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CRIMINAL PROCEDURE

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I INTRODUCTION

AS IN the case of other sectors, the COVID-19 pandemic had its impact on justice delivery system in India. In order to adhere to social distancing norms and to curb the spread of virus, the Indian courts resorted to video-conferencing to ensure that administration of justice remains uninterrupted. Since March 2020, the Indian Supreme Court, high courts and district courts sought to constrain the spread of the virus by reducing its caseload and only hearing extremely urgent cases. The functioning of the courts was restricted to hear only matters involving extreme urgency. Courts also altered their working style and started digitalising their procedures by enabling e-filing in all courts and hearing urgent cases through videoconferencing. As early as on 6-04-2020 in *In re Guidelines for Court Functioning Through Videoconferencing During COVID-19 Pandemic*[1] the Supreme Court in exercise of powers under article 142 of Constitution of India issued certain guidelines to preserve the constitutional commitment to ensuring the delivery of and access to justice while addressing the challenges occasioned by the outbreak of COVID-19.

The current survey endeavours to take stock of leading judicial pronouncements of the Supreme Court made during 2020 on different aspects of criminal procedure and thereby to highlight the pertinent reflections and significant contributions made by the Court to different segments and aspects of criminal justice administration in India. For facility of reference and analysis developments are discussed under different heads.

II COVID-19 PANDEMIC AND CRIMINAL PROCEDURE

The COVID-19 pandemic brought its fair share of challenges for criminal justice administration. One such challenge was that of addressing the threat of transmission of corona virus and its fatal consequences in prisons and also that of ensuring social distancing norms among prisoners.

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1 (2020) 6 SCC 686.

Expressing concern over the overcrowding of prisons in the context of COVID 19 pandemic, the Supreme Court in *In Re: Contagion of COVID 19 Virus in Prisons*[2] directed that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. The court further instructed that the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen. It is instructive to refer to the other directions issued by the ourt:[3]

> We also direct that prison specific readiness and response plans must be developed in consultation with medical experts. "*Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings*" jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously.

The court also directed as follows:[4]

> Each State/Union Territory shall constitute a High-Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.
>
> It is made clear that we leave it open for the High-Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

2 Suo Motu Writ Petition (Civil) No. 1/2020. Order dated Mar.23, 2020.

3 *Id.*, para 9.

4 *Id.*, para 12 to 15.

> The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*[5] shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.
>
> The High-Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar* v. *State of Bihar*.[6]

By an order dated April 13, 2020,[7] the court clarified the scope of its earlier Order thus:

> We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released. We make it clear that the aforesaid order is intended to be implemented fully in letter and spirits.

Addressing the concern that the release and transportation of the prisoners would itself result in transmission of coronavirus from prisons or detention centres to locations where the released prisoners have to reach, the court in its order dated April 13, 2020 also issued the following directions:[8]

(a)No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.

(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.

(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of coronavirus disease are at a distance from each other.

It may be noted that in 2020, in order to comply with various directions and interim orders issued by the Supreme Court of India from time to time and also in pursuance of the directions of respective High Court as well as decisions of High Powered Committees the trial courts in various States suitably modified their policies and approaches in the matter of granting bails so as to address the challenges and concerns relating to the spread of the corona virus.

5 (2016) 3 SCC 700.

6 (2014) 8 SCC 273.

7 *In Re: Contagion of COVID 19 Virus in Prisons*, Suo Motu Writ Petition (Civil) No. 1/2020, Order dated Apr.13, 2020, para 5.

8 *Id*., para 10.

III FIRST INFORMATION REPORT

In *Amish Devgan* v. *Union of India,*[9] the Supreme Court reiterated the legal position that there can be no second FIR where the information concerns the same cognizable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognizable offences. Following the *ratio* in *T.T. Antony* v. *State of Kerala,*[10] the court held that in such a situation the subsequent FIRs would be treated as statements under section 162 Cr PC. According to the court this would not cause any prejudice to the other complainants at whose behest the other FIRs were registered as it would be open to them to file a protest petition in case a closure report is filed by the police. To buttress this position the court also referred to section 186[11] Cr PC and held that the principle underlying the provision can be applied to pre-charge-sheet stage also *i.e.,* the stage after registration of FIR and prior to submission of charge-sheet.

