Interlocutory A.F.R.

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Court No. - 29

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 1710 of 2024

Applicant :- Raman Sahni
Opposite Party :- State Of U.P. Addl. Chief Secy. Deptt. Of Home Lko
Counsel for Applicant :- Sushil Kumar Singh,Ayush Singh
Counsel for Opposite Party :- G.A.,Abhisar Dev,Prashant Kumar Singh,Rachit Gupta,Sriniwas Bajpai

Hon'ble Shree Prakash Singh,J.

1. Heard Sri Sushil Kumar Singh, learned counsel for the applicant, Sri I.B. Singh, Senior Advocate assisted by Sri Avinash Singh Vishen, Advocate; Sri V.K. Singh, G.A. assisted by Sri Shivendra Shivam Singh Rathore, Sri Aniruddh Kumar Singh, AGA-I assisted by Sri Vaibhav Srivastava, Sri Nirmal Pandey, learned A.G.A. for the State; Sri Gaurav Mehrotra, Advocate, Amicus Curie, assisted by Sri Utsav Misra, Akber Ahmed, Madhur Jhavar, Maria Fatima, Alina, Chinmay Misra, Ravi Singh, Harsh Vardhan Mehrotra, Ramendra Yadav, Shhriya Agarwal, Ahad, Ankit Tripathi (Advocates) and Sri Sriniwas Bajpai, learned counsel for the complainant.

2. The instant bail application has been filed on behalf of the applicant with the prayer to grant him anticipatory bail in Case Crime No. 124 of 2021, under sections-2 and 3 of U.P. Gangster Act P.S.- Kotwali District – Sitapur.

3. At the very outset, the objection regarding the maintainability of the instant application are raised in two folds. One that the applicant has moved this application directly to this Court, which is not maintainable as per the law laid down in case of **Ankit Bharti Vs. State of U.P. anothers 2020 SCC OnLine All 1949** and secondly, in light of the provision of sub-section 6(a)(b) of section 438 of Cr.P.C. as amended by U.P. State legislature namely, U.P. State Amendment 2019, (Uttar Pradesh Amendment) Act 2018 (U.P. Act No. 4 of 2019) (hereinafter referred to as ‘Act 2018, U.P. Act No. 4 of 2019’) the benefit of provision of anticipatory bail is available in the matter pertaining to Gangster Act.

4. For summarising the issue, two questions can be formulated;

'I- Whether, the anticipatory bail application could directly be filed before this Court, under the facts and circumstances of the present case?

II- Whether, in light of the repealment of Criminal Procedure Code, 1973 (hereinafter referred to as ‘Cr.P.C. 1973’) and subsequently, the re-enactment of

BNSS 2023(hereinafter referred to as 'Sanhita 2023'), the Code of Criminal Procedure (Uttar Pradesh Amendment) Act 2018 (U.P. Act No. 4 of 2019) with presidential assent, would stand repealed?

5. So long as the first objection is concerned, the plea has been taken by the applicant for not filing the anticipatory bail application before the Sessions Judge, Sitapur, that the rival, Satyanaran and his family or involved in the business of Brick-lin and Transport and more than fifteen first information reports have been lodged against the applicant and and further the brother-in-law of the applicant namely, Anand in animosity, has also lodged several first information reports against him. It has also been stated that the opponent of the applicant being financially and politically powerful, is pressurizing the police officers and moreover, they are also affecting the judicial proceeding before the trial court. The next ground for directly approaching this Court is that there is threat to life to the applicant as there are acute enmity in between the parties and the applicant is not safe to approach the learned District and Sessions Judge for anticipatory bail. On the aforesaid ground, it is prayed that the anticipatory bail application may directly be entertained by this Court.

6. The counsel for the opposite parties have contradicted and submitted that since, there is no special reason to approach this Court, directly, therefore, the application is liable to be dismissed.

7. The settled law in case of **Ankit Bharti v. State of U.P. and another 2020 SCC OnLine All 1949** laid down the law while answering the reference. The reference answered by the full bench of this Court reads as under:-

"16. The Reference, in that sense, was clearly not merited. However and since we have heard parties not only on the question of maintainability of the Reference but also on the questions formulated for our consideration, we deem it apposite to render our opinion in order to lend a quietus to the doubts which appear to exist.

17. We, therefore, hold that the conclusions as recorded in Vinod Kumar on the meaning to be ascribed to exceptional or special circumstances needs no reconsideration. It must, as was noted there, be left to the concerned Judge to exercise the discretion as vested in him by the statute dependent upon the facts obtaining in a particular case.

18. The second aspect which needs to be emphasized and reiterated is that Vinod Kumar itself while articulating some of the situations in which the High Court may be moved directly had underlined the necessity of those assertions being evidenced and substantiated in fact A bald assertion without requisite particulars was neither suggested as being sufficient to petition the High Court nor does such an assumption flow from that decision. Vinod Kumar has explained that an application of grant of anticipatory bail cannot rest on vague and unsubstantiated allegations or lack of material particulars in support of the threat of imminent arrest. The learned Judge has while dealing with this aspect also referred to the pertinent observations as made by the Supreme Court in Rashmi Rekha Thatol v. State of Orissala Consequently it must be held that some of the circumstances which have been noted by the learned Judge in Vinod Kumar by way of an exemplar of what may constitute special circumstances is not to be read or understood as empty

incantations but must necessarily be supported and established from the material on record. The petition must rest on a strong foundation in support of the imminent threat of arrest as alleged. This aspect has also been duly emphasised by the Constitution Bench in Sushila Agarwal as is evident from the parts extracted above with it being observed that the application must be based "..on concrete facts (and not vague or general allegations)...

