2025:AHC:184205

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Misc. Bail Application No.-13193 of 2025

Asha .....Applicant (s)

Versus

State of U.P. .....Opposite Party (s)

Counsel for Applicant (s)	:	Madhu Ranjan Pandey
Counsel for Opposite Party (s)	:	G.A.

WITH

Criminal Misc. Bail Application No.- 19170 of 2025

Vikash Kanjad .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Yadavendra Dwivedi
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No. - 16313 of 2025

Abhimanyu Singh .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Kamla Singh, Vijay Shanker Singh
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No. - 12136 of 2025

Mata Prasad Alias Gheesu .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Sandeep Pandey
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No. - 18831 of 2025

Priyanka Alias Mona .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Irshad Ahmad
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No.- 17134 of 2025

Abhishek Lodhi @ Purshpendra Kumar .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Brajesh Kumar Solanki, Samrat Vikram Singh
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No. - 13551 of 2025

Pramod Sharma @ Bhullan .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Azhar Hussain, Ravitendra Pratap Singh Chandel
Counsel for Opposite Party(s) : Prem Narayan Singh, G.A.

WITH

Criminal Misc. Bail Application No. - 14246 of 2025

Abhishek Rathaur .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Shobh Nath Pal, Tripurari Pal
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No. - 14453 of 2025

Rajendra Prasad .....Applicant(s)

Versus

State of U.P. and 3 others .....Opposite Party(s)

Counsel for Applicant(s) : M.P. Srivastava, Manoj Kumar
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No.- 9600 of 2025

Suresh Kumar .....Applicant(s)

Versus

State of U.P. and 3 others .....Opposite Party(s)

Counsel for Applicant(s) : Shailesh Pandey
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No.- 26735 of 2025

Jang Bahadur .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Arjun Kumar Gautam, Narendra Singh
Counsel for Opposite Party(s) : G.A.

WITH

Criminal Misc. Bail Application No.- 11558 of 2025

Annu Chahar Alias Anil Kumar .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s) : Gireesh Chandra Sharma, Rajiv Lochan Shukla
Counsel for Opposite Party(s) : G.A., Ram Bahadur

WITH

Criminal Misc. Bail Application No.- 14785 of 2025

Purushottam Kesarwani .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Mohit Kumar Jaiswal, Nasiruzzaman
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No.- 6702 of 2025

Sachin Sharma .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Bharat Singh
Counsel for Opposite Party(s)	:	G.A., Munesh Kumar

WITH

Criminal Misc. Bail Application No.- 11032 of 2025

Piyush Gupta .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Saket Jaiswal
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No.- 15795 of 2025

Raj @ Vishnu .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Shashi Kumar Mishra
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No. - 11724 of 2025

Jagjeewan .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Jitendra Singh
Counsel for Opposite Party(s)	:	G.A.

WITH

Criminal Misc. Bail Application No.- 8473 of 2025

Awadhesh Kumar Yadav .....Applicant(s)

Versus

State of U.P. .....Opposite Party(s)

Counsel for Applicant(s)	:	Mamta Maurya, Ram Yash Maurya
Counsel for Opposite Party(s)	:	G.A.

Court No. -49

HON'BLE AJAY BHANOT, J.

1. The judgment is being structured in the following conceptual framework to facilitate the discussion:

I	Introduction
II	Issue arising for consideration
III	Submissions of learned counsels for the parties
IV	Bail: Grounds for grant/denial of bail
V	Constitutional law and bails
VI	Fair trial and Defence of an accused
VII	Defence of an accused & Bail: **A** Accused and the criminal justice system **B** Criminal investigations and defence evidence **C** Section 313 Cr.P.C. (Section 351 BNSS), Section 233 Cr.P.C. (Section 256 BNSS) and the accused **D** Realizing the rights of defence and bails **E** Grant of bail for defence : Case Laws
VIII	Conclusions: Parameters for grant of bail to prepare and conduct defence
IX	Post Script: **A** Supreme Court judgement in Irfan v. State of U.P. **B** Noise **C** Constitutional Dialogues & Comity of Constitutional Courts
X	Order on bail application

I. Introduction:

2. In this bail application and all companion bail applications prosecution evidence is near conclusion or has closed. Proceedings under Section 313 Cr.P.C. will be shortly set in motion, and thereafter defence evidence will be received. These are second bail applications. In all bail applications the primary ground for grant of bail is to conduct effective defence of the case.

II. Issue arising for consideration:

3. The issue that has arisen for consideration in this bail application and the connected bail applications is whether gathering of defence evidence, preparation of defence strategy and effectively prosecuting the defence case in a trial can be a ground for granting bail? If the answer is in the affirmative, what are the parameters on which the bail can be granted for framing a defence strategy, collecting defence evidence and conduct of defence and at what stage?

4. Heard Shri N.I. Jafri, learned Senior Counsel assisted by Shri Sadrul Islam Jafri, learned counsel, Shri Dharmendra Singhal, learned Senior Counsel assisted by Shri Shivendra Singhal, learned counsel, Shri Rajiv Lochan Shukla, learned counsel, Shri Sheshadri Trivedi, learned counsel, Shri Vikrant Rana, learned counsel, Shri Madhu Ranjan Pandey, learned counsel, Shri Irshad Ahmad, learned counsel, Shri Aishwarya Pratap Singh, learned counsel assisted by Shri Amiruddin Siddique, learned counsel, Shri Tripurari Pal, learned counsel,

Shri M.P. Srivastava, learned counsel, Shri Shailesh Pandey, learned counsel, Shri Mohit Kumar Jaiswal, learned counsel, Shri Shashi Kumar Mishra, learned counsel, Shri Nasiruzzaman, learned counsel, Shri Gireesh Chandra Sharma, learned counsel, Shri Yadvendra Dwivedi, learned counsel, Shri Rahul Saxena, learned counsel, Shri Bharat Singh, learned counsel, Shri Sandeep Pandey, learned counsel, Shri Narendra Singh, learned counsel, Shri Azhar Hussain, learned counsel, Shri Jitendra Singh, learned counsel, Shri Saket Jaiswal, learned counsel and Shri Samrat Vikram Singh, learned counsel for the applicants.

Shri Rajiv Lochan Shukla, learned counsel for the applicant (as Hon'ble Rajiv Lochan Shukla, J. then was) has since been elevated to the Bench of this Court.

4.1. Shri Ashok Mehta, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned A.G.A.-I and Shri Chandan Agrawal, learned A.G.A.-I for the State.

III. Submissions of learned counsels for the parties:

5. The hearings on the common legal issue arising in all the companion bail applications happened on various dates. Learned counsels for the applicants in all matters have made the following submissions on the common legal issue that has arisen for consideration:

I. The right of bail is sourced to statute, however, it has deep roots in Article 21 of the Constitution of India. The Court

should adopt a liberal approach while considering bail applications. “Bail not jail” is the guiding principle of the law of bails.

II. The defence of an accused is a primary ingredient of a fair trial.

III. The prosecution has concluded its evidence. In some connected cases prosecution evidence is nearing closure. There is no possibility of the applicant(s) influencing witnesses. Cooperation of the applicant(s) in the investigations and his/her conduct during the trial is a relevant factor to be considered.

IV. The police investigations were incompetent and overlooked evidences which established the innocence of the applicant(s).

V. The applicant(s) had cooperated in the investigations and faithfully joined the trial proceedings.

VI. The applicant(s) did not tamper with the evidence nor influence witnesses.

VII. Denial of bail for defence in the circumstances and at this stage of the trial in all these cases will compromise the defence and result in miscarriage of justice. The refusal to grant bail for gathering defence and to conduct effective pairokari of the case will violate the fundamental right of fair trial of the applicant(s) who belongs to socio economically marginalized sections of the citizenry.