Discouraging the unwarranted invocation of article 32 jurisdiction to quash FIRs, the Supreme Court in *Arnab Ranjan Goswami* v. *Union of India*[12] held that where a petitioner does not pursue the available remedies in law including the one under section 482 Cr PC and instead invokes the jurisdiction under article 32 for quashing an FIR he must be relegated to the pursuit of the remedies under the Cr PC. According to the court when the high court has the power under section 482 CrPC the same can be bypassed by entertaining a petition under article 32 only when there are exceptional grounds or reasons to do so.

In *Amish Devgan* v. *Union of India*[13] an accused approached the Supreme Court to quash an FIR by invoking its jurisdiction under article 32. While expressing its agreement with the ratio laid down in *Arnab Ranjan Goswami* v. *Union of India,*[14] the court proceeded to answer the issue under consideration and refused to relegate the petitioner to pursue the remedies under the Cr PC since detailed arguments were addressed by both sides on the maintainability and merits of the FIRs in question. In view of the peculiar circumstances of that case the court did not deem it appropriate to permit the petitioner to open another round of litigation.

IV INVESTIGATION

The principal agency for carrying out investigation into offences is the police. Wide powers have been conferred on the police to make the agency an effective and efficient instrument for criminal investigation. However, on many occasions the police exhibit a lackadaisical attitude in the matter of criminal investigation. In 2020 the callous way of investigation resorted to by the police came to be very heavily criticized by the Supreme Court in some decisions.

9 (2021) 1 SCC 1.

10 (2001) 6SCC 181.

11 S.186 relates to cases where two separate charge-sheets have been filed on the basis of separate FIRs and postulates that the prosecution would proceed where the first charge-sheet has been filed on the basis of the FIR that is first in point of time.

12 (2020) 14 SCC 12.

13 (2021) 1 SCC 1.

14 (2020) 14 SCC 12.

In *Amar Nath Chaubey* v. *Union of India and others*[15] the Supreme Court came down heavily on the police for an investigation which it termed as 'a sham, designed to conceal more than to investigation'. Setting aside the closure report in spite of the trial having commenced against the charge-sheeted accused, the court observed:[16]

> We are constrained to record that the investigation and the closure report are extremely casual and perfunctory in nature. The investigation and closure report do not contain any material with regard to the nature of investigation against the other accused including respondent no. 5 for conspiracy to arrive at the conclusion for insufficiency of evidence against them. The closure report is based on the *ipse dixit* of the Investigating Officer. The supervision note of the Senior Superintendent of Police (Rural), in the circumstances leaves much to be desired. The investigation appears to be a sham, designed to conceal more than to investigate. The police has the primary duty to investigate on receiving report of the commission of a cognizable offence. This is a statutory duty under the Code of Criminal Procedure apart from being a constitutional obligation to ensure that peace is maintained in the society and the rule of law is upheld and applied. To say that further investigation was not possible as the informant had not supplied adequate materials to investigate, to our mind, is a preposterous statement, coming from the police.

The court also elucidated the scope of judicial interference in investigation by police. It ruled:[17]

> The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

15 2020 SCC OnLine 1019.

16 *Id.,* para 7.

17 *Id.,* para 8.

In *Naresh Kumar Mangla* v. *Anita Agarwal*[18] the Supreme Court while allowing an appeal filed against an order of High Court of Allahabad cancelled the anticipatory bail granted to certain persons who were accused of offences punishable under sections 498A, 304-B and 323 IPC. Refusing to confine the scope of its examination to the wisdom of granting anticipatory bail, the court in the exercise of its inherent power directed the Central Bureau of Investigation to conduct a further investigation into the case. It reasoned:[19]

> We are of the view that it is necessary to entrust a further investigation of the case to the CBI in exercise of the powers of this Court under Article 142 of the Constitution. The conduct of the investigating authorities from the stage of arriving at the scene of occurrence to the filing of the charge-sheet do not inspire confidence in the robustness of the process. A perusal of the charge-sheet evinces a perfunctory rendition of the investigating authorities' duty by a bare reference to the facts and the presumption under Section 304B of the IPC when the death occurs within seven years of the marriage…………………………………………… It would indeed be a travesty if this Court were to ignore the glaring deficiencies in the investigation conducted so far, irrespective of the stage of the proceedings or the nature of the question before this Court. The status of the accused as propertied and wealthy persons of influence in Agra and the conduct of the investigation thus far diminishes this Court's faith in directing a further investigation by the same authorities. The cause of justice would not be served if the Court were to confine the scope of its examination to the wisdom of granting anticipatory bail and ignore the possibility of a trial being concluded on the basis of a deficient investigation at best or a biased one at worst.

