Prosecution Replenish

Vol- X Part – 8

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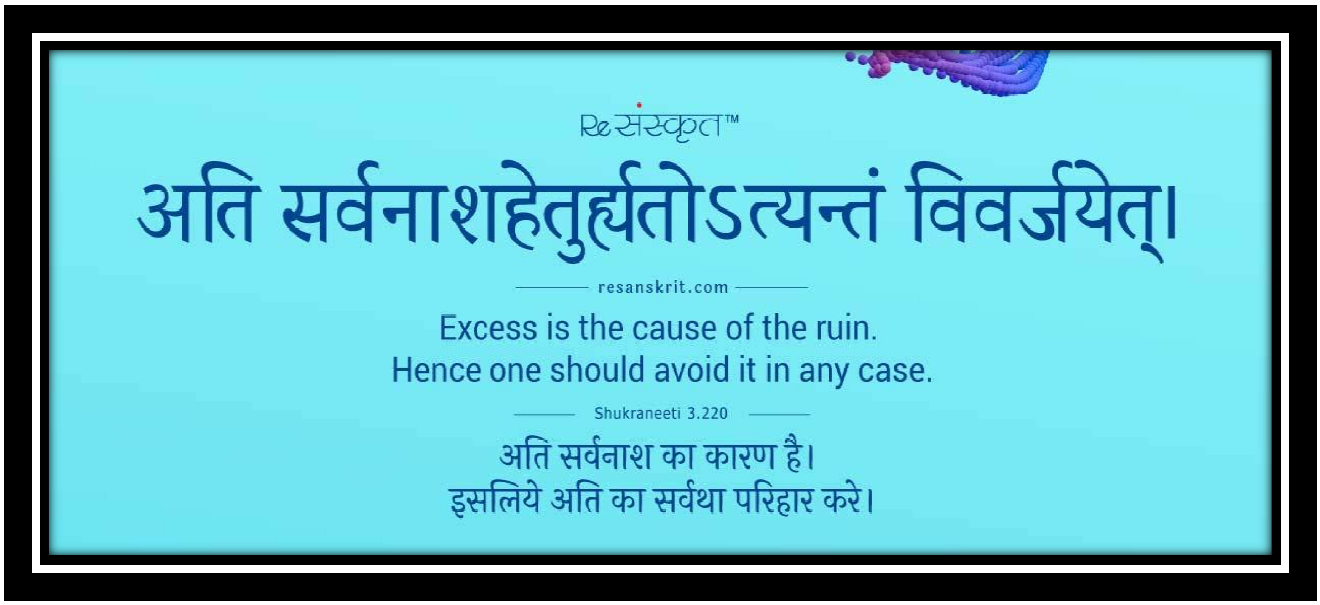
Aano Bhadra Kratvo Yantu Viswatah (Rig Ved)

Let all Noble thoughts come to us from all directions



CITATIONS

2022 0 Supreme(AP) 219; Arigela Venkata Rama Rao Vs. The State of Andhra Pradesh; Criminal Petition Nos. 3981, 3982, 3983, 3984 of 2022; Decided On : 04-07-2022

As can be seen from the entire record prosecution identified accused basing on CC TV footage, social media videos and photos. Further except mentioning the names of accused, no specific overt acts were attributed against the petitioner or any other accused.

It is pertinent to mention here that name of the petitioner was mentioned in all the complaints. Witnesses also specifically stated about the presence of petitioner. Though there are no specific overt acts against petitioner, this court must keep in mind some of guide liens in the judgment of Apex Court Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others

Thus, keeping the guidelines issued by the Apex Court, since the petitioner's involvement in the above cases has been stated in the complaint as well as by list of witnesses, petitioner is not entitled to pre-arrest bail, the custodial interrogation of petitioner is necessary.

2022 0 Supreme(SC) 549; Malkeet Singh Gill Vs. State of Chhattisgarh; Criminal Appeal No. 915 of 2022 (Arising Out of SLP (Crl.) No. 800 of 2021); Decided on : 05-07-2022

The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 of Criminal Procedure Code (in short 'CrPC') vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in Mohd. Akhtar Hussain and Section 31 CrPC.

2022 0 Supreme(SC) 558; Amrik Singh Vs. State of Punjab; Criminal Appeal No.993 of 2012; Subhash Chander Vs. State of Punjab; Criminal Appeal No.992 of 2012; Decided On : 11-07-2022

Now so far as the conviction of the accused on the PW1 – eye-witness identifying the accused in the Court Room and non-conducting the TIP is concerned, while appreciating the said aspect the averments in the FIR which was given by PW1eye-witnesses are required to be referred to. It may be true that as per the settled position of law the FIR cannot be encyclopedia. However, at the same time when no TIP was conducted the first version of the complainant reflected in the FIR would play an important role. It is required to be considered whether in the FIR and/or in the first version the eye-witness either disclosed the identity and/or description of the accused on the basis of which he can recollect at the time of deposition and identify the accused for the first time in the Court Room?

it can be seen that as such there are some contradictions in the first statement of the complainant recorded in the form of FIR and in the deposition before the Court. In the deposition before the Court, he has tried to improve the case by deposing that he had seen the accused in the city on one or two occasions. The aforesaid was not disclosed in the FIR. Even in the cross-examination as admitted by PW1 he did not disclose any description of the accused. At this stage it is to be noted that PW1 has specifically and categorically admitted in the cross-examination that it is incorrect that the accused were known earlier. He disclosed only the age of the accused. In that view of the matter conducting of TIP was necessitated and, therefore in the facts and circumstances of the case, it is not safe to convict the accused solely on their identification by PW1 for the first time in the Court.

