

REMAND

1] Arrest involves restriction of liberty of a person arrested and therefore infringes the basic human right of liberty. Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Art.21 of the Constitution. In the authority of **Siddharam Mehtre... vs State of Maharashtra and others 2011 SAR (Cri) 118 S.C.** Hon'ble Supreme Court held that arrest should be last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

2] The society has a vital interest in grant or refusal of bail because every offence is crime against the state. The order granting or refusing bail must reflect perfect balance between the conflicting interest, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirement of shielding of society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principal of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and sanctity of individual liberty. To strike a balance, there are various provisions in the Code of Criminal Procedure in respect of arrest, detention, production of accused, legal assistance to arrested person,

remand of accused in custody, bail and its cancellation. These will be discussed hereinafter.

INQUIRY WITH THE ACCUSED ABOUT DATE AND TIME OF ARREST AND ILL-TREATMENT AND STEPS TO BE TAKEN.

3] The arrested person should be produced before the Magistrate before expiry of 24 hour from his arrest excluding the time of journey as per section 57 of the Code of Criminal Procedure. Section 50 of the Code of Criminal Procedure mandates that the police officer should tell the arrested person about the offence for which he has been arrested and if he is arrested for bailable offence, then he can be released on bail. Further Section 50A of the Code of Criminal Procedure mandates that it is duty of magistrate before whom the arrested person is produced, to satisfy himself that police informed arrested person of his right to inform his relative or next friend about his arrest and place of arrest. The Magistrate should invariably note down time of production of arrested person and put the question to him in regards to verify the compliance of article 22 of the constitution before ordering remand of the arrested person.

RIGHTS OF ARRESTED PERSON

4] In the authority of **Sheela Barse v. State of Maharashtra, AIR 1983 SC 378: (1983) 2 SCC 96** following directions were given

1. Four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock up in which male suspects are detained.
2. Interrogation of females should be carried out only in the presence of female police officers/ constables.
3. A person arrested must be immediately informed of the grounds of his arrest and that he is entitled to apply for bail in case of bailable offence.
4. Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee which should take immediate steps to provide legal assistance to him at State cost provided he is willing to accept such a legal assistance.

5] Handcuffing of accused is violative of Articles 14,19, and 21 of Constitution. Only in cases of extreme circumstances handcuffs have to be proved on the prisoners, the extorting authority must record contemporaneously the reasons for doing so. **Prem Shankar Shukla...vs... Delhi Admn. AIR 1980 Supreme Court Cril. L.J. 930.**

GROUND FOR ARREST TO BE WRITTEN

6] ***Arnesh Kumar -vs- State of Bihar AIR 2014 SC 2756*** It is held that the police officer not to automatically arrest when a case u/s 498A of IPC is registered but to satisfy

themselves about the necessity for arrest. The police officer shall forward to Magistrate, the check list furnishing reasons necessitated for arrest. Failure to comply with the direction aforesaid shall apart from rendering the police officer concerned liable for departmental action, they shall also be liable to be punished for the contempt of court to be instituted before High Court having territorial jurisdiction. Authorizing detention without recording reason as aforesaid by a Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

LEGAL ASSISTANCE

7] In **Mohd. Ajmal Mohd. Amir Kasab alias Abu Mujahid Vs. State of Maharashtra AIR 2012 SC 3565** the Supreme Court held that during first production, the Magistrate is under duty and obligation to make the accused fully aware about his right to consult and to be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the state. Even if the accused does not ask for a lawyer or remains silent, it is the Constitutional duty of the court to provide him with a lawyer and any failure to fully discharge the duty would amount to dereliction of duty and would make the magistrate concerned liable to departmental proceedings.

