled that **Mandatory Nature of Article 22(1):** Emphasized that informing the arrestee of the grounds of arrest is a mandatory constitutional requirement under Article 22(1), non-compliance with which vitiates the arrest and violates Article 21's guarantee of personal liberty.

- **Meaningful Communication:** Held that grounds of arrest must be communicated effectively in a language the arrestee understands, ensuring the constitutional safeguard's purpose is served (Paragraphs 14, 21).

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- **Burden on Police:** Ruled that when an arrestee alleges non-compliance with Article 22(1), the burden lies on the police to prove compliance, and vague diary entries are insufficient without contemporaneous records of the grounds (Paragraphs 18, 27).
- **Invalidity of Subsequent Actions:** Clarified that filing a chargesheet or passing remand orders does not validate an unconstitutional arrest, as the violation of Article 22(1) renders the arrest and subsequent custody illegal (Paragraphs 16, 21).
- **Handcuffing Violation:** Condemned the act of handcuffing and chaining the appellant to a hospital bed as a violation of the right to dignity under Article 21, directing the State to issue guidelines to prevent such acts (Paragraphs 29, 33).
- **High Court's Error:** Criticized the High Court for equating information about the arrest with grounds of arrest and failing to address the violation of Article 22(1), calling its dismissal of the appellant's claims as "bald" uncalled for (Paragraphs 30, 31).
- **Suggested Practice:** While Article 22(1) does not mandate written grounds, recommended providing grounds in writing to avoid disputes and ensure compliance, though acknowledged this may not always be practicable (Paragraph 15).
- **Concurrence and Supplement:** Concurred with Justice Oka's analysis, emphasizing the constitutional mandate of Article 22(1)

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and its incorporation in Section 50 of CrPC and Section 19 of the PMLA (Paragraph 1, Page 37).

- **Purpose of Communication:** Highlighted that communicating grounds of arrest to the arrestee and their nominated persons (under Section 50A of CrPC) enables prompt legal action to secure release, reinforcing the right to liberty under Article 21 (Paragraphs 2, 3, Page 38).
- **Constitutional Mandate:** Reaffirmed that non-compliance with the requirement to communicate grounds in writing renders the arrest illegal, making the safeguard meaningful and effective (Paragraph 3, Page 39).

Can notice under section 41-A of the CrPC can be served via WhatsApp or other electronic means

The Hon'ble Supreme Court, in **Satendra Kumar Antil v. CBI (2022 INSC 690),** held that notices under Section 41-A of the CrPC cannot be served via WhatsApp or other electronic means. The Court emphasized strict adherence to the service methods prescribed under Chapter VI of the CrPC, 1973. This ruling came in response to the Haryana government's authorization of electronic service of notices, a practice followed in several states. Referring to **Rakesh Kumar v. Vijayanta Arya (DCP) & Ors. (2021 SCC Online Del 5629)**, the Court reaffirmed that police must serve notices personally or, if the recipient is unavailable, to an adult family member at their residence. If neither is

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possible, the notice should be affixed at the residence. For public servants, service must be routed through their superior officer. Further, in **Amandeep Singh Johar v. State (NCT Delhi) (2018 SCC Online Del 13448)**, the Court laid down additional guidelines, including the presence of the Investigating Officer, issuance of notices in triplicate, special safeguards for women, minors, and the elderly, and the retention of notices for three years. This judgment reinforces the importance of procedural compliance and prevents the misuse of electronic service in criminal investigations.

CONCEPT OF BAIL

"Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions"

The bench of Justice D.Y. Chandrachud and Justice Indira Banerjee notably remarked in the case of Arnab Goswami v. State of Maharashtra and Ors. (AIR2021SC1)

"The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of 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

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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. 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.

