Prosecution Replenish

An Endeavour for learning and excellence

Vol: XII **March ,2024**

Aano Bhadr Kratvo Yantu Viswatah
(Let Noble Thoughts Come To Me from All Directions)

क्षणशः कणशश्चैव विद्यामर्थं च साधयेत् ।
क्षणे नष्टे कुतो विद्या कणे नष्टे कुतो धनम् ॥

- **Hindi Translation:-** एक एक क्षण गवाये बिना विद्या ग्रहण करनी चाहिए और एक एक कण बचा करके धन इकट्ठा करना चाहिए। क्षण गवाने वाले को विद्या कहाँ और कण को क्षुद्र समझने वाले को धन कहाँ ?

- **English Translation:-** One should take knowledge without losing a single moment and save Money by collecting every coin. The one who lost the moment does not get knowledge And those who consider coin as small do not get money.

CITATIONS

2024 0 INSC 81; 2024 0 Supreme(SC) 94; Haalesh @ Haleshi @ Kurubara Haleshi Vs. State of Karnataka; Criminal Appeal No. 1954 of 2012 With Criminal Appeal No. 1955 of 2012 and Criminal Appeal No. 1303 of 2014; 02-02-2024

It is true that according to the prosecution and the evidence on record only A-1 to A-3 had caught hold of the deceased Shivanna and had assaulted him with choppers. No other accused person is alleged to have assaulted him, though, some of them had caught hold of the wife and daughter of the deceased and had assaulted them with choppers causing grievous injuries. Nonetheless, the evidence on record clearly proves that all the accused persons have initially assembled in front of the house of the deceased Shivanna; first two of them arrived and later the rest of them came in auto rikshaw. They armed themselves with weapons especially choppers and thereafter trespassed into the house of the deceased Shivanna. They all indulged in assaulting one or the other members of his family with the weapons in their hand except for A-8 and A-9 who remained standing at the door of the house.

PW-3 and PW-4 are the eyewitnesses who were present at the scene of incident and were grievously injured. On being assaulted, they became unconscious and gained consciousness only on reaching hospital. Their testimony in the background of the case is the best evidence. No doubt, they are members of the family and may be interested persons but their testimony cannot be discarded simply for the reason that they are family members in the scenario of the case that the incident took place inside the house of the deceased Shivanna, where there could not have been any other eyewitnesses other than the family members. The evidence of the aforesaid two eyewitnesses could not be shaken in the cross-examination.

an overt act of some of the accused persons of an unlawful assembly with the common object to kill the deceased Shivanna and to cause grievous hurt to the other family members is enough to rope in all of them for an offence under Section 302 IPC in aid with Section 149 IPC.

The second contention advanced on behalf of the appellants that the medical evidence or the medical report on record does not substantiate the stand taken by the prosecution has no merit at all for the simple reason that the doctor (PW-18) who conducted the postmortem had proved the injuries. However, she suggested the

possibility of use of different weapons in causing those injuries. Undoubtedly, only one kind of weapon i.e. chopper was used in committing the crime and, therefore, the evidence of the doctor may not be matching with that of the prosecution, but again, the ocular evidence of PW-3 and PW-4 is sufficient enough to prove that only chopper was used as a weapon of crime. In the light of the said evidence of the two eyewitnesses, the suggestion or opinion of the doctor cannot prevail as the opinion based upon probability is a weak evidence in comparison to the ocular evidence of eyewitnesses.

2024 0 INSC 82; 2024 0 Supreme(SC) 99; Bhaggi @ Bhagirath @ Naran Vs. The State of Madhya Pradesh; Special Leave Petition (Crl.) No. 2888 of 2023; Decided On : 05-02-2024

We are of the concerned view that when the words ‘barbaric’ and ‘brutal’ are used simultaneously they are not to take the character of synonym, but to take distinctive meanings. In view of the manner in which the offence was committed by the petitioner-convict, as observed by the High Court under the above extracted recital, according to us, one can only say that the action of the petitioner-convict is barbaric though he had not acted in a brutal manner. We will take the meanings of the words ‘barbaric’, ‘barbarians’ and ‘brutal’ to know the distinctive meanings of the words ‘barbaric’ and ‘brutal’. As per the New International Webster’s Comprehensive Dictionary of the English Language, Encyclopedia Edition they carry the following meanings:

‘Barbaric’ (adj):

1. of or characteristic of barbarians.
2. Wild; uncivilized; crude

‘Barbarians’: (n)

1. One whose state of culture is between savagery and civilization.
2. Any rude, brutal or uncultured person.

‘Brutal’ (adj):

Characteristic of or like a brute; cruel; savage.