ILL-TREATMENT

8] It is the duty of Magistrate to inquire whether arrested person was given ill-treatment by police as instructed in para 3(1) of chapter I of The Criminal Manual. This direction was also issued in the case of ***Shila Barse -vs- State of Maharashtra AIR 1983 Supreme Court 378.***

9] If any complaint of ill-treatment is made by arrested person the Magistrate shall then and there examine his body with his consent and shall record the result of his examination. If the arrested person refuse to permit such examination Magistrate shall be recorded the refusal and the reason thereof. If the Magistrate finds that there is reason to suspect that the allegation is well founded, he shall at once record the complaint and cause the arrested person to be examined by a Medical Officer or registered Medical Practitioner as provided in section 54 of Cr.P.C. as observed in case of ***Union of India through M.P. Suresh -vs- State of Maharashtra 2003 All M R (Cri.) 1016*** and shall make a report to the Session Judge. The Session Judge should arrange magisterial investigation into the complaint through such Judicial Officer as he may deem most convenient unless he is satisfied by Magistrate's report under sub-paragraph (1) above that the adequate investigation is proceeding. If in result of investigation allegation made found to be true, the statement recorded of arrested person be taken as a complaint to take cognizance. However there is no bar to take cognizance on the basis of complaint lodge by the Magistrate upon investigation.

PHYSICAL PRODUCTION OF ARRESTED PERSON

10] Maharashtra Amendment to section 167 of Cr.P.C. shows that first authorisation in custody must be made by magistrate only after production of arrested person before him and for further custody, except police custody, can be extended by video conferencing apart from actual production of him.

11] The Supreme Court, in ***Rajnarayan -vs- Superintendent, Central Jail, New Delhi AIR 1971 SC 178*** held that extension of authorization in any custody without production of the accused does not make the order a nullity. It introduces irregularity in the proceedings and such a procedure is not approved.

12] Provisions specified in **Criminal Manual** :-

It is laid down under chapter 1 para 2 of the Criminal Manual that Women accused of any offence, if arrested so soon after child birth that they cannot at once be taken before the Magistrate without personal suffering and risk to health, should not ordinarily be removed until they are in a proper condition to travel. The same procedure should be followed in the case of other accused persons who are too ill to travel.

GROUND FOR POLICE CUSTODY

13] The Criminal Manual provides guidelines for remanding the accused in police custody. Its chapter I Para 5 provides the guidelines to be followed. *A remand to Police*

custody of an accused person should not ordinarily be granted unless there is reason to believe that material and valuable information would thereby be obtained. If the Magistrate thinks that the Police not only require more time for their investigation but that for some good reason they require the accused person to be present with them in that investigation the Magistrate may remand him to Police custody, but while doing so, he must record the reasons for his order.

14] Where no recovery was mentioned in the remand papers, mere not mentioning of the fact of recovery or a wanted recovery in the remand papers, cannot come in the way of police or prosecution. **[Aatif Nasir Mulla Vs. State of Maharashtra 2006(1) Mh.L.J. (Cri) 679]**

PERIOD OF POLICE CUSTODY

15] The police custody after first 15 days is not permissible. However if complicity of accused is found in some other transaction while in judicial custody, then aforesaid limitation will not apply. **C.B.I. -Vs- Anupam Kulkarni, AIR 1992 SC 1768,**

COUNTING OF DAYS OF REMAND

16] First 15 days of PCR has to counted from the date of first remand and not from the date of arrest. **State of Delhi**

Administration vs. Ravindar Kumar 1982 Cr L J 2366.

17] **REMAND UNDER SPECIAL ACTS**

(1) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act= Special Court can take cognizance only after it is committed to it by Magistrate **Vidyadharan Vs. state of Kerala reported in 2004(2) MhLj 596..**

(2) NDPS Act= section 37 of NDPS Act does not exclude the operation section 167(2) of the code. The accused has right to seek bail on failure of prosecution to file charge-sheet within stipulated period. If he exercises his right within time and is released on bail, he can not be rearrested on mere filing of charge-sheet **Bipin shantilal Panchal vs. St of Gujrat 1996 Cri.L.J 1652 = 1996 SCC(cri) 200 = (1996)1 SCC 718**

(3) Protection of Children From Sexual Offence Act 2012= In view of Judgment of **Kum. Sharddha Meghshyam Velhal-Vs- State of Maharashtra, in Cr. W. P. No.354/2013,** the Judicial Magistrate First Class has not empowered to entertain the remand. Only special court will entertain the remand under this act.

