

SUMMARY/GIST OF THE PAPERS ON

SUBJECT :- Law relating to Bail.

1. Sections 436 to 439 Cr.P.C.
2. Section 167 (2) Cr.P.C. - default bail.

INTRODUCTION

"No person shall be deprived of his life or personal liberty except according to the procedure established by Law".

The Criminal Procedure Code, 1973 talks in details about the bail process and how it is obtained. However, it does not define bail. Section 2(a) Cr.P.C. says that 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, and non-bailable offence means any other offence.

Chapter-XXXIII of the Code of Criminal Procedure deals with various provisions as to bail and bonds. It lays down as to when bail is the right of the accused, when bail is the discretion of the Court, in what circumstances said discretion can be exercised, what are the terms and conditions which would be required to be observed by the accused, who has been released on bail and what powers are vested in the Court in the event of accused committing default of bail order.

Besides Chapter XXXIII Section 436 to 439, another provision, which deals with the concept of bail is Section 167 of the Code of Criminal Procedure, which is generally termed as "*Default Bail*". While considering the aspect of bail, both these provisions are to be studied in the context of each other.

The Art.21 of the Constitution of India declares that "No person shall be deprived of his life or personal liberty except according to procedure established by law. The concept of bail is closely related to Article 21 of the Constitution. It safeguards the personal liberty of a person from his detention.

The concept of bail is closely related with the terms "custody", "arrest" and "detention". In all these types of situations there is deprivation of liberty of a person. The question of bail arises when a person is in custody or arrested or when there is detention.

SCOPE AND APPLICATION :-

'Bail' connotes the process of procuring the release of an accused charged with certain offence by ensuring his future attendance in the Court for trial and compelling him to remain within the jurisdiction of the Court. Where

a person who is arrested is not accused of a non-bailable offence, no needless impediments should be placed in the way of his being admitted to bail. In such cases the man is ordinarily to be at liberty, and it is only if he is unable to furnish such moderate security, if any, as is required of him, as is suitable for the purpose of securing his appearance before a Court pending inquiry, that he should remain in detention. The section is imperative, and under its provisions the Magistrate is bound to release the person on bail or recognizance. But bail means release of a person from legal custody; it presupposes that he is in custody. Person who is under no such restraint cannot be granted bail. The fundamental principle of our system of justice is that a person should not be deprived of his liberty except for a distinct breach of law. If there is no substantial risk of the accused fleeing the course of justice, there is no reason why he should be imprisoned during the period of his trial. The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice. When bail is refused, it is a restriction on personal liberty of the individual guaranteed by Art.21 of the Constitution and therefore such refusal must be rare. Where delays in the disposal of criminal proceedings take place, the accused ought not to be kept in custody for an inordinately long time and must be released on bail except when under extremely rare circumstances it is not possible to do so.

Kinds of Bail

Broadly speaking there are three categories of bail and they are-

- i] bail in bailable offences,
- ii] bail in non bailable offences,
- iii] anticipatory bail,

BAIL IN BAILABLE OFFENCES,

Section 436 of the Code of Criminal Procedure deals with provisions of bail in bailable offences. Under this section, bail is the right of person, who has been accused for commission of offence, which is bailable in nature. This provision casts a mandatory duty on police official as well as on the Court to release the accused on bail if the offence alleged against such person is bailable in nature. This section further makes it clear that whenever any person, accused of bailable offence is arrested and applies for bail, then the police official or the Court, as the case may be, has no other alternative except to allow such application. This section further makes it clear that if the person applying for bail, is booked for commission of bailable offence, then neither the Court nor the police official can refuse to release such person merely because of non availability of surety. Similarly, it is also the duty of Court as well as police official to release the accused of bailable offence on his Personal Bond if such person, inspite of order of surety, fails to furnish surety within 7 days from such order. While casting such duty on police official as

well as on Magistrate, law raises presumption in favour of the accused to the effect that the accused is so indigent and poor that he cannot arrange for a surety and therefore, after that period he has to be released on his personal recognizance.

If person failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody. Any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

The Hon'ble Bombay High Court held in **Stefan Mueller -Vs- State of Maharashtra in Writ Petition No.2939 of 2009** dated 23/06/2010 in para no.10 that it is well settled position of law that if the offence is bailable, the accused is entitled to be released on bail and even where he does not make an application for bail, it is the responsibility of the concerned police officer, if he has arrested or detained the accused for a bailable offence, to inform him about his right to be released on bail. Similarly, it is also settled position of law that where a person accused of bailable offence appears or is produced before a Magistrate, it is responsibility of such Magistrate to inform him of his right to be released on bail.

A new section 436-A of Cr.P.C. is introduced in the year 2005, to solve the problems of under trial. As per the directions of **Hon'ble Apex Court in Cri.Writ Petition No.310/2005 (Hon'ble Justice Kurien Joseph and Rohinton Nariman JJ)** and as per section 436-A of Cr.P.C. a person who has undergone detention for a period extending half the maximum detention for a period of imprisonment imposed for a particular offence shall be released on his/her personal bond with or without sureties.