In the light of the evidence on record and rightly noted by the High Court in the above-extracted paragraph 34 of the impugned judgment it may be true to say that the petitioner-convict had committed the offence of rape brutally, but then, certainly his action was barbaric. In the instant case, the petitioner-convict was aged 40 years on the date of occurrence and the victim was then only a girl, aged 7 years. Thus, the position is that he used a lass aged 7 years to satisfy his lust. For that the petitioner-convict took the victim to a temple, unmindful of the holiness of the place disrobed her and himself and then committed the crime. We have no hesitation to hold that the fact he had not done it brutally will not make its commission non-barbaric.

2024 0 INSC 91; 2024 0 Supreme(SC) 105; Kishore and Others Vs. State of Punjab; Criminal Appeal No. 1465 of 2011; 07-02-2024

It is true that a test identification parade is not mandatory. The test identification parade is a part of the investigation. It is useful when the eyewitnesses do not know the accused before the incident. The test identification parade is usually conducted immediately after the arrest of the accused. Perhaps, if the test identification parade is properly conducted and is proved, it gives credence of the identification of the accused by the concerned eyewitnesses before the Court. The effect of the prosecution's failure to conduct a test identification parade will depend on the facts of each case.

The examination of the goldsmith or the person from whom the other ornaments were brought was necessary to prove that the ornaments were identical to the ones recovered at the instance of the accused. But that was not done. Therefore, even the identification of the ornaments by PW-9 becomes doubtful. The prosecution case regarding the recovery of the ornaments at the instance of the appellants also becomes doubtful.
It is established that there was no unlawful assembly as two out of five accused have been acquitted. The High Court could have altered the charge by applying Section 34 instead of Section 149 of the IPC, but that was not done.

2024 0 INSC 92; 2024 0 Supreme(SC) 104; Gurwinder Singh Vs. State of Punjab and Another; Criminal Appeal No. 704 of 2024, Special Leave Petition (Criminal) No. 10047 of 2023; 07-02-2024
The Appellant's counsel has stated that in the terror funding chart the name of the Appellant does not find place. It is pertinent to mention that the charges in the present case reveals the involvement of a terrorist gang which includes different members recruited for multiple roles. Hence, the mere fact that the accused has not received any funds or nothing incriminating was recovered from his mobile phone does not absolve him of his role in the instant crime.
In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-Section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-Section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.
On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

(1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act.

1.2 Such examination should be limited to case diary and final report submitted under Section 173 Cr.P.C.

(2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 Cr.P.C. ('tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2. Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'.

2024 0 INSC 114; 2024 0 Supreme(SC) 130; State by the Inspector of Police Vs. B. Ramu ; Criminal Appeal No. 801 of 2024, SLP (Crl.) No. 8137 of 2022; Decided On : 12-02-2024

In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act.

https://indiankanoon.org/doc/151083483/; Habeeb Sultan Ali vs The State Of Telangana on 15 February, 2024; CRIMINAL PETITION No.1750 of 2024;

the Investigating Officer is directed to follow the procedure laid down under Section 41-A Cr.P.C. and also the guidelines formulated by the Hon'ble Supreme Court of India in Arnesh Kumar v. State of Bihar scrupulously in a case registered for offences punishable under Section 506 of IPC and Section 7 read with 8 of POCSO Act.

https://indiankanoon.org/doc/141061029/; Payam Naveen vs The State Of Telangana on 14 February, 2024; CRLA 272/2022

In so far as the allegation regarding promise to marry, P.W.1 has consistently stated that right from the beginning, there was a promise to marry and ultimately, the appellant denied and went away from the village. It appears that the appellant had with an intention of indulging in sexual intercourse had made false promise of marrying her. In the said circumstances, the conviction for cheating under Section 417 of IPC is maintained.

https://indiankanoon.org/doc/36767353/; Korra Gopal vs The State Of Telangana on 14 February, 2024; WP 3887/2024

The case of the petitioner is that he has lodged a written complaint, dated 08.02.2024 before respondent No.5 against respondent Nos.6 to 8 and according to him the contents of the complaint would reveal commission of cognizable offence. The grievance of the petitioner is that even after receiving the complaint, dated 08.02.2024, respondent No.5 is not taking any action for registration of the crime against respondent Nos.6 to 8.

