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BAIL JURISPRUDENCE IN INDIA: DEVELOPMENTS IN THE RECENT PAST, WITH STATUTORY LAWS AND CONSTITUTIONAL SCHEMES

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RESEARCH METHODOLOGY

Statement of research problem:

Inclusion of fundamental rights in the constitutions of both the nations and its backdrop?How are fundamental rights enforced by judiciary in India and USA?
How judicial interpretation of fundamental rights in different scenarios has shaped themeaning of these rights in the both the countries?
What are the similarities and differences between the fundamental rights of the twonations?

Aims and Objectives:

The aim of the project is to present a detailed study of the topic **"BAIL JURISPRUDENCE IN INDIA: DEVELOPMENTS IN THE RECENT PAST, WITH STATUTORY LAWS AND CONSTITUTIONAL SCHEMES"** forming a concrete informative capsule of the same. To understand the difference and similarities between the fundamental rights of the twonations and their implementation by judiciary through judicial interpretation.

Data Collection:

The following secondary sources of data have been used in the project-

- Websites
- Case Laws
- Articles
- News letter
- Case analysis
- interviews
- Published works (research papers)
- Books

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- Unpublished works etc.

Method of Writing and Mode of Citation

The method of writing followed in the course of this research project is primarily analytical and doctrinal. This research project majorly focuses on the analysis of the given title as well includes comparative analysis with a different nation. Citation is done according to the ILI standard.

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ABSTRACT

Bail jurisprudence in India has undergone significant evolution in recent years, influenced by both statutory amendments and constitutional interpretations. This abstract provides an overview of the developments in bail jurisprudence, highlighting key legislative changes and judicial interpretations within the Indian legal framework.

In the realm of statutory laws, the Criminal Procedure Code (CrPC) of 1973 stands as the primary legislation governing bail provisions in India. Over the years, amendments and judicial interpretations have refined the application of bail principles, balancing the interests of the accused with those of society and the state. The 2018 amendment to the CrPC introduced Section 438A, emphasizing the need for anticipatory bail applicants to satisfy certain conditions, further delineating the scope of bail eligibility.

Constitutional schemes, particularly the fundamental rights enshrined in the Indian Constitution, play a pivotal role in shaping bail jurisprudence. The right to personal liberty under Article 21 forms the bedrock for bail considerations, emphasizing the presumption of innocence until proven guilty. The judiciary, through landmark decisions, has reiterated the significance of this fundamental right in granting bail, emphasizing that deprivation of liberty should be the exception rather than the rule.

Recent judicial pronouncements have reinforced the principles of bail jurisprudence, emphasizing individual circumstances, the nature of the offense, the likelihood of absconding or tampering with evidence, and the interest of justice. The Supreme Court of India, in various cases, has underscored the importance of balancing the rights of the accused with the interests of the society, ensuring that bail is not unduly denied or delayed.

Moreover, the judiciary has increasingly recognized the imperative of speedy trial as an intrinsic component of the right to bail. Delays in trial proceedings, often resulting in prolonged incarceration without conviction, have been addressed through judicial directives and legislative reforms, seeking to expedite the dispensation of justice and mitigate the adverse impact on the rights of the accused.

In conclusion, the recent developments in bail jurisprudence in India reflect a nuanced approach that considers both statutory provisions and constitutional imperatives. While upholding the principles of justice and fairness, the evolving legal landscape strives to strike a delicate balance between individual liberties and societal interests, ensuring that the grant of bail remains a safeguard against unjust deprivation of liberty.

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INTRODUCTION

I start off by explaining and expounding on the old adage- "Bail is the rule and Jail is the exception" by the great Justice VR Krishna Iyer of the Apex Court of India. I have given numerous instances where the courts have followed this so-called path, and have protected the life and liberty of citizens. When I speak in favor of the doctrine, I certainly understand the balances that are required to be maintained while granting bail to a person. In short, only when the custody or detention of alleged persons/accused is absolutely essential, should they be kept in remand or behind bars. Otherwise, investigations can continue with the protection of the liberty of the persons going hand in hand. The famous rule by the great judge was in State of Rajasthan vs. Balchand's Case (1978, SC).