BAIL IN NON BAILABLE OFFENCE:-

Under section 437 When a person is accused of, or suspected of, the commission of any non-bailable offence, is arrested or detained without warrant or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but such person shall not be so released,

- a] if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- b] if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence
- c] He may be released if under the age of sixteen years or is a woman or is sick or infirm
- d] He may be released if it is satisfied that it is just and proper so to do for any other special reason

e] Accused person may be required for being identified by witnesses during investigation is not a sufficient ground for refusing bail if he gives an undertaking that he shall comply with such directions as may be given by the Court.

f] If it appears to such officer or Court at any stage of the investigation, inquiry or trial that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his guilt, subject to the provisions of section 446A and pending such inquiry, he be released on bail, or, at the discretion of such officer or Court on the execution by him of a bond without sureties.

g] When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court may impose following condition which the Court considers necessary in order to ensure that (i) such person shall attend in accordance with the conditions of the bond (ii) shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or(iii) otherwise in the interests of justice.

h] An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

i] Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

j] If, in any case triable by a Magistrate, the trial of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

k] If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

At the stage of consideration of bail what the Court is normally required to consider are;

- (1) The nature and seriousness of the accusation
- (2) Severity of the offences
- (3) Nature of the evidence collected and the character and behavior of the accused

- (4) Chances of the accused absconding and not being available during the trial
- (5) Possibility of repetition of such crime
- (6) Chances of the accused of tampering with the evidence and witnesses, and
- (7) Last but not the least, larger interest of the people and the State.

ANTICIPATORY BAIL

Section 438 of Cr.P.C. deals with anticipatory bail. The anticipatory bail is nothing but a bail in the event of arrest, when any person has an apprehension or reason to believe that he may be arrested of an accusation of having committed a non-bailable offence then he may apply to High Court or Court of Sessions for direction that in the event of arrest he shall be released on bail. Therefore, the said powers are exclusively vested with the Court of Sessions and High Courts. For considering the application for anticipatory bail the prerequisite condition is that the offence must be non-bailable. There must be a sufficient reason to believe that the applicant may be arrested in said accusation. The Sessions Court or the Hon'ble High Court considering the nature and gravity of accusation, the antecedent of applicant, the possibility to flee from justice and whether the accusation has been made with object of injury or humiliating the applicant by having him arrested may either reject the application or issue an interim order for the grant of anticipatory bail. When the respective court has not passed any interim order or has rejected the application then the officer-in-charge of police station has right to arrest the accused without warrant. The interim order alongwith the seven days notice must be served to the Public Prosecutor and Superintendent of Police with a view to give them an opportunity for hearing on the application. The presence of applicant seeking anticipatory bail shall be obligatory at the time of final hearing of application and passing final order by the Court. But the Public Prosecutor must have to apply for the same.

Section 438(2) of Cr.P.C. provides that, the High Court or the Sessions Court may also impose some conditions while granting the application. The conditions may be as follows :

- a) that the persons shall make himself available for the interrogation by police officer as and when required;
- b) that the person shall not directly or indirectly make any inducement, threats or promise to any witness;
- c) that a person shall not leave India without previous permission of the Court.

:-SOME OF THE GROUNDS TO GRANT OR REFUSE REGULAR BAIL:-

Previous cases:

Hon'ble Supreme Court in *Maulana Mohmmad Amir Rishadi vs. State of U.P. and another 2012(2) Mh. L. J. (Cri.) 412* held that, merely on the basis of criminal antecedents, bail cannot be denied. In **Sumit Vs. State of U.P., 2010 Cri.L.J. 1435 (SC)** it was held that even if there are other criminal cases pending, accused should be granted bail.

Suppression of earlier petition

Concealment of earlier petition which was dismissed, was held to be not a ground to reject bail. [**Mohan Singh v. Union Territory, 1978 CrLJ 844 : 1978 AIR (SC) 1095 :**]

Permission to go abroad

In **Chandraswami and another, v. CBI .AIR 1998 SC 2679** It was held that he may leave country after seeking permission of Court but the reasons given by petitioner to go abroad namely to propagate Hindu religion and for medical treatment were held to be unsatisfactory and permission to go abroad was refused.

Monetary Surety

It was also held that undertaking by relatives is preferable over monetary suretyship.[**The State of Rajasthan, Jaipur v. Balchand, 1978 CrLJ 195 : 1977 CrLR (SC) 476]**

Successive bail applications:

Subsequent order granting bail without any change in circumstances was held to be not proper.[**State of Maharashtra v. Captain Buddhikota Subha Rao, 1989 CrLJ 2317 : 1989 AIR (SC) 2292]**

Dismissal of applications by one Judge and Grant of bail by another Judge was held to be contrary to judicial propriety. [**Shahzad Hasan Khan v. Ishtiaq Hasan Khan and another, 1987 Cr.L.J. 1872 : 1987 AIR (SC) 1613]**

Practice of appearing on every 14 days

Accused who has been granted bail need not to appear before the court till the charge sheet is filed and process is issued [**Free Legal Aid Committee v. State of Bihar, 1982 Cr.L.J. 1943 : 1982 AIR (SC) 1463]**

Onerous condition:

Excessively onerous conditions for furnishing security of Rs. 1 Lac in cash or in fixed deposit virtually amount to denial of bail.[**Keshab Narayan Banerjee and another v. The State of Bihar, 1985 CrLJ 1857 : 1985 AIR (SC) 1666 ; Munish Bhasin -Vs- State Government of Delhi, AIR 2009 SC 2072.**

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).**

In appropriate case the Court should release undertrial prisoners without insisting on surety. The Court should take into account the following factors concerning the accused:

1. The length of his residence in the community,
2. His employment status, history and his financial condition,
3. His family ties and relationships,
4. His reputation, character and monetary condition,
5. His prior criminal record including any record or prior release on recognizance or on bail,
6. The identity of responsible members of the community who would vouch for his reliability.
7. The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and
8. Any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.

