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H.J.S. P.C.S. (J) A.P.O. & CLAT

Year – 2023

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NO. 11 OF 2023

NEWSLETTER

November 2023

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1. Study Material-Law

Pre-Arrest Bail

Disquietingly, the Apex Court (also referred to as the ‘Court’) has recently dealt a colossal blow to the basic rule of ‘bail, not jail’ vide its ruling in **State of Haryana Vs. Dharamraj (2020) 2 SCC 118.** In a matter involving pre-arrest bail of an accused person, the Supreme Court not only denied the liberty to the petitioner but did so by overturning the relief as has already been determined in his favour by the concerned High Court.

Curiously though, even while denying pre-arrest bail to the accused therein, the Court placed reliance on a series of judgments whereby the Hon’ble Court has clearly outlined that ‘an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted’and ‘that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial’.

Clearly, the Apex Court has been rather recalcitrant in cancellation of the relief of bail/anticipatory bail already granted unless of course in the face of supervening arbitrariness and perversity coupled with circumstances obtaining as such. Nevertheless, in the Dharamraj ruling, the Court in its discretion concluded that the factors weighing with the concerned High Court did not meet the litmus test in allowing pre-arrest bail of the accused person and the state’s appeal was allowed with the Apex Court concluding that ‘the logic of the High Court does not commend itself to us’.

There of course can be no quarrel with the Court’s appreciation of the reasoning, or lack thereof, as employed by the High Court. However, what is disconcerting to an extent is how the Court has sought to wedge the ruling in between the intersection of provisions of the Code of Criminal Procedure, 1908 (CrPC), specifically Sections 82/83 dealing with ‘proclamation of person absconding’ along with ‘attachment of property of person absconding’ and Section 438 concerning ‘grant of bail to person apprehending arrest’. In essence, the Dharamraj judgment has effectively adjudged that any person having been declared a ‘proclaimed offender’ in accordance with Section 82 CrPC must first

assail such proclamation devoid of which the concerned courts cannot consider a plea for pre-arrest bail.

Briefly outlined, upon completion of investigation in a criminal trial the 'police report' as per Section 173(2) CrPC is forwarded to the concerned magistrate. The concerned magistrate in line with Sections 87/88 CrPC may thereafter, in cases wherein the accused is not already in custody, to ensure attendance of the accused shall proceed with issuance of summons in the first instance. However, as the Apex Court noted in its judgment in **Satender Kumar Antil v. CBI, (2022) 10 SCC 51** issuance of non-bailable warrants (NBW) has become par for course without due application of mind and the same is starkly against the tenor of the provisions enshrining judicial discretion in curtailing liberty of any person. Naturally, the course of action post issuance of NBWs is to initiate proceedings for declaring such a person as a proclaimed offender under Section 82 CrPC.

It is no one's case that the power of the magistrate ought be curtailed in ensuing the presence of an accused in a criminal trial. However, what is noteworthy is the cavalier manner in which Indian criminal courts issue warrants seeking attendance. Quite unfortunately, the authors herein, in matters still sub-judice and therefore not being named, have been privy to such disregard for liberty wherein bailable warrants and thereafter non-bailable warrants were issued against the accused despite delivery/service of summons having never been ensured and confirmed by the concerned magistrate. The sole reason for the same was that the accused was already in custody in relation to another offence and was never produced before the concerned magistrate by the police.

Due to such non-attendance and non-revelation of the accused's judicial custody in relation to a separate offence, the magistrate proceeded to initiate proceedings under Section 82 CrPC. Upon release from custody, only an order granting pre-arrest bail and/or interim relief shall prevent such an accused from being taken into custody de-novo. Unfortunately, this is a ploy employed ever so often by our investigative agencies and with impunity for the mere fact that the concerned magistrate court fails to ensure strict application of the law.

It must accordingly be outlined that the Court's ruling in Dharamraj in so far as it pre-requites assailing proceedings under Section 82 CrPC to obtaining pre-arrest bail does not commend itself to the law nor to practicalities of a criminal trial. The Court in Dharamraj, having placed reliance on earlier judgments of **Lavesh v. State NCT of Delhi, (2012) 8 SCC 730 and State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171** failed to consider the evolution of the law on 'pre-arrest bail' as outlined by the 5-judge bench in

Sushila Aggarwal v. State NCT of Delhi, (2020) 5 SCC 1 whereby aptly the Constitution Bench outlined that,
"…where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems to justification to require him to first submit to custody, remain in prison for some days and then apply for bail."

The bench further went on to add that,
"…the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she be not arrested; it was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a widespread malaise on part of the police."

On a conspectus of the law as it prevails therefore, the plain and literal language of Section 438 CrPC governing pre-arrest bail does not commend itself to any superimposed or artificial restrictions as to its operation. In fact the bench in Sushila Aggarwal as above went so far as to add that 'if the court were to weave conditions to impose and read into Section 438 that are not expressly provided, the danger would be that several applicants who might otherwise be entitled to relief might be denied it altogether'.

This is precisely the apprehension that the Dharamraj ruling gives rise to for it remains a reality that investigative processes in India are far from dispassionate and the powers of arrest are exercised in a cavalier manner by the agencies. In that regard if a dictum by the highest court of the land were to further proscribe the right to seek pre-arrest bail in apprehension of arrest the same will severely dent the right to liberty on a mere accusation despite the cardinal rule of 'presumption of innocence'.

It is beyond contestation that no accused can claim an inviolable right to unconditional protection from arrest. However, imposition of such conditions must be curtailed to a case-by-case basis and the Hon'ble Supreme Court ought be mindful of the fact that a mere nudge by it filter down to the courts below as an open season on rejection of the right to be protected from arbitrary arrests and curbs on freedom.

B. Important Cases November 2023

Important Supreme Court Cases November 2023

S.N.	Subject	Case Reference
1.	Observations made by coordinate bench is not a ground to Review a judgment. Issued eight principles on scope of review	Sanjay Kumar Agarwal Vs. State Tax Officer (1) & Anr., decided on 31-10-2023
2.	Exception 4 of Section 300 IPC is not applicable if accused took "undue advantage" of situation	Anil Kumar Vs. State of Kerala, decided on 01-11-2023
3.	For conviction under Section 149 IPC, no overt act is needed only membership of unlawful assembly is enough.	Parshuram Vs. State of Madhya Pradesh, decided on 03-11-2023
4.	The person who recorded dying declaration, his examination in person is essential. For admissibility under section 27, of the Evidence Act, the fact discovered must be a direct consequence of information received from a person in custody.	Manjunath and Ors. Vs. State of Karnataka, decided on 06-11-2023
5.	Explains four circumstances to be proved in cases of murder by poison	Hariprasad @ Kishan Sahu Vs. State of Chhattisgarh, Criminal Appeal No. 1182 of 2012, decided on 07-11-2023
6.	Court is required to separate the chaff from the grain to find out the true genesis of the incident. There are three types of witnesses-, one those who are wholly reliable, second one is wholly unreliable, and lastly, the one who are neither wholly reliable nor wholly unreliable, as far as the first two scenarios are concerned, the testimonies of the witnesses can be wholly accepted or discarded. However, only with respect to the third one, where the testimony is partly reliable and partly unreliable,	Balaram Vs. State of Madhya Pradesh, Criminal Appeal No. 2300 of 2009, decided on 08-11-2023

	the Court faces difficulty.	
7.	Issued directions to monitor the early disposal of pending criminal cases against Members of Parliament and Members of Legislative Assemblies.	Ashwini Kumar Upadhyay Vs. Union of India, W.P.(C) No. 699 of 2016, decided on 09-11-2023
8.	Governor can't veto legislature by simply withholding assent to bill, must return bill to assembly on withholding assent	State of Punjab Vs. Principal Secretary to the Governor of Punjab and Anr., W.P.(C) No. 1224/2023, decided on 10-11-2023
9.	High Courts and Sessions Court have power to grant interim/transit anticipatory bail even when the First Information Report (FIR) has been registered in another State.	Priya Indoria Vs. State of Karnataka, decided on 20-11-2023

IN THE SUPREME COURT OF INDIA

Sanjay Kumar Agarwal
Vs.
State Tax Officer (1) & Anr.
[Review Petition (Civil) No. 1620 of 2023]
[Civil Appeal No. 1661 of 2020]

Ramchandra Dallaram Choudhary
Vs.
State Tax Officer (1) & Anr.
[Review Petition (Civil) No. 1621 of 2023]
[Civil Appeal No. 1661 of 2020]

State Bank of India
Vs.
Rainbow Papers Ltd. & Anr.
[Review Petition (Civil) No. 1622 of 2023]
[Civil Appeal No. 1661 of 2020]

Chandra Prakash Jain
Vs.
State Tax Officer
[Review Petition (Civil) No. 236 of 2023]
[Civil Appeal No. 2568 of 2020]

Indian Overseas Bank
Vs.
State Tax Officer (1) & Anr.
[Review Petition (Civil) No. 1623 of 2023]
[Civil Appeal No. 1661 of 2020]

HEADNOTE – Observations by Coordinate Bench is not a ground to Review a judgment. Issued eight principles on scope of review

JUDGMENT

Bela M. Trivedi, J.

1. This batch of five Review Petitions seeks to review the common Judgment and Order dated 06.09.2022 passed by this Court in Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020. Both the said appeals were preferred by the State Tax Officer-appellant.

2. Civil Appeal No. 1661 of 2020 was preferred by the Appellant-State Tax Officer against the Respondent-Rainbow Papers Limited (Corporate Debtor), being aggrieved by the Judgment and Order dated 19.12.2019 passed by the National Company Law Appellate Tribunal (hereinafter referred to as the 'NCLAT'), dismissing the Company Appeal (At) (INs) No. 404 of 2019 filed by the appellant.

The said company Appeal was filed against the order dated 27.02.2019 passed by the Adjudicating Authority, rejecting the Application being I.A. No. 224/271/272/337 of 2018 and P-01/2019 in CP No. (IB) 88/9/NCLT/AHM/2017 filed by the appellants, in which it was held that the appellant cannot claim first charge over the property of the Corporate Debtor, as Section 48 of the Gujarat Value Added Tax 2003 (hereinafter referred to as the 'GVAT Act') cannot prevail over Section 53 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as the IBC).

3. Civil Appeal No. 2568 of 2020 was preferred by the appellant- State Tax Officer against the Respondents- Mr. Chandra Prakash Jain and M/s. Mekaster Engineering Ltd., being aggrieved by the Order dated 23.01.2020 passed by the NCLAT in Company Appeal (At) (Ins) No. 1193 of 2019. The NCALT by the said judgment and order had dismissed the said Appeal of the appellant on the basis of the judgment and order dated 19.12.2019 passed in Company Appeal (At) (Insolvency No. 404 of 2019) (which was the order under challenge in Civil Appeal No.1661 of 2020).

4. This Court while allowing the said Appeals vide the impugned order dated 06.09.2022 held as under:

"56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(l)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act. are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.

58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the

appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.

59. The appeals are allowed. The impugned orders are set aside. The Resolution plan approved by the CoC is also set aside. The Resolution Professional may consider a fresh Resolution Plan in the light of the observations made above. However, this judgment and order will not, prevent the Resolution Applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant. 60. There shall be no order as to costs".

5. The following five Review Petitions have been filed by the Review Petitioners being aggrieved by the said common judgment and order dated 06.09.2022 passed by this Court.

(i) The Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the petitioner - Sanjay Kumar Agarwal, who happened to be the Liquidator of Biotor Industries Limited (previously known as Jayant Oils and Derivatives Private Limited) ('Corporate Debtor') a registered dealer under the Gujarat Value Added Tax 2003 Act (hereinafter referred to as the 'GVAT Act') and the Central Sales Tax Act, 1956 (hereinafter referred to as the 'Sales Tax Act').

The Review Petitioner was not a party to the proceedings of Civil Appeal No. 1661 of 2020, however, has filed the Review Petition claiming to be an "aggrieved person" on the ground that the impugned order dated 06.09.2022 passed by this Court would have direct effect on the proceedings pending between the Review Petitioner and the Gujarat Sales Tax Authority before the Gujarat High Court in Special Civil Application No. 23256 of 2019.

(ii) The Review Petition No. 1621 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner - Ramchandra Dallaram Choudhary, who happened to be the Resolution Professional (hereinafter referred to as the RP) of the Corporate Debtor, "Rainbow Papers Limited" - and was the respondent in the proceedings before the National Company Law Tribunal (hereinafter referred to as the 'NCLT') in Intervention Application No. P-01 of 2019 in CP No. 88/9/NCLT/AHM/2017 and was respondent no. 2 before the NCLAT in Company Appeal (At) (Ins) No. 404 of 2019). According to the Review Petitioner, he was not made party in the Civil Appeal No. 1661 of 2020 filed before this Court and therefore was aggrieved by the said order.

(iii) The Review Petition (Civil) No. 1622 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner State Bank of India, on behalf of

the Consortium of lenders of the Biotor Industries Limited, a company under liquidation. The Review petitioner was not a party to the proceedings of Civil Appeal No. 1661 of 2020, however, claims to be an "aggrieved person" as according to the Review Petitioner, the impugned judgment had an effect over the proceedings pending between the Review Petitioner and the Sales Tax authorities, Vadodara in Writ Petition being SCA No. 23256 of 2019 before the Gujarat High Court.

(iv) The Review Petition (Civil) No. 236 of 2023 in Civil Appeal No. 2568 of 2020 has been filed by the Review Petitioners - Chandra Prakash Jain and Anr., Resolution Professional of M/s. Mekaster Engineering Ltd., and M/s. Mekaster Engineering Ltd (Corporate Debtor), who were the respondents in Civil Appeal No. 2568 of 2020 filed by the Appellant - State Tax Officer. According to the petitioners, they are aggrieved by the common impugned order dated 06.09.2022 passed by this Court as the same was passed without taking into consideration the law laid down by this Court and the provisions of IBC.

(v) The Review Petition (Civil) No. 1623 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner- Indian Overseas Bank, which was one of the members of the Committee of creditors constituted subsequent to the commencement of Corporate Insolvency Resolution Process (CIRP) of the M/s. Rainbow Papers Limited (Corporate Debtor). The Review Petitioner was not a party to the proceedings in Civil Appeal No. 1661 of 2020, however, is seeking review being aggrieved by the impugned judgment dated 06.09.2022.

6. This Court vide the order dated 13th November, 2022, had allowed the Applications seeking permission to file Review Petitions and also allowed the applications seeking Intervention/ Impleadment.

Scope of Review:

7. At the outset, it may be stated that the power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under Article 145. Supreme Court in exercise of the powers conferred under Article 145 of the Constitution of India has framed the Supreme Court Rules, 2013.

The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither Order XLVII CPC nor Order

XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review.

Even a third party to the proceedings, if he considers himself to be an "aggrieved person," may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.1 In view of the said legal position, the Review Petitioners who claimed to be the "aggrieved persons" by the impugned judgment dated 06.09.2022, were permitted to file Review Petitions and were heard by the Court.

8. Before adverting to the contentions raised by the learned counsels for the parties, let us regurgitate the well settled law on the scope of review as contemplated in Order XLVII of the Supreme Court Rules read with Order XLVII of CPC.

9. In the words of Krishna Iyer J., (as His Lordship then was) "a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace."2

10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.3 11. In Parsion Devi and Others vs. Sumitri Devi and Others4, this Court made very pivotal observations: -

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

12. Again, in Shanti Conductors Private Limited vs. Assam State Electricity Board and Others5, a three Judge Bench of this Court following Parsion Devi

and Others vs. Sumitri Devi and Others (supra) dismissed the review petitions holding that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

13. Recently, in Shri Ram Sahu (Dead) Through Legal Representatives and Others vs. Vinod Kumar Rawat and Others6, this Court restated the law with regard to the scope of review under Section 114 read with Order XLVII of CPC.

14. In R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345- 8346 of 2018 (Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another), this Court reiterated the law and held that: -

"15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions."

15. It is very pertinent to note that recently the Constitution Bench in Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others 7, held that even the change in law or subsequent decision/ judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that:-

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

Analysis:

17. Keeping in view the afore-stated legal position, let us examine whether the Review Petitioners have been able to make out any case within the ambit of Order XLVII of Supreme Court Rules, read with Order XLVII of CPC, for reviewing the impugned judgment.

18. We have heard Mr. Harish N Salve, Mr. Naveen Pahwa, Mr. Dhruv Mehta, Mr. Ramji Srinivasan, Mr. Siddharth Bhatnagar, and Mr. Sumesh Dhawan, respective learned Senior Counsels and other learned counsels for the Review Petitioners/ Intervenors, as also Mr. Maninder Singh, learned Senior Counsel and Ms. Aastha Mehta, learned Counsel for the Respondents.

19. The learned Senior Counsels and learned Counsels for the Review Petitioners/ Intervenors placing heavy reliance on the observations made by a two Judge Bench of this Court in C.A. No. 7976 of 2019 (Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others), delivered on 17th July, 2023, submitted that the court in the impugned judgment had failed to consider the waterfall mechanism contained in Section 53, as also failed to consider other provisions of the IBC. They have relied upon the observations made by the co-ordinate Bench in the following paragraph: -

"49. Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 - the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings.

However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was

missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government."

20. Taking recourse to the said observations made by the co-ordinate bench, the learned Counsels for the Review Petitioners have urged to review the impugned judgment. The said submission of the learned Counsels for the review petitioners deserves to be outrightly rejected for the simple reason that any passing reference of the impugned judgment made by the Bench of the equal strength could not be a ground for review.

It is well settled proposition of law that a co-ordinate Bench cannot comment upon the discretion exercised or judgment rendered by another co-ordinate Bench of the same strength. If a Bench does not accept as correct the decision on a question of law of another Bench of equal strength, the only proper course to adopt would be to refer the matter to the larger Bench, for authoritative decision, otherwise the law would be thrown into the state of uncertainty by reason of conflicting decisions.

21. In JaiSri Sahu vs. Rajdewan Dubey and Others8, a Bench of four Judges have made very pertinent observations in this regard: -

"11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled."

22. In Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) Through L.Rs.9, it was observed that: -

"7. Certainty of the law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission."

23. A precise observations made by a three Judge Bench in Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others10, are worth noting -

"17. A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and

certainty in law. Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel, Sub-Committee of Judicial Accountability vs. Union of India, and State of Tripura vs. Tripura Bar Association.)"

24. Apart from the well-settled legal position that a co-ordinate Bench cannot comment upon the judgment rendered by another co-ordinate Bench of equal strength and that subsequent decision or a judgment of a co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review, the submissions made by the learned Counsels for the Review Petitioners that the court in the impugned decision had failed to consider the waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the impugned judgment, the Court had considered not only the Waterfall mechanism under Section 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets.

25. To be precise, the Court in the impugned judgment had categorically reproduced Section 53 in Paragraph 20, other provisions of IBC along with the Regulations of 2016 in Paragraph 21, and the subsequent amendments in the Regulations of 2018, with regard to the submission of claims to be made by the creditors in Paragraphs 22 & 23 of the judgment.

The Court in the impugned judgment has also considered the earlier decisions of this Court in case of Ghanashyam Mishra and Sons Private Limited through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others11 in Paragraph 42. The decision in case of Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another12 in Paragraph 47, and thereafter observed as under: -

"48. A resolution plan which does not meet the requirements of SubSection (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.

49. Section 31(1) of the IBC which empowers the Adjudicating Authority to approve a Resolution Plan uses the expression "it shall by order approve the resolution plan which shall be binding" subject to the condition that the

Resolution Plan meets the requirements of subsection (2) of Section 30. If a Resolution Plan meets the requirements, the Adjudicating Authority is mandatorily required to approve the Resolution Plan. On the other hand, Sub-section (2) of Section 31, which enables the Adjudicating Authority to reject a Resolution Plan which does not conform to the requirements referred to in sub-section (1) of Section 31, uses the expression "may".

50. Ordinarily, the use of the word "shall" connotes a mandate/binding direction, while use of the expression "may" connotes discretion. If statute says, a person may do a thing, he may also not do that thing. Even if Section 31(2) is construed to confer discretionary power on the Adjudicating Authority to reject a Resolution Plan, it has to be kept in mind that discretionary power cannot be exercised arbitrarily, whimsically or without proper application of mind to the facts and circumstances which require discretion to be exercised one way or the other."

26. After considering the Waterfall mechanism as contemplated in Section 53 and other provisions of IBC for the purpose of deciding as to whether Section 53 IBC would override Section 48 of the GVAT Act, it was finally concluded in the impugned order as under: -

"55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act. Section 53 of the IBC begins with a nonobstante clause which reads: -

"Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority.

56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(l)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority."

27. In view of the above stated position, we are of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and

ambit of Review. The learned Counsels for the Review Petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court in various decision for reviewing the impugned judgment.

Since we are not inclined to entertain these Review Petitions, we do not propose to deal with the other submissions made by the learned Counsels for the parties on merits.

28. In that view of the matter, all the Review Petitions are dismissed.

.....................J. [A.S. Bopanna]

.....................J. [Bela M. Trivedi]

New Delhi;

October 31, 2023

1 (2019) 18 SCC 586, Union of India vs. Nareshkumar Badrikumar Jagad & Others
2 (1980) 2 SCC 167, M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi
3 AIR 1965 SC 845, Sajjan Singh and Ors. vs. State of Rajasthan and Ors.
4 (1997) 8 SCC 715
5 (2020) 2 SCC 677
6 (2021) 13 SCC 1
7 (2021) 3 SCC 1
8 AIR 1962 SC 83
9 (1975) 2 SCC 232
10 (2010) 13 SCC 336
11 (2021) 9 SCC 657
12 (2022) 2 SCC 401

IN THE SUPREME COURT OF INDIA

Anil Kumar
Vs.
State of Kerala

[Criminal Appeal No. 2697 of 2023]

HEADNOTE – Exception 4 of Section 300 IPC is not applicable if accused took "undue advantage" of situation.

JUDGMENT

Pankaj Mithal, J.

1. The appellant Anil Kumar has been convicted under Sections 302 and 498A of the Indian Penal Code by both the courts below and has been sentenced to life imprisonment and to pay fine of Rs. 50,000/, and in default to undergo simple imprisonment for one year under Section 302 IPC and rigorous imprisonment of one year under Section 498A IPC with direction that both the sentences would run concurrently.

2. The incident is of 26.09.2010 and had taken place at 9:00 am in the morning at the house of the appellant. The allegation is that the appellant, with the intention to kill his wife, lighted a matchstick and threw it upon her when she had already poured kerosene upon herself due to the quarrel with the appellant.

3. The FIR No.621/2010 dated 26.09.2010 was initially registered under Section 307 IPC wherein it has been stated that the deceased wife, due to unbearable mental and physical harassment caused to her by the appellant, poured kerosene upon herself to deter the appellant from causing further torture to her and that the appellant with the clear intention to kill her took advantage of the situation and lighted the matchstick and threw it on her body uttering "You Die". Thus, the deceased wife was inflicted with burn injuries at their residence by the appellant with clear intention of killing her. Subsequently, when the deceased wife died in the hospital, the case was converted into that under Sections 302 and 498A of IPC.

4. On the basis of the aforesaid FIR, the appellant was charged for uxoricide.

5. There is a clear and clinching evidence on record that the appellant used to harass the deceased wife by making demands for dowry and that both of them used to quarrel a lot. The marriage between the two was solemnized about 11 years before the date of incident and from the wedlock they had a boy and a girl.

At the time of the incident, their children were playing in the courtyard and that the boy, though of a tender age, had deposed that appellant was in habit of beating his wife and there used to be frequent quarrels between his parents.

6. In the trial court as well as before the High Court, the defence of the appellant was that he is not at all guilty of burning his wife. She had the suicidal tendency and had tried to immolate herself on one earlier occasion and had once even tried to cut her veins. She herself had poured kerosene upon herself and set herself on fire. The appellant had simply tried to douse the fire by pouring water from the bucket.

7. The defence so set up by the appellant was not accepted by either of the courts below in view of the overwhelming evidence on record regarding their frequent quarrel and the harassment meted out to the deceased wife. The ocular evidence of the witnesses clearly proved that on the date of the incident, there was again a quarrel between both of them though on a petty matter but the deceased wife, in order to avoid torture at the hands of the appellant and to deter him, went inside the kitchen and poured kerosene on herself. Thereafter, the appellant took advantage of the situation and set her on fire.

8. We had heard the learned counsel for the parties.

9. Learned counsel for the appellant had argued that the appellant had no premeditated mind to kill the deceased wife and that he had no intention even to kill her. Therefore, the provisions of Section 302 IPC are not applicable and at best he can be charged under Section 304 PartII of IPC.

10. The above submission has been strongly opposed on the ground that the appellant had burnt the deceased wife with a matchstick fully knowing that she was drenched in kerosene oil and that lightning of matchstick and throwing it upon her would certainly cause her death.

11. In the case at hand, admittedly, there are multiple dying declarations on record. The first dying declaration is in the form of the statement Ext.P1. This statement of the deceased wife before her death was made before the Judicial First Class Magistrate, Ernakulam, i.e. PW5. The said statement clearly reveals the cause and circumstances of the death of the deceased wife.

12. The other statement which can be read as a dying declaration is Ext.P10 recorded by PW16, Head Constable, Kuruppampady Police at General hospital, Ernakulam, wherein also the deceased wife repeated the same narration as in Ext.P1 in relation to the incident of her death.

13. Both the above statements, if read together, would reveal that on the fateful day, the appellant had assaulted the deceased wife under the influence of alcohol. He even struck a blow on her chest and pushed her. At the time of the said incident, the children were playing in the courtyard. When the assault of the appellant became unbearable, she took the cane of kerosene from kitchen and poured it on her body whereupon her husband lighted a matchstick and burnt her.

14. The Magistrate (PW5), before whom one of the dying declarations was recorded, proves the correctness of the statement and that when the statement of the deceased was recorded, she was coherent and oriented. He also accepted that there was no reason for him to believe that the deceased was not in a position to make the statement or that the statement made by her stands vitiated for any reason. The statement of PW5 was supported by that of PW14 (Dr. K. Venugopal).

15. The statement of the deceased wife further categorically states that the appellant was in habit of drinking alcohol and used to assault her frequently in inebriated condition. She also stated that various criminal cases are pending against the appellant in connection with similar kind of assaults. The above aspect, as stated by the deceased, was corroborated by the testimony of PW21 (Investigating Officer).

Even the DW1 (Saji Mathew) also proved that the deceased, at the time of the admission in the hospital, narrated about her burn injuries and alleged that her husband assaulted her and that she had poured kerosene on herself whereupon her husband had set her on fire. The medical report reveals that the deceased had suffered 96% burn injuries.

16. The incident was also proved by the oral testimony of PW1 (Sahajan) and PW2 (Gopalakrishnan), the neighbours who took the deceased to the hospital in a jeep and have seen the deceased in burning state.

17. In view of the aforesaid facts and circumstances and the overwhelming evidence on record, there is no escape from the conclusion that the deceased died of burn injuries. She had herself poured kerosene upon her body and that the appellant set her ablaze and later tried to douse the fire by pouring water. The appellant also accompanied the deceased to the hospital.

18. Now the only point for consideration is whether in the above circumstances, the appellant had any premeditated mind to kill the deceased or was it due to grave and sudden provocation which would not amount to murder or would at best be a case of culpable homicide not amounting to murder punishable with

imprisonment for a term which may extend up to 10 years or with fine or with both under Section 304 Part II of IPC.

19. In support of his above argument, learned counsel for the appellant relied upon **Kalu Ram Vs. State of Rajasthan (2000) 10 SCC 324,** which was case of a similar kind in connection with uxoricide by burning. However, it would be relevant and material to refer to Exception 4 to Section 300 IPC which defines "Murder" before extending the benefit of the above decision to the appellant. The said exception reads as under:

"Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.-It is immaterial in such cases which party offers the provocation or commits the first assault."

20. It is on the strength of the above exception that from the side of the appellant it has been argued that the appellant is not guilty of murder as he had no premeditated mind and that the action of the appellant arose out of a sudden fight. In the first place, the fight was not sudden. The appellant and the deceased wife had a past history of quarrel and that they had been quarrelling on the fateful day also since before the actual incident. During their quarrel, a neighbour/(Sahajan) i.e. PW1 had visited their house and the deceased wife had shown some injuries received by her during the assault.

However, realizing the quarrel between the two, he left saying that he would come later on. It was thereafter that the incident of pouring kerosene and burning took place. So, there was sufficient time in between the two acts and it cannot be said that there was a sudden quarrel and provocation leading to burning. The appellant saw the deceased wife drenched in kerosene and was conscious that if lighted, she would be burnt to death even then ignited her to fire.

This shows premeditated mind to kill her. More particularly, the appellant cannot take advantage of the 4th Exception only on the pretext that it was not on account of premeditated mind or out of a sudden fight or that his intentions were not bad as he tried his best to douse the fire and to save the life of the deceased wife for the reason that the benefit of the above exception would have been available to him, had he not taken undue advantage of the situation.

21. The exception clearly in unequivocal term states that it would be applicable where culpable homicide is committed not only without premeditated mind in a sudden fight or quarrel but also without the offender taking "undue advantage"

of the situation. In the instant case, the appellant upon seeing the deceased drenched in kerosene clearly took advantage of the situation and lighted a matchstick and threw it upon her so that she can be burnt. The appellant having taken "undue advantage" of the situation cannot be extended the benefit of Exception 4 to Section 300 IPC so as to bring the case within the ambit of PartII of 304 IPC.

22. In view of the above legal position, the ruling cited above, viz. Kalu Ram (supra) would not benefit the appellant.

23. The First Information Report and the dying declarations on record clearly contain the statement of the deceased that when she had poured kerosene upon herself to deter the appellant from fighting and assaulting, he lighted a matchstick and with the intention to kill her, threw it upon her by saying "You Die".

24. The aforesaid evidence clinches the issue and establishes beyond doubt that the appellant is guilty of the offence of culpable homicide amounting to murder and is not entitled to benefit of the Exception 4 to Section 300 IPC.

25. Accordingly, we are of the opinion that the courts below have not committed any error of fact or law in convicting and sentencing him to a maximum punishment of life imprisonment.

26. The appeal accordingly lacks merit and is dismissed. However, we would observe that the appellant who is in jail may, in usual course, be at liberty to apply for remission in accordance with the prevailing policy of the State.

....................J. (Abhay S. Oka)

....................J. (Pankaj Mithal)

New Delhi;

November 01, 2023.

IN THE SUPREME COURT OF INDIA

Parshuram
Vs.
State of Madhya Pradesh

[Criminal Appeal No. 524 of 2021]

HEADNOTE – For conviction under Section 149 IPC, no overt act is needed only membership of unlawful assembly is enough.

JUDGMENT

B.R. Gavai, J.

1. Leave granted in appeal arising out of SLP (Criminal) No. 1718 of 2022.

2. These appeals challenge the common judgment and order dated 14th March 2018, passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior, in Criminal Appeal Nos. 243 and 260 of 2005, whereby, the High Court upheld the judgment and order dated 30th March 2005, passed by the 1st Additional Sessions Judge, Shivpuri (Madhya Pradesh) (hereinafter referred to as the "trial court") in Sessions Trial No. 09/2002, convicting the appellants and sentencing them to imprisonment for life for the offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), to undergo rigorous imprisonment for seven years for the offence punishable under Section 326 read with Section 149 of IPC, to undergo rigorous imprisonment for six months for the offence punishable under Section 324 read with Section 149 of IPC, to undergo rigorous imprisonment for three months for the offence punishable under Section 323 read with Section 149 of IPC, and to undergo rigorous imprisonment for three months for the offence punishable under Section 148 of IPC.

3. Shorn of details, the facts leading to the present appeals are as under:

3.1 It is the prosecution case that the appellant Jalim Singh had constructed a shed (taparia) on the passage of the village which is used by the cattle. Since the said shed (taparia) was damaged by a buffalo belonging to the complainant party, appellant Jalim Singh had beaten that buffalo with lathi and drove that buffalo away. Thereafter, appellant Jalim Singh, Ram Sewak @ Sewak, Ram Lakhan @ Lakhan, Ramrup @ Roopa, Ram Sahai, Parshuram (appellant in Criminal Appeal No. 524 of 2021) and Mangal Singh came to the house of Chironji (PW-6).

On seeing this, Chironji (PW-6) ran away from the house out of fear. Thereafter, accused persons broke the doors and entered his house. It is the prosecution case that the accused persons caught and beat Madan, Leelabai and Kailash. Thereafter, all the accused persons fled from there. When Chironji (PW-6) came back to his house, he was informed about the incident.

3.2 It is further the prosecution case that on 6th October 2001 at 09.15 am, when Chironji (PW-6), Madan (deceased), Raghuveer, Patiram (PW-13), Leelabai (died natural death during pendency of trial), Ramhet (PW-12), Gyani (PW-14) and Kailash (PW-15), from the complainant party were going on a tractor to the Police Station to lodge the complaint, the accused persons, armed with lethal weapons like barchi, sword, spear, lathi and country-made bomb (hathgola), waylaid them to cause injuries to them.

3.3 After intercepting the victims, Ram Lakhan who was carrying a barchi, stabbed Madan on the left side of his chest, as a result of which Madan fell down unconscious; thereafter, Ram Sewak @ Sewak, who was carrying a gupti, caused injuries to the complainant on the right side of his torso (Bakha), and gave another blow on his head; and thereafter, Ramrup @ Roopa who was carrying a sword, caused injury to the complainant on his shoulder. Other accused persons, including the appellants herein, who were also armed with lethal weapons, caused grievous injuries.

3.4 The original First Information Report (for short, "FIR") was registered for the offences punishable under Sections 307, 323, 452, 147, 148 and 149 of IPC. However, on the death of Madan, the same came to be converted to the one under Section 302 IPC.

3.5 The accused persons were arrested, and after completion of investigation, the chargesheet was filed in the Court of Judicial Magistrate 1st Class, Kolaras. Since the case was exclusively triable by the Sessions Court, the case was committed to the Court of 1st Additional Sessions Judge, Shivpuri, on 10th January 2002.

3.6 Before the trial court, the accused persons (in total nine), denied the charges levelled against them, stating that they have been falsely implicated because of a land dispute. Defence examined two witnesses and the prosecution examined twenty-one witnesses. Out of the twenty-one prosecution witnesses, Chironji (PW-6), Ramhet (PW-12), Partiram (PW-13), Gyani (PW-14) and Kailash (PW-15) were injured eyewitnesses.

3.7 The trial court, thereafter, framed five issues for its consideration in connection with the charges framed against the accused persons. Vide judgment

dated 30th March 2005, the trial court held, that the evidence adduced by the prosecution proved that the accused persons Parshuram, Ram Sahai, Mangal Singh, Ram Lakhan, Ramrup @ Roopa, Ram Sewak @ Sewak and Jalim Singh, formed an unlawful assembly on the date of the incident and thereafter they grievously assaulted the complainant and his family members, thereby killing one of them in furtherance of the common intention of their unlawful assembly, using deadly weapons.

The abovenamed seven accused were held guilty of the charges under Section 302 read with Section 149, Section 326 read with Section 149, Section 324 read with Section 149, Section 323 read with Section 149, Section 147 and Section 148 of IPC, and the remaining two accused, namely Diwan Singh and Siyaram were acquitted of the charges.

3.8 Consequently, the trial court, after considering the facts and circumstances of the case, convicted and sentenced the accused persons as aforesaid. All the sentences awarded to the accused were to run concurrently.

3.9 Aggrieved by the judgment of the trial court, the accused persons (Parshuram & Others), preferred Criminal Appeal No. 243 of 2005, and accused Jalim Singh preferred Criminal Appeal No. 260 of 2005 before the High Court. The High Court vide common impugned judgment and order dated 14th March 2018, dismissed both the criminal appeals and affirmed the judgment and order of conviction as recorded by the trial court. Aggrieved thereby, the present appeals are filed by accused Parshuram and Jalim Singh.

4. We have heard Shri Rishi Malhotra, learned counsel appearing for the appellant-Parshuram in Criminal Appeal No. 524 of 2021, Shri A. Sirajudeen, learned Senior Counsel appearing for the appellant-Jalim Singh in appeal arising out of SLP (Crl.) No. 1718 of 2022 and Shri Abhimanyu Singh, learned counsel appearing on behalf of the respondent-State of Madhya Pradesh.

5. Shri Malhotra submitted that both the High Court and the trial court have grossly erred in convicting the appellants. He submitted that the prosecution has failed to attribute any specific role to the appellants herein. In the absence of the same, he submitted that the conviction recorded under Section 302 of IPC would not be tenable.

The learned counsel submitted that the role attributed to the present appellant Parshuram was only holding the lathi and as such, no injuries which had caused the death of the deceased, can be attributed to the appellant Parshuram. The learned counsel further submitted that two of the accused persons, who were

attributed the role of holding hand-bombs, were acquitted by the trial court. As such, conviction of the present appellants was not sustainable.

6. Shri Malhotra submitted that many accused persons had sustained injuries. These injuries were not at all explained by the prosecution. He submitted that the FIR which was lodged by the accused persons against the complainant party arising out of the same incident was prior in point of time. The learned counsel, relying on a recent judgment of this Court in the case of Nand Lal and Others v. State of Chhattisgarh1, submitted that non-explanation of injuries is fatal to the prosecution case and the appellants are entitled to be acquitted on the ground of non-explanation of such injuries.

7. Shri Sirajudeen, learned Senior Counsel for the appellant-Jalim Singh in appeal arising out of SLP (Crl.) No. 1718 of 2022, also advanced arguments on the same lines.

8. Shri Singh, on the contrary, submitted that both the trial court and the High Court have concurrently found that the prosecution has proved its case beyond reasonable doubt. He submitted that since the appellants were a part of the unlawful assembly, it was not necessary for the prosecution to attribute a specific role to each of them.

It is submitted that the object of the unlawful assembly was to kill the members of the complainant party and as such, no interference would be warranted in the finding of conviction recorded by the trial court as affirmed by the High Court. He further submitted that the injuries sustained by the deceased was on vital parts caused with deadly weapons.

9. With the assistance of the learned counsel for the parties, we have perused the material placed on record.

10. Chironji (PW-6) is the first informant. He has narrated about the incident which had taken place on a day prior to the day of occurrence of the present incident. He has stated that, after the accused persons assaulted Madan, Lila (sic Leelabai) and Kamlesh (sic Kailash), when they were going on a tractor to the Police Station for lodging the complaint, they were waylaid by Mangal, Roopa, Sewak, Ram Sahai, Parshuram, Lakhan, Jalim, Diwan and Siya and 4-5 other persons.

All of them stopped their tractor and thereafter hurled hand bombs. He further stated that Sewak beat with Gupti on his chest and also hit Gupti on his head. He stated that Roopa stabbed him with sword on his shoulder. He stated that Madan was stabbed in the chest by Lakhan with barchi, on which, he became

unconscious. He stated that thereafter, they went to the Police Station. Madan died at 10.00 am. His evidence is corroborated by Ramhet (PW-12).