Under our constitution, any person who is detained, has to be produced before a magistrate within a period of 24 hours. If this condition is not met, the detention as a result of the arrest becomes illegal. It vitiates the fundamental rights of the person/s under several provisions of the Constitution, particularly the life and liberty clause under Article 21. Illegal detentions have long been deprecated by the Judges of our Constitutional Courts. Unfortunately, unlike the English System where citizens can sue the Police having got their detentions proved illegal, Indian System doesn't really have anything to offer in guise of a vindication. Article 20 speaks that no person can arrested without flouting of a law that is in force at a point of time. The Supreme Court of India in Arunesh Kumar vs. State of Bihar (1981, SC) has mandated certain checks and balances before a person is arrested.

Our courts have reiterated from time to time about the essence of proper legal representation before a Court. 22(1) of the Constitution mandates that as soon the person is arrested, he should be informed about his ground of arrest and the legal remedies that he has. Article 39(A) mandates the State Governments to make sure that proper legal representation is given to people who require to face the prosecution. Other similar provisions are 304 of CrPC and Order 33 Rule 17 of CPC.

In one of the chapters in this dissertation, I explain about the various types of bails- Anticipatory under S. 438 and Regular under Ss. 437 and 439 of the Code of Criminal Procedure, 1973. I have also explained in length about Default, Transit and Zero bails.

Recently, Justice Rohinton Nariman of the Supreme Court, spoke about Preventive Detention as a social evil through one of his judgments. I explain as how the prosecution cites vague and illogical reasons for mechanical remand of an accused to Police or Judicial custody on his/her first being produced in Court. I have explained at best about the Constitutional schemes from

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where the

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reasoning of ‘bail’ flows.

There is a huge amount of ‘discretion’ and ‘interpretation’ that goes into deciding matters pertaining to Bail. Frankly speaking, the record of the lower courts in India has been far from satisfactory when it comes to protecting the liberties of citizens from being trampled upon by the States. The conditions of under trials in our country is enormous. Sections 436A speaks about the maximum period for which an under trial can be kept in jail. I have taken and elucidated several examples of the approach taken by courts in deciding the recent bails applications which were widely reported, like that of Student Activists, Professors, Poets, and others.

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CHAPTER 1: BAIL AS A MATTER OF RIGHT, AND JAIL AS AN EXCEPTION

‘The principle of "Bail is the norm, and imprisonment is the exception" originated from the landmark case "State of Rajasthan v. Balchand alias Baliya in 1978," where the Supreme Court established it. This principle is rooted in various constitutional rights, notably Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. Detaining an individual encroaches upon this fundamental right. The primary aim of detention is to ensure the smooth progress of legal proceedings by ensuring the accused's availability for trial without inconvenience. Therefore, if there's assurance that the accused will appear for trial as required, detention becomes unnecessary. As a result, it was believed that the rules outlined in the Criminal Procedure Code, 1973 (CrPC) concerning the apprehension of an individual should be understood in a manner that prioritizes minimizing the unnecessary detention of people. One specific entitlement within this framework is commonly referred to as 'Bail.' This legal concept entails temporarily releasing an individual held in custody pending trial for a criminal offense. The term 'Bail' originates from the French verb 'Bailer,' which translates to 'to give' or 'to deliver.' "Bail is provided with the aim of ensuring the accused's attendance at trial without causing unnecessary inconvenience, which is the primary purpose of arrest. Yet, if the accused's presence can be ensured without detention, it would be unfair to infringe upon their right to liberty. Hence, bail serves as a guarantee for appearing in court in exchange for release.".

ABANDONMENT OF RIGHTS:

The gravity of offence was immaterial for grant of bail. “Whether it’s a significant crime, whether it is the cash laundering Act or the other law ?, the principles to be followed in grant of bail are one and therefore the same as per the Criminal Procedure Code.” Failure to adhere to these principles could pose a significant threat to the rights of the accused. It was imperative that a three-judge Bench of the Supreme Court established clear guidelines for all courts to ensure that the rights of the accused are respected and to send a message to trial courts. The application of the Reformative theory to punishment principles entails striking a balance between two theories: deterrence and punishment. This balance aims to reform the accused while also keeping them separate from hardened criminals in prisons, which are often considered breeding grounds for further criminal behavior.

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Moreover, as Human Rights activism gains momentum, maintaining a balance between an individual's freedom and the societal interest has become paramount. Hence, unless there are compelling reasons such as the risk of the accused absconding or tampering with evidence or influencing witnesses, detaining the accused violates their fundamental right to liberty without justification. Therefore, courts ensure that individuals are not detained unless the administration of justice would be compromised by not making an arrest.

