# 12

# CRIMINAL PROCEDURE

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## I INTRODUCTION

THE YEAR 2024 is a historic milestone in the Indian criminal justice system, as it marked a transformation of the legal regime governing the administration. The three new criminal laws enacted in 2023 came into force on July 1, 2024. The five-decade-old Code of Criminal Procedure, 1973 (Cr PC), was replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). Hitherto, the criminal justice system, functioning under the provisions of the Cr PC, is now regulated by the BNSS. Nevertheless, the courts will continue to deal with the provisions of both the Cr PC and the BNSS for some time, given the continued applicability of the Cr PC to pending cases and of the BNSS to new ones.

The survey of law for the year 2024 presents a comprehensive overview of the changes introduced by the BNSS and the decisions of the Supreme Court and high courts that are shaping the landscape of criminal procedure through application and interpretation. The analysis of cases underscores the approach adopted by the courts in dispensing procedural justice, which primarily rests on connecting procedural norms to constitutional foundations. As in the past, this year also produced some trend-setters that have left a profound impact on the foundation of criminal justice and the development of law.

## II THE BNSS: KEY PILLARS OF REFORM

Among the three newly enacted laws, the BNSS has introduced a significant number of changes, primarily driven by past experiences and forward-looking to address future challenges. These centre on concerns such as overburdened courts, pendency, low conviction rates, the quality of investigation and prosecution, and justice for crime victims. The BNSS encompasses the synergy of technology and timelines to promise the efficient and timely dispensation of justice. Accountability- and efficiency-driven measures are introduced to improve the quality of investigation and prosecution, and the victim-centric approach is seen through

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the insertion of a participatory and informational rights framework in criminal proceedings. It is pertinent to note that, in the process of reforms, the BNSS has not only incorporated Supreme Court decisions into its statutory framework but also diluted the effect of key Supreme Court rulings. The key reforms introduced in the BNSS are:

(a) The access to prompt reporting of crime is strengthened by introducing the procedure of 'zero FIR' and 'e-FIR'.

(b) The BNSS introduces a punishment-based approach to preliminary enquiry with a stipulated time period for its completion, which is in contrast to the idea of preliminary enquiry in *Lalita Kumari* v. *Govt. of U.P.*

(c) The BNSS establishes a comprehensive District Directorate of Prosecution alongside the Directorate of Prosecution at the State level to monitor the cases and to make a decision on preferring appeals.

(d) Three key changes are brought in the arrest regime- introduction of notice format for notice of appearance; use of handcuffs in arrest and production before the Magistrate, and maintenance of a record of arrest at every police station level.

(d) Technology is integrated in various processes like summoning, submission of police report, cognisance by Magistrate, supply of documents to the accused person, deposition before the court, *etc*. The timeline introduced at various stages of the proceedings complements the tech integration to deliver efficient, speedy justice.

(e) The search and seizure process is mandatorily recorded through audio-video means, and the compulsory visit of a forensic expert at the crime scene is introduced for serious and heinous offences.

(f) The declaration of any absconder as a 'proclaimed person' has seen a change from an offence-centric approach to a punishment-based approach. The mandatory attachment of their property situated abroad and the in-absentia trial are other notable changes that enhance the rigour of the law in compelling their appearance.

(g) Under the changed regime, the victim rights framework has been broadened to confer the victim with the right to receive a copy of FIR and the police papers free of cost, information on the progress of the investigation to be provided to the victim within 90 days, and a mandatory hearing of the victim in withdrawal from prosecution are some notable changes.

(h) The BNSS unlocked the police custody period beyond the first 15 days. However, the police custody can be sought within the initial 40 or 60 days of the stipulated period.

(i) An under-trial who is a first-time offender is allowed to be released on bail after serving one-third of the detention period in prison.

(j) Procedure for processing the mercy petitions is included to counter the delay in the disposal of mercy petitions.

## III FIRST INFORMATION REPORT

The First Information Report (FIR) occupies a foundational place in criminal justice administration, as it sets in motion the State's investigative machinery. The case of *Lalita Kumari* v. *Govt. of U.P.*[1], which occupies the central stage in the FIR mode of crime reporting process, has set forth four objectives of prompt registration of FIR, *viz.,* (i) it is the first step of access to justice to the crime victims, (ii) it upholds the rule of law, (iii) it facilitates swift investigation and prevents further crime, and (iv) it reduces the chances of manipulation and 'ante-dates' FIR.[2]

The judicial decisions from 2024 also emphasised that prompt FIR registration ensures early notice to the law enforcement agencies and brings the information within the formal system. At the same time, the cases also demonstrated that while delays or defects in FIR registration may raise suspicion, each circumstance must be weighed contextually, not mechanically. Collectively, judicial decisions in 2024 demonstrate the Supreme Court's nuanced approach: while an unexplained and abnormal delay in lodging the FIR corrodes the prosecution's case, neither trivial defects nor minor delays in forwarding the FIR can be fatal when the overall investigation inspires confidence. The court remains vigilant to prevent abuse of process through multiple or selective FIRs, while simultaneously preserving victims' rights to demand registration of FIRs.

In *Deepak Kumar Shrivas* v. *State of Chhattisgarh*,[3] the Supreme Court treated the inordinate delay of three years in lodging the FIR as fatal. The delay remained wholly unexplained despite the complainant's knowledge of a prior inquiry. The court explained that such unexplained inaction cast 'a layer of scepticism' over the authenticity of the allegations, warranting acquittal of the accused. The decision reinforces the principle that unexplained and abnormal delay in setting the law into motion corrodes the credibility of the prosecution's case, particularly when accompanied by circumstances suggestive of afterthought.[4]

Although registration of an FIR is mandatory in all cognizable cases, a police officer's refusal does not leave the informant remediless. Like its predecessor, the BNSS also provides the informant with the remedy of approaching the jurisdictional Magistrate if resort to a police officer is in vain. If the police agency remains recalcitrant, the informant has the statutory remedy of approaching the Magistrate under section 175(3) of BNSS[5] or filing a private complaint under section 223of BNSS.[6] The cases in 2024 reinforce the principle that the police's denial of registration of an FIR cannot extinguish the victim's right to seek recourse.[7] The Magistrate,

1 (2014) 2 SCC 1.
2 *Id.,* para 97.
3 (2024) 3 SCC 601.
4 *Id.,* para 16.
5 Section 156(3), CrPC1973.
6 Section 200, CrPC1973.
7 *Sas Infratech Pvt. Ltd.* v. *State of Telangana*, 2024 SCC OnLine SC 4046.

on receipt of an application under section 156(3) of Cr PC, may not only direct the registration of the FIR but can also ensure proper investigation by monitoring its progress.[8]

The BNSS continued with the earlier requirement of *forthwith* forwarding a copy of the FIR to the Magistrate, as required under section 157 of Cr PC.[9] The object of such compliance is to ensure an external check on the recording of *ante-date* or *ante-time* FIRs. Though section 157 requires the police to act with promptitude, the courts are often approached to determine the effect of delay in forwarding a copy of the FIR to the jurisdictional Magistrate. In *Rama Devi* v. *State of Bihar*,[10] the FIR was sent to the jurisdictional Magistrate a day late. The incident had occurred on a Saturday, and the FIR was transmitted only after the weekend. The Court held that such a minor delay, when reasonably explained and the investigation otherwise robust, cannot, by itself, vitiate the case against the accused. The mere delay in itself is not sufficient to disregard and disbelieve the prosecution's case. The accused raising this specific issue has to demonstrate that the delay in complying with section 157 of the Cr PC has caused prejudice; only then would such a delay assume significance.

## IV INVESTIGATION

If the FIR is the spark that lights the machinery of the criminal law, investigation is the fuel that keeps it going. The BNSS entrusts the police with broad powers, but those powers are hedged with duties; duties to fairness, to completeness, to the court, and above all, to the truth. The Supreme Court in 2024 repeatedly reminded that while procedural law is meant to channel justice, it ought not to become an iron cage within which truth suffocates.

The case of *XXX* v. *State*[11] demonstrates how rigid technical formalism can shield injustice. In an FIR lodged under sections 417, 376, 420, 354A, and 506(i) read with section 34 of the IPC and section 66A of the Information Technology Act, 2000, the investigating officer has filed the chargesheet under sections 354A and 506 of the IPC, dropping other offences. The complainant, instead of filing a protest petition, preferred an application seeking further investigation under section 173(8) of Cr PC, which the Magistrate turned down for being 'technically defective'

8 It is pertinent to mention two key rulings of the Supreme Court which have settled the position of law on magisterial powers under section 156(3) of the Code of Criminal Procedure, 1973. The first case of *Sakiri Vasu* v. *State of U.P.* (2008) 2 SCC 409 has broadened the ambit of section 156(3) beyond the mere issuance of a direction/order by the Magistrate to register the FIR. The Court read 'implied powers' of the Magistrate within section 156(3) to ensure that a proper investigation is conducted post registration of the FIR and the Magistrate may even 'monitor' the investigation for this purpose. On the other hand, the ruling of *Priyanka Srivastava* v. *State of Uttar Pradesh* (2015) 6 SCC 287 has streamlined the invocation of powers under section 156(3) by subjecting it to the mandatory compliance of section 154(1) and section 154(3) of Cr PC as a pre-condition before approaching the Magistrate. Further, the Court has introduced 'affidavit' requirement for invocation of magisterial powers under section 156(3).

9 BNSS 2023, s. 176.

10 (2024) 10 SCC 462.