3. Learned Assistant Government Pleader for Home appearing for respondent Nos.1 to 5, on instructions, would submit that respondent No.5 had received the written complaint, dated 08.02.2024 and the police are conducting enquiry in the said complaint and they will take appropriate action in accordance with law, if the same would reveal commission of cognizable offence.

4. In view of the above submissions, this Court deems it appropriate to dispose of the writ petition directing respondent No.5 to take appropriate action on the complaint, dated 08.02.2024 submitted by the petitioner and if the contents of the said complaint reveal commission of cognizable offence, respondent No.5 is directed to conduct enquiry under Section 154 of Cr.P.C. and also follow the guidelines issued by the Hon'ble Apex Court in Lalita Kumari v. State of Uttar Pradesh

https://indiankanoon.org/doc/100945342/; Gudem Vikram Reddy vs The State Of Telangana; https://csis.tshc.gov.in/hcorders/2024/202100014662024_5.pdf; on 14 February, 2024; CRLP 1466/2024;

proceedings in Crime No. 855 of 2023 on the file of Patancheru Police Station, Sanga Reddy District, registered for the alleged offences punishable under Sections 147, 323,504, 149 of IPC and Section 3(1)(r)(s) of SC/ST (POA) Act, allowed to be compounded as the disputes have been settled amicably with the accused.

https://indiankanoon.org/doc/91317397/; Deep Singh , Deep Singh , Deepu vs The State Of Telangana on 13 February, 2024; CRLA 529/2020 (DB)

In view of several lapses on the part of the investigation, this Court finds that prosecution miserably failed to connect the accused with the offence. Admittedly, P.W.1 knows Hindi and he does not know how to read and write Telugu, but the complaint was written in Telugu and he signed in Hindi on the complaint. When the contents in the complaint were explained to P.W.1, he simply stated that he does not know Telugu. Though P.W.2 stated that she handed over the blood stained clothes of the victim to the police in the hospital, it was not mentioned in detail as to whether the said clothes are frock or underwear or any cloth in which victim girl was taken to the hospital. When the investigating Officer recorded the statements of P.Ws.1 to 3 in the hospital, why the investigating Officer has not collected the blood stained clothes of the minor child on the same day, was not explained anywhere. It appears to fill up lacuna, the frock was seized at the instance of P.W.1 by the investigating Officer. Even after representing the frock as M.O.3, when semen or spermatozoa was found on it, the investigating Officer has not opted for DNA profiling. In this case, the accused is languishing in jail from 15.10.2018. Admittedly, in this criminal case, the prosecution failed to prove guilt of the accused beyond all reasonable doubt and as such he is entitled to the benefit of doubt.

https://indiankanoon.org/doc/119760250/; Merla Bhavani Shankar Prasad vs Vallabhaneni Mytri Priyadarshini on 9 February, 2024; CRIMINAL PETITION No.12904 OF 2018;

In the present case, the learned Magistrate has taken cognizance against the accused and committed the accused to the Sessions Court and the learned Sessions Judge in Criminal Revision Petition No.125 of 2017, held by relying on the judgment of the Hon'ble Supreme Court in Jile Singh's case ((2012) 2 SCC (Cri) 175) deleting from the array of the accused that can be added only under Section 319 Cr.P.C. is unsustainable in law and it was contrary to the law laid down in Dharam Pal's case. Therefore, the order of the learned Sessions Judgfe to add the array of the deleted accused has to wait till the case reaches the stage of Section 319 Cr.P.C. is un-sustainable in view of the law laid down in Dharam Pal's case. Accordingly, it is liable to be set aside.

https://indiankanoon.org/doc/167461035/; Polasapalli Ravi Sankar vs The State Of Andhra Pradesh on 5 February, 2024; I.A.No.1 and 2in Crl.P.No.7595 of 2023

The case of the prosecution is that the de facto-complainant is working as Electrician in Railway Department in Guntur, he had confirmed his daughter marriage to the 1st petitioner on 02.09.2023 and his daughter engagement ceremony was also performed in his house and photos were also taken at the time. On all of sudden, on 21.09.2023, the groom"s sister by name Savitri called the 2nd BSB, J respondent and stated that their family was not interested in this alliance and, hence the marriage was cancelled. Later, when the 2nd respondent contacted the groom through phone he stated that he has no interest to marry his daughter. Thereafter, the 2nd respondent made a report

basing on which, the police registered a case in Crime No.251 of 20232 against the petitioners and others under Sections 420, 506 r/w 34 IPC.
Having regard to the facts and circumstances and as the parties have entered into compromise, the chances of convictions are meagre and remote. Therefore, in view of the aforesaid decision of the apex court, this Court is of the view that this is a fit case to quash the proceedings by exercising jurisdiction under Section 482 CrPC. Hence, there is no need to pass any order under Section 320 CrPC and accordingly, I.A.No.1 and 2 are closed.