6. Shri Ashok Mehta, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned A.G.A.-I and Shri Chandan Agrawal, learned A.G.A.-I for the State have made the following submissions :

I. Bail cannot be granted for defence purposes as it would entail grant of bail in all cases [**Ref: Rajesh Ranjan Yadav alias Pappu Yadav v. CBI through its Director**[1]]

II. While considering grant of bail, right of victim and the perspective of the prosecution also have to be considered.

III. Once the trial has commenced, bail cannot be granted. [**Ref: X v. State of Rajasthan and another**[2]]

IV. Bail: Grounds for grant/denial of bail:

7. Grant of bail is an exercise of judicial discretion. Over the years judicial conventions have developed parameters which guide exercise of judicial power in bail matters. Law of bails is an accumulation of such judicial conventions. The aforesaid conventions which were adhered to by courts while considering bail applications later crystallized into case laws. In fact judicial conventions have been so strong that till very recently case laws pertaining to considerations for grant of bail have been sparse.

8. The criteria for grant of bail so evolved over the years include the gravity of offence and its impact on society. The nature of implicatory evidence against an accused is an

1 (2007) 1 SCC 70
2 Special Leave Petition (Criminal) No.13378 of 2024

important factor. The requirements of the investigation agency too need to be factored in. For example need of police custody of an accused for collecting evidence or making recoveries or preventing disappearance of evidence may need examination in the facts and circumstances of a case.

9. The ability of an applicant to influence witnesses or tamper with evidences in general is a germane factor for grant of bail since the same directly bears upon the sanctity of the trial process. Criminal history of an accused and possibilities of reoffending, or the accused being a flight risk who may escape the process of law to cheat justice are also important issues for consideration while deciding bail applications.

10. The primary purpose of bails in criminal cases is to initially ensure that accused persons support the investigations, and later to secure the presence of the accused at the trial.

11. The discussion shall now be fortified by authorities in point.

12. Acknowledging that the law in regard to grant or refusal of bail is well settled, the Supreme Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another**[3] stated the need for exercise of judicial discretion in a just manner while granting bails, and also enunciated the grounds for granting subsequent bails:

> "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a

3 (2004) 7 SCC 528

matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge.

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.

19...The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

13. The need for reasons while granting bail but avoiding conclusive findings in the order was reiterated in **Kalyan Chandra Sarkar (supra)**:

"18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case *Puran* v. *Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)

"Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated." We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more

> so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent."

14. For importance of reasoned bail orders, (also see: para 3 **Ram Govind Upadhyay v. Sudarshan Singh and others**[4], para 35 **Brijmani Devi v. Pappu Kumar and another**[5] and para 11 **Ishwarji Nagaji Mali v. State of Gujarat and another**[6])

15. The Supreme Court in **State of U.P. v. Amarmani Tripathi**[7] detailed the factors to be examined while deciding bail applications:

> "18. It is well settled that the matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*)

4 2002 (3) SCC 598
5 2022 (4) SCC 497
6 2022 (6) SCC 609
7 (2005) 8 SCC 21

character, behaviour, means, position and standing of the accused; (*vi*) likelihood of the offence being repeated; (*vii*) *reasonable apprehension of the witnesses being tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh* v. *State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] : (SCC pp. 535-36, para 11)

> "11…..It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:
>
> (*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
>
> (*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
>
> (*c*) Prima facie satisfaction of the court in support of the charge."

16. Thereafter, the Supreme Court in **Amarmani Tripathi (supra)** reiterated the need to avoid a detailed examination of evidence by observing :

> "22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable."

17. **Gurbaksh Singh Sibbia v. State of Punjab**[8] arose out of proceedings pertaining to a grant of anticipatory bail. However after recognizing the distinctions between the anticipatory bail and right to ordinary bail, the Supreme Court in **Gurbaksh Singh Sibbia (supra)** noticed past authorities of high standing which had examined the object of ordinary bail and recognized that no hard and fast rule or inflexible principle regarding the exercise of discretion in ordinary bail matters can be laid down by observing :

> "27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra* v. *King-Emperor* [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar* v. *Emperor* [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously."

18. The observations made by the Supreme Court in **Nimmagadda Prasad v. Central Bureau of Investigation**[9] regarding factors which have to be kept in mind while

8 (1980) 2 SCC 565
9 (2013) 7 SCC 466

considering a bail application are in consonance with the earlier authorities:

> "24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

19. The proposition that grant of bail cannot be restricted in a rigid formula was also recognized in **Gurcharan Singh and others v. State (Delhi Admn.)**[10]by stating so:

> "29. We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of Justice. It is essential that due and proper weight should be bestowed on these two factors apart from others. <u>There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail."</u> (emphasis supplied)

20. The well settled propositions of law in regard to grant or refusal of bail were recapitulated in **Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra**[11]:

> "29. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders

10 (1978) 1 SCC 118
11 (2018) 11 SCC 458

reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(*a*) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(*b*) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(*c*) Prima facie satisfaction of the court in support of the charge.

30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

31. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused."

21. The first principle of bail jurisprudence, namely grant of bail is the rule, while denial is an exception was reiterated and the importance of ensuring a fair trial to the accused was underscored in **P. Chidambaram v. Directorate of Enforcement**[12]. **P. Chidambaram (supra)** while propounding the law also held that ultimately each bail application will be examined in its specific facts and circumstances:

"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench [Gurbaksh Singh Sibbiav.State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the

12 (2020) 13 SCC 791

exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."

22. The following principles governing grant of bail enshrined in **Ram Govind Upadhyay (supra)** were extracted in **Brijmani Devi v. Pappu Kumar and another**[13]:

"*4*. … (*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(*d*) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of

13 (2022) 4 SCC 497

> grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

23. While spelling out various considerations for grant of bail the Supreme Court in **Anil Kumar Yadav v. State (NCT of Delhi) and another**[14] declined to lay down an exhaustive criteria for the same by holding:

> "17. While granting bail, the relevant considerations are : (*i*) nature of seriousness of the offence; (*ii*) character of the evidence and circumstances which are peculiar to the accused; and (*iii*) likelihood of the accused fleeing from justice; (*iv*) the impact that his release may make on the prosecution witnesses, its impact on the society; and (*v*) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

24. The factors which guide the discretion of the Courts while granting bail were elaborated by the Supreme Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee and another**[15] after examination of past cases in point. The relevant parts of the judgement are extracted below:

> "9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
>
> (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
>
> (*ii*) nature and gravity of the accusation;
>
> (*iii*) severity of the punishment in the event of conviction;

14 (2018) 12 SCC 129
15 (2010) 14 SCC 496

(*iv*) danger of the accused absconding or fleeing, if released on bail;

(*v*) character, behaviour, means, position and standing of the accused;

(*vi*) likelihood of the offence being repeated;

(*vii*) reasonable apprehension of the witnesses being influenced; and

(*viii*) danger, of course, of justice being thwarted by grant of bail."

V. Constitutional law and bails:

25. The right of bail is derived from statute but is never beyond the oversight of Part III of the Constitution of India. In fact holdings of Constitutional Courts have anchored bail jurisprudence in Article 21 of the Constitution of India.

26. Bail jurisprudence was firmly berthed in the constitutional regime of fundamental rights in **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P.**[16]. Casting an enduring proposition of law in eloquent speech, V.R. Krishna Iyer, J. held:

> "1. Bail or jail?" — at the pre-trial or post-conviction stage — belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the Bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in this summit court I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering

16 (1978) 1 SCC 240

lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right."