[Hussainara Khatoon and others v. Home Secretary, State of Bihar, Patna, 1979 CrLJ 1036 : 1979 AIR (SC) 1360]

Speaking order:

Order granting or refusing bail is not necessarily required to be speaking order. **[Jivaji Jedeja and others etc. v. State of Maharashtra and others, 1987 CrLJ 1850 : 1987 AIR (SC) 1491].**

Alteration of conditions

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.**

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)**

Bail by magistrate in sessions triable cases

The 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 negativate 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]**

Offences punishable with life in cases triable by magistrate

If the offence is punishable with life imprisonment or any other lesser sentence and is triable by Magistrate, then the Magistrate has jurisdiction to consider the bail application. [**Ambarish Rangashahi Patingare ..vs.. State of Maharashtra, 2010 All MR (Cri) 2775.(Bom)**]

Compromise:

Bail cannot be granted on the assurance of compromise. It cannot be canceled for violation of terms of compromise. [**Binon Chatterjee vs. Sanchita Chaterjee 2004 CRLJ 1451 [SC]**]

When rejected by High court

In Bimla Devi vs. State of Bihar 1994 [2]SCC 8 provisional bail was granted by magistrate despite rejection of two bail applications earlier by high court. Departmental inquiry of Magistrate was ordered.

Accused to surrender

Prabhusingh Narendrasingh Walia versus State of Maharashtra and another 2010 All.MR (Cri) 2737. In this case the Hon'ble Bombay High Court, while entertaining an application under Section 437 of the Cr.P.C. held that, "It was not incumbent upon the accused to surrender to the police, accused can either surrender before the police or before the court and submit to the jurisdiction of the court. Mere pendency of application for cancellation of anticipatory bail in the High Court cannot be a ground for rejecting application for regular bail."

Granting Bail:

Arnesh Kumar Vs. State of Bihar and Anr., III (2014) CCR (SC). In this case it was held that that Police Officer need not arrest accused unnecessarily and Magistrate should not authorize detention casually and mechanically. The checklist under Section 41(b)(d)(ii) must be provided to Police Officer, which shall be regularly filled and furnished with reasons and materials necessitating the arrest. The Police Officer shall furnish the same before Magistrate authorizing the detention. Failure to comply these directions and conditions shall be liable to punish or contempt of Court. Authorizing detention without recording reasons shall also be liable for departmental action. It was clarified that these directions were applicable to the cases in which offences are punishable for imprisonment which may be less than 7 years or which may to the extent to 7 years.

In Khemlo Sakharam Sawant Vs. State of Maharashtra 2002 (1) BOM C.R. 689 it was held that Bail is rule, and jail an exception.

In Sanjay Chandra Vs. Central Bureau of Investigation, reported in **(2012) 1 Supreme Court Cases (Cri) 26** the dictum of Hon'ble

Supreme Court was that gravity alone can not be decisive ground to deny bail.

Among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: State of U.P. through **CBI v. Amarmani Tripathi, 2005 (8) SCC 21**; **Prahlad Singh Bhati v. NCT, Delhi & Anr. 2001 (4) SCC 280**; **Ram Govind Upadhyay v. Sudarshan Singh & Ors., 2002 (3) SCC 598**.)

Bail under special Act

In ***Sanjay Narhar Malshe v/s State of Maharashtra, reported in 2005 Cri. L.J. (Bom) 2984***, Honble High court has held that, complaint was filed against petitioner for offence under provisions of S.C. And S.T. (Prevention of Atrocities) Act. Merely because offence under said Act was exclusively triable by Special Court, it could not be said that Magistrate will have no power to grant the bail.

Cancellation Of Bail

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.)**

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**.

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.

The Hon'ble Supreme Court has held that once bail has been granted, it can only be cancelled based on cogent and overwhelming circumstances. Proceedings for the cancellation of bail are not in the nature of an appeal from the grant of bail, and therefore, a court must look for circumstances that warrant cancellation of bail, such as interference or attempt to interfere with

the due course of justice, or abuse of concession of bail granted to the accused in any manner. (*Dolat Ram v. State of Haryana, (1955) 1 SCC 349*)

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. However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard.

SECTION 437-A OF THE CODE OF CRIMINAL PROCEDURE

The amendment act of Code of Criminal Procedure, 2008 inserted a new section 437A 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.

Cases of Anticipatory Bail **Offence must be non bailable**

If allegations made out of an offence which was bailable - No question of grant of anticipatory bail can arise. [**R.K. Krishna Kumar v. State of Assam and others, 1998 CrLJ 848 : 1998 AIR (SC) 530**]

It must be remembered that Section 438 of the Code applies to all non-bailable offences and not merely to offences punishable with death or imprisonment for life. It is also to be remembered that applicability of the section is not confined to offences triable exclusively by the Court of Session. There is no indication in Section 438 of the Code for justifying a hiatus to be made among non-bailable offences vivisectioning those punishable with death or imprisonment for life and those others punishable with less than life imprisonment. No doubt such a classification is indicated in Section 437(1) of the Code, but that section is concerned only with post-arrest bail and not pre-arrest bail. [**State of Andhra Pradesh v. Bimal Krishna Kundu, 1997 CrLJ 4056 1997 AIR (SC) 3589**]

Investigation into the incident of unnatural death pending - Grant of bail in such matter is not proper. [**Samunder Singh v. State of Rajasthan and others, 1987 CrLJ 705 : 1987 AIR (SC) 737**] :

The Hon'ble Supreme Court in the **Gurbaksh Singh Sibbia and Others Vs. State of Punjab, Reported in (1980) 2 SCC 56**, has laid down the following principles with regard to anticipatory bail :

- a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.
- b) Filing of FIR is not a condition precedent to exercise of power under section 438.
- c) Order under section 438 would not affect the right of police to conduct investigation.
- d) Conditions mentioned in section 437 cannot be read into section 438.

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**).

