

# NATIONAL JUDICIAL ACADEMY



**NATIONAL SEMINAR ON BAIL & INTERLOCUTORY  
APPLICATIONS [P-1389]  
17<sup>TH</sup> & 18<sup>TH</sup> FEBRUARY, 2024**

**PROGRAMME REPORT**

**PREPARED BY:**

**RAJESH SUMAN & KRISHNA SISODIA,  
FACULTY, NATIONAL JUDICIAL ACADEMY,  
BHOPAL**

## Overview of the Seminar

The National Judicial Academy organized a two day “National Seminar on Bail & Interlocutory Applications” during 17<sup>th</sup> & 18<sup>th</sup> February, 2024. The participants were judges from the district judiciary from all states. The seminar facilitated deliberations among participant judges on Bail: Scope of Judicial Discretion; Expeditious Disposal of Bail Orders; Bail in Offences Punishable under Special Acts; Limits and Scope of Conditional Bail; and Interlocutory Applications: Management & Expeditious Disposal. The idea was to provide participants a unique platform to share experiences and assimilate best practices. The emphasis was on enabling deliberations through clinical analysis of statutory provisions, case studies and critical consideration of the relevant judgments, minimizing the lecture format.

### **Session 1: Bail: Intricacies and Nuances**

***Speakers: Justice Milind Narendra Jadhav & Justice K. Sreenivasa Reddy***

The session was commenced with discussion on fundamental issues related to bail including balancing of personal liberty with societal interest and consistency and uniformity in grant of bail. The legal theory behind bail was explained and it was opined that some primary reasons for grant of bail include reducing the burden of State and to keep accused constructively in court’s custody with terms and conditions. The constitutional provisions including Articles 21 and 22 that elevate right to bail as a constitutional right was referred and procedural laws related to bail contained in Sections 436 to 450 of the Code of Criminal Procedure, 1973 (Cr.P.C.) were also highlighted. Then the discussion focused on circumstances and fundamental concepts which a judge needs to take into account while dealing with an application for bail. The speaker discussed ten circumstances which a judge needs to take into account while granting or refusing bail. The Tripod Test was highlighted which assess that whether accused would be a flight risk or whether accused would influence witness or whether accused would temper with evidence. Various judgments of the Supreme Court were discussed *including Gurwinder Singh vs. State of Punjab and Anr* [Cr. Appeal No.704 of 2024], *National Investigation Agency vs. Zahoor Ahmad Shah Watali* (2019) 5 SCC 1 and *Vernon vs. State of Maharashtra* passed [Cr. Appeal No.639 of 2023].

Then issues related to anticipatory bail were focused upon and the principles laid down by the Supreme Court in *Sushila Aggarwal vs. State (NCT of Delhi)* (2020) 5 SCC 1 were discussed in the session. The speakers also focused on how to write reasoned bail orders. Various judgments of the Supreme Court on jurisprudence relating to bail were discussed including *Emperor vs. H.L. Hutchinson* AIR 1931 Allahabad 356, *Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh* (1978) 1 SCC 240, *Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote & Ors.* (1980) 2 SCC 559, *Usmanbhai Dawoodbhai Memon & Ors. Vs. State of Gujarat* AIR 1988 SC 922, *State of Maharashtra Vs. Buddhikota* AIR 1989 SC 2292, *Assistant Collector of Customs (P), Bombay vs. Madam Ayabo Atenda Ciadipo Orisan* 1992 Cri.L.J. 2349 Bombay High Court, *K.K. Jerath Vs. Union Territory, Chandigarh & Ors* (1998) 4 SCC 80, *Sandeep Jain vs. National Capital Territory of Delhi* ((2000) 2 SCC 66, *Ram Narain Poply Vs. Central Bureau of Investigation* AIR 2003 SC 2748, *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.* 2005 SCC (Cri.) 489, *Masroor vs. State of Uttar Pradesh* (2009) 14 SCC 286, *Kanwar Singh Meena vs. State of Rajasthan* AIR

2013 SC 296, *Nimmagadda Prasad vs. Central Bureau of Investigation* (2013) 7 SCC 466, *Sundeep Kumar Bafna vs. State of Maharashtra* (2014) 16 SCC 623, *State of Bihar vs. Rajballav Prasad* (2017) 2 SCC 178, *Virupakshappa Gouda and Anr. vs. State of Karnataka* (2017) 5 SCC 406

## **Session 2: Expeditious Disposal of Bail Applications**

**Speakers: Justice G.R. Swaminathan & Justice Milind Narendra Jadhav**

The session began with highlighting the significance of timeliness in bail matters. The case of Umar Khaleed whose bail petition was pending in the Supreme Court for 8 months because of adjournments and other issues was discussed. The judgment *Hussain vs. Union of India* 2017 5 SCC 702 which mandates that bail application should normally be disposed in one week was referred. The judgment prescribed timelines in the disposal of bail application and that timeline should be used as a touchstone in the assessment of judicial performance in annual confidential report. The judgment *Union of India v. K.A. Najeeb* (2021) 3 SCC 713 was referred and it was emphasized that a gross delay in trial violates the right to life and personal liberty under Article 21 and a fundamental right violation could be used as a ground for granting bail.

