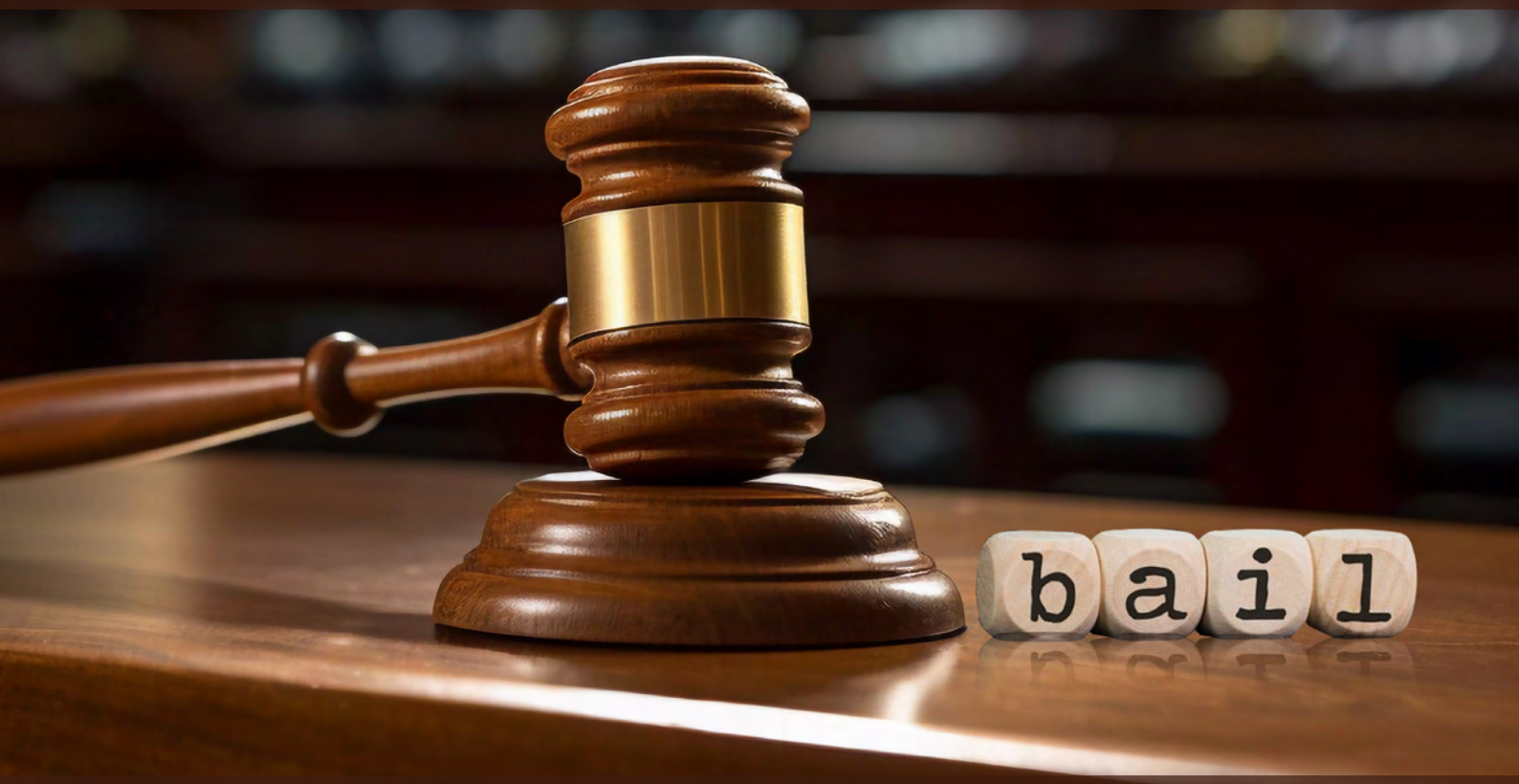
BAIL

— COMPARATIVE STUDY OF CrPC, 1973 AND BNSS, 2023

Reading Material

26th July, 2025



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CHAPTER 1: INTRODUCTION

"The issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process."

– Justice V. R. Krishna Iyer

In Gudikanti Narasimhulu Case (1978) 1 SCC 240

Constitutional Foundations of Bail

The right to bail, as a facet of Article 21 of the Constitution of India, has evolved through statutory codification and judicial interpretation. The Code of Criminal Procedure, 1973 (CrPC), and now, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), codify procedural provisions regulating the arrest, detention, and release of accused persons.

Article 21 of the Constitution guarantees the right to life and personal liberty. Bail serves as a mechanism to ensure that this liberty is not arbitrarily curtailed prior to conviction. In ***Sanjay Chandra v. CBI*****, [(2012) 1 SCC 40],** the Supreme Court held that bail is not to be withheld as a punitive measure. Pre-trial detention, it emphasized, must be justified by necessity and not merely on apprehension or public pressure. The Supreme Court comprehensively elaborated on the fundamental objective of bail, emphasizing that its primary purpose is to ensure the accused's appearance at trial, and not to serve as a form of punishment or preventive detention. The Court underlined that the deprivation of liberty must be treated as a punishment only after a person is found guilty through due process, and until then, every accused is presumed innocent. Detention pending trial, unless absolutely necessary, causes undue hardship and contradicts the constitutional guarantee of personal liberty under Article 21. The Court stressed that "necessity" is the operative test for pre-trial custody, and that mere apprehensions, such as the belief that the accused might tamper with evidence or witnesses should not justify denial of bail except in the most extraordinary circumstances. Furthermore, the Court cautioned against using pre-conviction imprisonment as a tool to express disapproval of the accused's past conduct or to give a pre-trial taste of punishment. It was also observed that imprisonment before conviction inevitably carries a punitive character and should not be imposed to serve moral or deterrent ends. The judgment reaffirmed that bail decisions must be grounded in legal necessity alone, keeping in mind the presumption of innocence and the right to liberty until guilt is conclusively established.

In ***Kashmira Singh v. State of Punjab*****, [(1977) SC 2147]**, the Court highlighted that indefinite detention pending appeal violates Article 21. The modern legal understanding of bail thus reinforces that liberty must prevail unless compelling state interest mandates custody. The Hon'ble Court addressed the grave concern of individuals being incarcerated for prolonged periods, only to be eventually acquitted. Taking note of such situations, the Court emphasized that the right to bail is inherent in Article 21 and can only be denied through a procedure established by law.

Reaffirming this position, the Supreme Court in the recent case of ***Jalaluddin Khan v. Union of India*, (2024)8 S.C.R. 633** reiterated the principle that "bail is the rule and jail is the exception." The Court sought to strike a balance between an individual's right to personal liberty and the interests of criminal justice.

Currently, the provisions relating to bail and bonds are codified under Chapter XXXV of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the *BNSS*). This chapter comprehensively deals with various aspects of bail, including bail in bailable and non-bailable offences, the grant of bail to undertrial prisoners, and the execution of bonds.

Meaning of Bail

The term '*bail*' is derived from the French word '*baillier*' which means *'to give away or deliver'*. Bail is also defined as "*the setting free of the defendant by releasing him from the custody of law and entrusting him to the custody of his sureties who are liable to produce him to appear for his trial at a specific date and time*."

According to **Section 2 (1) (b) of the BNSS**, the term means "*release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or bail bond.*"

The discussed definition introduces two essential components i.e., bail bond and bond. The term '**bail bond**' means *an undertaking with sureties for the release of an accused from the custody while the term 'bond' a personal undertaking or bond without sureties for the release of an accused from the custody*.

CHAPTER 2: MANDATORY BAIL/STATUTORY BAIL

A. Bail in bailable offence

According to Section 2(1)(c) BNSS (Section 2(a) of CrPC) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force. An accused can claim bail as a matter of right if he is accused of committing a bailable offence. Thus, in bailable offences, it is the duty of the police officer or the court to intimate the accused about his right to get bail.

Note: Section 47 (2) BNSS (Section 50(2) Cr.P.C.) makes it obligatory for a police officer arresting such a person without a warrant to inform him of his right to be released on bail.

Under Section 478 BNSS (Section 436 of CrPC) a person accused of a bailable offence at any time while under arrest without a warrant and at any stage of the proceedings has the right to be released on bail.

Section 478 BNSS (Section 436 of CrPC) provides for in what cases bail to be taken and as per this, bail can be granted provided following conditions are fulfilled:

- When any person other than a person accused of a non-bailable offence
- Is arrested or detained without warrant by an officer in in charge of a police station, or appears or is brought before a Court,
- If he is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail.
- Then such person shall be released on bail.

Therefore, Section 478 BNSS (Section 436 of CrPC) is **mandatory** in nature and the court or the police have no discretion in the matter. Any accused person arrested for a bailable offence willing to provide bail must be released.

Case of Indigent Person: Proviso to the Section further provides that such officer or Court:

- if he or it thinks fit, may, and
- shall, if such person is indigent and is unable to furnish surety, the courts shall release him on his execution of a bond without sureties.

Explanation to the Section further clarifies that where a person is unable to give bail bond **within a week** of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.

Section 478(2) BNSS (Section 436(2) CrPC) allows the Court to refuse bail to a person who has previously violated the conditions of their bail bond, such as failing to attend court at the designated time and place, if they appear before the Court again in the same case, or are brought before the Court in custody.

This refusal does not affect the Court's power to impose penalties under Section 491 BNSS (Section 446 Cr.P.C). Therefore, the Court still has the power to make the person or their surety pay a penalty for breaking the bail bond conditions, as mentioned in Section 491 BNSS (Section 446 Cr.P.C).In ***Amar Nath Singh v The State of Jharkhand*, 26 October, 2021** case, where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may by virtue of Section 436 (2) CrPC (Section 478(2) BNSS) refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court.

Relevant Case Laws:

In ***Maneka Gandhi v. Union of India*, AIR 1978 SC 597** case, Justice Bhagwati and Justice Krishna lyer highlighted the faulty bail system which needs reconsideration. In this case attention was brought to the impact of indigence of an accused on his right of bail.

In ***Lambert Kroger v. Enforcement Directorate*, 2000 CrilJ 2125** case, the Delhi High Court laid down that no person can be denied bail just because of the reason of his being a foreign national. The court can't discriminate on the grounds of nationality for granting bail. To secure his presence before the courts as and when required till the completion of trial, he can be released conditionally. Such conditions can be impounding of Passport to restrain him from fleeing from trial.

In ***R.D. Upadhyay v. State of A.P.*, AIR 2006 SC 1946** case, it was brought to the notice of court that there are many undertrials languishing in jail for non-furnishing of surety despite bail order granted in favour of them. It was held by court barriers in certain categories of cases, court can consider release of such prisoners on personal bonds.

In ***Rasiklal v. Kishore s/o Khanchand Wadhwani*, AIR 2009 SC 1341** case, the Supreme Court held that the right to bail for bailable offences is an absolute and in-defeasible right and no discretion can be exercised as the words of Section 436 CrPC (Section 478 BNSS) are imperative and the person accused of an offence is bound to be released as soon as the bail is furnished. The Court further observed that there is no need for the complainant or the public prosecutor to be heard in cases where a person is charged with a bailable offence. Moreover, the court has no discretion to impose any conditions except to demand security.

B. Default Bail

B.1 Evolution of Provisions on Statutory Bail in India: A Comparative Analysis of CrPC, 1973 and BNSS, 2023

B.1.1 Introduction

The concept of statutory or default bail, embedded within India's criminal procedural law, reflects a delicate equilibrium between investigative efficiency and individual liberty. It arises when the investigating agency fails to complete the investigation within the statutorily prescribed period, thereby triggering the right of the accused to seek release on bail. Governed by **Section 167(2) of the Criminal Procedure Code, 1973 (CrPC)** and now correspondingly reflected in **Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, this provision has undergone significant evolution both legislatively and through judicial interpretation. This chapter delves into the

historical trajectory and recent transformations in the statutory bail framework, critically comparing the provisions under the CrPC and BNSS.

B.1.2 Statutory Bail under CrPC, 1973: A Historical Perspective

Legislative Origin

Section 167 of the CrPC, 1973 was designed to limit arbitrary and prolonged detention during the investigative stage. It stipulated that upon failure to complete the investigation within 24 hours, the police must produce the accused before a Magistrate. The Magistrate could then authorize either **police custody** or **judicial custody**, subject to stringent time limits. In particular:

- **Police custody** could be granted for **a maximum of 15 days**.
- **Judicial custody** could extend up to **60 days for lesser offences** and **90 days for offences punishable with death, life imprisonment, or imprisonment not less than ten years**.
- On expiry of these limits, the accused acquired an **unqualified right to be released on bail** under **Section 167(2) proviso**, if they furnished bail.

The Supreme Court in ***CBI v. Anupam J. Kulkarni,*** **1992 (3) SCC 141** firmly held that **police custody was limited to the initial 15 days** following arrest. Once the accused was sent to judicial custody, they could not be remanded back to police custody. This interpretation sought to safeguard individual liberty and prevent misuse of custodial power.

Evolution through Judicial Interpretation of Section 167 (2) of CrPC:

Subsequent jurisprudence followed the Kulkarni precedent, reinforcing that the **15-day period of police custody must be exercised within the first 15 days** of remand. For instance, in ***Budh Singh v. State of Punjab,*** **(2000) 9 SCC 266**, a three-judge bench reiterated this position.

However, in ***CBI v. Vikas Mishra*** **(Criminal Appeal No. 957/2023)**, the Court hinted at reconsideration of the rigid interpretation of the 15-day limit, especially in light of complex economic offences. The landmark shift came in ***V. Senthil Balaji v. The State 2023 SCC OnLine SC 934,*** where the Supreme Court held:

"The period of 15 days being the maximum period would span from time to time with the total period of 60 or 90 days as the case may be… the proviso merely reiterates the maximum period of 15 days, qua a custody in favour of the police while there is absolutely no mention of the first 15 days alone for the police custody."

This judgment permitted **split custody**, allowing the 15-day police custody to be availed in non-continuous spells within the overall remand period (60/90 days), thereby departing from the earlier restrictive interpretation.

B.1.3. The Shift to Section 187 (2) of BNSS, 2023

Section 187 of BNSS: Wording and Intent

Following the judicial shift in ***Senthil Balaji***, the **BNSS, 2023**, introduced to replace the CrPC, encapsulated the logic of split custody. **Section 187(2) BNSS** provides that:

"The Magistrate may authorize police custody of the accused in whole or in part during the first forty or sixty days, as the case may be."

This statutory language reflects the reasoning in ***Senthil Balaji***, thereby **legitimising non-continuous and staggered police custody** within the overall 60/90-day investigation period. It no longer confines the 15-day window to the first 15 days post-arrest.

Section 187 (2) BNSS now permits 15 days of police custody to be spread over 40 or 60 days, a significant departure from the CrPC's Section 167, which mandated continuous custody within the first 15 days.

While intended to aid investigations in complex cases, this provision risks prolonging detention without bail, particularly for serious offenses. Legal experts argue it could be misused to harass accused persons, undermining the principle of liberty.

Parliamentary Standing Committee's Recommendations

Despite the legislative alignment with recent judicial trends, the **Parliamentary Standing Committee on Home Affairs**[1] recommended the incorporation of safeguards. Under the CrPC, a Judicial Magistrate may authorise the detention of an accused person for up to 15 days. BNSS adds that the 15-day detention period may be carried out in parts during the initial 40, 60, or 90 days. The Committee noted that this clause could be susceptible to misuse by authorities, as it does not clarify why the custody was not taken in the first 15 days. It recommended clarifying the clause with a suitable amendment. It advised that **split custody should be exceptional** and invoked only under specific conditions—such as the accused evading custody or where delays were due to circumstances beyond police control.

However, these recommendations were **not implemented** in the final version of BNSS passed in December 2023 and brought into effect in July 2024, raising concerns about unchecked discretion.

1 The Standing Committee on Home Affairs (Chair: Mr. Brij Lal) submitted its Report No. 246 on the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), on November 10, 2023.

B.2 Section 167 (2) Proviso (a) (i), CrPC via-a-vis Section 187 (3), BNSS:

SECTION 167 CrPC	SECTION 187 BNSS
(2) The Magistrate to whom an accused person is forwarded under this Section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction; Provided that— a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a ***term of not less than ten years***; XXX	(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this Sub-Section for a total period exceeding- (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for ***a term of ten years or more***; XXX

Earlier in the Crpc Section 167 (2) proviso (a)(i) laid down the criteria for maximum period of detention during investigation as 90 days and 60 days respectively depending upon the quantum of punishment prescribed in the respective offences which is summarized below:

- Ninety days, if the offence is punishable with death, life imprisonment, or imprisonment for a term of not less than ten years.
- Sixty days, if the investigation relates to any other offence.

Application of this Section 167(2) proviso (a)(i) Crpc to different offences mentioned in the IPC is very important since only after the expiry of 60 or 90 days, as the case may be, the accused became entitled to default bail, provided they are prepared to furnish bail with sureties.