(4) Prevention of corruption act 1988 = Judicial Magistrate First Class is not a Judge appointed under the Act and therefore he can not take cognizance of the offence specified under section 3 of the Prevention of Corruption act. Only Special Court to do remand.

(5) Electricity Act 2003 -= Under section 154 of the said act the Judicial Magistrate First Class shall not commit the charge-sheet and also he will not entertain the remand. Only Special Court to do remand.

(6) MCOCA Act and MPID Act = Only special Court can do remand of offence under MCOCA Act and MPID Act and not by the Magistrate.

(7) Transplantation of Human Organs Act, 1994 = As per Section 22 of Transplantation of Human Organs Act, 1994 (T.O.H.O.), cognizance for the offences punishable under the provision of said Act can only be taken up on a complaint filed by the prescribed authority or by the person duly authorised by competent authority. Hence sub-section 2 of section 167 is not applicable. **Jeewan kumar Raut and Ano. Vs. Central Bureau of Investigation reported in AIR 2009 SC 2763.**

Remand of accused during further investigation after filing of charge-sheet

18] The accused who would be arrested during the further investigation after filing of the charge-sheet and taking cognizance of case, would be governed by section 167 of Cr.P.C and the accused can be remanded to police custody. **[State Trough CBI Vs. Dawood Ibrahim and others (2000) 10 SCC 438 : Ambrish Rangshabi Patnigere and others Vs. State of Maharashtra 2011 Cri L J 515]**

SURRENDER OF ACCUSED

19] After surrender the accused is under judicial control and so he is in custody. **Niranjan singh vs Prabhakar AIR 1980 SC 785 = 1980 Cr.L.J. 426**

20] If a person surrendering before session court or High Court, he is in custody of Court. So he can be released on bail or if court finds that he is not entitled to bail, Court could pass necessary order for police or judicial custody. **Sandeep Kumar Bafana vs. St of Maharashtra 2014 Cr.L.J. 2245 SC**

DEFAULT BAIL UNDER S. 167(2) OF Cr.P.C

21] In case of **Uday Mohanlal Acharya vs. State of Maharashtra AIR 2001 SC 1910** it is held that application under section 167(2) of Cr.P.C must be decided forth with. However if the accused failed to furnished surety after passing of bail and in meanwhile chargesheet is filed, then indefeasible right of accused to get bail in default, gets extinguished. It has been further observed by Apex Court that :-

4. *Application for statutory bail should be decided forthwith.*
5. *If the accused is unable to furnish bail, as directed by magistrate, then conjoint reading of Explanation 1 and proviso to Sub Section (2) of 167, the continued custody of accused beyond the*

specified period in paragraph (a) will not be unauthorised and therefore, if during that period the investigation is complete and charge-sheet is filed then so called indefeasible right of the accused would stand extinguished.

6. *The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.*

22] Right of accused to furnish bail, gets forfeited as soon as charge sheet is filed even on same day application under sec. 167 (2) Cr.P.C is filed. ***Padmabai Bhojne Vs. state of Mah. [Criminal Application No.944/2013] [BOM]***

23] In an authority **Union of India...vs...Nirala Yadav 2014 Cril. L.J.3952 S.C.** it was held that Magistrate should decide application for statutory bail on the same day it is filed.

Computation of period for statutory bail.

24] In **Nijamuddin Mohd. Bashir Khan...vs...State of Maharashtra 2006 (5) Mah. L.J. 690**, it has been held that in every case in which offence is punishable with imprisonment for a term which may extend to ten years, provisions of section 167(2)(a)(ii) of Cr.P.C, will be attracted and if investigation in such case is not completed within period of 60-days, no Magistrate shall authorise detention of accused beyond the said period.