"ARNESH KUMAR V. STATE OF BIHAR":

A significant ruling was issued by the Supreme Court, enhancing oversight over police actions both prior to and following an arrest. In its directive to all State Governments, the Court emphasized the importance of police officers adhering to a checklist and thoroughly examining facts, conducting preliminary investigations before making arrests.

"Arrests bring humiliation, curtail freedom, and casts scars forever. Lawmakers know it so also the police. There is a battle between the law makers and police and it seems that the police have not learned its lesson: the lesson implicitand embodied in Cr.P.C."

In the "Munawar vs. State of Madhya Pradesh" case, also known as the Comedian Munawwar Farooqui Case, the Supreme Court granted bail to him because the investigative authorities didn't follow the rules laid out in the "Arnesh Kumar Case". This highlights how important it is to respect everyone's freedom and shows that nobody should have the power to take away someone else's liberty.

"EMERGING TREND: NOT BAIL, JAIL IS THE NORM":

The "right to life and personal liberty" is one of the most essential fundamental rights enshrined in our constitution under Article 21. The principles of natural justice serve as the foundation for Part III of the Indian Constitution. In general, no statute includes a clause requiring adjudicating authorities to follow natural justice principles. The question then arises as to whether the adjudicating authority is bound by natural justice standards. "The law is well settled following Byle J.'s forceful pronouncement in Cooper v. Wands worth Board of Works."

The principle set forth in the case mentioned above is acknowledged in India as well. In the well-known "A.K. Kraipak v. Union of India" case, Justice Hedge, speaking on behalf of the Supreme Court, stated:

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent

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miscarriage of justice. These rules can operate only in areas and covered by any law validly made. In other words, they do not supplant the law of the land but supplement it."

On the contrary, the jurisprudence surrounding bail in India also relies on the principles of natural justice and personal freedom. In the renowned case of 'Narasimhulu v. Public Prosecutor, Justice Krishna Iyer' remarked that "The subject of bail belongs to the blurred are of the criminal justice system and largely hinges on the hunch on the bench, otherwise called judicial discretion."

It's crucial that discretion be used judiciously, taking into account the interests of both justice and the personal liberty of individuals. It should not be arbitrary, ambiguous, or whimsical, but rather lawful and consistent.

The growing trend of arbitrary discretion has posed a significant obstacle to achieving justice. In instances involving prominent figures, bail is often granted without proper consideration of the gravity of the case. Conversely, investigating agencies sometimes arrest or detain individuals without conducting thorough preliminary investigations, seemingly acting at the behest of political authorities. For instance, it includes the unlawful detention of figures like "Adv. Sudha Bhardwaj, IPS Sanjiv Bhatt, Dr. Kafeel, Comedian Munawar Farooqui, and others".

Some experts have consistently stressed the significant influence of mass media on the human psyche. Recently, news channels fixated on TRP ratings, conducting media trials alongside judicial proceedings, which could potentially sway the opinions of judges. Due to all this or some threat or in pressure, the whole Bail Jurisprudence is now changed in India. Judges can discuss the merits of the case in the bail pleas which is somehow against the fair trial and criminal jurisprudence. District and Sessions Courts rejected the bail application, if media already pronounced the judgment and held the accused guilty, which we were seen in the case of Bollywood Actress Rhea Chakraboty and now in the case of Comedian Munawar Farooqui, then how will the justice be done and how the judiciary protects the rights of an individual.

Nowadays, the prosecution agencies unnecessarily oppose the bail application of the accused on the ground that his presence in custody is necessary for making a search and recovery of documents in his/her presence. However, The Supreme Court in Harsh Sawhney v. Union Territory, Chandigarh, rejected the plea of the prosecution on this ground and directed that appellant shall appear for the interrogation by the police whenever reasonably required, subject to his/her right under Art. 20(3) of the Constitution.

Now it is the need of the time that the judicial authorities interpret the bail laws in a very systematic

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and effective manner by which no govt. can infringes the right of the personal liberty of any individual.

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CHAPTER 2: BAIL AS A MATTER OF CONSTITUTIONAL RIGHT, AND DEFAULT BAIL AS AN INDEFEASIBLE RIGHT

The Supreme Court has held that the right to apply for bail is an "individual right" implicit in the Constitution. It is there in Article 21, and at several other places, as per the repeated interpretations of Constitutional Courts in India.