11 2024 SCC OnLine SC 1452.

and for being 'mislabeled'. The high court also affirmed the order of the Magistrate. In this background, the response of the Supreme Court is summed up: [12]

> We fail to understand what prevented the Magistrate from treating that application purportedly filed under section 173(8) of Cr PC as a Protest Petition and then deciding the same on merits. A technicality like the caption of the application/petition could not be an impediment to consider the substance thereof and then determine whether or not the matter required further investigation… Such a permissible procedural recourse has been unfortunately overlooked by the High Court as well.

Noting that the accused happened to be a police officer and there are high chances of police complicity and suppression of material evidence, the court further remarked that: [13]

> It is the bounden duty of every Court of law that injustice wherever visible must be hammered and the voice of a victim of the crime is dispassionately heard... The learned Judicial Magistrate ought to have invoked his powers under section 173(8) of the CrPC and directed the Investigating Officer to investigate the serious allegations further. The denial of further investigation has led to gross injustice to the appellant.

The court directed the State to constitute a special investigation team headed by a woman officer and complete the further investigation within three months.

A different but equally crucial procedural nuance arose in *Shento Varghese* v. *Julfikar Husen*,[14] where the court confronted the perennial puzzle of the word *'forthwith'*. Section 102(3) of Cr PC requires that once property is seized, the police officer must report the seizure to the Magistrate *forthwith.* The legal issue presented before the Court was premised on the consequences of failing to report a seizure *'forthwith'* to the jurisdictional Magistrate. Should the delayed reporting *ipso facto* vitiate the validity of the seizure? The survey of high court rulings suggests that delayed reporting under Section 102(3) of the Cr PC is considered fatal to the seizure by some high courts.

In contrast, others have treated it as a mere procedural irregularity that can be cured.[15] The Supreme Court, in the absence of any precedent to guide it on the issue, traced the legislative history of the provision and applied the interpretation given to the term *'forthwith'* appearing in section 157(1) of Cr PC. The court concluded that the term *'forthwith'* was inserted to facilitate the disposal of the property under Chapter XXXIV of the Cr PC and not as a condition to validate the seizure. The term *'forthwith'* was interpreted to mean 'with reasonable dispatch',

12 *Id.* at para 9.
13 *Id.* at para 10.
14 (2024) 7 SCC 23.
15 *Id.,* para 4 and 5.

judged against the surrounding circumstances. If there is an explanation for the delay and no prejudice is caused, such a delay does not nullify the seizure. At best, it may attract departmental action against the erring officer.

In *Dablu Kujur* v. *The State of Jharkhand,*[16] the Supreme Court lamented the practice of filing a charge sheet without complying with the mandatory requirements under section 173(2) of the Cr PC. The police report, being a vital document, forms the basis for the court to take cognisance and issue a process against the accused person. In such a scenario, a police report lacking the required details under section 173(2) is incomplete. The court has declared it incumbent on the part of the police officer to mandatorily comply with the requirements listed in section 173(2) of Cr PC and directed that the police report shall contain the following:

(i) A report in the form prescribed by the State Government stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170;

(h) Whether the report of medical examination of the woman has been attached where the investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Penal Code, 1860.

(ii) If, upon the completion of the investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance with section 169 of the Cr PC.

(iii) When the report in respect of a case to which section 170 of CrPC applies, the police officer shall forward to the Magistrate, along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely, other than those already sent to the Magistrate during investigation. The statements recorded under section 161 of the Cr PC of all the persons whom the prosecution proposes to examine as its witnesses.

(iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate an additional report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub-paragraphs (i) to (iii).[17]

16 (2024) 6 SCC 758.

17 *Id.,* para 20.

The court has directed the chief secretaries of the states/UTs, as well as the registrar generals of the high courts, to ensure compliance with these directions.

Restating the significance of the police report as a document, the Supreme Court in *Sharif Ahmed* v. *State of Uttar Pradesh* observed that the police report is an integral part of and has a substantial impact on subsequent stages, including cognisance, issuance of process, framing of charge, etc. It is the only investigative document and material available to the court at the preliminary stages of commencement and initiation of proceedings. Hence, a police report with substantiated reasons and grounds acts as a crucial resource for the Magistrate to decide the further course of action from the options available to him.[18] The court concluded that a charge sheet cannot be a mere reproduction of the contents of the FIR. The investigating officer must ensure that clear and complete entries of all columns in the charge sheet are made to enable the court to understand the crime which has been committed clearly, the accused who committed the crime, the individual role played by each accused and the material evidence available in the file, along with the list of witnesses and section 161 statements.[19]

One of the contentious issues that caught the Supreme Court's attentionis'bulldozer justice'. The use of 'bulldozer' by the executive to demolish the house of the alleged accused/convict in the name of 'quick justice'was not received well by the Supreme Court. *In Re: Directions in the matter of demolition of structures*,[20] the Supreme Court in unqualified terms stated that "the executive cannot become a judge and decide that a person accused is guilty and, therefore, punish him by demolishing his property. Such an act of the executive would be transgressing its limits." It has been categorically stated that the act of determining guilt is an exclusive function of the judiciary. The executive lacks such competence and must not usurp such exclusivity conferred on the judiciary. It will not only be contrary to the rule of law but also be violative of the principle of separation of powers enshrined in the Constitution.[21] Such action by the executive is wholly arbitrary and constitutes an abuse of the process of law. The act of imposing 'collective punishment' on the family of the accused/convict by bulldozing the house is contrary to the foundational principles of criminal justice, like the presumption of innocence and natural justice.[22] The court made the following remarks: [23]

> The chilling sight of a bulldozer demolishing a building, when authorities have failed to follow the basic principles of natural justice and have acted without regard for due process, reminds one of a lawless state of affairs where "might was right". In our Constitution, which rests on the foundation of 'the rule of law', such high-handed

18 *Id.,* para 21.
19 *Id.* at para 32.
20 2024 SCC OnLine SC 3291.
21 *Id.* at para 91.
22 *Id.* at para 74.
23 *Id.* at para 75.

> and arbitrary actions have no place. Such excesses at the hands of the executive will have to be dealt with by the heavy hand of the law. Our constitutional ethos and values would not permit any such abuse of power, and the court of law cannot tolerate such misadventures.

In *Javedali Mahebubmiya Saiyed* v. *State of Gujarat,*[24] the Supreme Court adopted a similar approach, in which the appellant approached the court apprehending a threat of bulldozing his house, as an FIR had been registered against one of the family members. The court opined that: [25]

> In a country where the rule of law governs the State's actions, the transgression by a family member cannot justify action against other family members or their legally constituted residence. Alleged involvement in crime is no ground for demolition of a property. Moreover, the suspected crime must be proved through the due legal process in a Court of law. The Court cannot be oblivious to such demolition threats inconceivable in a nation where law is supreme. Otherwise, such actions may be seen as running a bulldozer over the laws of the land.

In both cases, the Supreme Court has declared the executive's action illegal. The provisions of the erstwhile Cr PC and now of the BNSS do not provide for such a measure to compel the appearance of any accused person. It was a timely reminder to the executive to confine their actions within the procedural framework of the criminal law.

In *Central Bureau of Investigation* v. *Kapil Wadhwan,*[26] the Supreme Court was called upon to adjudicate on the legality of availing default bail under section 167(2) of Cr PC during the pendency of further investigation of other accused persons. The Supreme Court made the legal position clear that the right to default bail is not only a statutory right under section 167(2) but also part of the procedure established by law under article 21 of the Constitution. Such an indefeasible right remains enforceable only before the filing of the chargesheet and does not survive its filing if it was not already availed of.[27] The Court then went on to clarify that the police report within the meaning of section 173(2) of Cr PC is complete if the documents and statements as required by section 173(5) thereof are furnished with it. Indisputably, the right of the investigating officer to hold further investigation in terms of section 173(8) is not taken away only because a chargesheet is laid under section 173(2). Answering the issue negatively, the court held that: [28]

24 Writ Petition (Civil) Diary No. 41707/2024 dated Sep. 12, 2024.

25 *Id.,* para 5.

26 (2024) 3 SCC 734.

27 *Id.* para 15.The Constitution Bench in *Sanjay Dutt* v. *State through CBI* (1994) 5 SCC 410 has laid down this principle.

28 *Id.,* para 23.

> The pendency of the further investigation *qua* other accused or for the production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was incomplete or that the chargesheet was not filed in terms of Section 173(2) of CrPC.

The court set aside the concurring findings of the Special Court and the high court and noted that both the courts had committed a grave error of law in misreading the legal position pronounced by the Supreme Court with respect to the grant of default bail.

In *Enforcement Directorate* v. *Kapil Wadhawan, a reference was made to a three-Judge Bench to answer a significant question of law regarding the computation of the statutory period under section 167(2) of the Cr PC, arising from conflicting opinions* on the issue. The precise question was whether the total period of remand under section 167 is inclusive or exclusive of the date of the first remand order by the Magistrate. The court has highlighted that the accused person's production before the Magistrate is in continuation of his arrest by the police. If the idea of excluding the date of remand is accepted, it will result in a break between the two stages and create a legal vacuum, leaving the accused person in custody, but not for the purpose of counting 90 or 60 days. Since section 167 confers an indefeasible right on the accused person to be released on default bail at the expiry of 90 or 60 days, the interpretation that advances the cause of justice and personal liberty shall be favoured. The court concluded thus: [29]

> We therefore declare that the stipulated 90 or 60 days remand period under section 167 of CrPC ought to be computed from the date when a Magistrate authorises remand. Suppose the first day of remand is excluded. In that case, the remand period, as we notice, will extend beyond the permitted 90 or 60-day period, resulting in unauthorised detention beyond the period envisaged under section 167. In cases where the chargesheet/final report is filed on or after the 91st or 61st day, the accused, in our considered opinion, would be entitled to default bail. In other words, the very moment the stipulated 60/90-day remand period expires, an indefeasible right to default bail accrues to the accused.