27. The manner of exercise of judicial discretion and the tests for grant of bail were developed with the assistance of ancient authorities and modern constitutional propositions of liberty by Krishna Iyer, J. in **Gudikanti Narasimhulu (supra)**. Krishna Iyer J. in his scholarly exposition on the issue spoke thus for the Supreme Court:

"5. Having grasped the core concept of judicial discretion and the constitutional perspective in which the Court must operate public policy by a restraint on liberty, we have to proceed to see what are the relevant criteria for grant or refusal of bail in the case of a person who has either been convicted and has appealed or one whose conviction has been set aside but leave has been granted by this Court to appeal against the acquittal. What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [*R.* v. *Rose*, (1898) 18 Cox CC 717 : 67 LJ QB 289 — Quoted in 'The Granting of Bail', Modern Law Rev., Vol. 81, Jan. 1968, pp. 40-48] :

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial."

This theme was developed by Lord Russel of Kollowen, C.J., when he charged the grand jury at Salisbury Assizes, 1899: [(1898) 63 JP 193, Mod. Law Rev. p. 49 ibid.]

"... it was the duty of Magistrates to admit accused persons to bail, wherever practicable, unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such as to tie them to the place where they carried on their work. They had not the golden wings with which to fly from justice."

In Archbold it is stated that [Mod. Law Rev. ibid. p. 53 — Archbold. Pleading Evidence and Practice in Criminal Cases, Thirty-Sixth Edn., London, 1966, para 203]:

"The proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial ….

The test should be applied by reference to the following considerations:

(1) The nature of the accusation ….

(2) The nature of the evidence in support of the accusation ….

(3) The severity of the punishment which conviction will entail ….

(4) Whether the sureties are independent, or indemnified by the accused person...."

Perhaps, this is an overly simplistic statement and we must remember the constitutional focus in Articles 21 and 19 before following diffuse observations and practices in the English system. Even in England there is a growing awareness that the working of the bail system requires a second look from the point of view of correct legal criteria and sound principles, as has been pointed out by Dr Bottomley. [The Granting of Bail, Principles and Practice, Mod. Law Rev. ibid. pp. 40 to 54]

6. Let us have a glance at the pros and cons and the true principle around which other relevant factors must revolve. When the case is finally disposed of and a person is sentenced to incarceration, things stand on a different footing. We are concerned with the penultimate stage and the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the Court punishing him with imprisonment. In this perspective, relevance of considerations is regulated by their nexus with the likely absence of the applicant for fear of a severe sentence, if such be plausible in the case. As Erle. J. indicated, when the crime charged (of which a conviction has been sustained) is of the highest magnitude and the punishment of it assigned by law is of extreme severity, the Court may reasonably presume, some evidence warranting, that no amount of bail would secure the presence of the convict at the stage of judgment, should he be enlarged. [Mod. Law Rev. p. 50 ibid., 1852 I E & B 1] Lord Campbell, C.J. concurred in this approach in that case and Coleridge J. set down the order of priorities as follows: [Mod. Law Rev. ibid., pp. 50-51]

"I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial .... It is a very important element in considering whether the party, if admitted to bail,

would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important: the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.

In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death."

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record — particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice — to the individual involved and society affected.

12**.** A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned "free enterprise", should be provided against. No seeker of justice shall play confidence tricks on the Court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic

jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution."

28. After laying down the jurisprudential setting for coming generations the learned Judge leaned in favour of the brevity in bail matters in **Gudikanti Narasimhulu (supra)**:

"17. In this jurisprudential setting, I take up each case. Detailed ratiocination is not called for, since I have indicated the broad approach. And, for a bail order — once awareness of matters of relevance is assured — the briefer the better, and prolixity may be fraught with unwitting injury. The focus is on personal freedom, barricaded or banned when it turns a menace to the fair administration of justice which is the foundation of a free society."

29. The crisp prose of the Supreme Court in **Rajasthan v. Balchand alias Baliay**[17], that "bail not jail" became the guiding light of the law relating to bail:

"2**.** The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

17 (1977) 4 SCC 308

30. The Supreme Court in **Mohd. Muslim alias Hussain v. State (NCT of Delhi)**[18], liberalised the stringent bail regime under the NDPS Act by invoking constitutional parameters and held:

> "19. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "*not guilty of such offence*" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439 CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted *reasonably*. Further the classification of offences under the Special Acts (the NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions.
>
> 20. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused cooperating with the investigation, not fleeing from justice : even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such Special Acts, has to address itself principally on two facts : likely guilt of the accused and the likelihood of them not committing any offence upon release. This Court has generally upheld such conditions on the ground that liberty of such citizens has to—in cases when accused of offences enacted under special laws—be balanced against the public interest.
>
> 21. A plain and literal interpretation of the conditions under Section 37 (i.e. that court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

18 (2023) 18 SCC 166

22. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this Court have, therefore, emphasised that the satisfaction which courts are expected to record i.e. that the accused may not be guilty, is only prima facie, based on a *reasonable reading*, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India* v. *Rattan Mallik* [*Union of India* v. *Rattan Mallik*, (2009) 2 SCC 624 : (2009) 1 SCC (Cri) 831]). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436-A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil* [*Satender Kumar Antil* v. *CBI*, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1]). Having regard to these factors the Court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

(emphasis supplied)

31. Thereafter the Supreme Court in **Mohd. Muslim (supra)** also discussed the consequences of prisonisation in these words:

"24. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in *A Convict Prisoner* v. *State* [*A Convict Prisoner* v. *State*, 1993 SCC OnLine Ker 127 : 1993 Cri LJ 3242] as "*a radical transformation*" whereby the prisoner :

"*13*. … loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

25. There is a further danger of the prisoner turning to crime, "*as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal*" [Working Papers - Group on Prisons & Borstals - 1966 U.K.] (also see Donald Clemmer's "*The Prison Community*" published in 1940 [Donald Clemmer, *The Prison Community* (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, "Donald Clemmer's Concept of Prisonisation", available. Incarceration has further deleterious effects—where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials

—especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

32. Even restrictive statutory provisions for grant of bail may not entirely constrain the courts deciding bail applications if Article 21 is implicated as was held by the Supreme Court in **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs State of U.P.**[19]:

"42. This Court has, time and again, emphasized that right to life and personal liberty enshrined under Article 21 the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us. (Also see Nikesh Tarachand Shah Vs Union of India and another, 2018(11) SCC 1 regarding for reconciling restrictive provisions regarding bail with the mandate of Article 21 of the Constitution of India."

[Also see: **Nikesh Tarachand Shah Vs Union of India and another**[20] for reconciling restrictive statutory provisions regarding bail with the mandate of Article 21 of the Constitution of India.]

33. The apparently conflicting demands of liberty of accused citizens and investigation rights of the police were balanced by the Supreme Court in **Vaman Narain Ghiya v. State of**

19 2024 (8) SCC 293
20 2018(11) SCC 1

Rajasthan[21]. **Vaman Narain Ghiya (supra)** recalled the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty, and while reaffirming its applicability in bail jurisprudence expounded the law as under:

> "*6.* 'Bail' remains an undefined term in CrPC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression 'bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb 'bailer' which means to 'give' or 'to deliver', although another view is that its derivation is from the Latin term 'baiulare', meaning 'to bear a burden'. Bail is a conditional liberty. *Stroud's Judicial Dictionary* (4th Edn., 1971) spells out certain other details. It states:
>
> '… when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed—that is to say, set at liberty until the day appointed for his appearance.'
>
> Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.
>
> *7.* Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal

21 (2009) 2 SCC 281

jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have.

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt."

34. The aforesaid judgement was cited with approval by the Supreme Court in **Sanjay Chandra v. CBI**[22]. **Sanjay Chandra (supra)** discussed the principles regarding grant or denial of bail and the constitutional rights of under trial prisoners who are detained indefinitely in jail by stating:

"40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case."