In the newly enacted BNSS under Section 187, lays down a procedure similar to Section 167 Crpc for situations where the investigation cannot be completed within 24 hours of arrest. Specifically, Sub-Section (3) of Section 187 corresponds to Section 167(2) of the CrPC, and forms the crux of the legal discussion.

When Section 167(2) Proviso (a)(i) of Crpc is juxtaposed to Section 187(3)(i) of BNSS it may be seen that the phrase **"……for a term not less than 10 years…"** has been replaced with **"…..**

for a term of 10 years or more." So, at this juncture the question arises that whether the effect of new terminology in place of "……for a term not less than 10 years…" to "….for a term of 10 years or more" makes any difference in the application of 90 days period to different offences under Bharatiya Nyaya Sanhita or not? In this connection, a bare reading of both Section 167(2) Proviso (a)(i) of Crpc to Section 187(3)(i) of BNSS show that while earlier there was minimum threshold of minimum 10 years imprisonment due to operation of the words "……for a term not less than 10 years…" for completing an investigation in a maximum period of 90 days and now in the newly enacted BNSS, the concept of 167(2) proviso (a)(i) has been retained and the even in Section 187(3)(i) of BNSS, there still remains a requirement that for completing an investigation in a maximum period of 90 days, the offence alleged must be punishable with imprisonment of ten years or more. So essentially Section 167(2) proviso (a)(i) and Section 187(3)(i) of BNSS remain one and the same with mere slight change of wordings.

Here the readers must take a note of caution that a prima facie reading shows that the changes are not such which effectively alter the application of the 90 days period. However, as BNSS is newly enacted legislation the chances of getting other interpretations from constitutional courts cannot be ruled out.

The conclusion arrived so far that prima facie reading show that the changes are not such with effectively alter the application of 90 days period also finds support in the judgement of Karnataka High Court, in the case of **Hyder Ali v. State of Karnataka, Writ Petition No. 33526 of 2024 (dated 13th December 2024)** have observed that this is merely a change in expression, not in substance. In the considered view of this Court, it is only a play of words. Both phrases imply that the offence must carry a minimum punishment of ten years to attract the 90-day period. Therefore, the legal effect remains the same under both statutes.

Having arrived at the conclusion that Proviso to Section 167(2)(a)(i) and Section 187(3)(i) are one and the same thing it becomes important to refer to the case of **RAKESH KUMAR PAUL v. STATE OF ASSAM (2017) 15 SCC 67** wherein application of 60 days and 90 days period has been clearly spelt out while deferring with case of *Bhupinder Singh & Others vs. Jarnail Singh & Another 2006 (6) SCC 277:*

- The law clearly separates offences into two categories to avoid confusion. One includes offences with a minimum sentence of 10 years or more, grouped with those punishable by death or life imprisonment, as they demand more serious investigation.
- The second category includes all other offences, even if the maximum punishment exceeds 10 years, but the minimum sentence is lower. These offences allow for a shorter investigation period, as the likely punishment is not as severe.
- Only offences with a minimum sentence of 10 years fall under the stricter 90-day investigation rule. If an offence carries death or life imprisonment, the 90-day period applies regardless of the minimum sentence.
- For offences in the third category, the law uses the phrase "not less than ten years", meaning the minimum punishment must be at least 10 years. This does not apply to offences where 10 years is the maximum but not the minimum.

- If the minimum sentence is less than 10 years, and the offence is not punishable with death or life imprisonment, then only 60 days are given for investigation. After that, the accused is entitled to default bail.
- Any law that restricts a fundamental right like personal liberty must be interpreted strictly. If two interpretations are possible, courts must favor the one that protects liberty.
- Offences with a minimum sentence of 10 years and a maximum below life imprisonment, such as NDPS Act Sections 21(c) and 22(c), fall under the 90-day rule as they meet the required minimum threshold.

Further to explain the term **"…..for a term of 10 years or more"** used in Section 187(3) of BNSS, the Karnataka High Court in its judgement in **Hyder Ali v. State of Karnataka, Writ Petition No. 33526 of 2024 (dated 13th December 2024)** referred the case of ***Dharmasingh v. State of Karnataka*** **(ILR 1992 KAR 3137)** in which the Karnataka High Court interpreted the expression "punishable for a term of imprisonment of 5 years or more" under Section 37 of the NDPS Act to mean that the offence must carry a **minimum punishment of 5 years**, not merely an upper limit extending beyond that. The Court emphasized that if the legislature intended to include offences with lesser minimum sentences, it would not have qualified the provision with the phrase "5 years or more."

This interpretation aligns with the phraseology used in sub-clause (i) of Section 187(3) of the BNSS, where the words "ten years or more" similarly indicate that the minimum threshold punishment prescribed for the offence must be **not less than ten years**, establishing a clear legislative intent to limit the applicability of certain procedural safeguards to more serious offences.

Considering above analysis the following table showcases probable categorization of different offences of BNS reading with Section 187(3) of BNSS (Section 167(2) Proviso CrPC):

Sl. no.	Offences under BNS	Punishment Period	Period of Custody
1	Section 55: Abetment of an offence, If an act which causes harm to be done in consequence of the abetment. (Section 115, IPC)	Imprisonment which may extend to 14 years and fine.	60 days
2	Section 59 (b): A public servant concealing a design to commit an offence which it is his duty to prevent,If the offence be punishable with death or imprisonment for life. (Section 119 (b), IPC)	Imprisonment which may extend to 10 years and fine.	60 days
3	Section 64(1): Rape. (Section 376 (1), IPC)	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment for life, and fine.	90 days

4	Section 64(2): Rape by a police officer or a public servant or member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and rape committed by a person in a position of trust or authority towards the person raped or by a near relative of the person raped. (Section 376 (2) IPC)	Rigorous imprisonment for not less than 10 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and fine.	90 days
5	Section 68: Sexual intercourse by a person in authority, etc. (Section 376 C, IPC)	Imprisonment for not less than 5 years, but which may extend to 10 years and fine	60 days
6	Section 69: Sexual intercourse by employing deceitful means, etc.	Imprisonment which may extend to 10 years and fine.	60 days
7	Section 80(2): Dowry death. (Section 304 B (2), IPC)	Imprisonment for not less than 7 years but which may extend to imprisonment for life	90 days
8	Section 81: A man by deceit causing a woman not lawfully married to him to believe, that she is lawfully married to him and to cohabit with him in that belief. (Section 493 IPC)	Imprisonment which may extend to 10 years and fine.	60 days
9	Section 82(2) Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted (Section 495, IPC)	Imprisonment which may extend to 10 years and fine.	60 days
10	Section 87: Kidnapping, abducting or inducing a woman to compel her marriage, etc. (Section 366, IPC)	Imprisonment which may extend to 10 years and fine	60 days
11	Section 89: Causing miscarriage without women's consent. (Section 313, IPC)	Imprisonment for life, or imprisonment extendable to 10 years and fine.	90 days
12	Section 90(1) Death caused by an act done with intent to cause miscarriage. (Section 314, IPC)	Imprisonment which may extend to 10 years and fine	60 days
13	Section 91: Act done with intent to prevent a child being born alive, or to cause it to die after its birth. (Section 315, IPC)	Imprisonment which may extend to 10 years and fine	60 days
14	Section 92: Causing death of a quick unborn child by an act amounting to culpable homicide. (Section 316, IPC)	Imprisonment which may extend to 10 years and fine	60 days
15	Section 95: Hiring, employing or engaging a child to commit an offence.	Imprisonment for not less than 3 years but which may extend to 10 years and fine.	60 days

16	Section 96: Procuration of child. (Section 366 A, IPC)	Imprisonment which may extend to 10 years and fine	60 days
17	Section 98: Selling child for purposes of prostitution, etc. (Section 372, IPC)	Imprisonment which may extend to 10 years and fine	60 days
18	Section 99: Buying child for purposes of prostitution, etc. (Section 373, IPC)	Imprisonment for not less than 7 years but which may extend to 14 years and fine.	60 days
19	Section 105: Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc. (Section 304, IPC)	Imprisonment for life, or Imprisonment for not less than 5 years but which may extend to 10 years and fine.	90 days
20	Section 106 (2): Causing death by rash and negligent driving of vehicle and escaping. **Note: Effective date yet to be notified**	Imprisonment which may extend to 10 years and fine	60 days
21	Section 107: Abetment of suicide of child or person of unsound mind, etc. (Section 305 IPC)	Death, or imprisonment for life, or imprisonment extendable to 10 years and fine.	90 days
22	Section 108: Abetment of suicide. (Section 306, IPC)	Imprisonment which may extend to 10 years and fine	60 days
23	Section 109 (1): Attempt to murder (Section 307, IPC)	Imprisonment which may extend to 10 years and fine	60 days
	If hurt is caused	Imprisonment for life	90 days
24	Section 111(2) (b): Organised crime other than resulting in death of any person.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	90 days
25	Section 111(3) Abetting, attempting, conspiring or knowingly facilitating the commission of organised crime.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	90 days
26	Section 111(4) Being a member of an organised crime syndicate.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	90 days
27	Section 111(5): Intentionally harbouring or concealing any person who committed offence of organised crime.	Imprisonment for not less than 3 years but which may extend to imprisonment for life and fine of not less than 5 lakh rupees.	90 days
28	Section 111(6) Possessing property derived, or obtained from the commission of organised crime.	Imprisonment for not less than 3 years but which may extend to imprisonment for life and fine of not less than 2 lakh rupees.	90 days

29	Section 111(7) Possessing property on behalf of a member of an organised crime syndicate	Imprisonment for not less than 3 years but which may extend to imprisonment for 10 years and fine of not less than 1 lakh rupees.	60 days
30	Section 113 (2) (b) Terrorist act other than resulting in death of any person	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	90 days
31	Section 113(3) Conspiring, attempting, abetting, etc., or knowingly facilitating the commission of a terrorist act.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	90 days
32	Section 113(4) Organising camps, training, etc., for commission of terrorist acts.	Imprisonment for not less than 5 years but which may extend to imprisonment for life and fine.	90 days
33	Section 113(6) Harbouring, concealing, etc., of any person who committed a terrorist act.	Imprisonment for not less than 3 years but which may extend to imprisonment for life and fine.	90 days
34	Section 113(7) Possessing property derived or obtained from commission of terrorist act.	Imprisonment for a term which may extend to life and fine.	90 days
35	Section 118(2) Voluntarily causing grievous hurt by dangerous weapons or means [except as provided in Section 122(2)] (Section 326, IPC)	Imprisonment for life or imprisonment of not less than 1 year but which may extend to 10 years and fine.	90 days
36	Section 119 (1) Voluntarily causing hurt to extort property, or to constrain to an illegal act (Section 327, IPC)	Imprisonment which may extend to 10 years and fine	60 days
37	Section 119 (2) Voluntarily causing grievous hurt for any purpose referred to in Sub-Section (1). (Section 329 IPC)	Imprisonment for life, or Imprisonment which may extend to 10 years and fine	90 days
38	Section 120(2) Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc. (Section 331, IPC)	Imprisonment which may extend to 10 years and fine	60 days
39	Section 121(2): Voluntarily causing grievous hurt to deter public servant from his duty. (Section 333, IPC)	Imprisonment not less than 1 year but which may extend to 10 years and fine.	60 days
40	Section 123 Causing hurt by means of poison, etc., with intent to commit an offence (Section 328, IPC)	Imprisonment which may extend to 10 years and fine	60 days
41	Section 140 (1) Kidnapping or abducting in order to murder. (Section 364, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years	90 days
42	140(4) Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc. (Section 367, IPC)	Imprisonment which may extend to 10 years and fine	60 days

43	Section 141 Importation of a girl or boy from foreign country. (Section 366 B, IPC)	Imprisonment which may extend to 10 years and fine	60 days
44	Section 143(2) Trafficking of person. (Section 370, IPC)	Rigorous imprisonment for not less than 7 years but which may extend to 10 years and fine.	60 days
45	Section 144(1) Exploitation of a trafficked child. (Section 370 A, IPC)	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and fine	60 days
46	Section 145 Habitual dealing in slaves (Section 371, IPC)	Imprisonment for life, or imprisonment for not exceeding 10 years and fine.	90 days
47	Section 148 Conspiring to commit certain offences against the State. (Section 121 A, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years	90 days
48	Section 149 Collecting arms, etc., with the intention of waging war against the Government of India. (Section 122, IPC)	Imprisonment for life, or imprisonment for not exceeding 10 years and fine.	90 days
49	Section 150 Concealing with intent to facilitate a design to wage war. (Section 123, IPC)	Imprisonment which may extend to 10 years and fine	60 days
50	Section 152 Act endangering sovereignty, unity and integrity of India.	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days
51	Section 153 Waging war against Government of any foreign State at peace with the Government of India (Section 125, IPC)	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days
52	Section 156 Public servant voluntarily allowing prisoner of state or war in his custody to escape. (Section 128, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
53	Section 158 Aiding escape of, rescuing or harbouring such prisoner.(Section 130, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
54	Section 159 Abetting mutiny, attempting to seduce a soldier, sailor or airman from his duty. (Section 131, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
55	Section 160 Abetment of mutiny, if mutiny is committed in consequence thereof. (Section 132, IPC)	Death, Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
56	Section 178 Counterfeiting coins, government stamps, currency-notes or banknotes. (Sections 230-232, 246-249, 255, 489A, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days

57	Section 179 Using as genuine, forged or counterfeit coin, Government stamp, currency-notes or bank-notes (Sections 237 to 241, 250, 251, 254, 258, 260, 489B, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
58	Section 181 Making, buying, selling or possessing machinery, instrument or material for forging or counterfeiting coins, Government stamp, currency-notes or banknotes. (Sections 233 / 234 / 235 / 256 / 257 / 489D, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
59	Section 230(1) Giving or fabricating false evidence with intent to cause any person to be convicted of capital offence (Section 194, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine which may extend to 50,000/.	90 days
60	Section 248(b) Criminal proceeding instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for ten years or upwards. (Section 211, IPC)	Imprisonment which may extend to 10 years and fine	60 days
61	Section 260(a) Intentional omission to apprehend on the part of a public servant bound by law to apprehend a person under sentence of a Court if under sentence of death. (Section 222, IPC)	Imprisonment for life, or imprisonment which may extend to 14 years, with or without fine	90 days
62	Section 263 (e) Resistance or obstruction to the lawful apprehension of any person, or rescuing him from lawful custody, If under sentence of death. (Section 225, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
63	Section 307: Theft after preparation made for causing death, hurt or restraint in order to commit theft. (Section 382, IPC)	Rigorous imprisonment which may extend to 10 years and fine.	60 days
64	Section 308 (5): Extortion by putting a person in fear of death or grievous hurt. (Section 386, IPC)	Imprisonment which may extend to 10 years and fine	60 days
65	Section 308 (6) Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order to commit extortion. (Section 388, IPC)	Imprisonment which may extend to 10 years and fine	60 days
66	Section 308 (7) Putting a person in fear of accusation of an offence punishable with death, imprisonment for life, or imprisonment for 10 years in order to commit extortion. (Section 389, IPC)	Imprisonment which may extend to 10 years and fine	60 days
67	Section 309 (4) Robbery (Section 392, IPC)	Rigorous imprisonment which may extend to 10 years and fine	60 days

68	Section 309 (4) Punishment for robbery on highway between sunset and sunrise (Section 392, IPC)	Rigorous imprisonment which may extend to 14 years and fine	60 days
69	Section 309 (6) Causing hurt while committing or attempting to commit robbery (Section 394, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine.	90 days
70	Section 310 (2) Dacoity punishment (Section 395, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine.	90 days
71	Section 310 (4) Making preparation to commit dacoity. (Section 399, IPC)	Rigorous imprisonment which may extend to 10 years and fine.	60 days
72	Section 310 (6) Punishment for belonging to gang of dacoits. (Section 400, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine.	90 days
73	Section 316 (5) Criminal breach of trust by public servant, or by banker, merchant or agent. (Section 409, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
74	Section 317 (3) Dishonestly receiving property stolen in the commission of a dacoity. (Section 412, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine.	90 days
75	Section 317 (4) Habitually dealing in stolen property. (Section 413, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
76	Section 326 (g) Mischief by fire or explosive substance with intent to destroy house, etc. (Section 436, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
77	Section 327 (1) Mischief with intent to destroy or make unsafe a rail, aircraft, decked vessel or one of twenty tons burden. (Section 437, IPC)	Imprisonment which may extend to 10 years and fine	60 days
78	Section 327 (2) The mischief described in the last Section when committed by fire or any explosive substance. (Section 438, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine	90 days
79	Section 328 Punishment for intentionally running a vessel aground or ashore with intent to commit theft, etc. (Section 439, IPC)	Imprisonment which may extend to 10 years and fine	60 days
80	Section 331 (3) Lurking house-trespass or house breaking in order to commit offence, If the offence be theft (Section 454, IPC)	Imprisonment which may extend to 10 years and fine	60 days
81	Section 331 (4) Lurking house-trespass or house-breaking by night in order to the commission of an offence If the offence be theft (Section 457, IPC)	Imprisonment which may extend to 14 years and fine	60 days

82	Section 331 (5) Lurking house-trespass or house breaking after preparation for hurt, assault or wrongful restraint. (Section 455, IPC)	Imprisonment which may extend to 10 years and fine	60 days
83	Section 331 (6) Lurking house-trespass or house breaking by night after preparation for hurt, assault, or wrongful restraint.(Section 458, IPC)	Imprisonment which may extend to 14 years and fine	60 days
84	Section 331 (7) Grievous hurt caused whilst committing lurking house-trespass or house-breaking. (Section 460, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
85	Section 331 (8) All persons jointly concerned in lurking house-trespass or house breaking by night punishable where death or grievous hurt caused by one of them. (Section 459, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
86	Section 332(a) House-trespass in order to the commission of an offence punishable with death. (Section 449, IPC)	Imprisonment for life, or rigorous imprisonment which may extend to 10 years and fine	90 days
87	Section 332 (b) House-trespass in order to commit an offence punishable with imprisonment for life. (Section 450, IPC)	Imprisonment which may extend to 10 years and fine	60 days
88	Section 338 Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, etc. When the valuable security is a promissory note of the Central Government. (Section 467, IPC)	Imprisonment for life, or imprisonment which may extend to 10 years and fine.	90 days
89	Section 339 Having possession of document described in Section 337 or Section 338, knowing it to be forged and intending to use it as genuine, if the document is one of the description mentioned in section 338 (Section 474, IPC)	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days
90	Section 341 (1) Making or counterfeiting a seal, plate, etc., with intent to commit a forgery punishable under Section 338 or possessing with intent any such seal, plate, etc., knowing the same to be counterfeit. (Section 472, IPC)	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days

91	Section 342 (1) Counterfeiting device or mark used for authenticating documents described in Section 338, or possessing counterfeit marked material.(Section 475, IPC)	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days
92	Section 343: Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc. (Section 477, IPC)	Imprisonment for life, or imprisonment which may extend to 7 years and fine.	90 days

In light of the above judgments, it can be inferred that where the prescribed minimum sentence is less than 10 years but the maximum punishment extends to life imprisonment or death, the investigating agency may seek an extension of custody up to 90 days. The Court has the discretion to grant such extension, keeping in view the gravity of the offence and the statutory framework. This interpretation ensures that serious offences are not excluded from the extended investigation period merely due to a lower minimum sentence.