2022 0 Supreme(SC) 559; Shishpal @ Shishu Vs State of NCT of Delhi; Criminal Appeal No. 1053 of 2015; Roshan Vs. State (NCT of Delhi); Criminal Appeal No. 81 of 2018; Decided On : 11-07-2022

Both the appellants have been charged only based upon the rule of evidence available under Section 34 of the IPC. Section 34 does not constitute an offence by itself, but creates a constructive liability. The foundational facts will have to be proved by the prosecution. Not only the occurrence, but the common intention, has to be proved beyond reasonable doubt.

Both the Courts made reliance upon the non-cooperation on the part of the accused to undergo the test identification parade by drawing an adverse inference. Unfortunately, the evidence available on record was not looked into as the witnesses had already been exposed to the accused in the police station. After all, the test identification parade is only a part of an investigation, and therefore, nothing more can be attached to it. It is the duty of the prosecution to prove its case beyond reasonable doubt. Both the Courts have fixed the onus on the accused.

There has to be adequate material to fasten the appellants on the basis of constructive liability as Section 34 IPC is nothing but a rule of evidence.

2022 0 Supreme(SC) 560; Ravi Sharma Vs. State (Government of NCT of Delhi) and Anr.: Criminal Appeal Nos. 410-411 of 2015; Decided On : 11-07-2022

Much reliance has been made on the recoveries made. When the observation Mahazar was prepared along with the sketch and the inquest conducted, admittedly, scores of persons were present. No independent witness was made to sign and the evidence on behalf of the prosecution that they did not volunteer to do so, cannot be accepted. A witness may not come forward to adduce evidence at times when asked to act as an eyewitness. However, when a large number of persons were available near the dead body, it is incomprehensible as to how all of them refused to sign the documents prepared by the police.

The report of the Ballistic Expert is obviously a scientific evidence in the nature of an opinion. It is required to use this evidence along with the other substantive piece of evidence available. The

report is inconclusive with respect to the firearm belonging to the appellant being used for committing the offence.

2022 0 Supreme(SC) 564; Ajmal Vs. State Of Kerala; Criminal Appeal No. 1838 to 840 of 2019; Decided on : 12-07-2022

Considering the statutory provisions laid down in IPC and the law on the point, we find that the present case falls into the category of a culpable homicide not amounting to murder falling under section 304 Part-II IPC for the following reasons:

(i) There was no premeditation of mind to commit murder.

(ii) All the accused were admittedly not armed when they stopped the vehicle of the deceased and his friends and compelled them to alight from the same.

(iii) It was during the verbal altercation at that stage that the three accused picked up the weapon of assault namely, sticks of casuarina tree and a brick from the road side.

(iv) Single blow was given to the deceased by the accused nos.1 and 2.

(v) The case set up for exhortation to kill the deceased has not been found to be proved.

(vi) Both the groups consisted of young men.

(vii) The High Court found that there was no unlawful assembly formed with a common object and accordingly had acquitted three other accused and also the present appellants from the charge of unlawful assembly under section 149 IPC.

(viii) The appellants have been convicted with the aid of section 34 IPC.

2022 0 Supreme(SC) 588; Satender Kumar Antil Vs. Central Bureau of Investigation and Another; Miscellaneous Application No. 1849 of 2021, Miscellaneous Application Diary No. 29164 of 2021, Special Leave Petition (Crl.) No. 5191 of 2021; Decided On : 11-07-2022

Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in category B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth vs. State of U.P. 2021 SCC Online SC 615)

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

(b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

(c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

(d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORY B/D

On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Category B and D with the additional condition of compliance of the provisions of Bail under NDPS S.37, 45 PMLA, 212(6) Companies Act 43 d(5) of UAPA, POSCO etc."

Needless to say that the category A deals with both police cases and complaint cases.

The trial Courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by learned ASG is that where the accused have not cooperated in the investigation nor appeared before the Investigating Officers, nor answered summons when the Court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

(a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

(b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

(c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

(d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

(e) There need not be any insistence of a bail application while considering the application under Section 88, 170, 204 and 209 of the Code.

(f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).

(g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

(h) The High Courts are directed to undertake the exercise of finding out the under-trial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

(i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

(j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

(k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

(l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.

2022 0 Supreme(SC) 568; Barun Chandra Thakur Vs Master Bholu & Anr. ; Criminal Appeal No.950 of 2022(arising out of SLP(Crl.) No.10123 of 2018) With CBI Vs. Bholu; Criminal Appeal No.951 of 2022 (arising out of SLP(Crl.) No. 6347 of 2022 @Diary No.25451 of 2019) Decided on : 13-07-2022

There is a timeline provided for the inquiry, submission of the SIR, preliminary assessment and the investigation under the Act, 2015 and the Model Rules:

i. The inquiry by the Board under section 14(1) is to be completed within a period of four months from the date of first production of the child before the Board, and it could be extended by a period of two more months by the Board for the reasons to be recorded as per section 14(2).

ii. Section 14(3) provides that a preliminary assessment under section 15 should be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

iii. Under section 14(4) it is provided that if the inquiry by the Board under section 15 for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.

iv. Under the proviso to section 14(4) dealing with the serious or heinous offences, in case the Board requires further period of time for completion of inquiry, the same may be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded.

v. Under section 8(3)(e), SIR is to be submitted by the Probation Officer or the Child Welfare Officer or a social worker within a period of fifteen days from the date of first production of the child before the Board.

vi. In rule 10(5) of the Model Rules, in case of heinous offences committed by a child between the age of 16 to 18 years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board.

the purpose of the Act, 2015 and its legislative intent, particularly to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psychosocial workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry.