35. Adherence to the principle of bail and not jail was emphasized by the Supreme Court in **Prem Prakash v. Union of India through the Directorate of Enforcement**[23]**:**

"12. All that Section 45 PMLA mentions is that certain conditions are to be satisfied. The principle that, "*bail is the rule and jail is the exception*" is

22 (2012) 1 SCC 40
23 (2024) 9 SCC 787

only a paraphrasing of Article 21 of the Constitution of India, which states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Liberty of the individual is always a Rule and deprivation is the exception. Deprivation can only be by the procedure established by law, which has to be a valid and reasonable procedure. Section 45 PMLA by imposing twin conditions does not re-write this principle to mean that deprivation is the norm and liberty is the exception. As set out earlier, all that is required is that in cases where bail is subject to the satisfaction of twin conditions, those conditions must be satisfied."

36. The fundamental rights embodied under Article 21 of the Constitution of India were imparted into the regime of bail jurisprudence in **Satender Kumar Antil v. Central Bureau of Investigation and another**[24].

37. **Satender Kumar Antil (supra)** upon consideration of various cases in point including **Nikesh Tarachand Shah (supra)**, **Gurbaksh Singh Sibbia (supra)**, **Gudikanti Narasimhulu (supra)** held:

"12**.** The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This Court in *Nikesh Tarachand Shah* v. *Union of India* [*Nikesh Tarachand Shah* v. *Union of India*, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] , held that : (SCC pp. 22-23 & 27, paras 19 & 24)

"*19.* In *Gurbaksh Singh Sibbia* v. *State of Punjab* [*Gurbaksh Singh Sibbia* v. *State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , the purpose of granting bail is set out with great felicity as follows : (SCC pp. 586-88, paras 27-30)

...*30.* In *American Jurisprudence* (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and

24 (2022) 10 SCC 51

> the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."
>
> It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.'
>
> ***
>
> *24*. Article 21 is the Ark of the Covenant so far as the Fundamental Rights Chapter of the Constitution is concerned. It deals with nothing less sacrosanct than the rights of life and personal liberty of the citizens of India and other persons. It is the only article in the Fundamental Rights Chapter (along with Article 20) that cannot be suspended even in an emergency [see Article 359(1) of the Constitution]. At present, Article 21 is the repository of a vast number of substantive and procedural rights post *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] ."
>
> 14. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the court. Thus, it is for that agency to satisfy the court that the arrest made was warranted and enlargement on bail is to be denied."

VI. Fair trial and Defence of an accused:

38. Fair trial of an accused lies at the heart of legitimacy of the criminal justice system of any State. The right to a fair trial in India is not a reversible assurance in the judicial narrative, but exists as an irrevocable guarantee under Article 21 of the Constitution of India. The right to fair trial under Article 21 was invoked to uphold the right of speedy trial in **Hussainara Khatoon and others Vs Home Secretary, State of Bihar, Patna**[25]. Fair opportunity for defence in criminal trial is not only embedded under the Criminal Procedure Code but also flows directly from Article 21 of the Constitution of India

25 AIR 1979 SC 1369

which contemplates a reasonable procedure prior to deprivation of liberty. (see: **Maneka Gandhi v. Union of India**[26])

39. The non negotiable requirement of a fair trial in the constitutional scheme was iterated by the Supreme Court in **Sovaran Singh Prajapati v. State of Uttar Pradesh**[27]. In a scholarly setting after citing past cases in point **Sovaran Singh Prajapati (supra)** enunciated the law with brevity:

> "10. Fair and impartial administration of justice is a treasured right protected by various enactments of law including, first and foremost, the Constitution, which under Article 21 guarantees the Right to Fair Trial."

40. Article 67 of International Criminal Court containing the rights of the accused was integrated into the constitutional law discourse in **Sovaran Singh Prajapati (supra)**:

> "33.2…..(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence."

41. The narrative on fair trial in **Sovaran Singh (supra)** was bolstered by referencing : (i). **Vinubhai Haribhai Malaviya and others v. State of Gujarat and another**[28]; (ii). **Zahira Habibulla H. Sheikh and another v. State of Gujarat and others**[29] & (iii) **J. Jayalalithaa and others v. State of Karnataka and others**[30].

---

26 AIR 1978 SC 597
27 2025 SCC OnLine SC 351
28 (2019) 17 SCC 1
29 (2004) 4 SCC 158
30 (2014) 2 SCC 401

42. In **J. Jayalalithaa (supra)** it was held that the right of an accused to a fair trial is relatable to the guarantee of Article 21 of the Constitution of India:

> "28. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the "majesty of the law" and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.
>
> 29. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution. "No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison d'être in prescribing the time frame" for conclusion of the trial.
>
> 30. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by the rule of law. Denial of fair trial is crucifixion of human rights."

43. The Supreme Court in **Vinubhai Haribhai Malaviya (supra)** enjoined that Article 21 of the Constitution of India protected the rights of an accused in a criminal trial:

> "17. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] , be "right, just and fair and not arbitrary, fanciful or oppressive" (see para 7

therein). Equally, in *Commr. of Police* v. *Delhi High Court* [*Commr. of Police* v. *Delhi High Court*, (1996) 6 SCC 323 : 1996 SCC (Cri) 1325] , it was stated that Article 21 enshrines and guarantees the *precious* right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see para 16 therein).”

44. Right of an accused to adduce defence evidence was also held to be an essential ingredient of a fair trial by the Supreme Court in **Rattiram and others v. State of Madhya Pradesh through Inspector of Police**[31]. The consistency of constitutional law holdings fortifying the inalienable right of defence of an accused was depicted in **Rattiram (supra)** when the law was thus enunciated:

“40.In *Kalyani Baskar* v.*M.S. Sampoornam* [(2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577] it has been laid down that “fair trial” includes fair and proper opportunities allowed by law to the accused to prove innocence and, therefore, adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It is essential that the rules of procedure designed to ensure justice should be scrupulously followed and the courts should be zealous in seeing that there is no breach of them.

41.In this regard, we may fruitfully reproduce the observations from *Manu Sharma* v.*State (NCT of Delhi)*[(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] wherein it has been so stated : (SCC pp. 79-80, para 197)

“*197*. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. *The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime*. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.” (emphasis supplied)

31 (2012) 4 SCC 516

42.It would not be an exaggeration if it is stated that a “fair trial” is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity that is governed by rule of law. Denial of “fair trial” is crucifixion of human rights. It is ingrained in the concept of due process of law. While emphasising the principle of “fair trial” and the practice of the same in the course of trial, it is obligatory on the part of the courts to see whether in an individual case or category of cases, because of non-compliance with a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred.

43.The seminal issue is whether the protection given to the accused under the law has been jeopardised as a consequence of which there has been failure of justice or causation of any prejudice.

44. In this regard, it is profitable to refer to *Gurbachan Singh* v. *State of Punjab* [AIR 1957 SC 623 : 1957 Cri LJ 1009] wherein a three-Judge Bench has opined thus : (AIR p. 626, para 7)

“*7.* … This Court in ‘*Willie (William) Slaney* v. *State of M.P.* [AIR 1956 SC 116 : 1956 Cri LJ 291] ’ elaborately discussed the question of the applicability of Section 537 and came to the conclusion that *in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself*.”

(emphasis added)

45. The founding principles of procedural fairness in criminal jurisprudence align with the fundamental pronouncements of constitutional law to contemplate a fair opportunity for an accused to defend himself at a trial. Various statutory provisions in CrPC like Section 91 CrPC (Section 94 of the Bharatiya Nagarik Suraksha Sanhita), Section 313 of the Code of Criminal Procedure (Section 351 of the BNSS), Section 315 Cr.P.C. (Section 353 of the BNSS), Section 233 Cr.P.C. (Section 256 of the BNSS) among others manifest the

legislative intent to provide a fair opportunity for defence to an accused.