2024 0 Supreme(SC) 136; Souvik Bhattacharya Vs. Enforcement Directorate, Kolkata Zonal OFFICE-II; Criminal Appeal No. 963 of 2024, SLP (Criminal) No. 14476 of 2023; Decided On : 16-02-2024

the Court, while taking cognizance of an offence is of the opinion that there is sufficient ground for proceeding, may issue summons for the attendance of the accused when the case appears to be a summons case, or may issue a warrant for causing the accused to be brought or to appear before the Court, when the case appears to be a warrant case under Section 204 of Cr.P.C.
Section 437 would come into play when the accused is arrested or detained or when the summons or warrant is issued against the accused for causing him to be brought or to appear before the Court. In absence of any order for issuance of summons or warrant under Section 204 or under any other provision of Cr.P.C. the summons could not have been issued or served upon the appellant nor he could have been arrested or taken into custody.

2024 0 INSC 117; Deepak Kumar Shrivas & Anr. Vs. State of Chhattisgarh & Ors.; Criminal Appeal No. 1007 of 2024 @ Special Leave Petition (Crl.) No. 9800 of 2023; Decided On : 19-02-2024

A reading of the entire material on record clearly reflects that it was totally an unlawful contract between the parties where money was being paid for securing a job in the government department(s) or private sector. Apparently, a suit for recovery could not have been filed for the said purpose and even if it could be filed, it could be difficult to establish the same where the payment was entirely in cash. Therefore, the respondent no.6 found out a better medium to recover the said amount by building pressure on the appellant and his brother by lodging the FIR. Under the threat of criminal prosecution, maybe the appellant would have tried to sort out and settle the dispute by shelving out some money.
In conclusion, certain key observations from the factual matrix warrant a closer reflection. Prima facie, the conduct exhibited by the parties involved appears tainted with suspicion, casting a shadow over the veracity of their claims. The report from the previous inquiry reflects a convoluted landscape and unveils a trail of unethical, maybe even criminal, behaviour from both parties. The unexplained inordinate delay in bringing these allegations to the police’s attention despite knowledge of previous inquiry, raises even more doubts and adds a layer of scepticism to the authenticity of the claims. The facts stated, as well as the prior inquiry, reveal a shared culpability between the parties, indicative of a complex web of deceit, and unethical transactions where even civil remedies may not be sustainable. Thus, the object of this dispute, manifestly rife with mala fide intentions of only recovering the tainted money by coercion and threat of criminal proceedings, cannot be allowed to proceed further and exploit the time and resources of the law enforcement agency.

it becomes imperative to state that the police should exercise heightened caution when drawn into dispute pertaining to such unethical transactions between private parties which appear to be prima facie contentious in light of previous inquiries or investigations. The need for vigilance on the part of the police is paramount, and a discerning eye should be cast upon cases where unscrupulous conduct appears to eclipse the pursuit of justice. This case exemplifies the need for a circumspect approach in discerning the genuine from the spurious and thus ensuring that the resources of the state are utilised for matters of true societal import.

2024 0 INSC 106; 2024 0 Supreme(SC) 121; Directorate of Enforcement Vs. Niraj Tyagi & Ors.; Criminal Appeal No. 843 of 2024 (@ Special Leave Petition (Crl.) No. 10913 of 2023 With Mohit Singh Vs. Reena Bagga & Ors.; Criminal Appeal No. 844 of 2024 (@ Special Leave Petition (Crl.) No. 14942 of 2023; With Directorate of Enforcement Vs M3M India Private Limited & Ors.; Criminal Appeal No. 845 OF 2024 (@ Special Leave Petition (Crl.) No. 14935 of 2023; Decided On : 13-02-2024

Recently, a Three-Judge Bench in Neeharika Infrastructure (supra) while strongly deprecating the practice of the High Courts in staying the investigations or directing not to take coercive action against the accused pending petitions under Section 482 of Cr.PC, has issued the guidelines

Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the law. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice.