In *Naresh Kumar Mangla*[20] the court also expressed its anxiety over the practice of selective disclosure of information to media at the stage of investigation into crimes. It observed:[21]

> Within a couple of days of the death of Deepti, the alleged suicide note found its way into the newspapers in Agra. ………………. Immediate publicity was given to the alleged suicide note. These examples are now becoming familiar. Selective disclosures to the media affect the rights of the accused in some cases and the rights of victims' families in others. The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the

18 2020 SCC OnLine SC 1031.

19 *Id*., para 31.

20 *Supra* note 18.

21 *Id*., para 25.

> criminal trial, can be used to derail the administration of criminal justice. The investigating officer has a duty to investigate when information about the commission of a cognizable offence is brought to their attention. Unfortunately, this role is being compromised by the manner in which selective leaks take place in the public realm. This is not fair to the accused because it pulls the rug below the presumption of innocence. It is not fair to the victims of crime, if they have survived the crime, and where they have not, to their families. Neither the victims nor their families have a platform to answer the publication of lurid details about their lives and circumstances……………

The concern of the Supreme Court in the matter of safeguarding human rights inside police stations was very much evident in some of the decisions reported in 2020. With a view to avoiding police atrocities and ensuring effective investigation the Supreme Court in *Paramvir Singh Saini* v. *Baljit Singh and others*[22]issued a slew of directions with respect to installation of CCTV cameras in each and every police station in the states and Union Territories. The director general/inspector general of police of each state and Union Territory was directed by the court to issue instructions to station house officers entrusting them with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHOs were also responsible for CCTV data maintenance, backup of data, fault rectification, *etc*. In order to ensure that no part of a police station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the reception area; all verandahs /outhouses, inspector's room; sub-inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (*not inside*) washrooms/toilets; duty officer's room; back part of the police station, etc.

As regards the features and quality of the CCTV cameras to be installed, the court observed:[23]

> The CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does

22 (2021) 1 SCC 184.

23 *Id.* at 188.

> not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market…………

Earlier in *Shafhi Mohammad* v. *State of H.P.*[24] the Supreme Court had directed that a Central Oversight Body (COB) be set up by the Ministry of Home Affairs to implement the plan of action with respect to the use of videography in the crime scene during the investigation. In *Shafhi Mohammad*[25] the court after considering the directions issued in *D.K. Basu* v. *State of W.B.*[26] also held that there was a need for further directions that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish a report of its observations thereon.

In continuation of the directions issued in *Shafhi Mohammad,*[27] the Court in *Paramvir Singh Saini*[28] directed the constitution of state and district level oversight committees. The State Level Oversight Committee (SLOC) was to consist of (i) Secretary/Additional Secretary, Home Department; (ii) Secretary/Additional Secretary, Finance Department; (iii) Director General/Inspector General of Police; and (iv) Chairperson/ member of the State Women's Commission. The District Level Oversight Committee (DLOC) shall comprise of (i) The Divisional Commissioner/Commissioner of Divisions/Regional Commissioner/Revenue Commissioner Division of the District; (ii) District Magistrate of the District; (iii) Superintendent of Police of that District; and (iv) Mayor of a municipality within the District/a Head of the Zila Panchayat in rural areas.

In *Fertico Marketing and Investment (P) Ltd.* v. *Central Bureau of Investigation,*[29] the court had an opportunity to clarify the scope of sections 5 and 6 of the Delhi Special Police Establishment Act, 1946. According to the court though Section 5 enables the Central Government to extend the powers and jurisdiction of members of DSPE beyond the Union Territories to a state, the same is not permissible unless it grants its consent for such an extension within the area of the State concerned under section 6 of the DSPE Act. The court also clarified that if the name of an accused with respect to whose prosecution sanction was required under section 6 of DSPE Act did not find place in FIR and his name came to light during the course of investigation, the consent given after completion of investigation would be a valid consent under section 6 of DSPE Act.

24 (2018) 5 SCC 311.
25 *Ibid.*
26 (2015) 8 SCC 744.
27 *Supra* note 24.
28 Supra note 22.
29 (2021) 2 SCC 525.