46. Section 313 Cr.P.C. (Section 351 of the BNSS) alerts an accused to the implicatory evidence adduced against him in a trial and is critical to the defence of an accused. Section 315 Cr.P.C. (Section 353 of the BNSS) also protects the rights of an accused to a fair trial. Under Section 233 CrPC (Section 256 of the BNSS) the accused is entitled as a matter of right to tender evidence to establish his innocence and refute the prosecution case.

47. However, the realization of the right of defence of an accused which is an avowed goal of constitutional law and an explicit intendment of legislative enactments is hampered by inadequacies in the criminal justice system and the inequities of our socio economic equations.

VII. Defence of an accused and Bail:

A. Accused and the criminal justice system:

48. The criminal justice system is pivoted on a prosecution narrative which is built with the vast resources of the State and wide investigatory powers of the police. The State pumps huge resources and employs professional investigators to investigate a criminal offence. The State thereafter prosecutes the criminal case against the accused also bears the expenses of the same. On the other side of the scale is the accused person who is completely lacking in such resources and investigation skills to gather evidence.

49. The aforesaid imbalance between the prosecution and the accused and the consequent need for safeguards in the criminal trial process was discussed by Phipson in his classic "On Evidence"[32]:

"In a criminal case the aim is to convict the guilty and acquit the innocent. There is a strong public interest and concern that those who commit crimes cannot go unpunished. At the same time the innocent should be protected and process must be perceived as being fair. Usually the prosecution is brought by the State which has very wide investigatory powers. Without safeguards, many of which are built into the rule of evidence, there would be an imbalance in most cases between the prosecution and the defence."

"The aim should be to have rules which are fair and which can be applied fairly by the Courts. Concepts of fairness and hence what the rule of evidence should be applied from time to time and society to society."

"Until 1898 a defendant could not give evidence of his own trial. Such an approach in criminal case would be unthinkable today. As observed by **Lord Bingham of Cornhill** in **Regina v. H (appellant)** "Until 1898 a defendant could not generally testify on his own behalf. Such practices could not bear scrutiny today. But it is important to recognise that standards and perceptions of fairness may charge, not only from one

32 "Phipson on Evidence"

century to another but also, sometimes, from one decade to another."

VII(B).Criminal investigations and defence evidence:

50. On many occasions criminal investigations suffer from a pro prosecution bias. In such cases police investigations are unifocal and seek to procure only inculpatory evidence, while the lines of investigations which will retrieve exculpatory evidence in favour of the accused are either ignored or not followed up. Deficient investigations of this nature often consciously neglect exculpatory evidences, and deliberately eschew lines of enquiry which will prove the innocence of an accused. The infirmities in police investigations which unfairly operate to the detriment of the accused have been pointed out by Constitutional Courts from time to time.

51. The Supreme Court in **State of Gujarat v. Kishanbhai and others**[33] noticed from judicial experience that the scale of faulty police investigations and deficient prosecutions was vast, and identified them as systemic faultlines which needed institutional correction. **Kishanbhai (supra)** discussed the impact of lapses in police investigations and deficiencies in prosecutions on the lives of innocent persons who are falsely accused in criminal cases, victims and the criminal justice system. In **Kishanbhai (supra)** the Supreme Court issued various directions to the States throughout the country for raising the quality of training imparted to police investigators and prosecutors. The poignant plight of accused due to faulty

33 (2014) 5 SCC 108

investigations and prosecution was depicted thus in **Kishanbhai (supra)**:

> "19. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over."

52. Grant of bail for defence in such circumstances is a significant safeguard which can be fruitfully used by the accused to collect/produce the exculpatory evidence and effectively prosecute his/her defence in the trial.

VII(C). Section 313 Cr.P.C. (Section 351 BNSS), Section 233 Cr.P.C. (Section 256 BNSS) and the accused:

53. The significance of Section 313 Cr.P.C. (Section 351 of the BNSS) for the defence of an accused, and its indispensible role in ensuring fair trial has been recognized by a long line of judicial authorities. At the same time constant failure to implement the said provision has also been highlighted with regularity.

54. Recently the Supreme Court in **Raj Kumar @ Suman v. State (NCT of Delhi)**[34] underscored the importance of Section 313 Cr.P.C. (Section 351 of the BNSS) to the defence of an accused and simultaneously lamented the continuing breach of the aforesaid provision in criminal trials since 1951:

> "29. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the court and not as mouthpieces of their respective clients. While recording the statement under Section 313CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of sub-section (5) of Section 313CrPC, which will ensure that the chances of committing errors and omissions are minimised."
>
> 30. In 1951, while delivering the verdict in *Tara Singh* [*Tara Singh* v. *State*, 1951 SCC 903 : 1951 SCC OnLine SC 49] , this Court lamented that in many cases, scant attention is paid to the salutary provision of Section 342CrPC, 1898. We are sorry to note that the situation continues to be the same after 72 years as we see such defaults in large number of cases. The National and the State Judicial Academies must take a note of this situation. The Registry shall forward a copy of this decision to the National and all the State Judicial Academies."

55. Statutory procedures and constitutional guarantees protect the right of an accused to defend himself in a criminal trial. But the baneful practices in the criminal justice system impede the realization of defence rights of an accused. Constitutional Courts cannot be purblind to these issues which impact the fairness of a trial and rights of an accused.

---

34 (2023) 17 SCC 95

VII(D). Realizing the rights of defence & bails:

56. In summation this Court takes notice of the fact that on many occasions false criminal cases are launched against innocent persons by abusing the criminal law system. Inadequate police investigations often aggravate the problems for the accused persons. Statutory provisions for defence of an accused like Section 313 Cr.P.C. (Section 351 of the BNSS) are observed more in breach than compliance. In numerous instances proper legal advice for effective defence is wanting even during trial. Many accused persons who are falsely implicated belong to the socioeconomically marginalized classes and simply lack diligent pairokars to effectively prosecute their defence before the trial court or the resources to gather defence evidence.

57. The said malpratices or shortcomings in the criminal justice system not only defeat the salutary intent of under Section 313 CrPC (Section 351 of the BNSS) and Section 233 CrPC (Section 256 of the BNSS), but also negate the promise of fair trial contemplated under Article 21 of the Constitution of India.

58. The ability of an accused to conceptualise a defence strategy, gather evidence and prosecute his defence in the trial efficaciously may also be compromised by continued incarceration after prosecution evidence has concluded.

59. On account of the aforesaid imbalance between prosecution and defence in a criminal trial, and faultlines in the criminal

justice system discussed earlier, the socio economically marginalized classes of our citizenry become particularly vulnerable to miscarriages of justice.

60. Constitutional Courts have to be cognizant of the structural issues in the criminal justice process, socio-economic realities and imperatives of Constitutional goals while propounding the law to effectuate the rights of the accused. Obligation is cast on Constitutional Courts to obviate the possibility of denial of justice to the accused, and redress the imbalance between the prosecution and the accused. To achieve these ends judicial discourse has to build sturdy safeguards, develop protective measures and ensure processual fairness in the trial and bail jurisprudence. To remove obstacles to justice the right of defence of an accused has to be reinforced in the judicial pronouncements on bails.

61. In the wake of the preceding discussion, conceptualising a defence strategy, gathering and adducing of defence evidence is a valid ground for grant of bail at the appropriate stage in a trial and in the facts and circumstances of a case. In fact grant of bail for defence (in appropriate circumstances and at the apposite stage of trial) is the most critical safeguard evolved by the Courts to secure equal and fair justice to all accused persons especially those belonging to disadvantaged classes.