Presence of accused: If the public prosecutor applied to the court that direction be given to the applicant to remain present in the court at the time of final hearing of the application then if 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 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 approaching, 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**)

Bar to grant of anticipatory bail : Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act bars anticipatory bail for the offences committed under the said Act. However, if the prima facie case is not made out 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)**].

In **Siddharam Satlingappa Mhetre Vs. The State of Maharashtra and others (2011) 1 Supreme Court Cases (Cri) 514**. Hon'ble Supreme Court has opined that, A great ignominy, humiliation and

disgrace is attached to arrest. In case where court is of considered view that accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided, and anticipatory bail should be granted, which after hearing public prosecutor, should ordinarily be continued till end of that. Once it is granted, it will continue till the end of trial unless it is cancelled.

Section 12 of the Juvenile Justice (Care and Protection of Children) Act dealt with the bail of juvenile. If the Juvenile Board reject the bail of Juvenile, then the remedy to the Juvenile is to file the appeal under section 52 of the Act before the Sessions Court and after dismissing the appeal, can avail remedy to file revision under section 53 of the Act before the Hon'ble High Court. But bail under section 12 of the Act to the Juvenile is after arrest or detained or brought before a Board. Therefore Juvenile can file the anticipatory bail application if he is not detained. Non obstante clause in section 12 of the Act only has over riding effect over section 436 and 437 of Cr.P.C. Hence, there is no bar to the juvenile to file anticipatory bail. (**Mohan ..vs.. state of Chhattisgarh 2005 CRI L.J. 3271**).

The above provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases, where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. If anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

POWER OF SESSIONS COURT AND HIGH COURT REGARDING THE BAIL:-

Section 439 gives Special powers to High Court or Court of Session regarding bail. It may direct that any person accused of an offence and in custody be released on bail. It may impose any condition which it considers necessary for the purposes mentioned in that sub-section. It may impose or set aside any condition imposed by a Magistrate when releasing or set aside or modified. When the offence is triable exclusively by the Court of Session, give notice of the application to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice. It may also direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

HISTORICAL BACKGROUND OF PERIOD UNDER SECTION 167 Cr. P.C.

In its inception, Criminal Procedure Code provided only a period of 15 days for remand. Police had to file before Magistrates a preliminary or incomplete report to seek extension of remand under Section 344 of the old

Code. Section 344 could be invoked only after a Magistrate had taken cognizance of an offence after receiving final report under Section 173. Once granted, this led to lethargy in the investigation of cases resulting in accused languishing in custody for long periods. Consequently, a time limit of 60 days with a provision for its extension under certain circumstances was fixed by adding proviso (a) to sub-section (2) of Section 167 of the Code of 1973. This was hampering serious cases involving sentence of death, imprisonment for life etc. Consequently, certain amendments were effected to the proviso to Section 167(2) by means of Act 45 of 1978. Where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years was raised to 90 days, while in other cases the earlier limit of 60 days was retained. Instead of the words "under this section" occurring in the old proviso, the words "under this paragraph", were substituted. Explanation 1 to the proviso was added to highlight the statutory right of bail under clause (a) of the proviso was restricted only to those accused persons who are in a position to furnish bail. Provision of Section (2A) whereby Executive Magistrates, on whom the powers of a Judicial Magistrate have been conferred, have also been empowered to order remand for a term not exceeding 7 days in the aggregate, wherever Judicial Magistrates are not available.

COMPUTATION OF PERIOD

The period of 90 days or 60 days has to be computed from the date of detention as per orders of the magistrate and not from the date of arrest by the police [**Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni (1992) 3 SCC 141**]. Consequently, the first period of 15 days mentioned in section 167(2) has to be computed from the date of such detention and after the expiry of first 15 days it should be only judicial custody.

RELEVANT CASES

In The State of M.P. Vs. Rustam reported in (1995) 3 (Supp). S.C.C 221 the Hon'ble Apex Court observed that in computing the period of 90 days or 60 days the day on which the accused was remanded to judicial custody should be excluded and also the day on which the challan is filed in the Court.

The Hon'ble Bombay High Court in Baburao Vs. State of Maharashtra 1994 Cr.L.J. 192 (Bom.) held that this right is not absolute and indefeasible and can be exercised before the chargesheet is filed. In series of ruling it is held that the right can be exercised only before filing of chargesheet.

In Chaganti Satyanarayana and others Vs. State of Andhra Pradesh, (1986) 3 SCC 141 it has been held by Hon'ble Apex Court that, "Period of ninety days under Section 167(2) of the Code shall be computed from the date of remand of the accused and not from the date of his arrest under Section 57 of the Code."

As sub-section (2) of Section 167 as well as proviso (1) of sub-section 2 of Section 309 relate to the powers of remand of a Magistrate, though under different situation, the two provisions call for a harmonious reading in so far as the periods of remand are concerned. It would, therefore, follow that the words 15 days in the whole accruing in sub-section (2) of Section 167 would be equivalent to a period of 15 days, but if the accused is to be remanded to **police custody**, in no case to exceed 15 days.

Honourable Supreme Court has also held in, **Sadhwi Pragya Thakur Vs. State of Maharashtra, 2011 A.I.R. (S.C.W.) 5551** that Bail has to be decided on merits, except default bail which is under Section 167(2). Sadhwi was arrested on 23.10.2008. She has claimed that she was arrested on 10.10.2008. She was produced before Magistrate on 24.10.2008 and remanded to Police custody till 3rd November. She has not made complaint to the Magistrate that she was arrested on 10.10.2008 nor complained about ill-treatment by ATS. Complaint was made to Magistrate when she was produced before Magistrate on 3rd November. At no point of time she has challenged the order of remand dated 24.10.2008. Even assuming that appellant was arrested on 10.10.2008, but she is not entitled for grant of default bail, as charge-sheet was filed within 90 days from the date of first remand and not from the date of arrest. Thus, there was no violation of Article 22(2) Constitution of India, 1950.