B.3 Relevant Case Laws:

1. *Sanjay Dutt vs State through C.B.I. Bombay (II)* (1994) 5 SCC 410:

Whether the indefeasible right of the accused to default bail under Section 167 (2) Cr.PC (Section 187 (2) BNSS), if not already availed of, remains enforceable even after filing of charge sheet ?

The Supreme Court answered thus:

48. ----------. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 (Section 187 BNSS) but by different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC (Section 187 BNSS) ceases to apply.

2. *Uday Mohanlal Acharya vs State of Maharashtra* (2001) 5 SCC 453:

Whether the accused must be held to have availed of his indefeasible right to default bail under Section 167(2) CrPC, (Section 187(2) BNSS) the moment he files an application for bail ?

If during the pendency of such a bail application, a chargesheet is filed, does the right to default bail under Section 167(2) CrPC (Section 187(2) BNSS) survive ?

The Supreme Court answered thus:

13. .....A conspectus of the aforesaid decisions of this Court unequivocally indicates that an indefeasible right accrues to the accused on the failure of the prosecution to file the challan within the period specified under sub-section (2) of Section 167 (Section 187(2) BNSS) and right can be availed of by the accused if he is prepared to offer the bail and abide by the terms and conditions of the bail, necessarily, therefore, an order of the court has to be passed. It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] . The crucial question that arises for consideration, therefore, is what is the true meaning of the expression "if already not availed of"? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. ……But so long as the accused files an application and indicates in the application to offer bail on being released by appropriate orders of the court then the right of the accused on being released on bail cannot be frustrated on the off chance of the Magistrate not being available and the matter not being moved to the higher forum and the challan is filed in interregnum……".

3. *Rakesh Kumar Paul vs State of Assam* (2017) 15 SCC 67

In respect of offences punishable with imprisonment which may extend up to ten years, whether the accused will be entitled to grant of "default bail" after 60 days or 90 days?-

The accused was arrested for an offence, under Section 13(1) of the PC Act, the offence being "punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years" and fine. The view of the State was that since the petitioner could face imprisonment that could extend to 10 years, the date for applying for "default bail" would commence on the expiry of 90 days. However, according to the petitioner the date for obtaining "default bail" would commence on the expiry of 60 days.

The Supreme Court, in the backdrop of the facts of the case, was called upon to interpret the expression "punishment with imprisonment of not less than 10 years" as used in Section 167 (2) of the Code of Criminal Procedure. The majority view is of Justice Madan B Lokur and Justice Deepak Gupta. Their Lordships have penned separate orders but agreed that the period of detention under Section 167 (2) (Section 187(2) BNSS) for offences punishable with imprisonment up to 10 years would be 60 days only.

Justice Madan B. Lokur:

"19. To answer the primary question before us, we need to first decide the meaning of the expression "punishable with imprisonment for not less than ten years" occurring in clause (i) to proviso (a) of Section 167(2) CrPC……."

"25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also

nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing Judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in clause (i) to proviso (a) of Section 167(2) CrPC (and in other provisions) must be given their natural and obvious meaning, which is to say, not below a minimum threshold and in the case of Section 167 CrPC these words must relate to an offence punishable with a minimum of 10 years' imprisonment.

Justice Deepak Gupta:

While agreeing with the decision rendered by Justice Madan B Lokur that the detention under Section 167 (2) Cr PC would only be 60 days observed as follows:

71. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for "default bail" only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of "default bail" after 60 days in case charge-sheet is not filed.

72. Even if I were to assume that two views are possible and third category envisaged in Section 167(2)(a)(ii) is ambiguous, as suggested by learned Brother Pant, J., then also I have no doubt in my mind that a statute which curtails the liberty of a person must be read strictly. Section 167 of the Code lays down the procedure established by law by which a person can be deprived of his personal liberty guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being to be free.

4. *M Ravindran Vs Intelligence Officer-Directorate of Revenue Intelligence (2021) 2 SCC 485*

Interpreting Section 167(2) CrPC (Section 187(2) BNSS), the Supreme Court has said that the Courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21. It said,

"The history of the enactment of Section 167(2), CrPC and the safeguard of 'default bail' contained in the Proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with rule of law."

Going into the legislative intent, the Court noticed that Section 167(2) (Section 187(2) BNSS) was enacted providing for time limits on the period of remand of the accused, proportionate

to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail.

"… the intent of the legislature was to balance the need for sufficient time limits to complete the investigation with the need to protect the civil liberties of the accused."

Section 167(2) (Section 187(2) BNSS) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the Court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system. Hence,

"Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and setting down a rationalized procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21."

Further, in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

The Court, hence, concluded as follows:

- Once the accused files an application for bail under the Proviso to Section 167(2) (Section 187(2) BNSS) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPC (Section 187(2) BNSS) read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.
- The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.
- Where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

- Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2) (Section 187(2) BNSS) , the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.

5. *State v. T. Gangi Reddy,* (2023) 4 SCC 253

Whether a person released on default bail under Section 187 BNSS [167(2) CrPC] can have such bail cancelled on merits after the subsequent filing of a charge sheet disclosing the commission of a serious non-bailable offence, in light of Sections 480 BNSS [437(5) Crpc] and 483 BNSS [439(2) CrPC]?

In the case of ***State v. T. Gangi Reddy, reported in (2023) 4 SCC 253***, the Hon'ble Supreme Court dealt with the issue of cancellation of default bail granted under Section 167(2) of the CrPC. In para 21.1, the Court reiterated the well-settled position that the release of an accused on default bail is not on the merits of the case, but due to the failure of the investigating agency to file the charge sheet within the stipulated time. In para 21.2, the Court clarified that such a person shall be deemed to be released under Chapter XXXIII of the CrPC, which includes Sections 437(5) and 439(2). The Court held in para 21.3 that while mere filing of a charge sheet cannot be the sole ground to cancel default bail, such bail can indeed be cancelled upon special and strong grounds that the charge sheet discloses the commission of a non-bailable offence by the accused.

In para 22, the Court relied upon the judgment in ***Abdul Basit v. Mohd. Abdul Kadir Chaudhary, (2014) 10 SCC 754***, and reiterated that default bail is not a merit-based order but a consequence of procedural failure. Such bail can be cancelled upon curing of the defect by filing of the charge sheet if it is shown that the accused has committed a serious offence. It was clarified that the grounds for cancellation of bail include misuse of liberty, interference with investigation, tampering with evidence, or threat to witnesses, and these grounds are not exhaustive. The Court specifically noted that where bail is granted under Section 167(2), cancellation can be sought if there are reasonable grounds to believe the accused committed a non-bailable offence, although in such cases, very strong grounds are necessary.

In para 27, the Court summarised the legal position by holding that mere filing of the charge sheet cannot be a ground for cancellation of default bail. However, if upon conclusion of the investigation and filing of the charge sheet a strong case is made out indicating the commission of a non-bailable offence, the bail can be cancelled under Sections 437(5) and 439(2), in addition to other grounds available for cancellation of bail on merits.

In para 28, the Court expressly rejected the High Court's interpretation that once a person is released on default bail, his bail cannot be cancelled on merits. It warned that accepting such a proposition would mean giving a premium to lethargy or deliberate dereliction by the investigating agency. The Court further stated that allowing such an interpretation would permit serious offenders, including those under laws like NDPS or those accused of murders, to secure release merely due to procedural delays, which could be a result of collusion or manipulation. The Court observed that such a release is not based on merits and once the

defect is cured, courts must be free to evaluate the gravity of the offence disclosed in the charge sheet. To hold otherwise would frustrate the ends of justice. Therefore, the courts retain the power to cancel bail even in such cases.

In para 31, the Court conclusively answered the legal question in the affirmative, holding that if an accused is released on default bail and subsequently a strong case is made out through the charge sheet establishing commission of a non-bailable offence, then the bail can be cancelled on merits under Sections 437(5) and 439(2). However, it cautioned that mere filing of the charge sheet is not sufficient; a strong case must be made out justifying custody.

In para 32, the Court noted that the High Court had failed to consider the cancellation application on merits. Consequently, it remitted the matter to the appropriate High Court for fresh consideration in light of the principles laid down. Since the trial had been transferred to the CBI Special Court, Hyderabad, in view of the earlier order in *Suneetha Narreddy v. CBI*, (2023) 11 SCC 755 : 2022 SCC OnLine SC 1637, the proceedings relating to cancellation of bail were also transferred to the High Court of Telangana at Hyderabad for decision afresh. The appeal was accordingly allowed to this extent.

In light of the judgment in *State v. T. Gangi Reddy*, (2023) 4 SCC 253, it is clear that the grant of default bail under Section 167(2) CrPC does not confer an absolute or irrevocable right of liberty on the accused. The Hon'ble Supreme Court has authoritatively held that such bail is not granted on merits, but due to procedural lapses, and may be cancelled on the basis of subsequent developments that disclose the commission of serious non-bailable offences. Extending this legal principle, it logically follows that where an accused is released on bail for a particular offence, and the charge sheet subsequently discloses the commission of additional or distinct non-bailable offences, the accused cannot be deemed to be on bail for those new offences as a matter of course. Instead, the accused is under a legal obligation to seek bail independently for each such newly added offence. Failure to do so would amount to unauthorized liberty and would be contrary to the scheme of Chapter XXXIII of the CrPC. The requirement to obtain separate bail for each offence ensures judicial scrutiny and prevents abuse of process, thereby upholding the administration of criminal justice.

6. *Hyder Ali v. State of Karnataka,* Writ Petition No. 33526 of 2024 (dated 13th December 2024)

"SUMMARY OF FINDINGS :

(i) A slight tweak in the new regime qua 187(3) of BNSS in juxtaposition to Section 167(2) of the earlier regime – the Cr.P.C. has not changed the purpose of the provision.

(ii) The phraseology of the words 'ten years or more' found in sub-clause (i) of Section 187(3) of the BNSS would mean, the minimum threshold punishment imposable on an offence under the BNS should be ten years.

(iii) The offence in the case at hand, does not bear a minimum threshold sentence of ten years, but is extendable or to an extent of ten years, which would mean, discretion available to the concerned Court to impose punishment up to ten years. Therefore, the minimum threshold is not ten years.

(iv) Completion of investigation in a punishment which is up to ten years is undoubtedly 60 days. Rest of the other offences, be it death, life imprisonment of ten years and more, would be 90 days.

(v) If the investigation is to complete within 60 days, the period of police custody would run from day one day forty of registration of the crime. If it is 90 days, it would run from day one to day 60, maximum period in both the cases is 15 days of police custody.

(vi) In the case at hand, the offence is punishable up to ten years, Therefore, the police custody is only from day one to day forty."

7. ***Mohammed Sajjid v. State of Kerala,*** decided on 10 February 2025

The Kerala High Court considered whether the petitioner was entitled to statutory (default) bail under Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The petitioner was arrested in connection with the recovery of 2.28 grams of MDMA and charged under Section 22(b) of the NDPS Act, which carries a maximum punishment of up to 10 years. Since the prosecution failed to file the charge sheet within 60 days, the petitioner claimed entitlement to statutory bail. The State opposed the plea, arguing that the offence falls under the 90-day limit as per Section 187(3)(i) of BNSS, which applies to offences punishable with imprisonment for "ten years or more," and suggested that this phrase was distinct from the CrPC's "not less than 10 years."

The Kerala High Court rejected the State's narrow interpretation and held that the language of Section 187(3)(i) of BNSS was substantially similar to that of Section 167(2)(a)(i) CrPC, as interpreted by the Supreme Court in **Rakesh Kumar Paul v. State of Assam (2017)**. The Court ruled that when the maximum sentence is up to 10 years and no commercial quantity is involved—as in the present case—the 60-day limit applies. Emphasizing the principle that ambiguities in penal provisions must be resolved in favour of the accused to uphold personal liberty under Article 21 of the Constitution, the Court concluded that the petitioner was entitled to default bail. It also clarified that the presence of criminal antecedents cannot defeat the statutory right to such bail.

C. Suspension of Sentence pending Appeal

The person who has been convicted for the offence can also seek bail under the Section 430 (3) of BNSS which has replaced Section Section 389 (3) of CrPC. Section 430 (3), BNSS (Section 389 (3) of CrPC) states that if the accused satisfies the trial court i.e. the court which ordered his conviction that he wants to prefer appeal then in such cases; (i) if such accused person being on bail is sentenced for the term not exceeding three years or (ii) if such accused person being on bail is convicted of a bailable offence and he is on bail; then in such cases such trial court can order that the accused should be released on bail and the term of such sentence will also be suspended till the time appeal is made in the appellate court by such accused person.

Sub-Section (4) of Section 430, BNSS (Section 389 (4) of CrPC) further states that when the appellant is ultimately sentenced for any term, be it for life, the time during which he was released on bail shall be excluded from computing the term of his sentence.

A Two Judge Bench of the Supreme Court, in ***Atul Tripathi V. State of UP, Atul Tripathi V. State of UP 2014 (9) SCC 177*** discussed the scope and ambit of Section 389 of Cr.P.C (now Section 430 BNSS) and issued the following Guidelines regarding the suspension of Sentence during the pendency of Criminal Appeal:

a. The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release.

b. On such an opportunity being given, the State is required to file its objections, if any, in writing.

c. In case the public prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court.

d. The court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of the convict, impact on public confidence in court, etc. before passing an order for release.

In the case of ***Somesh Chaurasia v. State of M.P. and Another,2021 INSC 349*** the hon'ble SC gave an important judgement within the ambit of the post-conviction bail. In the said case, the SC held that in post-conviction bail the courts should adopt a more stringent process and shall provide opportunity to the public prosecutor to argue while granting post-conviction bail. The court also held that in cases of murder, such bail should only be given in exceptional circumstances and commission of additional crimes will lead to the dismissal of bail and arrest.

CHAPTER 3: BAIL TO UNDERTRIAL PRISONERS

The BNSS has also laid down the maximum period for which the undertrial prisoners can be detained. Section 479 of the BNSS (Section 436A CrPC) covers the provisions for the bail to the undertrial prisoners, subjected to a time period for which they have been detained. According to the said Section, if the person is not accused of an offence punishable with death or life imprisonment as one of its punishments, he shall be released on bail if he has been detained for (a) 1/2nd of the maximum punishment or

(b)where the undertrial is a first-time offender with no prior conviction, and has undergone detention for the period extending up to one-third of the maximum period of imprisonment for such offence or

(c) where the undertrial has undergone the maximum period of imprisonment provided for the said offence.

Also, the court shall consider the arguments of the public prosecutor before granting bail for (a) and (b) under the Section.

If there are multiple criminal cases pending against the accused, the court shall not grant bail to the accused but the court shall always consider that no person can be detained for the time period exceeding the maximum punishment given for the offences.