V BAIL

Almost four decades ago in *State of Rajasthan* v. *Balchand,*[30]V.R. Krishna Iyer J., pithily stated that the basic rule of Indian criminal justice system is 'bail not jail'. In *Arnab Manoranjan Goswami* v. *State of Maharashtra,*[31] the Supreme Court had an occasion to express anguish at the failure of high courts and district judiciary to apply this principle in the right spirit. While reminding the high courts and district judiciary to not forego the duty to apply this principle, the court observed that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression.

As in the previous years the Supreme Court in 2020 had an opportunity to discuss the distinction between rejection and cancellation of bail. According to the court, rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with liberty of individual and hence it must not be lightly resorted to. On this basis the Supreme Court in *Myakala Dharmarajam* v. *State of Telangana*[32] set aside a judgment of High Court for the State of Telangana by which the high court cancelled the bail granted to the accused by the sessions court.

The judgment of the Supreme Court in *State* v. *Murugesan,*[33] presents some interesting aspects with respect to the scope of the jurisdiction of a court under section 439 Cr PC. In a matter pertaining to grant of bail under section 439 Cr PC the Single judge of the High Court of Judicature at Madras admitted the accused to bail subject to certain conditions but passed an order on April 24, 2019 to call for the details of the cases registered by the police, final report filed, trial conducted and the result of such cases. The details were sought to bring to light the manner in which the entire criminal justice system was operating in the state. The court also directed the state to constitute a committee to give its recommendations on the reforms that can be brought into practice for reformation, rehabilitation and reintegration of the convict/accused person to society and best practices for improving the quality of investigation. While disposing of an appeal preferred by the state against the order dated April 24, 2019 a two judge Bench of the Supreme Court noted that the single judge of the high court collated data from the state and made it part of the order after the decision on the bail application as if the court had inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the state. The Supreme Court observed that the jurisdiction of a court under section 439 CrPC is limited to grant or not to grant bail pending trial. While setting aside the order dated April 24, 2019 the apex court held that even though the object of the single judge was laudable the jurisdiction exercised was clearly erroneous.

The scope of the accused's right to default bail was once again reiterated by the Supreme Court in *M. Ravindran* v. *Intelligence Officer, Directorate of Revenue*

30 (1977) 4 SCC 308.

31 (2021) 2 SCC 427.

32 (2020) 2 SCC 743.

33 (2020) 15 SCC 251.

Intelligence.[34] According to the court, the moment an accused files application for bail on default of investigating agency in filing charge-sheet within prescribed period and offers to furnish bail bond as directed by the court, he is deemed to have "availed of" his indefeasible right to be released on bail. Once the right to default bail has become indefeasible by filing application when right accrues, it continues, irrespective of pendency of bail application, or subsequent filing of charge-sheet, additional complaint or Public Prosecutor's report seeking extension of time.

The circumstances involved while considering an application for regular bail under section 437 Cr PC are different from the circumstances involved while considering an application for default bail/statutory bail. This aspect was emphasized by the Supreme Court in *Saravanan* v. *State.*[35] In this case the Madurai Bench of Madras High Court while releasing an accused on default bail/statutory bail imposed two conditions i.e., to deposit Rs. 8,00,000 (Rupees eight lakh only) and also to report daily to the police station at 10 AM. While allowing an appeal preferred against the order by which the impugned bail conditions were imposed a Three judge Bench of the Supreme Court held that imposing such conditions while releasing an accused on default bail would frustrate the very object and purpose of default bail under Section 167 (2) Cr PC.

In *Preet Pal Singh* v. *State of Uttar Pradesh,*[36] the Supreme Court explained the distinction between section 439 Cr PC and Section 389 Cr PC thus:[37]

> There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post-conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception……..However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) Cr PC.

34 (2021) 2 SCC 485.

35 (2020) 9 SCC 101.

36 (2020) 8 SCC 645.

37 *Id*. at 655.

In *Prahladbhai Jagabhai Patel* v. *State of Gujarat,*[38] the fact that the convict was aged about 65 years and that he has been in jail for about seven years led the Supreme Court to grant bail to him during pendency of appeal.

While granting bail to the convict the court required him, *inter alia*, to engage in spiritual programme or social/community service for a minimum six hours per week during the period of bail. Taking inspiration from the observations in *Babu Singh* v. *State of U.P.,*[39] the court observed that punitive harshness should be minimised and restorative devices to redeem the accused should be innovated. In the instant case the task of monitoring compliance with bail conditions was entrusted to the Madhya Pradesh State Legal Services Authority.