11. Dr. S.K. Majeji (PW-4) has performed autopsy on the deceased. Injuries sustained by the deceased are thus:

"Injury no. 1: Deep punctured wound l" X 1/2" X Lung Deep in the chest on the left side. The skin and muscles below this injury and left lung of the deceased had ripped apart because of this injury. The size of ripped lung was 1" X 2" X 2";

Injury no.2: Peeled wound 4" X l" in the center of the back; and Injury no.3: Peeled wound ½" X l/2" on left arm."

12. It is sought to be urged on behalf of the appellants that the testimonies of Chironji (PW-6) and Ramhet (PW-12) are not reliable inasmuch as there are material contradictions in their evidence. No doubt that there are certain inconsistencies in the evidence of Chironji (PW-6) and Ramhet (PW-12). However, it is to be noted that the witnesses are rustic villagers and they cannot be expected to give minute details identical with each other.

13. The law with regard to conviction under Section 302 read with Section 149 of IPC has been succinctly discussed by a Constitution Bench of this Court in the locus classicus of Masalti v. State of U.P.2, wherein this Court observed thus:

"17. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly.

It is in that context that the observations made by this Court in the case of Baladin [AIR 1956 SC 181] assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly.

In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly."

14. It could thus clearly be seen that the Constitution Bench has held that it is not necessary that every person constituting an unlawful assembly must play an active role for convicting him with the aid of Section 149 of IPC. What has to be established by the prosecution is that a person has to be a member of an unlawful assembly, i.e. he has to be one of the persons constituting the assembly and that he had entertained the common object along with the other members of the assembly, as defined under Section 141 of IPC. As provided under Section 142 of IPC, whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

15. Undisputedly, from the evidence of Chironji (PW-6) and Ramhet (PW-12), it is clear that the present appellants were members of the unlawful assembly. No doubt that there is no specific role attributed to the present appellants of assaulting the deceased Madan. However, since the appellants were members of the unlawful assembly, in view of the law laid down by this Court in the case of Masalti (supra), it is not necessary that such a person, for being convicted, must have actually assaulted the deceased.

16. Having held that, the question which we are left to answer is, as to, whether, the conviction under Section 302 of IPC would be tenable or not.

17. The defence taken by the appellants and the other accused persons was that in fact the accused persons had first lodged the complaint with regard to the attack made by the complainant party. It is their defence that after lodging the complaint, when they were coming back from the Police Station, the

complainant party had come on a tractor and assaulted the accused persons. It is their contention that the accused persons tried to save themselves. As a result whereof, there was a free fight resulting in injuries to the members of both the parties and unfortunately deceased Madan succumbing to the injuries.

18. It is to be noted that the defence side has also examined two witnesses. Ram Krishan Pandey (DW-1) is the police Constable who had registered the FIR lodged by one of the accused persons. Dr. Nisar Ahmed (DW-2), the Medical Officer, Shivpuri, who has deposed about the injuries sustained by accused Ram Sewak @ Sewak, Ram Lakhan and Ramrup @ Roopa. The injuries suffered by accused Ram Sewak @ Sewak are thus:

(i) Incised wound 7 cm X 1 cm on the deep bone on the front of the forehead;

(ii) Torn wound 3 cm X 1 cm was skin deep at the back and right side of the head.

(iii) Incised wound 4 cm X 2 cm was on the left shoulder posterior to the muscle depth;

(iv) Incised wound 1 X 1 cm/2 X 1 cm/ 2 cm on the outer and upper part of the left forearm;

(v) Incised wound 1 X 1 cm/ 2 X 1 cm was located on the left thumb;

(vi) Diffuse swelling in the upper left forearm;

(vii) Swelling of the right middle malleus and pain on pressure;

(viii) Diffuse swelling in the right thigh;

The injuries suffered by accused Ram Lakhan are thus:

(i) Diffuse swelling on the tendon in the back of the left leg.

The injuries suffered by accused Ramrup @ Roopa are thus:

(i) Cracked wound 6 X 1 cm blind skin deep in right parietal area of head;

(ii) The swelling and deformity in the lower part of the right forearm;

(iii) Swelling and pain on pressure in upper part of left scapula;

(iv) Diffuse swelling above the right knee.

19. Though the trial court has referred to the fact of the case being registered against the complainant party for the offences punishable under Sections 323, 341, 294, 147, 148 and 149 of IPC, the trial court observed that no fatal weapons were used by the complainant party in assaulting the accused persons. However, on the contrary, the accused persons had used the fatal weapons.

20. We do not find the said observation of the trial court correct. The injuries sustained by Ramrup @ Roopa is by a sharp weapon. It will be trite to refer to the following observations of this Court in the case of Lakshmi Singh and Others v. State of Bihar3:

"12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

"(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused.

Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima [(1975) 2 SCC 7 : 1975 SCC (Cri) 384] there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case.

This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

21. A similar view with regard to non-explanation of injuries has been taken by this Court in the cases of State of Rajasthan v. Madho and Another4, State of M.P. v. Mishrilal (Dead) and Others5, Nagarathinam and Others v. State Represented by Inspector of Police6 and recently in the case of Nand Lal (supra).

22. Undisputedly, in the present case also, the witnesses are interested witnesses. The injuries sustained by three accused persons are not at all explained. The trial court and the High Court have not considered this aspect of the matter.

23. Non-explanation of injuries on the persons of the accused would create a doubt, as to, whether, the prosecution has brought on record the real genesis of the incident or not. Undisputedly, as observed hereinabove, a cross case was also registered against the complainant party for the injuries sustained by the accused persons.

24. The defence taken by the accused persons is that when they were coming back from the Police Station, it was the complainant party which started assaulting them resulting into a free fight. Their further case is that in the said free fight, the persons from both the sides received injuries. As a result of the injury caused in the said free fight, Madan died.

25. From the material placed on record, it is also not clear as to whether the common object of the unlawful assembly was to cause the death of the deceased or not. The entire incident arose on account of the happening on a day prior to the day of occurrence of the present incident, i.e. the buffalo of the complainant party spoiling the taparia built by accused Jalim Singh.

It is quite possible that the accused persons did not have an intention to cause death of anybody from the complainant party. It is possible that the accused persons only assembled to teach a lesson to the complainant party on account of the buffalo from their party damaging the taparia of the accused Jalim Singh.

26. We are therefore of the considered view that the appellants are entitled to benefit of doubt. The conviction under Section 302 IPC would not be sustainable. The prosecution has failed to prove beyond reasonable doubt that

the unlawful assembly had an intention to cause the death of the deceased. As such, we find that the case would fall under Part-II of Section 304 of IPC.

27. In the result, the appeals are disposed of with the following directions:

(i) The conviction under Section 302 IPC is altered to Part-II of Section 304 of IPC;

(ii) The appellants are sentenced to suffer rigorous imprisonment for 7 years.

28. Pending application(s), if any, shall stand disposed of in the above terms.

....................J. [B.R. Gavai]

....................J. [B.V. Nagarathna]

....................J. [Prashant Kumar Mishra]

New Delhi;

November 03, 2023.

1 2023 SCC OnLine SC 262

2 [1964] 8 SCR 133

3 (1976) 4 SCC 394

4 1991 Supp (2) SCC 396

5 (2003) 9 SCC 426

6 (2006) 9 SCC 57

IN THE SUPREME COURT OF INDIA

Manjunath & Ors.

Vs.

State of Karnataka

[Criminal Appeal No. 866 of 2011]

HEADNOTE – The person who recorded dying declaration, his examination in person is essential. For admissibility under section 27, of the Evidence Act, the fact discovered must be a direct consequence of information received from a person in custody.

JUDGMENT

Sanjay Karol J.,

1. Appellants1 (six in number) have filed this appeal against the judgment and order dated 21st September 2010 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1795 of 2004 whereby the appeal filed by the State against the verdict of acquittal in favour of all 29 accused, vide judgment and order dated 25th September, 2004 in S.C. No.162 of 1999, passed by the Additional Sessions Judge - Presiding Officer, Fast Track Court- II, Kolar, was partly allowed. Overturning the same in respect of A-1 to A-5 and A-7, the Court while convicting them for having committed an offence punishable under Sections 143, 144, 146, 147, 148, 447, 324, 326, 504 and 506 r/w Section 149 of Indian Penal Code, 1860 sentenced each one of them to undergo rigorous imprisonment for a period of 4 years and pay a fine of ₹ 5000 each.

FACTUAL PRISM

2. The facts, as set out by the Courts below, shorn of unnecessary details are :-

2.1 On 6th August 1997, the deceased namely Byregowda2 and his brothers, T.V. Narayanaswamy (PW4), T.V. Gopalreddy (PW5), T.V. Rajanna (PW10) and Marappa (PW2) had gone to the fields to work when, allegedly, all the accused armed with weapons such as clubs, iron rods and choppers came and threatened them. PW2, PW4, PW5 and PW10 managed to escape but while the deceased, was attempting to do so, he was greviously assaulted by A1, A2 and A3 by means of iron rod and a steel edged weapon (chopper).

Immediate medical treatment was administered to the deceased at the Sidlaghatta General Hospital by Dr. Loganayaki (PW1) who also informed the police. V.M. Sonnappa (PW19), the then Sub-Inspector of Police took his

statement (Ex. P1) and as a consequence therefore, registered FIR being Crime No. 249/1997 dated 08.08.1997 under several penal provisions.

2.2 After due investigation, the challan came to be filed and the case was committed to the Court of Additional Sessions Judge-Presiding Officer, Fast Track Court-II, Kolar. All the accused denied the charges under section 120B, 143, 447, 302 read with Section 149 IPC and claimed trial. Accused Nos.6 and 8 are recorded to have died and therefore, the proceedings against them stood abated at this stage.

FINDINGS OF THE TRIAL COURT

3. The prosecution in order to prove the charges levied, examined 28 witnesses; exhibited 24 documents and three material objects. The accused did not lead any evidence save and except producing five witnesses to contradict the version of PW 4, Gopala Reddy (PW5), Chandrappa (PW15), T.V Krishnappa (PW17) and T.S Ramakrishna (PW13) respectively.

4. The evidence led was categorized into five heads -

(a) ocular;

(b) Dying declaration;

(c) circumstantial evidence;

(d) recovery of incriminating material; and

(e) motive.

4.1 PW2, PW3 and PW15 are eyewitnesses and PW2 and PW15 have not supported the case of the prosecution. PW2 has deposed that he had heard from the family members of the deceased that he had sustained various injuries and upon reaching there found the latter to be lying a little away from his own lands and later find out that he had died. PW3 has deposed that he had seen the accused persons assaulting the deceased, and it is they who had laid the deceased, post such assault, on the eucalyptus leaves on the fields of PW11.

PW15 stated that he saw the deceased lying on southern side of the eucalyptus plantation where PW2, PW4 and PW5 were also present. PW15 has deposed that he saw the accused persons armed with weapons and proceeding towards the garden. He followed them and found that the accused had chased and assaulted the deceased. It is a point of conflict whether the accused had, as per the statement of PW3, laid the deceased down on the eucalyptus fields of PW11 -

Raghava or was it PW15 who had done so. No other witnesses have deposed to that effect. The Trial Court, therefore, did not rely on the ocular evidence.

4.2 In respect of the dying declaration, it was observed that the evidence clearly shows PW19 to not have recorded the declaration. It has borne out from cross examination of this witness that it was one of his staff members, namely Nataraj who had recorded the statement who was neither cited nor examined as a witness. Moreover, this deponent has not even endorsed such a statement.

4.3 In respect of the medical evidence furnished, it was observed that PW1 admitted non stating of who furnished history of injuries- whether it was injured himself or another person who had brought him to the hospital. This, read alongside PW1's earlier statement that numerous persons were present with the injured/deceased led the Trial Court to believe that, on account of severe head injury he was not in a position to give a statement and it was other persons present who furnished necessary details to form the same.

4.4 In respect of circumstantial evidence, it was observed that PW2 has not implicated any of the accused in the circumstance relating to a mob approaching the fields in the morning of 6 August 1997. PW15 had deposed, as noted above that the deceased was laid on eucalyptus leaves in an injured state. It was however not his case that the deceased had informed him about who caused his injuries. This, led the Trial Court to observe "falsity" in the evidence of PWs 4,5,6 and 7 who stated the deceased had told that the accused assaulted him.

4.4.1 For PW3 and PW13, it was observed that their conduct did not reflect that of an "ordinary prudent man" as the former did not rush to the village or to the rescue of the deceased but instead, ostensibly, to invite the villagers to a hiding place; and the letter since he claimed to have heard the accused persons conspiring to attempt to take the lives of the deceased and his brothers and further claimed that later he heard the persons state that while one of them was caught, others ran away. Despite hearing this he proceeded to leave to attend the marriage of someone at Vijayapura. This, the Court, found to be a conduct, against of a prudent person who proceeded as normal, despite hearing of a conspiracy to kill a fellow man.

4.4.2 It is in light of above conclusions that the Trial Court held the web of circumstances to be unable to point "unerring, cogently and positively" to the guilt of the accused.

4.5 On recovery of weapons, the Court observed that although the weapons had been recovered at the instance of accused persons - clubs at the instance of A10, A3, A5, A6 and A7; iron rod at the instance of A1 and A2 and chopper at the

instance of A4, but doubted the veracity of the seizure on the ground that the clubs were recovered from a place of common access and the chopper as well as the rods were recovered from places where others also resided. Further, it was observed that the clubs seized (M.O. 3) were of 4 ft in length and 3 inches, in diameter which could cause such as abrasion(s), contusion(s), and laceration(s). However, the medical evidence of PW1 did not record any such injury. The Court, therefore, concluded that the incriminating objects or weapons were not of any assistance in the case against the accused.

4.6 On motive, it was observed that although a dispute had taken place on the night of 4th August, 1997 between PW4 and A1, A2, A4, A7, A8, A9, A11 and A12 regarding the obstruction of a pathway, resulting into criminal prosecution against the persons involved but leading only to their acquittals. Therefore, in view of the Court, motive was absent.

4.7 Two other aspects were also urged on behalf of the prosecution, one; regarding the place of occurrence of offence and two; the delay in recording the statements of the ocular and circumstantial witnesses. On both these grounds as well, the court did not find anything to be pointing towards the guilt of the accused persons.

4.8 In view of such findings, the court acquitted all accused persons.

5. The State, aggrieved by the acquittals en masse, appealed to the High Court.

FINDINGS OF THE HIGH COURT

6. It was noted that the deceased had specifically named as certain accused as also attributed specific roles to them. Having appreciated the evidence on record and the submissions of the learned counsel for the accused, who stated that the doctor had not certified the deceased fit to give a statement and in the absence of such a certificate of fitness, his declaration could not be relied upon; and the learned counsel for the state who submitted that the dying declaration categorically indicts A1-A7.

7. The Court found :-

7.1 The dying declaration makes a clear case against A1 to A7;

7.2 The injuries sustained by the deceased correspond to narration of the incident to PW19 (S. Narayanaswamy) and that PW1 (Dr. Loganayagi) certified the deceased to have been in a fit condition to give a statement.

7.3 The dying declaration of the deceased stood corroborated by PW3, PW4, PW5 as well as other witnesses.

7.4 On submission of the learned counsel for the accused that the injuries inflicted upon the deceased were on non-vital parts of the body, no intention could be gathered on part of the accused; hence the Court, in its wisdom, convicted the above specified accused under Section 304 Part II, IPC to undergo a sentence of rigorous imprisonment for a period of four years and pay fine of Rs. 5000/- each. All other accused were acquitted.

8. The position of the accused persons as it presently stands is indicated in a tabular form as under :-

Sl no.	Name of Accused	Sentenced by Trial Court	Sentenced by High Court	Punishment awarded
1.	Manjunath S/o Bachanna	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
2.	Ramegowda S/o Bachanna	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
3.	Ramappa S/o Narayanappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
4.	Ramesh S/o Chikka Venkatarayappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
5.	Manjunatha S/o Ramappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
6.	Ramanjanappa S/o Muniswamappa (Dead)	Expired	-	
7.	Dyavappa S/o Narayanappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
8.	Dyavappa S/o Chikka Miniswamappa (Abated)	Abated	-	
9.	Venugopala S/o Pillappa	Acquitted	Acquitted	
10.	Chowda Reddy S/o Narayanappa	Acquitted	Acquitted	
11.	Jayachandra S/o	Acquitted	Acquitted	

	Bachappa			
12.	Narayana Swamy @ Beema S/o Munegowda	Acquitted	Acquitted	
13.	Bachegowda, S/o Pillappa	Acquitted	Acquitted	
14.	Narayana Swamy S/o Pillappa	Acquitted	Acquitted	
15.	Krishanappa S/o Guttappa	Acquitted	Acquitted	
16.	Mune Gowda S/o Venkatarayappa	Acquitted	Acquitted	
17.	Aswath S/o Gateppa	Acquitted	Acquitted	
18.	Aswathappa S/o Nanjegowda	Acquitted	Acquitted	
19.	Murthy S/o Venkatappa	Acquitted	Acquitted	
20.	Ramesh S/o Mune Gowda	Acquitted	Acquitted	
21.	Ramesh S/o Byamma	Acquitted	Acquitted	
22.	Nagaraja S/o Narayanappa	Acquitted	Acquitted	
23.	Dayappa S/o Pillappa	Acquitted	Acquitted	
24.	Naryanaswamy S/o Bachappa	Acquitted	Acquitted	
25.	Ramappa S/o Chennarayappa	Acquitted	Acquitted	
26.	Manjunatha S/o Naryanappa	Acquitted	Acquitted	
27.	Sonne Gowda S/o Chennarayappa	Acquitted	Acquitted	
28.	Mahesh S/o Jayachandra	Acquitted	Acquitted	
29.	Lokesh S/o Bachanna	Acquitted	Acquitted	

9. Proceeding further, we notice, that this is a case involving primarily a dying declaration made by the accused in addition to the ocular and circumstantial evidence.

10. In fact, the dying declaration (Ext. P1) proven by PW19, is the main foundation of the prosecution case. It would be beneficial to appreciate the principles that the courts must adhere to when adjudicating a case of this nature.

PRINCIPLES IN REGARD TO DYING DECLARATIONS

11. Section 32 the Indian Evidence Act, 18723 relates to statements, written or verbal of relevant fact made by a person who is dead or who cannot be found, in other words, dying declaration. The various principles laid down by pronouncements of this court in respect of dying declarations can be summarised as under: -

11.1 The basic premise is "nemo moriturus praesumitur mentire" i.e. man will not meet his maker with a lie in his mouth.

11.1.1 In Laxman v. State of Maharashtra4 a Constitution bench of this court observed: -

"when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement."

11.2 For a statement to be termed a "dying declaration", and thereby be admissible under Section 32 of IEA, the circumstances discussed/disclosed therein "must have some proximate relation to the actual occurrence".

11.3 The Privy Council in Pakala Narayana Swamy v. Emperor5 explained the phrase "circumstances of the transaction" as under:-

"The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused.

Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower

than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose.

It will be observed that 'the circumstances' are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that 'the cause of (the declarant's) death comes into question'."

11.3.1 In the well-known case of Sharad Birdhichand Sarda v. State of Maharashtra,6 principles in respect of the application of section 32 have been noted as under: - Per S. Murtaza Fazal Ali J.,-

"21. ...

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context.

Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be

valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

11.4 Numerous judgments have held that provided a dying declaration inspires confidence of the court it can, even sans corroboration, form the sole basis of conviction. In this regard, reference may be made to Khushal Rao v. State of Bombay7, Suresh Chandra Jana v. State of West Bengal8 and Jayamma v. State of Karnataka9.

11.5 In order to rely on such a statement, it must fully satisfy the confidence of the court, since the person who made such a statement is no longer available for crossexamination or clarification or for any such like activity.

11.5.1 In Madan v. State of Maharashtra10, while referring to an earlier decision in Ram Bihari Yadav v. State of Bihar11 it was observed that a Court must rely on dying declaration if it inspires confidence in the mind of the court.

11.5.2 On a similar note, this Court in Panneerselvam v. State of T.N12 has observed: -

"Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness."

11.5.3 However, a note of caution has also been sounded. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence.

11.5.3.1 In Paniben v. State of Gujarat13 it was observed-

"The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination."

A reference may also be made to K. Ramachandra Reddy v. Public Prosecutor14

11.6 The Court must be satisfied that at the time of making such a statement, the deceased was in a "fit state of mind". In Shama v. State of Haryana,15 a fit state of mind has been held to be a prerequisite, alongside the ability to recollect the situation and the state of affairs at that point in time in relation to the incident, to the satisfaction of the court.

11.6.1 In Uttam v. State of Maharashtra16, it was discussed that it is for the court to determine, from the evidence available on record, the state of mind being fit or not.

11.6.2 In order to make a determination of the state of mind of the person making the dying declaration, the court ordinarily relies on medical evidence.17 However, equally, it has been held that if witnesses present, while the statement is being made, state that the deceased while making the statement was in a fit state of mind, such statement would prevail over the medical evidence.18 The statement of witnesses present prevailing over the opinion of the doctor has been reiterated in Uttam (supra).

11.6.3 It has also, however, been held in Laxman (supra) that the mere absence of a doctor's certificate in regard to the "fit state of mind" of the dying declarant, will not ipso facto render such declaration unacceptable. This position had been once again recognised in Surendra Bangali @ Surendra Singh Routele v. State of Jharkhand19.

11.7 In case of a plurality of such statements, it has been observed that it is not the plurality but the reliability of such declaration determines its evidentiary value. The principle as held in Amol Singh v. State of M.P20 was:-

"13. it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration [but] the statement should be consistent throughout. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not [and] while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

11.7.1 Faced with multiple dying declarations, this Court in Lakhan v. State of M.P21 observed-

"21. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

11.7.2 This Court, in Jagbir Singh v. State (NCT of Delhi)22, in this respect, concluded as under: -

"32. We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations.

If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered."

11.8 The presence of a Magistrate in recording of a dying declaration, is not a necessity but only a rule of Prudence. To this effect in Jayamma (supra), this Court observed :

"law does not compulsorily require the presence of a judicial or executive Magistrate to record a dying declaration or that a dying declaration cannot be relied upon as the solitary piece of evidence unless recorded by judicial or executive Magistrate. It is only a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a judicial or executive Magistrate so as to muster additional strength to the prosecution case."

Referring to the Constitution bench in Laxman (supra) the principle of a dying declaration not necessarily to be recorded by a Magistrate stands reiterated in Rajaram v. State of Madhya Pradesh23

11.9 Dying Declaration is not to be discarded by reason of its brevity is what is held in Surajdeo Ojha v. State of Bihar24.

11.9.1 It was observed in the State of Maharashtra v. Krishnamurti Laxmipati Naidu25 that if the dying declaration, while being brief, contains essential information, the courts would not be justified in ignoring the same.

11.9.2 In fact, the Constitution bench in Laxman reiterated this principle, stating: -

"Marely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity."

11.10 Examination of the person who reduced into writing, the dying declaration, is essential. Particularly, in the absence of any explanation forthcoming for the production of evidence is what stands observed in Govind Narain v. State of Rajasthan26.

11.10.1 In fact, in Kans Raj v. State of Punjab27 it was held: -

"11. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement."

and; In Sudhakar v. State of Maharashtra28, this Court categorically observed: -

"5. If it is in writing, the scribe must be produced in the court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. However, in cases where the original recorded dying declaration is proved to have been lost and not available, the prosecution is entitled to give secondary evidence thereof."

11.11 The questions that a court must ask when dealing with a case concerning a dying declaration, as listed out by this Court in Irfan@Naka v. State of U.P.29 along with the principles culled out hereinabove form the complete gamut of

consideration required on part of a court when deciding the weightage to be awarded to a dying declaration.

12. Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is "wholly reliable", then the court can base conviction thereupon. This applies even in cases where there is a sole eyewitness.30

13. The facts at hand, the trial court has disbelieved such evidence. The discarding of eye-witness testimony is a factspecific inquiry, and therefore the correction of such an action by the trial court shall be discussed later.

14. The law on circumstantial evidence, is well settled. The locus classicus on the issue is Sharad Birdhichand Sarda, (supra) which stands consistently followed up until very recently in Kamal v. State (NCT of Delhi)31.

14.1 Illustratively, in Gargi v. State of Haryana32 this court has, referring to various earlier judgments, summarised the principles relating to circumstantial evidence. The principle, is that the sum total of circumstances, when examined should point to the guilt of the accused, while ruling out all other possible hypotheses including his innocence and absence of second party guilt. Further reference may be made to Indrajit Das v. State of Tripura33 and Prakash Nishad v. State of Maharashtra34.

CONSIDERATION BY THIS COURT

15. The dying declaration, which forms the primary basis for prosecution of the above-named accused, reads as follows-

"T.V. Byregowda S/o Venkatappa, 41 years, Vokkaliga, Agriculture, R/o Thotliganahalli, Shidlaghatta Taluk.

I am residing at the above mentioned address and eking out livelihood from agriculture. This day i.e., on 6/8/97 at about 8 AM, myself and my brothers, Nrayanaswamy, Rajanna and Gopalreddy and our workers Marappa went to our land for work. When we were doing our work in our land, at about 9.30 AM, the sons of bacchanna of our village namely (1) Manjunath, (2) Ramegowda (3) Rayappa S/o Narayanappa sons of Bacchanna (4) Ramesh s/o Chikkavenkatarayappa (5) Manjunatha (6) Ramanjanappa (7) Dyavappa S/o Narayanappa (8) Dyavappa S/o Chikka Munishamappa and others formed unlawful assembly and holding deadly weapons in their hands, came to our land and abused myself and my brothers in filthy language and assaulted with weapons.

On seeing the Accused persons, my workers and my brothers ran away to escape from the accused persons. I also tried to escape from the Accused, at that time Manjunath forcibly assaulted with iron rod at my head, I fell down and immediately Ramesh assaulted me with sickle at my legs, Ramegowda assaulted me with sickle at right leg. Rayappa and others assaulted me with clubs holding in their hands and all over my body.

My both hands and legs got dislocated resulting in blood injuries. I also sustained blood injuries. Thereafter, Marappa S/o Anjanappa, B.K. Ramesh Gowda, S/o Krishnappa and Chandrappa S/o Venkate gowda, residents of our village released me from the hands of the Accused and admitted me to Government Hospital, Shidlaghatta for treatment. I request to take legal action against the accused persons who have assaulted me causing grievous injuries and provide protection to us.

Read over and found correct

LTM of T.V. Byregowda"

(Emphasis supplied)

16. It emanates from the testimony of the PW1(The Doctor) and PW19 (The Police Officer) that the dying declaration of the deceased was made in their presence. PW1 stated "When police recorded the statement of the injured. I was present and also endorsed that statement in Ex.P.1 statement now marked, Ex.P.1 (a) is my endorsement and Ex.P.1 (b) is my signature" and PW19 stated "I rushed to the hospital and enquired the injured Byregowda in presence of the doctor and recorded the statement. The statement is marked as Ex. P.1 and my signature is marked Ex. P.1 (b). The Doctor has also signed on the said statement."

17. It further emanates from the record, i.e., the testimony of PW19 that although he signed on the dying declaration made by the deceased, but the cross-examination reveals that he had not himself written the same. It was stated: -

"The contents in Ex. P.1 are not in my handwriting. The said document does not contain the endorsement as who has written the said document."

Further, in his re-examination, he states that-

"The contents in Ex. P1 are in the hand writing of Nataraj, staff of our station. The said statement was taken as stated by the deceased and as told by me. Since the deceased had sustained injury on his right hand also, he was not in a position to sign the same."

And PW1 stated in regards of the person who recorded the dying declaration as under:-

"I cannot say by name designation of the police person who recorded the statement of the injured. Again our records also do not disclose as to the time of recording of alleged statement of the injured. It is true that, before recording of the alleged statement of injured, neither the police had requested me to writing nor I had permitted them in writing for recording the statement of the injured. It is true when alleged statement of injured was recorded there were many persons around him. It is not true to suggest that on that day the injured was not in a position to give any statement and police did not record his statement at that point of time as stated in Ex. P.1."

18. Well then, who recorded the same?, What was his name?, What was his designation if he was a police personnel? remains unstated by her. Significantly, this witness also does not testify to the correctness or otherwise of the contents thereof. It was testified that at the time of recording of such statement "there were many persons around". Who these persons were, is another aspect that remains unclear.

Whether these persons were examined is unknown. The dying declaration was signed by thumb impression by the deceased but, it is not the case of the prosecution that the deceased was illiterate. The Doctor also does not state that the injured was in a condition to sign. Then why the thumb impression, remains a mystery casting a serious doubt about its authenticity or correctness of such declaration.

19. The reason for the non-examination of the scribe, however, does not bear itself. Nowhere has it been stated, either by the trial court or the High Court that scribe could not be examined for which or what particular reason. In Sudhakar (supra) this Court has held that if the original dying declaration is lost and therefore not available, the prosecution could adduce secondary evidence in support thereof.

The logical extension of such holding would be that, if the scribe, for reasons beyond control, such as incapacitation or death, would be unavailable, it would be open for the prosecution to take necessary aid of secondary evidence. That not being the case however, such unexplained nonexamination would, as a consequence of the holdings in Govind Narain (supra), Kans Raj (supra) and Sudhakar(supra), render the case to be doubtful if not, land a fatal blow to the prosecution case.

20. It is trite in law that given the nature of a dying declaration, it is required that such statement be free from tutoring, prompting, or not be a product of imagination. But it has emanated from the statement of the Doctor, PW1, that at the time of the dying declaration being made, there were numerous people present near him. In such a case, can it be categorically ruled out that the statement made by the deceased, is free from tutoring or prompting?

21. For finding an answer, we have independently evaluated the testimonies, relevant to adjudication of the present appeal, forming part of record.

21.1 Prosecution has endeavoured to establish the guilt of the accused by way of ocular evidence through the testimonies of numerous independent witnesses.

21.2 PW-2 has not supported the prosecution and despite being declared hostile and cross examined extensively, nothing fruitful, benefitting the prosecution case could be elicited from his testimony. All that he states is that "a group of 50 to 60 persons from the direction of the village approached towards the land. Seeing the same, I went towards the village." The ladies of the house of the deceased came and informed that the deceased had to be treated in the hospital for he has sustained injuries. He has denied having affixed his thumb impression on the documents prepared by the police and significantly the same has not been proved through any scientific evidence.

21.3 On this issue we also take note of the testimony of PW-9 (mother of the deceased) who only states that in the hospital, the deceased informed her that the "accused persons before the Court" had beaten and wounded him but then this does not in any manner help the prosecution for the same is in the nature of not only hearsay but also not to have been taken note by the police during the course of the investigation and as such appears to be a mere improvement and exaggeration. To similar effect, is the testimony of PW-10 (wife of the deceased). Testimony of PW-11 and PW-12 is of no consequence for they are not witnesses to the occurrence of the incident.

21.4 PW3 stated that a group of 25 to 30 people were proceeding towards the deceased and others, i.e., PW5, PW6, PW7, and PW2, who were working in lands near the village. It is he who had taken the deceased to the hospital. However, in the cross-examination part of his questioning, it comes forth that his recollection of events on the fateful day was vague. He had been examined thrice. It also is revealed that numerous aspects, this witness had not deposed before the investigating authorities. He does state the presence of eucalyptus trees at the place where the deceased was laid. It however does not appear in his testimony as to who laid the accused at that particular spot.

21.5 According to PW4, the brother of the deceased, prior to the date of the incident, on 4th August, 1997 another quarrel had taken place, in regards to the use of a pathway, between PW4 and one Shankarappa. On the fateful day, he has testified that a group of 25 to 30 persons holding weapons such as iron chains, sticks, and sickles came to the lands where he along with others, were working.

He stated that when they returned, after 10 or 15 minutes, having run away out of fear, upon approach by this armed group of persons, others including PW6 were present near the deceased person. He has also testified to the fact of enmity between the accused persons and the family of the deceased. He has stated it to be false that after assaulting his brother, certain persons had dumped him in the land of PW11.

21.6 PW15, in his testimony has stated that upon returning from the eucalyptus plantation he found the accused in an injured state lying towards the southern side of the Plantation Garden. PWs 4 and 5 were present there. With the deceased having been taken to the hospital, this witness returned to the village. He testified that, approximately a week after the incident several recoveries were made and he, being present there signed on various mahazars. In respect of the enmity between the accused and the deceased, he submitted that the same had ended in a compromise.

21.7 Having noted that no other witness has deposed the manner in which they saw the deceased laid on the eucalyptus leaves, similar to the manner as deposed by PW15, the trial court concluded that not much was to be gained from the ocular evidence on record.

21.8 We find that none of these witnesses, eye-witnesses as they may be, to have established beyond reasonable doubt, the guilt of the accused persons. There is a contradiction in testimonies in regard to the number of persons who formed part of the unlawful assembly- one witness testified the presence of 50-60 persons while others testified to the group being of 25-30 persons; there is no clarity as to how the deceased ended up in the lands of PW11 - a material contradiction between two supposed eye-witnesses, PW3 and PW15. PW3 in his Examination in Chief stated that he had signed the mahazar, but, in his cross-examination, it was stated that he was not able to read/write.

No reasons stand supplied for his presence at the scene of the incident- neither is he a resident of the village, nor does he have lands in said village. Further, the reasons for him being examined thrice, are left to imagination. Similarities, differences in such statements, if any, have not been brought forth. After all, it is also well-settled that a testimony cannot be given value, in isolation. It does not apply to logic that a person who is not a resident of the village would visit the

spot only to see as to what is happening, whereas the other close relative(s) have attempted to flee from the scene.

We notice that the police had thrice made enquiries from him and recorded his statements. Why is it so? Is left to the imagination. His version that the accused had said "this fellow has come to end now and come let us go" is not recorded in his previous statement in which he was confronted. It has to be read as a whole. It is evident from a bare perusal of the testimony of PW15 that the deceased was seen by him in an already injured state, meaning thereby that he has not actually witnessed the accused persons assaulting the deceased.

Therefore, his status as an ocular witness is rendered questionable. PW2 has deposed that he had seen a large group of people approaching from the direction of the village towards the lands where they were and seeing the same, he had proceeded towards the village, i.e., in the opposite direction. PW-4 is the brother of the deceased, but his conduct at best can be described as unusual, or it other words, one that defies logic.

Despite being a relative, his act, is that of a stranger, i.e., running away from the dispute; leaving the deceased defenceless; he did not accompany the deceased who was in an injured state to the hospital. After all, immediately preceding the instant occurrence was the altercation involving him, and therefore, if the assailants had any motive- the same would be against him, and none else. Having noticed such conduct, we do not find his testimony worthy of credence.

21.9 We cannot, in our considered view, say that this witness, has deposed the truth. Not only that, when we perused the cross-examination part of the testimony, we found his version to be uninspiring in confidence. He does not remember as to whether the police have carried out an investigation on the spot where his brother was lying. He does not remember the police having visited the village. Does such an unexplained denial render the witness unreliable and unworthy of credit? It appears that the witness was not present on the spot and was introduced by the prosecution with suggestions, in fact, as put to him by the accused.

21.10 We notice that the testimony of PW-5 is on similar lines as that of PW-4. He added that the accused persons came armed and started shouting "catch hold them, and we shall kill them". He also states that seeing the accused all the members of the victim party fled away from the spot, while the deceased was fleeing, and the assailants attacked him with rod, stick and sickle. Significantly, in his cross-examination, he admits several improvements made by him; he does not remember having informed the police of the accused moving towards the village holding the weapons they had brought.

n fact, not only is his version self-contradictory but also in contradiction to that of other witnesses. He states that persons other than the assailants were also present and were part of their group. The whereabouts of such persons are undisclosed and, significantly, this witness does not state as to which one of the accused was carrying which weapon and which one of them had actually assaulted or inflicted injuries on the body of the deceased. He admits to having run to a distance of about a furlong and hidden under/behind the trees for about 10 minutes and returned to the spot only after the accused had left the spot and since long.

21.11 PW-19 admits that "on 06.08.1997, the AW2 to 10, 12 to 17 did not inform me as to who assaulted the deceased, where and how. All the said persons were not available for giving statement".

21.12 Having noted the above aspects of the testimonies of the prosecution witnesses we find them to be unreliable, unworthy of credence. The testimonies differ on essential material facts, such as the number of persons, how the accused came to lay where he did, when discovered etc.

22. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value. The principle has been discussed in Rai Sandeep @ Deepu alias Deepu v. State (NCT of Delhi)35 as follows-

"22. In our considered opinion, the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court.

It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have corelation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion.

The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished.

To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(emphasis supplied)

This was quoted with profit by this Court in Ganesan v State36. Recently, this principle was further reiterated in Naresh @ Nehru v State of Haryana37.

23. As the above discussion would show vis-à-vis the delineation on the qualities of a sterling witness, none of the witnesses of the prosecution would qualify per this standard. Numerous contradictions and inconsistencies have borne from record, rendering such witnesses to be unreliable and undependable so as to place reliance on the same to hold the accused persons guilty of having committed an offence.

24. On circumstantial evidence, the trial court has examined the testimonies of PWs 1-5, 10, 13 and 15. We have, above, discussed PWs 1, 2, 3, and 4 along with 15. We now proceed to discuss PWs 10, and 13, independently. PW5, although classified as a circumstantial witness, a reading of the same suggests the witness to be an eyewitness.

24.1 PW10 stated that upon seeing the group of persons, I ran in different directions with him running towards Thadhooru. While there, he heard of his brother (deceased) having sustained various injuries. Pursuant to such information he went to the hospital where he stated that the deceased himself stated that "Manjunath and his henchmen of our village assaulted him" he stated, he never went to the place where the deceased was lying nor could he say who informed him of his brother's injuries. Hence, his statement is the nature of hearsay.

24.2 The circumstances, which are mentioned within the testimonies relied on by the trial court, we find, that they do not, conclusively point to the guilt of all the accused. The following conclusions from the circumstantial evidence on record, support our conclusion- apart from PW15 none of the witnesses relied on, name all accused persons; a group of 25 to 30 people is generally referred to- a general description does not indicate guilt. Secondly, the factum of enmity although repeatedly testified to by numerous witnesses, upon itself cannot thrust upon the accused, the guilt for having killed the deceased person. This view is supported by the fact that the criminal case lodged as a result of the altercation between a brother of the deceased and certain accused persons resulted in their acquittal, as has been noted by the trial court.

24.3 It is true that certain witnesses such as PW4 categorically mentioned certain accused persons holding particular weapons. As a solitary aspect, it can be seen as indicating a particular act done by the accused, aiding the death of the deceased person. However, the medical evidence of PW1 negates that possibility as well. The relevant extract of the testimony is reproduced:-

"I see the clubs at M.O. 3. they are of about 4 feet length and 3 inches in diameter. If a person is assaulted repeatedly by such clubs, he would sustain several abrasions, contusions and lacerations.

When I examined the deceased Byregowda clinically, I did not found any abrasions lacerations of contusions on his back or chest and so also on the abdomen. I did not find any incised injury on the body of the deceased."

24.4 While it may be true that the deceased had died due to injuries sustained, as the above-extracted testimony of PW1 shows, the said injuries could not have been caused as a result of the weapons that the accused persons were allegedly yielding, and the ones that were supposedly recovered at their instance.