At the end, the Court has declared *State of M.P.* v. *Rustam*[30] as *per incuriam,* which has excluded the day of remand in computing the total period of 60/90 days and also partly overruled another three-Judge Bench ruling in *M. Ravindran* v. *Intelligence Officer, DRI,*[31] which followed *Rustam* and not *Chaganti Satyanarayan* v. *State of Andhra Pradesh*.[32]

29 *Id.,* para 62.
30 1995 (Supp) 3 SCC 221.
31 (2021) 2 SCC 485.
32 (1986) 3 SCC 141.

## V ARREST

The Supreme Court's efforts over the last decade to streamline the contours of the arrest procedure are remarkable. The very approach of law in detaching the power of arrest from the cognizability standard of the offence and attaching the same with the necessity principle has gained impetus when the Supreme Court in *Arnesh Kumar* v. *State of Bihar*[33] has come up with a slew of directions in arresting for offences punishable with or up to 7 years. Since then, the Supreme Court has reinforced the *Arnesh Kumar dictum* to prevent the abuse of arrest powers.

In 2022, the Supreme Court, in *Satender Kumar Antil* v. *CBI*, issued directions to reinforce the legislative intent and judicial mandate to rationalize the exercise of arrest powers by the police. The court had issued, *inter alia, the* following directions:

> 100.2 The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41A of Cr PC and the directions issued by this Court in *Arnesh Kumar* v. *State of Bihar*.[34] Any dereliction on their part must be brought to the notice of the higher authorities by the court, followed by appropriate action.[35]
>
> 100.3 The courts will have to satisfy themselves on the compliance of Sections 41 and 41A of the Code. Any non-compliance would entitle the accused to bail.[36]

In 2024, the Supreme Court, in *Satender Kumar Antil* v. *CBI*, issued fresh directions for the proper implementation of the specific mandates of paras 100.2 and 100.3. The directions issued have required every Magistrate/Sessions Judge to report the non-compliance of para 100.2 and 100.3 within a week of such non-compliance to the Principal District Judge, who shall maintain a record of such non-compliances and shall forward the details to the Registrar General of the high court as well as to the Head of police in the district. The Head of the police is obligated to act against the erring police officer and is required to furnish the information to the principal district judge. On the other hand, the Registrar General of each high court is directed to place the details of such non-compliance before the committee for "Ensuring the Implementation of the Decisions of the Apex Court" for further action and forward it to the higher Police Authority.

In the landmark case of *Prabir Purkayastha* v. *State*,[37] the Supreme Court further strengthened the safeguards against indiscriminate arrest by drawing a fine line between 'reasons for arrest' and 'grounds of arrest'. The court observed that the source of provisions requiring communication of 'grounds of arrest' under the special penal laws (UAPA, PMLA, etc.) and under section 50 of Cr PC is article 22(1) of the Constitution of India. The court has aptly summarized that:

33 (2014) 8 SCC 469.

34 *Supra* note 35.

35 *Supra* note 36 at para 100.

36 *Ibid.*

37 (2024) 8 SCC 254.

> "…The purpose of informing the arrested person of the grounds of arrest is salutary and sacrosanct, as this information is the only effective means for the arrested person to consult his Advocate, oppose the police custody remand, and seek bail. Any other interpretation would be tantamount to diluting the sanctity of the fundamental right guaranteed under article 22(1) of the Constitution of India."[38]
>
> "The right to be informed about the grounds of arrest flows from article 22(1) of the Constitution of India, and any infringement of this fundamental right would vitiate the process of arrest and remand. The mere fact that a charge sheet has been filed in the matter would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."[39]

Further, the court rejected the idea that the arrest memo sufficiently communicates the 'grounds of arrest' and made a fine distinction between 'reasons for arrest' and 'grounds of arrest'. The court has opined that the arrest memo is simply a *proforma* indicating the formal 'reasons' for which the accused is arrested. The 'reasons for arrest' stated in the arrest memo are based on purely formal parameters, which can be generally attributed to any person arrested on accusation of an offence, whereas the 'grounds of arrest' are personal in nature and specific to the person arrested. The 'grounds of arrest' contain all the basic facts and particulars that necessitated the accused's arrest.[40]

In *Arvind Kejriwal* v. *Central Bureau of Investigation*,[41] the appellant moved the Supreme Court against the judgment and orders of the high court, which had dismissed the challenge to his arrest and further refused him bail. The legal issue in this case concerns the applicability of section 41A to cases where the person is already in custody. The appellant challenged his arrest on the ground that the procedure outlined in section 41(1)(b)(ii) and 41A of CrPC was not followed by the CBI. The appellant was already in judicial custody in the ED case when CBI filed an application under section 41A before the trial court seeking his custody for questioning.

The court observed that section 41A prescribes the procedure for issuing a notice to a person who is neither arrested nor in custody. It does not envisage or mandate issuing a notice to an individual already in custody. In such a scenario, the only possible way to secure the physical presence of a person already in judicial custody for questioning in another case is to seek the Trial Court's prior permission, which the CBI has duly obtained in this case. The further allegation that the arrest of the appellant violated section 41A(3)of the Cr PC did not find force. Section 41A generally shields an individual from arrest; however, the police

38 *Id.,* para 19.

39 *Id.,* para 21.

40 *Ibid.*

41 2024 SCC OnLine SC 2550.

may still proceed with the arrest under section 41A(3) if they find it necessary and record the reasons for doing so. Also, section 41A(1), when read together with section 41A(3), does not impose an absolute prohibition on the arrest of an individual. Section 41A(3) instead acts as an exception to the general rule under section 41A. The other allegation surrounding non-compliance of section 41(1)(b)(ii) has been found non-existent in this case, as the arrest of the appellant was made after the court issued the warrant. Hence, there was no occasion for the police officer effecting the arrest to form an opinion regarding the existence of reasons for the arrest. The opening line of section 41(1) also absolves the police officer from his statutory obligation to form an opinion in cases where the arrest is made under the order or warrant of a Magistrate. Consequently, the conditions prescribed in section 41(1)(b)(ii) would cease to apply in the given case.

The court concluded that CBI has complied with the procedure, which aligns with the intent and purpose of sections 41 and 41A of CrPC, and that there is no infirmity or procedural non-compliance in the arrest of the appellant. However, the Court has directed the release of the appellant on bail, given that the chargesheet has been filed and the trial is unlikely to be completed soon. Such continued incarceration pending trial for an extended period would amount to an unjust deprivation of personal liberty.[42] Justice Ujjal Bhuyan, though he concurred with Justice Surya Kant's opinion upholding the arrest, differed on the necessity and timing of the CBI's arrest of the appellant. Justice Bhuyan noted that the CBI did not press for the appellant's arrest for more than 22 months after the registration of the case and arrested him close to his release in the ED case, raising serious questions about the necessity and timing of the arrest. Justice Bhuyan has strongly opined that the appellant's belated arrest is unjustified and that the continued incarceration that followed it is untenable.[43]

## VI BAIL

An interesting question arose before the Supreme Court in *Dhanraj Aswani* v. *Amar S. Mulchandani*[44] regarding the maintainability of anticipatory bail in another case when the accused remains in custody in the first case. In this case, the accused was already in custody for one offence, yet was apprehended for arrest in a different case. The court remarked that the CrPC does not preclude, expressly or impliedly, the courts from entertaining the anticipatory bail application of an accused person about an offence who happens to be in custody in relation to another offence. So long as the accused person is not arrested in relation to the offence for which the anticipatory bail application is moved, the fact of his being in custody in relation to another offence is of no consequence. The court was of the view that the legislature has mindfully prescribed the restrictions within section 438 of CrPC and in other penal laws, and reading any restriction beyond the statutory limits would be contrary to the purport of section 438 of CrPC and the

42 *Id.,* para 38.

43 *Id.,* para 23 of the Judgment delivered by Justice Ujjal Bhuyan.

44 (2024) 10 SCC 336.

intent of the legislature. The Court concluded that the precondition for invoking section 438 of CrPC is the existence of apprehension of arrest, and the "custody in one case does not have the effect of taking away the apprehension of arrest in another case". This decision preserves the functional autonomy of section 438 of CrPC; its protective canopy cannot be collapsed simply because the accused is in custody in another case.

An accused person against whom a non-bailable warrant is pending and who has been declared a 'proclaimed offender' is not entitled to the relief of pre-arrest bail, eventhough the process of proclamation was initiated post-filing of an anticipatory bail application.[45]

The stream of administration of justice must remain unpolluted so that justice is administered fairly to all concerned. In furtherance of upholding such cherished principles, the Supreme Court in *Kusha Duruka* v. *State of Odisha*[46] has directed that the bail applications must disclose the fact about earlier bail applications (decided or pending) and the orders passed earlier regarding bail. Further, the bail applications filed by several accused persons in the same case should be listed before the same Judge. These details will allow the Court to take a holistic view in deciding the bail applications.

In another notable case, *Girish Gandhi* v. *State of Uttar Pradesh*, the Supreme Court addressed two major issues regarding bail: the requirement of local surety and the furnishing of multiple sureties in multiple bail orders. In this case, the petitioner has multiple FIRs registered against him in different states, and he has successfully secured bail in all of them. However, he could furnish sureties only in two cases (registered in other states) and pleaded his inability to furnish separate sureties in the remaining cases. In such a scenario, he prayed that the sureties furnished in two cases be considered for the remaining cases as well. The States opposed and stated that each crime number is distinct, hence a common surety cannot be made liable for the amount more than the amount of bond such surety has furnished in one case. The Court has opined that imposing excessive or onerous bail conditions, which may be impossible to comply with, amounts to taking away with one hand what is given with theother. The Court has recalled the golden words of Justice Krishna Iyer in *Moti Ram* v. *State of Madhya Pradesh*[47] and lamented on the practice of insisting on a local surety, which may virtually render the bail order ineffective in cases where the accused person hails from another state and thus may have limited or no scope to find a local surety. In this regard, the following observation of the court is worth mentioning: [48]

> …Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find

45 *Srikant Upadhyay* v. *State of Bihar*, (2024) 12 SCC 382.