In ***Dipak Shubhashchandra Mehta vs. C.B.I.,*** AIR 2012 SC 949 case, the Supreme Court laid down that when the undertrial prisoners are detained in jail custody to an indefinite period then it's a violation of Article 21 of the Constitution of India but the court granting bail should exercise its discretion in a judicious manner and not as a matter of course.

In ***Bhim Singh v. Union of India,*** 2015 (13) SCC 605, the Supreme Court directed the jurisdictional magistrate chief judicial magistrate/Session Judge to conduct a setting in jail once in a week for identifying the prisoners entitled for release as per the provision of Section 436 A CrPC (Section 479 BNSS) and release such prisoners then and there itself. Such visits were directed to be conducted for two months commencing from 1 October 2014 for effective implementation of Section 436 A CrPC (Section 479 BNSS).

Application of Section 479 BNSS to the undertrial prisoners in cases pending before the enforcement of BNSS:

Section 436 A of CrPC was introduced by Act 25 of 2005 to protect the rights of under-trial prisoners who are held in jail for extended periods awaiting investigation, inquiry, or trial. Section 436 A of the CrPC limited the duration of detention for undertrial prisoners during investigation, inquiry, or trial of an offense not punishable by death to one-half of the maximum imprisonment period specified for that offense under the relevant law.

However, Section 479 of BNSS which replaces Section 436 A of CrPC contains a proviso which states that a first-time offender (who has never been convicted for any offence in the past) is required to be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such an offence under a particular law.

Since 2013, the Supreme Court has been seized of a public interest litigation concerning prison conditions [***W.P. (Civil) 406 / 2013, In Re Inhuman Conditions in 1382 Prisons]***. Over the course of a decade, it has passed a slew of orders which, it hopes, would ameliorate prison conditions. A key priority has been to try and decongest prisons, which are notoriously overpopulated.

In this vein and with this intent, on 13.08.2024, the Amicus Curiae assisting the Court had directed the judges to Section 479 of the BNSS (Section 436 A of CrPC). More specifically, the first proviso therein, which stated that first-time offenders would be entitled to release from custody if they had spent up-to one-third of the maximum possible sentence. This clause, the Amicus submitted, "needs to be implemented at the earliest and it will help in addressing over-crowding in prisons."

The Court asked the Union Government to get instructions, and it heard the case next on 23.08.2024. The Union Government Counsel stated that "instructions" had been obtained from the relevant department to the effect that Section 479 of the BNSS (Section 436 A of CrPC) "*would apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01st July 2024, the date when the newly minted legislation has come into effect.*"

This led the Court to observe that:

"*... Having regard to the fact that the* ***substituted provision under the BNSS is more beneficial vis-a-vis Section 436A of the Code of Criminal Procedure, 1973****, wherein the period undergone by the first time offender was prescribed as up to half of the maximum period of imprisonment specified for such an offence, this Court had called upon the learned Additional Solicitor General to obtain instructions from the Department and submit a clarification regarding application of the said provision to all undertrials across the country. ...*

In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS *by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.*"

CHAPTER 4: BAIL IN NON-BAILABLE OFFENCE

Bail in non-bailable offenses is covered under **Section 480 of the BNSS (Section 437 CrPC)**. The said Section covers both the positive aspect and the negative aspect. It states that every person to be released on bail and also lays down the exceptions under which a person accused of non-bailable offences cannot be released on bail by a Court other than the Session court or the High court. The exceptions are as follows:

- If there are reasonable grounds to believe that the person has committed an offence punishable with imprisonment with life or death.
- If the person is accused of cognizable offence and has also been convicted for an offence punishable with death penalty or imprisonment for life or for seven years or more, or has been convicted twice or more for offence punishable with imprisonment for three years or more but less than seven years. Here, the court has the discretionary power to grant bail to the accused if the court finds it just for special reasons.

The Section has also provided the exception for the above exceptions which is that the court has discretionary power to grant bail if the accused is a woman, child, sick or infirm. The court or the police officer may release the accused on the execution of the bail bond or bond, if there are no reasonable grounds to believe that the accused person has committed any non-bailable offence.

The Section also covers the imposition of conditions while granting bail to the person accused of *offences affecting the human body* or of *offences against the state* or of *offences against property* or of abetment of the said offences.

There are also certain special conditions under which the court may grant bail to the accused person. Firstly, if the trial is not concluded within **sixty days** from the first date fixed for taking evidence and secondly, when the court before passing a judgement believes that the accused person is not guilty of the offence, may grant bail to the accused person.

Relevant Case Laws:

In ***Shakuntala Devi v State of UP, 1986 CriLJ 365*** case, the court explained that word "may" has been used in Section 437 (Section 480 BNSS) which should not be read as mandatory rather it confers discretionary power on Court.

In the ***State of Rajasthan v. Balchand, (1977) 4 SCC 308*** case, the Supreme Court opined "the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the Petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative."

In ***Sanjay Chandra Vs CBI, 2012 (1) SCC 40*** case, the Supreme Court laid down that while considering an application for bail under Section 437 CrPC (Section 480 BNSS) and Section 439 CrPC (Section 483 BNSS), severity of punishment and gravity of alleged offence both needs to be taken into consideration. The court is required to maintain a balance between the right to liberty and securing the presence of an accused at trial. Bail is not a rule but an exception so bail must be refused only in extraordinary circumstances.

CHAPTER 5: TRANSIT REMAND & BAIL

Although not explicitly codified in many earlier laws, it has become a vital legal tool. It offers temporary protection from arrest when a person is located in one state but faces arrest in another. The individual can approach a local court and seek transit bail to travel to the jurisdiction where the case is registered and then apply for regular or anticipatory bail there. This ensures procedural fairness across state boundaries.

Despite the lack of explicit statutory recognition, Indian courts have consistently upheld the power to grant transit bail. Courts have relied on their inherent powers, as well as constitutional mandates, to protect individuals from arbitrary arrest and ensure fair access to legal remedies.

Note: Reference can be taken from **Section 83 Proviso 2 of BNSS or Section 81 CrPC**

A landmark decision in this context is the Supreme Court's ruling in ***Priya Indoria v. State of Karnataka*** **[2024 (4) SCC 749].** The Court affirmed that:

- Courts can grant transit anticipatory bail as an interim measure, especially when the FIR is registered outside the applicant's jurisdiction.
- This relief is temporary and intended solely to enable the accused to approach the appropriate court for regular or anticipatory bail.
- Transit bail orders are typically valid for a limited period and subject to strict conditions, such as furnishing a bond and cooperating with the investigation.

Conditions and Limitations:

Transit bail is not an alternative to regular or anticipatory bail. It is granted only for a limited duration and under specific circumstances, such as:

- There is a reasonable apprehension of arrest.
- The applicant faces a threat to personal liberty or other compelling circumstances.
- The applicant undertakes to approach the competent court in the jurisdiction of the FIR within the stipulated time.

The courts may impose stringent conditions to ensure that the relief is not misused.

CHAPTER 6: ANTICIPATORY BAIL

Anticipatory bail is given to the person who is apprehending arrest and can only be granted by the Session court or the High court. According to Section 482 of the BNSS (Section 438 of CrPC), if any person believes that he may be arrested for any non-bailable offence, he may apply to the High court or the Session court to direct for his release on bail on event of his arrest, subjected to the conditions as imposed by the respective court while considering the facts of the case. Under this Section the respective courts have discretionary powers while granting bail to the person apprehending arrest. In the case of ***N.S. Sahni v. Union of India, AIR 2001 SC 3810*** the hon'ble SC held that the court has the discretionary powers in the matter of anticipatory bail and it is not an essential part of right to life enshrined under Article 21 of the Indian Constitution.

If the person is accused of *rape of a woman under sixteen years or twelve years of age* or *gang rape of a woman under eighteen years of age*, neither the Session court nor the High court shall grant anticipatory bail to accused under Section 482 of the BNSS (Section 436 A of CrPC).

In the case of ***Pratibha Manchanda v. The State of Haryana, (2023) 8 SCC 181*** the Hon'ble SC held that the High Court and the Court of Session while dealing with applications for anticipatory bail, should consider the nature and gravity of the alleged offence and its impact on the society.

A. Evolution of Provisions for Anticipatory Bail in India: A Comparative Study of CrPC, 1973 and BNSS, 2023

A.1. Introduction

Anticipatory bail represents a vital legal mechanism for the protection of individual liberty, allowing a person to seek pre-arrest bail in anticipation of being arrested for a non-bailable offence. Rooted in the recognition that arrest may be misused as an instrument of oppression or harassment, this provision has been a cornerstone of India's procedural law since its introduction in the **Code of Criminal Procedure, 1973**, under **Section 438**. With the enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023**, which repeals and replaces the CrPC, anticipatory bail now finds its statutory basis under **Section 482** of the BNSS. This chapter examines the legislative evolution, structural modifications, judicial pronouncements, and implications of anticipatory bail under both frameworks.

A.2. Historical Genesis of Anticipatory Bail in India

The concept of anticipatory bail was absent in the Code of Criminal Procedure, 1898, which governed Indian criminal procedure prior to 1973. The 41st Report of the Law Commission of India (1969) acknowledged this lacuna and advocated the inclusion of a provision empowering courts to grant **pre-arrest bail** in order to prevent abuse of the arrest process. The Commission proposed the insertion of a new Section, then called Section 497A, to authorise courts to issue a direction for release on bail where a person apprehends arrest.

This recommendation culminated in the enactment of **Section 438 CrPC, 1973**, marking a watershed moment in the legal recognition of **bail in anticipation of arrest**. It vested the **Court of Session and the High Court** with concurrent jurisdiction to issue such a direction for non-bailable offences.

A.3. Statutory Framework and Judicial Interpretation under CrPC, 1973

Structure of Section 438, CrPC

Section 438 CrPC permitted a person to apply for anticipatory bail if there existed a **reasonable apprehension of arrest for a non-bailable offence**. The Section provided that:

"...the Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail."

Courts were required to consider relevant factors including the **nature and gravity of the accusation**, **antecedents of the applicant**, **possibility of fleeing from justice**, and the **probability of tampering with evidence or threatening witnesses**.

Additionally, **amendments in various states and judicial interpretations** led to the incorporation of **safeguards**, including:

- A **notice of at least seven days** to the Public Prosecutor or Superintendent of Police before granting anticipatory bail (added through amendments in some jurisdictions).
- Provisions requiring the **presence of the applicant at the hearing** of the bail application.

These procedural requirements were designed to **ensure prosecutorial participation and prevent misuse** of anticipatory bail.

B. Judicial Pronouncements

In ***Balchand Jain v. State of M.P.*, 1977 SCR (2) 52**, Justice P.N. Bhagwati described anticipatory bail as an **"extraordinary remedy"** to be granted in **exceptional circumstances**, where:

"...a person might be falsely implicated, or a frivolous case might be launched against him..."

The Supreme Court in ***Sanjay Chandra v. CBI, (2012) 1 SCC 40,*** reiterated the principle that an accused cannot be detained in custody merely on the presumption of guilt. "...bail is the rule and committal to jail is an exception." Such interpretations emphasised that **custodial detention should not be punitive**, especially before conviction.

It was in the case of ***Gurbaksh Singh Sibbia and Ors. v. State of Punjab***, (1980) 2 SCC 565, where a Constitution bench, for the first time, laid down the scope of Section 438, CrPC. The Court interpreted Section 438(1) in the light of Article 21 of the Constitution of India. The Supreme Court laid down the following principles with regard to anticipatory bail:

1) Section 438(1) cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. "*Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely*."

2) Where an application for anticipatory bail is preferred before the High Court or the Court of Session, it is incumbent upon the Court to apply its independent judicial mind to the matter and determine whether a prima facie case exists for the grant of such relief. The Court cannot abdicate this responsibility by deferring the decision to the Magistrate under Section 437 of the Code of Criminal Procedure at a later stage, as such a course of action would undermine the very purpose and intent of Section 438.

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

4) Anticipatory bail can be granted even after filing of FIR, as long as the applicant has not been arrested.

5) The provisions of Section 438 cannot be invoked after the arrest. After arrest the accused must seek his remedy under Section 437 and Section 439.

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

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

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

9) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and the question ought to be re-examined after hearing. Such an interim order must conform to requirements of the Section and suitable conditions should be imposed on the applicant.

C. Whether the grant of anticipatory bail should be time-bound:

In the case of ***Sushila Aggarwal* v. *State (NCT of Delhi),* 2018 (7) SCC 731**, two major issues arose before the Supreme Court:

A. If the protection granted to a person under Section 438 Cr. P.C. should be restricted to a specific amount of time to enable the accused to surrender before the Trial Court and seek regular bail?

B. Whether the lifespan of anticipatory bail shall expire at the time and stage when the accused is called by the Court?

The Supreme Court held that the time period for which anticipatory bail can be granted is discretionary and can vary depending on the facts and circumstances of each case. The Supreme Court also placed reliance on ***Gurbaksh Singh Sibbia* v. *State of Punjab,*** (1980) 2 SCC 565 wherein it was held that anticipatory bail was a question of personal liberty, and hence not subject to a time period.

In the present case, the Court answered the two issues based on the reasoning it provided, that an order passed under Section 438 should not ordinarily be limited to a fixed period, but if the situation demands conditions should be imposed under Sections 437(3) and 438(2). Answering the 2nd issue the Court said that the term of anticipatory bail does not expire when a summons is issued by the Trial Court but can be prolonged until the trial is completed.

The Court also laid down the following points which courts must take into account while dealing with cases under Section 438 of Cr. P.C. (Section 482 BNSS)-

- When a person complains of fear of arrest and seeks an order, the application should be based on concrete facts of the offense, focusing on why the person fears arrest as well as his account of the story, rather than ambiguous and universal allegations relating to one or more specific offenses;
- On the gravity of the threat of arrest the court should issue a notice to the Public Prosecutor and obtain facts even while granting provisional anticipatory bail;
- A person may apply for anticipatory bail before the FIR if the facts show that there is a credible reason for the arrest;
- The Court held that nothing in Section 438 of the Cr. P.C. compels the court to set restrictions barring relief in terms of time, recording of witness testimony, or filling an FIR. While granting anticipatory bail, the Court should consider the seriousness of the crime such as the type of crime, evidence gathered, the harm is done to the victim, etc. before laying down any conditions on the petitioner;
- An order granting anticipatory bail, cannot extend to a future occurrence constituting a commission of a crime and there cannot be a 'blanket' order;
- Anticipatory bail can be extended until the completion of the trial once the charge sheet is filed;
- Anticipatory bail does not restrict or impede the rights and obligations of the police and investigative authorities in any way. It also said that under Section 439(2), the police can bring a claim to the court to arrest the accused again in certain circumstances;
- The accuracy of an anticipatory bail may be reviewed by a superior court, at the request of the investigating authorities. There is a possibility of the order being set aside on failure to consider relevant facts and critical circumstances. This does not mean cancellation of the order but simply dismissing it.

D. Whether application for Anticipatory bail for children in conflict with law is maintainable or not: *Birbal Munda v. State Of Jharkhand, 2019 Scc Online Jhar 1794*

Various High Courts have expressed differing views regarding the maintainability of anticipatory bail applications for children in conflict with law under Section 438 of the Code of Criminal Procedure (CrPC). Two primary reasons are highlighted for denying such applications:

- Non Obstante Clause in Section 12: Some courts argue that the non obstante clause in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 indicates that the Act supersedes the provisions of the CrPC, thereby preventing High Courts or Sessions Courts from entertaining anticipatory bail applications for children.
- Terminology Distinction: Other courts note that the Act uses the term "apprehend" rather than "arrest," suggesting that the legal prerequisites for applying for anticipatory bail (i.e., apprehension of arrest for a non-bailable offence) are not satisfied, and thus the power under Section 438 of the CrPC cannot be exercised.

The Hon'ble High Court of Jharkhand in the case of ***Birbal Munda v. State Of Jharkhand, 2019 Scc Online Jhar 1794*** is of the view that the non obstante clause does not eliminate the provisions for bail, including anticipatory bail, in the CrPC but rather facilitates the granting of bail to children by overcoming certain barriers. Citing the Supreme Court case of ***Nikesh Tarachand Shah v. Union of India***, the Hon'ble Court argues that the absence of explicit exclusions for anticipatory bail in specific legislations indicates that such bail can still be granted under appropriate circumstances. The author asserts that children, as defined in the Indian Penal Code and the CrPC, fall under the term "person" and can thus seek anticipatory bail.

The Hon'ble court also discusses the term "apprehend" as defined in legal lexicons, emphasising that it encompasses the act of arrest. The distinction made between "arrest" and "apprehension" suggests that apprehension entails a restriction of personal liberty, thus falling under the jurisdiction of bail provisions.

Ultimately, the Hon'ble court concludes that Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act does not extinguish the jurisdiction of High Courts or Sessions Courts to grant anticipatory bail under Section 438 of the CrPC. This interpretation aligns with the principles of juvenile justice aimed at protecting the rights and liberties of children in conflict with the law.