2024 0 INSC 120; 2024 0 Supreme(SC) 141; State through Inspector of Police CBI, Chennai Vs. Naresh Prasad Agarwal and Another; Criminal Appeal Nos. 829-830 of 2024, S.L.P. (Criminal) Nos. 2210-2211 of 2024, Diary No. 29911 of 2018; Decided On : 13-02-2024

it is obvious that even after the learned Judge demitted the office, he assigned reasons and made the judgment ready. According to us, retaining file of a case for a period of 5 months after demitting the office is an act of gross impropriety on the part of the learned Judge. We cannot countenance what has been done in this case.

2024 0 INSC 124; 2024 0 Supreme(SC) 144; Kalinga @ Kushal Vs. State of Karnataka by Police Inspector Hubli; Criminal Appeal No. 622 of 2013; Decided On : 20-02-2024

No doubt, it is trite law that a reasonable doubt is essentially a serious doubt in the case of the prosecution and minor inconsistencies are not to be elevated to the status of a reasonable doubt. A reasonable doubt is one which renders the possibility of guilt as highly doubtful. It is also noteworthy that the purpose of criminal trial is not only to ensure that an innocent person is not punished, but it is also to ensure that the guilty does not escape unpunished. A judge owes this duty to the society and effective performance of this duty plays a crucial role in securing the faith of the common public in rule of law. Every case, wherein a guilty person goes unpunished due to any lacuna on the part of the investigating agency, prosecution or otherwise, shakes the conscience of the society at large and diminishes the value of the rule of law.

2024 0 INSC 128; 2024 0 Supreme(SC) 148; Ram Singh Vs. The State of U.P.; Criminal Appeal No. 206 of 2024; Decided On : 21-02-2024

what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.

2024 0 INSC 134; 2024 0 Supreme(SC) 154; Satender Kumar Antil Vs. Central Bureau Of Investigation And Anr.; MA No. 2034 of 2022 In MA No. 1849 of 2021 In Special Leave Petition (Crl.) No. 5191 of 2021 With MA No. 2035 of 2022 In Slp (Crl.) No.5191 of 2021;Decided On : 13-02-2024

I. <u>STANDARD OPERATING PROCEDURE (SOP)</u>

(i) Ms. Aishwarya Bhati, learned Additional Solicitor General has invited our attention to a document titled as “Guidelines and standard operating procedure for implementation of the scheme for support to poor prisoners” and requested that the same may form part of record and the Order of this Court. The same shall be taken on record.

(ii) In furtherance of the subsequent orders passed by this Court on ancillary issues concerned with training public prosecutors and including judgments of this Court in the Curriculum of State Judicial Academies, we wish to further pass a direction on an SOP framed by Central Government. The SOP if put in place by the Central Government, will indeed alleviate the situation of under trial prisoners by way of establishment of a dedicated empowered committee and funds etc.

(iii) For the sake of convenience and for extending the benefit of this SOP to the under-trial prisoners, we wish to extract the SOP in its entirety in this Order so that all concerned parties act in tandem to ensure due compliance of this SOP and the compliance thereof is incorporated in the next report.

> **“Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners**
>
> i) Funds to the States/UTs will be provided through the Central Nodal Agency (CNA). The National Crime Records Bureau has been designated as the CNA for this scheme.
>
> ii) States/UTs will draw the requisite amount from the CNA on case-to-case basis and reimburse the same to the concerned competent authority (Court) for providing relief to the prisoner.
>
> iii) An 'Empowered Committee' may be constituted in each District of the State/UT, comprising of (i) District Collector (DC)/District Magistrate (DM), (ii) Secretary, District Legal Services Authority, (iii) Superintendent of Police, (iv) Superintendent/ Dy. Supdt. of the concerned Prison and (v) Judge incharge of the concerned Prison, as nominee of the District Judge.
>
> <u>Note</u> : This Empowered Committee will assess the requirement of financial support in each case for securing bail or for payment of fine, etc. and based on the decision

taken, the DC/DM will draw money from the CNA account and take necessary action.

Note : The Committee may appoint a Nodal Officer and take assistance of any civil society representative/social worker/ District Probation Officer to assist them in processing cases of needy prisoners.

iv) An Oversight Committee may be constituted at the State Government level, comprising of (i) Principal Secretary (Home/Jail), (ii) Secretary (Law Deptt), (iii) Secretary, State Legal Services Authority,

iv) DG/IG (Prisons) and (v) Registrar General of the High Court.