LAW RELATING TO 'BAIL' **CHAPTER XXXIII OF CR. P.C**

FAILURE TO FURNISH SURETY IN BAILABLE OFFENCES

25] If the accused is unable to give surety within 7 days in bailable offence, he shall be released on personal bond. **Shivaji Satuppa Gavade Patil vs State of Maharashtra Criminal Application No. 515/2008**

NON-BAILABLE OFFENCE

26] Grant of bail is the rule and committal to jail is an exception as refusal of bail is the restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. Object of the bail is to secure the appearance of accused at his trial. Object of bail is neither punitive nor preventive. When there will be long delay in trial, bail is warranted. **Sanjay ChandraVs....C.B.I. A.I.R. 2012 S.C. 830**. However,

merely because there will be delay in trial, bail not to be given mechanically. **Dipak Subhashchandra Mehta and another..vs.. C.B.I. and another A.I.R. 2012 S.C. 949.**

FACTORS FOR BAIL

27] Following factors are required for granting bail which are (1) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence (2) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant (3) prima facie satisfaction of the Court in support of the charge. **[Chaman Lal Vs. State of U.P. AIR 2004 SC 4267; 2004 SCC(Cri) 1974; (2004)7SCC 525**

28] Elaborate discussion on merit is not required but order should application of mind. **Afzal Khan @ Babu Murtuza Khan Pathan ..vs.. State of Gujrat 2007, Bombay C.R. 90 (S.C.).** Similar view has been taken in case of **Puran-vs-Rambilas- AIR 2001 SC 2023 .**

OFFENCES PUNISHABLE WITH LIFE IN CASES TRIABLE BY MAGISTRATE

29] In the matter of **Ishan Vasant Deshmukh ..vs.. State of Maharashtra, 2011(2) Mh.L.J.361**, Bombay High Court, it was held that if the offence is punishable with life imprisonment or any other lessor sentence and is triable by Magistrate, then the Magistrate has jurisdiction to consider the

bail application. Similar view is taken in the case of **Ambarish Rangashahi Patingare ..vs.. State of Maharashtra, 2010 All MR (Cri) 2775.(Bom)**

30] When approver's evidence is completely recorded, he can be released on bail **Premchand ...vs...State 1985 Cril. L.J. 1534 Delhi.**

BAIL BY MAGISTRATE IN SESSIONS TRIABLE CASES

31] Magistrate ordinarily should ask parties to go to Session Court for bail in sessions triable cases. If magistrate prefers to give bail in such cases then he has to specifically negate the existence of reasonable grounds for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. **Pralhad Singh Bhati ..vs.. N.C.T. Delhi AIR 2001 SC 1444**

CONDITIONS TO BE IMPOSED WHILE GRANTING BAIL

32] In **Balchand Jain vs. St of MP ,AIR 1977 SC 366**, the Apex Court laid down various conditions for grant of bail to secure presence of accused.

CONDITIONS OF BAIL SHOULD BE REASONABLE

33] The Courts should exercise restraint in imposing such conditions which may verge on denial of justice - **Mohammad Tariq -Vs- Union of India, 1990 Cri.L.J. 474 .** Any condition to be imposed under sub s. (3) of S. 437 of the Code must be reasonable and judicious and must not

tantamount to refusal of bail- **Sandip Jain's case, 2000 Cri.L.J. 807, (SC)**. Harsh, onerous, excessive, irrelevant or freakish conditions cannot be imposed on the accused for granting him bail -**Munish Bhasin -Vs- State Government of Delhi, AIR 2009 SC 2072**.