In the case of **L.R.Chawla V/s. Murari, 1976 Cri.L.J. 212 (Del.)** it has been observed that, while computing the total period of sixty days referred to in sub-clause (ii) of proviso (a) to sub-section (2) of Section 167, the period of detention under section 57 (which must not be more than twenty four hours) has to be excluded.

In **Arjun Singh Vs. State Of Rajsthan 1987 Cr.L.J. 1236**, Hon'be Rajsthan High Court answered the following questions :

Q .1. Whether in the total period of 90 days or 60 days as provided in sec.167(2) proviso (a) (i) and (ii) – the date of arrest is to be included or excluded ?

Ans: The date of arrest has to be excluded.

Q.2. Whether in a case a challen is filed on the 91st day of the arrest and the cognizance of the offence has been taken against the accused and he is remanded to the judicial custody under section 309 of Cr.P.C., whether the accused is still entitled for bail under sec.167(2) of Cr.P.C.?

Ans: The accused is not entitled for bail under sec.167(2) of Cr.P.C.

Q 3. How the period of 90 days or 60 days in the proviso (i) and (ii) of subsec.(2) of sec.167 of Cr.P.C. will be computed, whether 24 hours are to be taken into consideration to count the days or fraction of a day shall also be taken into consideration ?

Ans: the fraction of a day shall be counted as a day, even if the transaction of a day is counted as one day, it shall not make any difference as the total period of 90 days or 60 days can began to run only from the date of order of remand and so far as the time taken from arrest till the production of accused for remand shall be governed by the provisions of sec.57 Cr.P.C. and such period will have to be excluded from the period provided under section 167 of Cr.P.C.

In **Uday Mohanlal Acharya, reported in 2001 AIR(SC) 1910**, Honourable Supreme has held that, when an Application for bail is filed and charge sheet is not submitted after expiry of 60 days, therefore, the accused can be said to have availed of his indefeasible right for being released on bail on that ground and, therefore, he will be entitled to bail if the charge sheet not filed in time. Subsequent filing of charge sheet will not extinguish the right of the accused released on bail.

In the case of **State of Maharashtra Vs. Rajendra S. Nahar 2004(2) Mh.L.J.555**, it was held by the Hon'ble Bombay High Court that the right of accused to be released on bail after expiry of 60 or 90 days is not available to the applicant, if such application is filed after filing of charge-sheet.

As observed in the case of **Rehman Khan Kaluka Vs. The State of Maharashtra, 2002 Cri.L.J. 24**, The Magistrate by postponing the passing of an order of bail cannot have defeated the right accrued to the accused of being released on bail. Accordingly, 90 days would start running from the date of first remand. if the last day happens to be a closed holiday, the limitation would expire on that day and the accused would be entitled to bail as a matter of right.

In a case between **Rohini Mahavir Godse Vs. State of Maharashtra and others, 1996(2) Mh. L.J. 492**, the learned Magistrate held that the chargesheet was not accompanied with the documents and therefore it was an incomplete chargesheet and hence he refused to accept it and this resulted into granting bail to the accused. It was held that the chargesheet which is as per Section 173(2) of Cr. P.C. is a complete chargesheet and if such chargesheet comes before the Court the Magistrate ought to accept it.

Further, the Magistrate has to decide the application for the bail, if filed on the same day and it cannot adjourn the matter because it frustrates the legislative mandate as held in case between Union of India through **C.B.I. Vs. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav, 2014 Cri. L.J. 3952.**

Hon'ble Apex court in **State of Maharashtra vs. Bharti Verma : Cri. Appeal No. 1227/2001 and State of West Bengal Vs.Dinesh Dalmiya : Cri. Appeal No. 623/ 2007** had held that if the investigation into the offence, for which the accused was initially reveals his involvement in some other offence associated, any further investigation would continue to relate to the same initial arrest and as such the period envisaged in the proviso to sec. 167(2) would not be extended. Where a charge-sheet was filed within the stipulated period in different crime number then, different dates should be taken into consideration for each separate crime to ascertain 60 days period.

If Bail application under section 167(2) and charge sheet are filed on the same day, time for filing application is crucial and not when Magistrate considered it. (**Jitendra Maroti Deotare & anr., vs. State of Maharashtra, 2009(2) Bom.C.R (Cri) 687**) Meaning of the term “ if not availed of ” was explained .

In the case of **Rahul Gupta V/s. State of M.P., 1995 Cri.L.J. 3340 (M.P.)** which was murder case, the remand for bail custody was extended without the accused being produced physically, it was held that, where the Magistrate is satisfied that, physical non-production of the accused is on account of reasons beyond control of the authorities, he may expressly or impliedly waive production and extend the remand. It was further held that, endorsement of extension of remand on the reverse of the original warrant itself is not illegal but only a curable illegality and does not render the detention illegal.

In offence under Maharashtra Control of Organized Crimes Act. (MCOCA). Special Court is empowered to extend period of detention in Judicial custody upto 180 days in view of amendment to Sec. 167(2) made by Sec.21(2) of MCOC Act, therefore in case of failure to file challan/charge sheet before specific court, within period of 180 days of arrest and first order of remand to police custody, accused is entitled to bail.(**2008 (5) AIR Bombay 151 and Hitendra Thakur Vs. State of Mah. AIR 1994 SC 2623**).

In a case between **Rajnikant Jivanlal Patel and another Vs.Intelligence Officer, Narcotic Control Bureau, New Delhi, AIR 1990 S.C. 71**, it is held that the bail u/s 167(2) of Cr. P.C. may be appropriately termed as an order on default. At that stage the merits of the case are not to be examined.

