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<b>CASE LAW</b>		
<i>(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)</i>		
1.	<i>Satender Kumar Antil v. CBI</i> , 2022 SCC OnLine SC 825 [‘India needs a Bail Act’: Supreme Court asks Centre to consider the suggestion; Grant of bail — Exercise of discretion by court — Guidelines issued therefore based on categorisation of offences made herein: Offences have been categorised and the guidelines have been issued for grant of bail, but without fettering the discretion of the courts concerned and keeping in mind the statutory provisions. Further held, where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the benefit of the above guidelines cannot be given to such accused. Lastly, held, it is not as if economic offences not covered by Special Acts, are completely taken out of the aforesaid guidelines but do form a different nature of offences. Thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would	

*also be a factor.]*

2. **Mohammed Zubair v. State of NCT of Delhi**, 2022 SCC OnLine SC 897 [*The 6 FIRs filed in Ghaziabad, Chandauli, Lakhimpur, Sitapur, Hathras have also been transferred from the Uttar Pradesh Police to the Special Cell of the Delhi Police, thereby disbanding the SIT formed by the Director General of Police, Uttar Pradesh on 10 July 2022. If any other related FIR is filed against Zubair then the same will also be transferred to the Special Cell of the Delhi Police and Zubair shall be entitled to the order of interim bail.*]
3. **X v. Arun Kumar CK** , CRIMINAL APPEAL NO.1834/2022 (@Petition for Special Leave to Appeal (Crl.) No.7188/2022 [*The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.*]
4. **Naser Bin Abu Bakr Yafai v. State of Maharashtra**, (2022) 6 SCC 308 [*Re S. 167(2) CrPC where default bail claimed on ground that as charge-sheet was not filed within stipulated period by investigating agency which had jurisdiction to submit the same, and/or charge-sheet was not submitted in a proper court entrusted with jurisdiction, the accused had an indefeasible right to bail.*]
5. **Ram Govind Upadhyay v. Sudarshan Singh and Others**, (2022) 3 SCC 598 [*Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case.*]
6. **M Ravindran v. Intelligence Officer Directorate of Revenue Intelligence**, (2021) 2 SCC 485 [*Right to Default bail- scope – Accrual and Extinguishment; The Court held that the appellant was entitled to the relief of permanent bail on medical grounds. Therefore, the Court granted bail to the appellant by deleting the condition placed in the earlier Order limiting the relief in terms of time. The Bail was granted subject to certain conditions.*]
7. **Arnab Manoranjan Goswami v. State of Maharashtra**, (2021) 2 SCC 427 [*Factors to be considered for grant of bail*]
8. **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1 [*The Constitution Bench considered and gave due weightage to personal liberty, which at the very heart of the law, is central to the concept of anticipatory bail. Held that, the application for anticipatory bail should be based on concrete facts, relatable to one or other specific offence, along with the reason for apprehending arrest. It was iterated that courts should consider the nature of the offence, role of the person, likelihood of him influencing the course of the investigation or tampering with evidence or likelihood of fleeing and accordingly courts may impose restrictive conditions.*]
9. **P. Chidambaram v. Directorate of Enforcement**, (2019) 9 SCC 24 [*Anticipatory Bail - Factors to be considered*]
10. **Jagjeet Singh v. Ashish Mishra**, 2022 SCC Online SC 453 [*If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an*

*injustice eclipses.]*

11. **Meena Devi v. State of U.P. and Another**, 2022 SCC OnLine SC 676 [ While criticizing the practise of granting cryptic bail in a casual manner, the Bench expressed, “It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum.”]
12. **P. v. State of Madhya Pradesh and Another**, 2022 SCC OnLine SC 552 [High Court or for that matter, the Sessions Court have a wide discretion in deciding an application for bail under Section 439 Code of Criminal Procedure. However, the said discretion must be exercised after due application of the judicial mind and not in a routine manner. For cancelling bail once granted, the Court must consider whether any supervening circumstances have arisen or the conduct of the Accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial.]
13. **Imran v. Mohammed Bhava and Another** , 2022 SCC OnLine SC 496 [ Significant scrutiny is required at the instance of a superior court to cancel bail already granted by a lower court, the same could be done if relevant material, gravity of the offence or its societal impact were not considered by the lower court]
14. **Vipan Kumar Dhir v. State of Punjab and Another**, 2021 SCC OnLine SC 854 [Court explained the principles governing cancellation of bail and has held that it is necessary that ‘cogent and overwhelming reasons’ are present for the cancellation of bail. “Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail.”]
15. **Manoj Devi v. Pappu Kumar**, (2022) 4 SCC 497 [Grant of bail under S. 439 though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reason cannot be sustained. Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at a prima facie conclusion.]
16. **Deepak Yadav v. State of U.P. and Another**, 2022 SCC OnLine SC 672 [It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :- **a)** Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record. **b)** Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim. **c)** Where the past criminal record and conduct of the accused is completely ignored while granting bail. **d)** Where bail has been granted on untenable grounds. **e)** Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice. **f)** Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified. **g)** When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.]
17. **Ashim v. NIA**, (2022) 1 SCC 695 [Art. 21, Constitution of India undertrials cannot be detained indefinitely pending trial. Principles summarised regarding when Courts are obligated to enlarge them on bail.]
18. **Nathu Singh v. State of U.P.**, (2021) 6 SCC 64 [The Supreme court held that if not section 438 the