46 (2024) 4 SCC 432.

47 (1978) 4 SCC 47.

48 *Supra* note 51 at para 26.

> sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her fundamental rights under article 21 of the Constitution of India. An order that would protect the person's fundamental right under article 21 and, at the same time, guarantee the presence would be reasonable and proportionate.

A significant development in bail can be traced in the domain of special penal laws such as the UAPA, PMLA, and NDPS Act. Due to the presence of modified bail conditions in these special penal laws, bail is considered a remote possibility in most cases, and the under-trials eventually suffer long years of incarceration. In recent years, the Supreme Court has subjected bail under these special penal laws to the speedy trial consideration under article 21 of the Constitution. In one such case under UAPA, *Sheikh Javed Iqbal* v. *State of Uttar Pradesh,*[49] the Supreme Court has categorically stated that the right to speedy trial is applicable irrespective of the nature of the crime. In a prolonged trial, the State cannot take shelter under the 'seriousness of the charges' to oppose bail. The 'seriousness of the charge' has to be weighed against the period of custody undergone and the expected time for the completion of the trial. No under-trial can be incarcerated indefinitely pending trial. The cardinal principle of criminal jurisprudence that the accused is presumed to be innocent until proven guilty cannot be overthrown under the guise of statutory restrictions like 'twin bail conditions'. Once the court is satisfied that there is no likelihood of the trial being concluded within a reasonable time and that the accused has been incarcerated for a significant period, the scales of justice tilt in favour of granting bail to the accused.[50]

Interestingly, in arriving at such a conclusion, the court has distinguished its own decision in *Gurwinder Singh* v. *State of Punjab,*[51] wherein the court has stated that "the conventional idea that 'bail is the rule, jail is the exception' does not find any place while dealing with bail applications under UAPA."[52] In the opinion of the court, the use of the expression 'shall not be released' in Section 43D(5) UAPA has severely restricted the exercise of the general power to grant bail in UAPA cases. The use of such an expression is suggestive of the legislative intent to make 'bail as an exception and jail, the rule'. The court was of the view that, in grave offences, mere delay in trial cannot be a ground for releasing the accused on bail, irrespective of his having suffered lengthy incarceration.[53]

However, the Court in *Sheikh Javed Iqbal* reinforced that 'bail is the rule and jail is an exception' even in cases under UAPA. The restrictive statutory provisions in any penal law cannot shadow the laudable objectives of article 21of

49 (2024) 8 SCC 293.
50 *Id.,* para 33-35.
51 (2024) 5 SCC 403.
52 *Id.,* para 26.
53 *Ibid.*

the Constitution. The constitutional court cannot be restrained from granting bail if it finds that the sacrosanct right under article 21 is infringed. The court has reaffirmed that "the Constitutional Court has to lean in favour of the constitutionalism and the rule of law of which liberty is an intrinsic part", and the same cannot be surrendered in the name of the stringency of any penal law.[54]

In recent times, another issue that has attracted the Supreme Court's attention in bail matters is the 'conditions imposed by the courts while granting bail'.[55] In *Frank Vitus* v. *Narcotics Control Bureau,*[56] a Nigerian national was granted bail by the high court in an NDPS case, subject to certain conditions. The accused person remained in custody despite being released on bail because one of the conditions required the accused person to obtain a certificate of assurance from the High Commission of Nigeria to the effect that he will not leave India and shall make himself available before the trial court as and when required whereas, through another condition he was needed to drop a PIN on the google map so that the investigating officer can track his movement.

The Supreme Court was critical of the nature of conditions imposed by the high court. The Court reminded that the power to impose additional conditions in the 'interest of justice' under section 437(3) of Cr PC must not result in imposing conditions which are fanciful, arbitrary or freakish in nature. The court must show restraint while imposing bail conditions and be conscious of the fact that the constitutional rights of the accused person are not curtailed beyond the minimum extent required. The conditions of bail must not be so onerous as to frustrate the order of grant of bail.[57] The court has categorically stated that:[58]

> The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail by imposing arbitrary conditions, since that would violate the accused's right to privacy, as guaranteed by article 21... The reason is that maintaining such constant vigil over the accused by imposing drastic bail conditions will amount to confining him even after he is released on bail. Such a condition cannot be a condition of bail.

54 *Supra* note 54 at para 42.

55 For example, In *Sudeep Chatterjee* v. *State of Bihar* (SLP (Crl.) No.2011 of 2024 dated August 2, 2024) the Supreme Court noted that despite the top court deprecating the practice of imposing onerous conditions for bail, such type of conditions are imposed ignoring the binding precedents. In this case the high court imposed the condition on the husband that he will fulfill all the physical and financial needs of the wife. Similarly, in *Vikash Kumar Gupta* v. *State of Bihar* (Special Leave to Appeal (Crl.) No(s).11952/2024 dated September 11, 2024) the Supreme Court has set aside the condition imposed by the high court while granting bail that *"the petitioner shall furnish his bail bonds after completion of six months in custody from today"*. The Supreme Court termed such condition as regressive and not aligned with the right of personal liberty.

56 (2024) 8 SCC 415.

57 *Id.,* para 10.

58 *Ibid.*

Section 436A of the CrPC provided the salutary principle of statutory bail to undertrials who have served half of the maximum period of imprisonment prescribed for the offence. The BNSS in section 479 (corresponding to section 436A) has separated first-time offenders from others and provided for their early release on bail after serving one-third of the maximum period of imprisonment stipulated for the offence. In a notable development, the Supreme Court, in Re-Inhuman Conditions in 1382 Prisons, has held that section 479 is more beneficial for undertrials serving in prisons awaiting trial. The Court extended the benefit of the provision retrospectively to cover all undertrials whose cases were registered before 1st July 2024, *i.e.,* the date on which the BNSScame into effect. In this light, the Court has directed the immediate implementation of section 479 across all prisons in the country. The Jail Superintendents were directed to process the bail applications of eligible undertrials under section 479. The Court noted that the effective implementation of the noble provision will ease overcrowding in prisons.[59]

## VII INITIATION OF PROCEEDINGS

In *Sachin Garg* v. *State of U.P.,*[60] the Supreme Court has reminded the Magistrates that the invocation of criminal process is a delicate act which must be performed with utmost caution. The court observed that the summoning order reflects the satisfaction of the Magistrate in a cryptic manner. The allegations made in the complaint do not give rise to the offences for which the Magistrate issued the summoning order. The Court has found that the dispute is commercial with no element of criminality, and the machinery of the criminal court was invoked when no case was made out. Both the Magistrate and the high court have failed to apply their minds to preventing the abuse of criminal law. The Magistrate should be satisfied of the existence of sufficient ground for issuing a summons. The summoning order need not be detailed, but it must reflect that a *prima facie* case exists for the invocation of criminal process.[61]

It has also been reiterated by the Supreme Court in *Sharif Ahmed* v. *State of Uttar Pradesh*[62] that: [63]

> Any effort to settle civil disputes and claims that do not involve a criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. Any attempt to initiate vexatious criminal proceedings should be thwarted early on, as a summoning order or even a direction to register an FIR has grave consequences for setting criminal proceedings in motion.

59 *Id.,* para 4. In *Badshah Majid Malik* v. *Directorate of Enforcement* (Special Leave Petition (Criminal) No.10846/2024 dated 18.10.2024), the Supreme Court has extended the benefit of *first proviso* of s. 479 to an accused person under the PMLA who had completed 1/3rd period of incarceration.

60 (2024) 11 SCC 687.

61 *Id.,* para 17.

62 (2024) 14 SCC 122.

63 *Id.,* para 59.

In *Mukhtar Zaidi* v. *State of Uttar Pradesh*,[64] the Magistrate issued a notice to the informant upon receiving the police's closure report in his FIR. The informant preferred a protest petition, along with affidavits stating that the investigation was not conducted fairly. The Magistrate rejected the police report and proceeded to take cognizance of the 'protest petition' under section 190(1)(b) of Cr PC and directed that the case would proceed as a State case. The cognizance and summoning order of the Magistrate were assailed on the ground that the Magistrate had relied on the protest petition and the affidavits of the witnesses for the purpose of taking cognizance; hence, the case should have been treated as a complaint case, and not as a State case. Thus, the Magistrate should have proceeded as per Chapter XV of the Cr PC.