VI ANTICIPATORY BAIL

In the light of conflicting views of different Benches of varying strength, more particularly in *Gurbaksh Singh Sibbia* v. *State of Punjab,*[40] *Siddharam Satlingappa Mhetre* v. *State of Maharashtra,*[41]*Bhadresh Bipinbhai Sheth* v. *State of Gujarat*[42] on one side and in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[43] subsequently followed in *K.L. Verma* v. *State,*[44] *Sunita Devi* v. *State of Bihar,*[45] *Nirmal Jeet Kaur* v. *State of M.P.,*[46] *HDFC Bank Ltd.* v. *J.J. Mannan*[47] and *Satpal Singh* v. *State of Punjab*[48] the following questions were referred for consideration by a larger Bench in *Sushila Aggarwal* v. *State (NCT of Delhi).*[49]

(1) Whether the protection granted to a person under Section 438 CrPC should be limited to a fixed period so as to enable the person to surrender before the trial court and seek regular bail.

(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court.

A five Judge Bench of Supreme Court answered the Reference by a judgment dated 29-01-2020.[50] As regards the first question the court held that the protection granted to a person under section 438 Cr PC should not invariably be limited to a fixed period. It should ensure in favour of the accused without any restrictions on time. As regards the second question the court held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused

38 (2020) 3 SCC 341.
39 (1978) 1 SCC 579.
40 (1980) 2 SCC 565.
41 (2011) 1 SCC 694.
42 (2016) 1 SCC 152.
43 (1996) 1 SCC 667.
44 (1998) 9 SCC 348.
45 (2005) 1 SCC 608.
46 (2004) 7 SCC 558.
47 (2010) 1 SCC 679.
48 (2018) 13 SCC 813.
49 (2018) 7 SCC 731.
50 (2020) 5 SCC 1.

is summoned by the court, or when charges are framed, but can continue till the end of the trial. However, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so. While answering the reference the court overruled Siddharam *Satlingappa Mhetre* v. *State of Maharashtra*[51] wherein the court had observed that no restrictive conditions at all can be imposed while granting anticipatory bail. Likewise. the decision in *Salauddin Abdulsamad Shaikh* v. *State of Maharashtra*[52]and subsequent decisions (including *K.L. Verma* v. *State,*[53] *Sunita Devi* v. *State of Bihar,*[54] *Nirmal Jeet Kaur* v. *State of M.P.*[55], *HDFC Bank Ltd.* v. *J.J. Mannan*[56] and *Satpal Singh* v. *State of Punjab*[57]and *Naresh Kumar Yadav* v. *Ravindra Kumar*[58] which laid down certain restrictive conditions or terms limiting the grant of anticipatory bail to a period of time were overruled by the court.

VII COGNIZANCE OF OFFENCES

In *Jayant* v. *State of M.P.*[59] the Supreme Court had an opportunity to reiterate and summarize the scope of the powers of a magistrate in the matter of taking cognizance of an offence. According to the court it is only when the magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of an offence. In the instant case the court reiterated the legal position that a direction for investigation issued by the magistrate under section 156 (3) CrPC does not amount to taking cognizance of an offence.

VIII DISCHARGE OF ACCUSED

The legal principles which are applicable in regard to an application seeking discharge of an accused were reiterated by the Supreme Court in *M. E. Shivalingamurthy* v. *Central Bureau of Investigation, Bengaluru*[60] In this case the trial court had erroneously discharged the accused based on his version which were matters of defence which could not be looked into while considering the discharge petition. On appeal the High Court reversed the order passed by the trial court. While disposing of an appeal preferred against the judgment of the high court the Supreme Court held that only materials brought on record by the prosecution both in form of oral statements and documents are to be considered while disposing of a petition for discharge of an accused. According to the court the accused will be entitled to discharge if evidence which prosecution proposes to adduce to prove the guilt of the accused,

51 (2011) 1 SCC 694.
52 (1996) 1 SCC 667.
53 (1998) 9 SCC 348.
54 (2005) 1 SCC 608.
55 (2004) 7 SCC 558.
56 (2010) 1 SCC 679.
57 (2018) 13 SCC 813.
58 (2008) 1 SCC 632.
59 (2021) 2 SCC 670.
60 (2020) 2 SCC 768.

even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, cannot show that the accused committed the offence.