Note : The composition of the State level 'Empowered Committee' and 'Oversight Committee' are suggestive in nature. Prisons/persons detained therein being 'State-List" subject, it is proposed that the Committees may be constituted and notified by the concerned State Governments/UT Administrations.

Standard Operating Procedure

UNDERTRIAL PRISONERS

1. If the undertrial prisoner is not released from the jail within a period of 7 days of order of grant of bail, then the jail authority would inform Secretary, District Legal Services Authority (DLSA).

2. Secretary, DLSA would inquire and examine whether the undertrial prisoner is not in a position to furnish financial surety for securing bail in terms of the bail conditions.

For this, DLSA may take the assistance of Civil Society representatives, social workers/ NGOs, District Probation officers or revenue officer. This exercise would be completed in a time bound manner within a period of 10 days.

3. Secretary, DLSA will place all such cases before the District Level Empowered Committee every 2-3 weeks.

4. After examination of such cases, if the Empowered Committee recommends that the identified poor prisoner be extended the benefit of financial benefit under 'Support to poor prisoners Scheme", then the requisite amount upto Rs. 40,000/- per case for one prisoner, can be drawn and made available to the Hon'ble Court by way of Fixed Deposit or any other method, which the District Committee feels appropriate.

5. This benefit will not be available to persons who are accused of offences under Prevention of Corruption Act, Prevention of Money Laundering Act, NDPS or Unlawful Activities Prevention Act or any other Act or provisions, as may be specified later.

6. If the prisoner is acquitted/convicted, then appropriate orders may be passed by the trial Court so that the money comes back to the Government's account as this is only for the purposes of securing bail unless the accused is entitled to the benefit of bail U/s. 389 (3) Cr.P.C. in which event the amount can be utilised for bail by Trial Court to enable the accused to approach the Appellate Court and also if the Appellate Court grants bail U/s. 389 (1) of Cr.P.C.

7. If the bail amount is higher than Rs. 40,000/-, Secretary, DLSA may exercise discretion to pay such amount and make a recommendation to the Empowered Committee. Secretary, DLSA may also engage with legal aid advocate with a plea to have the surety amount reduced. For any amount over and above Rs. 40,000/-, the proposal may be approved by the State level Oversight Committee.

CONVICTED PRISONERS:

1. If a convicted person is unable to get released from the jail on account of non-payment of fine amount, the Superintendent of the Jail would immediately inform Secretary, DLSA (Time bound manner: 7 days).
2. Secretary, DLSA would enquire into the financial condition of the prisoner with the help of District Social Worker, NGOs, District Probation Officer, Revenue Officer who would be mandated to cooperate with the Secretary, DLSA. (Time bound manner: 7 days)
3. The Empowered Committee will sanction the release of the fine amount upto Rs. 25,000/- to be deposited in the Court for securing the release of the prisoner. For any amount over and above Rs. 25,000/-, the proposal may be approved by the State level Oversight Committee."

2024 0 INSC 138; 2024 0 Supreme(SC) 158; Ram Nath Vs. The State of Uttar Pradesh and Others; Criminal Appeal Nos. 472, 476-478, 479 of 2012, Criminal Appeal @ SLP (Crl.) No. 1379 of 2011; Decided On : 21-02-2024
When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

https://main.sci.gov.in/supremecourt/2008/35057/35057_2008_10_102_50755_Judgement_22-Feb-2024.pdf; 2024 INSC 149; CRIMINAL APPEAL (NO.) 1722 of 2010 (@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 8873/2008) NARESH KUMAR Vs. STATE OF HARYANA; 22-02-2024
The court should be extremely careful in assessing evidence under section 113A for finding out if cruelty was meted out. If it transpires that a victim committing suicide was hyper sensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court would not be satisfied for holding that the accused charged of abetting the offence of suicide was guilty.
This Court has held that from the mere fact of suicide within seven years of marriage, one should not jump to the conclusion of abetment unless cruelty was proved. The court has the discretion to raise or not to raise the presumption, because of the words 'may presume'. It must take into account all the circumstances of the case which is an additional safeguard.

2024 INSC 146; CRIMINAL APPEAL NO. 607/2024 WILLIAM STEPHEN Vs. THE STATE OF TAMIL NADU AND ANR. WITH CRIMINAL APPEAL NO. 608/2024; 21.02.2024
The record relating to the call details has been discarded by the High Court as there was no certification under Section 65B of the Evidence Act.
Before we part with the judgment, we must note here that the PW-19, the Investigating Officer, was not aware of the procedure to be followed for obtaining a certificate under Section 65B of the Evidence Act. He cannot be blamed as a proper training was not imparted to him. The State Government must ensure that the Police Officers are imparted proper training on this aspect.