The Supreme Court laid down in categorical terms that when a protest petition is not a bare objection but is accompanied by additional material, the Magistrate cannot casually dispose of it. The only course open is to treat it as a complaint under section 190(1)(a) of Cr PC and then scrupulously follow the roadmap in Chapter XV of Cr PC. The Supreme Court pointed out that when the Magistrate had perused the protest petition and the supporting affidavit before issuing the summoning order, the Magistrate had crossed the bridge from 'closure report review' into the territory of a 'private complaint', which brings into play the elaborate safeguards of Chapter XV.[65] It is pertinent to note that the Court made it crystal clear that the right of the complainant to file a petition under section 200 of Cr PC is not taken away even if the Magistrate does not direct that such a protest petition be treated as a complaint.[66]

Section 195 of the Cr PC restricts the initiation of criminal proceedings. Application of section 195 was the subject for discussion in *M.R. Ajayan* v. *State of Kerala*,[67] wherein the Supreme Court summarised the principles relating to section 195 of Cr PC, which deals with the conditions for taking cognizance for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

## VII TRIAL

In *P. Manikandan* v. *CBI,*[68] the trial court had convicted the appellant for the kidnapping and murder of a four-year-old child. However, the high court reversed the conviction and acquitted the appellant for lack of evidence and lapses in the investigation. While doing so, the High Court concurrently passed an order for a *de novo* investigation by the CBI, with a direction that, if the investigation reveals the appellant's involvement, the prosecution may be launched. The CBI re-registered a case and filed a fresh chargesheet against the appellant. The appellant sought quashing of the CBI proceedings before the High Court under section 482

64 2024 SCC OnLine SC 553.
65 *Id.,* para 10 and 11.
66 *Ibid.*
67 2024 SCC OnLine SC 3373.
68 2024 SCC OnLine SC 3808.

of CrPC on the ground that the conduct of a fresh investigation and retrial is violative of the protection afforded by article 20(2) of the Constitution, which has been further reinforced by section 300 of CrPC. The High Court found no merit in the appellant's contention and dismissed the petition, directing that the trial be completed within 30 days.

While analysing the scope of power of the appellate court under Section 386 of Cr PC, the Supreme Court noted a clear distinction between ordering a 'retrial' and directing a 'reinvestigation'. The court drew upon precedents holding that the power under section 386 of the Cr PC may be invoked to direct retirement rather than a *de novo* investigation. The court further observed that even the power to direct retrial should be exercised only in "exceptional" or "rare cases" where serious illegalities or irregularities vitiated the trial, or where such a course is indispensable to avert a failure of justice. A retrial should not be used merely to allow the prosecution to improve its case or fill up lacunae.[69]

Ultimately, it was held that, while passing an acquittal order, the court cannot order are investigation of the acquitted accused for the same offence. The high court's direction transferring the investigation to the CBI for a fresh investigation was bad in law. The court further ruled that the subsequent proceedings violated the appellant's fundamental right under article 20(2), as the conditions for the validity of the previous prosecution and the continued validity of the acquittal were fulfilled.[70]

Section 313 of the Cr PC embodies the principle of natural justice by providing the accused an opportunity to explain the incriminating circumstances appearing in evidence against him. It also allows the accused to present his own version of his alleged involvement in the crime. Be that as it may, the non-questioning or inadequate examination under section 313 on any incriminating circumstances would not be fatal to the trial; however, the conviction cannot be sustained if the omission has resulted in prejudice to the accused or in miscarriage of justice. In *Naresh Kumar* v. *State of Delhi,* the Supreme Court reminded the trial courts of the significance of section 313 of the Cr PC in fostering a fair trial. In this case, the appellant was not questioned about twin incriminating circumstances during his section 313 examination, which formed the basis for his alleged involvement in the crime. Since these foundational facts were not directly or indirectly put to the appellant during his section 313 examination, thereby depriving him of the opportunity to explain, the failure was held to be a patent illegality vitiating the trial *qua* the appellant, rather than a curable defect, as it caused blatant miscarriage of justice.[71]

Similarly, the Supreme Court in *Ashok* v. *State of Uttar Pradesh* has expressed its anguish at the way the accused's section 313 examination was conducted. In total, the appellant was asked only three questions. The appellant was neither

69 *Id.* at para 24.
70 *Id.* at para 26.
71 *Id.* at para 24.

asked any questions about the version of the main prosecution witnesses nor was he confronted with the contents of the incriminating documents. The Supreme Court pointed out that: [72]

> …The appellant is entitled to an acquittal on the ground of the failure to put incriminating material to him in his examination under section 313 of the CrPC. We are surprised to note that both the Trial Court and High Court have overlooked noncompliance with the requirements of section 313 of the CrPC. Shockingly, the Trial Court imposed the death penalty in a case that ought to have resulted in an acquittal.

Additionally, the court has reminded the Public Prosecutors of their duty under section 313(5) of Cr PC to assist the court in framing the questions under section 313 and point out if any material circumstances are omitted, ensuring there are no infirmities that prejudice the accused person.

The summoning order under section 319 of Cr PC to rope in an additional accused person must be passed before the pronouncement of the sentence in case of conviction, and in case of acquittal, before the pronouncement of the order of acquittal.[73] Where the court issues the summoning order under section 319 of Cr PC after rendering the judgment of conviction and sentence, such summoning order is not sustainable in light of the Constitution Bench ruling in *Sukhpal Singh Khaira* v. *State of Punjab.*[74]

Section 294 of the Cr PC prescribes the procedure for filing documents by the respective parties before the Court. The opposing party may admit or deny the genuineness of the papers. If the authenticity of the document is not disputed, it shall be read as substantive evidence without formal proof. In *Shyam Narayan Ram* v. *State of U.P.,*[75] the Supreme Court has reiterated the rule that if the defence has admitted the genuineness of the prosecution document under section 294 of Cr PC, then it cannot be allowed to discredit the same at a later stage on the ground that the author of the document has not been examined.[76] It is pertinent to note that the BNSS has introduced a 30-day period to admit or deny the genuineness of any document.[77]

## VIII LEGAL AID

The Supreme Court's landmark rulings have well-crafted the jurisprudence on free legal aid. From *Hussainara Khatoon (IV)*[78] to *Anokhilal*,[79] the Supreme Court has held that legal assistance is an essential ingredient of a "reasonable, fair

72 *Id.* at para 26.

73 *Devendra Kumar Pal* v. *State of U.P.*, 2024 SCC OnLine SC 2487.

74 (2023) 1 SCC 289.

75 2024 SCC OnLine SC 2988.

76 *Id.,* para 15.

77 S. 330, BNSS 2023.

78 *HussainaraKhatoon(IV)* v. *Home Secy., State of Bihar*, (1980) 1 SCC 98.

79 *Anokhilal* v. *State of M.P.*, (2019) 20 SCC 196.

and just" procedure, implicit in the right guaranteed under article 21 of the Constitution. Section 304 of Cr PC (section 341 of BNSS) confers a duty on the Court to ensure that the accused person is provided with a legal aid lawyer for his defence.

Despite legal aid being elevated to a fundamental right for every accused person, the State's failure to provide timely and quality legal assistance continues to loom large over the dispensation of criminal justice in the country. Time and again, the apex court has encountered cases in which the constitutional promise has been breached by both the State, in failing to provide legal aid, and the Court, in proceeding without a lawyer.

Recently, in *Ashok* v. *State of Uttar Pradesh*,[80] the court noted that the convict was denied legal assistance at crucial stages of the proceedings. The trial court framed the charges in the absence of any advocate. The evidence of the prosecution witness was recorded without assigning any legal aid counsel. Even after the legal aid counsel was appointed, he remained absent on most dates. The cross-examination could not proceed effectively due to his absence. The legal aid counsel was changed a couple of times. Such systemic failure has prompted the court to issue the following directions:

> It is the duty of the Court to ensure that proper legal aid is provided to an accused.

When an advocate does not represent an accused, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the Public Prosecutor's duty to ensure that the trial is conducted fairly and lawfully.

Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused.

An accused who an advocate does not represent is entitled to free legal aid at all material stages, from the remand stage onwards. Every accused has the right to legal assistance, including the right to file bail petitions.

At all material stages, including the framing of the charge, recording of evidence, etc., it is the duty of the Court to make the accused aware of his right to free legal aid. If the accused expresses a need for legal aid, the Trial Court must ensure that a legal aid advocate is appointed to represent the accused.

As held in the case of *Anokhilal*, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate with good knowledge of the law and experience in conducting criminal trials.

80 2024 SCC OnLine SC 3580.

The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocates. They shall ensure that the legal aid advocates attend the court regularly and punctually when the cases entrusted to them are fixed.

It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice.

In the cases where the offences are of a severe nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may nominate a senior member of the Bar who has vast experience in conducting trials to espouse the cause of the accused so that the accused gets the best possible legal assistance.

The right of the accused to defend himself in a criminal trial is guaranteed by article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by article21;

> If legal aid is provided only to offer it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, the law of evidence and procedural laws apart from other essential statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal assistance provided is of good quality. If the legal aid advocate assigned to an accused is not competent to conduct the trial efficiently, the accused's rights will be violated.[81]

In *Suhas Chakma* v. *Union of India, the Supreme Court* examined the legal aid framework in detail.It hailed NALSA's efforts to implement the constitutional goals set out in articles 21 and 39A. The court reiterated that 'legal aid to the poor should not be poor legal aid'. It issued multiple directions to ensure the efficient operation of access to legal aid services for prisoners, the monitoring and review of the functioning of PLACs, a fully functional Legal Aid Defence Counsel System, a robust mechanism for a legal aid awareness drive, and periodic review and update of the SOP-2022 for the Undertrial Review Committee (UTRC).

## IX REVISION

In *K. Ravi* v. *State of Tamil Nadu,*[82] the Supreme Court deprecated the practice of invoking the revisional jurisdiction against an interlocutory order. The Court clarified that an order dismissing an application for modification of charge would be an interlocutory order. In view of the express bar contained in section 397(2)of Cr PC, the revision application is not maintainable. The Court made strong observations on the way the high court has invoked its revisional jurisdiction: [83]

81 *Id.,* para 38.

82 2024 SCC OnLine SC 2283.

83 *Id.,* para 12.

> The High Court, on an absolutely extraneous consideration and in utter disregard of the settled legal position, allowed the revision application, though legally untenable, and set aside the charge framed by the Sessions Court. The said order being *ex facie* illegal, untenable and dehors the material on record, the same deserves to be set aside.

