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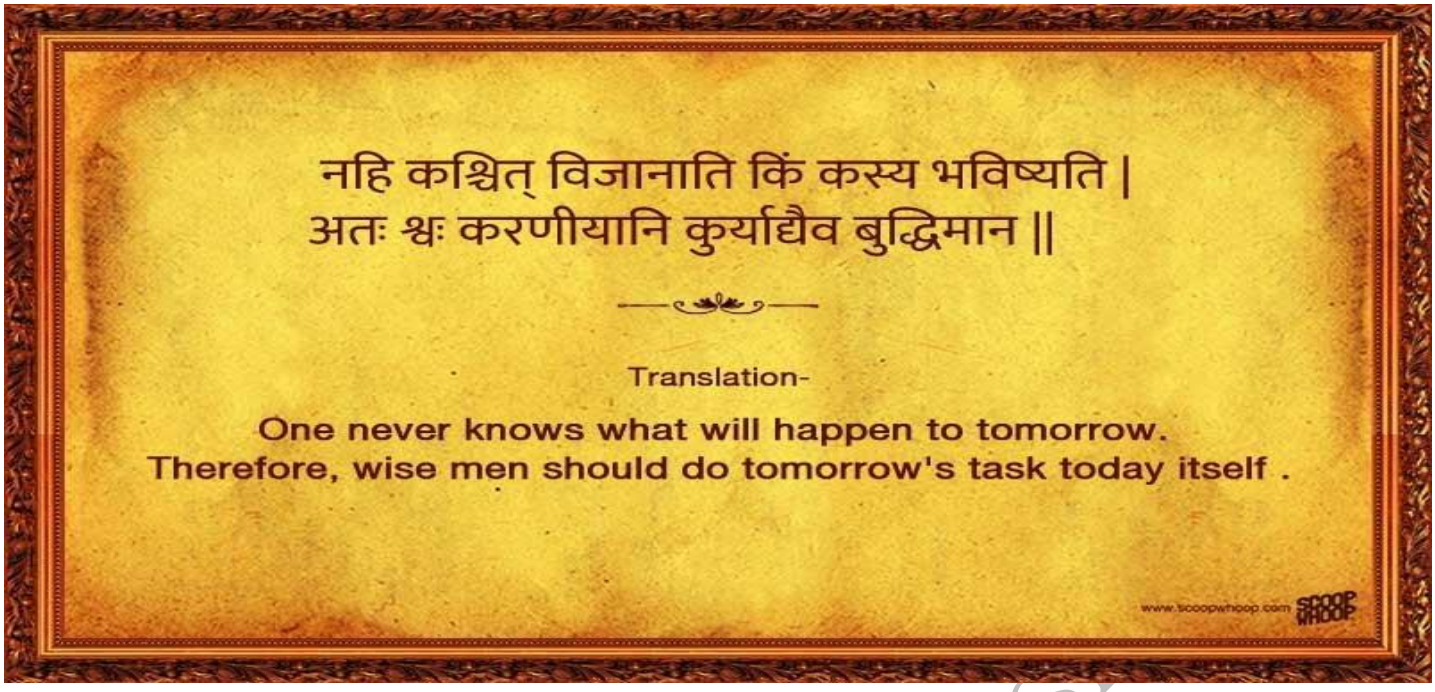

CHILD IN CONFLICT WITH LAW UNDER JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 AND LAW OF ANTICIPATORY BAIL

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This article is principally intended to discuss whether juvenile/child in conflict with law can seek anticipatory bail. Before venturing into the fulcrum of the subject for discussion, it would be in the fitness of things to discuss the object of the Juvenile Justice Act, 2015, the definitions of juvenile, child and child in conflict with law, the kinds of offences contemplated in the Act, powers and function of the JJ Board, mandate when the child alleged to be in conflict with law is apprehended and bail to a child in conflict with law. A discussion about these aspects would facilitate the readers to have a broad perspective about the aim of the Act in order to appreciate the topic intended for discussion. The article is divided into nine segments which are as under:

(1) Introduction & Object
(2) Juvenile, Child & Child in Conflict with Law
(3) Kinds of Offences under the Act
(4) Powers, Functions and Responsibilities of the Juvenile Justice Board
(5) Apprehension of Child alleged to be in Conflict with Law
(6) Bail to a Child in Conflict with Law
(7) Whether Child in Conflict with Law can seek Anticipatory Bail
(8) Position in the State of Telangana
(9) Conclusion

- ***Introduction & Object***

Children are considered as the pillars of any progressive nation and they are the builders of the future world and also they are the ultimate assets of any nation and thence every endeavour and effort should be made to provide them equal opportunities for their development. Due to the social disorganization there is significant rise in juvenile delinquency which is the greatest concern and hour of need in maintenance of social and cultural system of any nation. The object of the Juvenile Justice (Care and Protection of Children) Act 2015 is to cater the needs of children alleged and found to be in conflict with law and children in need of care and protection through proper care, protection, development, treatment, social re-

integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established under the Act.

The Constitution of India confers powers and impose duties on the State under Articles 15(3), 39(e),(f), 45 and 47 to ensure that all the needs of children are met and that their basic human rights are fully protected. The Government of India acceded to the Convention on the Rights of the Child in 1992, adopted by the General Assembly of United Nations. The Convention had prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child.

The Parliament had initially enacted Act No. 53 of 1986, then replaced it with Act No.56 of 2000 and thereafter re-enacted Act No. 2 of 2016 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child. The Parliament while enacting the law of Juvenile Justice took into account the United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985 (also known as Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption, 1993 and other related international instruments.

The Juvenile Justice Act, 2015 is a beneficial piece of legislation and therefore the provisions of the Act shall receive due interpretation advancing the cause of legislation and to confer the benefits thereof to the category of persons for whom the legislation has been made.

- ***Juvenile, Child & Child in Conflict with Law***

As per Section 2(35) of the Act, ***'juvenile'*** means a child below the age of eighteen years.
As per Section 2(12) of the Act, ***'child'*** means a person who has not completed eighteen years of age.
As per Section 2(13) of the Act, ***'child in conflict with law'*** means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

- ***Kinds of Offences under the Act***

The Act had classified the offences under three heads namely Petty Offences, Serious Offences and Heinous Offences.
As per Section 2(45) of the Act ***"petty offences"*** includes the offences for which the maximum punishment under the Indian Penal Code, 1860 or any law for the time being in force is imprisonment up to three years.
As per Section 2(54) of the Act ***"serious offences"*** includes the offences for which the punishment under the Indian Penal Code, 1860 or any other law for the time being in force, is imprisonment between three to seven years.
As per Section 2(33) of the Act ***"heinous offences"*** includes the offences for which the **minimum punishment** under the Indian Penal Code, 1860 or any other law for the time being in force is imprisonment for seven years or more.

- ***Powers, Functions and Responsibilities of the Juvenile Justice Board***

Section 8 of the Act provides the functions and responsibilities of the Board. The Board constituted for any District shall have the power to deal exclusively with all the proceedings under the Act, relating to children in conflict with law, in the area of jurisdiction of the Board. The powers conferred on the Board under the Act, may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 8 or in appeal, revision or otherwise.