2024 INSC 139; CRIMINAL APPEAL NO(S). OF 2024 Arising out of SLP(Crl.) No(s). 786 of 2024) HIMANSHU SHARMA Vs. STATE OF MADHYA PRADESH

WITH CRIMINAL APPEAL NO(S). OF 2024 (Arising out of SLP(Crl.) No(s). 2032 of 2024); 20.02.2024

Law is well settled by a catena of judgments rendered by this Court that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the Court is satisfied that after being released on bail,

(a) the accused has misused the liberty granted to him;

(b) flouted the conditions of bail order;

(c) that the bail was granted in ignorance of statutory provisions restricting the powers of the Court to grant bail;

(d) or that the bail was procured by misrepresentation or fraud.

2024 INSC 150; CRIMINAL APPEAL NO.3589 OF 2023 High Court Bar Association, Allahabad Vs. State of U.P. & Ors. with Special Leave Petition (Crl.) nos.13284-13289 of 2023 and Criminal Appeal..Diary no. 49052 of 2023; 29.02.2024

Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above.

We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of Asian Resurfacing1, the orders of automatic vacation of stay shall remain valid.

(Hon’ble Justice PANKAJ MITHAL)

Sometimes, in quest of justice we end up doing injustice. Asian Resurfacing is a clear example of the same. Such a situation created ought to be avoided in the normal

course or if at all it arises be remedied at the earliest. In doing so, 6 we have to adopt a practical and a more pragmatic approach rather than a technical one which may create more problems burdening the courts with superfluous or useless work. It is well said that useless work drives out the useful work. Accordingly, it is expedient in the interest of justice to provide that a reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time bound, would remain in operation till the decision of the main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying or vacating the same.

https://indiankanoon.org/doc/105718815/; Avinash Reddy Paladugu vs The Bureau Of Immigration Boi, on 26 February, 2024; WP_515_2024
In the present case a Notice U/s.41-A of the Criminal Procedure Code has been issued by the Police and charge sheet has also been filed and if the Police have apprehensions about non-cooperation of the Petitioner in the conduct of Court proceedings or trial it is always open to the Police to make an appropriate application before the Court concerned, but the Respondent Police cannot continue the LOC for years.

https://indiankanoon.org/doc/137849375/; WP_4883_2024; Goverdhan Reddy Bobbili vs The Union Of India on 26 February, 2024
this Court opines that mere pendency of criminal case is not a ground to decline issuance of passport. Further, the petitioner is ready to co-operate with the trial Court in concluding trial.

https://indiankanoon.org/doc/18183668/; CRIMINAL REVISION CASE No.187 OF 2010; PAMARTHI VENKATESWARA RAO & Ors Vs State Of A.P.; 26.02.2024
As seen from Section 28 of the A.P. Prohibition Act, 1995 officials of all departments of government and of all local bodies shall be legally bound to assist in prohibition or police officer in carrying out the provisions of this Act. Thus, on the date of offence there was a statutory obligation on the part of P.W.1{ Village Secretary} to assist the Prohibition Police or regular police. So, when such a statutory is cast upon P.W.1, his evidence cannot be branded as interested. Absolutely, nothing was brought out during the course of cross examination of P.W.1 that he was acting as a stock mediator in several cases.

https://indiankanoon.org/doc/24940726/; Reddy Srinu vs The State Of A.P. on 26 February, 2024; CRLRC NO.1902 OF 2009;
It is to be noted that it is not as though P.W.1 and P.W.2 had no chance to identify the accused. It is to be noted that the incident occurred was so severe as impact was such that the deceased was thrown on the road and the vehicle driven by the accused could be stopped at the distance of 200 feet after the place of accident. In such circumstances, even the accused was in the process of controlling the vehicle so as to take it to a halt. By then P.W.1 and P.W.2 were moving on motorbikes. Thus, there was a possibility for them to rush to the offending vehicle which stands on the left side. They had every possibility to see the accused, as such, they categorically testified that they identified the driver. According to the evidence of P.W.9, investigating officer, on production of accused by P.W.3, he confirmed from P.W.1 that the accused was the driver of the offending vehicle. In the entire cross examination of P.W.1 and P.W.2, accused did not venture to put any suggestion that he was not the driver of the