## X INHERENT POWERS

In *Vipin Sahni* v. *CBI*,[84] aggrieved by the discharge order, the CBI invoked the inherent power of the High Court under section 482 of Cr PC rather than pursuing the statutory remedy under section 397 of Cr PC. The petition under section 482 was filed after an inordinate delay. Noticing the fact that the statutory limitation period for filing a revision petition under section 397 is 90 days and a petition under section 482 is not barred by limitation, the Supreme Court stated that CBI's decision to invoke inherent powers was "obviously to get over the hurdle of the limitation".[85] The Court reiterated the established principle that when a specific remedy, such as appeal or revision, is provided in the Cr PC for assailing an order (which is not interlocutory), there should be a bar in invoking the inherent power under section 482. The intrinsic power is meant to be exercised when there is no express provision for redressal. Inherent jurisdiction cannot be exercised to nullify the express provisions of the Code. Consequently, the Supreme Court held that the high court was incorrect in accepting the CBI's petition.[86]

In *Naresh Kumar* v. *State of Karnataka,* the Supreme Court reiterated the principle that, though the high court should exercise the inherent powers under Section 482 of CrPC sparingly, it must not hesitate to invoke such power to quash criminal proceedings that are essentially of a civil nature. Where a dispute which is essentially of a civil nature is given a colour of criminal offence, the high court ought not hesitate to invoke the inherent power to quash the proceedings.[87]

In *XYZ* v. *State of Gujarat*[88] the Supreme Court has sounded a note of caution to the high court that when a petition for quashing criminal proceedings of non-compoundable nature is filed under article 226 or under section 482 of Cr PC on the ground of settlement, the satisfaction of the High Court with respect to the genuineness of the settlement between the parties is a pre-condition for proceeding further. The court further observed that, even though the victim's affidavit accepting the settlement is on record, in cases of serious offences and especially against women, it is always advisable to ensure the victim's presence, either physically or through video conferencing, to properly examine whether there is a genuine settlement between the parties and that the victim has no subsisting grievance.[89]

84 2024 SCC OnLine SC 511.
85 *Id.,* para 23.
86 *Ibid.*
87 *Id.,* para 9.
88 2024 SCC OnLine SC 3314.
89 *Id.,* para 7.

In *Mukesh* v. *State of Uttar Pradesh*,[90] the Supreme Court ruled that the option to file a petition for quashing criminal proceedings under section 482 of the Cr PC is available even after the filing of a charge sheet. The accused need not wait till the stage of framing of charge to question the order of framing charge before the revisional court. The scope of a petition for quashing is much broader than that available in a discharge petition.

In *Enforcement Directorate* v. *Niraj Tyagi*,[91] the Supreme Court has reminded the high court of the settled legal position in exercising the power under section 482 of the Cr PC, *qua the power to stay* the investigation or to restrain coercive action against the accused. The Court opined that: [92]

> It hardly needs to be reiterated that the inherent powers under section 482 of the Cr PC do not confer arbitrary jurisdiction on the High Court to act on whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In a way, by passing such orders staying investigations and restraining investigating agencies from taking any coercive measures against the accused pending petitions under section 482 CrPC, the High Court has granted blanket orders restraining arrest without the accused applying for anticipatory bail under section 438 of CrPC.

The court concluded that the orders of the High Court are in utter disregard and in the teeth of the guidelines issued in *Neeharika Infrastructure Pvt. Ltd.* v. *State of Maharashtra,*[93] wherein the Supreme Court has categorically stated that the extraordinary and inherent powers under section 482 must not be exercised to stay the investigation or to prevent coercive steps against the accused person.[94]

## XI SENTENCING

In *Navas @ Mulanavas* v. *State of Kerala,*[95] the Supreme Court summarised the factors for fixing the term of imprisonment for life that the convict must undergo before seeking remission. In this case, the appellant was awarded a death sentence in a murder trial by the sentencing court. In appeal, the high court commuted the sentence to imprisonment for life fixed for a period of 30 years without remission. The appellant challenged the sentence as excessive and pleaded for leniency. The Supreme Court referred to the guidelines set out in *Swamy Shraddananda* v. *State of Karnataka*[96] and *Union of India* v. *V. Sriharan alias Murugan*[97] in determining the quantum of term in fixing the life term. The Court has also surveyed 27 cases that followed the *Swamy Shraddananda* guidelines for fixing the term of

90 SLP (Cri.) No.12354/2024 dated 29.11.2024.
91 (2024) 5 SCC 419.
92 *Id.,* para 20.
93 (2021) SCC Online SC 315.
94 *Supra* note 101 at para 23.
95 (2024) 14 SCC 82.
96 (2008) 13 SCC 767.
97 (2016) 7 SCC 1.

imprisonment for life. The cases revealed that the range has been fixed at 20 to 35 years. The Court observed that the basis for the court to fix a compulsory life term is the principle of proportionality. The aggravating and mitigating circumstances considered by the court in deciding the commutation of a death sentence to life imprisonment have a significant bearing on the number of years of mandatory imprisonment without remission, too.[98] The court has listed the following factors as relevant for the sentencing court or the appellate court to keep in mind while reaching to a particular term for the life term as the most appropriate one: [99]

> (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been (1) age of the convict; (2) the probability of reformation of the convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused, and (6) conduct expressing remorse.

Additionally, the court may consider the convict's conduct in jail and the period already served to determine the number of years the convict should serve as part of the sentence of life imprisonment, after which he cannot apply for remission. Finally, the court applied these factors and granted the appellant relief, reducing the period of imprisonment from 30 years to 25 years, without remission.[100]

The 'unexplained and unjustified' delays, first, at the stage of processing the mercy petition, and second, in the issuance of the execution warrant, are violative of article 21 of the Constitution—such post-confirmation and pre-execution delay cause severe mental trauma to the death row convicts. Taking note of the same, the Supreme Court in *State of Maharashtra* v. *Pradeep Yashwant Kokade*[101] laid down detailed procedural guidelines for the efficient handling and processing of mercy petitions and the execution of death sentences. The comprehensive nationwide systemic directives included the establishment of dedicated mercy-petition cells in all States/UTs and a detailed procedural roadmap for sessions courts for issuing death warrants, mandating notice to convicts, providing legal aid, and a minimum 15-day interval before execution. The court directed the executive and the sessions court to follow the steps so that inordinate delay in disposing of the mercy petition and execution of the death sentence may be avoided.[102] Interestingly, the BNSS (2023) also introduced a procedural framework

98 *Supra* note 105 at para 78.

99 *Id.*, para 79.

100 *Id.,* para 80.

101 2024 SCC OnLine SC 3662.

102 *Id.,* para 42.

for the disposal of mercy petitions filed by death-row convicts. It lays down a time-bound framework for the filing and disposal of mercy petitions.[103]

Should the payment of compensation to the victim have any bearing on the quantum of sentence imposed on the convict? The Supreme Court *Rajendra Bhagwanji Umraniya* v. *State of Gujarat answered this specific question.*[104] In this case, the High Court reduced the sentence imposed on the convicts from five years to four years, with a further direction that they need not undergo further imprisonment if they compensate the victim as per section 357 of the Cr PC. The complainant knocked on the doors of the Supreme Court, questioning such a reduction in sentence. While holding that the high court has erred, the court has highlighted the object of victim compensation in the following terms: [105]

> The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence that has been committed. Payment of victim compensation cannot be a consideration or ground for reducing the sentence imposed upon the accused, as it is not a punitive measure but restitutory in nature and thus has no bearing on the sentence that has been passed, which is punitive.

Further, the court has made it clear that payment of compensation to the victim is independent of the sentence imposed on the convict.

In criminal proceedings, the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and/or a fine are imposed independently of any victim compensation, and thus the two stand on a completely different footing; neither can vary the other.[106]

If payment of compensation becomes a consideration for reducing a sentence, it will have a catastrophic effect on the criminal justice system. It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings.[107]

## XII REMISSION

In *Bilkis Yakub Rasool* v. *Union of India*,[108] the Supreme Court was called to answer the question of 'appropriate government' for 'premature release' within the meaning of section 432 of Cr PC in cases where the trial has been transferred from one State to another. It is pertinent to discuss the factual matrix to appreciate the legal issues involved fully. In this case, the trial was transferred from Gujarat to Maharashtra, and the convicts were sentenced to serve life imprisonment by the Special Court, Mumbai, for the crimes committed during the 2002 communal riots in Gujarat. In 2013, one of the convicts approached the Bombay High Court for

103 S. 472, BNSS 2023.
104 2024 SCC OnLine SC 927.
105 *Id.,* para 23.
106 *Id.,* para 25.
107 *Id.,* para 26.
108 (2024) 5 SCC 481.

'pre-mature release'. However, the High Court of Bombay dismissed the application on the ground that, although the trial was transferred to the State of Maharashtra under exceptional circumstances, the crimes were committed in the State of Gujarat. Once the trial is concluded and the accused is convicted, the applicable prison policy is that of the State of Gujarat. In 2019, when one of the convicts approached the High Court of Gujarat seeking 'pre-mature release', the court relying on *Union of India* v. *V. Sriharan alias Murugan*[109] and taking note of section 432(7) of Cr PC concluded that the place where the trial held assumes significance, hence the application for the 'pre-mature release' should have been filed in that State only and not in the State of Gujarat.