Hon'ble Bombay High Court in the case of **Sajid Basir Shaikh Vs. State Of Maharashtra 2005 (3) Mh.L.J 860** held that "the position of law which emerges is the right which accrues in favour of the accused to seek compulsory bail under Section 167(2) of the said Code gets extinguished if the accused fails to exercise his right before the prosecution files the charge sheet. There is no provision in the statute which lays down that the right which is extinguished can be revived. There cannot be a dispute about the proposition of the law that it was an obligation on the part of the learned Magistrate to inform the applicant of his right to be released on bail under Section 167(2) of the said Code. Even assuming that the learned Magistrate has failed to perform his duty, the applicant cannot exercise the right after filing of the charge sheet as the very act of filing charge sheet has a result of extinguishment of the said right.

In Union of India Vs. Hassan Ali Khan and another 2011(10) SCC 235, it has been held that, The scope of Section 167(2) Code and the proviso thereto fell for consideration and it was the majority view that an accused had an indefeasible right to be released on bail when the investigation is not completed within the specified period and that for availing of such right the accused was only required to file an application before the Magistrate seeking release on bail alleging that no challan had been filed within the period prescribed and if he was prepared to offer bail on being directed by the Magistrate, the Magistrate was under an obligation to dispose of the said application and even if in the meantime a charge sheet had been filed, the right to statutory bail would not be affected. It was, however, clarified that if despite the direction to furnish bail, the accused failed to do so; his right to be released on bail would stand extinguished.

Last day happens to be Sunday/Holiday/Nonworking day

It is well settled that, even if 90th day is a Sunday, the Police must arrange to see that the charge sheet is filed if not on 90th day but on 89th day. If the last day, as the case may be happens to be holiday or non-working day, then in that circumstances also Court is bound to accept the charge sheet. In other words, presentation of such charge sheet cannot be refused. (**Naresh @ Nana Vs. State of Maharashtra, 1999 (3) Mh. L. J 631**).

Duty of Magistrate to inform accused about his right :-

In the case of **Hussainara Khatoon Vs. Home Secretary, State of Bihar, reported in AIR 1979 SC 1369** it was observed that "when an under trial prisoner is produced before a Magistrate and he has been in detention of 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to the under trial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the under trial

prisoner with a view to enable him to apply for bail in exercise of his right under proviso (a) to sub section (2) of S.167 and the Magistrate must take care to see that the right of the under trial prisoner to the assistance of a lawyer provided at State costs is secured to him.”

Once the order is passed, but before furnishing bail-bonds the charge-sheet is filed even then right to enlarge on bail does not come to an end. For the applicability of 60 days or 90 days maximum sentence is to be seen. (**State vs. Suresh,1995 Mh.L.J.-65**).

To conclude, the conjoint reading of sec. 167 (2) and 172 (1)& (2) of the Code provides that, the investigation should be done expeditiously which would benefit the accused and the state.

RIGHT TO BAIL AND RIGHT TO FREE LEGAL AID :-

The right to free legal assistance is an essential element of any reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. Thus the Supreme Court spelt out the right to legal aid in criminal proceeding within the language of Article 21 and held that this is....

"a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer."

Important Citations on the point of bail:-

A question is whether anticipatory bail can be granted to a person against whom non-bailable warrant is issued. The answer is “yes” in the light of the judgment of **Akhalaq Ahemad Patel V/s State 1998(2) Mh.L.J. 932**. However, there is a contrary view in the case of **Ambalal Reshamwala V/s. State, 1992 Cri.L.J.2373**.

Recently, in the matter of **BHADRESH BIPINBHAI SHETH vs STATE OF GUJARAT & ANOTHER, CRIMINAL APPEAL NOS. 1134-1135 OF 2015**: Hon'ble Apex Court has laid down important principles which can be culled out as under:

(i) There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plentitude of Section 438 must be given its full play. There is no requirement that the accused must

make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

(ii) The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case.

Whether Profession is material in granting bail.

The accused cannot be released on bail because he is an Advocate. In the case of **Surendra Vs. Sessions Judge, Allahabad 1998 Cr.L.J. 104** Hon'ble Allahabad High Court held that where the accused Advocate assaulted the presiding judge in his chamber though the injury is not serious, it was considered not a fit case for bail.

Bail granted by Magistrate in offences triable by Sessions Court.

In offences involving punishment for life imprisonment or death penalty, the Magistrate has no jurisdiction to grant bail. In such cases Magistrate cannot usurp the function of the Sessions Judge at the stage of investigation itself. In the case of **Rafiquttain Vs. Basir Rahemant 1985 (1) Crimes 1076, 1080 Allahabad,** it was held by Hon'ble Allahabad High Court that if the Magistrate grants bail in the cases covered by the second and third part of the section 307 IPC the Magistrate goes behind his jurisdiction and acts illegally. His order of granting bail in such cases will be beyond his power.

The question now is whether the default bail granted can be cancelled. If the accused was released after completion of 60 days of stipulated period and subsequently after filing of the charge sheet, it reveals that some serious offence has been committed by him, then the bail earlier granted can be cancelled. Reliance can be placed in the decision in **Rajnikant Patel Vs. Narcotic Control Bureau, AIR 1990 Supreme Court 71.**

Once the accused is released on bail under section 167(2) of Cr.P.C. he cannot be taken in custody merely on filing of charge-sheet which reveals the commission of non bailable offence unless there are strong grounds, held in *Aslam B. Desai V/s State of Maharashtra, A.I.R. 1993 S.C. 1.*

CONCLUSION

The idea of bail is noble idea in criminal jurisprudence. Bail can be granted to the accused in case of non bailable offences subject to some limitation and conditions. The idea of bail conveys the meaning that the accused cannot be presumed to be guilty until his guilt is proved. Provision of bail also brings the noble idea of personal liberty into existence. The provisions are incorporated with a view to give effect to the personal liberty mentioned in Indian Constitution.