24.5 It is on both these counts, we find the circumstantial evidence on record, not to conclusively point towards guilt of the accused persons. We further find the eyewitness testimony to also be rendered questionable, since the weapons, which the accused were holding, and were subsequently recovered at their instance, do not correspond to the injuries found on the body of the deceased, as borne out from the crossexamination of PW1, reproduced supra.

25. The next aspect is the recovery of the alleged weapons, we have noted the particulars thereof while discussing the findings of the Trial Court. Such recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered from a house where other persons were also residing which

compromises the sanctity of such recovery and takes away from the veracity thereof.

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions have been discussed by the Privy Council in Pulukuri Kotayya v. King Emperor38 and the position was reiterated by this Court in Mohd. Inayatullah v. State of Maharashtra39, in the following terms:-

"12. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible.

The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery."

(Emphasis supplied)

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

27.1 This court has, in various judgments, clarified this position. Illustratively, in Jaikam Khan v. State of U.P40 it was observed: -

"One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries."

(Emphasis supplied)

27.2 Also, in Nikhil Chandra Mondal v. State of W.B.41 the Court held:-

"20. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been used, has been employed by the High Court to seek corroboration to the extrajudicial confession."

(Emphasis supplied)

28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places.

An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons.

CONCLUSIONS

29. Our conclusions, therefore, are thus:

29.1 The dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as the person who took down such declaration was not examined, nor did the police officer (PW19) endorse the said document with details of who took down the declaration. It is also not clear as to in front of which of the relatives of deceased was the same taken down.

29.2 The circumstantial evidence present on record does not point to the hypothesis of the guilt of the accused persons, for the reasons discussed above.

29.3 None of the eyewitnesses-PWs 2, 3, 15, as referred to by the trial court have succeeded in attributing a particular role to any of the accused persons and

equally so, to A-1 to A-5 and A-7, whose acquittals have been overturned by the High Court.

30. In our considered view, the view taken by the Trial Court was a possible view and there being no error in correct and complete appreciation of evidence as also application of law; the High Court, without assigning any cogent reasons ought not to have interfered with such findings.

31. For the aforesaid reasons, the judgment impugned before us in Criminal Appeal Number 1795 of 2004 dated 21 September 2010, is set aside. The appeal is, accordingly, allowed.

32. Having allowed the appeals as above, we are constrained to observe that the Criminal Appeal u/s 378 Code of Criminal Procedure, 1973 the High Court has not appreciated the severity of the allegations involved to the full extent. That a Court of Appeal should be circumspect in overturning its judgment of acquittal, is not a principle that requires reiteration. It has been held time and again that an acquittal will only be overturned in the presence of very compelling reasons.42

Further, right from the Privy Council43 onwards, it is been held that the presumption of innocence in favour of the accused is bolstered if the trial court hands down an acquittal.44 We find the High Court not to have observed the said principles in deciding the appeals. Quite opposite thereto, perfunctory reasons stand recorded to restore the convictions of the Appellants herein. The observations of the trial court along with the principle of a bolstered principle of innocence, were summarily cast aside. The same cannot be said to be in accordance with the law.

33. As a result, the acquittals handed down by judgment and order dated 25th September 2004 in S.C. No. 162 of 1999, passed by the Additional Sessions Judge- Presiding Officer, Fast Track Court-II, Kolar, are restored. The judgment of conviction and sentence, as awarded by the High Court, stands set aside.

34. Since the sentence awarded by the High Court under Section 304 Part II of the IPC was for 4 years, and the application of exemption from surrender was disallowed by this Court, vide order dated 13th December 2010, the Appellants appear to have already served the sentence awarded to them.

35. It is however directed, that the fine made payable by each of the accused, as a result of the impugned judgment be refunded to them. Consequently, bail bonds, if in effectuation, shall stand discharged. The appeal is accordingly, allowed.

36. In view of the above, interlocutory applications, if any, shall stand disposed of.

....................J. (Abhay S. Oka)

....................J. (Sanjay Karol)

New Delhi.

November 6, 2023;

1 Manjunath (s/o Bachanna) A-1; Ramegowda (s/o Bachanna) A-2; Ramappa (s/o Narayanappa) A-3; Ramesh (s/o Chikka Venkatarayappa) A-4; Manjunath (s/o Ramappa) A-5; Dyavappa (s/o Narayanappa) A-7.

2 Hereinafter, the deceased

3 For brevity, "IEA"

4 (2002) 6 SCC 710 [5 Judge Bench]

5 AIR 1939 PC 47 [5 Judge Bench]

6 (1984) 4 SCC 116 [3 Judge Bench]

7 AIR 1958 SC 22 [3 Judge Bench]

8 (2017) 16 SCC 466 [2 Judge Bench]

9 (2021) 6 SCC 213 [3 Judge Bench]

10 (2019) 13 SCC 464 [2 Judge Bench]

11 (1998) 4 SCC 517 [2 Judge Bench]

12 (2008) 17 SCC 190 [3 Judge Bench]

13 (1992) 2 SCC 474 [2 Judge Bench]

14 (1976) 3 SCC 618 [2 Judge Bench]

15 (2017) 11 SCC 535 [2 Judge Bench]

16 (2022) 8 SCC 576 [2 Judge Bench]

17 (2008) 4 SCC 265 [2 Judge Bench]

18 (2002) 6 SCC 710 [5 Judge Bench]

19 Criminal Appeal No. 1078 of 2010 [2 Judge Bench]

20 (2008) 5 SCC 468 [2 Judge Bench]

21 (2010) 8 SCC 514[2 Judge Bench]

22 (2019) 8 SCC 779 [2 Judge Bench]

23 2022 SCC OnLine SC 1733 [2 Judge Bench]

24 1980 Supp SCC 769 [2 Judge Bench]

25 1980 Supp SCC 455 [2 Judge Bench]

26 1993 Supp (3) SCC 343 [2 Judge Bench]

27 (2000) 5 SCC 207 [3 Judge Bench]

28 (2000) 6 SCC 671[3 Judge Bench]

29 2023 SCC Online SC 1060 [3-Judge Bench]

30 (1993) 3 SCC 282 [2 Judge Bench]

31 2023 SCC OnLine SC 933 [2 Judge Bench]

32 (2019) 9 SCC 738 [2 Judge Bench]

33 2023 SCC OnLine SC 201 [2 Judge Bench]

34 2023 SCC OnLine SC 666 [3 Judge Bench]

35 (2012) 8 SCC 21 [2 Judge Bench]

36 (2020) 10 SCC 573 [3 Judge Bench]

37 Criminal Appeal No.1786 Of 2023 [2 Judge Bench]

38 1946 SCC OnLine PC 47

39 (1976) 1 SCC 828

40 (2021) 13 SCC 716

41 (2023) 6 SCC 605

42 Tulsiram Kanu v State AIR 1954 SC 1

43 Sheo Swarup v King Emperor AIR 1934 PC 227(2)

44 Ghurey Lal v State of U.P. (2008) 10 SCC 450

IN THE SUPREME COURT OF INDIA

Hariprasad @ Kishan Sahu
Vs.
State of Chhattisgarh

[Criminal Appeal No. 1182 of 2012]

HEADNOTE – Explains four circumstances to be proved in cases of murder by poison

JUDGMENT

Bela M. Trivedi, J.

1. The Appellant-accused by way of present appeal has assailed the Judgment and Order dated 09.02.2011 passed by the High Court of Chhattisgarh at Bilaspur, in Criminal Appeal No.324 of 2006, whereby the High Court has confirmed the judgment of conviction and order of sentence dated 09.03.2006 passed by the Special Judge, (Atrocities), Bilaspur, Chhattisgarh (hereinafter referred to as the 'Trial Court') in Special Criminal Case No.19 of 2005.

The Trial Court in the said case while acquitting the appellant-accused from the charge under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (hereinafter referred to as the SC/ST Act), had convicted him for the offence under Section 302 of IPC and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default thereof, to further undergo Rigorous Imprisonment for one year.

2. The case of the prosecution as unfolded by it was that on 22.07.2003, during the evening hours, Bisahu Singh (the deceased) had gone to the forest for collecting woods, however he did not come back in the night. The next day morning his wife Ganeshi Bai saw him lying in the Verandah of his house in a semi-conscious state.

At that time, some wheezing sound, and pungent smell of liquor was coming from his mouth. Ganeshi Bai and her daughter Anita tried to wake him up, but in his slurred speech, he was trying to say that while he was going to the forest, Hariprasad (the appellant-accused) called him at his home and made him to drink two glasses of liquor and thereafter Hariprasad mixed some jadi-buti (herb) in the third glass of liquor, and made him to drink the third glass. Ganeshi Bai called her neighbours and took him to CIMS Bilaspur, as the health of

Bisahu Singh was deteriorating. During the course of treatment, Bisahu Singh died on 23.07.2003 at about 03.30 P.M.

The death was intimated to the police and Merg - Intimation (Ex. P/4) was prepared. The dead body of Bisahu Singh was sent for autopsy to CIMS Bilaspur. Dr. A.K. Shukla conducted the Post-mortem on 24.07.2003 and recorded in the Post-mortem Report (Ex. P/13) as under: -

"Cause of death could be decided after Chemical examination of Viscera preserved."

3. After the receipt of the report of Chemical examiner (Ex. P/14), the FIR was registered on 03.11.2004. (Ex. P/11)

4. During the course of trial, the prosecution had examined nineteen witnesses and led the documentary evidence. The Appellant-accused who was examined under Section 313 of Cr.P.C. denied the allegations levelled against him and pleaded innocence. He also examined DW-1 Pardesi Ram Gond, who had deposed that from 19.07.2003 to 23.07.2003 appellant was there in his house at Raipur. The Trial Court after appreciating the evidence on record, convicted and sentenced the appellant as stated hereinabove, which has been confirmed by the High Court.

5. The learned Counsel for the Appellant placing heavy reliance on the decision of Sharad Birdhichand Sarda vs. State of Maharashtra1 submitted that in case of the alleged death due to poisoning, the prosecution was required to prove that there was clear motive of the accused to administer the poison to the deceased; that the accused had the poison in his possession and that he had the opportunity to administer the poison to the deceased. However, in the instant case none of these circumstances were proved by the prosecution.

He further submitted that there was gross delay of one year occurred in filing the FIR, in as much as the alleged incident had taken place on 22.07.2003, however the FIR was lodged after more than one year i.e. on 03.11.2004. The so-called dying declarations of the deceased before the family members were not believable. The most important incriminating evidence i.e. FSL report (Ex. P/14) was not brought to the notice of the appellant when he was examined under Section 313 of Cr.P.C. According to him the entire story put forth by the prosecution was not only highly improbable but was not proved beyond reasonable doubt.

6. However, the learned Counsel for the Respondent State vehemently submitted that both the courts below having recorded the findings of conviction against the appellant for the offence under Section 302 and imposed the sentence of life

imprisonment accordingly, this Court in exercise of the jurisdiction under Article 136 of the Constitution should not interfere with the same.

He further submitted the delay caused in obtaining the report of chemical analyzer had delayed the lodging of the FIR, which explanation has been accepted by the Trial Court as well as by the High Court, and hence the same should not be held to be fatal to the case of prosecution, more particularly when all the witnesses had duly supported the case of prosecution.

7. Having regard to the submissions made by the learned counsel for the parties and having thoroughly gone through the oral as well as documentary evidence on record, in our opinion three broad questions arise for determination before this Court:

(i) Whether the delay of about more than one year occurred in registering the FIR could be said to be fatal to the case of prosecution?

(ii) Whether the prosecution had proved beyond reasonable doubt that the deceased had died due to administration of poison?

(iii) Whether the prosecution had proved beyond reasonable doubt that the appellant accused had administered the poison in the liquor and made the deceased to drink it on 22.07.2003 i.e., on the previous date of his death?

8. So far as the first issue with regard to the delay occurred in registering the FIR is concerned, it is not disputed that though the incident in question had taken place on 22.07.2003, and the deceased Bisahu Singh had expired on 23.07.2003, the FIR (Ex. P/11) was registered after more than one year i.e., on 03.11.2004 against the appellantaccused alleging offence under Section 302 of IPC.

9. It cannot be gainsaid that the First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence2.

It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation3. The First Information Report under Section 154 of Cr.PC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the Court.

As held by three-Judge Bench of this Court4, FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.

11. In Ravinder Kumar and Another Vs. State of Punjab5, it has been held that: -

"13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal.

Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station.

Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite

information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. (Vide Zahoor v. State of U.P. [1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678] , Tara Singh v. State of Punjab [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] and Jamna v. State of U.P. [1994 Supp (1) SCC 185 : 1994 SCC (Cri) 348]) In Tara Singh [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] the Court made the following observations: (SCC p. 541, para 4)

"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

12. Keeping in view the aforestated settled legal position, let us examine as to whether the delay of more than one year in the registration of the FIR was fatal to the case of prosecution or the prosecution had sufficiently explained the said delay?

13. As transpiring from the record, the deceased Bisahu Singh was the husband of PW-2 Ganeshi Bai and father of PW-3 Anita Porte. They both had stated in their respective evidence about the health condition of Bisahu Singh, when he was found lying in the Verandah of their house in the morning hours on 23.07.2003. As stated by the PW-6 Dr. Bhojraj Hotchandani, on 23.07.2003 at 01.25 P.M. Bisahu Singh was brought to the CIMS Hospital, Bilaspur. As per the evidence of PW-8 Dr. Anita Bambethwar, Bisahu Singh was brought to her for treatment, however he died at 3.30 PM on 23.07.2003.

The said Dr. Anita has stated that she had given the information about the death to the police station City Kotwali, as per Ex. P/3. The PW-9 Kedarnath Kaushik

who was the ward boy in CIMS Hospital, Bilaspur had given the Merg Intimation (before the police station City Kotwali) and PW-10 Mangal Das who was posted as Head Constable in City Kotwali, Bilaspur had sent the dead body of the deceased-Bisahu Singh along with the memorandum to CIMS Hospital, Bilaspur for post-mortem on 24.06.2003. The PW-14 Basant Kumar Singh who was posted as Sub-Inspector in police station City Kotwali, Bilaspur had drawn the proceeding of the Inquest panchnama (Ex. P/9), and had sent the dead body for post-mortem along with the memorandum (Ex. P/5A).

14. PW-18 Dr. A.K. Shukla working at CIMS Hospital, Bilaspur had carried out the post-mortem at about 12.50 hrs. on 24.07.2003. After carrying out the external and internal examination of the dead body of Bisahu Singh, he had opined (Ex. P/13) that "Cause of death could be decided after Chemical examination of the Viscera preserved. Time since death, less than 24 hours approx."

15. It appears that the Viscera of the deceased was collected and sealed in two separate boxes by the PW-18 on 24.07.2003 and were sent for chemical examination to the Forensic Science Laboratory, Chhattisgarh, which received the same on 18.09.2003. Thereafter, the Senior Scientific Officer, FSL, Raipur submitted the following Test result, vide the letter dated 10.08.2004 (Ex. P/14): TEST RESULT "Exhibit A and B contain Organophosphorus pesticide and Quinolphos. Exhibit C does not contain any chemical poison."

16. After the receipt of the afore-stated report from the Senior Scientific Officer, the PW-15 Shyam Kori, SHO Bilha, District Bilaspur registered the FIR being Crime No. 175/04 at police station Ratanpur on 03.11.2004 against the appellant-accused for the offence under Section 302 of IPC. He has stated in his evidence that the said FIR was registered on the basis of the evidence collected during the investigation in the Merg No. 43/03 under Section 174 of Cr.PC at police station Ratanpur, and thereafter, he recorded the statements of witnesses. On the completion of the investigation the chargesheet was filed by PW-19 I.H. Khan, SDO(P), Bilaspur in the Court.

17. From the afore-stated evidence on record, it is discernible that though the FIR was registered against the appellant on 03.11.2004 in respect of the incident which had taken place on 22.07.2003, a part of investigation had already started on the death of Bisahu Singh and on the Merg intimation no.43/03. Apparently, one may feel that there was a delay of more than one year in registering the FIR, however the chain of circumstances which took place during the said one year clearly suggests that the deceased was taken to the CIMS Hospital, Bilaspur immediately on 23.07.2003 in the morning, and he expired at about 3.30 PM on the same day.

His post-mortem was carried out on the very next day i.e., 24.07.2003 and the samples of Viscera of the deceased collected by Dr. A.K. Shukla, were sent for Chemical examination to the FSL, Raipur, on 18.09.2003. It was the report of Chemical examination sent by the FSL Raipur, after one year, which caused the delay in the registration of the FIR. Thus, the entire delay as such could be attributed to the FSL, Raipur, which took almost one year in giving the report of Chemical examination of Viscera of the deceased. As such, there is no allegation on concoction of false version made against the prosecution.

18. It is true that the PW-2 Ganeshi Bai, wife of the deceased right from the beginning having alleged that her husband Bisahu Singh when was found lying in the verandah of her house in the morning hours on 22.07.2003, had told her in presence of her daughter PW-2 Anita Porte, PW-7 Kotwar Bhagwati, and other witnesses that the appellant-accused Hariprasad had called him at his place on the previous day evening and had mixed jadi-buti in the liquor, and the appellant made him to drink it, because of which the health of Bisahu Singh had deteriorated, she or any other neighbours/relatives could have lodged a complaint against the appellant-accused on that day itself.

It is also true that when Bisahu Singh was admitted and treated in the hospital with the history of alleged administration of poison, and when he subsequently expired on the same day at 3.30 P.M., which required post-mortem to be carried out, the concerned SHO in the police station also could have registered the FIR instead of registering the case with Merg number. However, the explanation offered by the prosecution that the FIR was not registered as the cause of death was not stated by the Doctor who carried out the post-mortem and the report of Chemical examiner was awaited, seems to be reasonable and acceptable.

It appears that there was no mala fide intention on the part of any of the witnesses or the police not to register the FIR or to delay the registration of FIR. It was only when the report of Chemical examiner was received, the FIR was registered on 03.11.2004. We are, therefore, inclined to hold that the FIR being only a corroborative piece of evidence and not a substantive piece of evidence, mere delay in registering the FIR could not be held to be a ground adverse to the case of prosecution.

19. This takes us to the next issue as to whether the prosecution had proved beyond reasonable doubt that the deceased had died due to the administration of poison and that administration was by the appellantaccused.

20. Before delving into the evidence adduced by the prosecution, it may be noted that this Court way back in 1984, in Sharad BirdhiChand Sarda vs. State of Maharashtra (supra), which has been followed in catena of decisions, had

observed that in the case of murder by poison, the prosecution must prove following four circumstances: -

"(1) there is a clear motive for an accused to administer poison to the deceased,

(2) that the deceased died of poison said to have been administered,

(3) that the accused had the poison in his possession,

(4) that he had an opportunity to administer the poison to the deceased."

21. Hence, let us see whether the prosecution had proved the said four circumstances in the instant case. So far as the motive part is concerned, there is hardly any evidence adduced by the prosecution to show that there was any motive for the appellant to administer poison to the deceased. Though, the PW-2 Ganeshi Bai and PW-3 her daughter Anita had stated that there was some land dispute going on between the accused and the deceased, except their bare version there was no other evidence produced to substantiate that allegation. That apart, if there was enmity between the accused and the deceased, the deceased would not have gone to the house of the accused for consuming liquor.

22. The second circumstance that the deceased died of poison also does not seem to have been proved by the prosecution. The PW-1 Dr. Sudesh Verma, who was called by the wife of the deceased Bisahu Singh when he was found lying in the Verandah on 23.07.2003, had stated that the patient i.e. Bisahu Singh was in semi-conscious state of mind and was not in a position to speak properly. Wheezing sound and pungent smell of liquor was coming from his mouth.

According to him, Bisahu Singh told him that he consumed small quantity of liquor along with some of his mates. PW-2 Ganeshi Bai, wife of the deceased Bisahu Singh had stated that in the evening hours of 22.07.2003, her husband Bisahu had gone to the forest to bring woods, however he did not come back in the night. At 7 O'clock on the next day morning, she saw that Bisahu was sleeping in the Verandah and some wheezing sound was coming from his neck. She and her daughter Anita Bai tried to wake him up but his condition was very serious. He spoke in a low voice to call the Kotwar.

The Kotwar having come, her husband told that Hari Ram had given two glasses of liquor to him, and then he mixed something in the third glass. He further told them that upon his asking, Hari Ram told him that he was mixing medicine to subside the effect of the liquor. PW-3 Ms. Anita Porte, the daughter of the deceased also stated the same version as stated by her mother. PW-7, the Kotwar Bhagwati also supported the version of PW-2 Ganeshi Bai. Similarly, PW-4 Ms.

Sukwara Bai, PW-5 Rajesh Kumar, younger brother of the deceased also stated the same thing as stated by the PW-2 and others.

23. Having regard to the said evidence, it appears that though all the witnesses have stated the same story, none of the witnesses had any personal knowledge about the alleged incident and about the cause of the deteriorating health condition of Bisahu Singh. Even if the said version of the deceased before his wife, his daughter, his brother, the Kotwar and others is treated as his dying declaration, it would be very risky to convict the accused on such a weak piece of evidence.

24. As per the settled law, though a statement made by a person who is dying is made exception to the rule of hearsay and has been made admissible in evidence under Section 32 of the Evidence Act, it would not be prudent to base conviction, relying upon such dying declaration alone. In the instant case, even if that so-called dying declaration of the deceased is believed, at the most it could be said that the deceased on 22.07.2003 had consumed liquor along with Hari Ram and others, and that in the third glass of liquor, Hari Ram had mixed some herb, and made the deceased to drink it.

It may be noted that there is no evidence on record to show as to what kind of herb was allegedly mixed by Hari Ram, and whether such herb was poisonous or not. The PW-18 Dr. A.K. Shukla who carried out the post-mortem of the deceased on 24.07.2003 had also not given any opinion on the cause of death. He had stated in the Post-mortem report (Ex. P/13) that the cause of death could be decided only after the Chemical examination of the preserved parts was received. The Chemical examination report of the Senior Scientific Officer, FSL Raipur (Ex. P/14) stated that the Viscera of the deceased contained Organophosphorous insecticide and Quinolphos.

After the receipt of the said report of the Chemical examiner, the investigating officer had failed to obtain any opinion either from the doctor who carried out the post-mortem or from any other doctor about the actual cause of death of the deceased. There is nothing on record to suggest about the effect of mixture of liquor with Organophosphorous insecticide and Quinolphos, the substances found contained in the Viscera of the deceased. Under the circumstances, the Court is of the opinion that the prosecution had failed to conclusively prove that the substances found in the Viscera of the deceased were poisonous and the final cause of death of the deceased was due to the administration of poison to the deceased.

Though it may be a matter of common knowledge that the Organophosphorous insecticides and Quinolphos are considered to be poisonous substances,

nonetheless the Court would be loathe in imputing personal knowledge and conclude that such poisonous substances found in the Viscera of the deceased was the cause of death of the deceased, more so when the said opinion of Chemical analyzer was received after more than one year of sending the Viscera of the deceased to the FSL, Raipur. In absence of final opinion obtained from any medical expert, on the report of Chemical analyzer as to the cause of death, it could not be said that prosecution had proved beyond reasonable doubt that the cause of death of the deceased was due to administration of poison.

25. If the versions of the PW-2 Ganeshi Bai and Others, who were present at the house of the deceased in the morning hours on 23.07.2003 are believed, it may be presumed that the deceased Bisahu Singh had told them that the appellant Hari Prasad had made him to drink two glasses of liquor and in the third glass he had mixed some jadi-buti i.e. herb to subside the effect of liquor, however the prosecution had failed to bring on record as to which jadi-buti was mixed in the liquor and had failed to show whether the said jadi-buti or herb was poisonous. Of course, since the investigation had started after one year of the alleged incident, there was no possibility of any such jadi-buti or substance being found from the house of the accused.

A faint attempt was made by the prosecution by examining PW-12 Assistant Sub Inspector, Rama Pratap Singh who had stated that an information was sought from CIMS, Bilaspur through the memorandum (Ex. P/7), whether the jadi-buti would contain Organophosphorous Quinolphos, however he did not say anything further whether any such report was received from CIMS, Bilaspur or not.

The PW-18 Dr. A.K. Shukla had stated in his evidence that an inquiry was made by the concerned SHO on one insecticide- Quinolphos, manufactured by Hikal limited, G.I.D.C. Bharuch, Gujarat, marketed by S. India Limited Mumbai, whether such insecticides were found in the jadi-buti or not, but he opined that he did not know whether such poison would be contained in the herbs or not. He also stated that he did not know whether mixing of such herbs in any solution would result into Quinolphos.

26. Having regard to such scanty evidence, it is difficult to hold that the prosecution had proved the four important propositions laid down by this Court in case of allegation of murder by poisoning namely

(1) the accused had a clear motive to administer poison to the deceased;

(2) the deceased died of poison said to have been administered;

(3) the accused had the poison in his possession and that (4) the accused had an opportunity to administer the poison to the deceased. It is also pertinent to note that the Chemical examination report (Ex. P/14) though was an incriminating piece of evidence, was not brought to the notice of the appellant during the course of his examination under Section 313 of Cr.P.C. All these circumstances put together, have made the case of prosecution very vulnerable.

27. It cannot be gainsaid that this Court should be slow in reappreciating the evidence and in upsetting the findings recorded by the two courts below, particularly while exercising the jurisdiction under Article 136, however such exercise of jurisdiction is not prohibited, when the Court finds that such findings are afflicted with ex-facie infirmities.

28. In that view of the matter, the findings recorded by the Trial Court as confirmed by the High Court against the appellant-accused for his conviction under Section 302 IPC deserve to be set aside and the appellant deserves to be set free. The Judgment of Conviction and Order of Sentence passed by the Trial Court, as confirmed by the High Court are set aside. The appellant is acquitted from the charges levelled against him. Since the appellant is on bail, his bail bonds shall stand cancelled forthwith.

29. The Appeal stands allowed accordingly.

.....................J. [Bela M. Trivedi]

.....................J. [Dipankar Datta]

New Delhi,

November 7th, 2023

1 (1984) 4 SCC 116

2 Thulia Kali vs. The State of Tamil Nadu; 1972 (3) SCC 393

3 The King Emperor vs. Khawaja Nazir Ahmad; AIR 1945 PC 18

4 Apren Joseph alias current Kunjukunju & Ors. Vs. State of Kerela; 1973 (3) SCC 114

5 2001 (7) SCC 690

IN THE SUPREME COURT OF INDIA

Balaram
Vs.
State of Madhya Pradesh

Criminal Appeal No. 2300 Of 2009

HEADNOTE – Court is required to separate the chaff from the grain to find out the true genesis of the incident. There are three types of witnesses-, one those who are wholly reliable, second one is wholly unreliable, and lastly, the one who are neither wholly reliable nor wholly unreliable. as far as the first two scenarios are concerned, the testimonies of the witnesses can be wholly accepted or discarded. However, only with respect to the third one, where the testimony is partly reliable and partly unreliable, the Court faces difficulty.

JUDGMENT

B.R. Gavai, J.

1. This appeal challenges the judgment and order passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur, Bench Gwalior in Criminal Appeal No.276 of 1995 thereby dismissing the appeal filed by the present appellant as well as Rameshwar (since deceased) and confirming the judgment and order passed by the learned Special Judge and Second Additional Sessions Judge, Bhind passed in Sessions Trial No.70 of 1984.

2. The prosecution story as could be gathered from the material placed on record is thus:-

2.1 PW.5-Ramkali, PW.6-Mulchand along with their relative Pannalal (PW.8) and son-Ashok as well as granddaughter Rani and two other villagers namely, Badri and Mahesh were going on a bullock cart to Mau from Ujhawal at around 8-9 a.m. Pannalal (PW.8) was driving the cart. It is the case of the prosecution that when the cart reached near village Rasnol, two persons came in front of the cart and stopped their cart. Thereafter, 3-4 other persons also came there.

2.2 It is the prosecution case that Rameshwar (since deceased), appellant-Balaram, Uma Charan and Munna had come there after ten minutes of stopping of the cart, accused-Rameshwar fired the first shot and it hit Ashok in his chest. Thereafter, another shot was fired by accused- Uma Charan, which hit Ashok in the arms and thereafter, the third shot was fired which hit Ramkali (PW.5) in her right thigh.

2.3 As a result of firing, Ashok had become unconscious and was brought to Mau on cart. Pannalal reported the incident to the police on the basis of which an FIR came to be lodged initially for an offence punishable under Section 307 of the Indian Penal Code (for short 'IPC'). Following the death of Ashok, the case was converted to one under Section 302 of the IPC.

3. After investigation, the charge-sheet came to be filed before the jurisdictional Magistrate. Since the case was exclusively triable by the Sessions Judge, it came to be committed to the Special Judge & Second Additional Sessions Judge, Bhind. Six accused came to be tried for the offences punishable under Sections 147, 148, 302, 149, 307 and 341 of the IPC.

The learned Special Judge & Second Additional Sessions Judge, Bhind at the conclusion of the trial, found that accused Ram Bharosey, Munna, Uma Charan and Amar Singh were entitled to be acquitted for the charges levelled against them. However, Rameshwar (since deceased) was found guilty for commission of offences punishable under Sections 148, 302, 307 read with Section 149 of the IPC and appellant- Balaram was found guilty for the commission of offences punishable under Sections 148, 302 read with Section 149 and Section 307 of the IPC.

4. Being aggrieved thereby, an appeal was preferred by the accused which was dismissed by the High Court. Being further aggrieved, Rameshwar and Balaram filed an appeal before this Court. During the pendency of the appeal, Rameshwar has died and as such, the appeal against him has abated, which leaves us only with the appeal of the appellant-Balaram.

5. Heard Shri R. Chandrachud, learned counsel for the appellant and Shri V.V.V. Pattabhiram, learned Deputy Advocate General for the State of Himachal Pradesh. 6. Shri Chandrachud submits that, on the basis of very same evidence, the learned Trial Judge has acquitted four accused persons. He further submits that, though the evidence of PW.5-Ramkali and PW.6-Mulchand has specifically attributed a gun shot to Uma Charan, their evidence has been disbelieved insofar as Uma Charan is concerned. However, on the basis of the very same evidence, the appellant-Balaram has been convicted.

It is submitted that, from the testimony of the other witnesses it would be clear that the appellant-Balaram was not even present at the spot and he has been falsely implicated. Learned counsel further submits that the motive attributed i.e. previous enmity is also far fetched inasmuch as the incident with regard to the murder of Ramadhar, brother of Balaram, had taken place 4-5 years earlier. In any case, he submits that previous enmity is a double edged weapon, and as such the possibility of false implication cannot be ruled out.

7. He therefore submits that the appeal deserves to be allowed and the appellant deserves to be acquitted of the charges charged with.

8. Shri Pattabhiram, on the contrary, submits that the learned Trial Judge, by separating the chaff from the grain, has believed the testimony of PW.5-Ramkali and PW.6- Mulchand on finding that their ocular testimony was corroborated by the medical evidence on record. He further submits that the witnesses PW.5-Ramkali and PW.6-Mulchand are rustic villagers and merely because there were inconsistencies in their evidence cannot be a ground to discard their testimony.

9. With the assistance of the learned counsel for the parties we have perused the evidence.

10. Insofar as the present appellant-Balaram is concerned, he has been implicated by Ramkali-PW.5 and Mulchand-PW.6, both are wife and husband and parents of the deceased-Ashok.

11. It is well settled, as laid down in a locus classicus case of Vedivelu Thevar v. State of Madras1, there are three types of witnesses, which are (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unereliable. The law laid down in Vedivelu Thevar (supra) is consistently followed by this Court in a catena of judgments. It can thus be seen that, there are three types of witnesses.

If the witness is wholly reliable, there is no difficulty inasmuch as relying on even the solitary testimony of such a witness conviction could be based. Again, there is no difficulty in the case of wholly unreliable witnesses inasmuch as his/her testimony is to be totally discarded. It is only in the case of the third category of witnesses which is partly reliable and partly unreliable that the Court faces the difficulty. The Court is required to separate the chaff from the grain to find out the true genesis of the incident.

12. Let us examine the testimony of PW.5-Ramkali and PW.6-Mulchand so as to find out in which of the categories these witnesses would fall.

13. In the evidence of PW.5-Ramkali, there is no mention of the appellant-Balaram; she only states that the third person had fired a gun shot which had injured her leg. It is only on account of the ingenuity on the part of the cross-examiner that the presence of appellant-Balaram has come on record, in the cross-examination.

14. Even accepting her testimony, it can be seen that the injury attributed to the appellant-Balaram is of assaulting her on her leg and not the deceased-Ashok.

15. Per contra, PW.6-Mulchand attributes the fire injuries to three persons. One to accused Rameshwar, the other to Uma Charan and the third one to appellant-Balaram. On the basis of the very same evidence, the Trial Court has disbelieved the version of these two witnesses, insofar as accused Uma Charan is concerned.

16. We find it difficult to accept the distinction drawn by the learned Trial Judge while believing the evidence of PW.5-Ramkali and PW.6-Mulchand insofar as appellant- Balaram and Rameshwar (since deceased) are concerned.

17. As already discussed herein above, previous enmity is a double edged weapon; on the one hand it provides the motive, whereas on the other hand, the possibility of false implication cannot be ruled out.

18. We find that when the Trial Court has disbelieved the testimony of PW.5-Ramkali and PW.6-Mulchand insofar as accused Uma Charan was concerned, it could not have applied a separate standard while considering the case of the present appellant-Balaram and Rameshwar (since deceased).

19. We are of the considered view that the testimony of PW.5-Ramkali and PW.6-Mulchand would come in the category of wholly unreliable witnesses. As such, conviction on the basis of their testimony, in our view, would not be sustainable.

20. As a result, the appeal is allowed. The order of conviction and sentence as recorded by the learned Special Judge and Second Additional Sessions Judge, Bhind and the order of the High Court are quashed and set aside.

The appellant is acquitted of the charges charged with. He is directed to be set at liberty forthwith, if his detention is not required in any other case.

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

.....................J. [B.R. Gavai]

.....................J. [Pamidighantam Sri Narasimha]

.....................J. [Aravind Kumar]

New Delhi;

November 08, 2023.

1 AIR 1957 SC 614

Item No.105

Balaram

Vs.

State of Madhya Pradesh

[Criminal Appeal No(S). 2300/2009]

[IA No. 105398/2019 - EXEMPTION FROM FILING O.T. IA No. 105397/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES]

Date: 08-11-2023

These matters were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s)

Mr. R. Chandrachud, Adv.
Mr. Ashok Panigrahi, AOR
Mr. Nabab Singh, Adv.
Mr. Dhuli Venkata Krishna, Adv.
Ms. Geetanjali Das Krishnan, Adv.
Mr. Dharmendar Singh, Adv.

For Respondent(s)

Mr. V.V.V. Pattabhiram, D.A.G.
Mr. Yashraj Singh Bundela, AOR
Mr. Ramesh Thakur, Adv.
Mr. Pawan, Adv.
Ms. Jyoti Verma, Adv.

UPON hearing the counsel the Court made the following

ORDER

In terms of the signed judgment, the appeal is allowed.

The order of conviction and sentence as recorded by the learned Special Judge and Second Additional Sessions Judge, Bhind and the order of the High Court are quashed and set aside. The appellant is acquitted of the charges charged with.

He is directed to be set at liberty forthwith, if his detention is not required in any other case.

(NARENDRA PRASAD) (ANJU KAPOOR)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)

(Signed "Non-Reportable" judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

Ashwini Kumar Upadhyay
Vs.
Union of India & Anr.

[Writ Petition (C) No. 699 of 2016]

HEADNOTE – Issued directions to monitor the early disposal of pending criminal cases against Members of Parliament and Members of Legislative Assemblies.

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI

1. This Writ Petition under Article 32 of the Constitution of India, in the nature of Public Interest, seeks two distinct reliefs. The first prayer relates to expeditious disposal of criminal cases against elected members of the Parliament and Legislative Assemblies1. The second prayer relates to the constitutional validity of Section 8 of the Representation of Peoples Act, 1951.

By this order, we dispose of this Writ Petition as regards the first prayer after formulating certain guidelines for expeditious disposal of the subject cases. We have also requested the learned Chief Justices of the respective High Courts to constitute a Special Bench to review and monitor the progress of these cases from time to time.

2. A short reference to the orders passed by this Court from time to time, affidavits of the State Governments, and reports of the High Courts as analyzed by the Amicus in his written submissions are necessary before articulating the guidelines and disposing of the writ petition with appropriate directions. These proceedings commenced with notices being issued to the Union of India, State Governments and High Courts. At a later stage, this Court also appointed Shri Vijay Hansaria, Ld. Senior Advocate as Amicus Curiae. We place on record appreciation for his invaluable contribution and assistance.

3. In fact, this is not the first case in which the need for an expeditious disposal of criminal cases against elected members of the Parliament and Legislative Assemblies is examined. In Public Interest Foundation v. Union of India2, this court held:

"10. We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Sections

8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on a day-to-day basis.

If for some extraordinary circumstances the court concerned is not being able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above timelimit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the court concerned extending the time for conclusion of the trial."

4. At an early stage, this Court recorded the statement of the Ld. Additional Solicitor General that these proceedings are not adversarial in nature and that the Union would not be averse to setting up special courts for expeditious trial and disposal of the subject cases. By order dated 01.11.2017, this Court called upon the Union, States and the High Courts to respond to the idea of setting up special courts and the financial implications involved in its implementation.

5. After gathering the necessary information, the Union filed an affidavit as is evident from the order dated 14.12.2017, contemplating setting up twelve special courts exercising jurisdiction over multiple states. By the same order, the High Courts were called upon to identify and transfer the subject cases to the special courts that were to be established. The Union was also directed to bear the estimated expenditure of about Rs. 7.80 crores for running these twelve special courts.

6. However, as the above-referred decision had policy and financial implications, after much deliberation, this Court reconsidered the matter and accepted the suggestion of the Amicus. That is, instead of setting up special courts, a specified court in each district, both at the sessions and magistrate level, be identified and earmarked for prioritized hearing of the subject cases. The Union, State Governments and High Courts were asked to respond to the new suggestion.

7. On 04.12.2018, the High Courts were directed to examine the matter and constitute as many sessions and magisterial courts within their jurisdiction as is considered proper and expedient. By the same order, it was also directed that the subject cases punishable with death/life against sitting and former MPs/MLAs should be taken up on a priority basis, followed by cases punishable with imprisonment up to 5 years or more. Thereafter, all other criminal cases against sitting MPs/MLAs, followed by similar cases against former MPs/MLAs were to

be taken up. This order also suggested that the designated courts will take up and hear the subject cases on a day-to-day basis.

8. On 05.03.2020, the High Courts were directed to provide information about the (i) the MP/MLA involved in a case, (ii) whether sitting or former, (iii) date of FIR, (iv) offence alleged, (v) date of filing of charge sheet, (vi) date of framing of charges, (vii) present status, (viii) stay of trial, if any by the High Court, (ix) expected time of completion of trial, (x) name of the court, and (xi) the district in which the case is filed.