The functions and responsibilities of the Juvenile Justice Board shall include:

- ensuring the informed participation of the child and the parent or guardian in every step of the process.
- ensuring the child rights are protected throughout the process of apprehending the child, inquiry and rehabilitation and availability of legal aid for the child through the legal services institutions.
- directing the Probation Officer or in case a Probation Officer is not available the Child Welfare Officer to undertake a social investigation into the case and submit a report to ascertain circumstances in which the alleged offence was committed and inquire into the case and dispose of the matter and pass final order that includes an individual care plan for the child's rehabilitation including follow up by the Probation Officer or the District Child Protection Unit, as required.
- conducting inquiry for declaring fit persons' regarding care of children in conflict with law, conducting regular inspection visits of residential facilities foe children in conflict with law (minimum one inspection visit in a month) and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government, order the police for registration of FIR for offences committed against child in conflict with law, under the Act or any other law for the time being in force on a complaint made in that regard, conduct jail inspection to check if any child is lodged in such jails and to take immediate measures for transfer of such a child to the observation home and any other function that may be prescribed.

➢ ***Apprehension of Child alleged to be in Conflict with Law***

Section 10 of the Act provides that as soon as a child alleged to be in conflict with law is apprehended by the police, then the child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer. The special juvenile police unit or the designated child welfare police officer shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where the child was apprehended. However, a child alleged to be in conflict with law, shall not be placed in a police lockup or lodged in a jail. State Government shall make rules consistent with the Act, to provide for person through whom including registered voluntary NGOs any child alleged to be in conflict with law may be produced before the Board and to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

➢ ***Bail to a Child in Conflict with Law***

Section 12 of the Act provides that when any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before the Board, then such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit person. The person shall not be released if there appears reasonable grounds for believing that the release is likely to bring this person into association with any known criminal or expose the said person to moral, physical or psychological danger or that the person's release would defeat the ends of justice. The Board shall record the reasons for denying the bail and circumstances that led to such a decision. When a person having been apprehended is not released on bail under this section by the officer in-charge of the police station, then the officer shall keep the person in an observation home in such manner as may be prescribed until the person can be brought before the Board. When the person is not released on bail by the Board, it shall make an order sending him to an observation home or place of safety, during the period of pendency of the inquiry regarding that person, for a period that may be specified in the order. When a child in conflict with law is unable to furnish bail within seven days of the bail order, then such child shall be produced before the Board for modification of the conditions of bail.

➢ ***Whether Child in Conflict with Law can seek Anticipatory Bail***

Now coming to the pivot of the article whether the juvenile/child in conflict with law is entitled to seek anticipatory bail, it is interesting to note that there is no provision for the grant of anticipatory bail in the

Juvenile Justice Act, 2015. The concept of anticipatory bail is dealt under Section 438 of Cr.P.C. It is quite interesting to note that the word *"anticipatory bail"* was not employed in Section 438. The heading of the Section 438 is *'Direction for grant of bail to person apprehending arrest'.* The expression anticipatory bail is a misnomer. There is a popular misconception that anticipatory bail is granted in anticipation of arrest. Whenever the courts grant anticipatory bail they make an order that in the event of arrest, a person shall be released on bail. There can be no question of bail unless a person is arrested and thus, it is only on the arrest of a person that the order granting anticipatory bail becomes operative.

When one looks at the scheme of the JJ Act, 2015 in so far as the provision of bail is concerned it is more liberal. Notwithstanding anything contained in Code of Criminal Procedure or any other law in force for the time being the Juvenile /Child in conflict with law be released on bail with or without surety or the Board can place the Child in conflict with law under the supervision of the Probation Officer or under the care of a fit person. If the Board is of the opinion that the Child in conflict with law cannot or should not be released then the Board can do so only when there appears reasonable grounds for believing to the satisfaction of the Board that the release of the Child in Conflict with Law is likely to bring him into association with any known criminal or expose the juvenile to moral, physical or psychological danger or that the release of the juvenile would defeat the ends of justice. As per Rule 8 of Model Rules, 2016, no FIR shall be registered against the juvenile except where a heinous offence is alleged to have been committed or when such offence is alleged to have been committed jointly with adults. When such is the scenario can the Child in Conflict with Law ask for anticipatory bail especially the power to apprehend the juvenile shall only be exercised with regard to heinous offences. Even under Section 12 of the Act, nature of offence has no relevance, irrespective of the fact whether the child in conflict with law has committed petty offence or serious offence or heinous offence, the child in conflict with law shall be released on bail.

Under this backdrop it would be apposite to survey the decisions of different High Courts and to understand how the jurisprudential conception concerning Juvenile and anticipatory bail had developed.

Firstly, we will look at the judgments of various High Courts which have held that the application seeking anticipatory bail by the juvenile is not maintainable in law.

The Hon'ble High Court of Madras between ***K. Vignesh v. State rep. By Inspector of Police., 2017 SCC OnLine Mad 28442,*** comprising of Hon'ble Justice S. Nagamuthu and Hon'ble Justice Anita Sumanth, while answering a reference which was made in view of the conflicting orders on important legal whether an application seeking anticipatory bail under Section 438 of the Code of Criminal Procedure at the instance of a juvenile in conflict with law in terms of the Juvenile Justice (Care and Protection of Children) Act, 2000 is maintainable before the High Court or before the Court of Sessions, speaking through S. Nagamuthu, J. had held that a deep reading of Sections 2(13) & 10 of the Act, 2015 would make it crystal clear that no police officer has been empowered to arrest a child in conflict with law and instead he has been empowered only to apprehend a child in conflict with law. While enacting the Juvenile Justice (Care and Protection of Children) Act, 2015, the Legislature was well aware of Chapter V of the Code of Criminal Procedure more particularly Section 46 of the Code of Criminal Procedure as to how a person could be arrested. Had it been the intention of the Legislature, that a police officer should be empowered to arrest a child in conflict with law, the Legislature would have very well used the expression 'arrest' instead of using the expression 'apprehend' in Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Legislature has, thus, consciously omitted to use the expression 'arrest' in Section 10 of the Act, which means that the Legislature did not want to empower the police to arrest a child in conflict with law. The Legislature, being aware of the consequences that ensue the arrest, has avoided to empower the police to arrest a child in conflict with law. At the same time, the child in conflict with law cannot be let free as it would not be in the interest of the child in conflict with law as well as the society. Therefore, the Legislature had obviously thought it fit to give only a limited power to the police. In other words, the Legislature has empowered the police simply to apprehend a child in conflict with law and immediately, without any delay, cause his production before the Juvenile Justice

Board. The Juvenile Justice Board has also not been empowered to pass any order of remand of the child in conflict with law either with the police or in jail. The proviso to Section 10 of the Act makes it very clear that in no case a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. The Board has been obligated to send the child either to an observation home or a place of safety. There are lot of other safeguards in the Act as well as in the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 to ensure that the child so apprehended by a police or any other authority shall not in any manner be disturbed emotionally, psychological or physically. Thus, a reading of the entire scheme of the Act would inform that no authority, including the police, has been empowered to arrest a child in conflict with law but instead the child in conflict with law could only be apprehended and produced before the Juvenile Justice Board. From the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, one can understand, without any doubt whatsoever, that a child in conflict with law cannot be arrested and thus there cannot be apprehension of arrest and so an application at the instance of a child in conflict with law either before the High Court or before the Court of Sessions under Section 438 Cr.P.C. is not maintainable. The the Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained Code which is both substantive as well as procedural. The Act takes care of the interest of the child in conflict with law on the child being apprehended. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail.