KEY ISSUES OF BAIL JURISPRUDENCE

1. JURISPRUDENCE OF ANTICIPATORY BAIL:-

- The jurisprudence of anticipatory bail was widely discussed in the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and Ors., (2011)1 SCC 694**

The Apex Court observed that following factors and parameters can be taken into consideration while dealing with the anticipatory bail: (Para 122)

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

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iv. The possibility of the accused's likelihood to **repeat similar or the other offences.**

v. Where the accusations have been made only with the **object** of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must **evaluate the entire available material against the accused very carefully**. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the

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genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

2. <u>PRINCIPLES TO BE BORNE IN MIND WHILE GRANTING ANTICIPATORY BAIL:</u>

The Apex Court in the case of **Gurbaksh Singh Sibbia and Ors. vs. State of Punjab, (1980) 2 SCC 565**

laid down the following principles with regard to anticipatory bail:-

a) Section 438(1) is to be interpreted in light of **Article 21** of the Constitution of India.

b) Filing of FIR is not a condition precedent to exercise of power under Section 438.

c) Order under Section 438 would not affect the right of police to conduct investigation.

d) Conditions mentioned in Section 437 cannot be read into Section 438.

e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only." Powers are discretionary to be exercised in light of the circumstances of each case.

f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim order must conform to

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requirements of the section and suitable conditions should be imposed on the applicant.

3. "BAIL, NOT JAIL" IS THE BASIC RULE:

- **State of Rajasthan, Jaipur vs. Balchand, (1977) 4 SCC 308**

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

- **Arnab Manoranjan Goswami vs. The State of Maharashtra and Ors, AIR 2021 SC 1**

60. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive.....Equally it is the duty of courts across the spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to

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both ends of the spectrum - the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the Rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting....

63. ...High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequences for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground - in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the "solemn expression of the humaneness of the justice system". Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of

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applying this basic Rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this Court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard.

4. INTERRELATION OF BAIL AND LIBERTY:-

- **Neeru Yadav vs. State of U.P. and Ors., (2014) 16 SCC 508**

13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:

- *Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in*

proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.

5. CONSIDERATIONS TO BE KEPT IN MIND WHILE GRANTING BAIL:

An indept analysis of provisions with special reference to the latest Hon'ble Apex Court's pronouncements:-

The question of whether one is "behind the Bars or Free" has occupied human thought for centuries. Freedom is often celebrated as the most cherished of all human values.The need for change in approach in matters of bail and remand has been highlighted by the Hon'ble Supreme Court and Hon'ble High Courts time and again.

- **Ram Govind Upadhyay vs. Sudarshan Singh and Ors.,**

(2002) 3 SCC 598

The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of

rejection of the bail, though, however, dependent on the factual matrix of the matter.

Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:-

- **(a)** While granting bail the Court has to keep in mind not only the nature of the accusations, but the **severity of the punishment**, if the accusation entails a conviction and the nature of evidence in support of the accusations.
- **(b) Reasonable apprehensions of the witnesses being tampered with** or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.
- **(c)** While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a **prima facie satisfaction of the Court in support of the charge**.
- **(d) Frivolity in prosecution** should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

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6. SEVEN DIRECTIONS TO AVOID DELAY IN RELEASE OF PRISONERS AFTER GETTING BAIL:-

- **In Re Policy Strategy for Grant of Bail SMW, 2023 (2) KLT 97 –**

With a view to ameliorate the problems a number of directions are sought:-

1) The Court which grants bail to an under trial prisoner/convict would be required to send a **soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day.** The Jail Superintendent would be required to enter the date of grant of bail in the **e-prisons software** [or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the **duty of the Superintendent of Jail to inform the Secretary, DLSA** who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the **e-prison software** so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

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4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the **socio-economic conditions of the inmate** which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the under trial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider **granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.**

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider **whether the conditions of bail require modification/ relaxation.**

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the **courts may not impose the condition of local surety.**