The initial information received from the High Courts related only to IPC offences. In order to have a comprehensive understanding of the subject cases, by an order dated 10.09.2020, this Court called for information about prosecution of MPs and MLAs under special legislations. The High Courts compiled the said information and submitted their reports to us in the form of affidavits.

9. On the basis of the above information, a comprehensive protocol, in the nature of guidelines for identification of designated courts, the number of such courts, the procedure and practice that they need to adopt and follow, witness protection, etc. was prepared by the learned Amicus. These were noted by this Court in the order dated 10.09.2020 and they are reproduced hereinbelow for ready reference:

(i) Special Courts in every district for MPs/MLAs:-

a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the respective High Courts may consider proper, fit and expedient having regard to the number and nature of pending cases. Such decisions may be taken by the High Courts within four weeks of the order.

b. The State Governments will issue necessary notification in terms of the recommendation of the High Court within two weeks from the receipt of the recommendation.

c. Case records to be transferred expeditiously to the Special Courts.

(ii) Practice Directions :-

a. Special Courts will give priority to the trial of cases in the following order:-

i. Offences punishable with death/life imprisonment;

ii. Offences punishable with imprisonment for 7 years or more;

iii. Other offences.

b. Cases involving sitting legislators to be given priority over former legislators.

c. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.

d. State Governments/UTs will appoint/designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.

e. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.

f. The Superintendent of Police of respective Districts shall be responsible to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the Courts.

g. The SHO of the concerned police station shall be personally responsible for service of summons to the witnesses and their appearance and deposition in the court.

h. Courts will use technology of video conferencing for examination of witnesses and appearance of the accused persons, to the extent possible.

(iii) Cases under stay :-

a. This Hon'ble Court in Asian Resurfacing of Road Agency Pvt. Ltd vs. CBI, 2018 (16) SCC 299, held as under:-

"If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months.

Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the

final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years."

In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons. b. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before Hon'ble the Chief Justice for appropriate orders for urgent listing of such cases.

(iv) Witness Protection:-

a. Witness protection in all such cases is essential having regard to vulnerability of the witnesses and the influence exercised by the legislators facing criminal trials. This Hon'ble Court in the case of Mahender Chawla vs Union of India, 2018 (16) SCC 299 has framed "Witness Protection Scheme, 2018" and made it applicable to all the States till the enactment of suitable legislation by the Parliament or State legislatures.

b. Trial Courts shall consider granting of protection under the aforesaid scheme to all the witnesses, without any application by the respective witnesses.

(v) Monitoring by High Courts

a. Each High Court shall register a Suo Moto case with the title "In Re: Special Courts for MPs/MLAs" to monitor the progress of cases pending in the State and ensure compliance of direction of this Hon'ble Court.

b. The writ petition, so registered shall be heard by a Division Bench of the High Court to be constituted by the Chief Justice.

c. A Senior Advocate shall be appointed as Amicus Curiae.

d. The State shall be represented by the Advocate General or an Additional Advocate General.

e. A senior Police Officer of the rank not below Inspector General of Police shall be present in the Court in each hearing to furnish requisite information, as and when required.

f. Each Special Court will send a monthly status report to the High Court and the High Court, on examination of the same, will issue necessary directions to ensure speedy disposal of cases.

g. The case shall be heard by the High Court at such interval as may be necessary; however, at least once three months."

10. After hearing the Union and State Governments, we sought the opinion on the above referred suggestions along with an action plan for rationalization of the special courts from the Chief Justices of the respective High Courts3. This being an important order, the relevant portion is extracted herein;

"16. With respect to increasing the number of Special Courts and rationalizing the pending criminal cases, we deem it appropriate that, before passing any specific direction in respect thereto, it would be appropriate to direct the learned Chief Justice of each High Court to formulate and submit an action plan for rationalization of the number of Special Courts necessary, with respect to the following aspects:

a. Total number of pending cases in each district

b. Required number of proportionate Special Courts

c. Number of Courts that are currently available

d. Number of Judges and the subject categories of the cases

e. Tenure of the Judges to be designated

f. Number of cases to be assigned to each Judge g. Expected time for disposal of the cases h. Distance of the Courts to be designated

i. Adequacy of infrastructure

17. The learned Chief Justices while preparing the action plan should also consider, in the event the trials are already ongoing in an expeditious manner, whether transferring the same to a different Court would be necessary and appropriate.

18. The learned Chief Justices of the High Courts shall also designate a Special Bench, comprising themselves and their designate, in order to monitor the progress of these trials.

19. The learned Chief Justices are also requested to give their comments on the other suggestions of the learned amicus, as extracted by us in our order dated 10.09.2020 and this order. They are also requested to send us additional suggestion, if any, for the purpose of expedient disposal of pending criminal cases against legislators. The action plan, with the comments and suggestions of

the learned Chief Justices of the High Courts, are to be sent to the Secretary General of this Court, preferably within a week. A copy may also be sent to the learned amicus curiae by way of e-mail.

20. We further request the learned Chief Justices of all the High Courts to list forthwith all pending criminal cases involving sitting/former legislators (MPs and MLAs), particularly those wherein a stay has been granted, before an appropriate bench(es) comprising of the learned Chief Justice and/or their designates. Upon being listed, the Court must first decide whether the stay granted, if any, should continue, keeping in view the principles regarding the grant of stay enshrined in the judgment of this Court in Asian Resurfacing of Road Agency Private Limited v. CBI, (2018) 16 SCC 299.

In the event that a stay is considered necessary, the Court should hear the matter on a day-to-day basis and dispose of the same expeditiously, preferably within a period of two month, without any unnecessary adjournment. It goes without saying that the Covid-19 condition should not be an impediment to the compliance of this direction, as these matters could be conveniently heard through video conferencing."

11. In continuation of the above referred order dated 16.09.2020, further directions were issued and information was sought regarding -

(a) available infrastructural facilities4;

(b) extension of witness protection as provided in Mahender Chawla v. Union of India, (2019) 14 SCC 6155;

(c) orders withdrawing prosecution under section 321 Cr.P.C.6; and

(d) transfer of judicial officers7. The necessary information was provided through affidavits.

12. Present status on case pendency: A comprehensive picture of the pending subject cases in various courts spread across the States and Union Territories is made available to us. The following table evidences the number of cases pending against MPs and MLAs in each State and Union Territory as of December 2018, December 2021 and the latest being November 2022.

Sr. No.	**State/UT**	**Case in Dec. 2018**	**Cases in Dec. 2021**	**Cases as in November 2022**		
				Total cases	**More than 5 years**	**Case load per judge**
1	2	3	4	5	6	7

1.	Andhra Pradesh	109	146	92	50	92
2.	Arunachal Pradesh	6	16	4	1	Between 1 to 4
3.	Assam	38	69	75	33	Between 0 to 2.5
4.	Bihar	304	571	546	381 Average 7.3	
5.	Chhattisgarh	24	12	10	2	Average 1.1
6.	Delhi	124	97	93	27	Average 16
7.	Goa	15	12	19	5	Between 2 to 8
8.	Gujarat	119	33	28	11	Between 1 to 3
9.	Haryana	35	46	48	18	Between 0 to 2
10.	Himachal Pradesh	34	68	70	17	Between 1 to 19
11.	Jharkhand	160	207	198	72	Between 1 to 37
12.	Karnataka	161	150	221	61	Between 13 to 156
13.	Kerala	312	401	384	22	Between 0 to 59
14.	Madhya Pradesh	168	260	329	51	Between 25 to 210
15.	Maharashtra	303	470	482	169	Between 1 to 31
16.	Manipur	12	4	10	1	Between 1 to 4
17.	Meghalaya	3	5	4	4	Between 1 to 2
18.	Mizoram	4	1	0	0	Not applicable
19.	Nagaland	1	0	0	0	Not applicable
20.	Orissa	331	360	454	323	Between 0 to 30
21.	Punjab	34	74	91	16	Between 0 to 4
22.	Rajasthan	46	56	57	21	Between 1 to 4

23.	Sikkim	0	0	0	0	0
24.	Tamil Nadu	321	328	260	60	Between 1 to 22
25.	Telangana	99	50	17	4	Between 1 to 16
26.	Tripura	16	0	0	0	Not Applicable
27.	Uttar Pradesh	992	1339	1377	719	Average 9.31
28.	Uttarakhand	34	10	15	2	Not furnished
29.	West Bengal	269	136	244	23	Between 0 to 31
30.	Andaman & Nicobar (U.T.)	0	0	0	0	Not applicable
31.	Chandigarh (U.T.)	-	10	10	1	Between 0 to 5
32.	Dadra & Nagar Haveli (U.T.)	2	0	0	0	Not applicable
33.	Jammu & Kashmir (U.T.)	12	7	6	6	Not furnished
34.	Ladakh (U.T.)	-	-	-	-	-
35.	Lakshadweep (U.T.)	-	-	-	-	-
36.	Puducherry (U.T.)	34	36	31	16	Between 1 to 12
Total		**4122**	**4974**	**5175**	**2116**	

13. Analysis: The above referred table shows that there are as many as 5,175 subject cases pending as of November, 2022. Of these, cases that are pending for more than 5 years are as many as 2,116, which figure is more than 40% of such pendencies. This is a large number.

14. These cases have a direct bearing on our political democracy. Hence, there is a compelling need to make every effort to ensure that these cases are taken up on priority and decided expeditiously. Confidence and trust of the constituency in their political representative, be it an MP or an MLA, is necessary for an interactive, efficient and effective functioning of a parliamentary democracy. However, such confidence is difficult to expect when figures, as indicated in the above referred table, loom large in our polity.

15. In fact, there are no two views about the compelling need to take up and dispose of the subject cases expeditiously. We have no doubt in our mind that

even the political representative, be it MP or an MLA, involved in the prosecution would also seek a quick disposal of these cases.

However, the problem lies elsewhere. It seems systemic, perhaps institutional, and takes within its sweep many factors including the method of adversarial litigation that we have adopted. Yet, at every stage of the practice and procedure that we adopt, there is scope for reform. It is in this context that we have earnestly conducted and monitored this case for the last seven years.

16. Having analyzed the all India data on the pendency of subject cases in States and Union Territories, we have at the outset noted a considerable asymmetric disposition between states and even between districts within a State, on factors that have a bearing on early disposal. This is evident from the stark difference that exists in the actual number of pending cases between States and even districts within States.

There are also variations in the availability of judges to decide the cases, the case load per judge, the speed at which the cases are decided, the state of physical and technological infrastructure, availability of prosecutors, etc. There is yet another aspect, and this may not be amenable to data collection, but has a direct bearing on our endeavor for an early disposal of these cases. The practice and procedure prevalent in every court is distinct and is sometimes deep-rooted.

There are many factors, which may be historical, cultural, regional or linguistic, that influence the work ethic in a court. This is where the role of the Bar becomes important, and therefore, their participation becomes crucial. Once we recognize the inextricable connection and interdependence of the Bar and the Bench, the need to focus and address these issues comes to light. At this stage, we are merely attempting to identify factors that must be taken into account while making an accurate assessment for an effective and expeditious disposal of the subject cases.

17. Having analyzed the data and information available on record, two conclusions emerged - first, there are multiple factors that have a direct bearing on the disposal of the subject cases, and second, there is substantial variation from state to state, and district to district, with respect to each of these factors. These conclusions - the plurality of considerations and their asymmetry between State to State and even district to district, have a direct bearing on the decision or a measure that we may adopt for early disposal of the subject cases.

18. We have monitored these proceedings from 2017 onwards and have examined the data and information brought to our notice by the High Courts. We have also gone through the affidavits filed on behalf of the State Governments

which have shown equal concern and earnestness in ensuring early disposal of the subject cases. With the assistance of the learned Amicus, we have formulated certain guidelines that will enable the completion of investigation, smooth conduct of trial, removal of impediments and conclusion of the subject cases at the earliest.

19. Having considered the matter in detail, we are of the opinion that there exist multiple factors. Each of these influences early disposal of the subject cases. This, coupled with their dissimilarity from State to State, makes it difficult for this Court to form a uniform or standard guideline for trial courts across the length and breadth of this country to dispose of the subject cases. We have gone through the affidavits filed by the High Courts explaining the situation that exists within their jurisdiction.

The High Courts have been dealing with these issues on the judicial as well as on the administrative side, and they are alive to the position that exists in each of their district courts. Under Article 227, the High Courts are entrusted with the power of superintendence over the district judiciary8. We deem it appropriate to leave it to the High Courts to evolve such method or apply such measure that they deem expedient for an effective monitoring of the subject cases. 20. Having considered the matter in detail, we direct that:

(i) Learned Chief Justices of the High Courts shall register a suo-motu case with the title, "In Re: designated courts for MPs/MLAs" to monitor early disposal of criminal cases pending against the members of Parliament and Legislative Assemblies. The suo-motu case may be heard by the Special Bench presided by the Learned Chief Justice or a bench assigned by them.

(ii) The Special Bench hearing the suo-motu case may list the matter at regular intervals as is felt necessary. The High Court may issue such orders and/or directions as are necessary for expeditious and effective disposal of the subject cases. The Special Bench may consider calling upon the Advocate General or the Public Prosecutor to assist the Court.

(iii) The High Court may require the Principal District and Sessions Judge to bear the responsibility of allocating the subject cases to such court or courts as is considered appropriate and effective. The High Court may call upon the Principal District and Sessions Judge to send reports at such intervals as it considers expedient.

(iv) The designated courts shall give priority: (i) first to criminal cases against MP's & MLA's punishable with death or life imprisonment then to (ii) cases punishable with imprisonment for 5 years or more, and then hear (iii) other

cases. The Trial Courts shall not adjourn the cases except for rare and compelling reasons.

(v) The learned Chief Justices may list cases in which orders of stay of trial have been passed before the Special Bench to ensure that appropriate orders, including vacation of stay orders are passed to ensure commencement and conclusion of trial.

(vi) The Principal District and Sessions Judge shall ensure sufficient infrastructure facility for the designated courts and also enable it to adopt such technology as is expedient for effective and efficient functioning.

(vii) The High Courts shall create an independent tab on their website providing district-wise information about the details of the year of filing, number of subject cases pending and stage of proceedings. We make it clear that while monitoring the subject cases, the Special Bench may pass such orders or give such additional directions as are necessary for early disposal of the subject cases.

21. With these directions, we dispose of this Writ Petition with respect to the first prayer concerning the expeditious disposal of criminal cases against elected members of Parliament and Legislative Assemblies.

22. This Writ Petition will now be listed for hearing on the other issue relating to the constitutional validity of Section 8 of the Representation of Peoples Act, 1951. We also place on record our appreciation for the efforts taken by the learned Amicus Curiae.

......................CJI. [Dr. Dhananjaya Y. Chandrachud]

........................J. [Pamidighantam Sri Narasimha]

........................J. [Manoj Misra]

New Delhi;

November 09, 2023

1 Hereinafter referred to as the 'subject cases'.

2 (2015) 11 SCC 433

3 See order dated 16.09.2020.

4 order dated 06.10.2020.

5 order dated 04.11.2020.

6 order dated 10.08.2021.

7 order dated 10.08.2021 clarified later by order dated 10.10.2021 and 12.07.2023.

8 Though Constitution uses the expression 'subordinate' to describe the district judiciary, it is not to be understood in the literal sense. In fact, this Court in All India Judges Association v. Union of India & Ors., 2023 SCC OnLine SC 673, has held that district judiciary is a part of our basic structure.

IN THE SUPREME COURT OF INDIA

Priya Indoria
Vs.
State of Karnataka and Ors. Etc.

[Criminal Appeal Nos. _______ of 2023
arising out of SLP(Crl.) Nos. 11423-11426 of 2023
arising out of Diary No. 7943 of 2023]

HEADNOTE – High Courts and Sessions Court have power to grant interim/transit anticipatory bail even when the First Information Report (FIR) has been registered in another State.

JUDGMENT

Nagarathna, J.

1. Leave granted.

Bird's Eye View of the Controversy:

2. We begin this Judgment by an illustration: A person allegedly under intoxication beats another person with an iron rod in the State of Goa. The victim of the attack is injured. The alleged assailant travels to Rourkela, Odisha, where he is working in a factory. Meanwhile, the family of the injured registered a First Information Report (FIR) for the offence of causing grievous hurt under Section 326 of the Indian Penal Code (IPC) at the Bicholim Police Station, Goa.

On coming to know about the same and apprehending his arrest, the alleged assailant files an application for anticipatory bail before the District and Sessions Judge, Sundargarh, Odisha, having jurisdiction over Rourkela. Whether the alleged assailant's application is maintainable or not? Such a question has come for consideration before this Court in the present appeal.

Facts of the case:

2.1. The present appeals have been filed by the complainant-wife, against the orders dated 07.07.2022 passed by the learned Additional City Civil and Sessions Judge Bengaluru City in Criminal Misc. No. 3941/2022, 3943/2022, 3944/2022 and 3945/2022. By the said orders, the learned Additional City Civil and Sessions Judge Bengaluru City has granted anticipatory bail to the accused-husband and his family namely, accused Nos. 2,3 & 4 in FIR No. 43/2022 which alleged commission of offences under Sections 498A, 406 and 323 of the Indian

Penal Code, 1860 ('IPC', for short), registered by the complainant-wife at Chirawa Police Station, District Jhunjhunu, Rajasthan.

2.2. In view of the above, we take note of the social reality of criminal complaints relating to dowry harassment, cruelty and domestic violence arising out of unsuccessful matrimonial relationships. With the increasing migration of young people for marital and career prospects, supplemented by the forces of economic liberalization, a significant number of couples hail from two different States, with the corollary being that the matrimonial home of a complainant-wife is located in a different State from where her parental home is located.

3. According to the complainant-wife (appellant herein), the facts giving rise to the present appeal, in a nutshell as gathered from the material on record are:

3.1. The complainant-wife got married to the accused-husband on 11.12.2020 and started living in Bengaluru.

3.2. On 09.11.2021, the accused-husband filed a divorce petition M.C. No. 5786/2021 under Section 13 of the Hindu Marriage Act, 1955 before the Principal Judge, Family Court, Bengaluru, Karnataka. Notice was issued in the divorce petition on 15.11.2021. 3.3. On 07.03.2022, the complainant-wife filed Transfer Petition No.590/22 before this Court to transfer the case from the Principal Judge, Family Court, Bengaluru to Court of Additional District Judge, Chirawa, Jhunjhunu, Rajasthan.

3.4. The complainant-wife registered a First Information Report ('FIR', for short) being FIR No. 43/2022 for offences under Sections 498A, 406 and 323 of the IPC, at Chirawa Police Station, District Jhunjhunu, Rajasthan, on 25.01.2022 at 06.07 pm.

3.5. At the time of marriage, two younger siblings of the complainantwife were still unmarried. The father of the complainant-wife, despite being a heart patient who had undergone Angioplasty, spent about Rs. 46,00,000/- on the wedding and had met the dowry demands made by the accused-husband and his family members being his father, mother and younger brother, i.e., accused Nos.2, 3 & 4.

3.6. That the complainant-wife was a victim of harassment, torture and assault for the demand of dowry. The accused-husband and his family claimed that they had been cheated because the complainant-wife's father had promised to spend one crore rupees for the marriage. The harassment and torture continued from 11.12.2020 until 06.07.2021. For less than a year of marriage that the couple spent together, the accused-husband perpetrated cruelty upon her by frequently threatening to divorce her and get married for the second time.

3.7. The accused-husband started threatening and abusing the complainant-wife and stated that the complainant-wife was mentally and physically incapable of intimate relationships. Additionally, he slapped the complainant-wife about a month after the marriage and said that he was not inclined for marriage and preferred to live a free life. He threatened the complainant-wife that if she wanted to stay together, she would have to fulfil the dowry demand.

3.8. The complainant-wife informed her in-laws, being accused Nos. 2, 3 and 4, about the refusal of the accused-husband to consummate the marriage and the physical assault committed on her. Allegedly, her inlaws dismissed her by saying that it was not necessary to have a relationship with the husband and as such, being a husband, he had the right to beat her.

3.9. Deeply agonized by this experience, a demand regarding purchase of a scooter for the accused-husband was met. Rs.1,01,326/- was to be paid online from complainant-wife's mother's bank account on 12.02.2021.

3.10. Thereafter, the accused-husband started demanding a car, but the demand could not be fulfilled. The complainant-wife was harassed even when she was COVID-19 positive, and eventually, she was driven out of the matrimonial house on 02.06.2021. The complainant-wife's father begged the accused-husband to take back his daughter, but the accused-husband refused.

3.11. Thereafter, on 11.06.2021, the complainant-wife's father was forced to bring the complainant-wife back to Chirawa.

3.12. It was averred that goods and valuables worth Rs. 30,00,000/- were still in possession of the accused-husband and his family. The complainant-wife was continuously threatened with death by the accused-husband and his family even when she was in her paternal home in Chirawa. When the complainant-wife came to Chirawa, the accused-husband through internet call and video, threatened to kill her if she came to Bengaluru and kept saying all the time that if she came to Bengaluru, he would get her killed by goons and her dead body would also not be known.

3.13. The complainant-wife refused to undergo a medical test and noted that at the time she was thrown out of the accused-husband's house, she had shown light blue marks near the neck and shoulder to her parents but being hopeful of a change in the attitude of the husband, and affected by social stigma, she did not file any report.

3.14. The Sub-Inspector, Chirawa Police Station, Rajasthan made a note that from the victim's report, the offences under Sections 498A, 406 and 323 of the IPC were made out and the investigation was initiated.

We reiterate that the aforesaid details are as narrated by the complainant and are not our inferences of facts of the case.

Impugned Orders:

The accused-husband and his family members, accused Nos. 2, 3 and 4, sought the relief of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 ('CrPC', for short) by filing CRL. MISC. No. 3941/2022, CRL. MISC. No. 3943/2022, CRL. MISC. No. 3944/2022 and CRL. MISC. No. 3945/2022 before the Additional City Civil and Sessions Judge, Bengaluru City.

4. The Additional City Civil and Sessions Judge, Bengaluru City, on 07.07.2022, allowed the applications of anticipatory bail made by the accused-husband and his family members, accused Nos. 2, 3 & 4.

4.1. It is clear from a reading of the impugned orders that both Bagalkunte Police Station, Bengaluru and Chirawa Police Station, Rajasthan, were Respondents in the Bail Application. Both police stations were represented by the same Public Prosecutor before the Additional City Civil and Sessions Judge, Bengaluru City.

4.2. The learned Judge noted that the Investigating Officer had commenced the investigation, conducted mahazar, recorded the statement of witnesses and completed a major part of the investigation. It was reasoned that the involvement of the accused-husband and his family members, being accused Nos. 2, 3 and 4, was yet to be proved. The learned Judge further reasoned that since the alleged offences were not punishable with death or imprisonment for life and are to be tried before the Magistrate, there was absolutely no reason to deny the benefit of anticipatory bail.

4.3. When the police of Chirawa called upon the accused-husband and his family members, accused Nos. 2, 3 & 4, it was realised that the learned Sessions Judge, Bengaluru, had granted them anticipatory bail. This was confirmed by the complainant-wife when she checked the Court's website.

4.4. On 09.12.2022, this Court allowed complainant-wife's Transfer Petition No.590/22 and transferred the M.C. No. 5786/2021 from the Principal Judge, Family Court, Bengaluru, to the Court of Additional District Judge, Chirawa, Jhunjhunu, Rajasthan.

5. Being aggrieved by the grant of anticipatory bail to the accusedhusband and accused Nos. 2, 3 and 4, the complainant-wife filed W.P. No.48/2023 before this Court, which came to be dismissed as withdrawn on 17.02.2023 with liberty to pursue her legal remedies.

6. Thereafter, the present Special Leave to Appeal came to be filed and notice was issued by this Court on 17.03.2023. On 07.07.2023, this Court requested learned Additional Solicitor General Sri Vikramjit Banerjee to assist the Court as an amicus curiae, having regard to the ramifications that would arise in the context of Section 438 of CrPC and the jurisdiction of the concerned Sessions Court or High Court to grant pre-arrest bail, when the FIR is not registered within the territorial jurisdiction of a particular district or State but in a different State.

Submissions:

7. We have heard Sri Vikramjeet Banerjee, Additional Solicitor General and learned amicus, Sri Kaustav Paul, learned senior counsel for the complainant-wife, Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, Sri V.N. Raghupathy, learned counsel for the State of Karnataka and Smt. Anjana Sharma, learned counsel for the accused-husband. We have also perused the material on record.

7.1. Learned senior counsel Sri Banerjee, while assisting this Court as an amicus, submitted as under:

i. Section 438 of CrPC has only used the term 'High Court or the Court of Session', as the case may be' but has not specified whether such a 'High Court or the Court of Session' has to be the same Court which can take cognizance of the matter or can be any 'High Court or Court of Session' across the country. Therefore, there exists limited legislative guidance about the power of a Court to grant anticipatory bail for an offence that is registered outside its territorial jurisdiction, in other words, whether 'extra-territorial anticipatory bail' can be granted by a High Court or Court of Session to a person apprehending arrest.

ii. Elaborating on the divergent approaches of various High Courts in the country regarding the grant of 'extra-territorial anticipatory bail', learned amicus submitted that the Courts have evolved the 'transit anticipatory bail' approach to provide an equitable and interim relief enabling an accused travelling a residing in a different State to seek anticipatory bail.

Learned amicus clarified that anticipatory bail and 'transit anticipatory bail' are different, as the former may or may not be restricted to a time period, whereas the latter is always granted for a specific time period, until an applicant can make an application for anticipatory bail before a Court that can take 'cognizance' of the offence. It was further submitted that this Court had adopted the 'transit anticipatory bail' approach in State of Assam vs. Brojen Gogol (Dr),

(1998) 1 SCC 397 (Brojen Gogol) and Amar Nath Neogi vs. State of Jharkhand, (2018) 11 SCC 797.

iii. Learned amicus further submitted that this Court in Nathu Singh vs. State of U.P., (2021) 6 SCC 64 (Nathu Singh) had emphasized a liberal approach to the grant of anticipatory bail in view of the serious impact that the unfair denial of the same can have on the right to life and liberty under Article 21.

iv. Referring to the judgement of this Court in Navinchandra Majithia vs. State of Maharashtra, (2000) 7 SCC 640, learned amicus apprised this Court of an alternative approach that is based on the 'cause of action' theory in criminal law. In view of the facts of the present case, it was submitted that the cause of action essentially arose in the matrimonial home of the parties in Bengaluru, Karnataka and continued in the complainant-wife's paternal home in Chirawa, Rajasthan. Therefore, Courts at either of these places may exercise their jurisdiction.

7.2. Learned senior counsel Sri Paul appearing for the complainantwife/ appellant herein submitted as follows:

i. The right to fair and impartial investigation and trial of an offence is a fundamental right not only of the accused but also of the complainant.

ii. Grant of bail by the Court at Bengaluru in an F.I.R which was not lodged within its territorial Jurisdiction, had left the complainantwife without an opportunity to oppose the same.

iii. The complainant-wife could not oppose the bail petition and the jurisdictional prosecutor from Chirawa, Rajasthan was also absent during the hearing. That only the Public Prosecutor of Bengaluru was present at the time of the hearing of the bail petition seeking anticipatory bail. The said prosecutor neither had the case diary of the investigation with him nor any assistance from the area police station where the F.I.R had been lodged. Hence, the impugned orders may be set aside.

7.3. Learned senior counsel for the State of Rajasthan Dr. Manish Singhvi submitted as under:

i. The existence of territorial jurisdiction is the undergrid of the institution of any case before a Court of law. The concept of territorial jurisdiction is of cardinal significance to the administration of justice. More specifically, both Chapter XIII of the CrPC and the existing/general criminal jurisprudence recognize that cognizance of an offence and not the offender is taken. That this Court in Raghubans Dubey vs. State of Bihar (1967) 2 SCR 423 (Raghubans Dubey) held that the Magistrate takes cognizance of an offence and not the offender.

That territorial jurisdiction assumes paramount importance as the offender, unlike the defendant in a civil suit instituted as per the Civil Procedure Code, 1908, has no role to play as far as the conferment of jurisdiction of a Court is concerned. That, in Dashrath Rupsingh Rathod vs. State of Maharashtra, (2014) 9 SCC 129, it was observed that Section 177 of the CrPC postulated that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

ii. Elaborating on the scheme of the CrPC, Dr. Singhvi submitted that Chapter II of the CrPC distributes adjudicatory duties amongst Magistrates and Courts as per territorial jurisdiction. Section 14 of the CrPC specifically determines the jurisdiction of local Magistrate(s). The provisions granting power to take cognizance (Section 157) or power to investigate (Section 156), are in accordance with the concept of 'ordinary place of inquiry and trial,' as stated in Chapter XIII of the CrPC.

iii. Therefore, the Court under whose territorial jurisdiction the offence was committed becomes the Court of competent jurisdiction to pass all orders, including bail and anticipatory bail. That the language of Section 167(2) mandating a judicial order for the detention of an accused beyond 24 hours, mentions 'nearest Magistrate' and not Magistrate of competent jurisdiction. The nearest Magistrate, while possessing the power to extend custody up to 15 days, does not have the power to grant bail as the same power is reserved only for the Magistrate who is competent to commit the case for trial.

In this regard, learned senior counsel submitted that the power of 'the High Court or the Court of Session' to grant pre-arrest anticipatory bail under Section 438 of CrPC cannot be invoked by a Court which does not have territorial jurisdiction. It was further contended that a proper construction of the word 'the' prefixed to both High Court and Sessions Court in the text of Section 438 of CrPC would mean the High Court or the Sessions Court having the competent jurisdiction. It was contended that the word 'the' cannot be given so liberal a construction that it becomes indistinguishable from 'any.'

iv. Learned senior counsel apprised this Court that even after the introduction of the provision of anticipatory bail in the CrPC in 1973, many States, such as Uttar Pradesh, did not have the said provision for decades altogether. It was further pointed out that practical difficulties such as forum shopping may arise from the treatment of anticipatory bail as analogous to a fundamental right. The difficulty would arise if a High Court would grant pre-arrest bail for an offence committed in a State where the provision for anticipatory bail does not exist.

This may lead to a situation where the High Court or the Court of Session would not have the advantage of the stance of the investigating agency or the assistance of the public prosecutor while adjudicating applications for grant of anticipatory bail. In view thereof, it was submitted that the High Court judgements, In Re: Benod Ranjan Sinha, 1981 SCC Online Cal 102 (In Re: Benod Ranjan Sinha), L.R. Naidu (Dr.) vs. State of Karnataka, 1983 SCC OnLine Kar 206 (L.R. Naidu) and N.K. Nayar vs. State of Maharashtra, 1985 Cri LJ 1887 (N.K. Nayar), permitting the grant of anticipatory bail for an offence committed outside their jurisdiction, should be set aside.

To buttress his contention, learned senior counsel submitted that the Justice V.S. Malimath Committee Report on Reforms in Criminal Justice System, in section 7.33, page 121, had proposed that the provision regarding anticipatory bail may be retained subject to two conditions: that the Court would hear the Public Prosecutor; and that the petition for anticipatory bail should be heard only by the Court of competent jurisdiction.

v. As an alternative form of relief to persons resident in a particular State but apprehending arrest by the police in another State, learned senior counsel relied upon judgements of this Court in Balchand Jain vs. State of M.P., (1976) 4 SCC 572 (Balchand Jain) and Sushila Aggarwal vs. NCT of Delhi, (2020) 5 SCC 1 (Sushila Aggarwal), which enunciated the approach of 'transit anticipatory bail' and 'interim protection' that balanced the right to life and personal liberty enshrined in Article 21 and the right to freedom of movement under Article 19(1)(d) with the fundamental scheme of administration of criminal justice, as prescribed in the CrPC. It was submitted that in an age where the movement of a citizen is frequent and fast, an offender may apprehend arrest even with respect to a statement made in a place of residence in one State, but the offended person may be residing in another State.

vi. Learned senior counsel further contended that in order to prevent the abuse of the process of law, this Court may hold that interim protection for a limited period could be granted by the Court nearest to the residence of the accused apprehending arrest. However, in order to prevent forum shopping, certain safeguards were also suggested for availing grant of interim protection as follows:

a. The person must show some residence proof to establish that he/she had been residing in the area in which the interim protection is sought; b. If the person is seeking interim protection apart from his/her normal place of residence, he/she must state the reasons for doing so and also disclose the nature of apprehension of arrest in the area wherein he/she does not reside;

c. The interim protection should not exceed a period of fourteen days under normal circumstances;

d. The concerned public prosecutor of the Court wherein interim application is moved may be informed in advance about the filing of the interim protection application. The public prosecutor after looking at the nature of the interim protection application, may contact the concerned police station and seek information about the stage and nature of the investigation of the crime committed;

e. The limited duration of the interim protection to secure the liberty of the individual from arrest in an alleged frivolous case would also ensure that the regular anticipatory bail is only granted by a Court of competent jurisdiction; and f. Interim protection should not be granted unless the requirements enumerated under Section 438 of CrPC are satisfied.

7.4. Learned counsel for the State of Karnataka submitted that having regard to the relevant judicial precedents on Section 438 of CrPC, an appropriate order may be made in this case.

7.5. Smt. Anjana Sharma, learned counsel for the accused-husband submitted as under:

i. The complainant-wife had filed a frivolous FIR against him and his family members based on false allegations and accusations. It is alleged that the sole objective of complainant-wife is to extort money as the accused-husband had refused to pay an amount of Rs. 50,00,000/-.

ii. That the anticipatory bail applications had been filed for securing protection from immediate arrest as the liberty of the petitioner was at stake and instant protection was necessary to protect his fundamental rights.

iii. That the apprehension of arrest was during the subsistence of the COVID-19 pandemic and he was under continuous pressure and threat of being arrested. The accused-husband being the only earning member having a younger brother and an elderly ailing father, was compelled to seek protection of his life and limb because the complainant-wife's father had influential local contacts in the place where the FIR was registered, i.e., Chirawa, Rajasthan. There was a reasonable apprehension of his arrest, which was the guiding factor in filing the application before the Bengaluru Court.

iv. Learned counsel of the accused-husband also questioned the bona fides of the complainant-wife by relying upon the delay in filing the present petition. It was further contended that the FIR was filed in Chirawa Police Station with the sole

objective of causing harassment to accused-husband and his family as the alleged offences were committed in Bengaluru. That the complainant-wife is familiar with Bengaluru as even earlier, she was working with a Mumbai-based company in Bengaluru.

Points for Consideration:

8. Having heard learned amicus and senior counsel and counsel for the respective parties and on perusal of the material on record, the following points would emerge for our consideration:

i. Whether the power of the High Court or the Court of Session to grant anticipatory bail under Section 438 of the CrPC could be exercised with respect to an FIR registered outside the territorial jurisdiction of the said Court?

ii. Whether the practice of granting transit anticipatory bail or interim protection to enable an applicant seeking anticipatory bail to make an application under Section 438 of the CrPC before a Court of competent jurisdiction is consistent with the administration of criminal justice?

iii. What order? The aforesaid questions shall be considered together as they are intertwined.

Legal Framework:

9. Before discussing the points for consideration in the present appeal, the relevant provisions of the CrPC are exposited as under:

9.1. Section 2(e) of the CrPC defines "High Court" to mean 'the High Court for that State,' in relation to any State. In relation to the Union Territory, it is defined as that High Court for a State to which the Union Territory's jurisdiction has been extended. In case of any other Union territory, it means the highest Court of criminal appeal for that territory other than the Supreme Court of India.

9.2. Section 2(j) defines "local jurisdiction", in relation to a Court or Magistrate to mean the local area within which the Court or Magistrate may exercise its powers under the CrPC. Section 14 of the CrPC states that the local jurisdiction of a magistrate shall be confined to the limits defined by the Chief Judicial Magistrate. Section 9 of the CrPC mandates that the State Government shall establish a Court of Session to be presided over by a judge appointed by the High Court.

9.3. A Court of competent jurisdiction is referred to in Section 41A of the CrPC wherein a police officer is empowered to arrest a person who fails to comply

with a notice for arrest subject to the orders of such Court. This is a Court that is competent to try the case. Section 167(2) empowers the nearest Magistrate to authorize the custody of an accused for a period not exceeding 15 days, once he is produced before him, whether it is a Court of competent jurisdiction to try the case or not.

If the Magistrate has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Section 156 further postulates that any officer in-charge of a police station may investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

9.4. Section 177 in Chapter XIII of the CrPC mandates that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. In case of uncertainty or ambiguity regarding the local areas where an offence is committed, Section 178 postulates that it may be inquired into or tried by a Court having jurisdiction over any of such local areas where the offence, or part thereof, may have been committed. Section 179 states that when the consequence of the offending act ensues, it may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

9.5. Having regard of the aforesaid statutory framework, it would be apposite to distillate the core aspects of Section 438 of CrPC pertaining to grant of anticipatory bail which reads as under:

"438. Direction for grant of bail to person apprehending arrest.-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue

a bailable warrant in conformity with the direction of the Court under Sub-Section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860)."

9.6 The salient features of Section 438 of CrPC can be culled out as under:

i. It confers a statutory right upon any person who has a reason to believe that he may be arrested in relation to the commission of a non-bailable offence.

ii. The statutory right consists of the right to apply before the High Court or the Court of Session for a direction that in the event of such arrest, he shall be released on bail.

iii. The Parliament has provided ample legislative guidance on the factors that may guide the High Court or the Court of Session while considering the application for grant of an anticipatory bail.

iv. The substantive factors consist of the nature and gravity of the accusation, the criminal antecedents of the applicant, the risk of the applicant absconding from justice or not cooperating with the criminal justice administration and the possibility of an accusation made in bad faith with the aim of injuring or humiliating the applicant.

v. In addition to the aforementioned substantive factors guiding the exercise of judicial discretion, Section 438 of CrPC engrafts certain procedural requirements. The High Court or the Court of Session may grant an interim order under Section 438(1) of CrPC in case the facts and averments in the application satisfy the factors laid down. However, the proviso to Section 438(1) of CrPC provides that if such an interim order is denied, the officer in-charge of a police station is at liberty to arrest the applicant without warrant.

Even if the interim order is made in favour of the applicant, the High Court or the Court of Session is mandated under Section 438 (1A) of CrPC to cause a notice of not less than seven days along with a copy of the interim order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application is finally heard by the Court. The Court is also empowered under Section 438 (1B) of CrPC to allow the Public Prosecutor's application to make the presence of the applicant seeking anticipatory bail obligatory at the time of

final hearing, if the Court deems such presence necessary in the interest of justice.

vi. The High Court or the Court of Session, under Section 438(2) of CrPC, is further empowered to pass any such conditions in light of the facts of a particular case, including

a) A condition that the person shall make himself available for interrogation by a police officer as and when required;

b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

c) a condition that the person shall not leave India without the previous permission of the Court;

d) such other condition as may be imposed under Sub-Section (3) of section 437, as if the bail is being granted under that Section.

vii. Section 438(3) states that if such a person is thereafter arrested without warrant by an officer in charge of a police station on an accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he is entitled to be released on bail. If a Magistrate taking cognizance of an offence decides that a warrant should be issued in the first instance against that person, he is empowered to issue a bailable warrant in conformity with the direction of the Court under Section 438(1).

viii. The Parliament has inserted clause (4) to Section 438 of CrPC vide the Criminal Law (Amendment) Act, 2018, thereby stipulating that the remedy under Section 438 of CrPC cannot be resorted to by any person accused of having committed an offence under Sections 376(3), 376-AB, 376-DA or 376-DB of the IPC. ix. The State Legislatures of Maharashtra, Odisha, Uttar Pradesh and West Bengal have enacted State amendments to Section 438 of CrPC.