We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children’s Court under sections 15 and 19 respectively. The Children’s Court, on its own, upon a matter being referred to under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children’s Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under section 102, would test the decision of the Board or the Children’s Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision.

the task of preliminary assessment under section 15 of the Act, 2015 is a delicate task with requirement of expertise and has its own implications as regards trial of the case. In this view of the matter, it appears expedient that appropriate and specific guidelines in this regard are put in place. Without much elaboration, we leave it open for the Central Government and the National Commission for Protection of Child Rights and the State Commission for Protection of Child Rights to consider issuing guidelines or directions in this regard which may assist and facilitate the Board in making the preliminary assessment under section 15 of the Act, 2015.

2022 0 Supreme(SC) 569; Shahaja @ Shahajan Ismail Mohd. Shaikh Vs STATE OF MAHARASHTRA; Criminal Appeal No. 739 of 2017; Decided on : 14-07-2022

The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.

[See Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri LJ 1096 : AIR 1983 SC 753, Leela Ram v. State of Haryana, AIR 1999 SC 3717, and Tahsildar Singh v. State of UP, AIR 1959 SC 1012]

To put it simply, in assessing the value of the evidence of the eye-witnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence. Although in cases where the plea of the accused is a mere denial, yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or puts forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence.

Few contradictions in the form of omissions here or there is not sufficient to discard the entire evidence of the eye-witnesses.

This Court has time and again impressed upon the necessity of reading over the panchnama which can be used as a piece of corroborative evidence. In spite of this, it is regrettable that the learned trial judge did not take the pains to see that the panchnama was read over to the panch before it was exhibited. A panchnama which can be used only to corroborate the panch has to be read over to the panch and only thereafter it can be exhibited. If the panch has omitted to state something which is found in the panchnama, then after reading over the panchnama the panch has to be asked whether that portion of the panchnama is correct or not and whatever reply he gives has to be recorded. If he replies in the affirmative, then only that portion of the panchnama can be read into evidence to corroborate the substantive evidence of the panch. If he replies in the negative, then that part of the panchnama cannot be read in evidence for want of substantive evidence on record. It is, therefore, necessary that care is taken by the public prosecutor who conducts the trial that such a procedure is followed while examining the panch at the trial. It is also necessary that the learned trial judge also sees that the panchnama is read over the panch and thereafter the panchnama is exhibited after following the procedure as indicated above.

the conduct of the accused alone, though may be relevant under Section 8 of the Act, cannot form the basis of conviction.

2022 0 Supreme(SC) 572; Mekala Sivaiah Vs. State Of Andhra Pradesh; Criminal Appeal No. 2016 of 2013; Decided On : 15-07-2022

When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

If the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

2022 0 Supreme(SC) 580; Mohammad Irfan Vs. State Of Karnataka; Criminal Appeal Nos. 201-202, 203-204, 205-207, 208-209 of 2018; Decided On : 11-07-2022

The law on the point is clear that even if a witness is declared hostile, the evidence of such witness cannot be rejected in toto but the correct approach is to accept it to the extent his version is found to be dependable on a careful scrutiny thereof

The recoveries of books and literature were completely supported by the concerned Panch witnesses and the Panchanamas on record. The books and literature did carry inflammatory content and messages. The translations of the original versions in Urdu were placed on record by the Prosecution. The voluntary statements which led to such recoveries and the recoveries themselves were also proved by the Prosecution.
Section 120-B of the IPC would apply only when “no express provision is made in this regard for the punishment of such a conspiracy”. Since an express provision for particular kind of conspiracy is dealt with specifically in Section 121A of the IPC, the provision contained in Section 120-B of the IPC would have no application.

2022 0 Supreme(SC) 581; In Re: Perry Kansagra - Alleged Contemnor; Suo-Motu Contempt Petition (Civil) No.3 of 2021;Decided On : 11-07-2022
It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.
Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in [Pushpadevi M. Jatia v. M.L. Wadhawan, (1987) 3 SCC 367 : 1987 SCC (Cri) 526] prosecution was directed to be launched after prima facie satisfaction was recorded by this Court

2022 0 Supreme(SC) 589; State of Kerala Vs M. Karunakaran; Criminal Appeal No.(s) 924-925 of 2022 (@SLP (Crl) No.(s) 6241-6242 of 2022 @ D. No. 6034 of 2020); Decided on : 11-07-2022
It is brought to our notice that having found conflict with the decisions of two and three judge benches of this Court in the cases of B. Jayaraj Vs. State of Andhra Pradesh; (2014) 13 SCC 55 and P. Satyanarayana Murthy Vs. District Inspector of Police, State of Andhra Pradesh and Another; (2015) 10 SCC 152 with that of an earlier three judge bench decision of this Court in the case of M. Narsinga Rao (supra) regarding nature and quality of proof necessary to sustain conviction for the offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 when the primary evidence is unavailable, subsequently the three judge bench of this Court in the case of Neeraj Dutta Vs. State (Govt. of NCT of Delhi); Criminal Appeal No. 1669/2009, has referred the following question of law for determination by a larger bench:

> “whether in the absence of evidence of complainant/direct or primary evidence of demand of illegal gratification, is it not permissible to draw inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 based on other evidence adduced by the prosecution?”