62. Grant of bail to an accused for conducting defence after considering all relevant factors in the circumstances of a case and at the appropriate stage of trial for the aforesaid purposes

would realize the legislative intent of Section 313 Cr.P.C. (Section 351 of the BNSS) and Section 233 Cr.P.C. (Section 256 of the BNSS) and shall secure one of the most indispensable ingredients of a fair trial which is founded in the constitutional law discourse on Article 21 of the Constitution of India.

VII(E).Grant of bail for defence: Case Laws

63. Holdings of Constitutional Courts which have put the right of defence of an accused at a high pedestal, and have recognized that preparation of defence is a ground for grant of bail. The cases in point will now be considered.

64. The Allahabad High Court continued its pioneering role in creating safeguards for the accused while expounding the law on bails in **Emperor Vs H.L. Hutchinson and Another**[35].

65. A Division Bench of this Court in **H.L. Hutchinson (supra)** irretrievably entrenched "the opportunity to the applicant to prepare his defence" as a ground for bail. The proposition which is known for the profundity of its wisdom and equally for the flourish of its prose set forth the law as under:

> "35…...The matters for consideration in this particular case, to which I have given my best attention, may be enumerated as follows:-
>
> > "(a) Whether on the facts set out in the affidavit filed on behalf of the Crown and in the replies written and oral of the applicant there is or is not reasonable ground for believing that the applicant has committed the offence with which he is charged. The applicant has contended that he is being prosecuted only because he holds certain opinions. It

35 AIR 1931 Alld. 356

is a contention which, on the materials set out in the affidavit for the Crown, prima facie has no force in it; whether it be established eventually or not, the suggestion for the Crown is that he is promulgating his opinions and endeavouring to persuade others to those opinions with a view to a resort to violence sooner or later to enforce those opinions. It is not desirable, in view of the fact that it will be for the Sessions Judge to pronounce judgment on the merits of the evidence, for me to say anything further, but it is necessary to say this much to make it clear that in passing the order at which I shall arrive I in no way lose sight of the gravity of the charge or of the nature of the evidence.

(b) The nature and gravity of the charge.

(c) The severity or degree of the punishment which might follow in the particular circumstances in case of a conviction.

(d) The danger of the applicant absconding if he is released on bail;

(e) the character, means and standing of the applicant.

(f) The danger of the alleged offence being continued or repeated, assuming that the accused is guilty of having committed that offence in the past. In view of the particular circumstances of the case and the nature of the evidence as to the particular conspiracy I do not consider there is serious danger of this.

(g) The danger of witnesses being tampered with. In the present case the prosecution is closed.

(h) Opportunity to the applicant to prepare his defence;

(i) The fact that the applicant has already been some 22 months in jail, and that the trial is not likely to conclude for a further several months at least. I am of opinion that the accused should, on all these considerations weighed together and given their proper weight, be released on bail. This cannot of course be taken to suggest for a moment that I am prejudging the case against the applicant. His guilt or innocence is matter for future determination by the trial Judge. In a matter like the present, whether release on bail be refused or allowed, there can be no ground for the suggestion that the case is being prejudged. The only case in which such an assumption could possibly be justified is where the applicant has satisfied the Court that on the evidence hitherto produced there is no possible case against him. Such is not the case here."

(emphasis supplied)

66. Grant of bail to provide the opportunity for gathering defence evidence to an accused has received judicial affirmation from other constitutional authorities of high standing as well.

67. After copiously extracting **Hutchinson (supra)** with approval, the Constitution Bench of the Supreme Court in **Gurbaksh Singh Sibbia (supra)** further articulated the importance of bail to bring the right of defence of an accused to fruition:

> "27…..In Emperor v. Hutchinson it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence."
>
> (emphasis supplied)

68. It is noteworthy that the said passages of **Gurbaksh Singh Sibbia (supra)** holding that defence of an accused was a ground for grant of bail were approvingly reiterated by the Supreme Court in **Nikesh Tarachand Shah (supra)** and **Satender Kumar Antil (supra)**. [see: para 19 **Nikesh Tarachand Shah (supra)** and para 12 **Satender Kumar Antil (supra)**]

69. The Supreme Court in **Gudikanti Narasimhulu (supra)** has underscored the significance of bail for an accused to prepare his defence by holding:

> "11. We must weight the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible."
>
> (emphasis supplied)

70. A similar view was taken by the Supreme Court in **Babu Singh v. State of U.P.**[36]:

> "18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible." (emphasis supplied)

36 (1978) 1 SCC 579

71. The proposition that grant of bail contributes to better preparation of defence of an accused was unequivocally settled by the Supreme Court in **Moti Ram v. State of M.P.**[37]:

> "14. The consequences of pre-trial detention are grave. Defendants presumed innocent arc subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family." (emphasis supplied)

72. This Court in **Prabhat Gangwar v State of UP (Criminal Misc. Bail Application No. 2586 of 2023)**[38] affirmed that grant of bail for preparation of defence inheres in the concept of fairness in processual criminal jurisprudence, but caveated that bails on this ground should not be granted as a matter of course or in a mechanical manner:

> "Nature and gravity of the offence is certainly liable to be considered by the court while considering grant of bail. The Court has also to factor the likelihood of whether the accused committed the offence while deciding a bail application.
>
> The court also has to determine in the facts of the case whether the accused needs to be set at liberty to frame his defence and gather evidence to refute the prosecution case and establish his innocence. The bail court has to examine whether continued incarceration would disable the accused from tendering an effective defence of his case. This is a demand of processual fairness in criminal jurisprudence.
>
> Setting an accused at liberty on this ground cannot be applied mechanically in all cases. The issue has to be considered in the facts and circumstances of each case. While doing so all relevant facts including the evidences in the record, the conduct of the accused during the investigation as well as trial have to be adverted to before a decision is made in this regard."

---

37 (1978) 4 SCC 47
38 Criminal Misc. Bail Application No. 2586 of 2023

73. The Supreme Court in **Irfan v. State of U.P.**[39] while examining the proposition of law laid down in **Prabhat Gangwar (supra)** cautioned that bails on this ground should not be granted in a blanket manner and without consideration of observations made in **Prabhat Gangwar (supra)** by holding:

> "4. In the case of Prabhat Gangwar (supra) the Coordinate Bench of the High Court clearly stated that in an application for grant of bail, the Court is competent to set an accused on liberty in order to afford him an opportunity to frame his defence and gather evidence and gather evidence, to enable him to refute the prosecution case and establish his innocence. However, the Curt cautioned that such liberty on the said ground cannot be applied mechanically and would require to be considered in the facts and circumstances of each case. All relevant facts including the evidence on record, conduct of the accused during the investigation as well as the trial have to be adverted to before a decision is made in this regard for enlarging the accused on bail.
>
> 5. The view expressed in Prabhat Gangwar (supra) may be applied in rare cases but that too would have to be considered in the light of the observations made therein. However, from the impugned order, we find that the High Court failed to evaluate the facts and circumstances of the present case especially the conduct of the accused, and in a blanket manner proceeded to grant bail solely on the ground that further incarceration will deprive the accused from an effective defence strategy. Apparently, no such basis has been set out by Respondent No.2 for seeking bail as to what kind of defence strategy and the evidence that was required to be collected or what were the special facts and circumstances of the case which required this kind of indulgence. We are, therefore, not satisfied with the impugned order and are accordingly inclined to set it aside."

74. In **Rajesh Ranjan Yadav alias Pappu Yadav v. CBI Through its Director**[40], the Supreme Court observed that dilatory tactics have been adopted by the accused and after considering relevant factors including gravity of the offence refused bail by observing:

> "10. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the court and when it should not. It all depends on the facts and

39 Special Leave Petition (Criminal) No.8984 of 2025
40 (2007) 1 SCC 70

circumstances of each case and it cannot be said that there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

21. Learned Additional Solicitor General, Shri Amarendra Sharan, submitted that the appellant himself was at least partly responsible for the delay in the conclusion of the trial because most of the prosecution witnesses were cross-examined by his counsel for several days, mostly by asking irrelevant questions, and this was deliberate dilatory tactics used for delaying the trial so that on that basis the appellant may pray for bail.