*High Court can very well grant relief to the applicant under section 482 CrPC as the section explicitly recognizes the High Court's inherent power to pass orders to secure ends of justice. The court held that an order must be narrowly tailored to protect the interest of the applicant while taking into consideration the concerns of investigating authority with reasons for the same. The Supreme Court held that the High Court erred in exercising its powers under section 438 CrPC since while it dismissed the anticipatory bail it also provided relief, but the same was given without assigning reasons. Further, when 90 days period was assigned, the concerns of the investigation agency, complainant, and the applicant were not balanced.]*

19. **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana**, (2021) 6 SCC 230 [*The Bench not only criticized the practice of lower Courts of attaching caveat for not treating the decision as precedent, but also emphasized on need for reasoned disposal of bail matters.*]
20. **Sarvanan v. State**, (2020) 9 SCC 101 [*Indefeasible right to default bail/statutory bail under S. 167(2), once statutory period expires, discussed. Condition(s) if may be imposed as: (A) precondition(s) to release on default bail, and (B) conditions post release on default bail for cooperation in investigation, reporting to police station, etc., explained. This contrasted with position obtaining in regard to regular bail under S. 437]*
21. **Sushila Aggarwal v. State (NCT of Delhi)**, (2020) 5 SCC 1 [*The protection granted to a person under Section 438 Cr.PC should not invariably be limited to a fixed period. The Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event) etc.*]
22. **Mahipal v. Rajesh Kumar**, (2020) 2 SCC 118 [*“Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”]*
23. **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22 [*Factors and considerations for grant or refusal of bail: Need of humane approach while dealing with applications for remanding matter to police or judicial custody, stressed. There is overcrowding in jails due to non-adherence to basic principles of criminal jurisprudence regarding grant of bail and presumption of innocence. Even if grant or refusal of bail is entirely upon discretion of Judge, it must be exercised in a judicious manner and in a humane way as such remanding hampers dignity of accused howsoever poor he might be.*]
24. **Sumit Mehta v. State of N.C.T. of Delhi**, (2013) 15 SCC 570 [*there must be a balance between the individual's right to freedom and personal liberty and the duty of investigation by police. ]*
25. **Siddharam Satlingappa Mhetre v. State of Maharashtra**, (2011) 1 SCC 694 [*the law of bail dovetails two conflicting interests namely, the obligation to shield the society from the hazards of those committing and repeating crimes and on the other hand absolute adherence to the fundamental principle of criminal jurisprudence - presumption of innocence and the sanctity of individual liberty]*
26. **Shri Gurbaksh Singh Sibbia v. State of Punjab**, (1980) 2 SCC 565 [*In regard to anticipatory bail if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the*

*applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true... The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail." ]*

27. **Gudikanti Narsimhulu v. Public Prosecutor**, (1978) 1 SCC 240 [The Supreme Court has highlighted the importance of personal liberty of an accused. In the said judgment, the Supreme Court has emphasized on creating a balance between the right and liberty guaranteed under Article 21 of the Constitution of India and the interest of justice as well as the society which is sought to be protected by Section 437 Cr.P.C. ]

28. **Priya Indoria V. State of Karnataka And Ors.** (Arising out of SLP(Crl.) Nos.11423-11426 of 2023)Sessions Court or High Court that would have the power to grant interim/transit anticipatory bail, when the FIR is not registered within the territory of a particular State but in a different State.