"The right of an accused, an under trial prisoner or a convicted person awaiting appeal court's verdict to seek bail on suspension of sentence is recognized in Sections 439, 438 and 389 of the Code of Criminal Procedure," a judgment by a Bench of Justices L. Nageswara Rao andAniruddha Bose said.

"If there is a blanket ban on listing of these applications, even for offences with lesser degree of punishment, that would effectively block access for seekers of liberty to apply for bail and in substance suspend the fundamental rights of individuals in or apprehending detention. Such an order also has the effect of temporarily eclipsing statutory provisions."

'SECTION 167(2) of the Criminal Procedure Code, 1973 empowers judicial magistrates to authorize custody of an accused person in cases wherein investigation cannot be completed in twenty-four hours. It provides for the maximum period of custody that can be authorized. It further contains a mandate that if the investigation is not completed within the stipulated maximum period, the accused is to be released on bail whatever may be the nature of accusation against him. In Natbar Parinda, The Supreme Court noted that the accused has a right to be released on bail under this provision "even in serious and ghastly types of crimes.

The proviso to section 167(2) does not lay down any time limit for completion of investigation'. In substance it deals with the detention of the accused person in custody" during proviso is that the accused is not period of 90/60 days as may be applicable accused is being detained. If the investigation that period, on the expiry of such on bail if he is prepared to and accused under the proviso is that bail and to actually furnish bail release on bail. Under the legislative magistrate has no authority to detain statutory period of 90/60 days. Once investigation is not completed, the detention of accused in custody. To forthwith pass an order releasing such an order the magistrate has Once such an order is passed, the so long as he does not furnish bail". The Code makes this position clear is filed on completion of investigation accused would be detained in custody section 209 or 309 of the Code detention in custody under section cases wherein accused is released Code.

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Despite the unambiguous requirement of "section 167(2)", problems and issues have arisen, resulting in a variety of case law that is sometimes contradictory and unclear. This note attempts to analyze case law in order to reach a correct interpretation of the requirements.

The regulations outlined in the Code of Criminal Procedure, 1973, oversee the investigation, inquiry, and trial of all offenses under the Indian Penal Code. Section 4(2) of this Code extends its applicability to other statutes, stipulating that infractions under "any other law" must be handled according to its provisions. However, this is contingent upon any existing legislation governing the procedure or location of investigation, inquiry, trial, or other actions concerning such offenses. Consequently, unless specified otherwise by a specific law, section 167 applies even when an individual is arrested for an offense under a specialized statute. Section 49 of the Prevention of Terrorism Act, 2002 (POTA) affirms the application of section 167 of the Code in cases involving offenses punishable under the said Act, subject to the amendments specified therein.

These revisions, while pertinent to the ongoing discussion, necessitate that inquiries be concluded within ninety days for all types of violations under POTA. Furthermore, the special court empowered by the Act is permitted to prolong this period to 180 days. Consequently, Section 167(2) of the Code should be interpreted in light of these amendments. If the indictment is not filed within the initial ninety days or within the extended period, the defendant is entitled to bail under Section 167(2). In the case of Deepak Mcihajanu, the Apex Court determined that the provisions of Section 167 of the Code would be applicable to foreign exchange violations under the Foreign Exchange Regulation Act of 1973 and the Customs Act of 1962. In Thamisharashi, the APEXCourt ruled that Section 167(2) of the Code would apply to violations under the Narcotic Drugs and Psychotropic Substances Act of 1985. The court ruled that in light of section 167(2) of the Code, which indicates the opposing intention, such a judgement might be drawn.

BAIL GRANTED NOT TO BE CANCELLED ON COMPLETION OF INVESTIGATION

Whether bail granted under section on completion of investigation and Jivanlal, the Supreme Court (during vacation) held that an order to section 167(2) may appropriately the court further observed: The accused does not possess any special privilege to remain out on bail. If the investigation reveals that the accused has committed a serious offense and a charge sheet is submitted, the bail granted under proviso (a) of Section 167(2) can be revoked. Following the precedent set by Rajnikant, the full bench of the Gujarat High Court in Shardulbhai asserted that once the "defect is rectified by filing the charge sheet," the prosecution may move to revoke bail on the grounds

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that there are reasonable suspicions that the accused has committed a non-bailable offense and that

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it is essential to arrest them and remand them into custody. However, “the ruling in Rajnikant concerning the revocation of bail after the filing of the charge sheet was overturned by the Apex Court in Asia Babalal”.