It is reported that the said reference is pending and the aforesaid question of law is yet to be determined and/or considered by a larger bench.
The issue arising in the present appeal is somewhat similar and the decision of a larger bench may have a direct effect on the decision of the present appeal(s). Therefore, we are of the opinion that the decision in the present appeal(s) be deferred till the question of law, which is referred to a larger bench, referred to hereinabove, in Criminal Appeal No. 1669/2009, is decided by the larger bench.

2022 0 Supreme(SC) 598; State of Uttar Pradesh & Anr. Vs Akhil Sharda & Ors.; Criminal Appeal No. 840 of 2022 With Sanjeet Jaiswal vs State of Uttar Pradesh & Ors.; Criminal Appeal No. 841 of 2022; Decided On : 11-07-2022

The High Court has quashed the criminal proceedings by observing that there was no loss to the Excise Department. However, the High Court has not at all appreciated the allegations of the larger conspiracy. The FIR need not be an encyclopedia (See Satpal vs. Haryana, (2018) 6 SCC 110, Para 7).

Even otherwise, it is required to be noted that the allegation of missing of two trucks was the beginning of the investigation and when during the investigation it was alleged that earlier also a number of trucks were missing transporting contraband goods, the FIR should not have been restricted to missing of the two trucks only and return of on the goods thereafter. The High Court has not at all appreciated and/or considered the allegation of the larger conspiracy and that both the FIRs/criminal cases are interconnected and part of the main conspiracy which is very serious if found to be true.

2022 0 Supreme(SC) 599; Malti Sahu Vs Rahul & Anr.; Criminal Appeal No. 471 of 2022 With State of U.T., Chandigarh Vs Rahul ; Criminal Appeal No. 472 of 2022; Decided On : 11-07-2022

As per the settled position of law, even the evidence of a hostile witness can be considered to the extent, it supports the case of the prosecution. Therefore, prosecution has established and proved the motive to that extent.

The next link in the chain of evidence is the recovery of Loi having blood stains of the deceased Kavita as well as of the accused, which Loi was recovered on the basis of the disclosure statement made by the accused himself. Though, Panchas to the recovery panchnama/disclosure panchnama had turned hostile, still the prosecution has proved the same through the I.O. However, unfortunately, the High Court has doubted the DNA/CFSL report on grounds, which are not germane, namely, the human hair in the hands of Kavita was not examined; blood stains were not properly presented. However, the High Court has not gone in the detailed discussion of the CFSL Report on record.

Having gone through the CFSL Report as well as the depositions of the witnesses from the CFSL, we are of the opinion that the blood on the Loi was found to be matching with that of Kavita and the accused.

The accused has failed to explain the injury on him. On the contrary, he has come out with a false case that the injury was caused by some iron bar, which has not been established and proved.

2022 0 Supreme(SC) 609; Jarnail Singh & Anr. Vs State of Punjab; Criminal Appeal No. 634 of 2010 With Balkar Singh Vs State of Punjab & Ors.; Criminal Appeal No. 633 of 2010 Decided On : 12-07-2022

The prosecution did not make that effort to prove the existence of the original and loss thereof in order to take an order for leading secondary evidence. Thus, no reliance could be placed upon the enquiry report and even the High Court has recorded that enquiry report was not a piece of evidence.

2022 0 Supreme(SC) 592; State of West Bengal Vs Rakesh Singh @ Rakesh Kumar Singh; Criminal Appeal No. 923 of 2022, SLP (Crl.) No. 9470 of 2021; Decided On : 11-07-2022

We are conscious about the salutary object of the NDPS Act and we have given due regard to the decision of the Hon'ble Apex Court in the case of State of Kerala vs. Rajesh, (Supra). There cannot be any doubt that persons indulging in illegal trafficking in contraband drugs and psychotropic substances must be dealt with, with iron hands. The activities of such persons have a widespread deleterious effect on the society at large. Countless members of the society, often of tender age, fall prey to the heinous and nefarious activities of drug peddlers. However, the

decision in each case must depend on the facts of the case and no principle of law can be applied blindly to a given set of facts.
there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigours of Section 37 NDPS Act do not apply to the present case.

2022 0 Supreme(SC) 616; Himanshu Kumar & Ors. Vs. State Of Chhattisgarh & Ors.: Writ Petition (Criminal) No. 103 of 2009: Decided on : 14-07-2022

When examining the question whether there is any proceeding in any court, there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there may be no proceeding pending in any court in which, or in relation, to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1)(b) would come into operation. If there be a proceeding actually pending in any court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar under that provision would apply if it is alleged that the offence under Section 211 IPC, was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any court must actually be pending at the time applying this bar arises."

2022 0 Supreme(SC) 619; Narcotics Control Bureau vs. Mohit Aggarwal; Criminal Appeal Nos. 1001-1002 of 2022 Arising out of Petitions for Special Leave To Appeal (Crl.) No. 6128-29 of 2021; Decided on : 19-07-2022 (THREE JUDGE BENCH)

the appellant-NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench of this Court in Tofan Singh (2020 SCC Online SC 882), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. Therefore, the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside.
In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.

2022 0 Supreme(SC) 621; X Vs. The Principal Secretary Health and Family Welfare Department; Special Leave Petition (Civil) No. 12612 of 2022; Decided On : 21-07-2022 (THREE JUDGE BENCH)

A comparison between the two provisions before and after the 2021 amendment is tabulated below:

MTP, 1971	**MTP Amendment 2021**
Explanation 2: Where any pregnancy occurs as a result of failure of any device or method used by any **married woman or her husband for the purpose of limiting the number of children**, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.	Explanation 1: For the purposes of clause (a), where any pregnancy occurs as a result of failure of any device or method used by **any - woman or her partner for the purpose of limiting the number of children or preventing - pregnancy**, the anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

The above table shows that the phrase 'married woman' was replaced by 'any woman' and the word 'husband' was replaced by 'partner'. But evidently, there is a gap in the law: while Section 3 travels beyond conventional relationships based on marriage, Rule 3B of the MTP Rules does not envisage a situation involving unmarried women, but recognizes other categories of women such as divorcees, widows, minors, disabled and mentally ill women and survivors of sexual assault or rape. There is no basis to deny unmarried women the right to medically terminate the pregnancy, when the same choice is available to other categories of women.

