

NATIONAL JUDICIAL ACADEMY



NATIONAL SEMINAR ON CRIMINAL JUSTICE ADMINISTRATION

[P-1424]

23RD & 24TH NOVEMBER, 2024

PROGRAMME REPORT

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Overview of the Seminar

The Seminar aimed to assess the functioning of the crucial components of criminal justice administration and to evolve strategies for a more effective mechanism to ensure better administration. The discussions explored the various aspects of criminal justice administration including bail jurisprudence, sentencing procedure, rights of the victim and the evolving landscape of cybercrimes. The seminar provided a forum for judges to share experiences, insights, and suggestions with a panel of distinguished resource persons on relevant themes.

Session 1: Bail: Intricacies and Nuances

Panel: Justice Bharati Dangre and Justice Anup Jairam Bhambhani

The session commenced with discussion on fundamental issues related to bail including balancing personal liberty with societal interest and the larger issue of consistency and uniformity in grant of bail. Article 21 of the Constitution of India, 1950 and statutory provisions under Bhartiya Nagrik Suraksha Sanhita, 2023 (BNSS) relating to bail was discussed. The decision in *Jitendra Paswan Satya Mitra v. State of Bihar, Crl.A. No. 3648/2024 (Supreme Court)* was deliberated wherein the Supreme Court held that once a court concludes that an accused is entitled to bail, it cannot delay the implementation of the bail order as it may violate the rights guaranteed under Article 21 of the Constitution.

Thereafter, on conditions for grant of bail, the contours of the expression “such other conditions as it considers necessary” as stipulated under Section 480 of BNSS was deliberated. The recent decision in *Frank Vitus v. Narcotics Control Bureau, 2024 INSC 479* was cited wherein the Supreme Court held that there cannot be a bail condition that enables the police to constantly track the movements of the accused and virtually peep into the privacy of the accused. In *Nanhak Manjhi v. State of Bihar, 2024 SCC OnLine SC 3110* the Supreme Court observed that bail condition that accused shall furnish bail bonds 6 months after passing of order can't be imposed. Further, *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40* was underscored wherein it was held that objective of imposing condition is to secure the attendance of accused during pendency of trial and should not be punitive.

Lastly, while dealing with expeditious disposal of bail applications, the judgment in *Satendar Kumar Antil v. CBI, (2022) 10 SCC 51* was discussed wherein it was directed by the Supreme Court that bail applications must be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Further, applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

Session 2: Bail under Special Acts

Panel: Mr. K.M. Nataraj and Mr. Sidharth Luthra

The session commenced with discussion on the stringent conditions for grant of bail under special laws including Prevention of Money Laundering Act, 2002 (PMLA), Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and Unlawful Activities (Prevention) Act, 1967 (UAPA). Thereafter, the interesting jurisprudential journey of bail under UAPA was delineated. The decision in *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 was discussed wherein the Supreme Court held that at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. Subsequently, the Supreme Court distinguished *NIA v. Zahoor Ahmad Shah Watali* (*supra*) in *Union of India v. KA Najeeb* (2021) 3 SCC 713 wherein it was held that gross delay in trial violates the right to life and personal liberty under Article 21. Even if the case is under stringent criminal legislation including anti-terror laws, prolonged delay in a trial necessitates granting of bail. Subsequently, the judgment in *Vernon v. State of Maharashtra*, 2023 INSC 655 was discussed which followed *Union of India v. KA Najeeb* (*supra*) and held that a bail restricting clause under UAPA cannot denude the jurisdiction of a Constitutional Court in testing if continued detention in a given case would breach the concept of liberty enshrined in Article 21 of the Constitution of India. Thereafter, decision in *Gurwinder Singh v. State of Punjab*, 2024 5 SCC 403 was discussed wherein the Supreme Court observed that the 'exercise' of the general power to grant bail under the UAPA is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)– 'shall not be released' in contrast with the form of the words as found in Section 437(1) Code of Criminal Procedure, 1973 (CrPC) - 'may be released' – suggests the intention of the Legislature to make bail, the exception and jail, the rule". Recently, *Jalaluddin Khan v. Union of India*, 2024 INSC 604 distinguished *Gurwinder Singh v. State of Punjab* (*supra*) and held that 'bail is the rule and jail is the exception' even in special statutes like UAPA. Thereafter, on bail under PMLA, the judgment in *Nikesh Tarachand Shah v. Union of India* AIR 2017 SC 5500 was discussed where the 'twin conditions' were struck down of being in violation to Article 14. Subsequently, *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929 was discussed which held the 'twin conditions' under Section 45 of PMLA reasonable.