A Division Bench of Hon'ble High Court of Calcutta between ***Krishna Garai v. State., 2016 SCC OnLine Cal 6012,*** consisting of Hon'ble Justice Patherya and Hon'ble Justice Debi Prosad Dey had held that the application under Section 438 of the Code of Criminal Procedure is not applicable to a juvenile/child in conflict with law as Juvenile Justice (Care and Protection of Children) Act, 2000 (old Act) is a special act carved out from the code of criminal procedure which is a 1973 Act and meant especially for juveniles, the said Act will prevail over the Code of Criminal Procedure enacted in the year 1973.

The Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in ***Kapil Durgwani v. The State of Madhya Pradesh.,2010 SCC OnLine MP 641 = (2011) 97 AIC 310 (MP).,*** speaking through Hon'ble Justice N.K. Gupta held that provision of Section 12 of the JJ Act does not provide power to the Board which is equivalent to Section 438 of Cr.P.C,. The Board has no jurisdiction to entertain an application under Section 438 of Cr.P.C. As per Section 6 of the JJ Act, the powers of the Board can be exercised by the Court of Sessions as well as by the High Court in an appeal, revision or otherwise. Apart from it if a Board constituted under the JJ Act, rejects a bail application of the Juvenile, an appeal shall lie to the Sessions Court and against the order of the Sessions Court, revision may be preferred to High Court. Therefore, if the bail application is decided by the High Court for the first time and it is rejected, then the opportunity of appeal and revision will be lost by the juvenile. Thus, directly approaching to High Court under the provisions of Section 438 of Cr.P.C., shall result in a loss of the opportunity to prefer appeal and revision to a Juvenile, therefore such practice should be discouraged.

In ***Satendra Sharma v. The State of Madhya Pradesh, (Miscellaneous Criminal Case No.4183 of 2014, decided on 08.07.2014)*** the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) speaking through Hon'ble Justice B.D. Rathi held that only provision for bail of Juvenile is given under Section 12 of the Act ,2000 (old Act – *pari materia* to Act, 2015) and that application for grant of anticipatory bail by the juvenile cannot be entertained by the High Court or the Court of Session by applying the provision contained under Section 6(2) of the Act. The powers conferred on the Board can be used by High Court and the Court of Session only when proceedings come before them in appeal, revision or otherwise except under Sections 438 and 439 of Cr.P.C.

The Hon'ble High Court of Madhya Pradesh (Indore Bench) in ***Kamlesh Gurjar v The State of Madhya Pradesh., (Miscellaneous Criminal Case No. 10345 of 2019, decided on 20.03.2019)*** speaking through Hon'ble Justice Virender Singh held that no provision in the Act, 2015 or in the Code of Criminal Procedure enables the juvenile to move an application for anticipatory bail either before the Court of

Sessions or High Court or even before the Board, which has been exclusively constituted for the purpose of dealing with the proceedings pertaining to a juvenile. Therefore, in absence of specific provisions in the Act, 2015, juvenile is not entitled to move application under Section 438 of Cr.P.C.

The Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in ***Vinayak Pandey v. The State of Madhya Pradesh., (Miscellaneous Criminal Case No. 22489 of 2019, decided on 18.12.2017)*** the bench headed by Hon'ble Justice Rajeev Kumar Dubey held that the application filed under Section 438 of Cr.P.C. for anticipatory bail by the juvenile is not maintainable in law.

The Hon'ble High Court of Chhattisgarh in ***Preetam Pathak v. State of Chhattisgarh., 2014 SCC OnLine Chh 125 = (2015) 147 AIC 529 = (2015) 3 Crimes 638.,*** speaking through Hon'ble Justice Sanjay K. Agarwal held that apart from section 12 of the Act, 2000 (old Act – analogous to Act, 2015), there is no other provisions in the Act, 2000 like section 438 of Cr.P.C. giving powers to the Board to grant anticipatory bail to the juvenile and thus, power and jurisdiction to grant anticipatory bail has not been conferred to the juvenile Justice Board, and therefore, the provisions contained in section 438 of Cr.P.C. cannot be exercised by the High Court or Court of Session to grant anticipatory bail to the juvenile.

However some of the High courts have taken a different view holding that a juvenile is entitled to the relief of anticipatory bail. Let us now look at those judgments.

The Hon'ble High Court of Jharkhand in ***Birbal Munda and Others v. State of Jharkhand, 2019 SCC OnLine Jhar 1794,*** speaking through his lordship Justice Anil Kumar Choudhary, held that non obstante clause appearing in Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 does not take away various provisions of bail or anticipatory bail envisaged in the Code of Criminal Procedure but only removes various barriers for grant of bail under the provisions of the Code of Criminal Procedure and authorizes the Juvenile Justice Board that in-spite of such barriers for granting of bail as envisaged in Section 436 and 437 of the Code of Criminal Procedure for releasing the juvenile. Thus, certainly the said non obstante clause does not exclude the availability of remedy of applying for grant of anticipatory bail on behalf of a child in conflict with law as envisaged under section 438 of the Code of Criminal Procedure and certainly keeping in view the objects and reasons of the enactments in view Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be interpreted to the detriment of a child in conflict with law and the interpretation that the said provision dis-entitles a child in conflict with law to the statutory scheme of seeking anticipatory bail provided under Section 438 of the Code of Criminal Procedure will not be a rational construction of non obstante clause appearing in Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 as the said non obstante clause only seeks to put the child in conflict with law in a better position as compared to any other person who is not a child in conflict with law by providing that in absence of existence of three specified grounds exhaustively enumerated in the said section the child in conflict with law has to be granted bail and interpreting the said non obstante clause by giving it a wide amplitude as to exclude the statutory remedy of applying for anticipatory bail by a child in conflict with law will be an illogical interpretation.

Likewise the Hon'ble High Court of Chattisgarh between ***Mohan (In Jail) v. State Of Chhattisgarh., 2005 CriLJ 3271,*** the bench headed by Hon'ble Justice V. K. Shrivastava observed that Section 438 of the Code of Criminal Procedure empowers High Court of Session for issuing directions to release the person, against whom there is accusation of having committed a non-bailable offence, on bail in the event of arrest. Section 439 of the Code of Criminal Procedure confers special powers on High Court or Court of Session regarding bail. Juvenile Justice Board has not been conferred with any power for issuing directions in accordance with Section 438 of the Code of Criminal Procedure nor has been conferred special powers as enumerated under Section 439 of the Code of Criminal Procedure. Therefore, the non obstante clause, contained in Section 12 of the Act, does not erode the provisions of Sections 438 and 439 of the Code of Criminal Procedure.

The Hon'ble High Court of Kerala in ***Mr. X v. The State of Kerala, Through The Station House Officer, Hosdurg Police Station, Represented by The Public Prosecutor, High Court of Kerala., (Bail Application No. 3320 of 2018., decided On, 05.06.2018)*** headed by Hon'ble Justice R. Narayana Pisharadi held that Section 10 of the Act empowers the police for apprehending a child alleged to be in conflict with law. It does not provide for arresting a child alleged to be in conflict with law. Section 46(1) of the Code deals with how arrests are to be made. It provides that in making an arrest, the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. Apprehending a person necessarily involves touching or confining the body of that person or submission of the person to the control of the police officer. Therefore, apprehending a person involves arrest of the person. Apprehending a person curtails his personal freedom and liberty. In my view, merely for the reason that Section 10 of the Act provides for apprehending a child in conflict with law and not for arresting him, it cannot be held that an application under Section 438 of the Code by him/her is not maintainable.