.....

CASE LAWS FOR DISCUSSION

Ajay Kumar Choudhary -vs- Union of India (16.02.2015)

Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

Drawing support from the observations contained of the Division Bench in Raghbir Singh v. State of Bihar MANU/SC/0199/1986: 1986 (4) SCC 481, and more so of the Constitution Bench in **Antulay**, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Code of Criminal Procedure 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Code of Criminal Procedure postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension.

State of Gujarath -vs- Kishanbhai etc (Criminal Appeal No.1485 of 2008) dt 07.01.2014 Supreme Court :- Finding needs to be recorded in each case whether lapses committed by Investigating Officer was innocent or blamed worthy.

Indian Penal Code, 1860 - Sections 363, 369, 376, 394, 302 and 201--Kidnapping, rape, murder, etc.--Of six years old girl--Conviction and death sentence by trial court--But acquittal by High Court--Accused-respondent acquitted by giving him benefit of doubt--Prosecution's case mainly rest on testimony of P.W. 2, P.W. 5 and P.W. 6--Glaring inconsistencies and infirmities in statement of above witnesses--Their statements rendered suspicious and accordingly unreliable--Investigating

officials and prosecutors involved in presenting the case, miserably failed in discharging their duties--They have been instrumental in denying to serve cause of justice--Evidence produced to prove charges, systematically shattered, thereby demolishing prosecution version--Non-production of evidence which prosecution unjustifiably withheld, resulting in dashing all State efforts to the ground--On culmination of criminal case in acquittal--Concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified--All such erring officials/officers identified, as responsible for failure of prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action--Essential that every State should put in place procedural mechanism--Mechanism formulates would infuse seriousness in performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive--Home department of State to identify erring officers in instant case, and to take appropriate departmental action against them in accordance with law.

**Harijan Badhabhai -vs- State of Gujarath Dt 11th May 2016
(AIR 2016 SC 2376)**

How to appreciate evidence if murder is taken place in court room.

Relying on the testimony of eye witness account unfolded and the other material on record, the Trial Court found that the case of prosecution as against the Appellant and other Accused was fully proved. It however acquitted another Accused of all the charges leveled against her. The Appellant and other Accused were convicted for the offence punishable under Section 302 of Code. The convicting Accused persons filed appeal in the High Court. The other Accused died during the pendency of the appeal and the appeal at his instance stood abated. The High Court affirmed the conviction and sentence of the Appellant. Hence, the present appeal. Held, while dismissing the appeal :

(i) Even before the registration of FIR the inquest was undertaken and the postmortem was conducted. In this case, the assault was made right in the Courtroom which called for immediate action on part of the investigators to clear the Courtroom as early as possible. The Investigating Officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the Investigating Officer then had to make enquiries and record the complaint. In the meantime, if inquest was undertaken and the body was sent for post-mortem, no infraction which should entail discarding of the entire case of prosecution. No wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. The version coming from the eye witnesses inspired confidence and was well corroborated by the material on record.

(ii) The presence of a Police Officer who was required to give evidence in the adjoining Court, was quite natural. In case of any commotion as a result of any assault, a trained

Police Officer would certainly be expected to reach the place in question, which Police Officer in question did with promptitude. The evidence thus inspired confidence about his presence at the time in question. There was no infirmity orders passed by the Courts below.

Jaiprakash -vs- National Insurance Co. Dt.13.05.2016

Landmark judgment of Supreme Court revolutionizing MACT cases.

Sundeepkumar Bafana -vs- State of Maharashtra (AIR 2014 SC 1745)

Criminal Procedure Code - Section 167:- Private Counsel in State cases ?

He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.

In this analysis, the opinion in the impugned Judgment incorrectly concludes that the High Court is bereft or devoid of power to jurisdiction upon a petition which firstly pleads surrender and, thereafter, prays for bail. The High Court could have perfunctorily taken the Appellant into its custody and then proceeded with the perusal of the prayer for bail; in the event of its coming to the conclusion that sufficient grounds had not been disclosed for enlargement on bail, necessary orders for judicial or police custody could have been ordained. A Judge is expected to perform his onerous calling impervious of any public pressure that may be brought to bear on him.

There are no restrictions on the High Court to entertain an application for bail provided always the accused is in custody, and this position obtains as soon as the accused actually surrenders himself to the Court.

The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control

of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the Accused is to be granted bail is a matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Mr. Gopal Subramaniam, Senior Advocate and have perused detailed Written Submissions since we are alive to impact that our opinion would have on a multitude of criminal trials.

In conclusion, therefore, we are of the opinion that the learned Single Judge erred in law in holding that he was devoid of jurisdiction so far as the application presented to him by the Appellant before us was concerned. Conceptually, he could have declined to accept the prayer to surrender to the Courts' custody, although, we are presently not aware of any reason for this option to be exercised. Once the prayer for surrender is accepted, the Appellant before us would come into the custody of the Court within the contemplation of Section 439 CrPC. The Sessions Court as well as the High Court, both of which exercised concurrent powers under Section 439, would then have to venture to the merits of the matter so as to decide whether the applicant/Appellant had shown sufficient reason or grounds for being enlarged on bail.

Jai Prakash vs M/S. National Insurance Co. & Ors on 17 December, 2009.