Session 3: Victim in the Criminal Justice System

Panel: Justice Bharati Dangre and Mr. E.V. Chandru

The session commenced with the definition of victim under Section 2 (y) of the BNSS. Victim is defined as a person who has suffered an injury or loss due to act or omission by the accused person and victim include his/her guardian or legal heir under. Various rights of victim including, right to medical treatment, right to the protection of identity and right to restitution were deliberated. It was opined that in order to give just and proper compensation and rehabilitation to victim the

courts should consider various factors including loss of livelihood, age of the deceased, number of dependents, medical expenses of victim and continuity of offence. It was stated that it should be ensured that there should not be further victimization and stigmatization of victims specially women and children. The right of victim to file an appeal under Section 372, CrPC was discussed in light of *Mallikarjun Kodagali (Dead) v. The State of Karnataka 2019 (2) SCC 752*.

Thereafter, recent decisions of the Supreme Court on victimology were delineated. In *Saibaj Noormohammad Shaikh v. State of Maharashtra & Anr, Special Leave Petition (Crl.) No. 13890/2024* the Supreme Court mandated that in cases involving bodily harm, especially in sexual assault cases involving minors or women, Sessions Courts should order victim compensation. In *XYZ v. State of Gujarat, 2024 INSC 869* the Supreme Court advised High Courts to exercise caution before quashing non-compoundable cases based on settlement between the victim and the accused. It was further observed that even if there is an affidavit of the victim accepting the settlement, it is advisable to seek the victim's presence, either physically or virtually, before quashing serious offences, especially those against women. In *Jagjeet Singh v Ashish Mishra, 2022 SCC Online SC 453* it was held that from investigation till culmination of appeal/revision, victim has right to be heard at every step post the occurrence of an offence. The victims' rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of State in the proceedings, therefore, does not tantamount to according a hearing to a victim of the crime. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances.

Session 4: Sentencing Procedure: Issues & Challenges

Panel: Justice Atul Sreedharan and Dr. Justice Pushpendra Singh Bhati

The session commenced by stressing on the need for a comprehensive policy on sentencing in order to bring in uniformity. The case of *Sunita Devi v. The State of Bihar & Anr., 2024 INSC 448* was cited wherein the Supreme Court recommended the Government of India, to consider introducing a comprehensive policy, by way of getting an appropriate report from a duly constituted Sentencing Commission consisting of experts in different fields for the purpose of having a distinct sentencing policy. Further, the theories of sentencing were alluded to as basis of sentencing practices. The task of balancing aggravating and mitigating circumstances was dwelt and the judicious exercise of discretion was emphasized.

Thereafter, the factors which are required to be taken into consideration before imposition of sentence was discussed in reference to *Gurmukh Singh v. State of Haryana (2009) 15 SCC 635*. Emphasis was placed on the competing interests in sentencing viz. the expectations of society, interest of the victim and the liberty of the accused. On the issue of non-prescription of minimum sentence and the *vires* of judicial discretion the case of *Baba Natarajan Prasad v. M. Revathi, 2024 INSC 523* was discussed wherein it was held that non-prescribing of the minimum sentence would not permit the courts to impose a flea-bite sentence without looking into the nature of the

offence, circumstances under which it was committed, degree of deliberation shown by the offender, antecedents of the offender up to the time of sentence, etc.

While dealing with the concept of misplaced sympathy the case of *Jaswinder Singh v. Navjot Singh Sidhu*, (2022) 7 SCC 628 was highlighted wherein it was held that undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society cannot long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. Lastly, the cardinal factors of uniformity and proportionality in sentencing practices were delineated and the cases of *Rajbala v. State of Haryana*, (2016) 1 SCC 463, *Sumer Singh v. Surajbhan Singh*, 2014 7 SCC 323 and *Shyam Nrain v. State (NCT of Delhi)*, (2013) 7 SCC 77 were referred.

Session 5: Emerging Challenges in Criminal Justice Administration: Cyber Crimes

Panel: Justice A.M. Mustaque and Justice Atul Sreedharan

The session commenced with the assertion that in view of our increased dependency on technology the rate of cyber-crime is on the rise and we knowingly or unknowingly may have become victim of such crimes. The cases of an international paedophile racket operating through WhatsApp and child pornography crackdown by Kerala Police based on an InterPol report were referred to. Further, the discussions focused on the authenticity of electronic evidence and the nuances of hash value in determining the same.

While discussing the issue of liability of it was clarified that Section 79 of the Information Technology Act, 2000 (IT Act) is a qualified right in view of subsection (2) and (3) dealing with the conditions of exemption. It was opined that when an intermediary is involved in moderating, modulating, verifying or censoring content it ceases protection under the existing legal framework.

Thereafter, the deliberations focussed on harnessing extraterritorial evidence and developing internationally acceptable parameters so as to deal with transnational cybercrimes. While delineating on the subject of territoriality it was specified that there are broadly two issues involved i.e. the court having jurisdiction over the dispute and the law to be applied. The challenges in determination of place of suing, territorial jurisdiction and intricacies involved in extra territoriality of evidence were highlighted through a series of illustrations drawing a contrast between the contours of crimes committed in the physical and virtual world. Lastly, the “*Minimum Contact*” and “*Purposeful Availment*” tests were discussed in light of *Zippo Manufacturing Company v. Zippo Dot Com, Inc.* 952 F. Supp. 1119 .