In 2022, one of the convicts approached the Supreme Court in *Radheshyam Bhagwandas Shah @ Lala Vakil* v. *State of Gujarat*[110] for a writ of mandamus against the State of Gujarat to consider his application for premature release under the 1992 policy, which was in effect at the time of his conviction. The Supreme Court, relying on its earlier ruling in *State of Haryana* v. *Jagdish*,[111] held that the grant of premature release will be governed by the policy which was effective on the date of conviction. As far as the question about the applicable policy is concerned, in a case where the 'place of trial' is outside the State where the crime was committed, the Court was of the view that the case was transferred outside the State where the crime occurred in exceptional circumstances for a limited purpose of trial. Once the trial is concluded and the prisoner is convicted and moved to the State where the crime has occurred, then that State will be the 'appropriate government' within the meaning of section 432(7) of Cr PC to examine the application for premature release as per the applicable policy of that State. Finally, the court concluded that: [112]

> In the instant case, once the crime was committed in the State of Gujarat, after the trial been concluded and judgment of conviction came to be passed, all further proceedings have to be considered including remission or pre-mature release, as the case may be, in terms of the policy which is applicable in the State of Gujarat where the crime was committed and not the State where the trial stands transferred and concluded for exceptional reasons under the orders of this Court.

On August 10, 2022, the State of Gujarat, after consulting the Jail Advisory Committee and obtaining the Union's concurrence under section 435 of the Cr PC, remitted the sentences of all 11 convicts. Against this factual backdrop, the case of *Bilkis Bano* (2024) arose, challenging the State of Gujarat's decision to release all 11 convicts.

The Supreme Court undertook a meticulous statutory analysis of section 432 of the Cr PC. As per the Court, section 432(7) attaches primacy to the place of

109 (2016) 7 SCC 1
110 (2022) 8 SCC 552
111 (2010)4SCC216.
112 *Supra* note 118 at para 34.2.

trial and sentencing, rather than to the place of the offence or of imprisonment. Justice B.V. Nagarathna, delivering the Bench's decisive opinion, unequivocally identified a glaring jurisdictional defect. Section 432(7)(b) of Cr PC clearly assigns the remission power to 'the government of the state within which the offender is sentenced.' The Court made stern remarks that the order of this Court in 2022 was deemed invalid as it was obtained by suppression or misrepresentation of material facts, contrary to the binding precedent, and hence *per incuriam* and a nullity. The ruling powerfully reaffirmed that jurisdiction cannot be manufactured by convenience or political expediency; the rule of law must prevail. Further, the Court stated that the mandatory opinion of the Presiding Judge was ignored, as valid negative opinions from the convicting Court in Mumbai were disregarded; the opinion of the Dahod Sessions Judge, also a member of the Jail Advisory Committee, could not substitute the statutory requirement. The 1992 Gujarat policy was inapplicable because it was cancelled in 2013. Moreover, Maharashtra's 2008 policy, which mandates a 28-year minimum for heinous crimes, governed the convicts. The Court articulated the following factors for future remission considerations:

(a) The application for remission under section 432 of CrPC could be made only before the Government of the State within whose territorial jurisdiction the applicant was convicted (appropriate Government) and not before any other Government within whose territorial jurisdiction the applicant may have been transferred on conviction or where the offence has occurred.

(b) A consideration for remission must be by way of an application under section 432 of the Cr PC, which has to be made by the convict or on his behalf. In the first instance, compliance with section 433A of the Cr PC must be noted, as a person serving a life sentence cannot seek remission unless 14 years of imprisonment have been completed.

(c) The guidelines under section 432(2) about the opinion to be sought from the Presiding Judge of the Court which had convicted the applicant must be complied with mandatorily. While doing so, it is necessary to follow the requirements of the said section, which we, namely, highlight.

(i) the opinion must state as to whether the application for remission should be granted or refused, and for either of the said opinions, the reasons must be stated;

(ii) the reasons must have a bearing on the facts and circumstances of the case;

(iii) the opinion must have a nexus to the record of the trial or of such record thereof as exists;

(iv) The Presiding Judge of the Court before or by which the conviction was had or confirmed must also forward, along with the statement of such opinion granting or refusing remission, a certified copy of the record of the trial or of such record thereof as exists.

(d) The policy of remission applicable would therefore be the Policy of the State, which is the appropriate Government and which has the jurisdiction to consider that application. The policy of remission applicable at the time of the conviction could apply, and only if, for any reason, the said policy cannot be made relevant, a more benevolent policy, if in vogue, could apply.

(e) While considering an application for remission, there cannot be any abuse of discretion. In this regard, it is necessary to bear in mind the following aspects, as mentioned in *Laxman Naskar*,[113] namely:

(i) Whether the offence is an individual act of crime without affecting society at large?

(ii) Whether there is any chance of future recurrence of committing a crime?

(iii) Whether the convict has lost his potentiality in committing a crime?

(iv) Is there any fruitful purpose of confining this convict anymore?

(v) Socio-economic condition of the convict's family.

(f) There has also to be consultation in accordance with section 435 of the CrPC wherever the same is necessitated.

(g) The Jail Advisory Committee, which has to consider the application for remission, may not have the District Judge as a Member since the District Judge, being a Judicial Officer, may coincidentally be the very judge who may have to render an opinion independently in terms of sub-section (2) of section 432 of CrPC.

(h) Reasons for grant or refusal of remission should be clearly delineated in the order by passing a speaking order.

(i) When an application for remission is granted under the provisions of the Constitution, the following, among other tests, may apply to consider its legality by way of judicial review of the same.

(i) that the order has been passed without application of mind;

(ii) that the order is mala fide;

(iii) that the order has been passed on extraneous or wholly irrelevant considerations;

(iv) that relevant materials have been kept out of consideration;

(v) that the order suffers from arbitrariness.[114]

The policy of remission and the administrative power to grant or revoke it were firmly placed within the guardrails of natural justice in *Mafabhai Motibhai Sagar* v. *State of Gujarat*.[115] In this case the appellant has challenged the legality of the conditions imposed by the State while remitting his life sentence before the

113 *Laxman Naskar* v. *Union of India* (2000) 2 SCC 595.

114 *Supra* note 118 at para 222.

115 2024 SCC OnLine SC 2982.

Supreme Court, *viz.* (i) after the release the prisoner shall behave decently for two years; and (ii) if after release he commits any cognizable offence then he will be rearrested and made to serve the remaining period of sentence in jail.

The court has reiterated the power of the appropriate government to remit whole or any part of the sentence with or without any conditions. The power to remit a sentence is discretionary, and the convict cannot seek remission as a matter of right. However, it has to be exercised fairly and reasonably. The conditions imposed while granting remission have to stand the test of article 14 scrutiny, and any arbitrary conditions, if imposed, shall be violative of Article 14 and article 21 of the Constitution.[116]

Approving the challenge to both conditions, the court concluded that the cancellation or revocation of the remission directly affects the convict's liberty. Hence, such a step must not be taken without following the principles of natural justice. The convict must be served a show cause notice containing the grounds for taking the action of cancellation or revocation of the remission. The convict shall be allowed to file a reply and to be heard. The authority must pass a reasoned order which will be open to challenge under Article 226 of the Constitution.[117]

## XIII REPEAL AND SAVINGS

The most fascinating doctrinal challenge of 2024 came not from individual cases but from the interface between the old and the new regimes. The repeal and savings provision under section 531 of BNSS makes it crystal clear that the provisions of Cr PC shall be repealed from the date of the commencement of BNSS. However, section 531(2)(a) reflects the Legislative wisdom in saving the operation of Cr PC provisions in any pending appeal, application, trial, inquiry or investigation which has been instituted immediately before the implementation of BNSS.[118]

In this regard, the commencement of BNSS on 1st July 2024 gave rise to three possible situations regarding its applicability. Though the answer to the first situation appears straight forward, where the offence is committed on or after 1stJuly, 2024, then the substantive and procedural aspects shall be regulated by BNS and BNSS. The answer seems tangled, though the crime took place before July 1, 2024.Still, the criminal process (FIR or complaint) is initiated after the commencement of BNSS, or where both the commission of the offence and the initiation of the criminal process occurred before July 1,, 2024.Still, an application for bail or appeal is filed on or after July 1, 2024.

Soon after the BNSS came into force, the applicability of its provisions in pending/ongoing criminal proceedings began to be considered by various high

116 *Id.,* para 12.

117 *Id.,* para 17.

118 S. 531(2)(a), BNSS, 2023: *If, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force.*

courts. In *Krishna Joshi* v. *State of Rajasthan,* the High Court of Rajasthan ruled that if the FIR is registered before 1st July 2024, the petition for quashing should have been filed under section 482 of the Cr PC, and not under the corresponding section 528 of the BNSS. The court reasoned that: [119]

> It may sound trite, but the settled position is that, once an FIR is registered under section 154 of the CrPC, the criminal investigative/ administrative machinery is set in motion under Chapter XII thereof. Thus, if an FIR is registered before1st July 2024 under the CrPC, it would amount to a pending enquiry/investigation within the meaning of section 531(2)(a) of BNSS. *The entire subsequent investigation procedure, and even the trial procedure qua such an FIR, shall then be governed by CrPC, not BNSS.*

The reasons for the high court to conclude that the provisions of CrPC shall govern the pending investigation as well as trial procedure may be- first, to maintain the integrity of the judicial process and ensure that justice is neither delayed nor denied due to procedural changes; second, to protect the rights of the accused or convict and the legal expectations formed under the old law; third, to prevent any retrospective adverse effects that might arise from the sudden application of the new legal provisions to ongoing cases; and fourth, to assure the litigants already involved in legal proceedings initiated under the old code that their cases will be resolved under the legal framework they were initially engaged with.[120]

The legal position rendered by the High Court of Rajasthan finds limited support from the High Court of Bombay[121] in answering the question under investigation. The High Court of Bombay has accepted the conclusion of the Rajasthan High Court that any pending investigation at the time of commencement of BNSS shall be carried out and concluded as per the provisions of Cr PC. There cannot be a partial application of Cr PC provisions to pending investigations till June 30, 2024, and the remaining part thereafter under the provisions of BNSS. However, the High Court of Bombay did not support the view that, once the pending stage is over, subsequent proceedings shall also be conducted in accordance with the provisions of the Cr PC. After considering various precedents and section 531(2)(a) of BNSS, the High Court of Bombay has concluded that the anticipatory bail application filed after the commencement of the BNSS shall be governed as per section 482 of the BNSS (corresponding to section 438 of the Cr PC).[122]

The High Court of Punjab and Haryana in *Mandeep Singh* v. *Kulwinder Singh*[123] has taken the view that in a time-barred petition filed up to 30thJune, 2024,which remains pending as on 1stJuly, 2024, shall be governed under the CrPC

119 *Id.,* para 6.