19. Viewed in that backdrop it is manifest that it was open for the learned Judge to assess the facts of each case to form an opinion whether special circumstances existed or not entitling the applicant there to approach the High Court directly. Considered from the aforesaid perspective, it is manifest that Question (i) as framed by the learned Judge is really unwarranted. If the learned Judge was of the opinion that the averments made in support of the existence of special circumstances were "not appealing" [as he chooses to describe it or unconvincing, nothing hindered the Court from holding so.

20. We would consequently answer the Reference by holding that the decision in Vinod Kumar does not merit any reconsideration or explanation. As rightly held in that decision, there can be no exhaustive or general exposition of circumstances in which an applicant may be held entitled to approach the High Court directly. The Court would clearly err in attempting to draw a uniform code or dictum that may guide the exercise of discretion vested in the Court under Section 438 of the Criminal Procedure Code. The discretion wisely left unfettered by the Legislature must be recognised as being available to be exercised dependent upon the facts and circumstances of each particular case. The contingencies spelled out in Vinod Kumar as illustrative of special circumstances may, where duly established, constitute a ground to petition the High Court directly.

21. The special circumstances the existence of which have been held to be a sine qua non to the entertainment of an application for anticipatory bail directly by the High Court must be left for the consideration of the Hon'ble Judge before whom the petition is placed and a decision thereon taken bearing in mind the facts and circumstances of that particular cause. However special circumstances must necessarily exist and be established as such before the jurisdiction of the High Court is invoked. The application must rest on a strong foundation in respect of both the apprehension of arrest as well as in justification of the concurrent jurisdiction of the High Court being invoked directly. The factors enumerated in Vinod Kumar including (A) and (B) as constituting special circumstances do not merit any review except to observe that the existence of any particular circumstance must be convincingly established and not rest on vague allegations.

22. In light of the aforesaid, we answer the Reference as follows:-

Question (i) and (iv) clearly do not merit any elucidation for it is for the concerned Judge to assess whether special circumstances do exist in a particular case warranting the jurisdiction of the High Court being invoked directly. We answer Questions (ii) and (iii) in the negative and hold that Vinod Kumar does not merit any reconsideration or further explanation. It would be for the concerned Judge to form an opinion in the facts of each particular case whether special circumstances do exist and stand duly established."

8. While answering the reference, it is held that the entertainment of an application directly by the High Court is for the consideration of the Hon'ble Judge before whom the petition is placed. Meaning thereby, that there is no absolute bar that a person who has apprehension of arrest, cannot approach the High Court directly rather this

will depend on the facts and circumstances of the case, on the basis of which the Hon'ble Judge will apply its discretion and would take decision regarding the maintainability of such anticipatory bail application.

9. So far as the present case is concerned, the detailed reasons are stated in paragraph no. 3 of the anticipatory bail application. It reveals that the applicant is facing more than fifteen first information reports, which are lodged by the same complainant and the specific plea has been taken that the complainant is financially sound and there is tremendous threat to the applicant, in approaching the trial court, as the complainant and his goons are chasing the applicant while doing ‘Gadha Bandi.’

10. Considering the aforesaid peculiar facts and circumstances, particularly the law laid down in Ankit Bharti's Case, the objection regarding the maintainability of the anticipatory bail application on the ground of directly approaching this Court, has no force and thus, the same is rejected.

11. Now, most importantly, the second objection is that the riders of section 6(a)(b) of the Act 2018-(U.P. Act No. 4 of 2019) is still enforceable/applicable after the repealment of Cr.P.C. 1973 and re-enactment of ‘Sanhita 2023.’ The Code of Criminal Procedure was enacted by the parliament in 1973 and the Assembly of State of U.P. came with an amendment and by virtue of the same, the provision of anticipatory bail as provided under section 438 of Cr.P.C. 1973 was suspended, detecting the peculiar circumstances emerges at that point of time, in the State of Uttar Pradesh. After a period of about 40 years, considering the change in the circumstances, the provision of anticipatory bail as provided in the Cr.P.C. 1973, was re-introduced with certain objective/riders, namely, ‘the Act 2018 (U.P. Act No. 4 of 2019).’ The riders which basically envisaged in sub-section 6 of section 438(1) of the Cr.P.C. 1973, is reproduced hereinunder:-

"(6) Provisions of this section shall not be applicable,-

(a) to the offences arising out of,-

(i) the Unlawful Activities (Prevention) Act, 1967;

(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;

(iii) the Official Secret Act, 1923;

(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.

(b) in the offences, in which death sentence can be awarded."