The Supreme Court ruled that an order of bail under section 167(2) could only be cancelled for reasons that are valid for cancelling bail issued under Chapter XXXIII of the Code. The court stated that once the accused has been freed on bail, his liberty cannot be taken easily, i.e. on the basis that the prosecution has later produced a charge sheet. Such a viewpoint would engender complacency in the investigative agency, undermining the exact aim of fostering the sense of urgency required by Sections 57 and 167(2).

SITUATION FOLLOWING THE SUBMISSION OF THE CHARGESHEET:

It is evident that if the investigation is concluded and charges are filed before the maximum time of imprisonment expires, the accused's right to be released on bail is terminated. What is the scenario if a charge sheet is filed after the required term has expired and the accused has not been freed on bail in the meantime. In such scenarios, is the accused entitled to automatic bail? Instances have arisen where despite the investigation not being finalized within the stipulated timeframe, the accused has not been granted automatic bail. Holding the accused in custody under these circumstances would contravene the statutory provision prohibiting detention beyond the specified 90/60 days. Such situations can arise in courts nationwide. While the Act does not mandate the accused to file an application, no directive for automatic bail is issued until such an application is made. Due to this it is often assumed that in order to be released on bail under section 167(2), the accused must file an application. Court decisions are based on the notion that the accused must 'avail' his right by applying for bail.

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CHAPTER 3: JUDICIAL DISCRETION IN BAIL MATTERS

When denied bail, an individual forfeits their personal freedom, a fundamental right cherished under our constitutional framework, as enshrined in articles 19, 21, and 22. It is a significant trust that must be exercised judicially and with a strong concern for the individual and community's best interests. After all, an accused or convict's personal liberty, which is fundamental in nature, can only be lawfully eclipsed by a procedure established by law as provided by Judicial discretion is never arbitrary and always operates in defined and foreseeable channels wherever it appears to be conferred in unlimited terms by a statute. It is an appeal to the judge's conscience. The discretion must be employed in line with established legal principles, rather than in opposition to them. With this background in mind, an attempt has been made to investigate the scope of judicial authority in bail proceedings, including anticipatory bail. In this context, an attempt has also been made to explain the 'scope and ambit' of bail rules using historical evidence and the numerous court interpretations provided in this regard.

The unavoidable conclusion that can be drawn from the judicial decisions described above is that when exercising judicial discretion in bail issues, courts should be mindful of the goal of keeping a person in judicial custody pending trial or the disposition of an appeal. The accused individual should be admitted on bail whenever possible, unless there are compelling reasons to believe that he or she will not present at the trial. It is thus argued that bail should not be denied as a punishment, but rather as a means of ensuring an accused's appearance at trial in order to take judgement and serve sentence if the court so orders. There is little doubt that the liberty of citizens should be prioritized in all situations, and judicial discretion should always be associated with constitutional ideals.

But our bail system at present is highly unsatisfactory, and most implausible in practice. It exhibits a focus on property and erroneously assumes that the fear of financial loss is the sole deterrent against evading justice. The new code persists in adopting the outdated approach of its predecessor, requiring a monetary component even when an accused is released on personal bond. Courts routinely demand that the accused provide sureties and demonstrate their financial capability to cover the bail amount if the accused fails to appear to face the charges.

This system of bail is very discriminatory where the poor are pricedout of their liberty in the justice market. In theory, magistrates have broad latitude in determining the amount of bond, but in practice, bail is determined only on the seriousness of the charge, with no regard for the individual's financial situation, which appears to be the most important factor. It is high time for

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our Parliament to acknowledge that the fear of monetary loss is not the sole deterrent against fleeing from justice. There exist other equally effective deterrents, such as family connections, community ties, job stability, and involvement in stable organizations. These factors should be the primary considerations in granting bail, and the accused should be held responsible in appropriate cases without being bound by financial obligations for their release on bail.

Even under the current legal framework, courts are compelled to adhere to the outdated notion that pretrial release can only be secured through bail with sureties. This concept is antiquated and has proven to be more harmful than beneficial. There is an urgent need for a clear provision in the Code of Criminal Procedure allowing under-trial prisoners to be released on their own bond, without any obligations or sureties. The flaw in our bail system lies in the fact that financially disadvantaged accused individuals must rely on middlemen and professional sureties for bail or face pretrial detention.