Evolution of the Safeguard of Anticipatory Bail:

10. In Shri Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565 (Gurbaksh Singh Sibbia), a Constitution Bench of this Court speaking through Chandrachud, C.J., observed that society has a vital stake in preserving personal liberty as well as investigational powers of the police and their relative importance at any given time depends upon the complexion and restraints of political conditions. How best to balance these interests while determining the

scope of Section 438 of CrPC was the focus of the said case while dealing with the historical background of the said provision.

10.1 The question of the grant of pre-arrest or anticipatory bail fell for consideration in the era when the Code of Criminal Procedure, 1898 was in vogue and the grant of such bail was governed by Sections 497 and 498 of the erstwhile Criminal Procedure Code. In Jamini Mullick vs. Emperor, (1909) ILR 36 Cal 174, the Calcutta High Court considered a case where the Presidency Magistrate had issued warrants for the arrest of certain persons as suspects in a murder case.

The deceased had been found lying dead at night on the footpath and while at the inquest certain unknown persons were suspected, the Magistrate issued warrants when evidence casting suspicion on four individuals was produced. Therefore, the suspected individuals petitioned the Calcutta High Court for grant of bail. The Division Bench of Justices Mitra and Coxe granted pre-arrest bail to the suspected individuals. The judgment was prefaced by remarking that ordinarily the Court did not grant bail in cases of that kind, but emphasised on Section 498 of the erstwhile Criminal Procedure Code to hold that the High Court could exercise revisionary jurisdiction and grant bail to any person.

It was noted that the yardstick for the grant of relief of bail was whether there existed reasonable grounds to believe that the accused were guilty of the offence. It was underlined that it was within the Magistrate's jurisdiction to release the accused persons on bail but since the Magistrate did not consider the inconsistencies in the evidence produced to implicate four different accused for the same crime, the High Court could correct the Magistrate's failure to exercise his jurisdiction.

10.2 The decision of the Calcutta High Court was followed by the Full Bench of the Lahore High Court in Hidayat Ullah Khan vs. The Crown, AIR 1949 Lah 77 wherein the petitioners being apprehensive of institution of criminal proceedings had outlined reasons for the apprehension and sought pre-arrest bail till the disposal of the trial.

The petitioners had averred that such arrest would amount to victimization, and would be a cause of disgrace and dishonour to them. Justice Cornelius underlined that the proposed prosecution was not in good faith and that one of the petitioners was suffering from certain illnesses. The Crown had challenged the competence of the High Court to grant bail in anticipation of arrest, and that had occasioned the reference of the question from the Single Judge to the Full Bench. The Full Bench framed the question as under:

"Whether the High Court can grant any relief, and if so what, to a person seeking an order for bail, in anticipation of his arrest for an offence?"

10.3 The Full Bench held that the High Court had power under Section 498 of the erstwhile Code of Criminal Procedure Code to make an order that a person who is suspected of an offence for which he may he arrested by a police-officer or a Court, shall be admitted to bail. The Full Bench laid emphasis on the distinction between the jurisdiction of the police officer or Magistrate under Section 497 of the erstwhile Criminal Procedure Code 'to release on bail' and that of the High Court under Section 498 of the erstwhile Criminal Procedure Code, to 'direct that any person be admitted to bail.'

The Full Bench reasoned that the distinct use of a wide expression signified that the High Court's power includes not merely a power to revise the exercise of discretion by police-officers and Courts of first instance where bail has been refused, but also include clearly a power in the High Court to grant bail to persons to whom the police and the Courts of first instance are not permitted by S. 497 to grant bail, including those persons who are not in custody.

The Full Bench struck a cautious note that 'such cases would necessarily be extremely rare, and by its very nature, the power to interfere with the discretion of an official such as a police-officer exercising statutory powers perhaps at some remote place, at the very earliest stages of an investigation, would require to be exercised with the very greatest care.' The Full Bench held that the Court needs to be satisfied that if it stayed its hands until the police-officer had himself exercised his discretion in the matter and refused, upon arrest, to grant bail, a grave or irreparable wrong or injustice might result, while at the same time preserving the interest of justice in so far as they related to the charge against such an accused person.

10.4 It is observed that the CrPC, 1898 did not contain any specific provision corresponding to the present Section 438 of CrPC. Under the old Code, there was a sharp difference of opinion amongst the various High Courts on the question of whether Courts had the inherent power to pass an order of bail in anticipation of arrest, the preponderance of view being that it did not have such power.

10.5 The concept of 'anticipatory bail' was clearly explicated vide the 41st Law Commission Report in the year 1969, whereby the Law Commission observed as such:

"39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as 'anticipatory bail') was carefully considered by us.

Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting them detained in jail for some days.

In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail. We recommend the acceptance of this suggestion. We are further of the view that this special power should be conferred only on the High Court and the Court of Session, and that the order should take effect at the time of arrest or thereafter."

(emphasis added by us)

10.6 Thereafter, the 48th Law Commission of India Report, 1972 titled 'Some questions under the Code of Criminal Procedure Bill, 1970' discussed the legislative proposal for inclusion of a provision for the grant of anticipatory bail. The Law Commission termed the same to be a 'useful addition' while adding a caveat that it ought to be exercised only in very exceptional cases.

The Commission opined that the initial order should only be an interim order. That reasons for grant of the relief must be recorded and the Court ought to be satisfied that the direction is necessary in the interest of justice. The Law Commission also expressed a view that it was imperative that the final order of grant of anticipatory bail should only be made after notice to the Public Prosecutor so as to prevent the abuse of the process of law at the 'instance of unscrupulous petitioners.'

10.7 Observing that the crimes, the criminals and even the complainants can occasionally possess extraordinary features, in Gurbaksh Singh Sibbia, it was stated that "when the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism". The powerful processes of criminal law can then be perverted for achieving extraneous ends.

Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation that can even take the form of the parading of a respectable person in handcuffs, apparently on way to a Court of justice. The foul deed is done

when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

10.8 Despite the inclusion of the provision for anticipatory bail in the CrPC after the acceptance of the aforesaid recommendation, the expression "anticipatory bail" remained undefined in the CrPC. This Court in Balchand Jain observed that "anticipatory bail" means "bail in anticipation of arrest."

This Court has exposited that an application for anticipatory bail could be made by the accused either at a stage before an FIR is filed or at a stage when an FIR is registered but the charge sheet has not been filed, and the investigation is underway. Alternatively, it can be moved after the completion of investigation. The stage of investigation has a bearing on the conditions to be imposed while granting the relief of anticipatory bail. 10.9 A crucial difference between the pre-arrest bail order under Section 438 of CrPC and the bail order under Sections 437 and 439 of CrPC is the stages at which the bail order is passed.

11. Greater clarity on the contours of judicial discretion in the grant of pre-arrest bail emerged out of the judgement of the Full Bench of the Punjab and Haryana High Court in Gurbaksh Singh Sibia vs. State of Punjab, 1977 SCC OnLine P&H 157. The Full Bench of the Punjab and Haryana High Court had rejected the application for bail while furnishing the reasons that the power under Section 438 of CrPC is of an extraordinary character and must be exercised sparingly in exceptional cases. The said judgment was carried in appeal before this Court. Thereafter, the law on anticipatory bail was further crystallized by the Constitution Bench of this Court in Gurbaksh Singh Sibbia, where it disagreed with the reasoning of the Full Bench of Punjab and Haryana High Court.

11.1 It was observed that since the denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438 of CrPC, especially when not imposed by the legislature in terms of the Section. It was observed that Section 438 of CrPC is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail.

An over-generous infusion of constraints and conditions which are not to be found in Section 438 of CrPC can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained

in Section 438 of CrPC must be saved, not jettisoned. The considerations for grant of anticipatory bail were discussed in paragraph 31 of the said judgment which reads as under:

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made.

On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond.

There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the Court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail."

11.2 On the question of evaluation of the consideration as to whether the applicant is likely to abscond, it was observed that there can be no presumption that the wealthy and the mighty will submit themselves to trial and the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Ultimately, the Constitution Bench clarified the following points in paragraphs 35 to 39 which are extracted as under:

"35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a nonbailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief", for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested.

The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively, because it is then alone that the Court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

36. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

37. Thirdly, the filing of a first information report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

38. Fourthly, anticipatory bail can be granted even after an FIR is filed, so long as the applicant has not been arrested.

39. Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, insofar as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

11.3 Cautioning the Courts against granting blanket order of anticipatory bail so as to cover or protect any and every kind of allegedly unlawful activity, or eventuality, it was observed that there must be a genuine apprehension of arrest by the applicant and there must be something tangible to go by on the basis of which it can be said that the applicant's apprehension of arrest is genuine.

Otherwise, a blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because regardless of what kind of offence is alleged to have been committed by the applicant, when an order of bail comprehends allegedly

unlawful activity of any description whatsoever, this will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Therefore, the Court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.

12. While adjudicating on a question as to whether the protection granted under Section 438 of CrPC should be limited to a fixed period so as to enable the person to surrender before the trial Court or not, a Constitution Bench of this Court in Sushila Aggarwal took note of later doctrinal developments as well as reports of the Law Commission of India. In this case, two questions were considered by the Constitutional Bench:

1. Whether the protection granted to a person under Section 438 of CrPC should be limited to a fixed period so as to enable the person to surrender before the trial Court and seek regular bail?

2. Whether the life of an anticipatory bail order should end at the time and stage when the accused is summoned by the Court?

12.1 Regarding the first question, this Court held that the protection granted to a person under Section 438 of CrPC should not invariably be limited to a fixed period; it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) of CrPC should be imposed. If there are specific facts or features in regard to any offence, it is open for the Court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.

12.2 As regards the second question referred to this Court, it was held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the Court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the Court to limit the tenure of anticipatory bail, it is open for it to do so.

12.3 The following clarifications were also issued which are to be borne in mind while dealing with an application under Section 438 of CrPC:

"a) When an application is made seeking anticipatory bail, it should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. This is necessary in order to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition

that may have to be imposed. An application should be moved prior to the filing of an FIR, so long as the facts are clear and there is reasonable basis for apprehending arrest.

b) It is advisable for the Court, to issue notice to the Public Prosecutor and obtain facts, even while granting limited interim anticipatory bail.

c) Nothing in Section 438 CrPC, compels or obliges Courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. The Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. By virtue of Section 438(2), the Courts would be justified and ought to impose conditions spelt out in Section 437(3). Conditions which limit the grant of anticipatory bail may be imposed, depending on the facts of the case but not be invariably imposed.

d) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case. Whether to grant or not is a matter of discretion and similarly if bail is to be granted, the kind of conditions to be imposed or not to be imposed depends upon the facts of each case and subject to the discretion of the Court.

e) Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till the end of trial.

f) An order of anticipatory bail should not be blanket in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It must be confined to the particular offence or offences relatable to an incident, for which apprehension of arrest is sought. It cannot operate in respect of a future incident that involves commission of an offence.

g) The grant of an anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

h) The observations in Gurbaksh Singh Sibbia regarding limited custody or deemed custody in the context of Section 27 of the Evidence Act, does not require the accused to separately surrender and seek regular bail.

i) It is open to the police or the investigating agency to move the Court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding,

noncooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.

j) The correctness of an order granting bail can be considered by the appellate or superior Court at the behest of the State or investigating agency, and set aside the same on the ground that the Court granting it did not consider material facts or crucial circumstances. This does not amount to cancellation in terms of Section 439(2) CrPC.

k) In Siddharam Satlingappa Mhetre vs. State of Maharashtra, (2011) 1 SCC 694 (and other similar judgments), it was held that no restrictive conditions at all can be imposed, while granting anticipatory bail are hereby overruled. Likewise, the decision in Salauddin Abdulsamad Shaikh vs. State of Maharashtra, (1996) 1 SCC 667 and subsequent decisions which laid down restrictive conditions, or terms limiting the grant of anticipatory bail, to a period of time were overruled."

13. In Nathu Singh, the complainants filed a Special Leave Petition challenging the order of the High Court of Judicature at Allahabad, which dismissed the anticipatory bail application filed by the accused and on granting them 90 days to surrender before the trial Court and to seek regular bail, granted them protection from coercive action during the said period of 90 days.

13.1 The Court after referring to the Constitution Bench Judgment in the case of Sushila Aggarwal considered the proviso to Section 438(1) of CrPC and observed that the proviso does not create any rights or restrictions. It is only clarificatory in nature.

The Court then considered the question whether, while dismissing an application seeking anticipatory bail, the plea made by the applicant seeking protection for some time as he or she is the primary caregiver or breadwinner of his or her family members and needs to make arrangements for them and therefore even if a strict case for grant of anticipatory bail is not made out, and rather, where the investigating authority has made out a case for custodial investigation, whether the Court may exercise its discretion to grant protection against arrest for a limited period. It was observed that if such an order has to be passed, it must be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority and must be supported by reasons.

13.2 It was held that in the impugned order of the High Court, it had dismissed the application seeking anticipatory bail on the basis of the nature and gravity of the offence by not granting protection from arrest without assigning any reason. Secondly, the granting of the relief for a period of 90 days did not take into

consideration the concerns of the investigating agency, the complainant or the proviso under Section 438(1) of CrPC, which necessitates that the Court pass such an exceptional discretionary protection order for the shortest duration that is reasonably required.

A period of 90 days, or three months, is an unreasonable period. Therefore, the impugned orders were set aside leaving it open to the investigating agency to proceed with the matters in accordance with law and complete the investigation. If the applicants were in the meanwhile in judicial custody, their applications for regular bail could be considered by the competent Court, uninfluenced by the observations made in the order.

14. After marshalling the entire range of juridical materials on the subject of anticipatory bail and the perception of its abuse, the Constitution Bench in Sushila Aggarwal held the judgements of this Court that postulated greater limitations on the grant of anticipatory bail to be not good law.

15. The upshot of the above discussion is that the march of criminal law has been towards chiselling an equitous remedy that strikes a delicate balance between the imperative of personal liberty with that of effective administration of criminal law.

16. This Court, while being seized of a challenge to grant extraterritorial anticipatory bail, had kept the question of law open in the following two cases:

(i) In Brojen Gogol, this Court considered the Assam Police's challenge to the Bombay High Court's grant of anticipatory bail to an accused who was allegedly involved in offences perpetrated in Guwahati. Accordingly, it held that the anticipatory bail application ought to be made before the Gauhati High Court as the alleged activities had been perpetrated within its territorial jurisdiction.

Consequently, this Court set aside the impugned order of the Bombay High Court granting anticipatory bail on the ground that the prosecuting agency was not heard. However, this Court held that it did not think it necessary to decide whether the Bombay High Court had jurisdiction to entertain the anticipatory bail application. It was held that status quo would be maintained until the High Court of Gauhati passed appropriate order(s) on the anticipatory bail application.

(ii) This Court also had the occasion to adjudicate upon Teesta Atul Setalvad vs. State of Maharashtra, Special Leave Petition (Criminal) No. 1770 of 2014, whereby the applicant seeking extraterritorial anticipatory bail had appealed against the Bombay High Court's order. The Bombay High Court had permitted the applicant for extra-territorial anticipatory bail to move before the appropriate Court in Gujarat for the said relief and granted transit bail for four weeks so as to

enable the same. This Court disposed of the Special Leave Petition No. 1770 of 2014 on 24.02.2014 without interfering with the Bombay High Court's judgement while observing that the question of law about the jurisdiction of the High Court was kept open.

(iii) Therefore, the present appeal constitutes the third of the cases where this crucial question of public importance has been raised before this Court by the appellant who is the complainant.

Discussion:

17. Before proceeding further, the reasoning and outcome of some of the High Court judgements on the grant of extra-territorial anticipatory bail under Section 438 of CrPC are tabulated as under:

Case Name	High Court	Outcome and Reasoning
1. Pritam Singh vs. State of Punjab, 1980 SCC OnLine Del 336 (Pritam Singh)	Delhi High Court regarding FIR registered in the State of Punjab	The High Court allowed accused's plea under Section 438 of CrPC and directed that the accused be released in the event of arrest upon furnishing personal bond and surety. It was reasoned that one need not mix up the jurisdiction relating to cognizance of an offence with that of granting bail. Bails are against arrest and detention. Therefore, an appropriate Court within whose jurisdiction the arrest takes place or is apprehended or is contemplated will also have jurisdiction to grant bail to the person concerned. If the Court of Session or the High Court has the jurisdiction to grant interim bail, then the power to grant full anticipatory bail will emanate from the same jurisdiction. Concurrent jurisdiction in Courts situated in different States is not outside the scope of the CrPC.

		It is not possible to divide the jurisdiction under S. 438 of CrPC into an ad interim and final, but it is permissible if it is so expedient or desirable, for any of the Courts competent to take cognizance of and to try an offence and the Courts competent to grant bail can also grant anticipatory bail for a specified period only.
2. In Re: Benod Ranjan Sinha, 1981 SCC Online Cal 102 (In Re: Benod Ranjan Sinha)	Calcutta High Court regarding FIR registered in the State of Bihar.	The High Court granted relief under Section 438 of the CrPC to the petitioner therein and reasoned that it has jurisdiction to entertain the application for anticipatory bail of a petitioner who resides within the jurisdiction of the said Court, though he apprehends arrest in connection with a case which has been initiated outside the jurisdiction of this Court.
3. L.R. Naidu (Dr.) vs. State of Karnataka, 1983 SCC OnLine Kar 206 (L.R. Naidu)	Karnataka High Court regarding FIR registered in the State of Kerala	The anticipatory bail applicant was granted protection from arrest with the direction that upon a future arrest, he shall be released on bail on his executing a bond of a sum of Rs. 3,000/- with a surety in a like sum to the police's satisfaction. He was directed to approach the appropriate Court in Kerala State within twenty days from the date of his arrest by the Cannanore Police. It was held that in case he made any such application within the time referred to above, the order of anticipatory bail would be in force till such time as that Court passes an order. In case the petitioner does not

		make any application the order would cease to be in force thereafter i.e., from the 21st day of his arrest.
4. C.L. Mathew vs. Govt. of India, 1984 SCC Online Ker 207 (C.L. Mathew)	Kerala High Court regarding offences committed in Jamshedpur, Bihar.	The High Court granted anticipatory bail. It noted that an offence may be committed in one State and that the applicant may reside in another State; or he may have residence in several States. He may be arrested while he is on the move, after committing the crime, before he reaches his place of residence in another State. It cannot be that he can be armed with orders of anticipatory bail from every High Court; it cannot also be that conflicting orders are issued by different High Courts in respect of the same offence and in respect of the same alleged offender. A balance has therefore to be struck keeping in view the constitutional guarantee under Articles 21 and 22, the procedural safeguards under the Criminal Procedure Code and the jurisdiction conferred on the High Courts in India. It was concluded that the High Court of the State will have to restrict the scope of the relief of anticipatory bail to arrests made within that State. Arrests made outside the State will thus not be protected by an order under S. 438 of CrPC unless the offence itself is alleged to be committed within the State.

5. N.K. Nayar vs. State of Maharashtra, 1985 Cri LJ 1887 (N.K. Nayar)	Bombay High Court with respect to an FIR registered in Haryana.	The High Court laid emphasis on the expression 'apprehension of arrest' and held that if the arrest is likely to be affected within a jurisdiction beyond that of the High Court, then the concerned person may apply to the High Court for anticipatory bail even if the offence is committed in some other State.
6. Syed Zafrul Hassan vs. State, 1986 SCC Online Pat 3 (Syed Zafrul Hassan)	Patna Bench of the Patna High Court with respect to FIR registered at Jhinkpani police station which falls in the district of Singhbhum and comes squarely within the jurisdiction of the Ranchi Bench of the Patna High Court.	The High Court denied the relief and reasoned that an application under Sec. 438 of CrPC cannot be entertained in respect of offences committed in another territory for want of jurisdiction. The High Court laid emphasis on 'the deliberate designed phraseology' of Section 438 of CrPC and reasoned that "the High Court" or "the Court of Session" cannot be conflated with "any High Court" or "any Court of Session". Denying that the word 'the' could be substituted with 'any', the High Court reasoned that such a substitution would be doing 'plain violence to the specific language' of Section 438 of CrPC.
7. Sailesh Jaiswal vs. State of West Bengal, 1998 SCC Online Cal 215 (Sailesh Jaiswal)	Calcutta High Court	The Full Bench of Calcutta High Court held that an application under Sec. 438 of CrPC cannot be entertained in respect of offences committed in another State for want of jurisdiction. The High Court reasoned that the exercise of jurisdiction of anticipatory bail by any other Court namely the

		High Court or the Court of Session beyond the local limits of their jurisdiction is limited to the extent of consideration of bail for the transitional period. Accordingly, denied relief of anticipatory bail but granted transit anticipatory bail.
8. Sadhan Chandra Kolay vs. State, 1998 SCC Online Cal 382 (Sadhan Chandra Kolay)	Calcutta High Court with respect to offence committed outside the State of West Bengal.	The Court noted that in view of Article 214 of the Constitution, the territorial jurisdiction of a particular High Court of a particular State ordinarily shall not be extended to the territory of any other State and exercise of any power or jurisdiction in connection with any matter outside the State would be in excess of the power conferred by the law. Section 438 of CrPC confer special powers only on the Court of Session and the High Court to grant anticipatory bail in the event of arrest by the police. The legislative intention behind this provision is to prevent undue harassment by the police of an innocent citizen or class of citizens. So far as the Sessions Court is concerned, its power is limited to the territorial jurisdiction of the Sessions- Division and it cannot exercise the power under Section 438 of CrPC outside its Sessions-Division. Therefore, it is clear that the Sessions Judge has got no authority to exercise the power or jurisdiction under Section

		438 of CrPC beyond the local limits of the territorial jurisdiction of the Sessions-Division. The High Court held that the petition for anticipatory bail under Section 438 of CrPC in connection with an offence in any out-station cannot be entertained by the High Court and as such the petition was not maintainable.
9. Honey Preet Insan vs. State, 2017 SCC Online Del 10690 (Honey Preet Insan)	Delhi High Court regarding offence registered in the State of Haryana.	The High Court noted that the applicant, a resident of Sirsa in Haryana, had sought anticipatory bail from a Delhi Court by giving a Delhi address in addition to a Sirsa address. The High Court emphasized that it was duty bound to consider whether the applicant is a regular or bona fide resident of a place within the local limits of that Court and the application is not a camouflage to evade the process of law. If the Court is not satisfied on this aspect, the application deserves to be rejected without going into the merits of the case. The High Court also denied the plea of transit anticipatory bail for period of three weeks to enable the applicant to move the Punjab and Haryana High Court. The High Court reasoned that the applicant was at large and her counsel had refused to undertake to join investigation upon being granted interim protection. Therefore, the High Court

		concluded that the application is not bona fide and has been filed with a view to gain time.
10. Teesta Atul Setalvad vs. State of Maharashtra, ABA No.14/2014 (Teesta Atul Setalvad)	Bombay High Court regarding offence registered in the State of Gujarat	The High Court granted transit bail for four weeks and allowed the applicant to move before the appropriate Court in Gujarat for said relief.
11. Gameskraft Technologies vs. State of Maharashtra, 2019 SCC OnLine Kar 520 (Gameskraft Technologies)	Karnataka High Court regarding offence registered in the State of Maharashtra.	The High Court recognized that it is a well-settled proposition of law that though the alleged offence had not taken place within the jurisdiction of the said Court, it can grant bail though it has no jurisdiction. The High Court allowed the application, directing that they must be immediately released if they are arrested, subject to the condition that the applicant 'shall appear before the jurisdictional Court within 15 days or within 15 days from the date of their arrest by the concerned police whichever was earlier.
12. Surya Pratap Singh vs. State of Karnataka, 2019 SCC Online Del 9533 (Surya Pratap Singh)	Delhi High Court regarding offence registered in the State of Karnataka.	The High Court granted two weeks to the applicant to make an appropriate application before the concerned Court. Protection was granted for two weeks.
13. Nikita Jacob vs. State of Maharashtra, 2021 SCC OnLine Bom 13919 (Nikita Jacob)	Bombay High Court regarding offence registered in New Delhi.	Reasoned that the imperative of temporary relief to protect liberty and to avoid immediate arrest may be relied upon to grant interim bail for an offence that was allegedly committed outside the Court's territorial jurisdiction.

14. Ajay Agarwal vs. The State of U.P., 2022 SCC OnLine All 689 (Ajay Agarwal)	Allahabad High Court regarding offence registered in the State of Maharashtra.	The High Court noted that transit bail is protection from arrest for a certain definite period as granted by the Court granting such transit bail. Therefore, the Court granted protection to the accused for a period of six weeks to enable him to approach the competent Court for seeking appropriate relief.
15. Amita Garg vs. State of U.P., 2022 SCC Online All 463 (Amita Garg)	Allahabad High Court regarding offence registered in the State of Rajasthan.	The High Court noted that there is no legislation or law which defines "transit or anticipatory bail' in definitive or specific terms. The said Court explained that the transit anticipatory bail precedes detention of the accused and is effective immediately at the time of the arrest. Transit bail is protection from arrest for a certain definite period as directed by the Court granting such transit bail. Therefore, when an accused is arrested in accordance with the order of a Court and whereas the accused needs to be tried in some other competent Court having jurisdiction in the aforementioned matter, the accused is given bail for the transitory period i.e., the time period required for the accused to reach that competent Court from the place he is arrested in. The regular Court would consider such anticipatory bail, on its own merits and shall decide such anticipatory bail application. Therefore, it could be easily said that transit bail is

		a temporary relief which an accused gets for a certain period of time. The High Court concluded that there is no fetter on the part of the High Court in granting a transit anticipatory bail to enable the applicants to approach the Courts including the High Court within whose jurisdiction the offence is alleged to have been committed and the case is registered.
16. Manda Suresh Parulekar vs. State of Goa, 2023 SCC OnLine Bom 1568 (Manda Suresh Parulekar)	Bombay High Court regarding offence registered in the State of Goa.	The High Court granted transit anticipatory bail with respect to an FIR registered in Tardeo, Goa. Without adjudicating the merits of the case, upon considering the factual aspects of the case, protection was granted for a period of four weeks to enable the applicants to approach the concerned Court for appropriate reliefs.

18. The above table is a testament to the rich jurisprudential discussion that has arisen out of the limited legislative guidance regarding the expression 'the High Court or the Court of Session.' The analysis of the above case law is as under:

a. The Patna High Court in Syed Zafrul Hassan stressed on the plain meaning of Section 438 of CrPC to hold that 'the High Court' or 'the Court of Session' cannot mean "any" High Court or Court of Session. Therefore, it held that the application for direction under Section 438 of CrPC was not maintainable at Patna Bench of the Patna High Court because the FIR was registered at the Jhinkpani police station which falls in the district of Singhbhum. The matter thus came squarely within the jurisdiction of the Bench of the Patna High Court at Ranchi.

The High Court stressed on the principle that a criminal Court takes cognizance of the offence and not of individual offenders, vide Raghubans Dubey. Therefore, the High Court emphasized upon the practical difficulties if the jurisdiction of criminal Court was determined by 'the shady or evasive

movements of the offender', there would be 'judicial chaos and an inherent conflict betwixt the comity of Courts.' The High Court cautioned that if the application for anticipatory bail was maintainable outside the territorial jurisdiction of the High Court, 'a fugitive offender may well move from Court to Court ad infinitum and if he fails in one jurisdiction then on to another until he secures relief in the last.'

b. Calcutta High Court in Sadhan Chandra Kolay relied upon Article 214 of the Constitution which states that there shall be a High Court for each State and had categorically held that the Sessions Judge has got no authority to exercise the power or jurisdiction under Section 438 of CrPC beyond the local limits of the territorial jurisdiction of the Sessions-Division.

c. The facts in Honey Preet Insan are peculiar to the extent that the relief of interim protection was denied because the applicant was at large and had categorically refused to join investigation.

d. At this juncture it may be noted that the aforementioned approach was supported by the Justice V.S. Malimath Committee's Report on Reforms in Criminal Justice System. In section 7.33, page 121, the Committee had proposed that provision regarding anticipatory bail may be retained subject to two conditions: that the Court would hear the Public Prosecutor; and that the petition for anticipatory bail should be heard only by the Court of competent jurisdiction.

e. Another set of judgements, such as of the Delhi High Court in Surya Pratap Singh, Allahabad High Court in Ajay Agarwal, Amita Garg, Bombay High Court in Teesta Atul Setalvad, Nikita Jacob and Manda Suresh Parulekar, highlight the transit anticipatory bail approach. In these cases, the High Court granted transit bail and ruled that the grant of protection from arrest beyond the local limits of their jurisdiction is limited to the extent of consideration of bail for the transitional period. In other words, the High Courts in their respective judgement has read the scheme of administration of criminal justice and the provision for anticipatory bail in a conjoint sense, thereby limiting the relief of extra-territorial anticipatory bail to a definite interim period.

f. Another line of judgments namely, by the Delhi High Court in Pritam Singh; Kerala High Court in C.L. Mathew; Bombay High Court in N.K. Nayar; Calcutta High Court In Re: Benod Ranjan Sinha and Karnataka High Court in L.R. Naidu and Gameskraft Technologies have read the expression 'the High Court or the Court of Session' in Section 438 of CrPC as different and disjoint from the general scheme of criminal procedure, thereby deciding in favor of grant of protection from arrest to remove the apprehension of arrest at a

particular place, irrespective of the territorial jurisdiction to take cognizance of the criminal offence in question.

The constitutional imperative of safeguarding personal liberty was emphasised and it was noted that a person may apprehend arrest at a place including at a place other than the one within the jurisdiction in which an alleged offence has been committed. The High Courts in their respective judgments adverted to the lack of legislative qualification of the expression 'the High Court or the Court of Session' to mean that it extends to any High Court or Court of Session in whose jurisdiction an arrest is apprehended by a person against whom an FIR has been filed.

Position of law overseas:

19. Article 9 of the Universal Declaration of Human Rights, 1948 establishes that "no one shall be subjected to arbitrary arrest, detention or exile." Article 10 of the International Covenant on Civil and Political Rights of the United Nations, 1966 establishes that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

These provisions in the International Human Rights instruments are a necessary safeguard against the reality of arbitrary and inhumane deprivation of liberty and the inability of those thus deprived to benefit from legal resources and constitutional guarantees that they are entitled to for the conduct of their defence as required by law in any judicial system and by application of international human rights standards.

20. Comparative legal study on law of criminal procedure presents India as an exemplar with respect to the provision for pre-arrest bail. It would be useful to consider how other jurisdictions have dealt with the issue of pre-arrest bail as under:

(a) Possibly, the only known case of an application for a pre-arrest bail bond in the United States of America is In re: Sturman, 1984.604 F. Supp. 278. (F. E. Devine (1990) Anticipatory Bail: An Indian Civil Liberties Innovation, International Journal of Comparative and Applied Criminal Justice, 14:1-2, 107-114). The U.S. District Court for the Northern District of Ohio presumed that the applicant's motion was made to spare himself of the embarrassment of arrest. In denying the motion as premature, the Chief District Judge commented that the "setting of a bail bond is to insure the accused's presence at trial; it is not designed as a means to avoid arrest."

(b) In the United Kingdom, the common law of arrest was codified in Section 2 of the Criminal Law Act, 1967. The salient facets of Section 2 are that for an arrest to be lawful, the offence must be one carrying a penalty of five years imprisonment (an "arrestable offence"); and there must, at the minimum, be suspicion on reasonable grounds that the person to be arrested either has committed, is committing or is about to commit the offence. It may be wielded as a tool to prevent the destruction of evidence, interference with witnesses or warning accomplices who have yet to be arrested. When there is reason to suspect an offence may be repeated, especially though not exclusively in the case of violent offences, it may be used to prevent such repetition.

(c) The United Kingdom's Royal Commission Report on Criminal Procedure (Philips Commission)(1981) - cited affirmatively by this Court in Joginder Kumar vs. State of U.P., (1994) 4 SCC 260, para 17-19 - proposed to restrict the circumstances in which the police could exercise the power of arrest with warrant to deprive a person of his liberty to those in which it would genuinely be necessary to enable them to execute their duties of preventing the commission of offences, investigating crime, and bringing suspected offenders before the Courts; and to simplify, clarify and rationalise the existing statutory powers of arrest, confirming the present rationale for the use of those powers. It stated as follows:

"In attempting to limit the power of arrest, we have no intention of inhibiting the police from fulfilling their functions of detecting and preventing crime. But we do seek to alter the practice whereby the inevitable sequence that would follow upon the arising of a reasonable suspicion is arrest, followed by being taken to the station, often to be searched, fingerprinted and photographed. The evidence submitted to us supports the view of the Police Complaints Board, expressed in their triennial report, that police officers are so involved with the process of arrest and detention that they fail at times to understand the sense of alarm and dismay felt by some of those who suffer such treatment.

Arrest represents a major disruption to the suspect's life. That disruption cannot, in our view, be justified if it is not necessary to take him to the station for one or more of the following reasons: to find out his name and address; to prevent the continuation or repetition of the offence; to protect persons or property; to preserve evidence in connection with that offence; to dispel reasonable suspicion or to turn it into a prima facie case." (para 3.75)

The Royal Commission underlined the necessity principle to diminish the possibility of arbitrary arrest, thereby requiring the police officer receiving the suspect in his custody to enquire as to whether it would be essential to keep the arrested person at the police station on the basis of the following criteria:

(i) the person's unwillingness to identify himself so that a summons may be served upon him;

(ii) the need to prevent the continuation or repetition of that offence;

(iii) the need to protect the arrested person himself, or other persons or property;

(iv) the need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him; and

(v) the likelihood of the person failing to appear at Court to answer any charge made against him.

(d) The Queen's Bench in Regina vs. Secretary of State for the Home Department, Ex Parte LeecH, (1994) Q.B. 198 held that it was a principle of fundamental importance that every citizen had a right of unimpeded access to a Court, and to a solicitor for the purpose of receiving advice and assistance in connection therewith.

(e) In Kenya, while there are no specific provisions on anticipatory bail, these are instead enshrined in constitutional provisions under the Bill of Rights. The Constitution of Kenya, 2010 provides for:

(i) Bail of arrested person under Article 49(1)(h)

(ii) Appropriate relief under Article 23(3) for breach of the Bill of Rights.

Therefore, wherever the remedy has been considered, the Courts have applied the threshold applicable to an application filed seeking to prevent the violation or threatened violation of rights under Articles 23 and 165(3) of the Kenyan Constitution.

(f) The High Court of Kenya in Coroline Kuthie Karanja vs. Director Public Prosecutions, (2021) eKLR extensively referred to Section 438 of CrPC and stated that the constitutional Courts of India had widely construed the fundamental aspects of anticipatory bail to be of great importance and anchored to the right to life and liberty of a person.

The High Court also emphatically reiterated its constitutional duty to go to the length and breadth of the Constitution to protect the rights and fundamental freedoms of Kenyans where need be, but it emphasized the need to be alive to its obligation not to curtail the other organs of the State from carrying out their constitutional mandate. Accordingly, the High Court granted anticipatory bail on the ground that the applicant therein had been arrested in the past and was out of

custody on bond for a charge that was similar to the charge that she apprehended the arrest for.

Personal Liberty and Access to Justice:

While we have analysed key judgments of this Court as well as various High Courts across the country on the pertinent question/issue raised in this case, we must also look at the same from the angle of personal liberty and access to justice. Article 39 A of the Constitution of India deals with equal justice and free legal aid, which can be construed to be a specie of Article 21 of the Constitution of India, which deals with right to life and liberty. For sake of immediate reference, Article 39A is extracted as under:

"39A. Equal justice and free legal aid.-

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

21. A Constitution Bench of this Court in Anita Kushwaha vs. Pushap Sudan, (2016) 8 SCC 509 held access to justice to be encompassed within the right to life under Article 21 and observed as under:

"31. Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of the Constitution of India.

If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution.

We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law.

It is as much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and justice administered. The citizen's inability to access Courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws.

Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

The Constitution Bench enumerated four facets of access to justice as:

"33. Four main facets that, in our opinion, constitute the essence of access to justice are:

(i) the State must provide an effective adjudicatory mechanism;

(ii) the mechanism so provided must be reasonably accessible in terms of distance;

(iii) the process of adjudication must be speedy; and

(iv) the litigant's access to the adjudicatory process must be affordable."

22. Therefore, this Court has elevated the provision of a just adjudicatory forum for a citizen to agitate his grievance and seek adjudication of what he may perceive as a breach of his right to the level of a fundamental right. Not only is the adjudicatory forum supposed to be effective in its functioning and just, fair and objective in its approach, but it also must be conveniently approachable and affordable by observing as under:

"35. The forum/mechanism so provided must, having regard to the hierarchy of Courts/tribunals, be reasonably accessible in terms of distance for access to

justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the Court/tribunal/Court/competent authority to grant such a relief. (See D.K. Basu v. State of W.B. [D.K. Basu v. State of W.B., (2015) 8 SCC 744 : (2015) 3 SCC (Cri) 824])"

23. It was also emphasised that access to justice would, therefore, be a constitutional value of any significance and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to access justice is no more than a hollow slogan of no use or inspiration for the citizen. It was held as under:

"38. Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society."

Section 438 CrPC : Interpretation

24. The answer to the points for consideration raised herein would emerge from the construction that is afforded to the expression 'the High Court or the Court of Session' in Section 438 of CrPC. It was submitted before us that the use of the definite article 'the' before High Court and Court of Session must mean that High Court and that Court of Session which exercises territorial jurisdiction over the area where an offence has been committed.

25. It indeed is a trite rule of statutory interpretation that penal statutes are to be construed strictly. When acts are to be made penal and are to be visited with loss or impairment of life, liberty, or property, it may well be argued that personal liberty requires clear and exact definition of the offence. Furthermore, appropriate care must be taken to adopt an interpretation which makes the textual interpretation match the contextual. In this regard, the following contextual aspects may be noted:

a. The CrPC explicitly defines the 'local limits' and 'local jurisdiction' within which the Magistrate may exercise jurisdiction.

b. Even though the High Court is defined in CrPC, no provision explicitly defines its territorial jurisdiction which has to be discerned from the Constitution of India.

c. Section 438(1)(iv) of CrPC makes explicit the legislative intent to prevent humiliation of the persons who apprehend arrest, especially in politically motivated or malicious prosecutions or in false cases.

d. The mischief that Section 438 of CrPC seeks to remedy is apprehension of wrongful arrest.