12. Fact remains that with effect from 1.7.2024, the Cr.P.C. 1973 has been repealed and the parliament came with the new legislation in the name of Bharatiya Nagrik Surakhsha Sanhita 2023. Prior to the promulgation of the Sanhita 2023, as per the press release of Ministry of Law and Justice, Government of India, it transpires that there was a vital free legislative consultation for Bharatiya Nyaya Sanhita, Bharatiya Nagrik Surakhsha Sanhita and Bharatiya Sakhsya Adhiniyam. This release contains the information that it is for the purpose to seek suggestions from all stakeholders, 'Governors, Chief Ministers, Lieutenant Governors, Administrators of State and Union Territories' for their suggestions on comprehensive amendment to the

Criminal laws and suggestions were also sought from the Hon'ble Chief Justice of India and the Hon'ble Chief Justices of all High Courts, Bar Councils, Law Universities/Institutions, all Members of Parliament(Loksabha and Rajsabha). Not only this, but a committee was also constituted under the chairmanship of Vice-Chancellor, National Law University(NLU), Delhi to examine and suggest reforms in criminal laws. The committee had also invited suggestions from various quarters including the public and the Government and had also received inputs/suggestions from the **States and Union Territories**, Supreme Court of India, High Courts, Judicial Academies, Law Institutions and Members of Parliament. The committee constituted under the chairmanship of Vice Chancellor, National Law University, Delhi, while considering all the suggestions and with extensive consultation with all stakeholders and in the depth research submitted its report in February, 2022 alongwith its recommendations and thereafter, the Parliament after comprehensive discussion, has passed the 'Sanhita 2023.'

13. The Sanhita 2023 came into force with effect from 1.7.2024 and while deriving the power provided under section 1(3) of the Sanhita 2023, the Central Government issued notification on 1.7.2024. Now, what are saved and are repealed, are provided under section 531 of Sanhita 2023. Section 531 is reproduced as follows:-

"531. Repeal and savings.- (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure. 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force:

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

14. Bare perusal of the provisions of repeal and savings, it reveals that the same is silent over any State amendment made in the erstwhile Cr.P.C. 1973. Now, this would be relevant to have a comparative study, particularly the provisions of anticipatory bail provided in the old Cr.P.C. under section 438 and the amendment by the State Legislature and subsequently, the provisions of sections 482 provided in the Sanhita 2023,' as the question is particularly in reference with the provisions of anticipatory bail though, it goes into the root of the issue regarding the existence of the State amendments, which are made in a Central Laws, particularly the entries provided in the List III of Seventh Schedule of the Constitution of India.

15. The comparative chart highlighting the distinctions between the provisions of anticipatory bail contained under section 438 of erstwhile Cr.P.C. 1973, 'the Act 2018'and section 482 of Sanhita 2023, are given as follows:-

Section 438, Code of Criminal Procedure, 1973	**Section 438, Code of Criminal Procedure (Uttar Pradesh Amendment) Act, 2018 (U.P. Act no. 4 of 2019)**	**Section 482, Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS")**
438. [(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *interalia*, the following factors, namely:- (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and. (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim	**438**.(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail, and that Court may, after taking into consideration, inter alia, the following factors, namely: - i. the nature and gravity of the accusation; ii. the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; the possibility of the applicant to flee from justice; iii. and where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested; iv. either reject the application forthwith or issue an interim order for the grant	**482**. *Direction for grant of bail to person apprehending arrest. - (1) When* any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; *and that Court may, if it thinks fit, direct* that in the event of such arrest, he shall be released on bail. *(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-* (i) a *condition* that the *person* shall make himself available for interrogation by a police officer as and when required; (ii) a *condition* that the *person* shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing

order for the grant of anticipatory bail: Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application. *(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days' notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court, (1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.]* (2) When the High Court or the Court of Session *makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including--* (i) a condition that the	of anticipatory bail: Provided that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended hi such application. (2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under subsection (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely:- i. that the applicant shall make himself available for interrogation by a police officer as and when required; ii. that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; iii. that the applicant shall not leave India without the previous permission of the Court; and iv. such other Conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.	such facts to the Court or to any police officer; (iii) a *condition* that the *person* shall not leave India without the previous permission of the Court; (iv) such other *condition* as may be imposed under sub-section (3) of section *480*, as if the bail were granted under that section. *(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).* *(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bhartiya Nyaya Sanhita, 2023.*

person shall make himself available for interrogation by a police officer as and when required; (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; (iii) a condition that the person shall not leave India without the previous permission of the Court; (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section. (3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in confirmity with the direction of the Court under sub-section (1). *(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860).*	*Explanation*: -The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code. (3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court. (4) On the date indicated in the interim order under sub-section (2), the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order. (5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of such application. (6) Provisions of this section shall not be applicable, - (a) to the offences arising out of, the Unlawful Activities (Prevention) Act, 1967; the Narcotic Drugs and Psychotropic Substances Act, 1985; the Official Secret Act, 1923; the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. (b) in the offences, in which death sentence can awarded be	

	(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session."	

16. It is pertinent to mention that the old provision contained in Section 438 of the erstwhile CrPC, 1973 is completely different from the new provision for anticipatory bail contained in Section 482 of the Sanhita 2023. It is not a case where a repealed provision in erstwhile Section 438 of the CrPC, 1973 has been verbatim retained under the new Section 482 of Sanhita 2023 which may lead to any such conclusion that the state amendments in erstwhile Section 438 of the CrPC, 1973 are to be read in the new Section 482 of Sanhita 2023 as both the aforesaid provisions are different and not exactly the same.

17. Further in the old provision contained in Section 438 of the erstwhile 'Cr.P.C. 1973', there were certain guiding factors which were to be considered while deciding an application seeking anticipatory bail, however, the new provision contained in Section 482 of the Sanhita 2023 deletes the guiding factors which the Hon'ble Courts while hearing the anticipatory bail applications, were to take into account, such as nature and gravity of accusation, criminal antecedents and the possibility of the accused to flee from justice.