**Suggested Readings**

- ✓ A.M. Singhvi, **India's Bail Jurisprudence: Need for Urgent and Comprehensive Revamp**, in TAKING BAIL SERIOUSLY – THE STATE OF BAIL JURISPRUDENCE IN INDIA, ed. Salman Khurshid et al (Lexis Nexis, Gurgaon,2020)
- ✓ Chirag Balyan, **Bail or Jail: the Antinomies in Liberal Theory and the Way Forward**, in TAKING BAIL SERIOUSLY – THE STATE OF BAIL JURISPRUDENCE IN INDIA, ed. Salman Khurshid et al (Lexis Nexis, Gurgaon,2020)
- ✓ St. John's Law Review, **Judicial Discretion in Granting Bail**, 27 St. John's L. Rev. 56 1952-1953

**SESSION – 2  
EXPEDITIOUS DISPOSAL OF BAIL APPLICATIONS**

1.	Gaurav Thote, <b>Gamut of Section 436-A of the Code of Criminal Procedure: An Analysis</b> , 2021 SCC OnLine Blog OpEd 29.	<b>228</b>
2.	Saumya Devraj, <b>Electronically Monitored Bail in India: Prospects and Concerns</b> , in TAKING BAIL SERIOUSLY THE STATE OF BAIL JURISPRUDENCE IN INDIA 427-38 (Salman Khurshid, Sidharth Luthra, Lokendra Malik & Shruti Bedi, Lexis Nexis ed., 2020).	<b>232</b>
3.	Yatindra Singh, <b>IT: The Road to Speedier Justice</b> , [Text of talk delivered by Justice Yatindra Singh, in workshop on 'Cyber Laws, Cyber Forensics and E-Governance in Judiciary' at National Judicial Academy, Bhopal (2004)]	<b>260</b>
4.	S.S. Upadhyay, <b>Protection of Personal Liberty and Law of Bail</b> , Available at : <a href="https://lawhelpline.in/PDFs/CRIMINAL_LAWS/BAILS.pdf">https://lawhelpline.in/PDFs/CRIMINAL_LAWS/BAILS.pdf</a>	<b>270</b>

**CASE LAW**

*(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)*

1. **Gopisetty Harikrishna v. State of Andhra Pradesh** 2022 SCC OnLine SC 654 [The court issued directions to all the High Courts of the country to submit reports indicating status of cases where

*bail has been granted by the Supreme Court i.e. if any of such persons are deprived of the opportunity of being released on bail for some reason or the other.]*

2. **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re.,** (2021) 10 SCC 598 [Directions issued regarding reformation and clarity of procedure and practices relating to investigation, prosecution, trial, evidence, judgment and bail. Draft Rules of Criminal Practice, 2021, to be finalised and read in terms of discussion in this order. All High Courts and State Governments should incorporate the Draft Rules of Criminal Practice, 2021 annexed to the present order read with clarifications and directions herein.]

3. **Y. v. State of Rajasthan and Another,** 2022 SCC OnLine SC 458 [The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that “the facts and the circumstances” have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.”]

*[Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness.]*

*[Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order.]*

4. **Deepak Yadav v. State of U.P. and Ors.** AIR 2022 SC 2514, [The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.]

5. **Suleman v. State of Uttar Pradesh,** 2022 SCC OnLine SC 1042 [For cases which meet the norms of remission, the State Government, irrespective of pendency of the appeal, should be forthwith asked to take a call on the plea of remission. It may also facilitate posting all of the matters at one go and asking the counsels appearing for the convicts whether they would be satisfied with cases being considered for remission or would also like to urge the matter in appeal. This may help in clearing the backlog of some appeals.]

6. **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana,** (2021) 6 SCC 230 [The judgment not only criticized the practice of lower Courts of attaching caveat for not treating the decision as precedent, but also emphasized on need for reasoned disposal of bail matters. The Bench expressed, “Whether an order granting a bail is a precedent on grounds of parity is a matter for future adjudication if and when an application for bail is moved on the grounds of parity on behalf of another accused...it is for that court before whom parity is claimed to determine whether a case for the grant of bail on reasons of parity is made out.” The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The Bench added that the recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. The impugned orders were held to be tainted with perversity and hence, were set aside.]