Both of these implications cause significant suffering for the impoverished. In one example, the poor is accused of his money by touts and professional sureties, and he sometimes incurs debts to pay them in order to secure his release; in another, he is detained without trial or conviction. Doesn't this sound like a culture of bonded labour? But we are still holding to it. Ours is a socialist republic with social justice as its signature, and Parliament would be wise to consider whether it would not be more consistent with the ethos of our Constitution if, rather than financial surety, other relevant considerations as listed above should be used to determine bail. The deprivation of liberty only because of financial hardship is an incongruous aspect in a society founded on the principles of social fairness. Therefore, it is argued that the individual's personal liberty as guaranteed by articles 19 and 21 of the Indian Constitution should always be the primary consideration for judges exercising their discretion in bail matters. An individual's freedom should only be restricted when it jeopardizes the fair administration of justice, which is fundamental to an independent judiciary. Therefore, it is imperative to emphasize that judges should have clear guiding principles and legal criteria to rely on when exercising their discretion, ensuring that their decisions always align with both the principles of justice and the individual's liberty.

Section 438 is drafted broadly and does not impose any restrictions on the court's authority when an individual seeks anticipatory bail upon having reason to believe that they will be arrested for a non-bailable offense. Nonetheless, the power must be utilized judicially, with the goal of avoiding the traps inherent in the situation while serving the purpose of the law. However, some rules for using power under section 438 were assigned in the following words: Given that Section 438

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immediately succeeds Section 437, which outlines the basic provision for bail concerning non-bailable offenses, it is evident that the conditions outlined in Section 437(1) are implicitly incorporated into Section 438 of the Code. Section 438 does not grant unrestricted or unbridled authority to issue orders for anticipatory bail.

Instead, such an order, being exceptional in nature, can only be granted if, in addition to the conditions stipulated in Section 437, there exists a compelling justification for its issuance. The phrases "for a direction under this section" and "Court may, if it thinks fit direct" indicate clearly that the Court must consider a multitude of factors, including those delineated in Section 437 of the Code, before making a decision.24 The scope of our inquiry now needs an actual dissection of the limitations contained in section 437 which govern and ordain the exercise of power under section 438. Section 437 prohibits the granting of bail in any circumstances where there are reasonable reasons to believe that the accused is guilty of an offence punishable by death or life imprisonment. The nature and gravity of the charge are thus critical factors in determining whether or not an accused individual may be released on bail. True, the gravity of the offence and the heinousness of the crime involved are likely to lead the petitioner to escape the course of justice, and this must be considered by the court when granting anticipatory relief. The primary consideration in exercising judicial discretion under section 438 is the broader welfare of the state and society. It is contended that in cases involving economic offenses, such as smuggling, hoarding, profiteering, and foreign exchange manipulations, where the risk of reoffending while on bail cannot be discounted, it is unsafe to invoke this power. Additionally, it is crucial to assess and evaluate the quality of evidence supporting the allegation.

However, it is essential to acknowledge that the issue of anticipatory bail arises at the outset or early stages of an investigation. Therefore, demanding the investigating agency to establish the guilt of the accused individuals at that precise moment would impose an impractical burden. In such scenarios, the court must rely on the preliminary findings of the investigation to arrive at informed conclusions.

It is recommended that in such circumstances, the court should avoid presuming that the investigative agency will not uncover any new or more significant evidence incriminating the accused. Alternatively, the court should carefully scrutinize the available evidence on record. It is not unreasonable to suggest that the provisions of section 438 should always be accessible to the petitioner if they can prove to the court's satisfaction that the accusation against them is motivated by ulterior motives aimed at humiliating them, and that the charge is malicious. For instance, in a

case of criminal breach of trust, if the petitioner can promptly produce genuine documentary evidence that completely refutes the allegation of misappropriation, they should be entitled to the benefits of section 438. Similarly, in a grave charge like murder, if the petitioner can provide a solid alibi, such as being incarcerated in a jail at the time of the crime, they should be entitled to the benefits of section 438. These examples serve as illustrations and do not encompass every scenario warranting the exercise of power under section 438.