18. The mandatory requirement to decide an anticipatory bail application within 30 (thirty) days under the old Section 438(5) of the erstwhile Cr.P.C. 1973, also stands deleted in the new Section 482 of Sanhita 2023. Similarly, the requirement under Section 438(1-A) of the erstwhile CrPC, 1973 which provided that where the Hon'ble Court grants an interim order under sub-section (1) of aforesaid Section 438, it shall forthwith issue a notice being not less than 'seven days', together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard, when the application shall be finally heard by the Hon'ble Court, also stands dispensed under Section 482 of Sanhita 2023.

19. Evidently, under Section 482 of Sanhita 2023, the Hon'ble Courts have been conferred wider powers and discretion for granting anticipatory bail. It is not just the section number but even the text and intent of the provision for grant of anticipatory bail have been changed under the new provision contained in Section 482 of Sanhita 2023.

20. At this juncture, it is to examine that if a Central Legislation is repealed and re-enacted in respective of entries contained in List-III of the 7th Schedule appended to the Constitution of India, wherein, the amendments made by the State Legislatures in the erstwhile enactment, even after receipt of presidential assent, shall also stand impliedly repealed or would have its existence independently.

21. Prior to dwelling into the question of repealment of the State Amendments/State Laws in the erstwhile Central Legislation, the provision of Article 254 is necessarily to be discussed. Article 254 of the Constitution of India reads as under:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.-(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

22. Sub-clause 1 and 2 of Article 254 of the Constitution of India is very clear regarding any inconsistency between the two laws; one by the parliament and next by the legislature of the States and this provision provides that to the extent of repugnancy of any law, enactment by the legislature of the State to the law made by the Parliament would be void.

23. The Crux of the issue in fact is covered with the Proviso of Article 254 which provides that the provision of Article 254 would not prevent the Parliament for enacting any law with respect to **"same subject matter",** the law **adding to, amending, varying or repealing** the law so made by the legislature of the State.

24. Undoubtedly, the 'Act 2018 (Act No. of 2019)' enacted by the State of U.P. for introducing amendment in section 438 of Cr.P.C. 1973 had received assent from the President of India.

25. It is not out of place to mention here that on 16.7.2024, the Government of India, Department of Law and Justice issued a notification in-pursuance of section 8 of General Clauses Act 1897 (hereinafter referred to as 'Act 1897'), which says that any reference of IPC, Cr.P.C. and Evidence Act or any provision thereof, is made in any act made by Parliament or by the Legislature of State; Ordinance; Regulations made under Article 240 of Constitution of India; President's order; Rules Regulations Order or notification made under any Act, Ordinances or Regulations, such reference shall respectively be read. The notification dated 16.7.2024 is reproduced hereinunder:-

"MINISTRY OF LAW AND JUSTICE

(Legislative Department)

NOTIFICATION

New Delhi, the 16th July, 2024,

S.O. 2790(E). *In pursuance of section 8 of the General Clauses Act, 1897 (10 of 1897), the Central Government hereby notifies that where any reference of the Indian Penal Code (45 of 1860), or the Code of Criminal Procedure, 1973 (2 of 1974) or the Indian Evidence Act, 1872 (1 of 1872 or any provisions thereof is made in any-*

(a) Act made by Parliament, or

(b) Act made by the Legislature of any State;

(c) Ordinance,

(d) Regulations made under article 240 of the Constitution;

(e) President's order,

(f) rules, regulations, order or notification made under any Act, Ordinance or Regulation,

for the time being in force, such reference shall respectively be read as the reference of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023) (BNSS) or the Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023) (BSA), and the corresponding provisions of such law shall be construed accordingly.

[F. No. 13(12)/2024-Leg.1]

DIWAKAR SINGH, Addl. Secy. "

26. Section 8 of the 'Act 1897' provides that how to interpret references to repeal enactments. It says that when a provision of a farmer enactment is repealed and re-enacted, any reference to the repealed provision in other enactments or instruments should be interpreted as references to the re-enacted provisions for example any reference of Cr.P.C. in any Act time being prevailed, will be read as reference to Sanhita 2023 and similarly applicable to the other repealed enactments. Section 8 of Act 1897 is reproduced hereinunder:-

"8. Construction of references to repealed enactments. [(1)] [Section 8 renumbered as sub-Section (1) thereof by Act 18 of 1919, Section 2 and Sch.I.] Where this Act, or any [Central Act] [Substituted by A.O. 1937, for " Act of the Governor General-in-Council" .] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.2[[Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted] [Section 8 renumbered as sub-Section (1) thereof and sub-Section (2) inserted by Act 18 of 1919, Section 2 and Sch.I.] with or without modification, any provision of a former enactment, then references in any [Central Act] [Substituted by A.O. 1937, for " Act of the Governor General-in-Council" .] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]"

27. Meaning thereby the section 8 of Act 1897 does not provide that what would be the affect of repealing of a Central Act on a subject of concurrent list, upon which the State amendments are introduced.