7. **Tulsi Ram Sahu v. State of Chattisgarh,** Petition(s) for Special Leave to Appeal (Crl.) No(s). 2564/2022; 08-09-2022 [At least the bail applications whether it is pre-arrest bail or post-arrest bail (under Section 438 or 439 of the Code) must be decided as expeditiously as possible. Although we are not supposed to give any guidelines for the disposal of the bail applications but at the same

*time we always expect that bail applications must be decided as expeditiously as possible and not to be posted in due course of time.”]*

8. **Manoj Kumar Khokhar v. State of Rajasthan** (2022) 3 SCC 501 [Cryptic and casual bail orders without relevant reasons liable to be set aside; “*cessante ratiōne legis cessat ipsa lex*” invoked to hold that “*reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself*”]
9. **Brijmani Devi v. Pappu Kumar** (2022) 4 SCC 497 [It is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage but an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. Criticizing the practise of granting cryptic bail in a casual manner, the Bench remarked, “*It would be only a non speaking order which is an instance of violation of principles of natural justice. In such a case the prosecution or the informant has a right to assail the order before a higher forum.*”]
10. **Kamla Devi v. State of Rajasthan**, (2022) 6 SCC 725 [Re S. 439 CrPC, 1973 law summarised qua factors to be considered and necessity of recording essential reasons for grant of bail; grounds on which challenge to bail order or application for cancellation of bail is permissible.]
11. **Saudan Singh v. State of Uttar Pradesh** 2022 SCC OnLine SC 697 [while granting bail to appellatant the court observed: “*The only issue is whether in a criminal appeal of the year 2012 pending before the High Court of Allahabad where criminal appeals in the normal course are being heard of the 1980s and the appellatant having undergone 12 years of actual incarceration is still to be denied bail! The High Court seems to think so and, to say the least, we completely disagree*”. The bench also called for a report from the Registrar of the Luckow bench on the position of non-availability of a Bench to hear criminal appeals, and also how many applications are pending consideration of bail where the appeal is pending consideration and the person incarcerated has spent more than 14 years in actual custody as also cases where they may have been in incarceration for more than 10 years.]
12. **Manno Lal Jaiswal v. State of Uttar Pradesh and Another** 2022 SCC OnLine SC 89 [the Supreme Court court observed that the High Court had applied wrong facts and that it had not taken into consideration the gravity and nature of offences committed by the accused. The Apex Court reiterated relevant considerations while considering a bail application]
13. **Sunil Kumar v. State of Bihar**, (2022) 3 SCC 245 [*Bail: Principles summarized regarding considerations to be balanced while deciding to grant bail.*]
14. **Jaibunisha v. Meharban**, (2022) 5 SCC 465 [S, 439 CrPC, 1973 qua grant of bail, requirement of giving reasons for the decision is of the essence and is virtually a part of “*due process*”. However, while court is not required to give elaborate reasons while granting bail, an order dehors any reasoning whatsoever cannot result in grant of bail.]
15. **Ishwarji Nagaji Mali v. State of Gujarat** (2022) 6 SCC 609 [*Necessity of recording reasons: Though a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, but it has to indicate the prima facie reasons justifying the grant of bail. Hence, order granting bail bereft of any cogent reason(s) therefore, cannot be sustained.*]
16. **Jayaben v. Tejas Kanubhai Zala** (2022) 3 SCC 230 [*in serious matter and looking to gravity of offences and considering statements of eyewitnesses and that entire incident was recorded in CCTV footages and mobile phone, High Court, committed grave error in releasing accused respondents on bail. Hence, impugned judgments and orders passed by High Court releasing respondents on bail were quashed and set aside.*]
17. **In Re: Delay in Release of Convicts after Grant of Bail Suo Moto Writ**

*Petition(C)No.4/2021, Order Dated September 23, 2021 (Supreme Court Of India) [Convicts lodged in Agra Central Jail - not been released on interim bail even after 3 days of the Order passed by this Court, i.e. on, 87202 – Court is contemplating to adopt the procedure termed as FASTER (Fast and Secured Transmission of Electronic Records) System, for transmission of e-authenticated copies of the Judgments/final orders/interim orders to the concerned Courts/Tribunals and other duty holders for execution. Court direct the Secretary General of this Court to submit a proposal before us within a period of two weeks from today suggesting the modalities to implement FASTER system.]*

18. **Sonu v. Sonu Yadav and Others**, 2021 SCC OnLine SC 286 [Gives a clear picture as to why proper reasoning shall be provided while granting bail. Orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice.]
19. **Motamarri Appanna Veerraju v. State of West Bengal**, (2020) 14 SCC 284 [For, the application for bail or anticipatory bail is a matter of moment for the accused and protracted hearing thereof may also cause prejudice to the investigation and affect the prosecution interests which cannot be comprehended in this order. Such application needs to be dealt with expeditiously and finally, one way or the other and cannot brook delay.]
20. **Hussain and Anr. v. Union of India**, (2017) 5 SCC 702 [Bail applications be disposed of normally within one week;] [Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases [Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39] Shaheen Welfare Association v. Union of India (1996) 2 SCC 616
21. **Moti Ram v. State of Madhya Pradesh**, AIR 1978 SC 1594 [The Supreme Court clarified that the definition of the term bail includes both release on personal bond as well as with sureties. It is to be noted that even under this expanded definition, 'bail' refers only to release on the basis of monetary assurance-either one's own assurance (also called personal bond or recognizance) or third party's sureties.]