Similarly the High Court of Kerala in ***A.V. Gopakumar v. State of Kerala., 2012 (4) KHC 841 = 2012 (4) KLT 755.,*** speaking through Hon'ble Justice S.S. Satheesachandran while considering provisions contained in the Act of 2000 held that a juvenile in conflict with law apprehending arrest in a non-bailable offence, no doubt, will be entitled to seek the discretionary relief of pre-arrest bail envisaged under Section 438 of the Code because that Section takes within its ambit 'any person' to seek such relief when he has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence.

In ***Tara Chand v. State of Rajasthan., 2007 CriLJ 3047,*** the Hon'ble High Court of Rajasthan headed by Justice Dalip Singh while dealing with an application under Section 438 Cr.P.C. filed by a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000 against whom a case under Sections 341, 354 IPC and under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been registered, held, the provisions of Section 12 of the Act of 2000 shall have an overriding effect over the provisions of Section 18 of the Act of 1989 and a Juvenile who is brought before the Board or "appears" even by means of an application for being granting anticipatory bail, then notwithstanding the provisions of Section 18 of the Act of 1989 could be dealt with by the Board in the light of Section 6(2) of the Act of 2000 as Section 12 is a special provision meant exclusively for juveniles as such the exclusion of Section 438 Cr.P.C. under Section 18 of the Act of 1989 shall not apply in the case of a juvenile who is to be governed by the Act of 2000 and dealt as such.

In ***Sudhir Sharma v. State of Chhattisgarh., 2017 SCC OnLine Chh 1554 = (2017) 3 CGLJ 405 (DB),*** a division bench was called upon to answer a reference made under Rule 32 of the High Court of Chhattisgarh Rules, 2007, whether the application at the behest of a Juvenile before the Sessions Court or High Court under Section 438 Cr.P.C. would lie. The Bench consisting of Hon'ble Justice Manindra Mohan Shrivastava and Hon'ble Justice Goutam Bhaduri, answered the reference holding that an application for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 at the behest of Child in Conflict with Law before the High Court or the Court of Sessions is maintainable under the law and the said remedy is not excluded by operation of Section 12 of the Act of 2000 or Section 12 of the Act of 2015.

The Hon'ble High Court of Gujarat in ***Kureshi Irfan Hasambhai Through Kureshi Kalubhai Hasambhai v. State of Gujarat., (R/Criminal Misc. Application No. 6978 of 2021, Decided on 09.06.2021)*** speaking through Hon'ble Justice A.Y. Kogje observed that there is no express bar of application of anticipatory bail under Section 438 of Code of Criminal Procedure, to the Child in Conflict with Law as covered by the Juvenile Justice Act, 2015. It is pertinent to observe that for any child in conflict with law, necessary procedure to be adopted as prescribed under Section 12 of the Act, 2015 and therefore, even where the application under Section 438 of the Code is decided in any which way, the protection of Section 12 of the Act, 2015 will always be available. The question with regards to

fruitfulness to invoke Section 438 of the Code for the child in conflict with law may arise, in other words, even of invoking Section 438 of the Code no useful purpose will be served as the child in conflict with law have to undergo the process of Section 12 of the Act, 2015. The parameters of practical usage and/or application of parameters cannot lead to inferring of bar of application of a provision, Section 438 of the Code.

In ***Kumari Shivani and Another v. State of Madhya Pradesh.,(Gwalior Bench)., 2019 SCC OnLine MP 4803,*** headed by Hon'ble Justice S.A. Dharmadhikari held that an application for anticipatory bail by the juvenile is maintainable and the Court had granted anticipatory bail to the petitioners who were juveniles alleged to have committed offences punishable under Sections 147, 148, 149 and 302 IPC.

The Hon'ble High Court of Punjab & Haryana between ***Krishan Kumar Minor Through His Mother v. State of Haryana.,(CRM-M-19907-2020, decided on 27.07.2020)*** speaking through Hon'ble Justice H.S. Madaan held that Juvenile Justice (Care and Protection of Children)Act, 2015 is a piece of social welfare legislation, which was enacted to take care of welfare of the children and to avoid their turning into hardened criminals. The basic purpose of this legislation was to ensure that a child under age of 18 some time coming in conflict with law by committing an offence is to be tried in a manner and under such environment, which may take him to the path of reformation rather than allowing such children to mix up with criminals in the jail and themselves turning into hardened criminals. This is exactly the purpose of putting the juvenile in conflict with law, in the separate observation homes rather than in normal jail. Even if a juvenile in conflict with law is found to have committed some offence, then instead of awarding deterrent punishment, his rehabilitation and social integration is sought. If this special enactment is silent as regard a particular provision then that has to be read with the general law i.e. Criminal Procedure Code. An inference can certainly be not drawn that the legislature intended to debar a juvenile from seeking relief of pre-arrest bail. If it was also, then a specific provision in that regard would have been there on analogy of Section 18 The Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989, which clearly bars grant of pre-arrest bail to a person alleged to have committed offence under the said act. Even otherwise, the Juvenile Justice (Care and Protection of Children) Act, 2015 providing that children below age of 18 years coming within definition of juvenile be treated with kindness and compassion even if they are found in conflict with law. It could certainly be not intention of the legislature that such juvenile should be first apprehended and then produce before Juvenile Justice Board, in the process denying relief to a juvenile, which is available to the other persons, who are accused of heinous offences.

From the above discussed precedents we can find that there is sharp cleavage of opinions expressed by various High Courts in the Country.

Nevertheless, the Hon'ble High Court of Allahabad contemplated two situations while dealing with an application by a juvenile seeking the relief of anticipatory bail. In ***Shahaab Ali (Minor) And Another v. State of U.P., 2020 SCC OnLine All 45 = 2020 Cri LJ 4479 = (2020) 5 All LJ 570,*** headed by Hon'ble Justice Yashwant Varma observed that there are two situations that are to be considered with respect to whether anticipatory bail to a juvenile can be granted or not. First situation would be where the juvenile approaches the Court after the registration of FIR alleging commission of a cognizable offence. While, the second situation could be where a Juvenile apprehends apprehension prior to lodging of FIR. With regard to the first situation, the Juvenile Justice Act 2015, is a comprehensive code in itself and from the reading of Section 1(4) of the Act, which gives the Act exclusivity, it is indicative that Section 438 of Cr.P.C has no application. Sections 10 and 12 of the Act lays down a comprehensive mechanism to be mandatorily followed consequent to the apprehension of a child in conflict with law. Under Section 10 in case of a child is apprehended by Police, he needs to be immediately placed in custody of the Special Juvenile Police Unit and produced before the Juvenile Board. Thereafter under Section 12 the Board is obligated to forthwith release the child unless it forms the opinion that his release would fall within the ambit of the Proviso to Section 12. The need to invoke the jurisdiction of either the High Court or the Court of Session

as conferred by Section 438 of the Criminal Procedure Code is clearly debarred in the first situation. While in the second situation, where the child is apprehending apprehension or detention and FIR has not been lodged, Sections 10 and 12 of the Act, as well as Rules 8 and 9 of the Model Rules, 2016, will come into play only when information of an offence is recorded or FIR is lodged. Therefore in such a situation, the juvenile has no remedy under the 2015 Act. Therefore, *the right conferred by Section 438 of the Criminal Procedure Code would be entitled to be invoked by a child apprehending detention prior to the registration of a First Information Report in the case of a heinous offence or recordal of information in respect of other offences and prior to Section 10 and other provisions of the 2015 Act coming into play. It is only within this limited window that perhaps the right of a child in conflict with law to invoke Section 438 can possibly be recognized.*