22. It is not necessary for us to go into this aspect of the matter because we have already noted above that this is certainly not a case for grant of bail to the appellant as the facts and circumstances of the case disclose.

23. Learned counsel for the appellant then submitted that since the appellant is not on bail, he cannot conduct his defence effectively. In our opinion if this argument is to be accepted, then logically in every case bail has to be granted. We cannot accept such a contention."

75. The judgement rendered by the Supreme Court in **X v. State of Rajasthan and another**[41] arose in its particular facts where bail was granted by the High Court after noticing certain discrepancies in the statement of the victim under Section 164 Cr.P.C. and the F.I.R. during the course of the trial. The Supreme Court in such facts held:

"14. Ordinarily in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court be it the Trial Court or the High Court should be loath in entertaining the bail application of the accused.

15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.

16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach to its final conclusion which may either result in the conviction of the accused or acquittal of the accused. The moment the High Court exercises

41 S.L.P. No.13378 of 2024

> its discretion in favour of the accused and orders release of the accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only in the event if the trial gets unduly delayed and that too for no fault on the part of the accused, the Court may be justified in ordering his release on bail on the ground that right of the accused to have a speedy trial has been infringed.
>
> 17. In the case on hand, the victim is yet to be examined. Her mother who, according to the case of the prosecution, is an eye-witness has also not been examined so far. The High Court seems to have looked into few discrepancies in the FIR compared to the statement of victim recorded under Section 164 of the Code. This could not have been a good ground to exercise discretion in favour of an accused in a serious offence like rape."

76. It is noteworthy that the Supreme Court in **X (supra)** did not disturb the impugned order passed by the High Court granting bail. Moreover, the facts in which the judgement was rendered in **X (supra)** are distinguishable from the facts in the current controversy. Unlike in the case of **X (supra)** where the victim had not been examined, in all the cases at hand the prosecution evidence has concluded or nearing closure. All material witnesses have been examined in the matters at hand. Proceedings under Section 313 Cr.P.C. and defence evidence have either commenced or will begin shortly.

77. The issue of grant of bail for preparation of defence neither arose for consideration nor was the subject matter of the holding of the Supreme Court in **X (supra)**. Further the judgement nowhere imposes a blanket and unconditional ban on grant of bail after the trial has commenced.

78. The judgements in **Rajesh Ranjan Yadav (supra)** and **X (supra)** are not authorities for the proposition that the law absolutely prohibits grant of bail for preparation of defence.

The said judgments are of no avail to the State respondents, and reliance on the same is misconceived.

79. The binding precedent in a judgement is comprised in the ratio of the judgement. The ratio of a judgement has to be distilled from the legal issue arising in the facts and circumstances of the case and the statement of law propounded thereon. The statement of law so enunciated the basis on which the controversy is decided constitutes the binding precedent in the judgement. (For a more elaborate discussion on the law of binding precedents see: the Full Bench's judgement of this Court in **Chandrapal Singh v. State of U.P. and another**[42]).

80. For ascertaining the ratio in a judgement, the aforesaid line of enquiry has to be made in a deliberate manner. Judgements should not be construed as theorems of Euclid (see: Para 11 **Vinay Prakash Singh v. Sameer Gehlaut**[43]). The observations made in a judgement cannot be shorn of their context and applied without regard to the facts of each case. Even a small distinction in the facts of the respective cases may distinguish the judgement on which reliance is placed and render it inapplicable to the case at hand.

81. On the contrary the right of bail for defence has to be examined in the light of the preceding discussion and leading authorities in point namely, **Hutchinson (supra)**, **Gurbaksh Singh Sibbia (supra), Guddikanti (supra), Babu Singh (supra),**

42 2023 SCC OnLine All 2443
43 2022 SCC OnLine SC 1595

Moti Ram (supra), Satendra Antil (supra), Nikesh Tarachand Shah (supra), Prabhat Gangwar (supra) and **Irfan (supra)**.

VIII. Conclusions: Parameters for grant of bail to prepare and conduct defence:

82. After the conclusion of prosecution evidence or near conclusion of the same, the stage is set for proceedings under Section 313 Cr.P.C. ≡ Section 351 of the BNSS and later for introduction of defence evidence under Section 233 Cr.P.C. ≡ Section 256 of the BNSS. This is an apposite stage to consider grant of bail for collecting defence evidence and preparation of defence.

83. Preparation of defence evidence and tendering defence evidence to establish the innocence of an accused is not a formality in criminal trials but an essential part of substantive justice and fair procedure.

84. The criteria for grant of bail for defence after prosecution evidence has closed or nears conclusion will now be examined. While granting bail after the conclusion of prosecution evidence or when prosecution evidence nears closure, some of the factors which were prominent at the stage of pre-trial bail will recede in the background, while other considerations will become more prominent. For example the possibility of influencing prosecution witnesses will not be relevant after the prosecution evidence has concluded.

85. The relevant considerations while examining grant of bail for defence will include the heinousness of the

offence/depravity of the crime and impact on the society. Criminal history of the accused will also have a bearing on the matter. Conduct of the accused including cooperation in the investigations and the trial will be relevant. The fact that an accused has not tampered with evidence, nor influenced witnesses too will merit examination.

86. The other factor which may be considered is the nature of implicatory evidence and whether the police investigation suffered from a pro prosecution bias. Pro prosecution bias in a police investigation results in failure to collect exculpatory evidences, and refusal to pursue the lines of investigation which would establish the innocence of the accused. After prosecution evidence is closed, nature of defence evidence proposed by an accused may be considered briefly, but a detailed appraisal is to be certainly avoided.

87. The need of an accused to gather resources to get legal advice and collect evidences will also be a factor for consideration. The issue whether the accused has effective pairokars to professionally collect defence evidence, obtain quality legal advice, and prosecute his defence in the trial in an efficacious manner may also need a look in. At that stage the Court is also liable to examine whether further detention of the accused will become punitive.

88. In the facts and circumstances of a case, the Court may additionally impose stringent conditions to prevent the abuse of the liberty of bail and to ensure the presence of the accused.

89. Preparation of defence does not automatically guarantee enlargement of an accused on bail. Nor can bail be granted for defence on a mechanical basis. Effective conduct of defence can be a ground for bail at the appropriate stage when examined in the composite light of other relevant parameters.

90. Grant of bail for defence will thus be a result of judicial discretion guided by cumulative consideration of the aforesaid relevant factors. It is however clarified that the above parameters are neither exhaustive nor are liable to be applied in a rigid formulaic manner. The preceding discussion does not attempt a comprehensive catalogue of grounds of bail for defence. The aforesaid criteria may be adopted or adapted or evolved in the facts and circumstances of a case. In the ultimate analysis the exercise of judicial discretion for grant of bail to conduct defence requires application of mind to all relevant facts and circumstances of each case to advance the cause of justice and prevent the possibility of injustice.

IX. Post Script:

A. Supreme Court judgement in Irfan v. State of U.P.:

91. Before concluding the sagacious cautions advised by the Supreme court in **Irfan (supra)** need emphatic reiteration. As held by the Supreme Court in **Irfan (supra)**, a mechanical approach cannot be adopted while granting bail for defence. Proper pleadings, relevant materials and grounds for grant of bail to conduct defence have to be brought in the record of the bail application. At this stage this Court regrets to note that in

most cases pleadings and materials depicting satisfaction of various ingredients for grant of bail for defence are absent. The case for grant of bail on ground of defence has to be clearly set out in the bail application.