The speakers discussed timelines laid down in Article 22(2) of the Constitution which requires production of accused before the nearest magistrate within 24 hours of the arrest. Sections 57 Cr.P.C., 167 Cr.P.C. and 436A, Cr.P.C. were also referred. It was emphasized that judges should not go into the merits of the matter while hearing cases involving breach of timelines. The judgment *S. Kasi vs. State* (2021) 12 SCC 1 was referred and it was emphasized that right to default bail cannot be suspended even during a pandemic situation. It is the duty of the courts to see to that an accused gets the benefit of Section 167 (2) of the Cr.P.C.

It was emphasized that bail order should be sent to prison through electronic medium for timely release of prisoner and use of ICJS [Interoperable Criminal Justice System] and FASTER [Fast and Secured Transmission of Electronic Records] was emphasized. The copy of bail order should also be uploaded on the website of the court which can be accessed by the prison administration. The frequent adjournment of bail petition was highlighted and it was suggested that police officer can give written instruction through email to public prosecutor so that prosecutor do not request for adjournment. It was suggested that a bail petition should be disposed of in 2-3 days after it has been filed.

The right to speedy investigation and right to speedy trial were discussed and it was opined that judges should ensure that investigation is completed in timely manner. Then it was suggested that judges should adopt effective case management tools while hearing bail matters and should fix time frames for expeditious disposal of the case. The judges should control arguments and lengthy arguments should be avoided. Judges should also avoid writing lengthy orders and instead of complete statements of witnesses the summary should be mentioned in the order. The issue of putting onerous conditions in bail order was highlighted. The judgment *Satender Kumar Antil v. CBI*, 2022 SCC OnLine SC 825 was referred. It was suggested that one day in a week should be devoted to the disposal of old cases.

### **Session 3: Bail under Special Acts**

**Speakers: Justice G.R. Swaminathan & Mr. E.V. Chandru @ E.Chandrasekaran**

The session was commenced with discussion on conditions for grant of bail under special laws including Prevention of Money Laundering Act, 2002 [PMLA], Narcotic Drugs and Psychotropic Substances Act, 1985 [NDPS Act] and Unlawful Activities (Prevention) Act, 1967 [UAPA]. Thereafter the right to life and personal liberty under Article 21 was discussed. It was opined that there should be a balance of societal interest vis-à-vis rights of the individual. It was opined that if an individual disrupts the state then he will be subjected to restrictions on his liberty according to these special legislations in addition to the ordinary laws. Section 45 of the PMLA, Section 37 of the NDPS Act and Section 43 (d) (5) of the UAPA were referred and it was opined that offences defined under special laws belong to different class of offences. It was further added that any offence which is socio-economic in nature has to be dealt in a different manner and general laws such as Sections 437, 438 and 439 of Cr.P.C. are not applicable on such offences. The judgments *Nimmagadda Prasad vs C.B.I., Hyderabad* 2013 (7) SCC 466, *Y.S.Jagan Mohan Reddy vs C.B.I* 2013 (7) SCC 439, *State of Bihar And Anr vs Amit Kumar @ Bachcha Rai* 2004 (13) SCC 750 and *Rohit Tandon vs The Enforcement Directorate* 2018 (11) SCC 46 were referred.

Focusing on bail under PMLA, the judgment *Union of India vs Hassan Ali Khan* 2011 (10) SCC 235, *Ranjitsing Brahmajeetsing Sharma vs State of Maharashtra* AIR 2005 SC 2277, *Gautam Kundu vs Manoj Kumar Assistant Director*, AIR 2016 SC 106 were referred. These judgments dealt with the interplay between the Code of Criminal Procedure and provisions of PMLA. Then sections 4 & 5 of the Cr.P.C. along with Sections 65 and 71 of PMLA were discussed. The judgment *Union of India vs. Varinder Singh*, 2017 SCC OnLine SC 1314 was discussed. Then judgment *Nikesh Tarachand Shah vs. Union of India* AIR 2017 SC 5500 was discussed where some provisions of Section 45 of PMLA were struck down as violative of Article 14. The judgment *State of West Bengal Versus Rakesh Singh @ Rakesh Kumar Singh* Cr. Appeal No. 923 of 2022 dealing with Sections 27A, 37 of the NDPS Act was discussed. Section 45 of the PMLA, Section 37 of the NDPS Act and Section 43 (d) 5 of the UAPA were compared and judgment *Kekhriesatuo Tep and others vs. National Investigating Agency* (2023) 6 SCC 58 was discussed. The session was concluded with discussion on bail under UAPA.