28. It is also not out of place to mention here that the notification is having the distinct meaning than any legislation or enactment. As per the reference of the definition of the notification given in the book of PRINCIPALS OF STATUTORY INTERPRETATION by G.P.Singh, the term notification is interpreted primarily through reference to statutory definitions and judicial precedents. All though the book does not provide a stand alone 'dictionary-style' definition, it draws from key sources such as the Act 1897 and relevant case laws. The definition of notification can be drawn from Uttar Pradesh General Clauses Act 1904 (U.P. Act No. I of 1904) is as follows:-

'Notification means a notification published in a official gazette.'

Further, the ‘public notification’ is defined under Article 366(19) of the Constitution of India is as follows:-

“public notification” means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State;

29. In view of the above, a notification is a binding and has the force of law, unless it is struck down by a court or withdrawn by the issuing authority, however, it cannot override or go beyond the scope of parent legislation; meaning thereby, that the notification is not akin to Legislation and therefore, the notification dated 16.7.2024, would have no bearing regarding continuation or enforceability of the State Legislation i.e. ‘the act no. 4 of 2019.’

30. So long as the provision contained under section 24 of the Act 1897 is concerned, the same lays down, where any Central Act or regulation is repealed or re-enacted with or without modification, then unless it is otherwise expressly provided, any appointment, notification, order etc made or issued under the repealed act or regulation, shall in so far as it is not inconsistent with the provision re-enacted, continue to remain in force and shall deemed to have been made under the provision so re-enacted. Section 24 of the Act 1897 is reproduced as under:-

"24. Continuation of orders, etc., issued under enactments repealed and re-enacted.Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [appointment, notification] [Inserted by Act 1 of 1903, Section 3 and Sch.II.], order, scheme, rule, form or bye-law, [made or] [Inserted by Act 1 of 1903, Section 3 and Sch.II.] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] [Inserted by Act 1 of 1903, Section 3 and Sch.II.] issued under the provisions so re-enacted, unless and until it is superseded by any [appointment, notification] [Inserted by Act 1 of 1903, Section 3 and Sch.II.], order, scheme, rule, form or bye-law [made or] [Inserted by Act 17 of 1914, Section 2 and Sch.I.] issued under the provisions so re-enacted [and when any [Central Act] [Inserted by Act 1 of 1903, Section 3 and Sch.II.] or Regulation, which, by a

notification under section 5 or 5-A of the [Scheduled Districts Act, 1874 (14 of 1874)] [Repealed by A.O.1937.] or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.]"

31. It is discernible that in cases of repeal and re-enactment of any Central Act or regulation, the notifications, orders, rules, by-laws made or issued thereunder shall continue to operate and remain in existence unless the same is expressly barred and therefore, it is apparent that the provision of section 24 of Act 1897 will not apply in the cases of 'State amendments', introduced in Central Legislation with respect to entries in List-III of Schedules 7th of Constitution of India.

32. The issue which also invites attention of this Court, is the law laid down in a full bench of this Hon'ble Court in cases of **Mata Sewak Upadhyay Vs. State of U.P. reported in 1995 JIC 1168** and thereafter, approved by the Hon'ble Supreme Court of India, in a judgment reported in **2017 11 SCC 62 (AIRES) RODRIGUES Vs. Viswajeet P-Rane and others**. The matter was involved for adjudication that whether a notification issued under section 10 of the Criminal Law Amendment Act 1932 (hereinafter referred to as 'Act 1932') with reference to previous Cr.P.C 1898, is to be read as having been issued as reference to the Cr.P.C. 1973 or not?

33. When the old Cr.P.C. 1898 was in existence, a parliament enactment named as the Act 1932 was promulgated and section 10 provides the power to the State Government to amend certain provisions in the Cr.P.C. 1898 to make certain offences 'bailable' and non-congnizable' by way of issuing a notification and invoking such power. The State Government issued a notification on 31.7.1989 declaring the offence under section 506 of the I.P.C. 1860 to be cognizable and non-bailable and the same remains in existence till the repealment of the Cr.P.C. 1973, but as soon as the old Cr.P.C. 1898 was repealed and replaced by erstwhile Cr.P.C. 1973, the notification dated 31.7.1989 was challenged before this Court on the ground that power of State Government under section 10 of the Act 1932 can only be exercised in respect of Code of Criminal Procedure 1898 and after the Criminal Procedure Code 1973 came into existence, the power ceases to continue.

34. The validity of the notification issued under section 10 of Act 1932 was examined by the full bench of this Court and it has been held that the Act 1932 is also a Central Legislation which was enacted to supplement the Criminal Law and the same was never repealed by the Cr.P.C. 1973 and thus, the validity of the notification issued under section 10 of the Act 1932 was upheld.

35. Not only the full bench decided this, but the other Hon'ble High Courts have shown their views through the different judgments and there were two contradictory views emerges, which was ultimately decided by the Hon'ble Supreme Court of India in the case of (AIRES) RODRIGUES (Supra) which has ultimately upheld the law laid down in Mata Sewak Upadhyay (Supra). However, the decision of Hon'ble full bench of this Court and the Hon'ble Supreme Court of India is completely on

different footings of fact than the present case, as the Act 1932 was a Central Legislation to supplement the criminal laws and that was altogether an enactment which was not repealed by Cr.P.C. 1973 by replacing the old Cr.P.C. 1898 whereas, the issue in the instant matter is regarding the applicability of the amendments made by the State Legislature of U.P. in the erstwhile Cr.P.C. 1973, after the re-enactment of the Sanhita 2023. In fact the Criminal Law Amendment is not any notification under the Act 1897, but it is an independent legislation by the Parliament and therefore, the same cannot be equated with the notification dated 16.7.2024 issued by the department of Law and Justice, Government of India. As it has been discussed in so many words in the preceding paragraphs that continuation of a notification has no similarity to the continuation of any law passed by the Legislature and it has also been clarified that the notification is not a legislation rather it is issued deriving power from the parent enactment.