Section 167's goal is to allow an investigator to isolate an accused person and gather incriminating information from him. As a result, granting anticipatory bail at the outset ensures the continuation of the investigation, which can only be guaranteed while the suspect is in police custody. Furthermore, it would obstruct the inquiry by giving the criminal sufficient opportunity to leave signs of his crime with the help and cooperation of sympathizers. There is also a risk that the perpetrator will influence or undermine the prosecution witnesses. There is also the potential that the perpetrator will flee from justice. It is suggested that an investigating officer should not be denied the ability to examine the offender. The issue of anticipatory bail at the very threshold deprives of its key parts of surprise, speed and swiftness. submitted that mere joining a person in the course of investigation anticipatory bail is no substitute for investigation in custody cases where his personal investigation may be legitimate.Section 162 of the code stipulates that any statements made by a person to a police officer during an investigation, including those made by the offender themselves, are deemed inadmissible. Similarly, sections 25 and 26 of the Indian Evidence Act prohibit the admissibility of confessions made to a police officer. However, an exception to this stringent rule is provided by section 27 of the same Act. The recoveries made under this section serve as invaluable pieces of evidence for the prosecution. Therefore, it is both the duty and right of the investigation to obtain this material from the offender, which can only be admissible when obtained in the custody of a police officer. This right is crucial not only for determining the direction of the case but also for establishing it in court.

If the offender is granted anticipatory bail from the outset, section 27 of the Evidence Act may never come into play. It is evident that in cases where the investigation reasonably asserts that it needs to obtain damning material based on information expected to be provided by the offender themselves, the ability to grant anticipatory bail cannot be lawfully exercised. However, this does not imply that the investigating agency should delay its examination of cases, leading to the accused being detained. A highly beneficial provision in the form of proviso (a) to section (2) of section 167 has been specifically added to address such a scenario. Consequently, the code incorporates adequate safeguards against the abuse or misuse of power by the police.

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It is imperative for the judiciary to intervene with the police in cases falling within their jurisdiction and where the law imposes an obligation to do so.

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CHAPTER 4: CONDITIONS OF POOR UNDERTRIALS IN INDIA

On February 5, 2016, its Social Justice Bench instructed the government to implement a series of reforms aimed at improving prison conditions. The government was urged to engage competent legal aid lawyers, deliberate on the potential release of detainees under Sections 436 and 436A of the criminal procedure code, and establish efficient information management systems to address the issue of prison overcrowding, particularly in Maharashtra, Uttar Pradesh, and Dadra and Nagar Haveli, stated the APEX Court. The bench emphasized that legal aid for the poor should not be substandard, condemning the property-based bail system targeting the impoverished in clear terms. It vehemently asserted, "It is against the spirit of law to detain individuals solely due to their financial limitations." The bench directed the legal services authority to handle cases of prisoners unable to secure bail, acknowledging that the adolescent's inability has also driven him towards drug consumption.

"Six months later, the court cleared the mother and daughter of all criminal charges. Compared to the typical duration of trials, this resolution was relatively quick. Persistent requests from a diligent lawyer for expedited proceedings likely influenced the court's prompt handling of the case."

"Shanti's situation is not unique. As per the 2014 data from the National Crime Records Bureau (NCRB), the proportion of undertrial prisoners (UTP) has been steadily increasing over time (refer to the figure). The innocence of approximately three-fourths of the prison population remains unproven, and the overall case disposal and conviction rates are notably low. This suggests that a majority of undertrial prisoners, like Sahu, are ultimately found innocent and acquitted after trial. It's evident that individuals from economically disadvantaged, Dalit, and tribal backgrounds are disproportionately represented in prisons. The following is the common scenario of most under- trials.

Shanti Sahu and her 18-year-old daughter were arrested on June 13, 2015, accused of causing grievous harm and criminal intimidation to their neighbors. They found themselves incarcerated not due to a rejected bail application, but rather because they couldn't afford legal representation. Their release on bail only materialized when their employer arranged for a lawyer. The court

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stipulated a bail condition of Rs. 20,000, a sum they couldn't afford, lacking both assets and external financial support.