34] The Court cannot direct the accused to deposit his passport at the time of bail. **Suresh Nanda -Vs- CBI, 2008 Cri.L.J. 1599.(SC)**

CONDITIONS FOR ECONOMIC OFFENCES

35] The condition may be imposed upon the accused compelling him to pay an amount proportionate to the economic offence. **M. Shri Nivasinu Reddy -Vs- State of Tamilnadu (2002) 10 SCC 653 and Sureshchandra Ramanlal -Vs- State of Gujrat, AIR 2008 SC (Supp) 2001**.

ENFORCEMENT OF CONDITIONS OF BAIL

36] In **P.K. Shaji -Vs- State of Kerla, AIR 2006 SC 100**, wherein the Court of Sessions granted bail with direction to subordinate Court to pass appropriate orders in case of violation of any conditions of bail order. Later on the bail was cancelled by the trial Magistrate on violation of bail order as if the conditions for grant of bail had been imposed by the Magistrate himself. Magistrate's said order was challenged. However Hon'ble Apex Court has held that the order of Magistrate was not without jurisdiction and the Magistrate was empowered to protect such conditions being violated.

ALTERATION OF THE CONDITIONS

37] The Magistrate, who granted bail has power to cancel it or alter its conditions. **Brijesh Singh -Vs- State of Karnataka, 2002 Cri.L.J. 1362**

38] The conditions of bail which became obsolete on completion of investigation can be set aside. **Pratima Patra -Vs- State of Orisa, (2008) 2 Crimes 178 (SC)**

NO ARREST OF PERSON RELEASED ON BAIL

39] Accused who has been granted bail cannot be taken into police custody for further investigation unless bail is cancelled **[Mithabhai Pashabhai Patel and others Vs. State of Gujarat (2009) 6 SCC 332]**

40] When accused is released on bail for offence under section 306 of IPC and later on offence under section 302 is added, it was wrong on part of Magistrate to say that for every addition of offence, police can not arrest him. With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime - **Pralhad Singh Bhati ..vs.. N.C.T. Delhi AIR 2001 SC 1444.** If the accused is released on bail for bailable offence and if later on non bailable offence is added, then police can arrest the accused without seeking cancellation of order of bail- **Ahamed Basheer and another Vs Sub Inspector of**

police 2014 Cr.L.J 137 (Ker).

CANCELLATION OF BAIL IN NON-BAILABLE OFFENCES

41] The basic criteria for cancellation of bail are interference or even an attempt to interfere with due course of Justice or any abuse of indulgence/ privilege granted to the accused. **Ram Govind Upadhya ..vs.. Sudarshan Singh , 2002 Cr.L.J. 1849 (S.C.)**

42] The power of the Court under the section to cancel bail can be invoked either by the state itself or by any aggrieved party or even suo motu as held in the case of **Puran -vs- Ramvilas AIR 2001 SC 2013.**

43] Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted. The grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to accused in any manner. **Daulatram -vs- State of Haryana (1995) 1 SCC 349**

44] As per Section 437(5) of Cr.P.C. any Court which has released a person on bail may, if it considered it necessary so to do, cancel the bail and direct that such person be arrested and committed to custody. In **R.J.Sharma ..vs...R.P. Patankar 1993 Cri.L.J. 1993 Bombay,** it is held that Magistrate ought to pursue the application for cancellation of

bail and afford an opportunity to accused to be heard.

CANCELLATION OF BAIL IN BAILABLE OFFENCES

45] Bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. **Rasiklal vs. Kisore S/o Khanchand Wadhvani**
MANU/SC/0255/2009 = AIR 2009 SC 1341

The Right of the Under Trial prisoner under sec. 437 of the Code of Criminal Procedure

46] The Section 437(6) of the Code of Criminal Procedure provide that , in any case of non-bailable offence triable by Magistrate, the trial is not concluded within a period of 60 days from the first date of evidence , then the accused shall be released on bail. However magistrate, for the reasons to be recorded in writing, may refuse to give bail. In **U.T. World Wide India Private Ltd. ..vs.. State of Maharashtra, 2006(3), Bombay C.R. 513**, it has been held that the entire powers conferred u/sec. 437 of the Code are

discretionary.