E. Anticipatory Bail under BNSS, 2023: Key Shifts

Structural Location and Textual Shifts

The BNSS, 2023, which replaces the CrPC, codifies anticipatory bail under **Section 482**. The basic framework empowering the Court of Session or the High Court to issue a direction for release in the event of arrest—has been retained. However, certain changes signal both conceptual and procedural shifts.

Key differences include:

- **Wider Discretion**: The language "if it thinks fit" has been retained, but without further codified criteria. Unlike CrPC, BNSS does not expressly enumerate the considerations for granting anticipatory bail. This increases judicial discretion and introduces the risk of inconsistent or arbitrary decision-making.

Substantive Bar on Bail in Certain Offences

A significant change under the BNSS is the express bar on anticipatory bail in specific sexual offences. Section 482(4) BNSS (Section 438(4) CrPC) imposes a statutory prohibition against granting anticipatory bail in the following cases:

- **Rape on a woman under 16 years of age** (Section 65 (1), BNS, 2023- Section 376 (3) IPC).
- **Gang rape on a woman under 18 years of age** (Section 70(2), BNS, 2023).

This marks a departure from the CrPC, where no such explicit bar existed, and courts could exercise discretion based on facts.

CHAPTER 7: INTERIM BAIL

There is no statutory provision under the BNSS for granting interim bail. The concept of interim bail is wholly an outcome of judicial pronouncements. When the proceedings of the regular bail or anticipatory bail are not concluded, the court may grant temporary bail for the time period until the said proceedings are concluded.

General grounds for granting interim bail:

The Hon'ble Delhi High Court stated in ***Parminder Singh and Ors. v. The State of Punjab, 2002(61) DRJ336***, that interim bail should be permitted in the following cases:

- When there is no chance that the accused will escape prosecution,
- When there is no chance that the defendant may tamper with the evidence
- When there is no justifiable reason to conduct a confined interrogation, and
- When the hearing on the anticipatory bail claim must be postponed.

In ***Kamlendra Pratap Singh vs. State of U.P., 2009 (4) SCC 437,*** the Supreme Court reaffirmed that a judge considering a regular bail application has the inherent authority to grant interim bail while the ball case is being decided on in its entirety. When someone requests regular bail, the court usually lists that request after a few days so it may review the case diary, which must be received from the police authorities. In the meanwhile, the applicant must remain in custody. Even if the applicant is subsequently freed on bond, his image in society may have already been irreversibly damaged. A person's reputation is a significant asset of his and one of the aspects of his right under Article 21 of the Constitution. Consequently, the Court noted that the court involved has the inherent authority to grant interim bail to a person until the ultimate disposition of the bail application.

Recent Developments:

In the case of ***Mohammed Zubair vs State of NCT of Delhi,Writ Petition (Criminal) No 279 of 2022*** the SC of India granted interim bail to the accused and also imposed certain conditions with it. In the case of ***Arvind Kejriwal v. Directorate of Enforcement,W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024*** the hon'ble SC granted interim bail to then Chief Minister of Delhi in order to provide him the liberty to campaign the Lok Sabha elections of 2024. While examining the question of grant of interim bail or release, the Court must always take into consideration the peculiarities associated with the person in question and the surrounding circumstances. In fact, to ignore such individual-specific and contextual factors would not only be unjust but also contrary to the settled principles of bail jurisprudence. As reaffirmed in ***Arvind Kejriwal v. Directorate of Enforcement***, the grant of interim bail is not to be seen as a matter of general rule or exception but must be based on a nuanced appreciation of the facts, such as the nature of the offence, the conduct of the accused, and any overriding public interest—like the right to participate in democratic processes. Failure to account for these relevant considerations would undermine the very balance that the courts are constitutionally obligated to maintain between individual liberty and the interest of justice.

In the case of ***Hemant Soren v. Directorate of Enforcement*****, (SLP (Crl.) No. 9599/2024)** the Supreme Court upheld the interim bail granted to Hemant Soren by the Jharkhand High Court in the alleged land scam case under the Prevention of Money Laundering Act (PMLA). The Court dismissed the Enforcement Directorate's (ED) Special Leave Petition, observing that the High Court's decision was "very well reasoned." It held that while granting interim bail, the High Court had rightly considered the overall facts, including the credibility of witness statements and lack of direct material implicating the accused. The Supreme Court clarified that although the High Court had made certain observations while granting bail, these would not prejudice the ongoing trial or restrict the ED from pursuing its investigation. Importantly, the Apex court refrained from interfering with the High Court's findings, cautioning that any further comments might adversely affect the ED's position. Thus, the grant of interim bail was upheld on the basis of sound judicial reasoning and balanced appreciation of the case record and liberty considerations.

CHAPTER 8:
AUTHORITIES EMPOWERED TO GRANT BAIL UNDER THE BNSS

Under the Bharatiya Nagarik Suraksha Sanhita (BNSS), the power to grant bail is closely tied to the classification of offences as either **bailable** or **non-bailable**. This classification directly influences the discretion and authority of different entities involved in the criminal justice system.

According to **Section 2 (1) (c)** of the BNSS (Section 2(a) of CrPC), a *bailable offence* is one that is either specified as bailable in the First Schedule or made bailable by any other prevailing law. All other offences are considered *non-bailable*. The distinction is critical because it determines the rights of the accused and the extent of discretion available to the authorities granting bail.

In **bailable offences**, the accused has a legal right to be released on bail. Here, both the **officer in charge of a police station** and the **court** are empowered to grant bail, exercising only limited discretion. As per **Section 47 of the BNSS** (Section 50 of CrPC), it is also the duty of the arresting police officer to inform the person of their right to bail when arrested without a warrant for a bailable offence.

In contrast, **non-bailable offences** do not confer a right to bail. The discretion to grant bail in such cases lies predominantly with the courts, although **Section 480(2)** of the BNSS (Section 437(2) CrPC) permits both the police and the court to release an accused on bail if there are no reasonable grounds to believe that the person has committed a non-bailable offence.

In summary, the BNSS confers bail-granting powers on both the police and the courts, depending on the nature of the offence. While **bailable cases** involve limited discretion and a near-automatic right to bail, **non-bailable cases** require careful judicial consideration, with courts holding broader authority in deciding whether or not to grant bail.

CHAPTER 9:
SPECIAL POWERS OF HIGH COURT AND SESSION COURT

Under **Section 483 of the BNSS** (Section 439 of CrPC), the High Court and the Session Court have special powers in the matter of bail. Under the said Section, the mentioned courts have power,

- To impose any condition if the person is accused of *offences affecting the human body* or of *offences against the state* or of *offences against property* or of abetment of the said offences.
- To set aside or modify any condition imposed by the magistrate while granting bail.
- To notify the public prosecutor regarding the bail application and to seek presence of the informant while hearing bail application for the offence under **Section 65 BNS (Sections 376(3) and 376 AB IPC) and 70(2) of the BNS, 2023 (Section 376 DB).**
- To direct the arrest of any person released on bail.

CHAPTER 10: SECTION 481 BNSS/ SECTION 437A CRPC

The criminal justice system faced a recurring issue wherein the State machinery often failed to effectively serve appeal notices to acquitted individuals when their acquittals were challenged. To deal with such an issue, the Law Commission of India considered the insertion of Section 437-A CrPC (Section 481 BNSS) in Chapter VII of its 154th report on the recommendation of the division bench order dated 13.01.1994 of the Gujarat High Court in criminal appeal no. 51 of 1991 titled as ***State of Gujarat vs. Harish Laxman Solanki (1994) 35(1) Guj LR 581*** wherein it was observed as "While accepting the bail and bail-bonds for securing attendance before the Officer in-charge of the Police Station or Court, as provided in Form No. 45 in Schedule-11 of the Code, all the Criminal Courts shall also take the same covering the appellate as well as revisional stage.....the same should be taken for a further period of 12 months from the date of order of acquittal".

As a result, Section 437A of the Code of Criminal Procedure was inserted by Act 5 of 2009, with effect from 31st December 2009. This provision mandates that, before the conclusion of the trial or disposal of an appeal, the trial court or the appellate court, as the case may be, shall require the accused to execute bail bonds with sureties. The purpose is to ensure the accused's appearance before the higher court in case any appeal or petition is filed against the judgment. The bail bonds remain in force for a period of six months. If the accused fails to appear in compliance with such notice, the bond stands forfeited, and proceedings under Section 446 of the Code, relating to bond forfeiture, shall apply.

A plain reading of Section 437A CrPC (Section 481 BNSS) shows that courts are required to ask the accused to furnish bonds before the case concludes. However, it is important to go beyond the literal wording and consider the intent of the Legislature. This Section was introduced based on the recommendation of the Law Commission, which pointed out a recurring problem: when an appeal is filed against an acquittal, it often becomes difficult to serve notice to the acquitted person. Even non-bailable warrants sometimes fail to secure their presence.

Looking at the broader legal context, every trial concludes either with a conviction or an acquittal. If the accused is convicted, then Section 389(3) of the CrPC (Section 430 BNSS)comes into play, which allows the trial court to grant bail under certain conditions. If this provision does not apply, the convicted person must be taken into custody. In such situations, there is no need to take a bond under Section 437A (Section 481 BNSS). It's also important to note that Section 437A (Section 481 BNSS) does not deal with bail in the conventional sense. It only requires the accused to execute a bond with sureties to ensure future appearance before a higher court, if necessary. It neither grants bail nor takes it away. Similarly, in appeals against conviction or acquittal, if the appellate court upholds the conviction or overturns the acquittal, the accused will go to jail unless Section 389(3) (Section 430 BNSS)applies. Again, Section 437A (Section 481 BNSS) has no role in such cases.

It can be inferred that, Section 437A CrPC (Section 481 BNSS) is relevant only in cases where the accused is acquitted. It is at that point the court must ask the accused to execute bonds to ensure their appearance in higher courts if an appeal is filed. This provision does not apply when the accused is convicted, whether by a trial court or an appellate court.

Section 437A of the CrPC (Section 481 BNSS) has now been renumbered as Section 481 under the BNSS, with a few modifications. Notably, the phrase **"bail bond with sureties"** has been replaced with **"bail and bail bond"**, reflecting a shift in the language while retaining the underlying requirement.

NOTE: Generally, at the time of acquittal, the accused is discharged from the bail bond; however, as per Section 481 of the BNSS, the accused is now required to furnish a fresh bail bond as an assurance to appear before the appellate court, if and when appeal is filed against his acquittal.

CHAPTER 11: CASE LAWS RELATED TO BAIL JURISPRUDENCE

Nawaz Ahmad Sheikh v. Union Territory of J&K and Others MANU/JK/1042/2024

Whether bail can be denied as a form of punishment in a case involving charges under Section 363 IPC (Section 137 (2) BNS) and Section 376 IPC (Section 64 BNS), along with Section 4 of the POCSO Act, where the accused has already undergone incarceration exceeding two years?

This issue was examined in the case of ***Nawaz Ahmad Sheikh v. Union Territory of J&K and Others*** **[(29.07.2024 - JKHC): MANU/JK/1042/2024]**, where the accused had been charged with serious offences under the IPC and POCSO Act. He approached the Jammu and Kashmir High Court seeking bail, primarily on the ground that he had already undergone pre-trial detention for approximately two years and six months, while asserting that he had been falsely implicated.

The J & K High Court took note of the nature of the offences and acknowledged that they were of a grave and anti-social character. However, it emphasized that, at the present stage, the accused's involvement remained in the realm of an allegation, albeit a serious one, and was contested on both factual and legal grounds by the defence.

Relying upon the principles laid down in ***Satender Kumar Antil v. Central Bureau of Investigation and Another*****, (2022) 10 SCC 51**, the Court reiterated the settled position of law that bail cannot be withheld as a punitive measure. It underscored that denial of bail must remain an exception, justified only by the presence of extraordinary circumstances.

In the present case, the Court observed that no such exceptional elements had been demonstrated that could warrant continued denial of bail, especially when the accused had already endured substantial incarceration, the trial had commenced, and evidence had been concluded, eliminating any apprehension of interference with the investigation.

Furthermore, the applicant's medical condition was also taken into account for the limited purpose of considering bail. In light of the cumulative circumstances, including the prolonged pre-trial detention and the absence of any compelling reason to deny liberty, the Court held that grant of bail would be just, fair, and reasonable.

Accordingly, the applicant was granted bail, subject to appropriate conditions imposed by the Court.

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

Facts of the Case

In the matter of ***Arnesh Kumar v. State of Bihar***, the petitioner, Arnesh Kumar, approached the Hon'ble Supreme Court by way of a Special Leave Petition seeking anticipatory bail. He married Sweta Kiran on 1st July 2007. Several years into the marriage, the wife alleged that her husband's parents—particularly her mother-in-law and father-in-law—subjected her to demands for dowry. These demands reportedly included a Maruti car, a television, an air conditioner, ₹8,00,000 in cash, and other household articles.

She further claimed that upon resisting these demands and informing her husband, he sided with his parents and threatened to remarry if her family failed to meet the dowry demands. As per her allegations, the continued harassment compelled her to leave the matrimonial home.

Arnesh Kumar refuted all the allegations made against him. To safeguard himself against a possible arrest arising from the criminal complaint, he moved an application for anticipatory bail. However, both the Sessions Court and the High Court dismissed his plea, prompting the present petition before the Supreme Court.

Issues for Consideration

The Supreme Court was called upon to decide the following issues:

1. Whether the petitioner was entitled to anticipatory bail?
2. Whether the orders of the Sessions Court and High Court rejecting bail were legally sustainable?
3. Whether the police use arbitrary powers during arrest which undermines the fundamental principle of law and justice?

Observations of the Court

The case was decided by a two-Judge Bench comprising Justices Chandramauli Kr. Prasad and Pinaki Chandra Ghose. In its judgment delivered on 2nd July 2014, the Supreme Court expressed serious concern over the growing misuse of Section 498A of the Indian Penal Code. The Court noted that the provision, being both cognizable and non-bailable, had become a potent instrument for disgruntled spouses to initiate criminal proceedings against the husband and his relatives—often without adequate evidence.

The Bench emphasized that mechanical arrests based merely on allegations, without conducting a preliminary inquiry, are violative of personal liberty under Article 21 of the Constitution. The Court categorically stated that arrest should not be automatic or routine, especially in offences punishable with imprisonment for a term which may be less than seven years or extend to seven years.

The Court observed that police must act in accordance with the mandate of Section 41 of the Code of Criminal Procedure, which lays down specific criteria for making an arrest. Moreover, Magistrates were directed to exercise judicial discretion in authorising detention and ensure that such orders are supported by cogent reasons.

Guidelines Issued by the Supreme Court

In order to curb arbitrary arrests, the Court laid down the following guidelines:

1. Arrests under Section 498A IPC should not be made in a routine manner. Police must first conduct a preliminary investigation to verify the veracity of the complaint.
2. If arrest is deemed necessary, the officer must record reasons justifying such action and forward this material to the Magistrate.

3. The arresting officer must follow a detailed checklist as per Section 41(1)(b)(ii) CrPC to determine the necessity of arrest.

4. Where no arrest is made, the investigating officer must document the reasons for the same and submit the report to the concerned Magistrate within two weeks.

5. The Magistrate must be satisfied that the arrest was necessary before authorising further detention.

6. In case of violation of these directions, disciplinary proceedings may be initiated against the erring police officers by the jurisdictional High Court and shall be liable to be punished for contempt of court.

7. Further, in case the Judicial Magistrate fails to authorise detention with the reasons as discussed, he shall be liable for departmental action by the High Court.

8. These guidelines are applicable not only to cases under Section 498A IPC or Section 4 of Dowry Prohibition Act (the charges in this case) but also to all offences punishable with imprisonment for a term which may be less than seven years or extend to seven years.

The decision in ***Arnesh Kumar v. State of Bihar*** stands as a significant judicial pronouncement aimed at safeguarding individual liberty and preventing the misuse of criminal law provisions, particularly in matrimonial disputes. The judgment recognized the legitimate concerns over dowry harassment while simultaneously addressing the potential for abuse of the legal process under Section 498A IPC and Section 4 of the Dowry Prohibition Act. By issuing structured guidelines for arrest and investigation, the Court sought to uphold the principles of fairness, reasonableness, and due process.

***Siddharth v. State of U.P.,* (2022) 1 SCC 676**

Facts of the Case

In the present matter, the appellant was named as an accused in a First Information Report (FIR) registered approximately seven years prior. During the course of the investigation, he was granted interim protection from arrest. The appellant duly cooperated with the investigating authorities, and the investigation culminated in the preparation of the charge-sheet.

The controversy arose in relation to the interpretation of **Section 170 of the Code of Criminal Procedure, 1973 (CrPC)**, which stipulates that where the investigating officer, upon completion of investigation, is of the opinion that sufficient grounds exist to proceed against the accused, the accused shall be forwarded to the Magistrate empowered to take cognizance of the offence.

In the instant case, the trial court construed Section 170 to imply that the charge-sheet could not be taken on record unless the accused was taken into custody. As a consequence, the appellant was compelled to apply for anticipatory bail, which was denied, leading to the issuance of an arrest warrant. Aggrieved by this, the appellant approached the Hon'ble Supreme Court.