7. BAIL JURISPRUDENCE IN TERRORISM CASES:-

Analysis of Shoma Kanti Sen v. The State of Maharashtra (2024 INSC 269):- This case revolves around allegations of terrorism and involvement in banned organizations under the ***Unlawful Activities (Prevention) Act, 1967 (UAPA).*** The appellant, a 66-year-old woman in

detention for nearly six years, was accused of participating in meetings and promoting ideologies of CPI (Maoist), a banned organization. The appeal challenges the Bombay High Court's order rejecting her bail plea without considering the merit of the accusations under *Section 43D (5) of UAPA*. The Supreme Court considered her prolonged incarceration, non-framing of charges, lack of prima facie evidence supporting terrorism-related allegations, and the principle of balancing national security concerns with personal liberty. Prolonged incarceration without charge framing and age-related health concerns justified bail. The Court emphasized balancing the need for stringent anti-terror laws with protection of personal liberty, especially in cases of prolonged pre-trial detention.

8. ORDER GRANTING BAIL IF PASSED IN A CASUAL AND CRYPTIC MANNER, IS LIABLE TO BE SET ASIDE:

- **Manoj Kumar Khokhar vs. State of Rajasthan and Ors.,**

(2022) 3 SCC 501

18. …**It is not necessary for a Court to give elaborate reasons while granting bail particularly** when the case is at the initial stage and the allegations of the offences by the Accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant

of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail.

As noted in **Gurcharan Singh vs. State (Delhi Admn.) (1978) 1 SCC 118:-** when bail has been granted to an Accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail Under Section 439(2) of the Code of Criminal Procedure.

9. EXCESSIVE CONDITIONS TO BE AVOIDED WHILE GRANTING BAIL:

- **Guddan @ Roop Narayan vs State of Rajasthan (Criminal Appeal No. 120 of 2023 @ SLP (Criminal) No. 9756 of 2022)**

13. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each. Hon'ble Apex Court has held that- "We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof

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enough to show that he is not to be languishing in jail during the pendency of the case. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount."

- **Sandeep Jain case (Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66),**

Hon'ble Apex Court has held That:- The conditions of bail cannot be so onerous that their existence itself amounts to refusal of bail.Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail that too in a case where he normally would have been granted bail for the alleged offences is not just a symptom of injustice, but injustice itself.

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10. BAIL MUST BE GRANTED EXPEDITIOUSLY AND NOT IN DUE COURSE OF TIME:

- **Tulsi Ram Sahu vs. The State of Chhattisgarh, MANU/SCOR/94743/2022:-**

Ordinarily, this Court where there is refusal to grant interim relief is not inclined to interfere but this is somewhat peculiar facts brought to the notice of this Court where the applicant who approached for seeking anticipatory bail the learned Judge of the High Court while admitting the bail petition dismissed the interim relief and posted the matter for hearing in due course. This is an unusual practice and which this Court has never come across. We also disapprove such practice and request the Chief Justice of the High Court to take a judicial note and at least the bail applications whether it is pre-arrest bail or post-arrest bail (under Section 438 or 439 of the Code) must be decided as expeditiously as possible. Although we are not supposed to give any guidelines for the disposal of the bail applications but at the same time we always expect that bail applications must be decided as expeditiously as possible and not to be posted in due course of time.

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11. WHETHER ECONOMIC OFFENCES SHOULD BE TREATED AS A CLASS OF ITS OWN WHILE DECIDING ON BAIL?

- **P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791.**

The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. **Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis.**

12. WHETHER THE BAIL GRANTED FOR LESSER OFFENCE IS CANCELLED, IF LATER ON CHARGE SHEET SUBMITTED ON OFFENCE IS ALTERED FOR AN AGGRAVATED OFFENCE?