### **Session 4: Conditional Bail: Scope & Limits**

**Speakers: Justice Ajay Bhanot and Mr. E.V. Chandru @ E.Chandrasekaran**

The session commenced by discussing the contours of the expression “such other conditions as it considers necessary” as stipulated under Section 437 CrPC, 1973. It was opined that the expression is wide in nature, however, the Courts must exercise caution while imposing conditions. The case of *Mithun Chatterjee v. State of Odisha, Special Leave to Appeal (Crl.) No(s).4705/2021 (Supreme Court)* was referred wherein it was held that imposition of onerous conditions for grant of bail tantamount to denial of bail. In *Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570, it was held that while exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and

unhampered investigation. It was iterated that conditions should have a nexus with the purpose that is sought to be achieved.

Further, the cases wherein the Apex Court has set aside the varied nature of bail conditions were delved into. In *Aparna Bhat v. State of MP*, 2021 SCC OnLine 230, the Supreme Court set aside the bail condition imposed by the High Court upon the person (accused of outraging the modesty of women) to request the victim to tie the *rakhi* around his wrist. The Court further observed that “*using rakhi tying as a condition for bail, transforms a molester into a brother, by a judicial mandate. This is wholly unacceptable, and has the effect of diluting and eroding the offence of sexual harassment.*” In *Munish Bhasin and Others v. State (Govt. of NCT of Delhi)* (2009) 4 SCC 45 the condition imposed by the High Court directing the appellant to pay maintenance to his wife and child was held to be onerous and unwarranted. In *Dharmesh v. State of Gujarat*, (2021) 7 SCC 198, the Supreme Court found that the bail condition by the High Court requiring the appellant to deposit a sum of Rs 2 lakhs each towards compensation to the victims was not sustainable. Similarly, in *Talat Sanvi v. State of Jharkhand*, 2023 SCC OnLine SC 103, it was held that interim victim compensation cannot be imposed as a condition for grant of bail. In *Mohammad Azam Khan v. State of Uttar Pradesh*, 2022 SCC OnLine SC 653, the Apex Court set aside a bail condition imposed by the High Court to seal the premises of a university while granting bail. The Court 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.

Lastly, it was asserted that even if grant or refusal of bail is completely upon the discretion of judge, it must be applied in a judicious manner. It was opined that every bail order is conditional in nature, however, the Courts must exercise caution in imposition conditions that might be onerous on the accused.

## **Session 5: Interlocutory Applications: Management & Expeditious Disposal**

***Speakers: Justice Ashwani Kumar Mishra and Justice Sabyasachi Bhattacharya***

The session commenced with a concern that the judiciary in contemporary times is occupied in handling matters at the interlocutory stage rather than at the final stage. It was commented that expeditious disposal of interlocutory applications is paramount and delay in addressing them leads to erosion of faith of the people in the judiciary. It was opined that interlocutory applications can be effectively dealt if effective managerial techniques are deployed in the court. While stressing on the need to exercise judicial discretion in handling interlocutory application *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697 was referred. It was asserted that the exercise of discretion must be more stringent in cases of mandatory injunction. In this context, the case of *Dorab Cawasji Warden v. Coomi Sorab Warden*, 1990 AIR 867 was highlighted. Subsequently, various kind of injunctions were briefly discussed.

Thereafter, instances wherein the grant of injunction can be refused were delineated. In this regard, Section 41 read with Section 14 of The Specific Relief Act, 1963 was discussed. It was accentuated that there are statutory bars under several enactments that curtail the power of civil courts to grant injunctions. The Supreme Court in *State of A.P. v. Manjeti Laxmi Kantha Rao*, (2000) 3 SCC 689 laid down guidelines on how to interpret a clause in a particular Act which

seeks to exclude the jurisdiction of the civil court. Judges were advised to have a detailed idea of the scheme of the Act to ascertain whether the bar to grant injunction is complete or partial.

Thereafter, *ex-parte* injunction, *ad-interim* injunction and permanent injunction in Intellectual Property Rights (IPR) matters were discussed. In *Laxmikant V. Patel v. Chetanbhai Shah and Ors. (2002) 3 SCC 65*, the Supreme Court emphasized the need for passing *ex-parte* and interim injunction wherever a case of infringement or passing off is made out for the reason that the conflict of IPR is not just between the plaintiff and defendant but it also involves a third party, which is the consumer or the user. Lastly, it was advised that judges should improve the process of listing of cases and undertake management of roster so that cases are scheduled in a manner that the time of litigants spent in waiting unnecessarily can be reduced.