On similar lines the Hon'ble High Court of Madhya Pradesh (Gwalior Bench) in **Sandeep Singh Tomar v. State of Madhya Pradesh, (Miscellaneous Criminal Case No. 9816 of 2013, decided on 10.03.2014)** *speaking through Hon'ble Justice Sheel Nagu observed that the terminology used in Section 12 indicates that it does not relate to concept of anticipatory bail. However, the said provision excludes the operation of the Code of Criminal Procedure, but that exclusion pertains only to a juvenile who is either arrested or detained or appears or is brought before a Board but not to a juvenile apprehending detention.*

- **Position in the State of Telangana**

So far as the State of Telangana is concerned, the Hon'ble High Court for the State of Telangana had an occasion to decide whether a juvenile can seek anticipatory bail and in particular by way of writ petition. In ***Mohammed Bin Ziyad, a minor represented By his mother Smt. Noor v. The State Of Telangana & Another.,(Writ Petition No. 12422 of 2021, decided on 21.06.2021)*** Hon'ble Justice K. Lakshman had exhaustively and intricately dealt with the provisions of the Act, 2015 and also discussed the object and purport of the Act, 2015 and thoroughly considered the precedents of different High Courts and ultimately held that filing of an anticipatory bail application by a juvenile under section 438 of the Code of Criminal Procedure in a writ petition is not maintainable and that the juvenile has to avail the remedy under Section 12 of the JJ Act, 2015. His lordship agreed with the principle laid down by the Hon'ble High Court of Madras in *Vignesh's case.*

Following the decisions of the Hon'ble High Court of Telangana in *Mohammed Bin Ziyad's case* and Hon'ble High Court of Madras in *Vignesh's case,* the Hon'ble High Court of Punjab & Haryana in ***Piyush minor through his natural mother Smt. Nirmla Devi wife of Sh. Narender v. State of Haryana., (CRM-M-21406-2021., decided on 05.07.2021)*** speaking through Hon'ble Justice Rajesh Bhardwaj held that a careful perusal of statutory provisions and the judicial precedents, would show that the legislature in the best of its wisdom has legislated the Act with highest of the sensitivity which is apparent from the various safeguards provided in the Act. The language of Section 12 of the Act would show the intention of the legislature in safeguarding the welfare of juvenile wherein it mandates the production of the child before the Board. The underlying purpose of the scheme appears to be that legislature wanted the personal interaction of the juvenile with the Board before arriving at a decision regarding his bail. On the other hand, such a provision do not have any place under Section 438 Cr.P.C and hence safeguard provided to a juvenile is automatically bypassed. Even otherwise the Act mandates the provision of granting the bail to a juvenile in a bailable or non-bailable offence notwithstanding anything contained in Cr.P.C.

- ***Conclusion***

On overall analysis it could be understood that the majority of the decisions of the High Courts did not favour grant of anticipatory bail to a juvenile holding that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a self-contained Code being substantive as well as procedural. The Act takes care of the interest of the child in conflict with law on the child being apprehended. When we look at the provisions dealing with bail in the Code of Criminal Procedure, the accused who applies for bail has to make out a case for grant of bail, but the position is reverse in the case where bail is applied by a juvenile.

The juvenile/child in conflict with law need not make out a case for grant of bail and it is for the prosecution to satisfy the Board as to why a juvenile should not be released on bail. A juvenile is entitled to bail as a matter of right notwithstanding the seriousness of the crime, unless the Board is satisfied that the case of the juvenile falls within the four corners of the proviso to Section 12(1) of the Act. When such a liberal approach is envisaged in the Act for grant of bail, whether the juvenile can seek anticipatory bail is no doubt a moot point. Be that as it may, there is no dictum of Hon'ble Supreme Court of India on the issue whether juvenile is entitled for anticipatory bail or not. There is apparent dichotomy and sharp division of views expressed by different High Courts about the right of Juvenile seeking anticipatory bail under Section 438 of Cr.P.C. This duality of opinions can only be resolved by the Hon'ble Supreme Court of India, else, in every State the precedent to be followed would be different which is not an healthy sign particularly in view of the legislation governing the entire country as the JJ Act, 2015 is a central legislation. Having different views on the same subject by various High Courts across the length and breadth of the Country will have potent ramifications in the ultimate administration of justice. We can only hope that the Supreme Court would sooner or later resolve the ambiguity.

*(Prosecution Replenish conveys its heartfelt thanks to **Sri D.V.R. TejoKarthik,** Judicial Magistrate of First Class, Special Mobile Court, Mahabubnagar, for contributing this article for our leaflet)*

CITATIONS

The documents already taken note by this Court indicates that there is prima facie material against the respondent No. 2. Though the appellant herein, i.e., the wife of the deceased has been examined and a contention has been put forth with regard to her statement, it is not the evidence in its entirety and it is premature to conclude on the basis of a stray sentence. Further, merely classifying the appellant as the principal star witness and referring to her statement is of no consequence since the entire evidence will have to be assessed by the Sessions Court before arriving at a conclusion. If that be the position when this Court at an earlier instance had taken note of all aspects and had arrived at the conclusion that there is prima facie material against the respondent No. 2, the mere examination of the appellant herein cannot be considered as a change in circumstance for the High Court to consider the fourth bail application of the respondent No. 2 and enlarge him on bail.

2021 0 Supreme(SC) 318; Mamta Nair Vs. State of Rajasthan & Anr; Criminal Appeal No. 586 of 2021 (Arising Out of SLP (Criminal) No. 3679 of 2021) : 12-07-2021(THREE JUDGE BENCH)

One is required to consider the entire evidence as a whole with the other evidence on record. Mere one sentence here or there and that too to the question asked by the defence in the cross-examination cannot be considered stand alone. Even otherwise it is to be noted that what is stated by the Doctor/Medical officer can at the most be said to be his opinion. He is not the eye-witness to the incident. PW1 & PW2 have categorically stated that the other accused inflicted the blows by knives. The same is supported by the medical evidence and the deposition of PW2.

There may be some minor contradictions, however, as held by this Court in catena of decisions, minor contradictions which do not go to the root of the matter and/or such contradictions are not material contradictions, the evidence of such witnesses cannot be brushed aside and/or disbelieved.

2021 0 Supreme(SC) 310; RAKESH AND ANOTHER Vs. STATE OF U.P. AND ANOTHER; CRIMINAL APPEAL NO. 556 OF 2021; 06-07-2021

Our Constitution specifically envisages the independence of the district judiciary. This is implicit in Article 50 of the Constitution which provides that the State must take steps to separate the judiciary from the executive in the public services of the State. The district

judiciary operates under the administrative supervision of the High Court which must secure and enhance its independence from external influence and control. This compartmentalization of the judiciary and executive should not be breached by interfering with the personal decision-making of the judges and the conduct of court proceedings under them.

43 There is no gainsaying that the judiciary should be immune from political pressures and considerations. A judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State.

44 India cannot have two parallel legal systems, "one for the rich and the resourceful and those who wield political power and influence and the other for the small men without resources and capabilities to obtain justice or fight injustice." The existence of a dual legal system will only chip away the legitimacy of the law. The duty also falls on the State machinery to be committed to the rule of law and demonstrate its ability and willingness to follow the rules it itself makes, for its actions to not transgress into the domain of "governmental lawlessness[12][Upendra Baxi, The Crisis of Legitimation of Law in The Crisis of the Indian Legal System: Alternative Developments in Law (Vikas Publishing House, 1982).]".