- **Prahlad Singh Bhati vs. N. C. T., Delhi and Another (2001) 4 SCC 280**

The accused was granted anticipatory bail in terms of S. 438 in respect of offences relating to dowry under Ss. 306 and 498-A, I.P.C. registered against him, and applications for cancellation of the anticipatory bail were dismissed. However, later on charge-sheet was filed against the accused under Ss. 302, 406 and 498-A, I.P.C. by the

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investigating agency and he was directed to appear before the Metropolitan Magistrate, the Magistrate, granted him bail even in a case under S. 302, I.P.C. which is an offence punishable with death or imprisonment for life, merely on grounds that the accused cannot held be liable for arrest every time the charge is altered or enhanced at any stage. The Hon'ble Supreme Court, while condemning the High Court held that:-

9. The Magistrate committed an irregularity by holding that "I do not agree with the submission made by the learned Prosecutor inasmuch as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law." 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. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

The **Hon'ble Patna High Court in Sita Ram Singh vs. State of Bihar, 2002 SCC Online Pat 197: (2002) 50 (2) BUJR 859,** had considered the case where case was initially instituted under Section 307 IPC. FIR was lodged on 24-8-2000 under Section 307 IPC. The accused was granted bail on 1-9-2000. Thereafter, due to death of the injured on

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6-9-2000, Section 302 IPC was added. Informant had applied for cancellation of the bail. The bail earlier granted was cancelled in view of subsequent development. The **Hon'ble Patna High Court relying on the judgment of this Court in Prahlad Singh Bhati vs. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674,** held that: "on a serious change in the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence and in such circumstances, the correct approach of the court concerned would be to apply its mind afresh as to whether the accused is entitled for grant of bail, in the changed circumstances."

(Para 12)- The Hon'ble Supreme Court further in **Pradeep Ram vs. State of Jharkhand and Another, (2019) 17 SCC 326: 2019 SCC OnLine SC 825,** came to a conclusion that in respect of a circumstance where after grant of bail to an accused, further cognizable and non-bailable offences are added (Para 31):-

31.1. The accused can surrender and apply for bail for newly added cognizable and non-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

31.2. The investigating agency can seek order from the court under Section 437(5) or 439(2) CrPC for arrest of the accused and his custody.

31.3. The court, in exercise of power under Section 437(5) or 439(2) CrPC, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The court in exercise of

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power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non- bailable offences which may not be necessary always with order of cancelling of earlier bail.

31.4. In a case where an accused has already been granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it needs to obtain an order to arrest the accused from the court which had granted the bail.

13. SUMMARY OF THE GUIDELINES IN THE LIGHT OF JUDGEMENT PASSED IN THE CASE OF

- **SATENDER KUMAR ANTIL VS. CBI, AIR 2022 SC 3386, ARNESH KUMAR VS. STATE OF BIHAR, AIR 2014 SC 2756, AND OTHER CASES:-**

Nature of Offence	Conditions	Course to be adopted by courts
Offences punishable with imprisonment of 7 years or less	1) Accused not arrested during investigation.	1) Summons (Appearance through lawyer permissible)
	2) Cooperated throughout the investigation including	2) then, Bailable warrant

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	appearance before Investigating Officer whenever called.	3) then, NBW *Appearance of accused not necessary for cancellation of warrant. *Bail application of accused arrested in N.B.W. to be decided without taking him into physical custody
Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years	-	On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.
Special Acts containing stringent provisions for bail		Aforesaid guidelines have to be kept in mind.

Where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons, when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, then accused not to be benefited from above principles. It is further held that, while issuing notice to bail applications,

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court may grant interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest.

13. BAIL DURING INVESTIGATION AND BAIL DURING TRIAL:

Primary considerations would obviously be different between these two stages. In the former stage, an arrest followed by a police custody may be warranted for a thorough investigation, while in the latter what matters substantially is the proceedings before the Court in the form of a trial. There has been no cause to arrest the accused, merely because a charge sheet is filed, would not be an ipso facto cause to arrest the petitioner

- **The Hon'ble Court further followed ratio in Nikesh Tarachand Shah vs. Union of India, (2018) 11 SCC 1,**

Held that bail is right and jail in exception. Referring to the Judgment in the matter of **Sanjay Chandra vs. CBI (2012) 1 SCC 40**, the Hon'ble court reiterated that in a bail applications, generally, it has been laid down from the earliest times 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 preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the Crinciple that punishment begins after conviction, and that every man is deemed to be nnocent until duly

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tried and duly found guilty. The Hon'ble Court also emphasized on the principle of presumption of innocence.