A woman's right to reproductive choice is an inseparable part of her personal liberty under Article 21 of Constitution. She has a sacrosanct right to bodily integrity. In Suchita Srivastava vs. Chandigarh Administration, (2009) 9 SCC 1 this Court has recognized that a woman's right to reproductive autonomy is a dimension of Article 21 of the Constitution

Denying an unmarried woman the right to a safe abortion violates her personal autonomy and freedom. Live-in relationships have been recognized by this Court. In S. Khusboo vs. Kanniammal, (2010) 5 SCC 600 this Court observed that criminal law should not be we aponized to interfere with the domain of personal autonomy. It was observed:

> "46. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. **Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not co-extensive."**
>
> (Emphasis Supplied)

2022 0 Supreme(SC) 622; Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey & Ors.; Criminal Appeal No. 1041 of 2022 (Arising Out of S.L.P. (Criminal) No. 4599 Of 2021) Decided On : 26-07-2022 (THREE JUDGE BENCH)

Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the port

mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

32. We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

33. Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the charg-esheet. Such approach of the trial court at times may prove to be more rationale and prudent.

Post mortem report, by itself, does not constitute substantive evidence.

B Sridevi versus State of Andhra Pradesh; Case No.: Crl Petition No.: 4976/2022; :14.07.2022;

Going by the complaint due to the pressure put by higher officers, deceased committed suicide and nothing is made out from the complaint with regard to abetment or instigation made by the petitioner. In view of the law laid down by the Hon"ble Apex Court and as prima facie case is not made out against the petitioner since the complaint does not indicate about abetment or instigation made by her, this Court is inclined to grant bail to the petitioner.

SLP (CRL) NO. 4634 OF 2014 Vijay Madanlal Choudhary Vs UOI and batch; 27.07.2022; https://lawtrend.in/wp-content/uploads/2022/07/df0a003b9aee5ebb935b9a56d70d0b22.pdf;

The reasons which weighed with this Court in Nikesh Tarachand Shah {(2018) 11 SCC 1} for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

https://indiankanoon.org/doc/177851559/; Korma Suresh vs The State Of Andhra Pradesh on 26 July, 2022; CRIMINAL PETITION No.5248 of 2022

The case of the prosecution, in brief, is that the accused is a relative of the de facto complainant and they were in love for the last 10 years. On 04.07.2017, the accused took the de facto complainant to his house and on the pretext that he would marry her, he had performed sexual intercourse with her against her will and on 19.12.2021 the accused performed intercourse with the de facto complainant and since then the accused committed rape on her for several times. About 1 ½ years ago, the accused got employment and thereafter he neglected her and when the

de facto complainant and her parents placed the matter before elders, the accused refused to marry her. Thus, the accused cheated her. Basing on the complaint of the de facto complainant the present crime was registered. Perused the decisions relied on by the counsel. The decision Anurag Soni v. State of Chhattisgarh relied on by the learned Special Assistant Public Prosecutor is not applicable to the facts of the case on hand and the facts of the present case are somewhat similar to the facts of the decision Uday Vs State of Karnataka relied on by the learned counsel for the petitioner.
Taking into consideration the fact that there was consensual relationship between the petitioner and the de facto complainant and keeping in view the fact that the petitioner is a veterinary in Village Secretariat, this Court is inclined to grant anticipatory bail to the petitioner.

https://indiankanoon.org/doc/44618306/; Vunnam Naresh, vs The State Of Andhra Pradesh, on 29 July, 2022; CRIMINAL APPEAL No.1 OF 2013

The accused can be held guilty basing on the evidence but not on assumptions. The court could not assume that the complainant would not have consented for the sexual intercourse unless there was promise from A1, without any evidence in the said regard.
The complainant (PW.1) knowing fully well that her parents were against her marriage with A1, continued to live in a room with A1 and led sexual life with him. She is an educated woman, who did her B.Ed. and working as a Teacher in a private school. Knowing fully well that she and A1 belonged to separate castes or communities and knowing fully well that her parents are also against to her marriage with A1, she voluntarily cohabitated with him and continued her live in relationship with A1. Hence, it cannot be assumed that believing the assurance of A1 that he would marry her, she entered into sexual relationship with A1 and A1 cheated her and committed the offence under Section 415 IPC. Hence, this Court is of the view that the prosecution failed to prove the guilt of A1 for the offence under Section 415 IPC punishable under Section 417 IPC.

https://indiankanoon.org/doc/143647899/; Shaik Janimiya 3 Others vs The State Of A.P. Rep., By Its Pp ... on 28 July, 2022; CRL.P.No.15749 OF 2013

the second respondent made only bald allegations against A-2 and A-3, who are in-laws of the second respondent, that they demanded additional dowry and subjected her to harassment by confining her in a room and forced her to leave the matrimonial home. Undisputedly, there are no specific allegations against the parents of A-1 subjecting the second respondent to harassment for the alleged demand of additional dowry. Only general and omnibus allegations are leveled by the second respondent about the demand for additional dowry.
Even if the allegations contained in FIR/complaint are taken at their face value and accepted in their entirety, they do not prima facie constitute any of the ingredients of the offences alleged. Moreover, the allegations in the complaint/FIR do not constitute any of the cognizable offences and permitting the proceedings to continue would certainly amount to abuse of process of law.