2021 0 Supreme(SC) 370; Somesh Chaurasia Vs. State of M.P. & Anr.; Criminal Appeal Nos 590-591 of 2021 @ SLP (Crl) Nos. 4998-4999 of 2021; 22-07-2021

filing of an anticipatory bail application by a juvenile under Section - 438 of Cr.P.C. in a writ petition is not maintainable, and that the juvenile has to avail the remedy under Section - 12 of the JJ Act, 2015.

WP No.12422 OF 2021; 21-06-2021; Mr. Mohammed Bin Ziyad, a minor, rep. By his mother Smt. Noor Vs. The State of Telangana & another

GUTKA

As far as Section - 328 of IPC is concerned, it deals with causing hurt by means of poison, etc., with intent to commit an offence. As per the said provision, whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such

person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, there should be administering poison, intoxicating etc., with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt. As stated above, the allegations in the entire batch of criminal petitions are lacking. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 328 of IPC.

As far as Section - 336 of IPC is concerned, it deals with an act endangering life or personal safety of others, and as per which, whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both. In the complaints / charge sheets, there is no such allegation of rash and negligent act which endangers human life or personal safety of others. Therefore, according to this Court, the contents of the complaints / charge sheets lacks the ingredients of Section - 336 of IPC.

As far as Section - 420 of IPC is concerned, it deals with Cheating and dishonestly inducing delivery of property. There is no such inducement either at the inception or at a later stage. Thus, the contents of complaints / charge sheet lack the ingredients of Section - 420 of IPC.

As far as Section - 269 of IPC is concerned, it deals with negligent act likely to spread infection of disease dangerous to life, and as per which, whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the

infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. But, a perusal of the contents of complaints / charge sheets in the present batch of cases, such ingredients are lacking and, therefore, Section - 269 of IPC does not arise in the present batch of cases.

In view of the above said discussion, according to this Court, transportation, possession, storage, sale and purchase of tobacco products are not totally banned in the State of Telangana and also in the Country.

Therefore, it cannot be said that Sections - 269, 270, 271, 272 and 273, 328, 336 and 420 of IPC are attracted to the cases in this batch.

in Chidurala Shyamsubder {Crl.P. No.3731 of 2018 & batch, decided on 27.08.2018 }, the learned Single Judge following the guidelines laid down by the Hon'ble Supreme Court in Bhajan Lal{1992 Supp (1) SCC 335 } held that the police are incompetent to take cognizance of the offences punishable under Sections - 54 and 59 (1) of the FSS Act, investigating into the offences along with other offences under the provisions of the IPC. It was further held that filing charge sheet is a grave illegality, as the Food Safety Officer alone is competent to investigate and to file charge sheet following the Rules laid down under Sections - 41 and 42 of FSS Act.

Section - 20 of COTP Act deals with punishment for failure to give specified warning and nicotine and tar contents. But, in the complaints / charge sheets, there is no allegation against the petitioners that they were carrying on trade or commerce in contraband or any other tobacco products without label and specified warning on the said products. In view of the same, the contents of the complaints / charge sheets lack the ingredients of Section - 20 (2) of the COTP Act. Even, there is no allegation that the seized products do not contain labels with statutory warning. Thus, registering the crimes for the said offence against the petitioners is not only contrary to Section - 20 (2) of COTP Act.

CRLP No.152 OF 2020 & Batch : 05-07-2021: Crl.P. No.152 of 2020: Mr. Mohd. Jameel Ahmed Vs. The State of Telangana.

The right to summon document(s), indeed, is available but that has to be exercised when the trial is in progress and not when the trial is completed, including after the statement of accused under Section 313 of Criminal Procedure Code had been recorded. The efficacy of the trial cannot be whittled down by such belated application.

CRLA No. 585 OF 2021 (Arising out of SLP(Crl.) No. 3191 of 2019) MD. GHOUSEUDDIN Vs. SYED RIAZUL HUSSAIN & ANR.: 12.7.2021:

Section 306 IPC is much broader in its application and takes within its fold one aspect of Section 304B IPC. These two sections are not mutually exclusive. If a conviction for causing a suicide is based on Section 304B IPC, it will necessarily attract Section 306 IPC. However, the converse is not true.

CRLA NO.601 OF 2021 (Arising out of SLP(Criminal) No.9487 of 2019) BHAGWANRAO MAHADEO PATIL Vs. APPA RAMCHANDRA SAVKAR & ORS.; 14.7.2021.

It is only in a case where there is a gross
contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

CRLA NO. 177 OF 2014; PRUTHIVIRAJ JAYANTIBHAI VANOL Vs. DINESH DAYABHAI VALA AND OTHERS: 26.07.2021.

genuineness, reliability or otherwise of the dying declaration will be tested by the trial Court on consideration of entire evidence, both oral and documentary. The Investigating Officer is not having power to discard the said dying declaration during the course of investigation.

CRLP No.2246 OF 2021; 05-07-2021; Mrs. Manasa alias Jwala Vs. State of Telangana (HC)

When a report is lodged with the police alleging constitution of cognizable offences and when no action has been taken by the police concerned on the said complaint, the aggrieved person has a right to file a private complaint under Section 200 of Cr.P.C., before the Magistrate concerned. There is no necessity to file a copy of the complaint submitted to the police on earlier occasion. Without there being such copy, the Magistrate is justified in referring the subject complaint under Section 156 (3) Cr.P.C to the Station House Officer concerned for investigation and report.

CrlP No.1621 of 2021; 02.07.2021; Dr. A. Chandrasekhar and others Vs State of Telangana;(HC)

NDPS - It is important to emphasise that the interpretation of the term "accused" in section 25 of the Evidence Act is materially different from that contained in Article 20(3) of the Constitution. The scope of the section is not limited by time - it is immaterial that the person was not an accused at the time when the confessional statement was made.

section 67(c) of the NDPS Act, the expression used is "examine" any person acquainted with the facts and circumstances of the case. The "examination" of such person is again only for the purpose of gathering information so as to satisfy himself that there is "reason to believe" that an offence has been committed. This can, by no stretch of imagination, be equated to a "statement" under section 161 of the CrPC,

there could be a situation in which a section 42 officer, as designated, is different from a section 53 officer, in which case, it would be necessary for the section 42 officer to first have "reason to believe" that an offence has been committed, for the purpose of which he gathers information, which is then presented not only to his superior officer under section 42(2), but also presented to either an officer-in-charge of a police station, or to an officer designated under section 53 - see section 52(3).

A statute may expressly make Section 173 of the Cr.P.C applicable to inquiries and investigations under that statute. However, in the case of a statute like the NDPS Act, where the provisions of the Cr.P.C do not apply to any inquiry/investigation, except as provided therein, it cannot be held that the officer has all the powers of a police officer to file a report under Section 173 of the Cr.P.C. The NDPS Act does not even contain any provision for filing a report in a Court of law which is akin to a police report under Section 173 of the Cr.P.C.

As per the well established norms of judicial discipline and propriety, a Bench of lesser strength cannot revisit the proposition laid down by at least three Constitution Benches, that an officer can be deemed to be a police officer within the meaning of Section 25 of the Evidence Act only if the officer is empowered to exercise all the powers of a police officer including the power to file a report under Section 173 of the Cr.P.C.