26. Therefore, we ought to provide sufficient amplitude to the expression 'reason to believe that he may be arrested', and look at the setting in which the words are used and the circumstances under which the law came to be passed to decide whether something implicit is behind the words used which controls the literal meaning of such words. An interpretation giving rise to an absolute bar on the jurisdiction of a Court of Session or a High Court to grant interim anticipatory bail for an offence committed outside the territorial confines of a High Court or Court of Session may lead to an anomalous and unjust consequence for bona fide applicants who may be victims of wrongful, mala fide or politically motivated prosecution.

27. Furthermore, the fundamental right to personal liberty and access to justice, which are constitutionally recognised and statutorily preserved through the presence of jurisdiction with superior Courts, would be undermined through such a restrictive interpretation. While construing a statute, constitutional Courts are obliged to render a contextually sensitive construction that preserves and furthers core constitutional values.

28. Reliance in this regard may be placed on the dicta of this Court in Central Inland Water Transport Corporation vs. Brojo Nath Ganguly, (1986) 3 SCC 156:

"It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the Court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our Courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution."

(emphasis by us)

29. We are mindful that this Court's jurisprudence on Section 438 of CrPC, particularly in Gurbaksh Singh Sibbia and Sushila Aggarwal, has towed the line of wise exercise of judicial discretion while interpreting the silence of the Parliament to imply an intention to facilitate the grant of essential procedural relief to secure the right to life and personal liberty under Article 21.

Whilst the Constitution Bench in Gurbaksh Singh Sibbia ruled against the procedural and substantive restrictions on the grant of relief of anticipatory bail, the Constitution Bench in Sushila Aggarwal held that the period of anticipatory bail cannot be limited, and may extend till the end of trial. The judgement of the Constitution Bench in Gurbaksh Singh Sibbia, in para 13, emphasises that, 'the High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant.'

30. Maxwell in his treatise on Interpretation of Statutes (10 edn.), page 284 states that "the tendency of modern decisions on the whole is to narrow materially the difference between strict and beneficial construction". It follows that criminal statutes such as the CrPC are interpreted with rational regard to the aim and intention of the legislature. What has to be borne in the judicial mind is that the interpretation of all statutes should be favorable to personal liberty subject to fair and effective administration of criminal justice.

31. A remedy such as anticipatory bail secures citizens afflicted in difficult life circumstances - and such difficulties would keep evolving as our collective lives and legal systems become more complex. We deem it fit to distinguish between exercise of jurisdiction arising out of apprehension of arrest and jurisdiction conferred consequent to the "commission and cognizance of an offence". If the Parliament intended that the expression 'the High Court or the Court of Session', to mean only the Court that takes cognizance of an offence, then the Parliament would have made this abundantly clear.

The omission of any qualification of the expression 'the High Court or the Court of Session,' ought to be constructed in a fashion that furthers the constitutional ideal of safeguarding personal liberty. It would be in furtherance of fostering personal liberty enshrined in Article 21 of the Constitution of India in entrusting a wider jurisdiction to the Court of Session and the High Court in the grant of anticipatory bail, than in foreclosing the same by restructuring the exercise of jurisdiction in the matter of grant of anticipatory bail.

32. In the context of the contentions advanced by Dr. Manish Singhvi that the unbridled power to grant extra-territorial anticipatory bail would cause inconsistencies because of the varying State amendments to Section 438 of CrPC, we note that the application of the provision for anticipatory bail in the State of Uttar Pradesh had been omitted vide the enactment of the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 1976.

The Uttar Pradesh State Legislature applied Section 438 of CrPC vide enactment of Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2018, pursuant to 'continuous demand for its revival', writ petitions before the High courts, and recommendations of the Uttar Pradesh State Law Commission in its third report in 2009. We also note that the Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2022 makes the provision of anticipatory bail inapplicable

(a) in case of offences arising out of,-

(i) The Unlawful Activities (Prevention) Act, 1967;

(ii) The Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) The Official Secrets Act, 1923;

(iv) The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986;

(v) The Protection of Children from Sexual Offences Act, 2012;

(b) to those offences in which the death sentence may be awarded;

(c) to the offences of rape and illegal sexual intercourse enumerated in sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376- DA, 376-DB, 376-E of the Indian Penal Code, 1860.

33. Considering that the nature of criminal law regime in India, entwined with State amendments, the exercise of the jurisdiction for grant of extra-territorial anticipatory bail must be cognizant of the possibility of forum shopping. We also deem it necessary to take note of the evolution of the law on inter-state arrests, as this lies at the heart of 'apprehension of arrest,' for which the extraordinary jurisdiction of the High Court and Court of Session are attracted in case the accused resides in or is located in a territorial jurisdiction different from the jurisdiction in which cognizance of crime is taken by the Court of competent jurisdiction.

34. Section 48 of CrPC permits the police to pursue an accused in other jurisdictions. A police officer, for the purpose of arresting without a warrant, one whom he is allowed to arrest, may pursue an individual anywhere in India. Prior to effecting the arrest outside a particular jurisdiction, the police is obligated to secure the transit remand i.e. the remand of the accused, for taking him from one place to another in their own custody, usually for the purpose of producing him before the concerned magistrate who has jurisdiction to try/commit the case.

The primary purpose of such a remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated and tried. However in various cases, the police and investigating agencies have failed to exercise necessary restraint while functioning within their legal remit. It is for the aforesaid reason that an accused apprehending arrest seeks pre-arrest bail.

The Courts in India have to be vigilant about such applications being filed particularly when a person alleged to have committed an offence can be proceeded with by setting the criminal law in motion in a place other than the place where the offence has actually occurred. In such circumstances the Courts must balance the interest of the accused in the context of the salutary principle of access to justice which is a facet of Article 21 of the Constitution as well as a Directive Principle of State Policy, especially Article 39(A). More importantly, it is a facet of Article 14 of the Constitution which guarantees to every person in the country, equality before the law and equal protection of the law.

35. In this case, we are concerned with what is loosely termed as 'transit anticipatory bail'. As we have seen, the expression 'anticipatory bail' is not defined in the CrPC though it is traceable to Section 438 of CrPC This Court in Balchand Jain had defined anticipatory bail to mean bail in anticipation of arrest. The Constitution Bench in Gurbaksh Singh Sibbia has held that filing of FIR is not a condition precedent for exercising power under Section 438 of CrPC What is required for invocation of power under Section 438 is that the person seeking anticipatory bail should show reasonable belief of imminent arrest.

If the expression 'anticipatory bail' is not a defined expression, then it is quite but natural that the larger expression 'transit anticipatory bail' would not find any exposition in the CrPC. Perhaps the need and necessity for transit anticipatory bail has occasioned because the police has been conferred power under the CrPC to pursue an accused in other jurisdictions. Immediately upon affecting the arrest of a person outside the jurisdiction where the offence is registered, the police is obligated to secure a transit remand.

The arrested person has to be produced before the nearest magistrate. If such a magistrate finds that he has no jurisdiction to try the case in which the accused has been arrested, he may order the accused to be forwarded to a magistrate having the jurisdiction to try the case or to commit it for trial. Thus, the police is obligated to secure a transit remand of the accused for taking him from the place where he is arrested to the place where the crime is registered, for production before the competent magistrate in terms of the requirement of Article 22.

As we have already noted, the primary purpose of such a transit remand is to enable the police to shift the person in custody from the place of arrest to the place where the matter can be investigated. It appears that from the aforesaid requirement of transit remand, has arisen the necessity of 'transit anticipatory bail' for, an affected person cannot be without a remedy.

35.1. The word 'transit' is derived from the Latin word transitus which means passage from one place to another. Since the word 'transit' is an undefined expression in CrPC, we may take recourse to the dictionary meaning of the word 'transit'. The Concise Oxford English Dictionary, 10th Edition, Revised, defines the word 'transit' to mean carrying of people or things from one place to another; the conveyance of passengers on public transport; an act of passing through or across a place. 'Transited' or 'transiting' would mean pass across or through.

Similarly, the word 'transition' means the process of changing from one state or condition to another. Likewise, the adjective 'transitory' means not permanent; short-lived. An useful example of the above expression is transit visa which means a visa allowing its holder to pass through a country only, not to stay there. The word 'transit' has also been defined in the Black's Law Dictionary, 11th Edition, to mean the transportation of goods or person from one place to another; passage; the act of passing.

35.2. In Dr. Brojen Gogol, this Court did not decide whether the Bombay High Court had the jurisdiction to entertain the anticipatory bail applications of the respondents since the crimes were registered within the State of Assam. On the short point that the State of Assam or the Assam police were not heard before granting anticipatory bail to the respondents, this Court set aside the order of the Bombay High Court but granted protection from arrest to the respondents for a limited duration to enable them to approach the Gauhati High Court.

While passing such an order, this Court however made a general observation that the question of granting anticipatory bail to any person who is allegedly connected with the offence in question, must for all practical purposes be considered by the High Court of Gauhati within whose territorial jurisdiction such activities could have been perpetrated. As we have noted above, this was a general observation made by this Court and not a declaration of law after due adjudication.

35.3. The Allahabad High Court in Anita Garg also noted that there is no legislation or law which defines transit or anticipatory bail in definitive or specific terms. Thereafter, the High Court proceeded to explain the term 'transit' to mean the act of being moved from one place to another. Since the expression 'anticipatory bail' means granting bail to an accused person who is anticipating

arrest, 'transit anticipatory bail' would refer to bail granted to any person who is apprehending arrest by police of a state other than the state he is presently located in.

On that basis, Allahabad High Court explained 'transit anticipatory bail' to mean protection from arrest for a certain definite period. The mere fact that an accused has been granted transit anticipatory bail does not mean that the regular court under whose jurisdiction the case would fall, shall extend such transit bail and convert the same into anticipatory bail.

Therefore, the Allahabad High Court held that upon the grant of transit anticipatory bail, the accused person who has been granted such bail has to apply for regular anticipatory bail before the competent court which would then consider such a prayer on its own merits. Allahabad High Court has also held that transit anticipatory bail is a temporary relief which an accused gets for a certain period of time so that he can apply for anticipatory bail before the regular court. In this connection, Allahabad High Court heavily relied upon the decision of the Bombay High Court in Teesta Atul Setalvad.

In that case, Bombay High Court held that High Court of one State can grant transit bail in respect of a case registered within the jurisdiction of another High Court in exercise of the power under Section 438 of CrPC. Bombay High Court was of the view that generally the power of a High Court to grant anticipatory bail is limited to its territorial jurisdiction and that the power cannot be usurped by disregarding the principle of territorial jurisdiction. Having said that, the High Court emphasized that temporary relief to protect liberty and to avoid immediate arrest can be given by the Bombay High Court.

36. In view of what we have discussed above, we are of the view that considering the constitutional imperative of protecting a citizen's right to life, personal liberty and dignity, the High Court or the Court of Session could grant limited anticipatory bail in the form of an interim protection under Section 438 of CrPC in the interest of justice with respect to an FIR registered outside the territorial jurisdiction of the said Court, and subject to the following conditions:

(i) Prior to passing an order of limited anticipatory bail, the investigating officer and public prosecutor who are seized of the FIR shall be issued notice on the first date of the hearing, though the Court in an appropriate case would have the discretion to grant interim anticipatory bail.

(ii) The order of grant of limited anticipatory bail must record reasons as to why the applicant apprehends an inter-state arrest and the impact of such grant of

limited anticipatory bail or interim protection, as the case may be, on the status of the investigation.

(iii) The jurisdiction in which the cognizance of the offence has been taken does not exclude the said offence from the scope of anticipatory bail by way of a State Amendment to Section 438 of CrPC.

(iv) The applicant for anticipatory bail must satisfy the Court regarding his inability to seek anticipatory bail from the Court which has the territorial jurisdiction to take cognizance of the offence. The grounds raised by the applicant may be -

a. a reasonable and immediate threat to life, personal liberty and bodily harm in the jurisdiction where the FIR is registered;

b. the apprehension of violation of right to liberty or impediments owing to arbitrariness;

c. the medical status/ disability of the person seeking extraterritorial limited anticipatory bail.

37. It would be impossible to fully account for all exigent circumstances in which an order of extra territorial anticipatory bail may be imminently essential to safeguard the fundamental rights of the applicant. We reiterate that such power to grant extra-territorial anticipatory bail should be exercised in exceptional and compelling circumstances only which means where, denying transit anticipatory bail or interim protection to enable the applicant to make an application under Section 438 of CrPC before a Court of competent jurisdiction would cause irremediable and irreversible prejudice to the applicant. The Court, while considering such an application for extra-territorial anticipatory bail, in case it deems fit may grant interim protection instead for a fixed period and direct the applicant to make an application before a Court of competent jurisdiction.

38. We therefore set aside the judgement of Patna High Court in Syed Zafrul Hassan and judgment of Calcutta High Court in Sadhan Chandra Kolay to the extent that they hold that the High Court does not possess jurisdiction to grant extra-territorial anticipatory bail i.e., even a limited or transit anticipatory bail.

39. We shall now revert to our illustration given at the beginning of this judgment. In the illustration, we have stated that if a person commits an offence in one State and the FIR is lodged within the jurisdiction where the offence was committed but the accused resides in another State he can approach the Court in the other State and seek transit anticipatory bail of limited duration.

We have held that the accused could approach the competent Court in the State where he is residing or is visiting for a legitimate purpose and seek the relief of limited transit anticipatory bail although the FIR is not filed in the territorial jurisdiction of the District or State in which the accused resides, or is present depending upon the facts and circumstances of each case. Conversely, the offence may be committed in one State, the FIR may be lodged in another State and the accused may reside in a third State.

In which of the Courts of the three States would the accused approach for grant of anticipatory bail? We feel that having regard to the salutary concept of access to justice, the accused can seek limited transit anticipatory bail or limited interim protection from the Court in the State in which he resides but in such an event, a 'regular' or fullfledged anticipatory bail could be sought from the competent Court in the State in which the FIR is filed.

40. We are conscious that this may also lead the accused to choose the Court of his choice for seeking anticipatory bail. Forum shopping may become the order of the day as the accused would choose the most convenient Court for seeking anticipatory bail. This would also make the concept of territorial jurisdiction which is of importance under the CrPC pale into insignificance.

Therefore, in order to avoid the abuse of the process of the Court as well as the law by the accused, it is necessary for the Court before which the plea for anticipatory bail is made, to ascertain the territorial connection or proximity between the accused and the territorial jurisdiction of the Court which is approached for seeking such a relief. Such a link with the territorial jurisdiction of the Court could be by way of place of residence or occupation/work/profession.

By this, we imply that the accused cannot travel to any other State only for the purpose of seeking anticipatory bail. The reason as to why he is seeking such bail from a Court within whose territorial jurisdiction the FIR has not been filed must be made clear and explicit to such a Court. Also there must be a reason to believe or an imminent apprehension of arrest for a non-bailable offence made out by the accused for approaching the Court within whose territorial jurisdiction the FIR is not lodged or the inability to approach the Court where the FIR is lodged immediately.

41. Having regard to the vastness of our country and the length and breadth of it and bearing in mind the complex nature of life of the citizens, if an offence has been committed by a person in a particular State and if the FIR is filed in another State and the accused is a resident in a third State, bearing in mind access to justice, the accused who is residing in the third State or who is present there for a

legitimate purpose should be enabled to seek the relief of limited anticipatory bail of transitory nature in the third State.

42. While we so hold, we are conscious of the fact that the expression High Court in Section 2(e) of the CrPC reads as follows:

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union Territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union Territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India.

Section 6 of the CrPC states that besides the High Courts and the Courts constituted under any law, other than the CrPC, there shall be, in every State, inter alia, Courts of Session. Section 7 speaks about territorial divisions. Sub-section (1) of Section 7 states that every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of CrPC, be a district or consist of districts.

The proviso states that every metropolitan area shall be a separate session division and district. Sub-section (1) of Section 9 states that the State Government shall establish a Court of Session for every session division; every Court of Session shall be presided over by a Judge, to be appointed by the High Court; the High Court may also appoint Additional Sessions Judges to exercise jurisdiction in a Court of Session and such Judges may also sit in another division as may be directed by the High Court.

43. Section 26 of the CrPC deals with the Courts by which offences are triable which states that subject to the other provisions of the CrPC, any offence under the IPC may be tried by (i) the High Court; (ii) the Court of Session; or (iii) any other Court by which such offence is shown in the First Schedule to be triable. In case of offences under any other law when any Court is mentioned in this behalf in such law, being tried by such Court and when no Court is mentioned may be tried by (i) the High Court; or (ii) any other Court by which such offence is shown in the First Schedule to be triable.

44. Further, on a reading of Section 438 of CrPC, we do not find that the expression "the High Court" or "the Court of Session" is restricted vis-à-vis the local limits or any particular territorial jurisdiction. However, this does not mean that if an FIR is lodged in one State then the accused can approach the Court in another State for seeking anticipatory bail. He can do so, if at the time of lodging

of the FIR in any State, he is residing or is present there for a legitimate purpose in any other State.

In fact, on a reading of Section 438 of CrPC, it does not emerge that the expression "the High Court" or "the Court of Session" must have reference only to the place or territorial jurisdiction within which the FIR is lodged. If that was the implication, the same would have been expressly evident in the Section itself or by a necessary implication. Further use of the word "the" before the words "High Court" and "Court of Session" also does not mean that only the High Court or the Court of Session, as the case may be, within whose jurisdiction the FIR is filed, is competent to exercise jurisdiction for the grant of transit anticipatory bail.

45. At the same time, we are also mindful of the fact that the accused cannot seek full-fledged anticipatory bail in a State where he is a resident when the FIR has been registered in a different State. However, in view of what we have discussed above, he would be entitled to seek a transit anticipatory bail from the Court of Session or High Court in the State where he is a resident which necessarily has to be of a limited duration so as to seek regular anticipatory bail from the Court of competent jurisdiction. The need for such a provision is to secure the liberty of the individual concerned.

Since anticipatory bail as well as transit anticipatory bail are intrinsically linked to personal liberty under Article 21 of the Constitution of India and since we have extended the concept of access to justice to such a situation and bearing in mind Article 14 thereof it would be necessary to give a constitutional imprimatur to the evolving provision of transit anticipatory bail. Otherwise, in a deserving case, there is likelihood of denial of personal liberty as well as access to justice for, by the time the person concerned approaches the Court of competent jurisdiction to seek anticipatory bail, it may well be too late as he may be arrested.

Needless to say, the Court granting transit anticipatory bail would obviously examine the degree and seriousness of the apprehension expressed by the person who seeks transit anticipatory bail; while the object underlying exercise of such jurisdiction is to thwart arbitrary police action and to protect personal liberty besides providing immediate access to justice though within a limited conspectus.

46. If a rejection of the plea for limited/transitory anticipatory bail is made solely with reference to the concept of territorial jurisdiction it would be adding a restriction to the exercise of powers under Section 438. This, in our view, would result in miscarriage and travesty of justice, aggravating the adversity of the

accused who is apprehending arrest. It would also be against the principles of access to justice. We say so for the reason that an accused is presumed to be innocent until proven guilty beyond reasonable doubt and in accordance with law.

In the circumstances, we hold that the Court of Session or the High Court, as the case may be, can exercise jurisdiction and entertain a plea for limited anticipatory bail even if the FIR has not been filed within its territorial jurisdiction and depending upon the facts and circumstances of the case, if the accused apprehending arrest makes out a case for grant of anticipatory bail but having regard to the fact that the FIR has not been registered within the territorial jurisdiction of the High Court or Court of Session, as the case may, at the least consider the case of the accused for grant of transit anticipatory bail which is an interim protection of limited duration till such accused approaches the competent Sessions Court or the High Court, as the case may be, for seeking full-fledged anticipatory bail.

47. There can also be a case where the accused is facing multiple FIRs for the same offence in several States. He may seek an interim protection from a particular Sessions Court or the High Court in a State. Does he have to move from State to State for the purpose of seeking anticipatory bail or seek multiple pre-arrest bails? We would not attempt to give an answer to such a situation as the facts of the present case do not involve such a situation.

48. Another issue that calls for reiteration is, whether, the ordinary place of inquiry and trial would include the place where the complainant-wife resides after being separated from her husband. The position of law regarding the ordinary place of investigation and trial as per Section 177 of the CrPC, especially in matrimonial cases alleging cruelty and domestic violence, alleged by the wife, has advanced from the view held in the case of State of Bihar vs. Deokaran Nenshi, (1972) 2 SCC 890; Sujata Mukherjee (Smt.) vs. Prashant Kumar Mukherjee, (1997) 5 SCC 30; Y. Abraham Ajith vs. Inspector of Police, Chennai, (2004) 8 SCC 100, Ramesh vs. State of T.N. (2005) 3 SCC 507; Manish Ratan vs. State of M.P., (2007) 1 SCC 262 that if none of the ingredients constituting the offence can be said to have occurred within the local jurisdiction, that jurisdiction cannot be the ordinary place of investigation and trial of a matrimonial offence.

A three judge Bench of this Court has however clarified in Rupali Devi vs. State of U.P., (2019) 5 SCC 384 (Rupali Devi) that adverse effects on mental health of the wife even while residing in her parental home on account of the acts committed in the matrimonial home would amount to commission of cruelty within the meaning of Section 498A at the parental home. It was held that the

Courts at the place where the wife takes shelter after leaving or being driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, depending on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the IPC.

49. Applying Rupali Devi, in view of the fact that the complainantwife herein claims to have received death threats and harassment over the phone even after her return to her parental home in Chirawa, Rajasthan the ordinary place of trial may be Chirawa.

But in the present case by the impugned orders, the accused-husband and his family members were granted extra-territorial anticipatory bail without issuing notice to the investigating officer and public prosecutor in Chirawa Police Station, Rajasthan wherein the appellant had lodged the FIR. In view of the facts and circumstances of the present case and the conclusion to the points considered hereinabove, we allow and dispose of these appeals in the following terms:

a. The impugned orders of the learned Additional City Civil and Sessions Judge Bengaluru City do not take note of respondent No.2 at all for allowing Criminal Misc. Nos. 3941/2022, 3943/2022, 3944/2022 and 3945/2022.

b. The impugned orders are hence set aside.

c. However, in the interest of justice, it is directed that no coercive steps may be taken against the accused for the next four weeks, to enable them to approach the jurisdictional Court in Chirawa, Rajasthan for anticipatory bail.

d. It is also directed that in case applications under Section 438 of CrPC are made before the Court of Session in Chirawa or the High Court of Rajasthan, the same shall be decided expeditiously and on their own merits.

We place on record our appreciation for the valuable assistance rendered by learned senior counsel and learned ASG, Sri Vikramjeet Banerjee who has advanced submissions as an amicus curiae in this case as also of other senior counsel and counsel who have appeared in this case.

.......................J. (B.V. Nagarathna)

.......................J. (Ujjal Bhuyan)

New Delhi;

IN THE SUPREME COURT OF INDIA

State of Punjab
Vs.
Principal Secretary to the Governor of Punjab and Anr.,

W.P.(C) No. 1224/2023

HEADNOTE – Governor can't veto legislature by simply withholding assent to bill, must return bill to assembly on withholding assent

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, CJI.

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1. The jurisdiction of this Court under Article 32 of the Constitution has been invoked by the State of Punjab. The Government of Punjab is aggrieved on the ground that the Governor did not (i) assent to four Bills which were passed by the Vidhan Sabha nor have they been returned; and (ii) furnish a recommendation for the introduction of certain Money Bills in the Vidhan Sabha.

I. Factual background

2. On 22 February 2023, the Council of Ministers of the Government of Punjab forwarded a recommendation to the Governor of Punjab seeking the summoning of the Punjab Vidhan Sabha for its Budget Session commencing on 3 March 2023. The Governor's refusal to do so, on the ground that he was seeking legal advice, led to the institution of a petition before this Court on 25 February 2023.

On 28 February 2023, this Court delivered its judgment in the State of Punjab v. Principal Secretary to the Governor of Punjab1. This Court observed that:

"There was no occasion to seek legal advice on whether or not the Budget Session of the Legislative Assembly should be convened. The Governor was plainly bound by the advice tendered to him by the Council of Ministers."

3. While concluding its judgment, this Court had the following observations on the broader aspects of mature political governance in a democracy:

"Political differences in a democratic polity have to be worked upon and sorted out with a sense of sobriety and maturity. The dialogue between constitutional functionaries cannot degenerate into a race to the bottom. Unless these principles were to be borne in mind, the realization of constitutional values may be placed in jeopardy. Such a situation emerged before this Court, leading to the institution of a petition under Article 32 of the Constitution for a direction to the Governor to summon the Legislative Assembly. It is inconceivable that the Budget Session of the Legislative Assembly would not be convened.

We can only hope that mature constitutional statesmanship will ensure that such instances do not occur in the future as much as we reiterate our expectation that constitutional functionaries must be cognizant of the public trust in the offices which they occupy. The public trust which is entrusted to them is intended to sub-serve the cause of our citizens and to ensure that the affairs of the nation are conducted with a sense of equanimity so as to accomplish the objects of the Preamble to the Constitution."

4. Following the decision of this Court, the Sixteenth Punjab Vidhan Sabha was summoned on 3 March 2023. The Speaker adjourned the session sine die on 22 March 2023. On 12 June 2023, acting in pursuance of the powers conferred by the second proviso to Rule 16 of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly)2, the Speaker reconvened the sitting of the session of the Vidhan Sabha on 19 and 20 June 2023. During the course of the session, the Vidhan Sabha passed four Bills, namely:

(i) The Sikh Gurdwaras (Amendment) Bill 2023;

(ii) Punjab Affiliated Colleges (Security of Service) (Amendment) Bill 2023;

(iii) Punjab Universities Law (Amendment) Bill 2023; and

(iv) Punjab Police (Amendment) Bill 2023 No action was taken by the Governor on these Bills.

5. Thereafter, the session of the Vidhan Sabha was sought to be reconvened on 19 October 2023 since the following three Money Bills were to be introduced:

(i) The Punjab Fiscal Responsibility and Budget Management (Amendment) Bill, 2023;

(ii) The Punjab Goods and Services Tax (Amendment) Bill 2023; and

(iii) The Indian Stamp (Punjab Amendment) Bill 2023 The recommendation of the Governor was required in terms of the provisions of Article 207(1) of the Constitution for the introduction of the Bill in the Vidhan Sabha.

6. Correspondence was exchanged between the Chief Minister and the Governor. On 15 July 2023, the Chief Minister addressed a communication to the Governor noting that though the Sikh Gurudwaras (Amendment) Bill 2023 was submitted for assent on 26 June 2023, it had not been assented to till then. In his response dated 17 July 2023, the Governor stated that:

"I have proceeded to receive legal advice which gives me to believe that your calling of Vidhan Sabha session on 19-6- 2023 and 20-6-2023 when these four Bills were passed was in breach of law and procedure" The Governor thereby cast doubt on the legitimacy and legality of those Bills. The Governor stated that "in the background of the legal advice received" he was actively considering whether to obtain the legal opinion of the Attorney General for India "or as per the Constitution, to reserve these Bills for the consideration and consent of the President of India". The Governor stated that he would take action according to law after the legality of the Vidhan Sabha session which was held on 19 and 20 June 2023 is first examined.

7. The Governor addressed another letter on 24 July 2023 to the Chief Minister annexing a "crux of legal opinion" obtained from a "constitutional expert", according to which "the House so summoned was patiently (sic) illegal". After the three Money Bills were forwarded to the Governor for consideration in the special session of the Fourth Budget Session of the Sixteenth Punjab Vidhan Sabha, proposed to be held from 20 October 2023, the Governor addressed a communication to the Chief Minister on 19 October 2023. He reiterated that in his previous communications dated 24 July 2023 and 12 October 2023, he had indicated that the calling of the session was "patently illegal, against the accepted procedures and practice of the legislature, and against the provisions of the Constitution". The Governor stated:

"As the Budget Session stood concluded, any such extended session is bound to be illegal, and any business conducted during such sessions is likely to be unlawful, and ab-initio void. Inspite of these communications, disregarding the

possibility of taking an unconstitutional step, it appears that a decision has been taken to call the session. For these reasons I withhold my approval to the above mentioned Bills."

8. Notably, the Governor did not 'declare' in any public notification that he is withholding his assent to the Bills. The Governor advised the Chief Minister to call for a fresh Monsoon/Winter Session and to forward an agenda setting out the specific business to be conducted so as to enable him to grant permission for the summoning of the House to transact the business.

9. Aggrieved by the inaction of the Governor, the State of Punjab invoked the jurisdiction of this Court under Article 32 of the Constitution. The State of Punjab seeks:

(a) A declaration that the Sessions held on 19 June 2023, 20 June 2023 and 20 October 2023 of the Punjab Vidhan Sabha are legal and that the business transacted by the House is valid; and

(b) A mandamus to the effect that the seven Bills which have been kept pending by the Governor including the three Money Bills be processed in accordance with law.

10. This Court entertained the Petition on 6 November 2023. During the course of the hearing, the Court has been apprised of the fact that after the institution of the Petition, the Governor has recommended that two out of the three Money Bills, namely, the Punjab Goods and Services Tax (Amendment) Bill 2023; and the Indian Stamp (Punjab Amendment) Bill 2023, may be introduced before the Vidhan Sabha.

II. Submissions

11. During the course of the hearing, we have heard submissions on behalf of the petitioners by Dr Abhishek Manu Singhvi, senior counsel who appeared with Mr Gurminder Singh, Advocate General for the State of Punjab. Mr. Satya Pal Jain, senior counsel appeared on behalf of the Principal Secretary to the Governor.

12. The principal submissions which have been urged on behalf of the petitioners are that:

(a) Though the Budget Session of the Legislative Assembly was summoned on 3 March 2023, it was adjourned sine die on 22 March 2023 by the Speaker without prorogation;

(b) The adjournment of the House sine die could not have been treated by the Governor as a prorogation of the House;

(c) The Speaker was acting within the exercise of constitutional jurisdiction, as evinced by the provisions of the Rules of Procedure governing the Vidhan Sabha, in reconvening the sitting of the Assembly on 19 and 20 June 2023 under the second proviso to Rule 16;

(d) Regulating the rules of procedure and the conduct of business in the House lies within the sole discretion of the Speaker;

(e) The Governor as a symbolic head of State did not act within the scope of his constitutional powers in coming to the conclusion that reconvening of the session of the Vidhan Sabha in June 2023 was unconstitutional, thereby rendering the legislative business which was transacted on 20 June 2023 void; and

(f) The consequence of the decision of the Speaker is to virtually nullify the legislations which have been passed by an overwhelming majority of the Members of the Legislative Assembly.

13. On the other hand, it has been urged on behalf of the Secretary to the Governor that:

(i) After the business of the Budget Session had been transacted, the House was required to be prorogued and it was not open to the Speaker to adjourn the proceeding sine die to be reconvened initially on 19 and 20 June 2023 and thereafter on 19 and 20 October 2023;

(ii) Rule 14A of the Rules of Procedure requires that three sessions should be held in the Vidhan Sabha, namely, the Budget Session, the Monsoon Session and the Winter Session and hence, it was not open to the Speaker to continue the Budget Session in the month of June 2023;

(iii) The Governor has, as a matter of fact, assented to as many as 185 Bills which were presented to him for assent, which would clearly indicate that there has been no delay on the part of the Governor and it is only in view of the objection to the manner in which the House was adjourned sine die that assent to the four Bills was withheld;

(iv) Subsequently, the Governor has even granted his recommendation for the introduction of two of the three Money Bills in the Vidhan Sabha;

(v) In the reliefs which have been claimed in the petition under Article 32 of the Constitution, the petitioners themselves seek a declaration that the sessions which were held on 19 and 20 June 2023 and the business which was transacted was legal, which is an indication of the fact that the State of Punjab itself is unsure about the validity of the session; and

(vi) The Governor would have no objection whatsoever to deal with the Bills in respect of which assent has been sought if this Court were to clarify that the Budget Session was lawfully adjourned sine die so as to be reconvened in the month of June 2023.

14. Two issues arise for consideration: first, whether the Governor can withhold action on Bills which have been passed by the State Legislature; and second, whether it is permissible in law for the Speaker to reconvene a sitting of a Vidhan Sabha session which has been adjourned but has not been prorogued.

III. Analysis

A. The Governor is a symbolic head and cannot withhold action on Bills passed by the State Legislature

15. In a Parliamentary form of democracy real power vests in the elected representatives of the people. The governments, both in the States and at the Centre consist of members of the State Legislature, and, as the case may be, Parliament. Members of the government in a Cabinet form of government are accountable to and subject to scrutiny by the legislature.

The Governor as an appointee of the President is the titular head of State. The fundamental principle of constitutional law which has been consistently followed since the Constitution was adopted is that the Governor acts on the 'aid and advise' of the Council of Ministers, save and except in those areas where the Constitution has entrusted the exercise of discretionary power to the Governor.

This principle cements the bedrock of the constitutional foundation that the power to take decisions affecting the governance of the State, or as the case may be of the nation essentially lies with the elected arm of the government. The Governor is intended to be a constitutional statesman, guiding the government on matters of constitutional concern.

16. These principles have been well established since the decision in Samsher Singh v. State of Punjab3, where this Court held:

"28. Under the Cabinet system of Government as embodied in our Constitution the Governor is the constitutional or formal head of the State and he exercises all

his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion.

32. It is a fundamental principle of English Constitutional law that Ministers must accept responsibility for every executive act. In England the Sovereign never acts on his own responsibility. The power of the Sovereign is conditioned by the practical rule that the Crown must find advisers to bear responsibility for his action.

Those advisers must have the confidence of the House of Commons. This rule of English Constitutional Law is incorporated in our Constitution. The Indian Constitution envisages a Parliamentary and responsible form of Government at the Centre and in the States and not a Presidential form of Government. The powers of the Governor as the constitutional head are not different."

17. In SR Bommai v. Union of India4 a nine judge bench of this Court has held that federalism is a part of the basic structure of the Constitution. The manner in which the role of the Governor as a symbolic Head of State is performed is vital to safeguard this basic feature. The exercise of unbridled discretion in areas not entrusted to the discretion of the Governor risks walking rough shod over the working of a democratically elected government at the State.

In a steady line of cases this Court has strengthened the importance of institutions and their vitality to democratic functioning. Federalism and democracy, both parts of the basic structure, are inseparable. When one feature is diluted it puts the other in peril. The tuning fork of democracy and federalism is vital to the realization of the fundamental freedoms and aspirations of our citizens. Whenever one prong of the tuning fork is harmed, it damages the apparatus of constitutional governance.

18. In State (NCT of Delhi) v. Union of India,5 one of us (D Y Chandrachud J) observed:

"287. These cases involve vital questions about democratic governance and the role of institutions in fulfilling constitutional values. The Constitution guarantees to every individual the freedom to adopt a way of life in which liberty, dignity and autonomy form the core. The Constitution pursues a vision of fulfilling these values through a democratic polity. The disputes which led to these cases tell us how crucial institutions are to the realisation of democracy.

It is through them that the aspirations of a democratic way of life, based on the rule of law, are fulfilled. Liberty, dignity and autonomy are constraining influences on the power of the State. Fundamental human freedoms limit the

authority of the State. Yet the role of institutions in achieving democracy is as significant. Nations fail when institutions of governance fail. The working of a democratic institution is impacted by the statesmanship (or the lack of it) shown by those in whom the electorate vests the trust to govern.

In a society such as ours, which is marked by a plurality of cultures, a diversity of tradition, an intricate web of social identity and a clatter of ideologies, institutional governance to be robust must accommodate each one of them. Criticism and dissent form the heart of democratic functioning. The responsiveness of institutions is determined in a large measure by their ability to be receptive to differences and perceptive to the need for constant engagement and dialogue. Constitutional skirmishes are not unhealthy.

They test the resilience of democracy. How good a system works in practice must depend upon the statesmanship of those who are in decision-making positions within them. Hence, these cases are as much about interpreting the Constitution as they are about the role of institutions in the structure of democratic governance and the frailties of those who must answer the concerns of citizens."

19. The dispute in the present case essentially bears upon the Governor having detained four Bills which were passed by the Vidhan Sabha on 20 June 2023. Article 2006 of the Constitution postulates that when a Bill has been passed by the Legislative Assembly of a State or, in the case of a bicameral legislature, by both the Houses, it shall be presented to the Governor. The Governor has three options available when a Bill which has been passed by the State Legislature is presented for assent.

The Governor "shall declare" (i) either that he assents to the Bill; or (ii) that he withholds assents therefrom; or (iii) that he reserves the Bill for the consideration of the President. The term "shall declare" implies that the Governor is required to declare the exercise of his powers. The fist proviso to Article 200 stipulates that the Governor may "as soon as possible" return the Bill.

The proviso to Article 200 envisages that, as soon as possible, after the presentation to the Governor of the Bill for assent he may return a Bill, which is not a Money Bill, together with a message requesting that the House or Houses would reconsider the Bill or any specific provisions of the Bill and in particular consider the desirability of introducing such amendments which he may recommend. When a Bill is returned by the Governor, the legislature of the State is duty bound to reconsider the Bill.

After the Bill is again passed by the legislature either with or without amendment and is presented to the Governor for assent, the Governor shall not withhold assent therefrom. Apart from the first proviso in the above terms, the second proviso envisages a situation where "the Governor shall not assent to, but shall reserve for the consideration of the President" those Bills that "so derogate from the powers of the High Court as to endanger the position" which the High Court is designed to fill by the Constitution.

20. The present case turns upon how the first proviso is to be construed. In construing the first proviso, it needs to be noted that the substantive part of Article 200 provides the Governor with three options: an option to assent; an option to withhold assent; and an option to reserve the Bill for the consideration of the President.

The first proviso opens with the expression "the Governor may" in contrast to the second proviso which begins with the expression "the Governor shall not assent". The "may" in the first proviso is because the first proviso follows the substantive part which contains three options for the Governor. The first proviso does not qualify the first option (where the Governor assents to the Bill) nor the third option reserving the Bill for consideration of the President.

The first proviso attaches to the second option (withholding of assent) and hence begins with an enabling expression, "may". By the mandate of the second proviso, there is an embargo on the Governor assenting to a Bill which derogates from the powers of the High Court under the Constitution. The Governor is by the mandate of the Constitution required to reserve such a Bill for consideration of the President.

21. The second proviso impacts upon the option which is provided by the substantive part of Article 200 to the Governor to reserve a Bill for the consideration of the President by making it mandatory in the situation envisaged there. The option of reserving a Bill for the consideration of the President is turned into a mandate where the Governor has no option but to reserve it for the consideration of the President. The second proviso is, therefore, in the nature of an exception to the option which is granted to the Governor by the substantive part of Article 200 to reserve any Bill for the consideration of the President.

22. A proviso, as is well settled, may fulfil the purpose of being an exception. Sometimes, however, a proviso may be in the form of an explanation or in addition to the substantive provision of a statute. The first proviso allows the Governor, where the Bill is not a Money Bill to send it back to the legislature together with a message. In terms of the message, the legislature may be requested by the Governor to reconsider the entirety of the Bill.

This may happen for instance where the Governor believes that the entirety of the Bill suffers from an infirmity. Alternatively, the Governor may request the legislature to reconsider any specific provision of the Bill. While returning the Bill, the Governor may express the desirability of introducing an amendment in the Bill. The desirability of an amendment may arise with a view to cure an infirmity or deficiency in the Bill.