47] In **Bhimsingh ..vs...Union of India and others W.P. (Cril) 310/2005** Hon'ble Supreme Court directed that Magistrate, Sessions Judge shall hold one sitting in jail and identify under trial prisoners who have completed half period of the sentence and who had exceeded it may be released, if requirement of section 436-A of Cr.P.C. is fulfilled.

SECTION 437A OF THE CODE OF CRIMINAL PROCEDURE

48] The amendment act of Code of Criminal Procedure, 2008 inserted a new section 437-A to provide for the Court to require the accused to execute bail bonds with sureties to appear before the Higher Court and when such Court issues notice in respect of the Appeal against the Judgment of the respective Court. The bail bond furnished by the accused under the new section remains in force for six months.

BAIL UNDER SECTION 389 OF CRPC

49] Trial court can suspend the execution of the sentence on the part payment of the fine or compensation. **Smt.Vandana Kelkar ..Vs.. State of Maharashtra-** [Cri. writ petition No.92/2009, High Court of Bombay]. There is no impediments to put the applicant accused on the terms while suspending the substantive sentence like deposit of compensation in the court. But amount of such compensation must be a reasonable. No unreasonable amount can be imposed as compensation - **Shabbir Abdul Rahaman ..Vs..**

Parnerkar Nagri Sahakari Path Sanstha.[Criminal Writ Petition No.1137/2009.Decided on 15th June,2010.]

ANTICIPATORY BAIL - SECTION 438 OF Cr.P.C

50] Where complaint for non-bailable offences is sent by the Magistrate under section 156(3) of Cr.P.C. to the police with direction to register the crime, in such matter a person apprehending of his arrest he may apply for anticipatory bail **(2012 ALL MR (Cri) 3095 Dilip Ramrao Khedekar ...vs.. State of Maharashtra and 2004 (2) Crimes 49 (CAL) Sanjay Kumar ..vs.. State)**.

51] When the court grant anticipatory bail either interim or final the following factors and parameters are to be considered (1) the nature and gravity of the accusation (2) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence (3) the possibility of the applicant to free from justice (4) where the accusation has been made with the object of injury or humiliating the applicant by having him so arrested (5) Possibility of tampering with witnesses (6) need for custodial interrogation and (7) other relevant grounds which may apply to the facts and circumstances of the particular case. **Siddharam Satlingappa Mhetre ..vs.. State of Maharashtra reported in AIR 2011 SC 312.**

52] When the application for grant of anticipatory bail is filed, FIR not a precondition for preferring and disposing the said application to the exercise of the power under section 438. **AIR 1980 SC 1632 Gurubakshasingh ..vs.. State of Punjab.**

53] If the public prosecutor applied to the court that direction be given to the applicant remained present in the court at the time of final hearing of the application then the court considers such presence necessary in the interest of justice and give such direction to the applicant. But such direction be issued when the interim anticipatory bail is granted to the applicant otherwise not. **(2010 ALL M R (Cri) 3073 Shivraj Krishnappa Gandge ..vs.. State of Maharashtra)** . If victim of the offence appeared in the court and seeking permission to be heard, then opportunity of being heard is to be given to him or her, because the complainant or victim has a right to be heard. **(2009 ALL MR (Cri) 687 Vinay Potdar ..vs.. State of Maharashtra and 2014 All M R (Cri) 833 Dr.Krishna Appaya Patil ..vs.. State of Maharashtra)**.