https://indiankanoon.org/doc/130405289/; B.Jeevan Prasad vs The State Of Telangana on 28 July, 2022CRIMINAL PETITION No.6728 of 2022

Investigating Officer shall adhere to the requirement to follow Section 41-A Cr.P.C. except under the circumstances mentioned under Section 41(1) Cr.P.C. and Section 41-A (4) Cr.P.C.

https://indiankanoon.org/doc/108541796/; G. Maheswar Reddy, 3 Others, vs The State Of Ap Rep By Its Pp Hyd., on 26 July, 2022; CRL.P.No.11278 OF 2013

It is not in dispute that the agreement of sale dated 23.08.2007 was executed by A-5 in favour of A-1. It is also not in dispute that A-2, being an Advocate, while discharging his professional duty might have drafted the agreement, which was prepared in the presence of A-3. The second respondent entered into an agreement of sale on 02.08.2010 with A-1, who is the agreement holder in respect of subject plots original owned by A-5, who had executed agreement of sale in favour of A-1 on 23.08.2007 and A-1 is authorized to execute agreements of sale in respect of

subject plots. Though A-1 is an agreement holder of the plots in question, the fact remains that at the time of registration of plots, it is the original owner/A-5, who had executed the sale deeds in favour of second respondent. The allegation that there is difference in the contents of agreement of sale and sale deed and the same were included by way of deception to cause wrongful gain is without any basis. Interestingly, the sale consideration amount of Rs.11 lakhs was received by A-1 and the sale deed was executed by the original owner/A-5 by showing the sale consideration of Rs.5 lakhs which was already paid to the vendor. It appears that the said discrepancy has been portrayed as a mischief on the part of the accused and reason for suspicion about the entire transaction by the second respondent and her sister. Be that as it may, once the registered sale deed was executed in respect of the plots in question, the second respondent has acquired right and title over the said property. Apart from this, the learned counsel for the petitioners submits that the original owner is alleged to have cancelled GPA executed in favour of Mr.T.Mahender Singh by addressing letter dated 10.12.2000 to the Sub-Registrar and the same was duly acknowledged by them. Since the alleged GPA in favour of Mr.Mahender Singh was cancelled long ago and much prior to the present transaction on 16.08.2010 i.e., almost ten years after the cancellation of the GPA, it cannot be said that the accused have suppressed the said fact and entered into the present transaction and registered the plots in favour of second respondent and her sister. As rightly contended by learned counsel for the petitioners, the entire allegations make out a civil wrong and a civil remedy is available to the second respondent. Further, nowhere the allegations in the complaint, protest petition, contents of final report and the statement of second respondent disclose the offence of cheating. I do not find any material to show that from the very inception there was any intention on the part of the accused to cheat the second respondent, which is a condition precedent for an offence under Section 420 IPC. So also the allegations in the complaint do not prima facie disclose commission of the other offences alleged.

https://indiankanoon.org/doc/168147300/; Burela Padma vs The State Of Telangana on 26 July, 2022; CRIMINAL PETITION No.6639 OF 2022

The SHO to permit the accused or his counsel to submit documents in pursuance to 41A CrPC notice and take them into consideration and thereafter take steps as required under law with regard to submission of final report.

https://indiankanoon.org/doc/195547779/; Choudam Sumanth Vishnu Teja vs State Of Telangana on 26 July, 2022; CRIMINAL PETITION No.2349 of 2022

Though the Code of Criminal Procedure has not fixed any time limit for completion of investigation and filing of Final Report as contemplated under Section 173 Cr.P.C., yet, the investigation has to be completed within a reasonable time.

https://indiankanoon.org/doc/144948172/; Smt.N. Surekha And Another vs The State Of Telangana And Another on 25 July, 2022; CRIMINAL PETITION No.1303 OF 2021

The Investigating Officer has not recorded the statements of any independent witnesses and without consideration of the contents of the statements of the witnesses recorded under Section 161 of Cr.P.C, he has laid the charge sheet against the petitioners herein. Thus, the contents of the charge sheet lack the ingredients of the offences alleged against the petitioners herein. Continuation of proceedings in 3159 of 2020 is an abuse of process of law and it squarely falls in the parameters/guidelines laid by the Apex Court for exercise of power of this Court under Section 482 Cr.P.C.

https://indiankanoon.org/doc/4623881/; Potunuru Nagendra Rao vs The State Of Andhra Pradesh on 29 July, 2022; CRIMINAL PETITION No.5442 OF 2022;

As per the Mediators Report, the quantity recovered from the accused is 20 kgs each and hence, it is not commercial quantity.

https://indiankanoon.org/doc/26904597/; Nelaturi Sukumar, vs The State Of Andhra Pradesh, on 27 July, 2022; CRIMINAL PETITION No.5630 OF 2022;

The learned Judge in Padala Venkata Sai Rama Reddy while referring to the earlier decisions of this Court in Z.Lourdiah Naidu v. State of A.P., Goenka Sajan Kumar v. the State of A.P., as also 2013 (2) ALD (Cri) 393 = 2014(1) ALT (Cri) 322 (A.P.) the decision of Hon'ble High Court of Karnataka at Bengaluru in Sri Roopendra Singh v. State of Karnataka held that continuation of criminal proceedings against the petitioner therein, who was present in a brothel house at the time of raid by the Police as a customer, or fastening with any criminal liability in respect of any of the offences for which the charge sheet was filed, would amount to abuse of process of law.