The concluding part of the first proviso however stipulates that if the Bill is passed again by the legislature either with or without amendments, the Governor shall not withhold assent therefrom upon presentation. The concluding phrase "shall not withhold assent therefrom" is a clear indicator that the exercise of the power under the first proviso is relatable to the withholding of the assent by the Governor to the Bill in the first instance.

That is why in the concluding part, the first proviso indicates that upon the passing of the Bill by the legislature either with or without amendments, the Governor shall not withhold assent. The role which is ascribed by the first proviso to the Governor is recommendatory in nature and it does not bind the state legislature.

23. This is compatible with the fundamental tenet of a Parliamentary form of government where the power to enact legislation is entrusted to the elected representatives of the people. The Governor, as a guiding statesman, may recommend reconsideration of the entirety of the Bill or any part thereof and even indicate the desirability of introducing amendments.

However, the ultimate decision on whether or not to accept the advice of the Governor as contained in the message belongs to the legislature alone. That the message of the Governor does not bind the legislature is evident from the use of the expression "if the Bill is passed again ...with or without amendments".

24. The substantive part of Article 200 empowers the Governor to withhold assent to the Bill. In such an event, the Governor must mandatorily follow the course of action which is indicated in the first proviso of communicating to the State Legislature "as soon as possible" a message warranting the reconsideration of the Bill. The expression "as soon as possible" is significant.

It conveys a constitutional imperative of expedition. Failure to take a call and keeping a Bill duly passed for indeterminate periods is a course of action inconsistent with that expression. Constitutional language is not surplusage. In State of Telangana v. Secretary to Her Excellency the Hon'ble Governor for the State of Telangana & Anr.7 this court observed that "The expression "as soon as

possible" has significant constitutional content and must be borne in mind by constitutional authorities."

The Constitution evidently contains this provision bearing in mind the importance which has been attached to the power of legislation which squarely lies in the domain of the state legislature. The Governor cannot be at liberty to keep the Bill pending indefinitely without any action whatsoever.

25. The Governor, as an unelected Head of the State, is entrusted with certain constitutional powers. However, this power cannot be used to thwart the normal course of lawmaking by the State Legislatures. Consequently, if the Governor decides to withhold assent under the substantive part of Article 200, the logical course of action is to pursue the course indicated in the first proviso of remitting the Bill to the state legislature for reconsideration.

In other words, the power to withhold assent under the substantive part of Article 200 must be read together with the consequential course of action to be adopted by the Governor under the first proviso. If the first proviso is not read in juxtaposition to the power to withhold assent conferred by the substantive part of Article 200, the Governor as the unelected Head of State would be in a position to virtually veto the functioning of the legislative domain by a duly elected legislature by simply declaring that assent is withheld without any further recourse.

Such a course of action would be contrary to fundamental principles of a constitutional democracy based on a Parliamentary pattern of governance. Therefore, when the Governor decides to withhold assent under the substantive part of Article 200, the course of action which is to be followed is that which is indicated in the first proviso. The Governor is under Article 1688 a part of the legislature and is bound by the constitutional regime.

26. Insofar as Money Bills are concerned, the power of the Governor to return a Bill in terms of the first proviso is excluded from the purview of the constitutional power of the Governor. Money Bills are governed by Article 207 in terms of which the recommendation of the Governor is required for the introduction of the Bill on a matter specified in clauses (a) to (f) of clause (1) of Article 199.

27. Senior counsel for the respondent has argued that the Governor has assented to about 185 Bills which would indicate that the delay on the part of the Governor on the four Bills in question was only based on his objection to the validity of the sitting of the Vidhan Sabha. The learned senior counsel further

submitted that the Governor has since granted his recommendation for the introduction of two of the three Money Bills in the Vidhan Sabha.

As we have held above, the Governor is not at liberty to withhold his action on the Bills which have been placed before him. He has no avenue but to act in a manner postulated under Article 200. Regardless, these submissions do not affect the role of the Governor under the Constitution or justify the inaction on the Bills sent to him by a democratically elected State Legislature.

28. In view of the above, the Governor of Punjab was not empowered to withhold action on the Bills passed by the State Legislature and must act "as soon as possible". In any event, as delineated below, it was legally permissible for the Speaker to reconvene the Vidhan Sabha because (a) there is a distinction between adjournment and prorogation; and (b) the Speaker has exclusive jurisdiction over regulating the procedure of the House.

B. Reconvening a sitting of the Vidhan Sabha which has not been prorogued is permissible in law and is within the exclusive domain of the Speaker

1. Distinction between adjournment and prorogation

29. Article 174 of the Constitution provides that the Governor shall from time to time summon the House or each House of the legislature of the State to meet at such time and place as he thinks fit. However, clause (1) also specifies that six months shall not intervene between the last sitting in one session and the date appointed for the first sitting in the next session. Clause (2) of Article 174 empowers the Governor, from time to time to (a) prorogue the House or either House of the legislature; and (b) dissolve the Legislative Assembly. Article 174 thus makes a reference to distinct constitutional concepts, namely, the power to prorogue and the power to dissolve.

30. Significantly, Article 174 also makes a distinction between a sitting of the legislature and a session of the legislature. That is how, while specifying the maximum duration between two sittings, Article 174(1) stipulates that not more than six months should elapse between the last sitting of the legislature in one session and the date appointed for its first sitting in the next session. This implicitly recognizes that there may be more than one sitting of the legislature comprised in one session. Similar provisions have been made in relation to Parliament under Article 85 of the Constitution.

31. Kaul and Shakdher in their well-known treatise on the Practice and Procedure of Parliament (7th Ed) note that the termination of a session of the House of Parliament by an order made by the President under Article 85(2) of

the Constitution is called prorogation. Moreover, the President in exercising the power to prorogue the House acts on the advice of the Prime Minister.

Usually, as the authors note, prorogation follows the adjournment of the sitting of the House sine die. However, the authors list several instances where the adjournment of the sitting of the House sine die is not followed by a prorogation and the sittings of the House are reconvened by the Speaker. A few illustrative instances discussed by the authors are set out below:

(a) The Eighth Session of the Eighth Lok Sabha commenced on 23 March 1987 and was adjourned sine die on 12 May 1987. The Lok Sabha was not, however, prorogued. The Speaker reconvened the sittings of Lok Sabha from 27 July 1987 which continued till 28 August 1987. The two parts, preceding and following the period of adjournment of Lok Sabha sine die on 12 May 1987, were treated as constituting one session divided into two parts. On conclusion of the second part of the Eighth Session, the Lok Sabha was adjourned sine die on 28 August 1987 and was prorogued on 3 September 1987; and

(b) The Third Session of the Ninth Lok Sabha commenced on 07 August 1990 and was adjourned sine die on 07 September 1990. The Lok Sabha was not, however, prorogued. The Speaker reconvened the sittings of the Lok Sabha from 01 October 1990 which continued till 05 October 1990.

32. Similar incidents of reconvening an adjourned sitting of the House, without prorogations can also be found in the (a) Fourteenth Session of the Eighth Lok Sabha which commenced on 18 July 1989; (b) First Session of the Eleventh Lok Sabha which commenced on 22 May 1996; (c) Fourteenth Session of Thirteenth Lok Sabha which commenced on 02 December 2003; (d) Seventh Session of Fourteenth Lok Sabha which commenced on 16 February 2006.

33. Article 208 of the Constitution provides that a House of the legislature of a State may make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. The Rules of Procedure framed by the Punjab Vidhan Sabha contain provisions which have a bearing on the subject under discussion. Rule 2 defines "prorogue" to mean the ending of a session by an order of the Governor under Article 174(2)(a) of the Constitution.

Rule 3 postulates that when a session of the Vidhan Sabha is summoned under Article 174 of the Constitution, the Secretary shall issue a notification in respect thereof in the Gazette. According to Rule 7, when a session of the Vidhan Sabha is prorogued, the Secretary shall issue a notification in the Gazette and inform the Members. Rule 7A postulates that on the prorogation of the House, all

pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse.

Rule 14 provides that the sitting of the Vidhan Sabha is duly constituted when it is presided over by the Speaker or any other Member competent to preside over a sitting under the Constitution or the Rules. Rule 14A provides that subject to the provisions of Article 174, there shall be three Sessions in a financial year, namely, the Budget Session, Summer/Monsoon Session and Winter Session of the Assembly and that the total number of sittings in all the Sessions put together shall not be less than forty. Rule 16 provides as follows:

"Subject to the provisions of the Constitution and these Rules the Vidhan Sabha (Assembly) may be adjourned from time to time by its own order:

Provided that a motion for adjournment of the Vidhan Sabha (Assembly) to a day or sine die shall not be made except in consultation with the Speaker:

Provided further that the Speaker may, if it is represented to him by the Minister that the public interest requires that the Vidhan Sabha (Assembly) should meet at any earlier time during the adjournment and if he is satisfied that the public interest does so require, give notice that he is so satisfied, and call a meeting of the Vidhan Sabha (Assembly) before the day to which it has been adjourned or any time after it has been adjourned sine die."

34. Rule 16 indicates that the Vidhan Sabha may be adjourned by its own order from time to time. This is however subject to the provisions of the Constitution and the Rules. In terms of the first proviso, a motion for adjournment either to a day or sine die requires consultation with the Speaker. Significantly, in terms of the second proviso, the Speaker is empowered in public interest to call a meeting of the Vidhan Sabha earlier than the date to which it has been adjourned or at any time after it has been adjourned sine die. Therefore, it is clear that the Rules of Procedure expressly recognize a situation where the Speaker reconvenes a sitting of the Vidhan Sabha which has been adjourned sine die but not prorogued.

35. The provision empowering the Speaker to reconvene a sitting of the Vidhan Sabha on any date after it has been adjourned sine die is not unique to the Rules of Procedure of the Punjab Vidhan Sabha. A review of the Rules of Procedure of State Legislatures for various states indicates that almost all of them contain an identical or similar provision.

By way of illustration, to name a few, the Rules of Procedure for the State Legislatures of Rajasthan,9 Haryana,10 Tamil Nadu,11 Kerala,12 and West Bengal13 expressly permit the Speaker to call a sitting of the House any time

after it has been adjourned. A similar provision is also contained in the first proviso to Rule 15(1) of the Rules of Procedure and Conduct of Business in Lok Sabha.14 Therefore, it is common practice for the Rules of Procedure of State Legislatures and Parliament to permit the Speaker to call a sitting of the House after it has been adjourned sine die.

36. In Ramdas Athawale (5) v. Union of India and Others15, a Constitution Bench of this Court distinguished between the prorogation of the House and its adjournment. The Court held that:

"22. An adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current.

23. In May's Parliamentary Practice, which has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice, it is stated:

"A session is the period of time between the meeting of a Parliament, whether after the prorogation or dissolution, and its prorogation. During the course of a session, either House may adjourn itself of its own motion to such as it pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed as 'recess'; while the period between the adjournment of either House and the resumption of its sitting is generally called an 'adjournment'."

25. It is thus clear that whenever the House resumes after it is adjourned sine die, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29-1-2004, does not amount to commencement of the first session in the year 2004.

37. The Constitution and established legislative practice distinguish between adjournment sine die and prorogation of the session of the House. In the case before us the Vidhan Sabha was adjourned on 22 March 2023 without prorogation. Therefore, the Speaker was empowered to reconvene the sittings of the House within the same session.

2. Exclusive domain of the Speaker to regulate the procedure of the House

38. Article 178 of the Constitution provides for the office of the Speaker and Deputy Speaker of a Legislative Assembly. Article 212 of the Constitution precludes the courts from inquiring into the proceedings of the legislature of the State. A corresponding provision with regard to the Parliament is contained in

Article 122. The decision In Ramdas Athawale (supra) is significant in that it dwells on the role of the Speaker of the House and interprets Article 122 of the Constitution. The Constitution Bench observed:

"31. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate the procedure and conduct of business of the House of the People vests in the Speaker of the House.

By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued Notice dated 20-1-2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23-12-2003.

Whether the resumed sitting on 29-1- 2004 was to be treated as the second part of the fourteenth session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India."

39. The Court observed that under Article 122(2), the decision of the Speaker in whom powers are vested to regulate the procedure and conduct of business is final and binding on every Member of the House. Hence, this Court held that the validity of the Speaker adjourning the House sine die and the later direction to resume sittings could not be inquired into on the ground of any irregularity of procedure.

The Court reaffirmed that the business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the direction of the Speaker cannot be inquired by the courts. This follows the fundamental principle that it is the right of each House of the legislature to be the sole Judge of the lawfulness of its own proceedings so as to be immune from challenge before a court of law.

40. As stated above, Rule 16 of the Rules of Procedure empowers the Vidhan Sabha to adjourn from time to time by its own order. The first proviso to Rule 16 acknowledges that adjournment of the Vidhan Sabha may be either to a particular day or sine die. An adjournment sine die postulates that there is no specific date on which the sitting of the Vidhan Sabha is convened.

The first proviso requires express consultation with the Speaker in that regard, for the adjournment of the Vidhan Sabha. However, even when an adjournment takes place the Speaker is entrusted in public interest to call a meeting of the Vidhan Sabha before the date to which it has been adjourned. These provisions are a clear indicator of the control of the Speaker in the conduct, both of the legislative business of the House and matters pertaining to its adjournment.

41. Therefore, it was legally permissible for the Speaker to reconvene the sitting of the Vidhan Sabha after it was adjourned sine die without prorogation. Further, the Speaker was empowered as the sole custodian of the proceedings of the House to adjourn and reconvene the House.

42. The submission that the declaration sought by the State of Punjab in the present petition namely, that the sessions of the Vidhan Sabha and the business transacted was legal indicates that the State of Punjab is unsure about the validity of the sessions is misconceived. The declaration has not been sought in a vacuum but in response to the Governor's inaction on the Bills purportedly on the grounds that the sessions were invalid.

In fact, as evidenced by the correspondence, the State of Punjab has consistently held the position that the sessions of the Vidhan Sabha and the business transacted therein are legal and constitutionally valid. The fact that a petitioner has approached this Court seeking declaratory relief cannot be used to the petitioner's detriment.

43. During the course of the hearing, a question was posed to the senior counsel appearing on behalf of the State of Punjab as to whether the course of action which has been followed in the present case could possibly be utilized to justify the indefinite adjournment of the House sine die so as to obviate the prorogation of the House. We posed a query to learned counsel on whether the power of adjourning of the House sine die could be used to obviate the proroguing of the House over an entire year.

Responding to the query, Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the petitioner submitted that the Chief Minister heading the Council of Ministers of the State of Punjab would be advising the Speaker to convene the Winter Session of the State Legislative Assembly at an early date which would be fixed in due consultation.

Dr Singhvi urged that the course of action which was adopted in the present case was due to the difficulty faced by the government in having the House summoned by the Governor. Counsel adverted to the situation which arose when the Governor was delaying in summoning the Vidhan Sabha for the Budget

session, which eventually led to proceedings before this court under Article 32. The imbroglio which arose in the State would have been obviated by statesmanship and collaboration.

IV. Conclusion

44. Bearing in mind the well settled principles which have been adverted to above, we are of the view that there is no valid constitutional basis to cast doubt on the validity of the session of the Vidhan Sabha which was held on 19 June 2023, 20 June 2023 and 20 October 2023. Any attempt to cast doubt on the session of the legislature would be replete with grave perils to democracy.

The Speaker who has been recognized to be a guardian of the privileges of the House and the constitutionally recognized authority who represents the House, was acting well within his jurisdiction in adjourning the House sine die. The re-convening of the House was within the ambit of Rule 16 of the Rules of Procedure. Casting doubt on the validity of the session of the House is not a constitutional option open to the Governor.

The Legislative Assembly comprises of duly elected Members of the Legislature. During the tenure of the Assembly, the House is governed by the decisions which are taken by the Speaker in matters of adjournment and prorogation. We are, therefore, of the view that the Governor of Punjab must now proceed to take a decision on the Bills which have been submitted for assent on the basis that the sitting of the House which was conducted on 19 June 2023, 20 June 2023 and 20 October 2023 was constitutionally valid.

45. We clarify that we have not expressed any opinion in regard to the manner in which the Governor will exercise his jurisdiction on the Bills in question presented to him. However, he must act in a manner consistent with the provisions of Article 200 of the Constitution.

46. The Petition shall accordingly stand disposed of in the above terms.

47. Pending applications, if any, stand disposed of.

......................CJI. [Dr Dhananjaya Y Chandrachud]

........................J. [J B Pardiwala]

........................J. [Manoj Misra]

New Delhi;

1 Writ Petition (Civil) No 302 of 2023

2 "Rules of Procedure"

3 (1974) 2 SCC 831

4 (1994) 3 SCC 1

5 (2018) 8 SCC 501

6 When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom:

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

7 WP(C) No. 333 of 2023

8 **Article 168.**
Constitution of Legislatures in States. - (1) For every State there shall be a Legislature which shall consist of the Governor, and (a) - [Andhra Pradesh], [***], Bihar, [***] [Madhya Pradesh], [***[, [Maharashtra], [Karnataka] [***], [Tamil Nadu] [and Uttar Pradesh], two Houses;

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly

9 Rule 13, Rules of Procedure and Conduct of Business in the Rajasthan Legislative Assembly.

10 Rule 16, Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly.

11 Rule 26, Tamil Nadu Legislative Assembly Rules.

12 Rule 14, Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

13 Rule 15, Rules of Procedure and Conduct of Business in the West Bengal Legislative Aseembly.

14 **15. Adjournment of House and procedure for reconvening.-** (1) The Speaker shall determine the time when a sitting of the House shall be adjourned sine die or to a particular day, or to an hour or part of the same day:

Provided that the Speaker, if thinks fit, may call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned sine die.

15 (2010) 4 SCC 1

2. Study Material-G.K.

MODERN INDIAN HISTORY

1. Fall of Mughals

The period of the Great Mughals, which began in 1526 with Babur's accession to the throne, ended with the death of Aurangzeb in 1707. Aurangzeb's death marked the end of an era in Indian history. When Aurangzeb died, the empire of the Mughals was the largest in India. Yet, within about fifty years of his death, the Mughal Empire disintegrated.

The reasons responsible for the decline of the Mughal empire in India are

(i) Wars of Succession

- The Mughals did not follow any law of succession like the **law of primogeniture.**
- Consequently, each time a ruler died, a war of succession between the brothers for the throne started.
- This weakened the Mughal Empire, especially after Aurangzeb.
- The nobles, by siding with one contender or the other, increased their own power.

(ii) Aurangzeb's Policies

- Aurangzeb failed to realize that the vast Mughal Empire depended on the willing support of the people.
- Aurangzeb's religious orthodoxy and his policy towards the Hindus damaged the stability of the Mughal empire
- He lost the support of the Rajputs who had contributed greatly to the strength of the Empire.
- They had acted as pillars of support, but Aurangzeb's policy turned them to bitter foes.
- The wars with the Sikhs, the Marathas, the Jats and the Rajputs had drained the resources of the Mughal Empire.

(iii) Weak Successors of Aurangzeb

- The successors of Aurangzeb were weak and became victims of the intrigues and conspiracies of the faction-ridden nobles.

- They were inefficient generals and incapable of suppressing revolts.
- The absence of a strong ruler, an efficient bureaucracy and a capable army had made the Mughal Empire weak.
- After Bahadur Shah's reign came a long list of weak, worthless and luxury-loving Kings.

(iv) Empty Treasury

- Shah Jahan's zeal for construction had depleted the treasury.
- Aurangzeb's long wars in the south had further drained the exchequer.

(v) Invasions

- Foreign invasions sapped the remaining strength of the Mughals and hastened the process of disintegration.
- The invasions of Nadir Shah and Ahmad Shah Abdali resulted in further drainage of wealth.
- These invasions shook the very stability of the empire.

(vi) Size of the Empire and Challenge from Regional Powers

- The Mughal Empire had become too large to be controlled by any ruler from one centre i.e. Delhi.
- The Great Mughals were efficient and exercised control over ministers and army, but the later Mughals were poor administrators.
- As a result, the distant provinces became independent. The rise of independent states led to the disintegration of the Mughal Empire.

(vii) Rise of independent states in the 18th century

- With the decline of the Mughal Empire a number of provinces seceded from the empire and several independent states came into existence.

(a) Hyderabad

The State of **Hyderabad** was founded by **Qamar-ud-din Siddiqi**, who was appointed Viceroy of the Deccan, with the title of **Nizam-ul- Mulk**, by Emperor Farrukhsiyar in 1712.

He established a virtually independent state but returned to Delhi during the reign of Emperor Mohammad Shah. In 1724, he was reappointed Viceroy of the Deccan with the title of Asaf Jah.

(b) Bengal

- Bengal in the 18th century comprised Bengal, Bihar and Orissa.
- **Murshid Quli Khan** was the Diwan of Bengal under Aurangzeb.
- Farrukhsiyar appointed him Subedar (governor) of Bengal in 1717

(c) Awadh

- The subah of Awadh comprised **Benaras** and some districts near Allahabad.
- **Saadat Khan Burhan-ul-Mulk** was appointed Governor of Awadh by the Mughal Emperor.
- But he soon became independent.

(d) Deterioration of land relations

- **Shahjahan and Aurangzeb** opted for jagirs and Paibaqi instead of paying directly from state treasury to the officials.
- Jagirs refer to temporary allotment of lands to officials for their services which may be according to the satisfaction of the Emperor.
- Paibaqi refers to revenue from reserved lands which were sent to the central treasury.
- There was a constant clash of interest between the nobles and zamindars

  - **Rise of the Marathas**
    - Marathas consolidated their position in Western India
    - They started making plans for a greater Maharashtra empire.

The decline of the Mughal Empire was due to social, economic, political and institutional factors. By 1813, the British government took away the power that allowed the East India Company's monopoly and later, the company worked on behalf of the government. In 1857, the Indian Rebellion occurred which prompted the British colonial office to exile the last emperor, Bahadur Shah II, and take complete control of the Indian subcontinent.

3. Study Material-Language

ONE WORD-SUBSTITUTION

S.N.	Sentence	One Word
1.	A person who acts on behalf of others	Agent
2.	A leader or orator who espoused the cause of the common people	Demagogue
3.	A person having a sophisticated charm	Debonair
4.	A leader who sways his followers by his oratory	Demagogue
5.	A dabbler (not serious) in art, science and literature	Dilettante
6.	A man who is womanish in his habits	Effeminate
7.	A person who deliberately sets fire to a building	Arsonist
8.	A government of officials	Bureaucracy
9.	A government by one person	Autocracy
10.	A government by rich and powerful class	Plutocracy
11.	A government by nobles	Aristocracy
12.	A government of the people, by the people and for the people	Democracy
13.	A Government by the Churchmen	Theocracy
14.	A person who heads the Council of Ministers	Prime Minister
15.	A work or a book or a literary piece of work whose author is not known	Anonymous
16.	A diplomatic representative of one country in another	Ambassador
17.	A person selected by disputing parties to settle their difference	Arbitrator
18.	A supplement added at the end of the book	Appendix
19.	A voluntary renouncement of the throne by the King	Abdication
20.	A lover of others	Altruist
21.	A medicine to cure the effect of poison	Antidote
22.	A public sale of property conducted by biddings	Auction Sale
23.	A place where anus and ammunition are kept	Armoury
24.	A person who secret himself by running away from law	Absconder
25.	A member, of the middle class	Bourgeois
26.	A State involved in war	Belligerent
27.	A person who is fond of fighting	Bellicose
28.	A person unable to pay debt	Bankrupt
29.	A lover of books or a collector of books	Bibliophile
30.	A list of books or articles	Catalogue
31.	A person who has been convicted of an offence	Criminal
32.	A person who has been charged of an offence	Accused
33.	A process of compound between two parties	Compound
34.	A general order for people to remain indoor	Curfew
35.	A period of hundred years	Century
36.	A period of ten years	Decade
37.	A round about mode of expression	Circumlocution
38.	A person engaged in diplomacy	Diplomat

39.	A suit filed for the purpose of declaration of title	Declaratory suit
40.	A Hundi on which payment can be made at sight	Darshani Hundi
41.	A long poetic account of the deeds of great heroes	Epic
42.	A person who leaves his country and goes to live in another	Emigrant
43.	A person whose conduct is not normal	Eccentric
44.	A person interested in everything happening around him	Extrovert
45.	A speech given without preparation	Extempore
46.	A speech given for the first time in life	Maiden speech
47.	A poetry or prose recited at the end of a play	Epilogue
48.	A poetry or prose recited at the beginning of the play	Prologue
49.	A man is womaniser	Effeminate
50.	A person who is hi habit of sensuous pleasure	Epicure
51.	A person who believes in fate	Fatalist
52.	A strong believer of religion	Fanatic
53.	A supporter of women movement/women's right	Feminist
54.	A medicine that destroys germs	Germicide
55.	A plane figure with six sides	Hexagon
56.	A person who is unable to pay his debts	Insolvent
57.	A disease communicable by air or water through virus	Infectious
58.	A sound that cannot be heard	Inaudible
59.	A decision which cannot be changed	Irrevocable
60.	A person who goes from one country to another with intention to settle down there	Immigrant
61.	A trade or act which is prohibited by law	Illicit
62.	A person who is confined to his own-self	Introvert
63.	A body of person selected according to law and sworn to give verdict on some matter according to evidence	Jury
64.	A formal decision made by or pronounced by a court of law or other tribunal	Judgment
65.	A person who is skilled in language	Linguist
66.	A gift of personal property by will to a legatee	Legacy
67.	A game of chance, generally unlawful	Lottery
68.	A person with whom money or gain is the most important consideration	Materialist
69.	A soldier who fights for the sake of money	Mercenary
70.	A place where dead body is kept before post-mortem	Mortuary
71.	A handwritten copy	Manuscript
72.	A person who hates woman-kind	Misogynist
73.	A hater of mankind	Misanthrope
74.	A hater of marriage	Misogamist
75.	A person below the age of 18	Minor
76.	A person above the age of 18	Major
77.	A wrongful act done intentionally without a just cause or excuse	Malice
78.	A direction from a superior to an inferior Court	Mandate
79.	A people’s verdict in favour of a party to rule	Mandate
80.	A note according to particulars of an event	Memorandum

81.	A woman who without marriage lives as a wife	Mistress
82.	A sound proposal node in a meeting	Motion
83.	A special favour by a person occupying high position to his relatives	Nepotism
84.	A widely known criminal with had reputation	Notorious
85.	A new born child	Neonate
86.	A plea in abatement which alleged that the plaintiff has failed to join in action all those who have been parties	Non-joinder
87.	A person deprived of the protection of law	Outlaw
88.	A custom or word which is no longer in use	Obsolete
89.	A figure with eight sides and eight angles	Octagon
90.	A child whose parents are dead	Orphan
91.	A man whose wife is dead	Widower
92.	A woman whose husband is dead	Widow
93.	A person who looks at the brighter side of things	Optimist
94.	A person who views life with despair	Pessimist
95.	A garden of fruits	Orchard
96.	A solemn appeal usually to God to witness that some statement is true or that some promise is binding	Oath
97.	A duty, usually legal or moral and of one's choosing to undertake a course of action	Obligation
98.	A proposal, written or oral to give or do something	Offer
99.	A disregard of the essentials of justice	Oppression
100.	A law promulgated by the President or Governors	Ordinance
101.	A tendency to give an unfair judgment through sympathy with one side	Partiality
102.	A child born after the death of his father	Posthumous
103.	A remedy for all ills	Panacea
104.	A person without means	Pauper/Indigent
105.	A person who does not believe in war or favours its abolition	Pacifist
106.	A murder of his own father	Patricide
107.	A woman who offers the use of her body for sexual intercourse to anyone who pays for that	Prostitute
108.	A person who loves his country and is ready to sacrifice his life for his country	Patriot
109.	A man who amuses himself by love making	Philanderer
110.	A man who helps others in difficulty	Philanthropist
111.	A lover of woman kind	Philogynist
112.	A special right or immunity conferred on some person or body	Privilege
113.	A glance at the past events	Retrospect
114.	A law with effect from some earlier date	Retrospective law
115.	A private person at whose suggestion an action is commenced by Attorney-General	Relater
116.	A residue of an estate, depending upon a particular estate and rated together the same at one time	Remainder
117.	A periodic payment made by the tenant or other occupier of land to the owner for its possession and use	Rent

118.	A citation to appear before a Judge or Magistrate	Summons
119.	A person who draws amusement by inflicting cruelty on others	Sadist
120.	A person who doubts the truth of a particular claim	Sceptic
121.	A person or a thing taking place of another	Substitute
122.	A person who knows the philosophy of pain and pleasure and therefore, takes both in the same way	Stoic
123.	A place where artists work	Studio
124.	A truth which is often repeated	Truism
125.	A play of a serious kind with a sad ending	Tragedy
126.	A practice which has continued over a long period	Usage
127.	A person or animal suffering an' injury or loss	Victim
128.	A person who has a long experience	Veteran
129.	A person who gives up himself upto, luxury and sexual pleasures	Voluptuary
130.	A cupboard with shelves, pegs for keeping clothes	Wardrobe
131.	A study of animal life	Zoology
132.	A group of stars	Constellation
133.	A hackneyed phrase	Cliche
134.	A man whose manners are more like those of a woman than a man	Effeminate
135.	A breaker of images	Iconoclast
136.	A man who can disguise the direction of his voice	Ventriloquist
137.	A man with narrow and prejudiced religious views	Bigot
138.	A man who eats human flesh	Cannibal
139.	A person who is head of the joint-Hindu family	Karta
140.	A person knowing everything	Omnicient
141.	A body which is all powerful	Omnipotent
142.	A remedy which never fails	Infallible
143.	A match which ends without victory of either party	Drawn
144.	A place where birds and animals are kept for exhibition	Zoo
145.	A damages not directly related to a wrongful act	Remote
146.	A state of growth of a person between boyhood and youth	Adolescence
147.	A Constitution which contains norms in a written document	Written Constitution
148.	A Constitution which divides power of governance between the national and the regional governments	Federation
149.	A constitutional scheme which provides for governance of the whole country by the Central Government	Unitary
150.	A person who avoids arrest by concealing himself	Absconder
151.	A person who brings the suit	Petitioner
152.	A claim made by the opposite party in a suit	Counter claim
153.	A statement which is not clear and is open to more interpretations	Ambiguous
154.	A loss or damage that cannot be compensated	Irreparable
155.	A widespread disease affecting people at large at the same time	Epidemic
156.	A place where one can reach	Accessible

157.	A loss which can be ascertained	Accessible
158.	A public officer who attests deeds or documents	Notary
159.	A person who has been declared outcast by a community	Ex-communicated
160.	A person who addresses a public gathering	Speaker
161.	A member of the Parliament who presides over its meetings	Speaker
162.	A dignatory who presides over the Meetings of the Council of the State	Chairman
163.	A duty imposed on the manufacture of a thing	Excise
164.	A duty levied at the incidence of importing or exporting goods	Custom duty
165.	A person who can speak and write two languages	Bilinguist
166.	A person who believes in the existence of God	Theist
167.	A person who does not believe in God	Atheist
168.	A person who spends money recklessly	Prodigal
169.	A person who is sent upon a special mission	Envoy
170.	A self centred person who always thinks of his own interest	Egoible
171.	A judgment pronounced on the basis of the agreeing of all the judges on the bench	Unanimous
172.	A diplomatic personnel of highest order sent by one country to another	Ambassador
173.	A person who dies without making will	Intestate
174.	A matter pertaining to parents	Parental
175.	A government which does not interfere into matters of the people	Laissez-faire
176.	A gratuitous payment made secretly	Donatio violate
177.	A property managed by a person for the beneficial use of other person	Trust Property
178.	A legal injury caused without any monetary loss to a person	Injuria sine Damnum
179.	A kind of happening which had never happened earlier	Unprecedented
180.	A work without remuneration	Honorary
181.	A girl who is not married	Virgin
182.	A leave without application	French leave
183.	A person who eats only vegetables	Vegetarian
184.	A sum of money payable yearly either as a personal obligation of the grantor or out of property	Annuity
185.	A detention with a view to prevent the detenue from committing act	Preventive detention
186.	A payment reserved by the grantor of a patent, lease of mine etc. payable proportionately to the use made of the right by the grantee	Royalty
187.	A money comfort qualified by the statute, given as a conciliatory measure for the compulsory acquisition of the land of the citizen by a welfare state	Solatium
188.	A super added charge over and above the usual or current dues	Surcharge
189.	A term during which an office is held	Tenure

190.	A mark used in relation to goods for the purpose of indicating connection in the course of trade between goods and some person having the right to use that mark as proprietor	Trade mark
191.	A device intended to comprehend a mode by which property can pass	Disposition
192.	A visible manifestation of the feelings or sentiments of an individual having legal personality	Demonstration
193.	A collection or individuals classed together under the same name or a religious body having a faith or organisation and designated by a distinctive name	Denomination
194.	A formal resolution of a body reprimanding a person (normally one of its own members) for specified conduct	Censure
195.	A public and formal censure or severe reproof administered to a person in fault by his superior officer or by a body or organisation to which he belongs	Reprimand
196.	A temporary suspension of the execution of a sentence	Respite
197.	A small quantity of any commodity presented for inspection or examination as evidence of the quality of the whole	Sample
198.	A seat of judgment for the administration of justice	Bench
199.	A right of use over the property of another	Easement
200.	A court organised for the argument of hypothetical cases	Moot Court
201.	A sanctuary or place of refuge and protection	Asylum
202.	A person who has committed grave crime	Felon
203.	A body of law constituted by eccesiastical authority for the organisation and governance of the Christian Church	Cannon Law
204.	A place of work in which trade union members working there refuse to allow non-union members to be employed in that industry	Closed shop
205.	A mode of the transfer by which property is transferred from one person to another by written instrument's and related formalities	Conveyance
206.	A form of government in which the administration of affairs is open to all citizens and office of the head of the state is occupied by an elected person	Republic
207.	A breaker of images	Iconoclast
208.	Acquisition of one firm by another so that they become one unit	Merger
209.	Acts, the tendency of which is to injure, annoy etc. to a complainant	Molestation
210.	Act of general pardon	Amnesty
211.	Admitting a person as a citizen of a foreign state	Naturalize
212.	Allowance payable to a wife on judicial separation from her husband	Alimony
213.	All substances found under the earth obtained by mining and containing inorganic substances	Minerals
214.	All land, houses or other buildings forming part of endowment of an ecclesiastical benefice	Glebe

215.	Ambiguity in a document seen on its face	Patent
216.	Ambiguity in a document not found prima facie	Latent
217.	An agreement to do or not to do a particular thing	Covenant
218.	Any living object	Animate
219.	An order issued by the court before the pronouncement of the decision	Interlocutory order
220.	An established principle of practical wisdom	Maxim
221.	An authorised period of delay in performing of obligation	Moratorium
222.	An assembly of members of an Inn or Court at which points of law are argued	Moot
223.	An offence of collective insubordination, collective defiance or disregard of authority or refusal to obey authority	Mutiny
224.	An adult through whom an infant or patient sues/represents	Next friend
225.	An act of omission or commission punishable under criminal law	Offence
226.	An action taken by one person as on retaliation for ton assumed or real wrong by another	Reprisal
227.	An act which wrongfully deprives a person of his freehold	Ouster
228.	An association of individuals entitled to act as an individual having a legal personality	Corporation
229.	An imaginary tome assumed by an author	Pseudonym
230.	An earlier decision taken as an example	Precedent
231.	An act by which one annuls something he has done	Revocation
232.	An offence consisting of breaking and entering and committing a felony in any place of divine worship	Sacrilege
233.	An office to whom high salary is paid for little or no work or responsibility	Sine cure
234.	An express and specific denial of an allegation of fact made in statement of claim	Traverse
235.	An order that is absolutely clear	Unambiguous
236.	An offence with intent to deceive others	Witchcraft
237.	An acknowledgment of something existing before	Recognition
238.	An intangible asset or the whole advantage of the reputation or connections formed with customers together with the circumstances making the connection durable	Goodwill
239.	An order against which appeal may lie	Appealable
240.	An infringement of a provision which empowers a person to get enforced in a court of law	Enforceable
241.	An enactment conforming to norms set in the Constitution	Constitutional
242.	An expert in the science of law	Jurist
243.	An act violative of the norms prescribed by the law	Unlawful
244.	An net whose validity is under challenge	Impugned
245.	An act violative of the norm of morality and decency	Obscene
246.	An act ending the sitting of the House	Adjournment
247.	An act ending the session of a House	Prorogation
248.	An act ending the life of the House of the people	Dissolution
249.	An entity which can sue or be sued	Person

250.	An action of killing infants	Infanticide
251.	An act which is contrary to the nature	Unnatural
252.	An act of importing goods illegally without paying the custom duty	Smuggling
253.	An act of removing objectionable utterances of Legislator's in a House by the Speaker	Expunge
254.	An old student of a institution	Alumni
255.	An act of a officer or body beyond Jurisdiction	Ultravires
256.	An institution where a student has been trained	Alma mater
257.	An incidence worthy to be remembered	Memorable
258.	An act which is wrong	Culpable
259.	An act of engaging oneself in war	Belligerent
260.	An act which is legally allowed	Permissible
261.	An infringement of a provision which empowers a person to get enforced in a Court of law	Enforceable
262.	Absence of restraint	Liberty
263.	Authority to act granted by a competent authority	Licence
264.	Bathing nakedly	French bath
265.	Bank loan allowing a customer's current account to go into debit	Overdraft
266.	Belonging to all	Universal
267.	Belonging to village area	Rural
268.	Belonging to a city	Urban
269.	Belonging to the bank of river or stream	Riparian
270.	Book containing information on all subjects	Encyclopaedia
271.	Chairman of a city council elected by the councillors	Mayor
272.	Charging of the nature of the punishment	Commutation
273.	Charges in respect of goods unloaded from wagons and kept at the station	Demurrage
274.	Capable of being understood	Intelligible
275.	Contrary to nature	Unnatural
276.	Collection of special words with meaning	Glossary
277.	Collector of stamps	Philatelist
278.	Common plea remarks	Platitude
279.	Conferred as an honour unpaid, an officer for which no salary is paid	Honorary
280.	Culpable omission to perform a duty	Neglect
281.	Child brought up by a person other than parents	Foster Child
282.	Disagreement or differences between statement in the writ and pleadings	Variance
283.	Destroying the source of authority of the existing government	Subjugation
284.	Discrimination with an object to safeguard the interest of the weaker sections of the society	Protective Discrimination
285.	Dispatching of goods/articles to another country	Export
286.	Dramatic performance with dumb show	Pantomime
287.	Document issued under the seal of the court as official evidence of the authority of an executor	Probate