36. This Court is also aware that the law laid down in the cases of, **The State Of Bombay vs Pandurang Vinayak Chaphalkar And others 1953 1 SCC 425**, **Harshad S. Mehta & Ors vs The State Of Maharashtra 2001 8 SCC 257, Government Of Andhra Pradesh & Ors vs Smt. P. Laxmi Devi 2008 4 SCC 720 and Harkesh Chand Vs.Krishan Gopal Mehta & Ors 2017 4 SCC 537,** are not applicable, in the facts and circumstance of the present case.

37. This Court has also noticed the judgment and order rendered in the case of **Deepu and Others vs. State of U.P. and Others 2024 SCC OnLine All 4289,** wherein, the coordinate division bench of this Court has summarized the issue regarding the effect of repealment of the IPC and Cr.P.C. and re-enactment of BNS and BNSS. For the reference paragraph no. 16 of the above-said judgment is reproduced hereinunder:-

"On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr. P.C. by BNS and BNSS respectively and same is being mentioned as below:

(1) If an FIR Is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the Investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr. P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr. P.C.;

(iii) The cognizance on the pending Investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding Including enquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgment passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr. P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr. P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr. P.C."

38. It transpires that the issue before the coordinate bench in the aforementioned case was altogether different and the issue herein, is regarding the existence of 'Act 2018 (Act No. 4 of 2019)' after the erstwhile Cr.P.C. 1973 is repealed and the new enactment in a form and name of Sanhita 2023 came into existence therefore, the ratio of the abovesaid judgment would not apply in the present case.

39. Now, coming to the crux that time and again, the State Legislatures including the State of U.P. introduced amendments in the erstwhile Cr.P.C. 1973 and particularly the State of U.P. by virtue of promulgation of the 'Act No. 4 of 2019', introduced certain amendments in section 438 of the Cr.P.C. 1973. After the repealment of Cr.P.C. 1973 and the new enactment named as Sanhita 2023, the applicability of State amendments in the erstwhile Cr.P.C. 1973 is questioned. Undoubtedly, any State law contrary to the parliamentary enactment would be void as per the provisions provided under Article 254 of the Constitution of India, but so far as the present case is concerned, a conspicuous issue, which is not akin to the issue of repugnancy, that the subsequent law made by the parliament if expressly, does not repeal a State law, whether, the State law will be impliedly repealed, in respect of the "Same Matter".

40. In this regard, I may refer the judgment rendered by Constitution Bench of the Hon'ble Supreme Court of India in case of **Zaverbhai Amaidas vs. State of Bombay 1954 2 SCC 345** wherein, the Apex Court, dealing with the principals of implied repealment of the State law upon enforcement of the subsequent law by the Parliament in respect of the same matter has held in paragraph nos. 13, 14 and 16 as follows:-

"13. In the present case, these was no express repeal of the Bombay Act by Act 52 of 1950 in terms of the proviso to Article 254(2). Then the only question to be decided is whether the amendments made to the Essential Supplies (Temporary Powers) Act by the Central Legislature in 1948, 1949 and 1950 are "further legislation" falling within Section 107(2) of the Government of India Act or "law with respect to the same matter" falling within Article 254(2). The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter". If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Article 254(2) will have no application. The principle embodied in Section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.

14. Considering the matter from this standpoint, the first question to be asked is, what is the subject-matter of Bombay Act 36 of 1947? The Preamble recites that it was "to provide for the enhancement of penalties for contravention of orders made under the Essential Supplies (Temporary Powers) Act, 1946". Then the next question is, what is the scope of the subsequent legislation in 1948, 1949 and 1950? As the offence for which the appellant has been convicted was committed on 6-4-1951, it would be sufficient for the purpose of the present appeal to consider the effect of Act 52 of 1950, which was in force on that date. By that Act, Section 7(1) of the Essential Supplies (Temporary Powers) Act as passed in 1946 and as amended in 1948 and 1949 was repealed, and in its place, a new section was substituted. The scheme of that section is that for purposes of punishment, offences under the Act are grouped under three categories—those relating to cotton textiles, those relating to foodstuffs, and those relating to essential commodities other than textiles or foodstuffs. The punishments to be imposed in the several categories are separately specified. With reference to foodstuffs, the punishment that could be awarded when the offence consists in possession of foodgrains exceeding twice the maximum prescribed, is imprisonment for a term which may extend to seven years, with further provisions for fine and forfeiture of the commodities. In other cases, there is the lesser punishment of imprisonment, which may extend to three years. Section 7 is thus a comprehensive code covering the entire field of punishment for offences under the Act, graded according to the commodities and to the character of the offence. The subject of enhanced punishment that is dealt with in Act 36 of 1947 is also comprised in Act 52 of 1950, the same being limited to the case of hoarding of foodgrains. We are, therefore, entirely in agreement with the opinion of Chagla, C.J, and Chainani, J. that Act 52 of 1950 is a legislation in respect of the same matter as Act 36 of 1947.