(This judgment does not discuss the judgment of S. Naveen Kumar Vs. State of Telangana, wherein it was held that the customer to a brothel house should be charged under section 370A IPC)

https://indiankanoon.org/doc/36009076/; Seru Krishna Kishore Krishna, vs State Of Andhra Pradesh on 27 July, 2022; CRIMINAL PETITION No.4763 of 2022

since the petitioner is involved in heinous crimes and had criminal antecedents, mere filing of charge sheet is not at all a ground to grant bail to the petitioner. The contentions raised by the learned counsel for the petitioner regarding admissibility of the confession of the petitioner cannot be gone into at this stage while considering bail application.

Admissibility of Panchanama

Murli and another v. State of Rajasthan reported in (2009) 9 SCC 417: (2010) 1 SCC (Cri) 12. We got the relevant observations:

> "34. The contents of the panchnama are not the substantive evidence. The law is settled on that issue. What is substantive evidence is what has been stated by the panchas or the person concerned in the witness box."

Principles governing bail:

The Hon'ble Apex Court in Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others, AIR 2011 SC 312 : MANU/SC/1021/2010 laid the following principles which are to be considered while granting bail:

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

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

(iii) The possibility of the applicant to flee from justice.

(iv) The possibility of the accused likelihood to repeat similar or the other offences.

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

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

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

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

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

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Common Intention

In Jasdeep Singh alias Jassu v. State of Punjab, (2022) 2 SCC 545 this Court considered the scope of Section 34 IPC as follows:

"17. We shall first go back into the history to understand Section 34 IPC as it stood at the inception and as it exists now.

Old Section 34 IPC	New Section 34 IPC
34. Each of several persons liable for an act done by all, in like manner as if done by him alone.—When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act were done by him alone"	"34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

18. On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Barnes Peacock, C.J. presiding over a Bench of the Calcutta High Court, while delivering its decision in R. v. Gorachand Gope [R. v. Gorachand Gope, 1866 SCC OnLine Cal 16] which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view : (SCC OnLine Cal)

"It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

19. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one.

Therefore, in order to attract Sections 34 to 39 IPC, a series of acts done by several persons would be related to a single act which constitutes a criminal offence. A similar meaning is also given to the word “omission”, meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

20. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act “in furtherance of the said intention”. One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word “furtherance” indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the

defence to specifically raise such a plea in a case where adequate evidence is available before the court."

MOTIVE

This also occurred few days before the date of occurrence. When we deal with a case of circumstantial evidence, as aforesaid, motive assumes significance. Though, the motive may pale into insignificance in a case involving eyewitnesses, it may not be so when an accused is implicated based upon the circumstantial evidence. This position of law has been dealt with by this Court in the case of Tarsem Kumar v. Delhi Administration (1994) Supp 3 SCC 367 in the following terms:

"8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. ……."

Anticipatory Bail

In yet another recent Constitution Bench judgment in the case of Sushila Aggarwal and Others vs. State (NCT of Delhi) and Another, (2020) 5 SCC 1, in paragraph 85 of the report Justice Ravindra Bhatt laid down the guiding principles in dealing with applications under Section 438.

Justice M.R. Shah had authored a separate opinion. Justice Arun Misra, Justice Indira Banerjee and Justice Vineet Saran agreed with both the opinions. The concluding guiding factors stated in paragraphs 92, 92.1 to 92.9 are reproduced hereunder:

"92. This Court, in the light of the above discussion in the two judgments, and in the light of the answers to the reference, hereby clarifies that the following need to be kept in mind by courts, dealing with applications under Section 438 CrPC.

92.1. Consistent with the judgment in Shri Gurbaksh Singh Sibbia and others v. State of Punjab, (1980) 2 SCC 565, when a person complains of apprehension of arrest and approaches for order, the application should be based on concrete facts (and not vague or general allegations) relatable to one or other specific offence. The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. It is not essential that an application should be moved only after an FIR is filed; it can be moved earlier, so long as the facts are clear and there is reasonable basis for apprehending arrest.

92.2. It may be advisable for the court, which is approached with an application under Section 438, depending on the seriousness of the threat (of arrest) to issue notice to the public prosecutor and obtain facts, even while granting limited interim anticipatory bail.

92.3. Nothing in Section 438 Cr. PC, 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. While considering an application (for grant of anticipatory bail) 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. The courts would be justified – and ought to impose conditions spelt out in Section 437 (3), Cr.P.C. [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.

92.4. 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, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

92.5. Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the chargesheet till end of trial.

92.6. 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 should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.

92.7. An order of 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 prearrest bail.

92.8. The observations in Sibbia regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia (supra) had observed that

"if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v Deoman Upadhyaya, AIR 1960 SC 1125."

92.9. 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, non cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc."

MAY OR SHALL

in Dhampur Sugar Mills Ltd. v. State of U.P., (2007) 8 SCC 338 [Para 78], held:

"36. ….In our judgment, mere use of word "may" or "shall" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

Sec 27 & 8 IEA

Even while discarding the evidence in the form of discovery panchnama the conduct of the appellant herein would be relevant under Section 8 of the Act. The evidence of discovery would be admissible as conduct under Section 8 of the Act quite apart from the admissibility of the disclosure statement under Section 27, as this Court observed in A.N. Venkatesh v. State of Karnataka, (2005) 7 SCC 714,:

"By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand Vs. State (Delhi Admn.) [(1979) 3 SC 90]. Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8."