The first problem relates to a section of motor accident victims who are doubly unfortunate – first in getting involved in an accident, and second, in not getting any compensation. Let us elaborate. There are two categories of victims in motor accidents - those who will be able to get compensation and those who will not be able to get compensation. Victims of motor accidents involving insured vehicles, who are assured of getting compensation from the insurer, fall in the first category. Victims of motor accidents involving the following categories of vehicles, who do not receive any compensation fall under the second category:-

- (i) Hit and run vehicles which remain unidentified.
- (ii) Vehicles which do not have any insurance cover.
- (iii) Vehicles with third party insurance,

3. The second problem relates to the widespread practice of using goods vehicles for passenger traffic. Such use is primarily due to the following four reasons:

(a) Non-availability of regular mode of passenger transport in several parts of the country, particularly in rural areas, compelling people to use lorries and other goods vehicles as modes of transport to reach their destinations.

(b) Non-availability of contract carriages for group travel during special occasions. Consequently, large groups of people use, again mostly in rural areas, goods vehicles (lorries and tractor-trailers) for group travel on occasions like marriages, festivals, functions and political rallies.

(c) Frequent break-down of buses/cars/other vehicles (on roads with sparse traffic) due to bad maintenance of roads or the vehicles, or other emergencies forcing the stranded passengers to use goods vehicles to reach nearest city or town from which they can get regular recognized modes of transport.

(d) The temptation of lorry drivers to make a quick buck by carrying passengers for a fare (with or without the knowledge of the owner) coupled with the attraction of a low fare for the poor and needy. (These passengers though termed as 'gratuitous' passengers, except in a few cases, are fare paying illegal passengers).

4. The third problem relates to the procedural delays in adjudication/settlement of claims by Motor Accidents Claims Tribunals (for short 'Tribunals') and consequential hardship to the victims and their families

Sub-section (6) of section 158 of the Act provides:

"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer-in-charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer".

Sub-section (4) of Section 166 of the Act reads thus:- "The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act".

Rule 150 of Central Motor Vehicle Rules, 1989 prescribes the form (No.54) of the Police Report required to be submitted under section 158(6) of the Act. 4.3) This Court in *General Insurance Council v. State of A.P.* [**2007 (12) SCC 354**] emphasized the need for implementing the aforesaid provisions. This Court directed:

"It is, therefore, directed that all the State Governments and the Union Territories shall instruct all police officers concerned about the need to comply with the requirement of Section 158(6) keeping in view the requirement indicated in Rule 150 and in Form 54, Central Motor Vehicles Rules, 1989. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Road Transport and Highways shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the State Governments/Union Territories concerned so that necessary action can be taken against the officials concerned."

4.4) But unfortunately neither the police nor the Motor Accidents Claims Tribunals have made any effort to implement these mandatory provisions of the Act. If these provisions are faithfully and effectively implemented, it will be possible for the victims of accident and/or their families to get compensation, in a span of few months. There is, therefore, an urgent need for the concerned police authorities and Tribunals to follow the mandate of these provisions.

Problem (iv)

5. Courts have always been concerned that the full compensation amount does not reach and benefit the victims and their families, particularly those who are uneducated, ignorant, or not worldly-wise. Unless there are built-in safeguards they may be deprived of the benefit of compensation which may be the sole source of their future sustenance. This court has time and again insisted upon measures to ensure that the compensation amount is appropriately invested and protected and not frittered away owing to ignorance, illiteracy and susceptibility to exploitation. [See **Union Carbide Corporation v. Union of India - 1991 (4) SCC 584** and **General Manager, Kerala State Road Transport Corporation v. Susamma Thomas - 1994 (2) SCC 176**]. But in spite of the directions in these cases, the position continues to be far from unsatisfactory and in many cases unscrupulous relatives, agents and touts are taking away a big chunk of the compensation, by ingenious methods. Reports of Amicus Curiae

Directions to the Claims Tribunals

12. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents receive under Section

158 (6) of the Act as applications for compensation under Section 166 (4) of the Act and deal with them without waiting for the filing of claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary Registers, forms and other support is extended to the Tribunal to give effect to Section 166 (4) of the Act.

13. For complying with section 166(4) of the Act, the jurisdictional Motor Accident Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an Institution Register for recording the AIRs which are received from the Station House Officers of the Police Stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the Register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant/s appear, the miscellaneous application shall be converted to claim petition. Where a claimant/s file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any 'Police Officer - Advocate – Doctor' nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

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(e) The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavour to determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the claims tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in Fixed deposit and disbursed as per the directions contained in **General Manager, KSRTC v. Susamma Thomas [1994 (2) SCC 176]**.

(h) As the proceedings initiated in pursuance of Section 158(6) and 166(4) of the Act, are different in nature from an application by the victim/s under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the

owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependents of the deceased victim and in determining the quantum of compensation.

We extract below the particulars of a special Scheme offered by a nationalized Bank at the instance of the Delhi High Court :

(i) The fixed deposit shall be automatically renewed till the period prescribed by the Court.

(ii) The interest on the fixed deposit shall be paid monthly.

(iii) The monthly interest shall be credited automatically in the saving account of the claimant.

(iv) Original fixed deposit receipt shall be retained by the Bank in safe custody. However, the original passbook shall be given to the claimant along with the photocopy of the FDR.

(v) The original fixed deposit receipt shall be handed over to the claimant at the end of the fixed deposit period.

(vi) Photo identity card shall be issued to the claimant and the withdrawal shall be permitted only after due verification by the Bank of the identity card of the claimant.

(vii) No cheque book shall be issued to the claimant without permission of the court.

(viii) No loan, advance or withdrawal shall be allowed on the fixed deposit without permission of the court.

(ix) The claimant can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimant, the bank shall provide the said facility.

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