288.	Duties imposed by the government on imports	Tariff
289.	Everything which is to be applied for the purpose of healing whether externally or internally	Medicine
290.	Extermination of a race by mass murder	Genocide
291.	Evidence from an independent source conforming and strengthening other evidence	Corroboration
292.	Fixed time from which military operation are counted	Zero hour
293.	Functions which can be performed only by the organs of the government	Sovereign or Regal
294.	Formal investigation of a person's activities	Vetting
295.	Formal suspension of execution of a sentence	Reprieve
296.	Former holder of any office or position	Predecessor
297.	Failure of legacy	Lapse
298.	Fund or property available for discharge of debts	Assets
299.	Generally one's nearest blood relations	Next-of-kin
300.	Generally involves a grant of exclusive possession for a term at rent	Lease
301.	Good observer in matters in which taste is needed	Connoisseur
302.	Government where all adult citizens elect their representatives	Democracy
303.	Government or opposition official responsible for controlling the presence of MP's at debates and votes, arranging pairs etc	Whip
304.	Government based on religion	Theocracy
305.	Getting away from restrain or custody	Escape
306.	Give and take mutually	Reciprocate
307.	Given to finding fault	Censorious
308.	Have blood relation	Kin
309.	Having one wife	Monogamy
310.	Having two wives	Bigamy
311.	Having many wives	Polygamy
312.	Having some resemblance to, but lacking some requisites	Quasi
313.	Having more than one husband	Polyandry
314.	Handing over a fugitive foreign criminal to the proper authorities of his own country when sought to do so	Extradition
315.	Herb eating animal	Herbivorous
316.	Happening once in three years	Triennial
317.	High or profitable post with no duties	Sinecure
318.	Honest intent free from taint of fraud or fraudulent design	Good faith
319.	Happening for the first time	Unprecedented
320.	Illegal export or import of merchandise	Smuggling
321.	Imposition of assessment or tax	Levy
322.	Income, yield of taxes, return on investment-	Revenue
323.	In accordance with the forms of law	Legal
324.	Inconsistency of two or more provisions in a deed or other document	Repugnance
325.	Incapable of being cured	Incurable
326.	Intentional abandonment of a right	Renunciation

327.	Intimation, intelligence, warning, observation	Notice
328.	Instrument by which a payment of money is assured on death	Insurance policy
329.	Killing of either or both parents	Parricide
330.	Kingdom of rulers belonging to one family	Dynasty
331.	Knowledge of how to accomplish something	Know how
332.	Legally capable of making a will	Testable
333.	Let the buyer be aware	Caveat Emptor
334.	Lay of dilly at the incidence of importing the goods	Custom Duty
335.	Living on both land and in water (like frog)	Amphibious
336.	Lover of books	Bibliophile
337.	Life History written by the person concerned	Autobiography
338.	Life history of a person written by other person	Biography
339.	List of books, Articles etc.	Catalogue
340.	List of items of business transaction at a meeting	Agenda
341.	Liable to make mistake	Fallible
342.	Market structure with only a single seller of a commodity	Monopoly
343.	Marrying more than one husband at a time	Polyandry
344.	Malicious destruction of or damage to property so as to harm a business or military potential of the State	Sabotage
345.	Medical examination of dead body	Post-mortem
346.	Mode of acquiring title or property by uninterrupted possession	Usucaption
347.	Money paid for securing freedom of a captive	Ransoms
348.	Medicines that promote sleep	Narcotic
349.	Movement from one country to another	Migration
350.	Missing portion or omission in a document	Lacuna
351.	Murder of an infant	Infanticide
352.	Made of different kinds	Heterogeneous
353.	Man who eats human flesh	Cannibal
354.	Medical examination of a dead body	Autopsy
355.	Money received by a Muslim women as a consideration of marriage	Mehr
356.	Negligence and unreasonable delay in the assertion of a right claiming privilege	Latches
357.	Notes providing a record of proceedings	Minutes
358.	Non-payment of interest on a loan exceeding the principal at time	Damdupat
359.	One who can neither read nor write	Illiterate
360.	One who is not sure about God's existence	Agnostic
361.	One who makes an official examination of accounts	Auditor
362.	One who does a thing for pleasure and not as a profession	Amateur
363.	One who can use either hand with ease	Ambidextrous
364.	One who cannot be won	Invictus
365.	One who speaks on behalf of other	Spokesman
366.	One who feels very sympathetic to all human beings	Humanitarian
367.	One who regards the whole world as his country	Cosmopolitan
368.	One who is liked by everybody	Popular

369.	One who cannot be corrected	Incorrigible
370.	One who is dependent on other	Dependent
371.	One who sells goods in the street roaming about	Hawker
372.	One who is unable to pay his debt	Insolvent
373.	Obliteration of statute by another from the statute hook as completely as it had never been enacted	Repealed
374.	One who examines publications, films and like for objectionable content	Censor
375.	One who does not take any intoxicating drink	Teetotalism
376.	One who walks in sleep	Somnambulis
377.	One who talks in sleep	Somnikquist
378.	One who is appointed to act in place of another	Surrogate
379.	One who makes a settlement of his property	Settlor
380.	One appointed with authority or power to act for another, i.e., meeting, attendance	Proxy
381.	One of the first persons to do anything to go into a country to develop it: first student of a new branch of study	Pioneer
382.	One who walks on foot	Pedestrian
383.	One who depends on others	Parasite
384.	One who has possession as owner or tenant of land or a house and has degree of control associated with his presence on the land or in the house	Occupier
385.	One who does not believe in the existence of God	Atheist
386.	One who leads an austere life	Ascetic
387.	One who can either hand with ease	Ambidextrous
388.	One who is bad in spellings	Cacographer
389.	One who feeds on human flesh	Cannibal
390.	One who is recovering health after illness	Convalescent
391.	One who is a centre of attraction	Cynosure
392.	One who dies for a noble cause	Martyr
393.	One who is very particular about small details	Meticulous
394.	One bound by allegiance and feudal service	Liege
395.	One who makes a lease to another	Lessor
396.	One to whom a lease is made	Lessee
397.	One who entertains a guest	Host
398.	One who sneers at the beliefs of others	Cynic
399.	One who is in debt to another	Debtor
400.	One who is for pleasure of eating and drinking	Epicure
401.	One who often talks of his achievements	Egotist
402.	One who easily believes, whatever is told	Credulous
403.	One who first attacks	Aggressor
404.	One who does work for pleasure and not as an occupation	Amateur
405.	One who intends to destroy the established government, Law and Order	Anarchist
406.	Parliamentary Commissioner for Administration	Ombudsman
407.	Person who compiles a dictionary	Lexicographer
408.	Place, where dead bodies are cremated (burnt)-	Crematory
409.	Properly inherited by a person from his ancestor	Patrimony

410.	Place of detention for those committed to custody under the law	Prison
411.	Period of isolation, originally 40 days, imposed on the ship and its travellers coming from a country in which serious infectious disease has spread	Quarantine
412.	Person who takes up arms against the established government	Rebel
413.	Person escaped to foreign country from religious or political persecution	Refugee
414.	Persuasion to disobedience, illicit sexual intercourse	Seduction
415.	Punishment or penalty imposed on a person found guilty by court	Sentence
416.	Payment by the State to producers or distributors intended to reduce prices paid by consumers	Subsidy
417.	Process becoming entitled to property of deceased by operation of law	Succession
418.	Scientist who studies stars	Astronomer
419.	Someone who leaves one country to settle in another	Emigrant
420.	Specialist in female diseases	Gynaecologist
421.	Specialist in children's diseases	Pediatrician
422.	Specialist in eye diseases	Opthlmologistioculist
423.	Specialist in heart diseases	Cardiologist
424.	Specialist in skin diseases	Dermatologist
425.	Specialist in mental and emotional disorders	Psychiatrist
426.	Science of disease	Pathology
427.	Science of bodily structure	Anatomy
428.	Science of the production of healthier and fitter children	Eugenics
429.	Something said or done at one without preparation	Impromptu
430.	Sending out of a person from his native country	Exile
431.	Send money	Remit
432.	Sexual intercourse between near relations	Incest
433.	Society in which mother is the head of the family	Matriarchy
434.	Stealing from another person's writings	Plagiarise
435.	Substance that prevents infection	Antiseptic
436.	Substance that kill germs	Germicide
437.	Substance that easily catches fire	Inflammable
438.	Substance that breaks easily (like chalk)	Brittle
439.	Statement or story worthy of belief	Credible
440.	State of repugnance between two laws	Repugnancy
441.	Statement in a deed or any formal instrument to explain or to lead up to the operative part of the instrument	Recital
442.	Susceptible to injury	Vulnerable
443.	Statement of a witness in court	Testimony
444.	Speech in which a character speaks to himself in thoughts on the stage	Soliloquy
445.	Power to prohibit or refuse	Veto
446.	Performed by one person as a substitute for, or for the benefit of another	Vicarious

447.	Physical impossibility of the presence of the accused at the scene of offence by reason of his presence of another place	Alibi
448.	Qualified, fit to be chosen	Eligible
449.	Quasi autonomous, non-governmental organisations, generally carrying out regulatory and operational functions	Quangos
450.	Quarrelsome, scolding woman	Shrew
451.	Relating to the affairs of this temporal world	Secular
452.	Referring to damage in ancient civil law caused by a slave or animal	Noxal
453.	Risk of convention and punishment	Jeopardy
454.	Right over another's property	Servitude
455.	Ruler who has absolute power	Dictator
456.	Rule by military during an emergency when the civil authority cannot function	Martial Law
457.	Right or privilege to vote in an election	Suffrage
458.	Repudiation, in Islamic law of a wife by her husband by means of a formal, triple declaration	Talaq
459.	Refers to the deliberate conduct of a person	Wilful
460.	Right of the husband or wife to the society of the other espouse	Conjugal Right
461.	Reasoning from general to particular	A priori
462.	Reasoning from particular to general	A posteriori
463.	Representation of God in the likeness of man	Anthropomorphism
464.	Scientist who studies the development of man from his earliest beginnings	Anthropologist
465.	Scientist who studies the composition of the earth	Geologist
466.	Scientist who studies living organism both animals and plants	Biologist
467.	Status of a child resulting from birth in lawful bedlock	Legitimacy
468.	Stage of gradual recovery of health alter illness	Convalescence
469.	Stage between childhood and youth	Adolescence
470.	The state of being unmarried	Bachelorhood/Celibacy
471.	That which happens once a year	Annual
472.	That which happens once in two year	Biennial
473.	Too turn friends into foes, to estrange	Alienate
474.	To talk impiously about; God/sacred things	Blasphemy
475.	Termination of marriage by coup, thereafter spouses are Ike to remarry	Divorce
476.	Total repudiation of the obligations of marriage	Desertion
477.	Things which one suitable to eat	Eatable
478.	The subject which deals with the derivation of words	Etymology
479.	Total removal of an evil or disease etc.	Eradicate
480.	That Mitch never fails	Infallible
481.	That which is believable	Incredible
482.	That without which one cannot do	Indispensable
483.	That which cannot be defeated	Invincible
484.	The worship of idols	Idolatory
485.	To wage another person to do evil	Instigate

486.	That which must happen	Inevitable
487.	The act of increasing the amount of money in circulation so that there is a price rise	Inflanation
488.	That which cannot be burnt	Incombustible
489.	The science/philosophy of law	Jurisprudence
490.	To throw overboard a ship's cargo or tackle no as to lighten it in an emergency	Jettison
491.	The place for keeping the collection of books	Library
492.	The body of rules and guidelines within which society requires its judges to administer, justice	Law
493.	The owner or holder of land leased to another	Landlord
494.	Me making of law by a competent authority	Legislation
495.	The publication in printed form of a statement which tends to damage the reputation of a person	Libel
496.	The taking of legal action by a party, who is known as litigant	Litigation
497.	The place of living for monks	Monastery
498.	The system of government by a single ruler	Monarchy
499.	To injure to person so that he is crippled	Maim
500.	Time at which to bill of exchange becomes due	Maturity
501.	The act of a third party relating to the settling of a dispute between two contending parties	Mediation
502.	The disposition of an estate or land or other property by debtor to creditor as security for debt with proviso that it shall be returned on payment of debt within certain period	Mortgage
503.	Term generally applied to personal as opposed to real property or immovable property	Movable
504.	Title, deeds and other evidence relating to the title to land	Documents
505.	The study of coins	Numismatics
506.	The place where young plants are grown	Nursery
507.	The bringing of the ownership and management of firms/industries under state control	Nationalisation
508.	The legal relationship attaching to membership of a nation	Nationality
509.	That which is offensive to which causes or tends to cause injury	Noxious
510.	To turn out of society	Ostracize
511.	That which cannot be seen through	Opaque
512.	The killing of un imperial power or a king	Regicide
513.	Too much attention to rules and regulation by civil servants	Red-tapism
514.	To dispose of the person or an individual charged with a crime e.g., on the adjournment of a hearing	Remand
515.	To withdraw from an agreement	Resile
516.	The publication, orally or in writing of words intended to bring into hatred or contempt or to excite disaffection against the authority of States' executive	Sedition
517.	To seek justice by the process of law	Sue
518.	To taking of one's own life intentionally and voluntarily	Suicide
519.	Two or more things occurring at the same time	Simultaneous

520.	The passage of soul after death from one body to the other	Transmigration
521.	That which can be seen through	Transparent
522.	To offer for sale or to offer money etc.	Tender
523.	The greatest happiness of the greatest number	Utilitarianism
524.	The risking of a sum of money on an uncertain, eventual outcome	Wager
525.	The exercise of cure and protection of ward	Wardship
526.	Trees and their fruits blown down by the wind	Windfalls
527.	The damage of a ship sot that she ceases to be of use	Wreak
528.	The official counting of the people of a State	Census
529.	The fixed beginning or ending point of a given run in connection with transportation	Terminal
530.	The amount of money which is turned over in business	Turnover
531.	The thing is not what it pretends to be	Spurious
532.	The money gives to a woman for maintenance	Alimony
533.	The last will drawn by a testator	Ultima voluntas
534.	To remove objectionable matter from a book	Expurgate
535.	The reason for decision of a case	Ratio-decidendi
536.	To root out an evil	Eradication
537.	To hasten the progress	Acceleration
538.	Uncultured person	Philistine
539.	Unauthorised or illegal assumption of rights	Usurpation
540.	Used to indicate the specified number of members of a body	Quorum
541.	Usually solicitor who attests deeds	Notary
542.	Use of public fund not in legal way	Embezzlement
543.	Voluntary murder of one's sister or brother	Fratricide
544.	Which cannot be interpreted clearly	Ambiguous
545.	Words having opposite meaning	Antonyms
546.	Words having similar meaning	Synonyms
547.	Words having the same spelling or pronunciation but different meanings and origins	Homonyms
548.	Words that are pronounced or written in a similar way but which have different lexical meaning	Paranoyms
549.	Whose business is to locate criminals	Detective
550.	Who loves company	Gregarious
551.	Who eats too much	Glutton
552.	Which cannot be easily approached	Inaccessible
553.	With knowledge if facts in question	Knowingly
554.	Written acknowledgment of goods or money received	Receipt
555.	With consent of all	Unanimous
556.	Without force	Void

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4. Current Affairs

NOVEMBER 2023

National Affairs

- Asia's largest annual open air trade fair 'Ballia Yatra' began
- Hamfest 2023 was recently held in Ahmedabad
- 'Mission Agni' has been launched to increase the knowledge of Ayurveda practitioners
- Ayushman Bharat Health and Wellness Centres have been renamed as Ayushman Arogya Mandir
- National Milk Day is celebrated every year on November 26 in the country
- Recently, the government has exempted CERT-In from the ambit of right to information
- The 'Mission Daksh' programme will be launched by the Bihar government
- Recently, NITI Aayog has implemented the RISE program
- Recently IIT Madras has launched India's first incubator information platform for startups
- Recently, the Awards and Conference on Excellence in Diversity and Inclusion were held in New Delhi
- Recently, the Uttar Pradesh government has launched the 'Hot Cooked Food Scheme
- Recently 'Water Smart Kid Campaign' has been launched by the Meghalaya government
- The second edition of Kashi-Tamil Sangamam will be held in December
- Recently, the 'New Education for New India' campaign has been launched by the President
- The India Water Impact Summit was held in New Delhi
- Recently, 'Ghol Fish' has been declared as the state fish of Gujarat
- The Uttar Pradesh government has banned food items with halal certification
- Recently the Uttar Pradesh government has launched a campaign called 'Every Right for Every Child
- Uttar Pradesh is at the top position in terms of providing water connections under the Jal Jeevan Mission
- The India Art Architecture Design Festival will be held in New Delhi
- Recently, the Punjab and Haryana High Court has struck down the provision of 75 per cent reservation for the residents of the state in the industries of Haryana

- Recently, Cities Investment to Innovate, Integrate and Subordinate 2.0 has been launched in New Delhi
- The 'Atta Dal Yojana' will be launche by the Punjab government
- Recently, Delhi International Airport Limited has started the Sunflower program
- PM-Kisan Bhai Yojana will be launched in 7 states
- Recently, a new species of lizard has been discovered in Mizoram
- Recently, the Indian Navy's Artillery Seminar was organized in Kerala
- In the year 2024, India International Science Festival will be held in Faridabad
- Recently, the Specially Weaker Tribal Groups Development Mission has been launched from Jharkhand
- A Guinness World Record was created by lighting 22 lakh diyas in Ayodhya
- The Indian Navy's Indo-Pacific Regional Dialogue is being held in New Delhi
- Recently, the joint exercise 'Trishakti Prahar' of the three armies started
- Recently, the Union Ministry of Rural Development has launched the 'Nayi Chetna - 2.0' campaign
- Recently, the first meeting of the Uttar Pradesh Cabinet was held in Ayodhya
- The annual Naval Education Committee Conference was held recently at Porbandar
- Recently, the Bihar Assembly has increased the reservation in the state to 75%
- Recently the Nagaland government has approved 33% reservation for women in urban local bodies
- Recently, under the 'Meri Mati Mera Desh' campaign, he has set a Guinness World Record in the selfie program
- Bhogapuram International Greenfield Airport is being constructed in Andhra Pradesh
- Recently, 'Silent Conversation: From Margins to the Centre' tribal art exhibition was held in New Delhi
- Recently, the Haryana government has launched the 'Hot Balloon Project
- According to the announcement of the Union Ministry of Defense, military women will get equal leave for motherhood and child care
- Recently, Ganga utsav was organized in New Delhi
- Recently, the 'Water for Women, Women for Water' campaign has been started
- The 2023 International Film Festival of India (IFFI) will be held in Goa
- Recently, the Karnataka government has announced the launch of Dr. Puneet Rajkumar Hriday Jyoti Yojana
- Writer Leela Omchery has passed away recently

International Affairs

- NASSCOM has signed a MoU with NRW to set up a launchpad in Germany
- The Ocean Tuna Commission meeting is being held in Mumbai
- The World Congress on Disaster Management is being organized in Dehradun
- Japan, China and South Korea have agreed to a trilateral meeting again
- The Global Professional Accountants Conference is being held in Gandhinagar
- The ASEAN-India Millet Festival is being held in Jakarta
- The World Management Conference will be held in Sambalpur
- Recently, the India-Nordic Baltic Business Summit was held in New Delhi
- Recently the Delhi government has extended the deadline for the 'Friendship Agreement' with Fukuoka Prefecture of Japan.
- Recently, the 'Vajra Prahar' joint military exercise began in Meghalaya
- The International Tourism Mart is being organized in Shillong
- Recently, WHO and the Ministry of AYUSH have signed a Project Collaborative Agreement on Traditional and Complementary Medicine
- The United Nations Forum on International Humanitarian Law and Peacekeeping is being held in New Delhi
- The Global Fisheries Summit is being held in Ahmedabad
- The 2+2 Ministerial Dialogue between India and Australia is being held in New Delhi
- Recently, the International Conference on Space Technology was held in New Delhi
- The World Fisheries Conference will be held in Ahmedabad
- Weekly Current Affairs (12 November to 18 November 2023)
- Recently, the 'Mitra Shakti' joint military exercise is being conducted in Pune
- The Voice of Global South Summit is being hosted by India
- The Sea Guardian joint military exercise is being conducted between China and Pakistan
- Recently, the Standing Committee meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora was held in Switzerland
- The ASEAN Defence Ministers' meeting is being held in Jakarta
- Recently, the Global Media Congress was held in Abu Dhabi
- World Kindness Day is celebrated every year on November 13
- The Conference of the Regional Commission of the World Animal Health Organization of the Asia-Pacific Region is being held in New Delhi

- The International Conference of National Human Rights Institutions was recently held in Denmark
- The 2+2 dialogue between India and the US was held recently in New Delhi
- Weekly Current Affairs(5 November to 11 November 2023)
- Recently India and the Netherlands have signed an agreement for cooperation on joint medical product regulation
- The World Tourism Market was held in London
- China's Peking University has topped the recently released Asia University Rankings
- Chile has recently become a member of the International Solar Alliance
- Recently, an agreement has been signed between India and Italy to facilitate the movement of workers, students and professionals
- Recently, the International Chief Justice Conference concluded in Lucknow
- Recently, the International Mining and Resources Conference was held in Sydney
- The World Local Production Forum is being held in The Hague
- The Central Board of Secondary Education of India will open its office in the United Arab Emirates
- Recently, the Indian Finance Minister attended the 'NAM 200' program held in Sri Lanka as the chief guest
- Recently India and UAE have signed a MoU in the field of education
- The AI Security Summit is being held in the UK
- Recently, the International Solar Alliance conference is being held in New Delhi

Business and economics

- Recently, the Basic Animal Husbandry Statistics were released by the Union Minister of Fisheries, Animal Husbandry and Dairying, Shri Parshottam Rupala
- S.&P. has raised India's growth rate to 6.4% for the financial year 2023 - 24
- Recently, Pakistan has applied for membership of BRICS
- Recently India Post has signed an MoU with 'Blue Dart' for better services
- Recently, saffron from Kashmir has been given the GI tag
- Bengaluru has the highest number of women-led startups in India
- Recently, the National Payment Corporation of India has directed to close Inactive UPI by December 31, 2023
- The Reserve Bank of India has increased the risk weight for personal loans by 25% for banks

- The seabuckthorn fruit found in Ladakh has recently been granted the GI tag
- India will become the world's second largest solar module manufacturer by 2025
- Recently, the International Trade Fair started in New Delhi
- Recently, the International Monetary Fund has approved a proposal to increase the quota of its members of the Executive Board by 50 percent
- Recently the government has announced that 1% interest rate subvention will be given to disabled persons who repay the loan on time
- India's largest cold oil production plant to be set up in Gujarat
- Recently, the 'Bharat Organics' brand of National Cooperative Organics Limited has been released
- Moody's has projected India's growth rate at 6.7% for the current financial year
- The Insurance Regulatory and Development Authority of India has constituted a committee to review the existing bank insurance structure
- Recently, the Philippines has decided to withdraw from China's Belt and Road project
- Recently, the Australia-India Education and Skills Council meeting was held in Gandhinagar
- The Asia-Pacific Human Development Report was recently released by the UNDP.
- International Conference on Sustainable Trade and Standards was held in New Delhi
- Shiv Nadar has topped the list of Indian donors released by Hurun India recently
- South-West Asia's largest beverage plant has been inaugurated in 'Amethi
- Manila is at the top position in the recently released Prime Global Cities Index
- The 'India Manufacturing Show' was inaugurated by Union Defence Minister Rajnath Singh
- India's first international cruise liner 'Costa Serena' sailed from Mumbai
- Recently, NITI Aayog organized a workshop on 'India-African Union Cooperation for a Better Inclusive World
- Recently, 'Special Campaign 3.0' has been concluded by the Union Ministry of Mines
- Big Basket Company has secured the top position in the recently released Fairwork India Index
- Recently, the Financial Action Task Force has included Bulgaria in the gray list
- Recently, 3 projects built with India's assistance in Bangladesh were inaugurated by the Indian Prime Minister
- Norway has decided to support Uttarakhand for India's 'Hunger Project

- Recently A.U. Small Finance Bank has been announced to merge with Fincare Small Finance Bank

Appointments and Resignations

- Recently, Harsh Kumar Bhanwala was appointed as the chairman of HDFC. An additional independent director has been appointed in the bank
- Colonel Sunita has become the first woman to command the Armed Forces Transfusion Centre
- Christopher Luxon has recently been sworn in as the Prime Minister of New Zealand
- India will be the President of the International Sugar Organization for the year 2024
- Recently, Anish Shah has been appointed as the President of FICCI
- India's CAG has recently been appointed as the Deputy Head of the United Nations Auditor Panel
- Recently Mohamed Muizzu has been sworn in as the President of Maldives
- Recently, Sourav Ganguly has been appointed as the brand ambassador of West Bengal
- Recently, Vinay M. Tonse has been appointed as the Managing Director of State Bank of India
- Recently Luke Frieden has become the new Prime Minister of Luxembourg
- Recently, Justice Manoj Gupta has been appointed as the acting Chief Justice of the Allahabad High Court
- Javier Miley will be the new President of Argentina
- Recently, Ashok Vaswani has been appointed as MD and CEO of Kotak Mahindra Bank
- Recently, Alok Sharma was appointed as the new SPG chief.
- Recently Pedro Sanchez has been elected Prime Minister of Spain
- Weekly Current Affairs (12 November to 18 November 2023)
- Recently, former Prime Minister David Cameron has been made the new Foreign Minister of Britain
- Recently, Anusha Shah became the first Indian to become the chairman of the Institute of Civil Engineers
- Recently, Hitesh Kumar Makwana has been appointed as the Surveyor General of India
- Recently, Rohit Rishi has been appointed as the Executive Director of Bank of Maharashtra
- Recently Rajendra Menon has been appointed as the Chairman of the Armed Forces Tribunal

- Recently, Praveen Madhukar Pawar was handed over to the CBI. He has been appointed joint director
- Recently, Hiralal Samariya has been appointed as the Chief Information Commissioner of the country
- Recently, Surendra Adhana was awarded the U.N. Award. Selected in the Advisory Committee
- Recently, Prime Minister Narendra Modi has been elected as the chairman of Shri Somnath Trust
- Recently, Manoranjan Mishra was appointed as the executive director RBI.
- Recently, Saima Wazed has been elected regional director of the South-East Asia Region of the World Health Organization

Awards

- Recently NTPC Bongaigaon has been awarded the Greentech Environment Award
- 'Endless Borders' has won the Golden Peacock Award for Best Film at the International Film Festival of India
- Kamachi Mudali Uthandi has been awarded the Lifetime Achievement Award at the National Metallurgist Award recently
- Red Planet Day is celebrated every year on November 28
- Recently, 'Od' has been awarded the Best Film Award at the '75 Creative Minds of Tomorrow' at the International Film Festival of India
- The 2023 Booker Prize has been awarded to author Paul Lynch
- Recently, NHPC received the 'The Economic Times HR World Exceptional Employee Experience Award'. Has been honored
- Recently, C. Raj Kumar has been honored with the Dr. Pritam Singh Transformational Leader Award
- Ekta Kapoor has become the first Indian woman to win the International Emmy Awards
- JCB of the year 2023 The literature award has been given to Perumal Murugan
- The Armed Forces Medical College will be honoured with the President's Colour Award
- Recently Vir Das has won the International Emmy Award
- The Indira Gandhi Peace Prize for the year 2023 has been given to the Indian Medical Association and the Trend Nurses Association of India
- Recently, Shenice Palacios has won the Miss Universe title
- Recently HDFC LIFE has won the Golden Peacock Award for Excellence in Corporate Governance

- Recently, Salman Rushdie has been awarded the Lifetime Disturbing the Peace Award
- Serena Williams has recently become the first athlete to be awarded by Fashion by the Council of Fashion Designers of America
- Recently, Kerala has received the Global Responsible Tourism Award
- Recently, Preity Zinta has been given an honorary doctorate by Birmingham City University
- Recently, T. Padmanabhan has been honored with the Kerala Jyoti Award
- Nandini Das has recently been awarded the British Academy Book Award
- Gujarat is at the top position among the states in the Azadi Ke Amrit Mahotsav and Meri Mati Mera Desh campaign
- Recently the U.S. T. Company has been awarded the Mahatma Award
- The Union Home Minister's 'Special Operation Medal' has been given for 4 special operations
- Lionel Messi has recently been awarded the Men's Ballon d'Or award

Sports News

- Recently Aditi Ashok won the Ladies European Tour season-ending event
- Hardik Pandya has joined the Mumbai Indians team again
- Recently, 'Ujjwala' has been made the mascot of the Khelo India Para Games
- Recently, former West Indies cricket team player Marlon Samuels has been banned for 6 years by the ICC
- The first Khelo India Para Games will be held in New Delhi
- Recently the ICC India has snatched the hosting of the Under-19 World Cup from Sri Lanka
- Recently, the IBSF. Pankaj Advani won the Billiards Championship, 2023 title
- Recently, Novak Djokovic won the ATP title for a record seventh time
- Australia became the winner of the ICC Cricket World Cup
- Sheetal Mahajan has become the first woman in the world to skydive from 21,500 feet near Mount Everest
- Recently, Virat Kohli has become the first batsman to score the most centuries in an ODI international cricket match
- Recently the ICC Former Indian cricketer Virender Sehwag has been inducted into the Hall of Fame
- Recently, the World Medical and Health Games were held in Colombia
- Recently, Sunil Narine has announced his retirement from international cricket
- Recently the ICC Sri Lanka Cricket Board has been suspended

- Recently, the world's highest mountain biking race has been held in Arunachal Pradesh
- Weekly Current Affairs(5 November to 11 November 2023)
- Recently Max Verstappen has won the Sao Paulo Grand Prix title
- Maharashtra topped the recently concluded National Games
- In the recently released ICC rankings, Shubman Gill and Mohammed Siraj have reached the top position
- Recently, R. Vaishali and Vidit Gujrathi won the FIDE Grand Swiss title
- Punjab has won the Syed Mushtaq Ali Trophy for the year 2023
- Recently, Novak Djokovic has won the Paris Masters title
- The Asian Archery Championships will be hosted by Bangladesh in the year 2025
- Recently, the 'Vizag Navy Marathon' was organized in Andhra Pradesh
- Recently, Germany has won the Title of Sultan of Johor Cup
- Recently, the Indian team has won the Women's Asian Champions Trophy
- Angelo Mathews became the first batsman to be timed out in cricket history
- The Indian Navy Sailing Championship is being held in Mumbai
- Mohammed Shami has become the highest wicket-taker for India in the World Cup
- Nepal and Oman have qualified for the 2024 T20 World Cup
- In the recent Asian Shooting Championships, India won 55 medals
- Recently, former Indian cricketer Sachin Tendulkar has unveiled his statue at the Wankhede Stadium
- Recently, South Africa won the Rugby World Cup title

Science and Technology

- Recently, New Zealand abolished the smoking ban law
- Recently, Union Minister Smriti Irani launched the National Outreach Programme on Anganwadi Protocol for Children with Disabilities
- Recently, stealth guided missile district Imphal has been unveiled
- Southeast Asia's first night sky sanctuary has been created in Ladakh
- India's largest tiger reserve will be set up in Damoh
- The country's first Telecom Centre of Excellence will be set up in Saharanpur, Uttar Pradesh
- India's second floating CNG station to come up in Varanasi
- Recently, Prime Minister Narendra Modi has become the first Prime Minister to fly in Tejas aircraft
- According to the UN report, by the end of this century, the earth will warm by 3 degrees Celsius
- Recently, a rare metal tantalum has been discovered in the Sutlej river

- Recently, Israel has declared 'Lashkar-e-Taiba' as a terrorist organization
- Bundelkhand Expressway is going to be the first solar expressway in Uttar Pradesh
- Recently the National Pollution Response Exercise began in Vadinar
- The world's first 3D temple has been constructed in Telangana
- Recently, the Lieutenant Governor of Jammu and Kashmir flagged off the 'Gyanodaya Express – College on Wheels' train
- Recently, the Indian Navy has successfully tested the country's first indigenous anti-ship missile
- Ajay Bhatt represented India at the recently held Dubai Air-Show
- Sam Altman, the co-founder of Open AI, has been removed from the post of CEO
- Recently, the Indian Green Building Council has launched the 'Nest' initiative
- Recently, INS Sumedha has completed the anti-piracy patrol operation
- The NISAR satellite will be launched in 2024
- Recently, anti-submarine shallow water craft 'Amini' has been launched
- India and Russia have signed a Memorandum of Understanding for Igla-S missiles
- The world's first chikungunya vaccine has been developed by France
- The name of the country's first bridge-push train will be Amrit Bharat Express
- Recently, a new species of wasp named 'Teniagonalos dhritia' has been discovered in the Western Ghats
- Recently, the Uttar Pradesh government has approved the Drone Operation Safety Policy-2023
- Recently, Pusa-2090 variety of paddy has been developed
- Recently, 'Coordinated Patrol' joint military exercise was organized between India and Bangladesh
- Rampage missile will be installed in the MiG-29 fighter aircraft of the Air Force
- Collins Dictionary has declared the Word of the Year 'A.I.' for 2023
- Recently, a Myanmar-Russia joint military exercise was conducted in the Andaman Sea
- Recently, the 'Pralay' ballistic missile was successfully tested from Abdul Kalam Island
- Recently, Elon Musk has announced the launch of X's artificial intelligence chatbot 'Grok
- IIT Kanpur has sent a proposal for artificial rain to tackle pollution in Delhi-NCR
- Swedish company Saab has announced India's first 100% FDI in defence project. It has become an acquiring company
- Recently the guided missile destroyer warship, 'Surat' has been unveiled

- According to the recently released IQ AIR report, Delhi is the most polluted city in the world
- DRDO has recently announced the launch of an air defence system named 'Project Kush
- Exercise 'Eastern Akash' is being conducted by the Indian Air Force
- Recently, Chanakya Defence Dialogue - 2023 was organized in New Delhi
- Bhutan has become the first country in the world to sterilise stray dogs
- Recently, the Election Commission of India has developed a software named 'Encore
- Recently, the Russian President launched the CTBT. The law repealing has been approved
- Recently, the Indian Air Force has eliminated a squadron of MiG-21 from 'Uttarlai Air Force Station
- Recently, the Indian Air Force has deployed S-400 air defense systems on the borders with China and Pakistan

5. Prelims and Mains Notes Preparation Scheme

V.S. DREAM COACHING
FOR
HJS, PCS (J.) AND CLAT

Prelims and Mains Notes Preparation Scheme is going on. Prepare your own excellent study notes to crack HJS, PCS (J) and CLAT on the subjects mentioned below under the able guidance of Hon'ble Mr. Justice Vedpal (Former Judge), High Court of Judicature at Allahabad, Ex-Director of Judicial Training and Research Institute, U.P., Lucknow and resource person of various legal academies and institutions. Seek prior appointment to avoid despair. Subjects;-

1.General Knowledge	2.Law
1. Current Affairs 2. G.K.MCQs 3. History of India and Indian Culture 4. Geography of India 5. Indian Polity 6. Current National Issues 7. Topic of Social Relevance with special reference to newly added 9 Social Acts 8. India and the World 9. Indian Economy 10.International Affairs and Institutions 11. Development in the field of: (a) Science and Technology (b) Communications and Space **3.CLAT** 1. General Knowledge 2. A Guide for CLAT	1. Constitutional Law 2. Law of Evidence 3. Criminal Procedure Code 4. Code of Civil Procedure, 5. Indian Panel Code 6. Law of Contract 7. Partnership Act 8. Easements Act 9. Law of Torts 10. Transfer of Property Act 11. Principles of Equity , 12. Law of Trust 13. Specific Relief Act 14. Hindu Law 15. Muslim Law 16. U.P. Revenue Code. 17. U.P. Municipalities Act 1916 18. U.P. Panchayat Raj Act 1947 19. U.P. Consolidation of Holdings Act, 1953 20. U.P. Urban (Planning and Development) Act, 1973

6. About Coaching

V.S. Dream coaching is one of the premiere law institute that offers coaching for Judicial Services Examinations at all the three levels – Preliminary Test, Main Examination and Personality Test.

We started our journey the month of Sept. 2022 with a vision driven by the socialist ideology. Since its inception, the coaching is successfully conducting courses for Judicial Services Exams and has always worked by aligning itself to the best interest of its students. The coaching Institute is focused on providing comprehensive and reliable training and support to all its students, who plan to appear for the Judicial Services Exam and are in the search of highly qualified targeted and dedicated faculty to crack examinations successfully.

The teaching faculty of the Institute has been drawn from highly qualified persons having experience. We also guide the aspirant in preparing his own notes and quality study Material

Teaching pedagogy

Our faculty uses a teaching pedagogy which is easily understandable and is aspirant friendly. Our patron Hon'ble Mr. Justice Vedpal former Judge High Court Allahabad had been a Trainer of Trainers. Director of Judicial Training and Research institute U.P., Resource person of several Judicial Institutes and member of Law commission U.P. The faculty of the coaching Institutes consists of those who have several decade experience in teaching in the field of law.

7. About Director and faculty

Ms. Anshu Singh B.A., LL.B is the director of the coaching who remained associated with the law for more than two decades. The director of the coaching possess self-awareness, garner credibility, focus on relationship-building, exhibit humility, empower others, stay authentic, present themselves as constant and consistent, become role models and are fully present

The director aims to improve performance and focuses on the 'here and now' rather than on the distant past or future. The director is subject expert. And focuse on helping the individual to unlock their own potential

Regular Faculty

1. Ms. Anshu Singh, B.A. (English Literature) LL.B. The Director, herself
2. Shri Shantanu Baliyan, B.A. LL.B who is a Law graduate from C.C.S. University Campus. He has also received Certificate of Excellency from the

University. He has started teaching at a very young age and now with his teaching experience, he has developed innovative ways of teaching Law and general knowledge, which suites to the need of a law student, as well as an Judicial service aspirant. He has conducted many online and offline Courses. His notes on Law subjects as well as on general knowledge are masterly work

8. Resource persons/Guest Speakers

1. Hon'ble Mr. Justice Vedpal, Former Judge, High Court Allahabad -Mentor
2. Shri Soraj Singh, Ex-Director (Ag.), U.P. Government- Guest Speakers
3. Mrs. Kalpana Malik, B.Sc., LL.B., LL.M. (P) - Guest Speakers
4. Dr. Venu Agarwal M.A.(English), M.Com. M.Ed., PhD - Guest Speakers

9. Library with Research wing

V.S. Dream Coaching has an excellent Library containing **about five thousand books, Journals, brochures, notes and guides**. The library in a coaching institute plays an important role in the life of students by serving as the store house of knowledge. It facilitates the work of the resource person and faculty also. The students have also access to library, after coaching hours. Our library changes as technology changes and remains updated in Course subjects. The coaching itself prepares study excellent and qualitative reading material.

Preparing a study material on a subject on Law and General Knowledge, is a herculean task. There is always a debatable question to be asked regarding what, and what not to include and how to differentiate the books and brochures from the ones already available in the market.

There should be a system for the verification of facts, data, etc. While preparing study material, we always keep in the mind the quality, so we hope that the book, brochures prove beneficial to all the aspirants taking examinations with law and General Knowledge..

A coaching should provide students with the fundamental knowledge base or foundation needed in order to be successful in their exam. Aspirants were surveyed to determine how they should be taught. The survey was developed based on course content. We encourage accredited programs to regularly evaluate current curricula for and develop new curricula that reflect changing construction technologies and management trends.

Library

Research wing