IX JURISDICTION

In *Amish Devgan* v. *Union of India*[61] the Supreme Court refused to quash several FIRs registered against a television anchor for the allegedly derogatory statements made by him during a TV channel show broadcast against a widely revered religious figure's shrine located in a particular city. The court did not accept the contention of the petitioner that the FIRs ought to be quashed as they were registered at places where no "cause of action" arose. Referring to section 179 Cr PC the court reiterated the statutory position that an offence is triable at a place where an act is done or where its consequence ensues. The court noted that the TV show hosted by the petitioner was broadcast on a widely viewed television network. The audience located in different parts of the country were affected by the utterances of the petitioner and hence the consequence of the words of the petitioner can be said to have ensued in different places.

X PROSECUTION OF A PUBLIC SERVANT

Section 197 Cr PC, *inter alia*, deals with prosecution of public servants. It mandates a court not to take cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty. Sanction of the government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action.[62] In *D. Devaraja* v. *Owais Sabeer Hussain,*[63] two judge bench of the Supreme Court had an occasion to address the question as to which is the appropriate stage at which the trial court has to examine whether sanction has been obtained. After referring to *Matajog Dobey* v. *H.C. Bhari*[64] the court held that the question as to whether sanction is necessary or not can be determined at any stage of the proceedings.

XI ALTERATION OF CHARGES

In *Rohtas* v. *State of Haryana*[65] the Supreme Court observed that the Cr PC is sufficiently flexible to allow alteration of charges to meet the ends of justice. The Code does not permit justice to be defeated by technical rigidities. The only controlling objective while deciding on alteration of charges should be whether the new charge would cause prejudice to the accused. According to the court, section 386 of Cr PC bestows even upon the appellate court such wide powers to make amendments to the

61 (2021) 1 SCC 1.

62 *D. Devaraja* v. *Owais Sabeer Hussain* (2020) 7 SCC 695.

63 *Ibid.*

64 AIR 1956 SC 44.

65 2020 SCC OnLine 1014.

charges which may have been erroneously framed earlier. Improper, or non-framing of charge by itself cannot be a ground for acquittal under Section 464 of the CrPC. It must necessarily be shown that failure of justice has been caused, in which case a re-trial may be ordered.

XII EXAMINATION OF ACCUSED BY COURT

Section 313 Cr PC provides for examination of the accused by the court with a view to give an opportunity to the accused person to explain the circumstances appearing in evidence against him. The provision requires the courts to question the accused properly and fairly so that it is brought home to the accused in clear words the exact case that the accused will have to meet thereby giving him an opportunity to explain any such point. The Supreme Court has time and again emphasized the importance of putting all relevant questions to an accused under section 313 Cr PC. In *Maheshwar Tigga* v. *State of Jharkhand,*[66] the Supreme Court expressing displeasure at the casual and perfunctory manner in which the section 313 examination was carried out by the trial court observed thus:[67]

> It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him.

XIII PRE-SENTENCE HEARING OF ACCUSED

The significance of pre-sentence hearing of accused as required by section 235 (2) Cr PC has been considered and explained by the Supreme Court on several occasions in the past.[68] The object and purpose of section 235 (2) CrPC is that the accused must be given an opportunity to make a representation against the sentence to be imposed on him. Be that as it may, what is required to be considered is whether at the time of awarding of sentence, sufficient and proper opportunity has been given to the accused or not. In *Manoj Suryavanshi* v. *State of Chhattisgarh,*[69] the Supreme Court while applying the law declared in a 2019 judgment of the Court in *'X'* v. *State of Maharashtra*[70] held that hearing of accused on the very same day when conviction is recorded would not vitiate award of death sentence if otherwise sufficient opportunity has been given to accused to put forward his case on the issue of sentence. While holding that there is no absolute proposition of law that in no case there can be

66 (2020) 10 SCC 108.

67 *Id*. at 113.

68 *Santa Singh* v. *State of Punjab*, (1976) 4 SCC 190; *Tarlok Singh* v. *State of Punjab* (1977) 3 SCC 218; *Allauddin Mian* v. *State of Bihar*, (1989) 3 SCC 5; *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra* (2009) 6 SCC498*; Rajesh Kumar* v. *State*, (2011) 13 SCC 706; *Ajay Pandit* v. *State of Maharashtra*, (2012) 8 SCC 43; *Chhannu Lal Verma* v. *State of Chhattisgarh* (2019) 12 SCC 438; 'X' v. State of Maharashtra (2019) 7 SCC 1;

69 (2020) 4 SCC 451.