120 *Id.,* para 6.1 and 6.2.

121 *Chowgule and Company Pvt. Ltd.* v. *Public Prosecutor, State of Goa,* 2024 SCC OnLine Bom 2501.

122 *Id.,* para76.

123 2024 SCC OnLine P&H 6169.

and not under the BNSS. However, in another case, the High Court of Punjab and Haryana made it clear that the application or petition made on or after July 1, 2024 in relation to a FIR lodged under the IPC shall be disposed of as per the provisions of the BNSS and not the Cr PC.[124] The court dismissed the petition for quashing the FIR, as it was filed under section 482 of the Cr PC, not under section 528 of the BNSS. The high court has summarised the following principles:

(*i*) The Criminal Procedure Code, 1973, stands repealed w.e.f. 1-7-2024. Ergo, no new/fresh appeal, application, revision, or petition can be filed under the Criminal Procedure Code, 1973, on or after 1-7-2024.

(*ii*) The provisions of sections 4 and 531 of the BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation pending before 1-7-2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Criminal Procedure Code, 1973. In other words, any appeal/application/revision/petition filed on or after 1-7-2024 is required to be filed/ instituted under the provisions of BNSS, 2023.

(*iii*) Any appeal/application/revision/petition filed on or after 1-7-2024 under the provisions of Cr PC, 1973 is non-maintainable and hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed upto 30-6-2024 under the provisions of Cr PC, 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed upto 30-6-2024 but there is defect (registry objections, as referred to in common parlance) and such defect is cured/removed on or after 1-7-2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 1-7-2024 and, therefore, would be non-maintainable.

(*iv*) Section 531 of the BNSS shall apply to "revision", "petition", as also "petition of complaint" (ordinarily referred to as complaint before "Magistrate") with the same vigour as it is statutorily mandated to apply to "appeal/application/trial/inquiry or investigation" in terms of Section 531 of the BNSS.[125]

The above view that appeals filed after July 1, 2024, are to be dealt under the provisions of the BNSS was accepted by the High Court of Kerala in *Abdul Khader* v. *State of Kerala.*[126] The Court opined that upon completion of any pending proceeding initiated under the CrPC, further steps will be taken in accordance with the provisions of the BNSS. Though the Bench has shown its reservation to paragraph *(iii)* above that mere misquoting of a provision or mistake in the nomenclature shall not fail a petition. Once the defects are cured and the appeal/application/revision/petition is represented correctly, the date of filing shall relate

124 *Abhishek Jain* v. *State of U.T. Chandigarh* 2024 SCC Online P and H 9874.
125 *Id.,* para 9.
126 Criminal Appeal 1186/2024 dated July 15, 2024.

to the date on which it was first filed. The applicable law shall be decided with reference to the date of its first presentation and not to its representation.[127]

In *S. Rabban Alam* v. *CBI,*[128] the appeal was filed under the relevant section of the BNSS, though the investigation and trial had been completed under the Cr PC and the Prevention of Corruption Act, 1988. It is a settled principle of law that an appeal is a continuation of the trial. However, section 531(2)(a) of the BNSS allows only pending appeals to be governed under the provisions of the Cr PC. The High Court of Delhi has also agreed with the possible interpretation that where the appeal is pending before the implementation of BNSS, it will be continued under the provisions of Cr PC, and an appeal preferred on or after 1st July, 2024 shall be dealt with as per the provisions of BNSS.

Again, in *Prince* v. *State of Govt of NCT of Delhi,*[129] the petition for anticipatory bail was filed after 1stJuly, 2024, under the provisions of Cr PC, in a case registered before 1stJuly, 2024. The Delhi High Court opined that a plain reading of Section 531(2)(a) of BNSS reveals that the proceedings, like any appeal, application, trial, inquiry or investigation pending before 1stJuly, 2024, are to be proceeded as per the Cr PC provisions. If any application/petition is filed on or after 1stJuly, 2024, though the FIR was lodged under the CrPC, it ought to be filed as per the provisions of BNSS.[130]

The High Court of Allahabad in *Deepu* v. *State of U.P.*[131] has culled out the following principles *vis-à-vis* applicability of BNSS provisions:

> Amended/repealed procedural law will be applicable retrospectively unless otherwise provided in the new Act itself;
>
> Liability or right accrued under the repealed Act will not be affected, and the same will continue as if the repealing Act did not come into force;
>
> Procedure of investigation, trial, revision and appeal, as well as a forum of remedy, is part of procedural law, and the same will be applicable retrospectively unless otherwise provided in the new procedural law;
>
> Litigants have no vested rights in procedural law, but they dohave vested rights in substantive law, with accrued rights or liabilities. The statute, which not only changes the procedure but also creates new rights and liabilities, shall be construed as prospective in nature unless otherwise provided.[132]

The High Court of Madras has taken a different view in cases where the offence occurred before the BNSS came into force, but the case was registered

127 *Id.,* para 17.
128 Criminal Appeal 578/2024 dated July 10, 2024.
129 2024 SCC OnLine Del 4909.
130 *Id.,* para 5.
131 2024 SCC Online All 4289.
132 *Id.,* para 14.

after its implementation. In *Muthuvelaydha Perumal Appavu* v. *R.M. Babu Murugavel*[133] the high court has observed that applying the saving clause in section 531(2)(a) of BNSS to cases where the FIR/complaint is made after the commencement of the BNSS will be contrary to the saving of rights and privileges, acquired and ensured protection under Section 358 of BNS, 2023 and section 4 of General Clause Act. The court concluded that for offences committed before July 1, 2024, the procedural law ought to be Cr PC alone, irrespective of the fact that the FIR/complaint was made after July 1, 2024.[134]

The majority of the high courts have agreed to limit the scope of Cr PC provisions to the pending stage of a case. Any new stage in a pending case or a fresh application made in a pending case is governed by the provisions of the BNSS. Though the view of extending the CrPC provisions to the entirety of the case post commencement of BNSS also found support in some cases. It is hoped that the Supreme Court puts the issue at rest by providing a reasonable interpretation of the provision.

## XIV PRISON ADMINISTRATION

The case of *Sukanya Shantha* v. *Union of India*[135] highlights the caste-based segregation and institutionalised discrimination of prisoners belonging to marginalised communities perpetuated in the Prison Manuals and Rules. Such discrimination exists in the form of division of labour, separation of barracks, and differential treatment of prisoners belonging to denotified tribes and habitual offenders. The court, while delivering its judgment, held that these discriminatory rules violated fundamental rights guaranteed under Articles 14, 15, 17, 21, and 23 of the Constitution. With respect to the constitutional mandate for substantive equality given under article 14, the Bench found that the impugned provisions exhibited both direct and indirect discrimination. To counter the institutional perpetuation of stereotypes against marginalised communities, the judgment integrated the principles of anti-stereotyping and manifest arbitrariness established in rulings such as *Navtej Singh Johar* v. *Union of India*[136] and *Joseph Shine* v. *Union of India*.[137] The practice of assigning caste-based duties, particularly tasks such as scavenging, was held to constitute untouchability, prohibited by article 17 of the Constitution. Compelling inmates to perform functions of "degrading or menial character" solely based on their caste background and denying them freedom of choice amounted to forced labour prohibited under Article 23 of the Constitution.[138]

The court issued several specific directions, mandating all States and Union Territories to revise their prison manual rules within three months to comply with

133 2024 SCC OnLine Mad 5997.
134 *Id.,* para 15,16 and 17.
135 2024 SCC OnLine SC 2694.
136 AIR 2018 SC 4321.
137 AIR 2018 SC 4898.
138 *Supra* note146 at para 58.

the judgment. The court specifically ordered the deletion of the 'caste' column and any references to caste from all prisoner registers. It also directed that any categorisation of 'habitual offenders' in prison manuals must abide by definitions established by relevant State legislations, striking down all other vague definitions that had the effect of targeting tribal groups. Finally, the court took *suo motu* cognisance of discrimination inside prisons. It established a monitoring mechanism, directing Legal Services Authorities and the Board of Visitors to conduct regular joint inspections and monitor compliance.[139]

## XV CONCLUSION

The cases surveyed in criminal procedure for 2024 indeed contributed to the development of criminal procedure law. The court's observation in *Sukanya Shantha,* in contextualising constitutional inferences on the workings of the criminal justice institution, may serve as a guiding light for other institutions and functionaries of the criminal justice system to remain more conscious of the constitutional vision of justice. The cases reiterate the principle that criminal law and procedure must be due-process-compliant, conform to constitutional values, and uphold the rule of law. The interpretation and application of the provisions with a pro-liberty approach are a testament to the Supreme Court's commitment to protecting life and liberty. The cases discussed have reinforced the protective net of constitutional and statutory safeguards. It will be interesting to witness the judicial interpretation of the newly introduced provisions of the BNSS on preliminary enquiry, the use of handcuffs, extended periods of police custody, and in-absentia trial, which have unsettled the long-standing legal principles evolved through case law.

139 *Id.* at para 254.