16. It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that Section 2 of Bombay Act 36 of 1947 cannot prevail as against Section 7 of Essential Supplies (Temporary Powers) Act 24 of 1946 as amended by Act 52 of 1950."

41. The issue before the Apex Court, in the above-said case was that the essential supplies(temporary powers) Act 24 of 1946 (Act 1946) was enacted by the Central Legislature by virtue of the powers conferred on it by 9 and 10 George VI, Chapter 39 and it applied to whole of British India. Section 7(1) envisaged the provision of punishment for violation of orders issued under the Act 1946, however, the State of Bombay considered that the maximum punishment of three year imprisonment provided in above section 7 of Act 1946 is not adequate for the offences and therefore, with object of enhancing the punishment, enacted, the Act No. 36 of 1947 (section 2 of Act 1947). The subject matter of Act 36 of 1947 came within the concurrent list and therefore, the Bombay Government obtained the assent of the Governor General and it came into force on 25.11.1947 and thereafter, in year 1948 there was an amendment in the name of essential supplies (Temporary Powers Act), whereby the proviso to section 7(1) was repealed and a new proviso was substituted.

Further in the year 1949 section 7 (1) was repealed and a new clause was substituted and subsequent thereto Central Act 52 of 1950 was brought in force under which the old section 7 was repealed and a new section enacted. Consequently, there was no express a repeal of the Bombay Act 36 of 1947 by Central Act 52 of 1950, in terms of the proviso to Article 254(2) however, the Supreme Court of India held that section 2 of Bombay Act 36 of 1947 cannot prevail as against section 7 of Essential Supplies(Temporary Powers) Act 24 of 1946 as amended by Act 52 of 1950.

42. The above-said law has been reiterated in the case of **T. Barai vs Henry Ah Hoe And Another 1983 1 SCC 177** wherein, the issue before the Apex Court was that whether the enforcement of section 16-A of the Prevention of Food and Adulteration Act 1954 as inserted by the Prevention of Food and Adulteration Amendment Act 1976(Central Amendment Act would impliedly repeal the Prevention of Adulteration of Food Drugs and Cosmetics, (West Bengal Amendment) Act 1976 and resultantly, the pending proceedings would be governed by the procedure under section 16-A as inserted by the Central Amendment Act 34 of 1976. The Hon'ble Supreme Court of India reiterating the verdict in case of Zaverbhai Amaidas(Supra), held that even if the Central Amendment Act had not expressly repealed the West Bengal Amendment Act, it would be still be repealed by the necessary implication of the proviso of Article 254(2) of the Constitution of India. The relevant extract of the judgment rendered in the case of T. Barai(Supra) is quoted as under:-

"15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is "repugnant" to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception viz. that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the "same matter". Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such

repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together, e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1). That being so, when Parliament stepped in and enacted the Central Amendment Act, it being a later law made by Parliament "with respect to the same matter", the West Bengal Amendment Act stood impliedly repealed.

16. The case of Zaverbhai Amaidas v. State of Bombay [AIR 1954 SC 752: (1955) 1 SCR 799: 1954 SCJ 851: 1954 Cri LJ 1822] illustrates the application of the proviso to Article 254(2). The Essential Supplies (Temporary Powers) Act, 1946 was enacted by the Central legislature, Section 7 of which provided for penalties for contravention of orders made under Section 3 of the Act. The provision with regard to the penalties was that if any person contravenes any order made under Section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. The then Province of Bombay felt that the maximum punishment of three years' imprisonment provided by Section 7 of the Act was not adequate for offences under the Act and with the object of enhancing the punishment provided therein, enacted Act 36 of 1947. By Section 2 of that Act it was provided that notwithstanding anything contained in the Essential Supplies (Temporary Powers) Act, 1946, whoever contravenes an order made under Section 3 of the Act shall be punishable for a term which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to fine. The Bombay Act thus increased the sentence to imprisonment for seven years and also made it obligatory to impose a sentence of fine, and further provided for a minimum sentence of six months and the court was bound to impose a minimum sentence except for reasons to be recorded in writing. The Act having been reserved for the assent of the Governor-General and received his assent under Section 107(2) of the Government of India Act, 1935, came into operation in the Province of Bombay notwithstanding the repugnancy. Subsequently, the Essential Supplies (Temporary Powers) Act, 1946 underwent substantial alterations and was finally recast by the Essential Supplies (Temporary Powers) Amendment Act, 1950. The amendment made in 1950 substituted a new section in place of Section 7 of the Act. The scheme of the new section was that for purposes of punishment, offences under the Act were grouped under three categories and the punishment to be imposed in the several categories were separately specified. Section 7 was thus a comprehensive Code covering the entire field of punishment for offences under the Act graded according to the commodity and character of the offence. It was held by this Court that the Bombay Act was impliedly repealed by Section 7 of the Essential Supplies (Temporary Powers) Amendment Act, 1950."

43. It has further been reiterated in a judgment rendered in case of **Innoventive Industries Ltd. vs. ICICI Bank 2017 SCR page 33** and there also, explaining the principles 'implied repeal,' it is held that if the subject matter of the State Legislation or a part thereof is identical with that of the Parliament Legislation, then the State Legislation will be deemed to be impliedly repugnant to the Parliamentary Legislation. For ready reference paragraph nos. vi, viii, ix and x are reproduced as follows:-

"vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two Or more

provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation,, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way toany subsequent Parliamentary law which adds to, amends, (varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254 (2) proviso."