When a statutory provision is clear and there is no ambiguity, this Court cannot alter that provision by its interpretation. To do so, would be to legislate, which this Court is not competent to do. If a provision is free from ambiguity or vagueness, and is clear, but violative of a fundamental right, the Court will have to strike the same down. Any omission in a statute cannot be filled in by Court as to do that would amount to the legislation and not construction. The Court cannot fill in casus omissus and language permitting Court should avoid creating casus omissus where there is none. In the interpretation of statute the Courts must always presume that legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

a Statute is an edict of the legislature and has to be construed according to "the intent of those that make it.

Compulsion is an essential ingredient of the bar of Article 20 (3) of the Constitution. Article 20 (3) does not bar the admission of a statement, confessional in effect, which is made without any inducement, threat or promise, even though it may have subsequently been retracted. The article also does not debar the accused from voluntarily offering himself to be examined as a witness. The constitutional protection against compulsion to be a witness is available only to persons "accused of an offence", and not persons other than the accused. It is a protection against compulsion to be a witness and it is a protection against compulsion resulting in giving evidence against himself.

Section 25 of the Evidence Act does not differentiate between evidence in a trial for non cognizable offence and evidence in a trial for cognizable offence. The admissibility of evidence does not depend on whether an offence is 'cognizable' or non-cognizable'. The mere fact that an offence was cognizable, enabling the police to arrest without warrant, should not make any difference to the admissibility or the probative value of the evidence adduced by the prosecution during the trial of the offence.

2020 0 AIR(SC) 5592; 2021 1 RCR(Cri) 1; 2021 2 Supreme 1; 2020 0 Supreme(SC) 646;Tofan Singh Vs State of T.N.

Contrasted with Section 195(1)(b)(i), Section 195(1)(b)(ii) of the CrPC speaks of offences described in Section 463, and punishable under Sections 471, 475 or 476 of the IPC, when such offences are alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court. What is conspicuous by its absence in Section 195(1)(b)(ii) are the words “or in relation to”, making it clear that if the provisions of Section 195(1)(b)(ii) are attracted, then the offence alleged to have been committed must be committed in respect of a document that is custodia legis, and not an offence that may have occurred prior to the document being introduced in court proceedings.

2021 (1) ALD Crl 706(SC); 2020 0 AIR(SC) 4247; 2020 4 Supreme 582; 2020 0 Supreme(SC) 522; M/s Bandekar Brothers Pvt. Ltd. & Anr. Vs. Prasad Vassudev Keni : Criminal Appeal Nos. 546-550 of 2017: 02-09-2020

the bail granted under Section 167(2) Cr.P.C. could be cancelled under Section 439(2) Cr.P.C..

The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC.

2021 1 ALD Crl 739(SC); 2021 0 AIR(SC) 335; 2020 4 Crimes(SC) 415; 2021 0 CrLJ 978; 2020 6 KHC 468; 2021 1 Supreme 490; 2020 0 Supreme(SC) 668;Venkatsan Balasubramaniyan Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.801 of 2020 (arising out of SLP (Crl.) No.1452/2019): Villayutham Nagu Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.802 of 2020 (arising out of SLP (Crl.) No.1820/2019) Vijaya Kumar L. Vs. The Intelligence Officer, D.R.I. Bangalore: Criminal Appeal No.803 of 2020 (arising out of SLP (Crl.) No.1443/2019): 20-11-2020

the charge sheet filed for offence U/sec 188 IPC is in violation of the mandatory provision of Section 195 (1) (a) of Cr.P.C.

http://tshcstatus.nic.in/hcorders/2020/crlp/crlp_5930_2020.pdf; T.V.Rama Krishna Raju vs State of Telangana; 2021 1 ALD Crl. 869(T.S.);

this Court has noticed that Police Officials have been registering several FIRs by mentioning the offences as Sections - 107, 110 and other provisions of the Code and the said registration of crime by mentioning the said sections is illegal.
the police officials are burdening themselves by committing the very same illegality registering the FIRs mentioning the offences under Sections - 107, 110 and other provisions of the Code and they are also burdening this Court, which has to be avoided.
2021 1 ALD Crl 878(TS); 2021 0 Supreme(Telangana) 29;Reddygari Srinivas Reddy & others Vs. State of Telangana; WP No. 685 OF 2021: 02-02-2021:

there is a vast difference between "law and order" and "public order". The offences which are committed against a particular individual fall within the ambit of "law and order". It is only when the public at large is adversely affected by the criminal activities of a person, is the conduct of a person said to disturb the public order. Moreover, individual cases can be dealt with by the criminal justice system. Therefore, there is no need for the detaining authority to invoke the draconian preventive detention laws against an individual. For the invoking of such law adversely effects the fundamental right of personal liberty, which is protected and promoted by Article 21 of the Constitution of India. Hence, according to the Hon'ble Apex Court, the detaining authority should be wary of invoking the immense power under the Act.
Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large.
2021 1 ALD Crl 973(TS); 2021 0 Supreme(Telangana) 40;Charakonda Chinna Chennaiah Vs. The State of Telangana and others : W.P. No.18013 of 2020: 23-02-2021

Although there is no need to separately prove the court records emanating during trial but no legal presumption can be extended to the veracity of the contents of such documents.
It has been settled through a catena of decisions that there is no difference of power, scope, jurisdiction or limitation under the CrPC between appeals against judgments of conviction or of acquittal. An appellate Court is free to re-consider questions of both law and fact, and re-appreciate the entirety of evidence on record. There is, nonetheless, a self-restraint on the exercise of such power, considering the interests of justice and the fundamental principle of presumption of innocence. Thus, in practice, appellate Courts are reluctant to interfere with orders of acquittal, especially when two reasonable conclusions are possible on the same material, Ramabhupala Reddy v. State of Andhra Pradesh, (1970) 3 SCC 474.
It would be gainsaid that lack of independent witnesses are not fatal to the prosecution case, Kalpnath Rai v. State, (1998) AIR SC 201, 9. However, such omissions cast an added duty on Courts to adopt a greater-degree of care while scrutinising the testimonies of the police officers, which if found reliable can form the basis of a successful conviction.
2021 1 ALD Crl. 1014(SC); 2020 0 AIR(SC) 5375; 2020 4 Crimes(SC) 389; 2020 4 RCR(Cri) 873; 2020 6 Supreme 547; 2020 0 Supreme(SC) 629;Raveen KumarVs. State of Himachal Pradesh: CRLA Nos. 2187-88 of 2011: 26-10-2020

Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved.

The criminal jurisprudence developed in this country recognizes that the eye sight capacity of those who live in rural areas is far better than compared to the town folks. Identification at night between known persons is acknowledged to be possible by voice, silhouette, shadow, and gait also.