**SESSION – 3  
BAIL UNDER SPECIAL ACTS**

1.	Vrinda Bhandari, <b>Bail and Terror Offences: An Analysis</b> , in TAKING BAIL SERIOUSLY – THE STATE OF BAIL JURISPRUDENCE IN INDIA, ed. Salman Khurshid et al (Lexis Nexis, Gurgaon, 2020)	<b>408</b>
2.	Justice S. G. Gokani, <b>Burden of Proof and Reverse Burden</b> in DIAMOND JUBILEE 1960-2020 60 YEARS LAGACY AND LAW 83- 93 The High Court of Gujarat 2021.	<b>429</b>
3.	Onkar Thakur, <b>Where Jail is the Rule and Bail is the Exception: Analysing Recent Judicial Trends towards Bail in Economic Offences</b> , 2021 SCC OnLine Blog OpEd 168.	<b>442</b>
4.	Shruti Bedi, <b>Bail Under Prevention of Money Laundering Act, 2002: A Critical Analysis of Nikesh Tarachand Shah Judgment</b> in TAKING BAIL SERIOUSLY THE STATE OF BAIL JURISPRUDENCE IN INDIA 427-38 (Salman Khurshid, Sidharth Luthra, Lokendra Malik & Shruti Bedi, Lexis Nexis ed., 2020).	<b>449</b>



5.	Kapil Madan and Saurabh Gauba, <i>Controversial Rule of Jail under the Prevention of Money Laundering Act, 2002</i> , 2021 SCC OnLine Blog Exp 56	461
6.	Sidharth Luthra & Aayushi Sharma Khazanchi, <i>Seeking Consistency in Bail Jurisprudence</i> in TAKING BAIL SERIOUSLY – THE STATE OF BAIL JURISPRUDENCE IN INDIA, ed. Salman Khurshid et al (Lexis Nexis, Gurgaon,2020)	467
7.	Swarnendu Chatterjee, <i>The Fundamental Tussle between Bails and Fundamental Rights : Analysing the Vijay Chaudhary Judgment and Determining a Way Forward</i> , 2022 SCC OnLine Blog Exp 66	485
8.	David Hamer, <i>The Presumption of Innocence and Reverse Burdens: A Balancing Act</i> , pp. 142 66(1) Cambridge Law Journal, March (2007).	495

**CASE LAW**

*(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)*

- Vijay Madanlal Choudhary v. Union of India**, 2022 SCC OnLine SC 929 [Supreme Court holds “twin conditions” under Section 45 of PMLA reasonable: Applicability to anticipatory bail, non-cognizable offences discussed; exception highlighted]
- Narcotics Control Bureau v. Mohit Aggarwal** 2022 SCC OnLine SC 891 [At the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. ] [The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.]
- Ramchand Karunakaran .v. Directorate of Enforcement & Anr.** CRIMINAL APPEAL NO.1650 OF 2022; 23.09.22, [Court granted bail on account of the advanced age of the accused and the fact that he had already spent three years spent in custody. "Appellant has completed more than three years of imprisonment in connection with the offence under PMLA. It has been brought to our notice that accused 2,3,4,7 have not been arrested, and charges are yet to be framed. Considering the entirety of the matter and the fact that the appellant is a senior citizen, we hold that he is entitled to bail. We therefore allow this appeal, he shall be produced before trial court within 3 days for bail conditions," the Court ordered.]
- Thwaha Fasal v. Union of India**, 2021 SCC OnLine SC 1000 [ Grant of bail –UAPA; the stringent restrictions imposed by sub-section(5) of Section 43D, do not negate the power of Constitutional Court to grant bail keeping in mind violation of Part III of the Constitution... while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail]
- Jahir Hak v. State of Rajasthan**, 2022 SCC OnLine SC 441 [The Supreme Court granted bail to a UAPA under-trial accused who was in custody for nearly 8 years. Appeal against Rajasthan HC order denying bail to UAPA accused- under trial - Allowed - In the nature of the case against the appellant, the evidence which has already unfolded and above all, the long period of incarceration

that the appellant has already undergone, time has arrived when the appellant be enlarged on bail.]