offending vehicle. P.W.3 obviously, for the reasons best known appears to have given a goby to his Section 161 of Cr.P.C. statement. He admitted that the vehicle involved in the accident in question. If that be the case, his bounden duty was to reveal the name of the driver, if not the accused. It appears that only so as to help the accused, P.W.3 appears to have given a goby from deviating his Section 161 of Cr.P.C. statement. The conduct of P.W.3 in this regard further strengthens the case of the prosecution. When it is the evidence of P.W.9, the investigating officer, that P.W.3 brought the accused before him along with crime vehicle records, that portion of the evidence of P.W.9 was not challenged by the accused. In the considered view of this Court, the prosecution adduced proper evidence before the learned Additional Judicial Magistrate of First Class, which was rightly taken into consideration by the learned Additional Judicial Magistrate of First Class as well as the learned Additional Sessions Judge. The evidence on record proves the fact that the accused was the driver of the offending vehicle.

Witness adding explanation during his cross examination

The oft quoted observation of Lord Herschell, L.C. in Browne vs. Dunn [(1893) 6 The Reports 67] clearly elucidates the principle underlying those provisions.

It reads thus:

I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pas it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses. This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.

Non-Cross examination amounts to admission

State Uttar Pradesh vs Nahar Singh (Dead) & Ors on 18 February, 1998;
AIR 1998 SUPREME COURT 1328, 1998 (3) SCC 561,

It may be noted here that that part of the statement of PW-1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence PW-1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provisions is enlarged by Section 146 of the Evidence Act by a allowing a witness to be questioned:

(1) to test his veracity.

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case {NIA vs. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1}

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 Cr.P.C. must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

(i) **Meaning of 'Prima facie true'** [Para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence.

(ii) **Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges - Compared** [Para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 Cr.P.C.) do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

(iii) **Reasoning, necessary but no detailed evaluation of evidence** [Para 24]: The exercise to be undertaken by the Court at this stage-of giving reasons for grant or non-grant of bail-is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

(iv) **Record a finding on broad probabilities, not based on proof beyond doubt** [Para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

(v) **Duration of the limitation under Section 43D(5)** [Para 26]: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

(vi) **Material on record must be analysed as a 'whole' no piecemeal analysis** [Para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is

required to be reckoned and not by analysing individual pieces of evidence or circumstance.

(vii) **Contents of documents to be presumed as true** [Para 27]: The Court must look at the contents of the document and take such document into account as it is.

(viii) **Admissibility of documents relied upon by Prosecution cannot be questioned** [Para 27]: The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible.

NEWS

- THE CONSTITUTION (SCHEDULED TRIBES) ORDER (AMENDMENT) ACT, 2024 applicable to A.P.
- Act notified- the Public Examinations (Prevention of Unfair Means) Act, 2024 dated 12th February,2024
- Bharatiya Nyaya Sanhita, 2023 effective date notified
- the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) notified
- the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) notified
- AP- National Pension System Contributory Pension Scheme Adoption of centralized mode Permission for operating ERM operations Modification Orders Issued G.O.Ms.No.22 from Finance HR. III Pension GPF Department dated 28.02.2024
- High Court Of Andhra Pradesh At Amaravati Roc.No.597/So/2023. Dated: 22.12.2023. Declaration Of 4th Saturday Of Every Month, Except The Court Working Saturdays, As Holiday For The Employees Of The High Court, And The Offices Working Under The Administrative Control Of The High Court
- TSHC - Circular No. 03 of 2024 - Courts - Civil and Criminal-Delay in supply of certified copies to the litigant public and to the advocates - Certain instructions issued - Reg.
- TSHC - Judgement and Orders of Honourable Supreme Court of India in WP(Civil) No.215 of 2005 and Miscellaneous Application No.1699 of 2019 - Passive Euthanasia -Certain directions issued - Instructions for implementation. Spl. Officers Section
- APHC- High Court of Andhra Pradesh Order dated 10.01.2024 passed in Shama Sharma versus Kishan Kumar (Tranfer Petition (Civil) No. 1957 of 2023) by the Hon'ble Supreme Court - Certain Directions - Issued - Reg.

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ON A LIGHTER VEIN

Did you hear about the mathematician who's afraid of negative numbers?

He'll stop at nothing to avoid them

✍The Prosecution Replenish,
4-235, Gita Nagar, Malkajgiri,
Hyderabad, Telangana-500047;
: 9848844936;
💻 e-mail:- prosecutionreplenish@gmail.com
telegram app : *http://t.me/prosecutionreplenish;*
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