2021 0 Supreme(SC) 382; Pruthiviraj Jayantibhai Vanol Vs. Dinesh Dayabhai Vala and Others: CRLA No. 177 of 2014: 26-07-2021

the power of the court to grant consent for a withdrawal petition is similar to the power under Section 320 of the CrPC to compound offences. The court in both the cases will not have to enquire into the issue of conviction or acquittal of the accused person, and will only need to restrict itself to providing consent through the exercise of jurisdiction in a supervisory manner. It was held that though Section 321 does not provide any grounds for seeking withdrawal, "public policy, interest of administration, in expediency to proceed with the prosecution for reasons of State, and paucity of evidence" are considered valid grounds for seeking withdrawal. Further, it was held that the court in deciding to grant consent to the withdrawal petition must restrict itself to only determining if the Prosecutor has exercised the power for the above legitimate reasons:

The persons who have been named as the accused in the FIR in the present case held a responsible elected office as MLAs in the Legislative Assembly. In the same manner as any other citizen, they are subject to the boundaries of lawful behaviour set by criminal law. No member of an elected legislature can claim either a privilege or an immunity to stand above the sanctions of the criminal law, which applies equally to all citizens. The purpose and object of the Act of 1984 was to curb acts of vandalism and damage to public property including (but not limited to) destruction and damage caused during riots and public protests.

2021 0 Supreme(SC) 386; The State of Kerala Vs. K. Ajith & Ors: CRLA No 697 of 2021 @ SLP (Crl) No 4009 of 2021 and Criminal Appeal No 698 of 2021 @SLP (Crl) No 4481 of 2021 : 28-07-2021

It is well settled law that an order passed under Section 451 Cr.P.C relating to interim custody of the vehicle is amenable for revisional jurisdiction under Section 397(1) Cr.P.C. It is not an interlocutory order to attract the bar under Section 397(2) Cr.P.C.

Criminal Petition No.1745 of 2021=; K R KUMAR REDDY Vs. STATE OF AP: 30.07.2021

UNWARRANTED ACQUITTALS WOULD NOT ONLY GIVE WRONG SIGNAL TO THE SOCIETY BUT WOULD POSE A THREAT TO LAW AND ORDER.

In the landmark Judgment of **Shivaji Sahebrao Bobade & anr. vs. State of Maharashtra, 1973 AIR 2622**, the Supreme Court has held that -

"In law there are no fetters on the plenary power of the appellate court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty' to scrutinise the probative material de novo informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage our jurisprudence owes to individual liberty constrains the higher court not to upset the holding without very convincing reasons and comprehensive consideration."

"**The dangers of exaggerated devotion to the rule of benefit of doubt** at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent

martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author(1) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. ..... For all these reasons it is true to say', with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the ,guilty no less than from the conviction of the innocent. .."-In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free arid chopping the logic of preponderant probability to, punish marginal innocents. We have adopted these cautious in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago. This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full power to review at large I the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed."

"If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless."

CONTRADICTING THE EVIDENCE OF A WITNESS:

The Supreme Court in the case of State of Karnataka v/s. Yarappa Reddy, (1999) 8 SCC 715, in which the Judgment of acquittal passed by High Court was set aside and the conviction and sentence passed by the trial Court was upheld. The Supreme Court has observed thus :

"The general rule of evidence is that no witness shall be cited to contradict another witness if the evidence is intended only to shake the credit of another witness.

The Supreme Court has further observed as follows :

"The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. In Vijayan v. State, [1999] 4 SCC 36, this Court has held that "the rule limiting the right to call evidence to contradict a witness on collateral issues excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute.""

DEFECTIVE INVESTIGATION

Dhanaj Singh @ Shera & ors. vs. State of Punjab, 2004(2) SCR 938, wherein it has been observed that :

"5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect;

to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

"The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party."

Revision against Section 91 CrPC petition is maintainable

in Girish Kumar Suneja v. Central Bureau of Investigation, (2017) 14 SCC 809, would contend that the order passed by the Trial Court was amenable to the revisional jurisdiction of the High Court.

Absence of Chemical Examination report not fatal

In Bhupendra v. State of M.P. [(2014) 2 SCC 106: (2014) 1 SCC (Cri) 1: (2013) 13 Scale 552], the Court held that the production of chemical examination report is not mandatory. The Court held as follows: (SCC p. 112, para 23).

"23. These decisions clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under Section 304-B IPC or under Section 306 IPC takes place; in a case of an unnatural death inviting Section 304-B IPC (read with the presumption under Section 113-B of the Evidence Act, 1872) or Section 306 IPC (read with the presumption under Section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary."

Hear say evidence:

The Privy Council in Subramanian vs. Public Prosecutor, 1956 (1) WLR 965, in which case, the appellant was tried for being in possession of ammunition illegally. His defence was that he had been captured by terrorists and he was put in duress. Evidence of the conversation by the terrorists was shut out by the court on the basis that it constituted hearsay. The Privy Council did not approve of the said view. It laid down as follows:

"In ruling out peremptorily the evidence of conversation between the terrorists and the appellant the trial judge was in error. Evidence of a statement made to a witness by a person who is not himself called as a witness may or may no be hearsay. **It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made.** The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements could have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if he failed to conform to their wishes.

NEWS

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- Prosecution replenish congratualtes Senior Assistant PP. Sri K.Rama Krishna on his promotion as Addl.PP Gr-II.
- GOVERNMENT OF ANDHRA PRADESH - Budget Estimates 2021-22 - Comprehensive Budget Release Order for Rupees Seven crore thirty one lakh ninety four thousand only (Rs.7,31,94,000/-) - Quarterly Distribution of Budget for the Prosecutions Department - Orders - Issued. FINANCE (FMU-Home&Courts) DEPARTMENT G.O.Rt.No.:1629 Dated:08-07-2021
- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Home Department – Directorate of Prosecutions – Hiring of two (2) private vehicles, one for the use of Additional Director of Prosecutions and another for the use of (2) Joint Director of Prosecutions, for the Financial Year 2021-22 – Permission – Accorded. HOME (BUDGET) DEPARTMENT G.O.Rt.No.616 Dated: 08.07.2021
- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Public Services – Re-Constitution of Departmental Promotion Committee for the First and Second level Gazetted

posts in Prosecutions Department – Orders - Issued. HOME (COURTS-A) DEPARTMENT G.O.RT.No. 611 Dated: 07-07-2021

- GOVERNMENT OF ANDHRA PRADESH ABSTRACT Public Services – Prosecutions Department - Promotions – Senior Assistant Public Prosecutors - Promotion to the post of Additional Public Prosecutor Grade-II on temporary basis – Orders – Issued. HOME (COURTS.A) DEPARTMENT G.O.Ms.No.79 Dated:26-07-2021.

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ON A LIGHTER VEIN

Two friends went out to play golf and were about to tee off, when one fellow noticed that his partner had but one golf ball.

"Don't you have at least one other golf ball?", he asked. The other guy replied that no, he only needed the one. "Are you sure?", the friend persisted. "What happens if you lose that ball?" The other guy replied, "This is a very special golf ball. I won't lose it so I don't need another one."

Well," the friend asked, "what happens if you miss your shot and the ball goes in the lake?"

"That's okay," he replied, "this special golf ball floats. I'll be able to retrieve it."

"Well what happens if you hit it into the trees and it gets lost among the bushes and shrubs?"

The other guy replied, "That's okay too. You see, this special golf ball has a homing beacon. I'll be able to get it back -- no problem."

Exasperated, the friend asks, "Okay. Let's say our game goes late, the sun goes down, and you hit your ball into a sand trap. What are you going to do then?"

"No problem," says the other guy, "you see, this ball is fluorescent. I'll be able to see it in the dark."

Finally satisfied that he needs only the one golf ball, the friend asks, "Hey, where did you get a golf ball like that anyway?"

The other guy replies, "I found it."

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Thanks for being such a special
part of my life that
you are and will always be.!
Happy
Friendship Day