70 (2019) 7 SCC 1.

conviction and sentence on the same day the court also distinguished the judgments in *Santa Singh* v. *State of Punjab*[71] and *Allauddin Mian* v. *State of Bihar.*[72]

In *Shatrughna Baban Meshram* v. *State of Maharashtra*[73] the Supreme Court had an occasion to specify the proper course of action to be adopted by an appeal court when it finds that the mandate of section 235 (2) has not been complied with by the trial court. Cognizant of the fact that sending the case back to the trial court may lead to more expense, delay and prejudice to the cause of justice, the Supreme Court held that it may be more appropriate for the appellate court to give an opportunity to the parties in terms of section 235 (2) Cr PC to produce the materials they wish to adduce instead of going through the exercise of sending the case back to the trial court. According to the court the opportunity provided to the accused by the appeal court must be real and effective. The accused must be permitted to adduce before the court all data which he desires to adduce on the question of sentence. The accused may exercise that right either by instructing his counsel to make oral submissions to the court or he may, on affidavit or otherwise, place in writing before the court whatever he desires to place before it on the question of sentence.

XIV TRANSFER OF CRIMINAL CASES

In *Jatinderveer Arora and others* v. *State of Punjab,*[74] the Supreme Court refused to transfer a trial outside Punjab since no credible case for such transfer was made out. According to the court 'the transfer of trial from one state to another would inevitably reflect on the credibility of the State's judiciary'. Except for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked.

Petition for transfer of a criminal cases was also rejected in *Umesh Kumar Sharma* v. *State of Uttarakhand*[75] where the Supreme Court advocated careful use of transfer power under section 406 Cr PC. Plea of transfer might be considered only when fair justice is in peril. The court will have to be fully satisfied that an impartial trial is not possible. The apprehension of not getting a level playing field must be based on some credible material and not just conjectures and surmises.

XV GRANT OF REMISSION

In *Shatrughna Baban Meshram* v. *State of Maharashtra*[76] the court had an occasion to address the effect of life sentence with statutory prescription that it "shall mean the remainder of that person's life" on the power of remission. According to the court, though an imposition of life sentence *simpliciter* does not put any restraints on the power of the executive to grant remission and commutation in exercise of its statutory power, a statutory prescription that it "shall mean the remainder of that

71 (1976) 4 SCC 190.
72 (1989) 3 SCC 5.
73 (2021) 1 SCC 596.
74 2020 SCC OnLine SC 952.
75 2020 SCC OnLine SC 845.
76 (2021) 1 SCC 596.

person's life" will certainly restrain the executive from exercising any such statutory power.

XVI SIGNIFICANCE OF DISTRICT JUDICIARY

In *Arnab Manoranjan Goswami* v. *State of Maharashtra*[77] the Supreme Court had an occasion to highlight the significance of the district judiciary in the overall framework of Indian criminal justice system. According to the court, though the district judiciary may be subordinate in hierarchy it is not subordinate in terms of its importance in the lives of citizens or in terms of duty to render justice to citizens. The district judiciary must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector.

XVII USE OF ICT TOOLS TO DEMOCRATIZE ACCESS TO JUSTICE

In *Arnab Manoranjan Goswami* v. *State of Maharashtra*[78] the Supreme Court also called upon the chief justices of various high courts as well as administrative judges in charge of various districts to utilize the ICT tools including the data available on the National Judicial Data Grid in ensuring that access to justice is democratized and equitably allocated. Expressing concerns over the institutional problem of bail applications not being heard and disposed of with expedition the court observed that there is a pressing need to remedy the same and thereby expand the footprint of liberty in our country.

XVIII CONCLUSION

As in the case of previous years the case law in 2020 also has added strength and vitality to our criminal justice system. It is satisfying to note that the judiciary has maintained proper control of the functioning of our criminal justice system in spite of the unprecedented challenges raised by the COVID-19 pandemic. In conclusion, it may be stated that the judiciary has lived up to the expectations in adding new dimensions to the criminal justice system.

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77 (2021) 2 SCC 427.

78 (2021) 2 SCC 427.