6. **Union of India v. KA Najeeb** (2021) 3 SCC 713 [*'Gross Delay' in trial violates the right to life and personal liberty under Article 21. A fundamental right violation could be used as a ground for granting bail. Even if the case is under stringent criminal legislation including anti-terror laws, prolonged delay in a trial necessitates granting of bail.*]
7. **NIA v. Zahoor Ahmad Shah Watali**, (2019) 5 SCC 1 [*UAPA- Section 45 D(5) - bail- Approach of exercising discretion*]
8. **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791[ *Bail – Economic Offences- Factors to be considered*]
9. **Nikesh Tarachand Shah v. Union of India**, (2018) 11 SCC 1 [*Constitutionality – PMLA -Section 45*]
10. **Rohit Tandon v. Directorate of Enforcement**, (2018) 11 SCC 46 [*PMLA- Section45 –Factors to be considered for grant of bail*]
11. **State of Maharashtra v. Pankaj Jagshi Gangar**, (2022) 2 SCC 66 [*S. 439 — Forum shopping to obtain bail: In this case, accused was charged under special Act and IPC. Vires of special Act under which accused was charged, was challenged and quashment of the proceedings was sought before High Court under Art. 226 of the Constitution, upon failure to obtain bail as per law. By impugned order, respondent was released on bail by High Court that too by way of interim relief, without at all considering seriousness of offences alleged against respondent, and other settled parameters for grant of bail in such cases. High Court did not at all even consider allegations with respect to offences under IPC. Such order, held, wholly impermissible. Hence, impugned order was quashed and respondent directed to surrender forthwith to face trial.*]
12. **State of Kerala v. Rajesh** (2020) 12 SCC 122 [*The Court stated that the expression “reasonable grounds” in Section 37 (1) (b) would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. The Court clarified that the entire exercise that a court is expected to undertake at the stage of bail under Section 37 of NDPS Act is to see the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and that he is unlikely to commit an offence under the Act while on bail.*]
13. **Pokar Ram v. State of Rajasthan**, AIR 1985 SC 969. [*The Supreme Court has cautioned that since anticipatory bail intrudes the sphere of investigation of crime some very compelling circumstances have to be made out for granting anticipatory bail in serious offences.*]

**SESSION- 4**  
**CONDITIONAL BAIL: SCOPE & LIMITS**

1.	Law Commission of India — Report No. 200 (August, 2006) <b><i>Trial by Media : Free Speech v. Fair Trial Under Criminal Procedure</i></b> (Amendments to the Contempt of Courts Act, 1971)	<b>525</b>
2.	Mandeep K. Dhami, <b><i>Conditional Bail Decision Making in the Magistrates' Court</i></b> , The Howard Journal Vol 43 No 1. February 2004.	<b>608</b>
3.	Anthea Hucklesby and Emma Marshall, <b><i>Tackling Offending on Bail</i></b> , The Howard Journal Vol 39 No 2. May 2000 ISSN 0265–5527, pp. 150–170.	<b>628</b>

4.	Anthea Hucklesby, <i>The Use and Abuse of Conditional Bail</i> , 33 HOW. J. CRIM. Just. 258 (1994).	650
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**CASE LAW**