NEWS

- Amends the notification of the Ministry of Home Affairs, CTCR Division, vide number S.O. 2711 (E) dated the 7th June, 2022, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), dated the 13th June, 2022, appointing the Spl PP for High Court of Telangana as Spl PP for NIA too.

- Amendments to the Foreign Contribution (Regulation) Amendment Rules, 2022.

- Officers competent to compound FCRA offences notified S.O. 3025(E) 1st July, 2022.

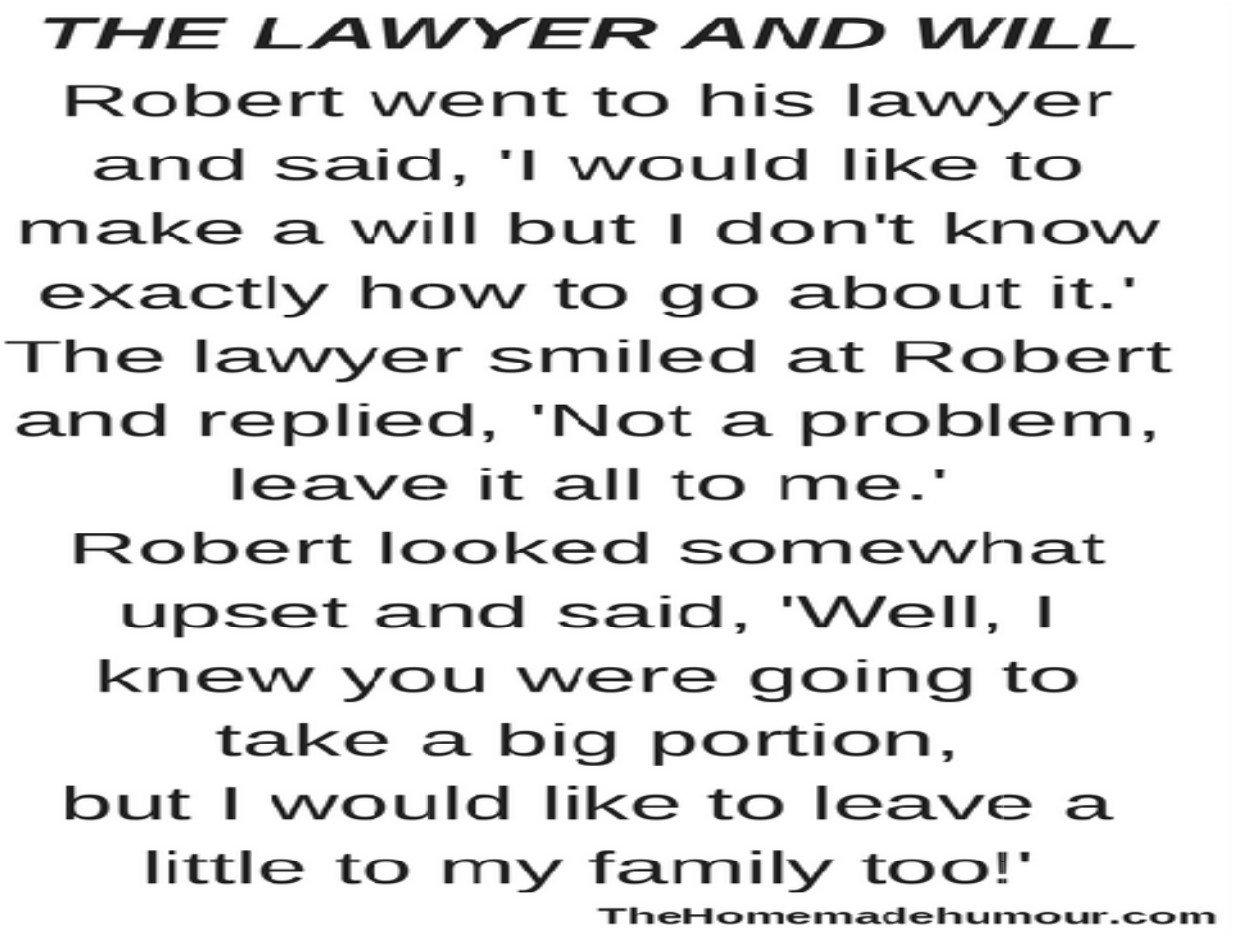
- The Surrogacy (Regulation) Act, 2021 (Act No.47 Of 2021) - Constitution Of State Assisted Reproductive Technology And Surrogacy Board; State Appropriate Authority For The Purposes Of The Said Act; And District Appropriate Authority For Surrogacy For Implementation Of The Act In The State. [G.O.Ms.No.181, Health, Medical And Family Welfare (E2), 8th July, 2022.]

- AP- Public Services - Employees Welfare Scheme - Andhra Pradesh State Employees Group In Insurance Scheme - 1984 - Revised Rate of Interest (7.1% p.a) w.e.f. 01.01.2022 to 31.03.2022 on accumulated Savings Fund - Communication of Tables of Benefits for Savings Fund for the Period from 01.01.2022 to 31.03.2022 - Revised Tables - Orders - Issued (G.O.Ms.No.177, from Finance (Admn-III-DA, DSA) Department).

- AP- Government Employees Revised Pay Scales 2022 - Comprehensive Orders - Amendment - Orders - Issued (G.O.Ms.No.175, from (PC-TA) Department, dated:15.07.2022).

- High Court Of Andhra Pradesh - Rules For Online Electronic Filing (E-Filing), 2022. [G.O.Ms.No.104, Law (L and LA &J - Home - Courts.A), 8th July, 2022.]

ON A LIGHTER VEIN



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