14. WHETHER SECOND OR SUBSEQUENT BAIL APPLICATION IS MAINTAINABLE?

- **State of Maharashtra vs. Capt. Buddhikota Subha Rao, AIR 1989 SC 2292**

In this case, accused was retired naval officer. He was apprehended while he was about to leave the country on ground that his luggage contained highly sensitive documents marked secret and confidential. His bail application was rejected several times. Single Judge had rejected his bail application but after two days another Judge of High Court enlarged him on bail for two months. Hence, the appeal was filed before the Apex Court. Accused sought bail on ground of age and physical condition. Further facts revealed that respondent several bail applications were spurned and hence the issue arose whether there was any justification for grant of bail to respondent. The court observed that in such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to secure an order. **It was held that successive bail applications can be filed. However, these must be filed before the same judge (when possible). The accused must disclose whether any**

prior bail applications have been filed, and also demonstrate that there is a change in circumstances which justifies grant of bail in the present instance.

- **Similarly, in the case of Kalyan Chandra Sarkar v Rajesh Ranjan and Ors., AIR 2004 SC1866**

It was held by the Hon'ble Apex Court that although an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected and the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. The Apex Court stated:

"20.....we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. Therefore, it can be concluded that even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding

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has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application.

15. WHETHER A REGULAR BAIL CAN BE GRANTED IN A CASE IN WHICH THE ANTICIPATORY BAIL IS ALREADY GRANTED?

- **In Rukmani Mahato vs. State of Jharkhand**

(03.03.2017) 15 SCC 574

9. When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned Trial Court and seek regular bail. The predicament of the subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the Superior Court meaningless.

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10. subordinate Courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged.

16. WHETHER A SUBSEQUENT BAIL CAN BE FILED IN THE LOWER COURT WHEN THE HIGHER COURT HAS ALREADY REJECTED THE BAIL ONCE?

- **Kalyan Chandra Sarkar and Ors. vs. Rajesh Ranjan and Ors.**

(2004) 7 SCC 528

The Hon'ble court stated that:

19. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application.

20. The decisions given by a superior forum, undoubtedly, is binding on the subordinate for a on the same issue even in bail matters unless of

course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application.

17. CANCELLATION OF BAIL:-

"Society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the state. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society."

- Justice Dalveer Bhandari

In Siddharam Satlingappa Mhetre case, MANU/SC/1021/2010

The Code of Criminal Procedure makes clear provisions for cancellation of bail and taking accused back in custody. Section 437(5) states that any court which has released a person on bail under sub-section (1) or (2) of Section 437, may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody. Similarly, Section 439 confers on the High Court and the Court of Session power to cancel bail.

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Section 439(2) The Code of Criminal Procedure makes clear provisions for cancellation of bail and taking accused back in custody.

The power of cancellation of bail can be resorted to broadly in the following two situations:

(1) On merits of a case mainly on the ground of the order granting bail being perverse, or passed without due application of mind or in violation of any substantive or procedural law

(2) On the ground of misuse of liberty after the grant of bail or other supervening circumstances.

CONCLUSION

"Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint."

-Justice E. Barrett Prettyman, Former U.S. Judge

There exists a delicate and precarious balance between the need to curb criminal tendencies in the society and the freedom of the people. Just as menoned in the abovemenoned words, it is upon the Courts of this nation to ensure that the scales remain balanced, and cizens can enjoy their liberty.

-::THANK YOU::-

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