*(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)*

1. **Sami Ullah v. Zulfikar Nasir**, (2022) 1 SCC 195 [S. 439 — Bail — Grant of, to attend wedding of child — Permitted with strict conditions: Directions issued by Supreme Court to take appellant out of jail he is presently lodged in and transfer him to prison of State where marriage ceremony and post-marriage ceremonies of his daughter has to take place and whereafter he has to be again transferred and lodged back in present jail. Further directed, that on all such days of appellant attending ceremonies, he shall be accompanied by police personnel in plain clothes, however, he will not be handcuffed during said period.]
2. **Sidhique Kappan v. State of Uttar Pradesh**, 2022 SCC OnLine SC 1195 [Bail granted after considering the length of custody undergone. Alongside the court imposed conditions to be followed while release on bail]
3. **DR. P. Varava Rao v. National Investigation Agency & Anr**, 2022 SCC OnLine SC 1004, (Conditions set for grant of bail by NIA – directed not to make any statement about the case to the media nor contact the co-accused or any other person involved in similar activities)
4. **Mohammad Azam Khan v. State of Uttar Pradesh**, 2022 SCC OnLine SC 653 [the Supreme Court set aside a bail condition imposed by the Allahabad High Court to seal the premises of a University while granting bail. The Bench expressed disappointment at the new trend in bail orders, wherein the High Courts' are exceeding their authority to delve into issues which are not relevant to the determination of the bail pleas.]
5. **Aparna Bhat v. State of MP**, 2021 SCC OnLine 230 [Directions to be considered while granting bail in sexual offences]
6. **Dharmesh v. State of Gujarat**, (2021) 7 SCC 198 [A Division Bench of the Supreme Court found that direction passed by the High Court requiring the appellant-accused to deposit a sum of Rs 2 lakhs each towards compensation to the victims, as a condition for grant of bail was not sustainable.]
7. **M.D. Dhanpal v. State**, (2019) 6 SCC 743 [ Bail cannot be made conditional upon heavy deposits beyond financial capacity of applicant]
8. **Kunal Kumar Tiwari v. State of Bihar** (2018) 16 SCC 74 [The Court observed: “Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eyes of law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an over-zealous exercise in utter disregard to the very purpose of the criminal justice system.”
9. **Hema Mishra v. State of Uttar Pradesh**, (2014) 4 SCC 453, [Section 438(2) of CrPC states that the High Court or Sessions Court are empowered to grant a conditional bail to a person apprehending arrest The Court dismissed the appeal however, extended application of its interim order granting conditional bail to the appellant to continue till the completion of trial. It stated that the State can always move to the Court to vacate the order if the appellant doesn't cooperate in investigation.]
10. **Sumit Mehta v. State (NCT of Delhi)**, (2013) 15 SCC 570 [It was held that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's

*right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.*

11. **Munish Bhasin and others v. State (Govt. of NCT of Delhi)** (2009) 4 SCC 45 [In a proceeding under Section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child. The condition imposed by the High Court directing the appellant to pay a sum of Rs. 12,500/- per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside.

**SESSION- 5  
INTERLOCUTORY APPLICATIONS: MANAGEMENT & EXPEDITIOUS  
DISPOSAL**

1.	<b>Speedy Disposal of Interlocutory Application in Civil Cases</b> , e-Handbook of Civil Trial (Judicial Academy Jharkhand, September 2020)	<b>663</b>
2.	Arun Mohan, <b>Interlocutory Applications</b> in JUSTICE, COURTS AND DELAY (2009) pp 1749-1757 Universal Law Publishing.	<b>706</b>
3.	Justice M.Y. Eqbal, <b>Duty of the Courts in Disposal of Interlocutory Applications</b> , (2011) 2 LW (JS) 15	<b>716</b>
4.	Arun Mohan, <b>Injunctions and Interim Orders</b> in JUSTICE, COURTS AND DELAY (2009) pp 1619-1735 Universal Law Publishing	<b>738</b>
5.	K.Sudhamani, <b>Interlocutory Applications</b> , Available at: <a href="https://districts.ecourts.gov.in/sites/default/files/merged_document_29.pdf">https://districts.ecourts.gov.in/sites/default/files/merged_document_29.pdf</a>	<b>859</b>
6.	Aditya Swarup, <b>The Prima Facie Standard for Interim Injunctions in India</b> , NLUJ Student Law Journal, Vol. 4, pp. 20-46, 2017	<b>886</b>

**CASE LAW**

*(Judgments mentioned below includes citation and short note for reference and discussion purpose during the course of the programme. Please refer the full judgment for conclusive opinion)*

- Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives** (2020) 7 SCC 366, [The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.]
- Frost International Limited v. Milan Developers and Builders (P) Limited and Another** (2022) 8 SCC 633, [Writ petition against order of Revisional Court rejecting plaint under Or. 7 R. 11 CPC: A Revisional Court while allowing the application filed under Or. 7 R. 11 CPC would in substance reject the plaint but since in such a case, the said decree is not passed by the court of original jurisdiction, namely, the trial court, the remedy by way of writ petition under Art. 227 of the Constitution would be available to the aggrieved party. However, if the plaint were to be rejected by the trial court i.e. court of original jurisdiction, it would result in a right of appeal under S. 96 CPC.]