Issues Raised Before the Court

1. Whether the appellant should be granted an anticipatory bail or not?

2. Merely because an arrest can be made lawfully does it mandate that it must be made?

Observations of the Supreme Court:

Upon considering judicial precedents from various High Courts, the Supreme Court clarified the objective of Section 170 CrPC, emphasizing that its purpose is merely to secure the presence of the accused before the court at the time of filing of the charge-sheet, and not to mandate arrest or custody.

The Court referred to the decision of the **Delhi High Court in *Court on its Own Motion v. CBI***, where a similar contention regarding the necessity of custody under Section 170 was rejected. The High Court had held that there exists a misconception among trial courts that arrest is mandatory in all non-bailable and cognizable offences. However, the correct position in law is that arrest must be avoided where the accused is cooperating with the investigation and not evading the process, as personal liberty remains a constitutionally protected right under **Article 21**.

The judgment also cited the **Gujarat High Court's** ruling in ***Deendayal Kishanchand & Ors. v. State of Gujarat***, which held that refusing to accept a charge-sheet solely due to the absence of the accused is legally untenable. The High Court also stressed the importance of timely acceptance of charge-sheets, particularly in light of **Section 468 CrPC**, which bars cognizance of certain offences after the lapse of the limitation period.

The Supreme Court held that the term "custody" under Section 170 is not to be interpreted narrowly as police or judicial custody, but should be understood to mean the production or appearance of the accused before the court at the time of filing the final report.

Legal Principles Affirmed:

1. Issuance of Non-Bailable Warrants:

The Court reiterated that non-bailable warrants are to be issued only when there is a reasonable apprehension that service of summons or bailable warrants would not suffice. This is essential to preserve the individual's liberty under **Article 21 of the Constitution of India.**

2. Accused's Cooperation with Investigation:

Where the accused has cooperated with the investigation, there is no justification for compelling arrest or issuance of non-bailable warrants. This principle was reaffirmed in ***Satender Kumar Antil v. CBI*** and other similar rulings.

3. Arrest Not Mandatory for Filing Charge-Sheet:

The Court clarified that, under Section 170 CrPC, if the investigating agency does not seek custodial interrogation, the accused need not be arrested solely for the purpose of filing the charge-sheet.

4. Charge-Sheet Must Be Accepted Regardless of Arrest Status:

The Supreme Court categorically held that a Magistrate cannot refuse to accept a charge-sheet on the ground that the accused has not been taken into custody.

5. Bail Should Be Favoured When Custody is Unnecessary:

The Court endorsed the view that bail ought to be granted when the accused is not required to be taken into custody and has fully cooperated with the investigating agency.

This ruling in ***Siddharth v. State of Uttar Pradesh*** underscores the constitutional emphasis on personal liberty, reinforces the principle that arrest is not a procedural formality, and affirms that custody is not a precondition for filing a charge-sheet. It acts as a crucial reminder for law enforcement and trial courts to respect procedural safeguards and interpret statutory provisions in a rights-centric manner.

Tarsem Lal V. Directorate of Enforcement, (2024) 7 SCC 61

a) Requirement of filing a Bail Application under Section 45 following Issuance of Summons Warrant

The Supreme Court has very categorically held that when handling an application for cancellation of a warrant, as aforementioned, the Special Court is not handling a bail application. Therefore, Section 45(1) of the PMLA would not apply in this case. The SC referred to the pivotal precedent of the ***Satender Kumar Antil v. CBI*** **(2022) 10 SCC 51,** wherein a two-judge bench of the Supreme Court emphatically underlined the principle of presumption of innocence being inherent, and held in addition to many other principles that warrants are exceptions and the Courts must uphold liberty. The Court clarified that there is no need for a bail application to be considered under Section 88 (take a bond for appearance), 170(produced by a police officer before a magistrate), 204 (issue of process) and 209(when it appears to the Magistrate that the offence is to be tried by the Court of Sessions exclusively) of CrPC. The Special Law applies only when the accused has already been arrested. But if the accused is either not arrested or arrested and later released on bail, the Court need not order further arrest. A provision in the Special Law analogous provision to Section 167(2) CrPC grants the accused the right to default bail, subject to the satisfaction of Section 440 of the CrPC.

The court has opined that the object of both a summons and a warrant is to ensure the presence of the accused in the court at the stipulated time. As a rule, the court should first issue a summons, then a bailable warrant, and then a non-bailable warrant. If a warrant is issued by the court, it is to ensure that the accused appears before the court in furtherance of investigation. Once the accused appears before the court, and the court is satisfied that the accused will cooperate in the said investigation, the court has the power to cancel the warrants so issued. So, it is not necessary for the accused to file a bail application in such a case. It is also pertinent to note that if the accused has not been arrested prior to the filing of the complaint under Section 19 of the PMLA, he cannot be arrested by the ED at the stage of cognizance, until it specially approaches the Special Court for custody and a fair hearing is given to both of the parties by the Special Court before deciding accordingly.

The Supreme Court noticed that the practice nowadays by the Lower Court is to arrest the accused as soon as they respond to the court. A warrant is issued against the accused irrespective of whether they answer the summons. This leads accused individuals to preemptively seek anticipatory bail out of fear of arrest. As a result, the purpose of such warrants shifts from ensuring the accused's appearance in court to securing their custody. This has made anticipatory

bail applications a common practice, even when not needed, including in cases under Section 45.

b) Distinguishing between Bond Application under Section 88 and Bail Applications

To understand whether or not a bond application under Section 88 of CrPC can be construed as a bail application, the SC considered the claim of the ASG as to whether the accused can be deemed to be in custody as soon as they appear before the court in response to the summons. The court relied on the case of Inder Mohan Goswami & Anr. v State of Uttaranchal & Ors (2007) 12 SCC, in which it was held that generally, unless the accused is charged with a heinous crime and there is a risk of tampering with or destruction of evidence, or efforts to evade the legal process, summons are issued as a rule. Since in the present case, there was no reason to believe in the above apprehensions on the ground that the accused was being thoroughly cooperative in the investigation, there was no need to issue a warrant. It was further held, that if the accused avoided the summons, a bailable warrant should be issued first; and then if the Court is satisfied that the accused is intentionally avoiding the court's proceedings, a nonbailable warrant may be issued. This whole process should be followed, without skipping any steps, because "personal liberty is paramount".The SC in this case observed that this process will even apply in cases governed by Section 44(1) of the PMLA. In the present case, the accused avoided the first summons, upon which a non-bailable warrant was issued against them. The middle step of issuance of a bailable warrant, was skipped.

Upon reading the Form no. 1 In the Second Schedule as prescribed under Section 61 of CrPC, the court concluded that summons are only issued to secure the presence of the accused before the court and not his custody. Its compliance can be fulfilled with or without the person being in custody. The court even stated that there are several provisions, like Section 205 of CrPC where it is clear that the person on whom summons is issued is not in deemed custody. Hence, the claim that on cognizance of offence in the court, the person would be deemed to be in custody does not arise. Therefore, since the question of the accused being in custody does not arise, the question of the accused being granted bail does not arise either. There was no need for the accused to apply for an anticipatory bail in this case. Furnishing bonds under Section 88 to appear in court regularly would have been enough distinguishing it from an application of bail, which are relevant when custody or arrest is involved. Thus, there is a clear distinction between bond applications under Section 88 and bail applications.

***Policy Strategy for Grant of Bail, In re*, (2024) 10 SCC 685**

Coram:

The judgment was delivered by the Supreme Court in *SMWP (Criminal) No. 4 of 2021*, with inputs from Mr. Gaurav Agrawal, learned *Amicus Curiae*. The Bench included Justice Sanjay Kishan Kaul and Justice Abhay S. Oka.

Facts:

The case arose from concerns over undertrial prisoners remaining in custody despite being granted bail, mainly due to their inability to furnish bail bonds or comply with conditions. The Court had

earlier passed an order in ***Sonadhar v. State of Chhattisgarh*, 2022 SCC OnLine SC 2156**, drawing attention to this systemic problem. A report filed by NALSA on 30 January 2023 revealed that 5,000 undertrials were still in jail despite the grant of bail. Out of these, 2,357 were provided legal aid and 1,417 were subsequently released. One of the key issues identified was that many prisoners were involved in multiple cases, and chose not to furnish bail in one case until bail was granted in all, in order to maximize undertrial custody benefit under Section 428 CrPC. Additionally, poverty and inability to secure sureties were major reasons for continued incarceration.

Analysis:

The Court acknowledged several institutional and technological gaps hampering timely execution of bail orders. NALSA had begun the creation of a master data sheet in Excel, detailing prisoners unable to secure release. Coordination with State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs) was ongoing to resolve such cases. Further, NIC had developed a Standard Operating Procedure (SOP) to be implemented through its e-prison software used in 1300 jails. A new feature was added where the date of grant of bail must be entered, and if a prisoner is not released within 7 days, a flag and automatic email alert would be sent to the DLSA. This would enable paralegal volunteers or jail-visiting advocates to assist the prisoners. The Court also noted the possibility of allowing secure access to the portal by SLSA and DLSA Secretaries to facilitate better monitoring. Discussions with TISS (Tata Institute of Social Sciences) for further suggestions were underway, though more detailed work was required.

Held:

"9. With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

"(1) The court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by email to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software (or any other software which is being used by the Prison Department).

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

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

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

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

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

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

Devinder Kumar Bansal v. State of Punjab, (2025) 4 SCC 493

In cases involving allegations of corruption, the grant of anticipatory bail is governed by strict parameters and is considered an exceptional remedy. In ***Devinder Kumar Bansal v. State of Punjab*, (2025) 4 SCC 493 : 2025 SCC OnLine SC 488**, the Supreme Court emphasized that anticipatory bail in corruption cases can only be granted in exceptional circumstances. The Court noted at page 501 (para 21) that such exceptional circumstances may include instances where the applicant has been falsely implicated, or the accusations are politically motivated or frivolous. However, in the case at hand, no such exceptional circumstance was found to exist, and the Court concluded that the prosecution was not frivolous, and therefore, anticipatory bail was rightly denied.

The Court in *Devinder Kumar Bansal* rejected the argument that anticipatory bail is an integral part of Article 21 of the Constitution of India. Citing ***State of M.P. v. Ram Kishna Balothia*, (1995) 3 SCC 221 : 1995 SCC (Cri) 439 : AIR 1995 SC 1198** at page 500 (para 18), it was held that anticipatory bail is essentially a statutory right conferred much after the Constitution came into force and not a fundamental right guaranteed under Article 21. Accordingly, its denial in certain categories of offences, including corruption, cannot be construed as violative of the constitutional guarantee of life and personal liberty.

Further reference was made to the 41st Report of the Law Commission of India, dated 24-9-1969, which recommended that anticipatory bail should be granted only in very exceptional cases (para 19, page 500). Even though the counsel for the petitioner placed strong reliance on ***Siddharam Satlingappa Mhetre v. State of Maharashtra*, (2011) 1 SCC 694 : (2011) 1 SCC (Cri) 514 : AIR 2011 SC 312** to argue that anticipatory bail should not be denied unless custodial interrogation is warranted, the Court found no merit in such contention (para 20, page 501). The Court was of the view that the broader interest of public justice must be balanced with the rights of the accused, and an overemphasis on the accused's liberty may hinder the objective of maintaining a corruption-free society (paras 23–24, page 501).

In support of this reasoning, the Court referred to ***CBI v. V. Vijay Sai Reddy*, (2013) 7 SCC 452 : (2013) 3 SCC (Cri) 563,** where it was emphasized that while granting bail, the court must consider the nature and seriousness of the accusation, the evidence in support, the likelihood of the accused fleeing, the potential for tampering with witnesses, and the larger public interest (para 22, page 501). The Court clarified that while the standard is not "proof beyond reasonable doubt," the existence of "reasonable grounds for believing" that the accusation is true is sufficient to deny bail at this stage.

The presumption of innocence, though a key principle of criminal jurisprudence, is not by itself a sufficient ground for grant of anticipatory bail in corruption cases. It is one of several factors to be balanced against the interests of public justice. If liberty is to be denied to an accused to further the goal of a corruption-free administration, the courts should not hesitate to do so. Once investigation is complete and charge-sheet filed, the Court may thereafter consider granting regular bail to the accused public servant (paras 23–24, page 501).

In the concluding part of the judgment, the Supreme Court upheld the High Court's decision to deny anticipatory bail, stating at page 505 (paras 32–33) that in the overall view of the matter, there was no error in the denial of such relief and the petition was accordingly dismissed.

CHRONOLOGICAL DEVELOPMENT IN SATENDER ANTIL v. CBI

S.NO.	CASE TITLE	DATE OF ORDER	KEY DIRECTIONS
1.	Satender Kumar Antil vs. C.B.I.& Anr. (2021) 10 SCC 773	07/10/2021	Classification of Offences
2.	Satender Kumar Antil vs. C.B.I.& Anr. 2021 SCC Online SC 3302	16/12/2021	Correction regarding offence under Section 45 of PMLA
3.	Satender Kumar Antil vs. C.B.I.& Anr. (2022) 10 SCC 51	11/7/2022	Detailed Directions regarding Bail (including arrest, remand, issue of process, default bail, bail in appeal, bonds and sureties)
4.	Satender Kumar Antil vs. C.B.I.& Anr MA 2035/2022 (Crl) No5191/2021 (II) (IA No166259/2022 – Clarification/ Direction)	03/02/2023	Judgment of Satender Kumar Antil vs. C.B.I.& Anr. (2022) 10 SCC 51 & Siddharth case should be incorporated as part of the curriculum of SJAs/NJA
5.	Satender Kumar Antil vs. C.B.I.& Anr 2023LL(SC)233	21/03/2023	· Directions for Public Prosecutor · The principles of bail would apply on Anticipatory Bail
6.	Satender Kumar Antil vs. C.B.I.& Anr (2024) 9 SCC 198	13/02/2024	Guidelines and Standard Operating Procedure for Implementation of the Scheme for Support to poor person.
7.	Satender Kumar Antil vs. C.B.I.& Anr 2025 SCC OnLine SC 1322	21/01/2025	Police Shouldn't Serve S.41A CrPC/S.35 BNSS Notice Through WhatsApp or Electronic Means

Satender Kumar Antil vs. C.B.I.& Anr. (2021) 10 SCC 773

The Hon'ble Supreme Court categorized the offences and laid down the necessary conditions to be followed accordingly.

CATEGORIES/TYPES OF OFFENCES

CATEGORY	OFFENCE COVERED UNDER CATEGORY	PROCEDURE TO BE FOLLOWED BY THE CONCERNED COURTS
A	Offences punishable with imprisonment of 7 years or less not falling in category B & D. Note: Category A deals with both police cases and complaint cases.	After filing of chargesheet/complaint taking of cognizance- a) Ordinarily 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 appear despite issuance of Bailable Warrant. d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting upon 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.
B	Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.	On appearance of the accused in Court pursuant to process issued bail application to be decided on merits.
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.	Same as Category B & D with the additional condition of compliance of the provisions of Bail under NDPS S. 37, 45 PMLA, 212(6) Companies Act 43d (5) of UAPA, POSCO etc.
D	Economic offences not covered by Special Acts.	On appearance of the accused in Court pursuant to process issued, bail application to be decided on merits.

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REQUISITE CONDITIONS

1) Not arrested during investigation.

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

Trial Courts and High Courts should follow the guidelines laid down for granting bail.

However, there are exceptions where these guidelines may not apply. These include cases where:

- The accused did not cooperate with the investigation.
- The accused did not appear before the Investigating Officer.
- The accused ignored summons from the Court.
- The Court believes judicial custody is necessary for completing the trial.
- Further investigation or recovery is still pending.

In such situations, the accused cannot claim benefit under the general bail guidelines.

Additional Point:

- Even when issuing a notice to consider bail, the Trial Court can grant interim bail.
    - This depends on the conduct of the accused during the investigation.
    - If the accused cooperated and was not arrested earlier, interim bail can be considered.
    - Final decision on bail must still follow the statutory provisions.

For Category D the Apex Court in Sanjay Chandra v CBI, (2012) 1 SCC 40 has held in Para 39 that in determining whether to grant bail both aspects have to be taken into account:

(a) Seriousness of the charge, and

(b) Severity of punishment.

Satender Kumar Antil vs. C.B.I.& Anr. 2021 SCC Online SC 3302

Guidelines/Clarifications Issued by the Hon'ble Court:

1. We make it clear that our intent was to ease the process of bail and not to restrict it. The order, in no way, imposes any additional fetters but is in furtherance of the line of judicial thinking to enlarge the scope of bail.

2. We acknowledge that, while referring to Category 'C', there was an inadvertent mention of Section 45 of the Prevention of Money Laundering Act (PMLA), which has already been declared unconstitutional by this Court.

3. A word of caution is necessary: the mere classification of certain offences as economic offences — even if they are non-cognizable — should not lead to a misinterpretation or misapplication of the principles laid down in this order.

4. We also clarify that if the investigating agency did not find it necessary to arrest the accused during the investigation, then the mere filing of a charge sheet should not automatically justify the arrest of the accused. This principle has already been laid down in ***Criminal Appeal No. 838 of 2021, Siddharth v. State of Uttar Pradesh & Anr.***, dated 16.08.2021.