92. Refusal of bail in appropriate cases for conducting defence would cause denial of justice. Grant of bail without proper pleadings and consideration of relevant materials would mean disservice to law. Justice cannot travel very far without law. Law cannot serve its purpose without justice.

93. A copy of the judgement rendered by the Supreme Court in **Irfan (supra)** along with this judgement be supplied to the President/Secretary, High Court Bar Association and Advocates Association, Allahabad High Court for examining how the Bar can be appropriately alerted and trained for complying with the directions of the Supreme Court in **Irfan (supra)** and this judgement to serve justice to the litigants before this Court.

94. It is the responsibility of the High Court Bar Association and Advocates Association, Allahabad High Court to ensure that constant learning programs are created for regular upgradation of legal knowledge, and enhancement of proficiency of the members of the Bar.

IX(B). Noise:

95. As seen above the authorities of high standing have consistently held that the bail is a judge’s discretion. Discretion

has to be exercised by the Courts judiciously in light of parameters long established by convention and practice. However, the courts have refrained from creating a strait jacket formula or an iron clad discipline for grant or denial of bail. Creation of a mathematical formula in bail jurisdiction to fit all cases will not only be an elusive judicial quest, but also impose unnecessary fetters on judicial discretion which will not serve justice. In fact any such rigid formulae for bails is nothing but a recipe for failure of justice. Each bail will have to be considered in the facts and circumstances of a case.

96. Despite near certainty in bail law, absolute consistency in bail orders has not been achieved. The book NOISE[44] explores different facets of "noise" or "random scatter" in judgements on an issue in an institution. What are the causes, consequences and remedies of diverging judgements on issues where people should be agreeing are the subject matter of study in NOISE.

97. "NOISE" provides instructive lessons in the errors caused by noise, the beneficial impact of noise and the limitations in reducing noise in an institution. On "Noise" in bail decisions the authors opined:

> "Bail decisions are noisy. Whether an accused person will be granted bail or instead sent to jail pending trial depends partly on the identify of the judge who ends up hearing the case. Some judges are far more lenient than others. Judges also differ markedly in their assessment of which defendants present the highest risk of flight or reoffending."

---

44 NOISE- A Flaw in Human Judgment: By Daniel Kahneman, Olivier Sibony, Cass R. Sunstein

98. The authors of the book NOISE made the following observation after studying divergence in bail judgments: “Judicial guidelines for grant of bail cut the noise but have failed to eliminate it altogether”.

99. Consistency in orders may not always save the Courts from error, and divergence in judgements may often lead the judicial process to truth.

IX(C). Constitutional Dialogues and Comity of Constitutional Courts:

100. The invocation of **Hutchinson (supra)** by the Supreme Court in **Gurbaksh Singh Sibia (supra)** best encapsulated the judicial ethos of the golden period in the dialoguing traditions of Constitutional Courts. It was an era when the comity of Constitutional Courts flourished to serve justice through their scholarly dialogues which were defined by mutual respect and untrammelled discourse leavened by refined speech. To read the authorities from times when the vision of Constitutional Courts soared to meet the aspirations of the Constitution framers is elevating; and what elevates is bound to revive hallowed traditions of the past and reinvigorate the excellence in the present.

X. Order on bail application:

101. By means of the second bail application the applicant has prayed to be enlarged on bail in Case Crime No. 471 of 2022 at Police Station-Neuriya, District-Pilibhit under Sections 306, 34 IPC.

102. The first bail application of the applicant was rejected by this Court on 02.07.2024. The applicant was granted interim bail by this Court on 25.09.2025.

103. The following arguments made by Shri Madhu Ranjan Pandey, learned counsel on behalf of the applicant, which could not be satisfactorily refuted by Shri Paritosh Kumar Malviya, learned A.G.A.-I from the record, entitle the applicant for grant of bail:

I. The applicant is a law abiding citizen who cooperated with the police investigations and had joined the trial.

II. The applicant never influenced witnesses or tampered with the evidence.

III. The applicant did not adopt dilatory tactics or impede the trial proceedings.

IV. According to the status report sent by the learned trial court, cross-examination of PW-4 is on foot. The status report further records that the learned ADGC (Crl.) has submitted that the prosecution does not intend to produce anymore witnesses of fact and intend to examine only two or three more formal witnesses.

V. There is no possibility of the applicant influencing any material witnesses.

VI. The police investigation was vitiated by pro prosecution bias. Despite the availability of exculpatory evidence the police

failed to pursue the line of investigation in that direction and did not collect the evidence which was consistent with the innocence of the applicant. In fact the police conducted the investigation and filed the chargesheet in a mechanical manner only to burnish their professional credentials.

VII. The applicant is the wife of the deceased. The differences between the applicant and her deceased husband were neither grave nor irreconcilable. Infact the parties had arrived at an amicable compromise after successfully resolving their disputes through mediation by well wishers of the family. There are defence witnesses who will establish the harmonious relations between the applicant and her deceased husband.

VIII. Documentary evidences including a preliminary enquiry by the police attesting the fact of amicable resolution of domestic issues, was not filed by the police along with the chargesheet as it would discredit the prosecution case. The report may be adduced as defence evidence.

IX. The applicant has to tender various evidences to establish that the marital disputes or actions of the applicant did not aid, abet or instigate the suicide of her husband.

X. The prosecution also neglected to produce any evidence regarding mental condition of the deceased just prior to his death. The deceased was depressed for reasons other than marital discord which may need to be established at the stage of defence.

XI. The applicant also needs to establish through evidences that the criminal case was instituted only to oust the rights of the applicant over her husband's property.

XII. The video of the applicant's husband which is sought to be relied upon is a doctored one. The applicant may need to challenge the same by producing expert evidence in that regard.

XIII. The applicant is a lady of meagre means. She has been abandoned by her family or friends alike. No one is effectively prosecuting the case on her behalf either before the trial court or for the purposes of gathering defence evidences.

XIV. The applicant needs to be enlarged on bail to gather resources to engage a counsel of her choice and to collect defence evidence and to conduct her defence effectively.

XV. Various contradictions of the prosecution evidence adduced during the trial have been pointed out. However, in the facts of this case this Court declines to appraise the evidence as it may influence the trial.

XVI. Continued incarceration of the applicant will disable her from crafting an effective defence strategy and prevent her from gathering evidence in her support and tendering the same before the learned trial court to establish her innocence. Further detention of the applicant will be detrimental to her defence in the trial and inconsistent with the norms of fairness in criminal processual jurisprudence. In fact such detention of the applicant in these facts will be punitive in nature.

XVII. Denial of bail in these facts and circumstances will defeat the legislative intent of Section 313 Cr.P.C. and Section 323 Cr.P.C.

XVIII. The applicant does not have any criminal history apart from the instant case.

XIX. The applicant is not a flight risk. The applicant being a law abiding citizen has always cooperated with the investigation and undertakes to cooperate with the trial proceedings. There is no possibility of the applicant influencing witnesses, tampering with the evidence or reoffending.

104. In wake of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

105. Let the applicant- **Asha** be released on bail in the aforesaid case crime number, on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court below. The following conditions be imposed in the interest of justice:-

(i) The applicant will not tamper with the evidence or influence any witness during the trial.

(ii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.

106. The learned trial court is directed to fix the sureties after due application of mind in light of the judgement passed by this

Court in **Arvind Singh v. State of U.P. Thru. Prin. Secy. Home Deptt.** [45]

107. The learned trial court shall ensure that the right of bail of the applicant granted by this Court is not frustrated by arbitrary demands of sureties or onerous conditions which are unrelated to the socioeconomic status of the applicant.

108. It is further directed that in case the applicant does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.

(Ajay Bhanot, J.)

October 14, 2025

Ashish/Pravin

45 Application U/S 482 No.2613 of 2023 passed by this Court at Lucknow Bench