3. **Asian Resurfacing of Road Agency Pvt. Ltd. and Another v. Central Bureau of Investigation**, 2022 SCC OnLine SC 1014 [*Whether the dictum of automatic vacation of stay in Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation (2018) 16 SCC 299 applicable to an interim order of stay passed by High Court in writ proceedings (writ appeal) - The order of stay granted by the Division Bench in the High Court cannot be treated as having no force - This Court cannot be understood as having intended to apply the principle to the fact situation which is presented in this case.*]
4. **Rajendra Bajoria v. Hemant Kumar Jalan** [2021 SCC OnLine SC 764] [*reading of the averments made in the plaint should not only be formal but also meaningful. ...if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its power under Order VII Rule 11 of CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself.*] [*This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.*]
5. **Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira** (2012) 5 SCC 370 [*the court significantly delved into the malaise of protracted litigation involving such false claims. It acknowledged that the primary mandate, burden and duty of courts and the Indian judicial system is to "discern and find out the real truth" and mete out justice expeditiously. It also observed that litigation relating to valuable real estate is often dragged out by unscrupulous litigants hoping to wear down the owners and ultimately to settle for substantial amounts, and that such situations arise due to protracted delays in adjudication by courts.*]
6. **Ramrameshwari Devi v. Nirmala Devi and Others** (2011) 8 SCC 249 [*the court laid down guidelines for the grant of ex parte orders - In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation; the court should be cautious and extremely careful while granting ex-parte and interim injunctions; as a rule, the court should grant interim injunction or stay order only after hearing the defendants or the respondents; in case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits; while imposing costs the Courts have to take into consideration pragmatic realities and be realistic what the defendants or the respondents had to actually incur in contesting the litigation before different courts]*
7. **M. Gurudas and Ors. v. Rasaranjan and Ors.** (2006) 8 SCC 367) [*while considering an application for injunction, the Court would pass an order thereupon having regard to prima facie, balance of convenience and irreparable injury.*]
8. **Union of India v. Era Educational Trust** (2000) 5 SCC 57 [ *the court laid down certain guiding principles for courts to follow while deciding upon an ex-parte injunction- whether the plaintiff will be a victim to irreparable mischief by the defendant?; whether the weight of injustice will be heavier if an ex-parte injunction is not granted?; whether the timing of applying for an ex-parte jurisdiction was maliciously motivated?; the courts will also consider the general principle of balance and irreparable loss.*]
9. **Shiv Kumar Chadha v. Municipal Corporation of Delhi** (1993) 3 SCC 161, [*Power to grant injunction is an extraordinary power vested in the court to be exercised taking into consideration the facts and circumstances of a particular case. The courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so*

*passed. That is why Rule 3 of Order 39 of the Code requires that in all cases the court shall, before grant of an injunction, direct notice of the application to be given to the opposite-party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that “where it is proposed to grant an injunction without giving notice of the application to the opposite-party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay...”.]*

10. **Dalpat Kumar v. Prahlad Singh and Ors** AIR 1993 SC 276 [*while considering the question of balance of convenience observed that the court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, and in the case of refusal of injunction should compare it with that which is likely to be caused to the opposite party, if the injunction is granted.*]
11. **Ram Prasad Singh v. Subodh Prasad Singh** AIR 1983 Pat 278, [*The principal question involved in this case is as to whether the petitioner is liable to be proceeded against under O. 39, R. 2(3), Civil P.C. when he was not personally a party to the suit*]
12. **F.C.I. v. Yadav Engineer & Contractor** (1982) 2 SCC 499, [*interlocutory proceedings are incidental to the main proceedings. They have a life till the disposal of the main proceeding. As the suit or the proceeding is likely to take some time before the dispute in the suit is finally adjudicated, more often interim orders have to be made for the protection of the rights of the parties. Such interlocutory proceedings stand independent and aloof of the main dispute between the parties involved in the suit. They are steps taken for facilitating the just and fair disposal of the main dispute. When these interlocutory proceedings are contested it cannot be said that the party contesting such proceedings has displayed an unequivocal intention to waive the benefit of the arbitration agreement or that it has submitted to the jurisdiction of the court. When ex parte orders are made at the back of the party the other party is forced to come to the court to vindicate its right*]
13. **Arvindam v. T.V. Satyapal**, AIR 1977 SC 2421, [*an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction.*] [*The trial judge must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.*]

#### **Suggested Readings**

- ✓ Judge Thomas A. Zonay, **Judicial Discretion: Ten Guidelines for Its Use**; National Judicial College, May (2015). Available at: <http://www.judges.org/judicialdiscretion-ten-guidelines-for-its-use>