Satender Kumar Antil vs. C.B.I.& Anr. (2022) 10 SCC 51

The Hon'ble Supreme Court laid down detailed directions and guidelines pertaining to the grant of bail. It also clarified the misinterpretation surrounding Section 170 of the Code of Criminal Procedure, 1973.

Prevailing Situation

A significant majority of prison inmates in India—over two-thirds—are undertrial prisoners. Many among them, including women, the poor, and the illiterate, are charged with offences punishable by up to seven years and may not require arrest. This reflects a colonial-era mindset within investigating agencies, treating arrest as routine despite its severe impact on personal liberty. In a democracy, such practices raise serious concerns, as they are inconsistent with the principles of a free society.

Definition of Trial

The Code of Criminal Procedure does not define the term 'trial'. For bail purposes, it must be interpreted broadly to include both investigation and post-investigation stages. During investigation, custody may be necessary; however, once it is complete, the focus shifts to court proceedings, warranting a more lenient approach towards granting bail.

Definition of bail

The term "bail" has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the Accused. It means the release of an Accused person either by the orders of the Court or by the police or by the Investigating Agency.

BAIL IS RULE, JAIL IS EXCEPTION

The principle that bail should be the norm and imprisonment the exception has been consistently upheld by this Court in numerous decisions. This position is firmly rooted in the constitutional guarantee of personal liberty under Article 21 of the Constitution of India.

Presumption of Innocence

The law presumes an accused to be innocent until proven guilty, placing the burden on the prosecution to justify arrest and oppose bail. This fundamental principle is globally recognised—enshrined in Article 14(2) of the ICCPR and Article 11 of the UDHR. Jurisdictions like Australia, Canada, the U.S., and the U.K. uphold this presumption, granting bail based on offence severity, with varying conditions such as cash deposits or restrictions.

PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

The Code of Criminal Procedure, despite being a procedural law, is enacted on the inviolable right enshrined Under Article 21 and 22 of the Constitution of India. The provisions governing clearly exhibited the aforesaid intendment of the Parliament.

1. ARREST & REMAND

Section 41, 41A and 60A of the Code

***Arnesh Kumar vs. State of Bihar* (2014) 8 SCC 273**

The Hon'ble Supreme Court in the ***Satender Kumar Antil* case** has laid down binding directions to ensure strict adherence to the principles of arrest and detention, particularly in light of the earlier judgment in ***Arnesh Kumar v. State of Bihar***. These directions are to be followed in letter and spirit by both the police authorities and the Magistracy:

- The Magistrate must not mechanically authorize detention. Before granting detention under Section 167 of the CrPC, the Magistrate must be satisfied that the arrest is lawful, conforms to the procedural safeguards under Section 41 CrPC, and upholds the constitutional rights of the arrestee.
- Mere reproduction of the statutory language or generic grounds under Section 41 CrPC in the case diary or arrest memo shall not be accepted. Such practice is discouraged and must be discontinued.
- If the arrest does not meet the requirements of Section 41 CrPC, the Magistrate is under a duty not to authorize further detention and must order the release of the accused forthwith.
- At the time of producing the accused before the Magistrate, the arresting officer is required to provide the specific facts, grounds, and justification for the arrest. The Magistrate must independently assess whether the prerequisites under Section 41 CrPC are fulfilled before authorizing detention.
- The Magistrate must record his satisfaction, even if briefly, in the detention order. This recorded satisfaction must clearly indicate that he has applied his judicial mind and is convinced that the arrest was justified in accordance with law.
- In cases where arrest is not warranted, the Investigating Officer must issue a notice of appearance under Section 41-A CrPC. Such notice should be served within two weeks from the date of institution of the case. This period may be extended only by the Superintendent of Police, with written reasons.
- Non-compliance with the above directions by the police authorities shall attract disciplinary proceedings and may also lead to contempt of court proceedings before the jurisdictional High Court.
- Magistrates who authorize detention without recording judicial satisfaction as mandated shall be subject to disciplinary action by the respective High Courts.

The Investigating Officer is duty-bound to comply with Sections 41 and 41-A CrPC. As per Supreme Court guidelines, in offences punishable with imprisonment up to seven years, arrest

should be an exception—not the rule. The police must issue notice under Section 41-A CrPC and ensure arrest is justified. A careful balance must be maintained between individual liberty and public order while exercising powers under Sections 41, 41-A, and 57 CrPC.

2. ISSUE OF PROCESS Section 87 and 88 of the Code

Section 87 – Issue of Warrant in lieu of, or in addition to, Summons

- Empowers the court to issue a warrant instead of or in addition to summons.
- The court must record reasons in writing before issuing the warrant.
- A warrant (bailable or non-bailable) can be issued if:
  - The person is likely to abscond or disobey summons.
  - The person fails to appear after due service of summons without reasonable excuse.

Judicial Guidelines – ***Inder Mohan Goswami v. State of Uttaranchal*** **(2007) 12 SCC 1**

- Personal liberty is paramount and protected under Article 21 of the Constitution.
- NBWs (Non-Bailable Warrants) should be issued only in exceptional circumstances:
  - When the person is avoiding appearance.
  - When summons/bailable warrant failed.
  - When immediate custody is necessary (e.g., potential harm or absconding).
- Stepwise approach recommended:
  - Issue summons.
  - If ignored, issue a bailable warrant.
  - Only then, issue a non-bailable warrant as a last resort.
- Issuance of warrants must not be mechanical; reasons must be recorded.
  - The court must balance personal liberty and societal interest.

Section 88 – Power to Take Bond for Appearance

- When a person (accused or otherwise) is present in court, the court may require a bond for appearance.

The bond may be with or without sureties.

- This provision is discretionary, not mandatory.
- It facilitates appearance, but does not confer a right to be released on bond.

Judicial View – ***Pankaj Jain v. Union of India*** **(2018) 5 SCC 743**

- Section 88 gives discretionary power to the court.
- The use of "may" in Section 88 signifies that the court is not bound to accept a bond.
- No vested right is conferred on the person present in court under Section 88.

- The discretion is to be used to ensure presence, not as a matter of entitlement.

3. Section 170- Cases to be sent to Magistrate when evidence is sufficient.

***Siddharth v. State of U.P.*, (2021) SCC Online SC 615** — Clarification on Filing of Chargesheet Without Arrest

In the landmark judgment of ***Siddharth v. State of U.P.***, the Hon'ble Supreme Court addressed the procedural aspect under Section 170 of the Code of Criminal Procedure (CrPC), especially in cases where the accused has not been arrested during investigation and has cooperated throughout. The key observations made by the Court are as follows:

1. It is not mandatory for the Investigating Officer to produce the accused before the Magistrate at the time of filing of the chargesheet, if the accused has not been arrested during the investigation.
2. When the accused has cooperated with the investigation and has not been taken into custody, there is no necessity to move a bail application at the stage of filing the chargesheet.
3. In such circumstances, the accused is merely presented before the Court for the purposes of initiating trial proceedings, such as framing of charges and issuance of process.
4. If the Court, upon receiving the chargesheet, is of the opinion that custodial remand is not warranted, it may invoke Section 88 of the CrPC to ensure the accused's appearance for the trial, without insisting on bail or remand.
5. However, in cases where the accused is already in custody, the consideration of a bail application must be undertaken independently, based on its own merits.
6. The Court clarified that for the purpose of compliance with Section 170 CrPC, the mere non-arrest of an accused does not imply that the chargesheet cannot be filed or that the accused must necessarily seek bail.

This judgment underscores the principle that arrest is not a prerequisite for filing a chargesheet and emphasizes the need to avoid unnecessary incarceration, especially where the accused has cooperated and poses no flight risk.

Directions for the Magistrate

All courts must be directed to accept the chargesheet as and when it is submitted by the police, without insisting upon any preliminary endorsement or noting by court staff or the Magistrate regarding any deficiency or procedural lapse in the chargesheet.

Direction for Police

Section 170 CrPC does not mandate arrest of every accused at the time of filing the chargesheet. If the Investigating Officer believes the accused is unlikely to abscond or evade summons, production in custody is not required. The term "custody" in this context simply means presenting the accused before the court, not necessarily arrest or detention.

4. Section 167(2) CrPC – Default Bail & Article 21

- Introduced in 1978 to set maximum time limits for investigation and prevent indefinite detention.
- Aims to ensure expeditious investigation, fair trial, and protection of personal liberty, especially for indigent accused.
- The provision embodies a constitutional safeguard under Article 21 – no person shall be deprived of liberty except by just, fair, and reasonable procedure.

Nature of Right under Section 167(2)

- Grants an absolute and indefeasible right to bail if the charge-sheet is not filed within:
  - 60 days (for offences punishable up to 10 years),
  - 90 days (for offences punishable with death, life, or 10+ years).
- This right cannot be taken away even in emergency situations (e.g., pandemic – ***M. Ravindran v. Directorate of Revenue Intelligence*, (2021) 2 SCC 485** & . ***S. Kasi v. State*, (2021) 12 SCC 1**).

Judicial Recognition of Personal Liberty

- Continued detention without filing charge-sheet is illegal and violates Article 21.
- Detention must follow non-arbitrary, reasonable, and lawful procedure.
- Section 167(2) is a legislative guarantee of liberty against misuse of investigative powers.

Interpretation Principles

- ***Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67***: Courts should interpret Section 167(2) in favour of liberty; technicalities must not defeat rights.
  - Oral request suffices for default bail.
  - The 90-day period applies only where the minimum sentence is 10 years.
- Courts must avoid formalism when dealing with personal liberty and apply the law to protect the rights of the accused.
- Observation in *Satender Antil* – Scope of Section 167(2) CrPC :
- The right under Section 167(2) is absolute once conditions are met.
- Detention beyond the prescribed period is illegal and violates personal liberty.
- It is the duty of both the investigating agency and the court to ensure the accused gets the benefit of default bail.

5. BAIL IN APPEAL- Section 389 CrPC

Case Referred

1. *Atul Tripathi vs State of U.P. &Anr.,* 2014 (9) SCC 177
2. *Angana v. State of Rajasthan,* (2009) 3 SCC 767

3. *Sunil Kumar v. Vipin Kumar* (2014) 8 SCC 868

Section 389 deals with bail after conviction during the pendency of an appeal. Unlike Sections 437 or 439 (bail during trial), the presumption of innocence no longer applies post-conviction. Hence, bail is not a matter of right. Mere filing of an appeal doesn't justify bail.

However, factors like delay in hearing the appeal and benefit under Section 436A (prolonged custody without disposal) must be considered for granting bail.

6. BAIL under Section 436 A

Section 436A CrPC – Maximum Detention for Undertrial

Section 436A mandates that an undertrial who has spent half of the maximum sentence in custody may be released on personal bond, with or without sureties after hearing the public prosecutor. Under no circumstances can the person be **detained beyond the maximum term** of imprisonment prescribed for the offence.

[NOTE: BNSS is enacted after the judgement and the corresponding Section is 479 under the new Act and a proviso is added which states that "...where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:"]

[***Bhim Singh v. Union of India*** **(2015) 13 SCC 605**] – The Supreme Court emphasized the need to implement this provision to prevent prolonged and unjustified detention of undertrial prisoners.

Direction for jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge -

- Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting per week in each jail/prison for a period of two months starting from 1st October 2014.
- These sittings are aimed at effective implementation of Section 436-A of the Code of Criminal Procedure.
- During the sittings, judicial officers shall identify undertrial prisoners who have either completed half the period or the maximum period of imprisonment prescribed for the offence under the law.
- After complying with the procedure laid down under Section 436-A, appropriate orders for release shall be passed in jail itself for such undertrial prisoners who fulfil the conditions for release.
- A report of each sitting shall be submitted by the judicial officers to the Registrar General of the High Court.
- After the completion of two months, the Registrar General of each High Court shall submit a consolidated report to the Secretary General of the Supreme Court without any delay.
- Jail Superintendents are directed to provide all necessary facilities for holding the court sittings inside the jail premises.

7. Difference between Section 437 and Section 439 discussed

Basis	Section 437	Section 439
Applicable Court	Magistrate	Sessions Court / High Court
Offence Type	Non-bailable (not punishable with death/life imprisonment)	Any non-bailable offence
Power	Limited	Broad and discretionary
Welfare Proviso (minors, women, sick, infirm)	Yes	Yes (must be considered)
Notice Requirement	Not mandatory	Mandatory for serious offences (to PP and informant)
Appeal Role	First-level bail decision	Appellate or direct for Sessions-triable offences

Key Judicial Insights:

- Integration of Welfare Proviso: Even though the proviso in Section 437 appears under Magistrate's power, it must be considered by higher courts under Section 439 as part of a purposive and welfare-oriented interpretation.
- Mandatory Notice: The prosecution and informant must be notified as required under the second proviso to Section 439(1) for certain serious offences – this is not optional.
- Unified Consideration: Courts cannot bifurcate application of the welfare proviso between Sections 437 and 439; uniform application is required in bail matters.

8. Section 440- Amount of bond and reduction thereof

[Case Referred: Hussainara Khatoon & Ors v Home Secretary, State of Bihar, 1980 (1) SCC 81]

Section 440 CrPC mandates that the bail amount must be reasonable and not excessive, considering the specific circumstances of each case. Courts must avoid mechanical or uniform conditions and ensure that compliance is feasible. Sections 436 to 439 should be interpreted harmoniously, emphasizing the reasonableness of bail conditions. This principle also applies when exercising powers under Section 88.

DIRECTIONS/GUIDELINES FOR INVESTIGATING AGENCIES AND THE COURTS:

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 Vs. State of UP,* 2021 SCC Online SC 615**).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to the 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 undertrial 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 v. Union of India*, (2015) 13 SCC 605**, 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.

***Satender Kumar Antil vs. C.B.I.& Anr.* (2024) 9 SCC 198**

The Apex Court issued the "Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners". It provides that-

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 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.

Note: 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 under Section 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 under Section 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."

***Satender Kumar Antil vs. C.B.I.& Anr* 2025 SCC OnLine SC 1322**

The Hon'ble Court issued the following directions:

a) All the States/UTs must issue a Standing Order to their respective Police machinery to issue notices under Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023. It is made amply clear that service of notice through WhatsApp or other electronic modes cannot be considered or recognised as an alternative or substitute to the mode of service recognised and prescribed under the CrPC, 1973/BNSS, 2023.

b) All the States/UTs while issuing Standing Orders to their respective Police machinery relating to Section 41-A of CrPC, 1973/Section 35 of BNSS, 2023 must be issued strictly in accordance with the guidelines issued by the Delhi High Court in ***Rakesh Kumar v. Vijayanta Arya (DCP) & Ors.*, 2021 SCC Online** Del 5629 and ***Amandeep Singh Johar v. State (NCT Delhi)*, 2018 SCC Online Del 13448**, both of which were upheld by this Court in ***Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51**.

c) All the States/UTs must issue an additional Standing Order to their respective Police machinery to issue notices under Section 160 of CrPC, 1973/Section 179 of BNSS, 2023 and Section 175 of CrPC, 1973/Section 195 of BNSS, 2023 to the accused persons or otherwise, only through the mode of service as prescribed under the CrPC, 1973/BNSS, 2023.

d) All the High Courts must hold meetings of their respective Committees for "Ensuring the Implementations of the Decisions of the Apex Court" on a monthly basis, in order to ensure compliance of both the past and future directions issued by this Court at all levels, and to also ensure that monthly compliance reports are being submitted by the concerned authorities.

CHAPTER 12: ILLUSTRATION OF DIFFERENT OFFENCES

Grant of Bail in cases where a Civil case if given Criminal colour:

In cases where a civil dispute is improperly characterized as a criminal offence, the Court must grant bail to the accused. The legal principle established is that civil disputes should not be treated as criminal offenses, and the judiciary must intervene to protect the rights of the accused. Cases of cheating are the most common instrument to give a civil transaction a criminal cloak.

In India, civil disputes giving rise to criminal proceedings must be carefully distinguished and dealt with separately under the law. This principle is well-recognized by Indian courts to prevent misuse of the criminal justice system for personal vendettas or to pressurize parties in civil disputes.