(emphasis supplied)

44. In most recent judgment, of the Ho'ble Apex Court passed in **Special Leave Petition (C) No. 16460 of 2023, Naeem Bano@Gaindo vs. Mohammad Rahees and Anr.,** it has been held in the event of amending a provision by the parliament, subsequent to a State Legislature's amendment regarding the provision of law found in the concurrent list, the State Law must give way to any subsequent parliament law which adds to, amends, varies or repeals the law made by the legislature of the State, meaning thereby, such law of the State Government, on the same subject matter would pale into insignificance, owing to implied repugnancy. Paragraph nos. 9.5 and 9.6 of the judgment are quoted as follows:-

"9.5 Thus, the subject "transfer of property other than agricultural land" is one which falls within the scope and ambit of Entry 6, List III as noted above and both the Parliament and the State Legislatures have legislative competence to make laws on the said subject including enacting an amendment to any provision of the T.P. Act. If an amendment is made to a provision of T.P. Act such as Section 106 in the instant case, by a State Legislature and the mandate of sub-clause (2) of Article 254 is complied with by the State, then any inconsistency between the State law and the Parliamentary law would result in State law prevailing in the State.

9.6 In the instant case, it is noted that the Legislature of State of U.P. amended Section 106 by amendment dated 30.11.1954 by which the words "fifteen days' notice" in Section 106 of the T.P. Act were substituted by "thirty days' notice" and the substituted clause prevailed in the State of U.P. However, in view of the amendment made to Section 106 by the Parliament by Act 3 of 2003 with effect from 31.12.2002, the substitution in Section 106 made by the Legislature of the State of U.P. is impliedly repealed and Section 106 as amended with effect from 31.12.2002 by the Parliament, would apply. This is on the strength of the proviso to clause (2) of Article 254 of the Constitution. This position could be better understood by referring to Article 254 of the Constitution and the relevant judicial dicta on the said Article as discussed above. The proviso to clause (2) of Article 254 of the Constitution squarely applies in the instant case."

45. Infact, the transfer of property act 1882, which is a central legislation on the subject 'transfer of property other than agricultural land' under the concurrent list, the legislature of State of U.P. had brought an amendment on 30.11.1954, in section 106, whereby, the '15 days notice' period for termination of lease was changed to the '30 days' and as such, section 106 as amended by the State Legislature of U.P., prevailed in the State, but subsequently, parliament substituted section 106 of the transfer of property act 1882 with effect from 31.12.2002 amending the aforesaid provision, completely, thus, question cropped up as to whether the earlier amendment made to section 106 by the U.P. State Legislature with effect from 30.11.1954, would be insignificant on account of the principal of implied repeal.

46. It is culled out from the above-said discussions that when a conflict arises regarding the applicability of provisions of parliamentary law and State law over the same subject matter then, it is apt to say that the power of a legislative body to repeal a law is co-extensive with its power to enact the law and the effect of repealing of the statue, is to obliterate completely from the records of the parliament, as if, it was never in existence. If a lesilature is repealing any act, the same is well within the power to save any right, privilege or remedy provided under the repealed statute. In fact, this balances with the constitutional principle of 'legislative supremacy' and 'coherence.' Further, the constitutional mandates of cooperative federalism and rule of law is also one of the beacon of light to come to the conclusion regarding the existence and applicability of the law enacted by the parliament and the state legislature.

47. So far as the present matter is that the Cr.P.C. 1973 has been repealed and there is no existence of the Cr.P.C. 1973 and the State amendments made in the erstwhile Cr.P.C. 1973 does not find place in the saving clause of newly enacted Sanhita 2023. This Court is also noticed the stand of the State Government as is said in the counter affidavit that the State of U.P. has proceeded with State amendment regarding the anticipatory bail in Sanhita 2023 and the draft amendment is also prepared, which clearly shows that the State Government is also aware of that after the repealment of the earlier Cr.P.C. 1973, the amendment by way of Act No. 4 of 2019 is not enforceable.

48. In view of the aforesaid submission and discussions, I am of the considered opinion that the subsequent law made by the Parliament though, does not expressly repeal the State law, nevertheless, the State Law will be impliedly repealed and that shall give way to any subsequent parliament law in respect with **"same matter"** which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of operation of proviso of Article 254 of the Constitution of India.

49. Consequently, the Code of Criminal Procedure (Uttar Pradesh Amendment) Act 2018 (U.P. Act No. 4 of 2019) passed by the State legislature would stand impliedly repealed.

50. Resultantly, the issue no. II framed by this Court is being decided in 'positive'. Thus, preliminary objection raised by the opposite party is hereby rejected.

51. Needless to say that it is always open to the State Legislature to bring State amendment in the newly enacted Sanhita 2023.

52. It is also clarified that rest of the issues are open for consideration.

53. List this matter before appropriate Court, in the first week of July, 2025.

54. The interim order granted earlier, shall remain continue till then.

55. Departing from the order, this Court appreciates the relentless, indispensable and efficient attempt of the amicus curiae, Sri Gaurav Mehrotra, to assist this Court.

Order Date :- 28.5.2025
Mayank