54] If the Session court had granted interim anticipatory bail, but it is not confirmed then the session court can give the interim protection to the applicant till approach the superior court. **(L.K.Varma ..vs.. State 1997 ALL MR (Cri) 1385 (SC) and State of Maharashtra ..vs.. K.S.S. Singh Rajput 1994 B.Cr.C. 504)**. If the interim bail was not granted to the applicant and main application is rejected then he is not entitled to get the interim protection till

approach the superior court. Successive applications for anticipatory bail after rejection of earlier application, would be tenable in law, but for that there must be change in circumstances. (**Kamlesh ..vs.. State of Maharashtra 2007 (2) Mh.L.J. 850**).

55] As per Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act bar to grant of anticipatory bail for the offences committed under the provisions of this Act. However, if the prima facie case is not made under the provision of the Atrocities Act, then there is no bar to grant of anticipatory bail. [**Vilas Pandurang Pawar ..vs.. State of Maharashtra 2012 CRI .L.J. 4520 (SC)**].

56] The Sessions court can grant transit bail for limited period but it is a matter of exercise the discretion as to whether transit bail is to be granted or not and depend upon the gravity of the offence and facts of the case. [**N.Surya Rao ..vs.. State of Maharashtra 2002 Cr.L.J. NOC 170 (AP)**].

57] If the anticipatory bail is granted to the applicant then, the prosecution or victim or aggrieved person is at liberty to apply for cancellation of bail under section 439(2) of Cr.P.C. on the point of breach of condition or new circumstances to the court which is granted anticipatory bail. Granted bail can be cancelled if a bail granted illegally or improperly by a wrong arbitrary exercise of judicial discretion or found supervening circumstances, otherwise it cannot be cancelled. (**State of Maharashtra ..vs.. Sanjay 1999 CRI L J 3806, Salim Khan Saheb Khan ...vs.. State of**

Maharashtra 2012 ALL MR (Cri) 822) When the application for cancellation of anticipatory bail is submitted to the court of sessions and the session court while deciding the said application cannot direct the accused to personally remain present before the court during the pendency of the said application even though the person who was on bail was found to be evading service of order of detention or arrest (**Dipak ..vs..Union of India 2009 (2) Mh.L.J. 406)** .

58] Once the anticipatory bail is granted, it will continue till the end of trial unless it is cancelled. (**Siddharam Satlingappa Mhetre ..vs.. State of Maharashtra reported in AIR 2011 SC 312)** .

59] If the court granted anticipatory bail with imposing condition but later on court can impose fresh conditions if warranted when the prosecution move the court for cancellation. (**State of Maharashtra ..vs.. Chandrakant Daliram Sonawana 1991 (1) Crimes 844 (Bom)**). The Assistant sessions judge presiding over the court of Session Judge cannot grant anticipatory bail . (**Ravi Nandam ..vs..Sessins Judge Patna 1993 Cr.L.J. 2436 (Pat. F.B.)** Revision against the bail order is not maintainable. After granting anticipatory bail remedy to cancel it u/sec.439 of Cr.P.C. [**State of Maharashtra ..vs. Sanjai 1999 CRI L.J. 3806 (Bom)]**).

Forfeiture of bail bonds-

60] It is the duty of the court to ascertain whether surety is proper and whether he has property as stated by him. In case of doubt magistrate can ask police to make an inquiry

and submit report and if surety is bogus and his affidavit is false, then he can be prosecuted. In **Gulam Mendi...vs...State of Rajasthan 1960 S.C, 1185**, it is held that before a surety becomes liable to pay amount of bond forfeited, it is necessary to give notice, and if a surety fails to show sufficient cause only then the Court can proceed to recover money. When no opportunity has been given to show-cause why he should not be made to pay, the proceeding cannot be said to be in accordance with law and should be quashed.

61] If the surety failed to bring the accused as undertook by him while taking bail, court can recover surety bond amount from him by taking it as arrears of land revenue. At the same time personal bond amount can also be recovered from his property as arrears of land revenue. If the surety dies then the accused has to furnish fresh surety on previous conditions of bail. If surety wants to withdraw himself as surety for the accused, such application shall not be decided forthwith, but accused shall be given a chance so that he can be ready with fresh surety.

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