The Supreme Court in the case of *Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76 : 2012 SCC OnLine SC 1070 at page 676, mentions that -

"12. *While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*

Sections Under BNS	Offences under Bharatiya Nyaya Sanhita, 2023 and their Punishment	Punishment	By what Court Triable	Category as per *Satender Antil v CBI*
85 (Section 498A IPC)	Husband or Relative of husband of a woman subjecting her to cruelty	Imprisonment for 3 years + Fine	Magistrate Ist Class	A
144 (Section 370A IPC)	Exploitation of a trafficked person.	Rigorous imprisonment for not less than 5 years extendable upto 10 years + Fine	Court of Session	B
303 (Section 378 IPC)	Theft	Rigorous imprisonment for not less than 1 year extendable upto 5 years + Fine	Any Magistrate	A

318(4) (Section 420 IPC)	Cheating and Dishonestly inducing delivery of property	Imprisonment for 7 years + Fine	Magistrate of Ist Class	A
338 (Section 467 IPC)	Forgery of a valuable security, will,or authority to make transfer any valuable security, or to receive any money,etc.	Imprisonment for life or Imprisonment for 10 years + Fine	Magistrate of Ist Class	B
137 (Section 359 - 363 IPC)	Kidnapping	Imprisonment for 7 years and Fine	Magistrate of Ist Class	A
196 (1) (Section 153A IPC)	Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing act prejudicial to maintenance of harmony	Imprisonment for 3 years or fine or both	Magistrate of Ist Class	A
196(2) (Section 153A IPC)	Promoting enmity between classes in place of worship, etc.	Imprisonment for 5 years and Fine	Magistrate of Ist Class	A
304(2) (Section 383 IPC)	Snatching	Imprisonment for 3 years and Fine	Any Magistrate	A
308(2) (Section 384 IPC)	Extortion	Imprisonment for 7 years or Fine or both	Magistrate of Ist Class	A
336(3) (Section 468 IPC)	Forgery for the purpose of cheating	Imprisonment for 7 years and fine	Magistrate of Ist Class	A

Trial Courts and High Courts should follow the guidelines laid down in Satender Kumar Antil v. CBI [(2021) 10 SCC 773] for granting bail. However, there are exceptions laid down in para 5 where these guidelines may not apply. These include cases where:

- The accused did not cooperate with the investigation,
- The accused did not appear before the Investigating Officer,
- The accused ignored summons from the Court,
- The Court believes judicial custody is necessary for completing the trial, or
- Further investigation or recovery is still pending.

In such situations, the accused cannot claim benefit under the general bail guidelines.

The Apex Court also observed in Para 7 that, for Category D offences, the Court in ***Sanjay Chandra v. CBI*** **[(2012) 1 SCC 40]** held in Para 39 that, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment must be taken into account.

In Category A offences, after the filing of the charge-sheet or complaint and taking cognizance, an ordinary summons is issued at the first instance, including permitting appearance through a lawyer. If the accused does not appear despite the service of summons, a bailable warrant for physical appearance may be issued. If the accused still fails to appear despite the issuance of a bailable warrant, a Non-Bailable Warrant (NBW) may be issued. However, the NBW may be cancelled or converted into a bailable warrant or summons without insisting on the physical appearance of the accused if an application is moved on behalf of the accused before the execution of the NBW, along with an undertaking to appear physically on the next date(s) of hearing. When such an accused appears, their bail application may be decided without taking them into physical custody or by granting interim bail until the bail application is decided. (PARA 85)

In Category B and D offences, upon the appearance of the accused in court pursuant to the process issued, the bail application is to be decided on merits.(PARA 90)

In Category C offences, the bail application is to be decided on merits upon the appearance of the accused in court pursuant to the process issued, similar to Categories B and D. However, an additional condition applies, requiring compliance with the specific bail provisions under special laws such as Section 37 of the NDPS Act, Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, and POSCO, among others.(PARA 87)

BAIL IN ECONOMIC OFFENCES

Relevant considerations such as the gravity of the offence, the object of the Special Act, and the attending circumstances—along with the period of sentence—are all material factors while deciding bail matters in economic offences. Categorization of all economic offences into one group is not advisable. Thus, irrespective of the nature and gravity of the charge, the precedent of another case alone will not be the basis for either grant or refusal of bail, though it may have a bearing on principle. Therefore, the consideration must ultimately be on a case-to-case basis, based on the facts involved and the need to secure the presence of the accused to stand trial (Paras 90 to 92).

Even economic offences would fall under the category of *grave offences*. In such circumstances, while considering the application for bail, the Court must deal with the matter sensitively, keeping in view the nature of the allegation made against the accused. One of the aspects in considering the gravity of the offence is also the term of sentence prescribed for the alleged offence. This consideration regarding the gravity of the offence is in addition to the triple test (also referred to as the tripod test) that is normally applied. It must also be kept in view that even if the allegation is of a grave economic offence, it is not a rule that bail should be denied in every case, as no such bar has been created by the relevant legislation, nor does bail jurisprudence support such a blanket denial (Para 91).

The right to bail is not to be denied merely because of the sentiments of the community against the accused. The Court must not lose sight of the fact that the investigating agency has already completed the investigation and the charge-sheet has been filed before the Special Judge. Therefore, continued custody of the accused may not be necessary for further investigation (Para 92). (***Satender Kumar Antil vs. C.B.I.& Anr. (2022) 10 SCC 51)***

CHAPTER 13: BAIL UNDER SPECIAL LAWS

The Prevention of Money Laundering Act, 2002 (PMLA) has all the characteristics of a modern day criminal Act. It is unique since it creates a completely new offence i.e. money laundering which is linked with most other criminal offences. Since "money laundering" deals with property acquired using "proceeds" of other crimes, it becomes a complex offence.

Section 44 of the Act permits the Special Court under the Act to try an offence under Section 4 of the Act and *"any scheduled offence connected to the offence under that Section"*. Further Section 45[2] of the Act, which deals with the power of the Special Court to grant bail. This Section unlike the analogous Sections in the NDPS Act and the MCOCA applies the twin conditions cumulatively for a scheduled offence and not for an offence under the Act. In other words, if a person is accused of having committed minor offences under the Indian Penal Code/ Bharatiya Nyaya Sanhita (BNS), he/ she would be entitled to bail as per Section 439 of the CrPC/ Section 483 BNSS . However, if he/she is also accused of having committed an offence under Section 4 of PMLA, then he/she will have to satisfy the twin tests laid down in Section 45 of the Act, so far as the said offences are concerned. Moreover, even if a person is only accused of a Scheduled Offence, merely because the trial is being conducted jointly with others accused of offences under PMLA, the former would be subjected to the double test scrutiny under Section 45.

Another anomaly that arose in this context was that when it came to anticipatory bail, there was no bar under the Act. Therefore, the provisions of Section 438 of the CrPC/482 BNSS would continue to be applied when a person seeks pre-arrest/anticipatory bail for all offences including the scheduled offences. The result would be that it was easier to get anticipatory bail in case of offences under PMLA than to seek regular bail after arrest. In the case of ***Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1)***, the Supreme Court had to decide upon the the constitutionality of Section 45 of PMLA which was challenged as being discriminatory and arbitrary. The Court observed that:

"The mere circumstance that the offence of money laundering is being tried with the Schedule A offence without more cannot naturally lead to the grant or denial of bail (by applying Section 45 (1) for the offence of money laundering and the predicate offence.

All these examples show that manifestly arbitrary, discriminatory and unjust results would arise on the application or non application of Section 45, and would directly violate Articles 14 and 21, in as much as the procedure for bail would become harsh, burdensome, wrongful and discriminatory depending upon whether a person is being tried for an offence which also happens to be an offence under Part A of the Schedule or an offence under Part A of the Schedule together with an offence under the 2002 Act. Obviously, the grant of bail would depend upon a circumstance which has nothing to do with the offence of money laundering. On this ground alone, Section 45 would have to be struck down as being manifestly

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2 Section 45. Offences to be cognizable and non bailable:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless: (i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

arbitrary and providing a procedure which is not fair or just and would, thus, violate both Articles 14 and 21 of the Constitution.

This, again is laying down a condition which has no nexus with the offence of money laundering at all, and a person who may prove that there are reasonable grounds for believing that he is not guilty of the offence of money laundering may yet be denied bail, because he is unable to prove that there are reasonable grounds for believing that he is not guilty of the scheduled or predicate offence. This would again lead to a manifestly arbitrary, discriminatory and unjust result which would invalidate the Section."

The Court considered various scenarios that would arise in the case of a joint trial where a bail application is filed. It then upheld the contention of the petitioner and came to the conclusion that the provisions of Section 45 would be discriminatory qua an accused being tried for a scheduled offence having punishment of more than three years coupled with an offence under PMLA vis a vis a person being tried for an offence merely under the provisions of PMLA. In the former case, the grant of bail would be dependent on circumstances having nothing to do with the offence under PMLA while in the latter case bail will be granted as per Section 439 of the CrPC/Section 483 BNSS.

The Court also struck down the provision on a third ground, holding that the classification of scheduled offences on the basis of their sentencing would have no rational nexus with the objective of PMLA and to the granting of bail for offences committed under the Act, and, therefore, the Section will have to be annulled on the basis of the equal protection clause. The Court was also of the opinion that the anomaly between the grant of anticipatory bail and regular bail, which is created by Section 45 would also lead to manifestly arbitrary and unjust results and would, therefore violate articles 14 and 21 of the Constitution.

Also, Section 37[3] of the NDPS Act, 1985 imposes strict conditions for granting bail. All offences under this Act are considered cognizable, and bail is specifically restricted in cases under Sections 19, 24, and 27A, and for offences involving commercial quantity. Bail may only be granted after:

- The Public Prosecutor has been heard, and
- The Court is satisfied that there are reasonable grounds for believing that the accused is not guilty, and that he will not commit any offence while on bail.

The provision states:

"no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satis there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

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3 **37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.].

In ***Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1***, the Supreme Court struck down Section 45 of the Prevention of Money Laundering Act, 2002 (PMLA). This provision required that bail could not be granted unless the Public Prosecutor opposed the bail, and the court was satisfied of the accused's innocence and non-recidivism. The Court found these conditions overly restrictive and violative of Article 21, making bail virtually impossible under the Act.

While granting bail, the Court remarked:

"But, so far as second part of Section 37(1)(b)(ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit `any offence' after coming out of the custody, is concerned, this Court is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record..."

"...this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail... the satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner... then this Court can, to some extent, venture to believe that the petitioner would not, in all likelihood, commit any offence after coming out of the custody..."

Thus, under Section 37 of the NDPS Act, the norm is to deny bail, while granting it is exceptional. The rationale behind this is the State's commitment to fight the drug menace. It is assumed that if such accused persons are released, they may revert to drug trafficking, posing a grave risk to society.

However, the court retains discretion to grant bail if there are "reasonable grounds" to believe that the accused is not guilty and would not repeat the offence. The Supreme Court in ***Narcotics Control Bureau v. Dilip Pralhad Namade*, (2004) 3 SCC 619** clarified that *"reasonable grounds"* means something more substantial than mere prima facie evidence.

With the repeal of TADA and POTA, their bail-related provisions were absorbed into the Unlawful Activities (Prevention) Act, 1967 (UAPA). The bail regime under UAPA is less rigid than under TADA/ POTA, which had virtually precluded bail.

Under UAPA, when a bail application is filed, the Public Prosecutor must be heard, and bail is denied if the allegations appear prima facie true. In ***Jayanta Kumar Ghosh v. State of Assam,* Criminal Appeal No. 12 of 2010**, the Gauhati High Court clarified that the court must assess whether the allegations are "inherently improbable or wholly unbelievable." Only in such circumstances should the accused be released on bail. Besides terrorism, financial and economic crimes can also significantly threaten national stability and public confidence.

Section 43D of UAPA declares all offences under the Act as cognizable. It allows for extended detention of up to 90 days, extendable to 180 days upon a request from the Public Prosecutor, supported by reasons for delay in investigation.

Sub-section (5) of Section 43D further provides:

"no person accused under this section be released on bail unless the public prosecutor has been given an opportunity of being heard on the application for such release and provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true"

In ***Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731,*** the Court observed that bail under special legislations has remained inconsistent and unpredictable, raising serious concerns under Article 21 of the Constitution. It called for proper guidelines to eliminate arbitrariness in such bail decisions.

Similarly, in ***Hussain and Another v. Union of India, (2017) 5 SCC 702***, the Supreme Court addressed delays in trial and emphasized that prolonged incarceration without trial infringes the fundamental right to speedy trial under Article 21. The Court laid down *specific directions:*

"29.1. The High Courts may issue directions to subordinate courts that—

29.1.1. Bail applications be disposed of normally within one week;

29.1.2. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;

29.1.3. Efforts be made to dispose of all cases which are five years old by the end of the year;

29.1.4. As a supplement to Section 436-A, but consistent with the spirit thereof, if an undertrial has completed a period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the trial courts concerned from time to time;

29.1.5. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

29.2. The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;

29.3. The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;

29.4. The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;

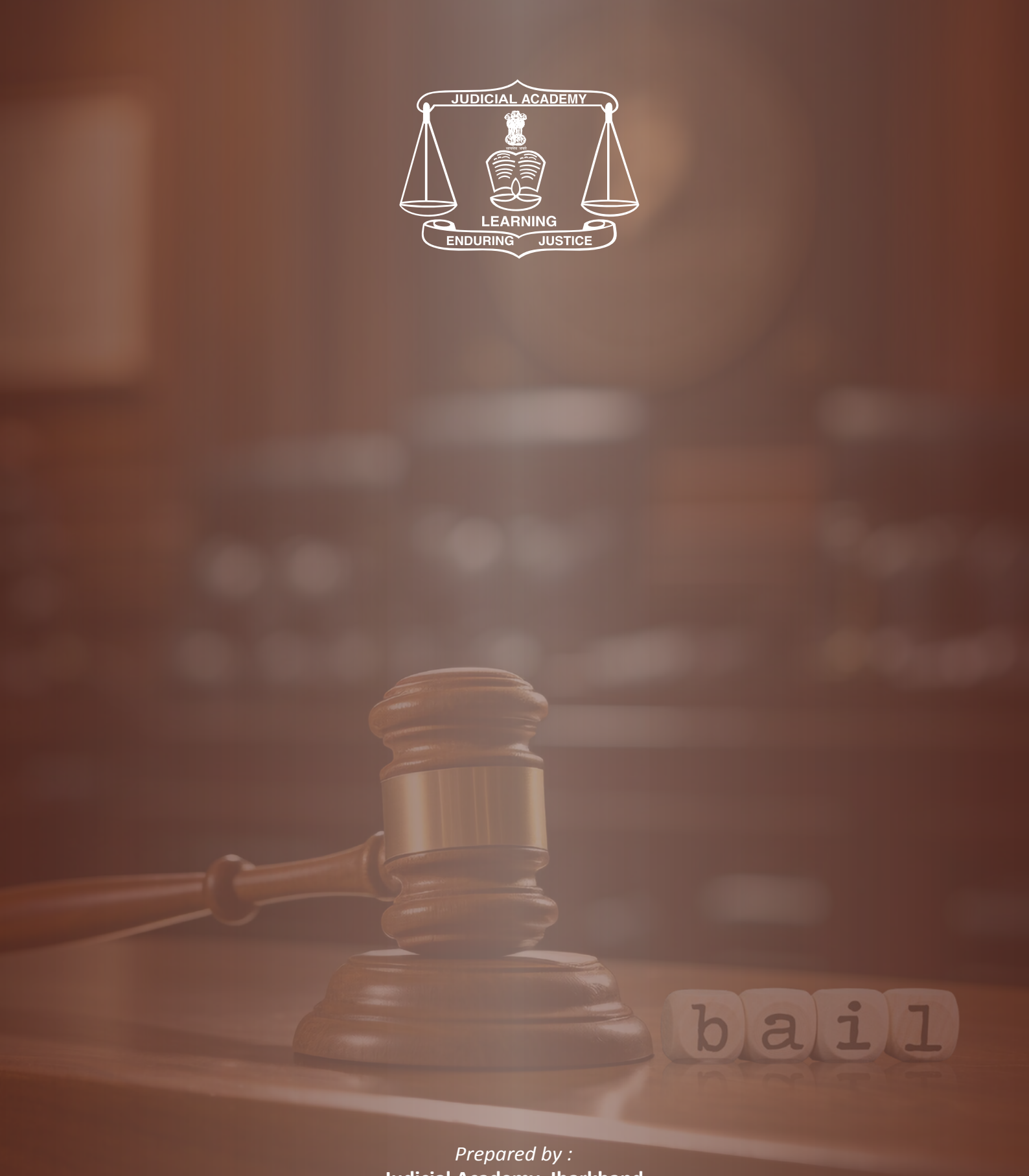
*29.5. The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in Harish Uppal [**Harish Uppal v. Union of India, (2003) 2 SCC 45**] ."*

India has witnessed a significant rise in white-collar and financial crimes that adversely impact economic integrity and public trust. These crimes are committed for personal gain and require stricter bail scrutiny. The 268th Law Commission Report has recommended imposing stringent conditions for granting bail in such cases.

While Article 21 of the Constitution guarantees personal liberty, it is not absolute. Courts must strike a balance between individual rights and societal interest. Therefore, while adjudicating bail pleas under special laws, the Court is empowered to impose reasonable conditions on the accused to protect public interest.

Sections	Offences under Prevention of Money-Laundering Act, 2002	Punishment	By what Court Triable	Category as per *Satender Antil v CBI*
3	**Offence of money-laundering**.	Imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine	Special courts for the trial of money laundering offenses presided over by Special Judge	C

Section	Offence under The Narcotic Drugs and Psychotropic Substances, Act, 1985	Punishment	By what Court Triable	Category under Satender Kumar Antil v CBI
ALL	All Offences under the Act	Imprisonment, Fine or both	Special Courts	C



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