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CHAPTER 5: PROOF OF INNOCANCE IN BAIL: AMENDMENTS REQUIRED

Bail is typically considered the standard practice, with detention being the rare occurrence. Parliament is striving to address emerging forms of serious crime. Alongside increasingly severe punishments, pre-trial procedures are also becoming more rigorous, making obtaining bail a challenging process. Earlier, bail was the ruleand "no bail' ' the exception. Now, "no bail" is the rule and bail the exception. Thus the broad change in the criminal justice system from presumption of "innocence" " to "presumption of guilt" is beginning to affect even pre-trial procedures. The fundamental idea behind bail rests on the principle of presumed innocence until proven guilty. Restricting an individual's liberty based on allegations that have yet to be substantiated may be viewed as unjustified. Liberty should only be restricted in accordance with societal defense concerns, such as the suspicion of evidence tampering or evasion of justice, which warrant denial of bail. Hence, the doctrines of "presumption of innocence" and "bail as the rule" are interconnected and reinforce each other. Disrupting one doctrine affects the integrity of the other. The prime examples of such stringency are section37(b) of the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS), section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) and section 15(5) of Terrorist Affected Areas (Special Courts) Act, 1984 (Terrorist Special Courts Act), all dealing with bailfor the accused in similar terms. The stringent provisions when not drafted with adequate carecan become prone to misuse and constitutionally suspect for enabling arbitrary action These provisions, in identical terms, mandate prosecutor to oppose the bail application and then on two grounds before bail can be granted. “There (i) a preliminary belief on reasonable grounds guilty"; and “the accused is not likely to commit any offence” The first ground is a modification of section Procedure 1973 (CrPC). Contrary to its requirement based on reasonable grounds that the accused is guilty, bail to be granted only after both the above enumerated Here, the condition precedent for bail is belief based on reasonable grounds. Moreover, section TADA Act and section 15(6), Terrorist Special Courts new provisions are in addition to any limitations or any other applicable law, thereby making belief mandatory to grant bail.

THE PROBLEM:

This most stringent requirement of the second in the judicial process. The stipulation of a findingto commit any offence while on bail, coupled with provided under these Acts,

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underscores the need

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for all bail applications under these enactments. The bail has been read by the Supreme Court as completely the question of constitutionality of such stringent time. However, in Kartar Singh v. State of Punjab, the constitutionality of the bail provision of TADA the condition "there are grounds for believing that in a different form is also incorporated in section FERA and section 104(1), Customs Act and cannot The court without going in depth into the second ground, in one sentence. As enunciated earlier, the doctrines, right of bail and fair trial are an integrated whole and mutually reciprocative. If one is tampered with, the others are disturbed away with and a belief on reasonable grounds that is not likely to commit any offence while on bail, is right to bail. It will be pertinent to undertake an examination changing concept of bail in India.

Over stringency is the main difficulty with these enactments. tend to create absurd situations so that even if the FIR and case diaries adduced by the police do not contain a shred of connection between the accused and commission of the offence whereby only ground (0 can be answered, how can the court be sure of ground (if) as it involves a prediction of future conduct of the accused. Thus, bail may be denied on this ground alone. This places an innocent at the mercy of police or public prosecutors. Prediction of a man's future volition would be a case even more difficult than the lament of Lord M'Naughten when faced with inferring present intention - "Human mind is a trait. Even the Devil does not know the mind of man, what of a poor judgelike me".

Moreover, the reference to 4 any offence' could be bad for over-breadth since it does not limit itself to offences akin to those made punishable by the Acts. No guideline is given. It is submitted that the present yardsticks are not judicially manageable standards, thereby causing the difficulties enumerated. These provisions may also be self-defeating and contradictory as neither release by the investigating officer under section 169, CrPC nor discharge by the court under section 227, CrPC (both of which are applicable to a trial under these Acts), require such conditions if belief in innocence of the accused is reasonably possible, whereas in case of bail thecourt is saddled with strict conditionalities. Now that the Supreme Court has upheld such bail provisions (even while the problem persists), the solution to the paradox lies in noting that these special bail provisions are intended to indicate an attitude or approach of mind on the part of the legislature. It reflects the overriding concern of Parliament to prevent a recurrence of similar heinous offences if the accused is released on bail. When viewed from such an angle, the second requirement for grant of bail does not lay down clear guidelines or judicially manageable standards. The provision seems to be improperly drafted and would not seem to attain the purpose of realizing the legislative intent and at the same time protect innocent citizens against any

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possible misuse.

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Such a provision must by careful choice flexibility since the judiciary has to apply the Precision in law should also not be carried to an extreme. As Baxi observes The idea should sometimesbe allowed to have a freedom to roam over a definite area, and to choose its resting place in an appropriate manner. The criterion of precision in such drafts lies in knowing how far to go and where to stop. 'What we admire in legal draftsmanship is not precision. It is a precisely appropriate degree of impreciseness.

THE SOLUTION:

The main flaw is that very stringent formulae without some hint of flexible guidelines do not work in legislation. The alternative to get over the difficulties posed would be to redraft the provisions to read: Notwithstanding anything contained in the Code, ...no person... shall, be released on bail unless- (a) (b) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that on the basis of past conduct , links or associations he is not likely to commit any offenceof a similar nature or class

, or any other connected offence , while on bail. Hence having regard to past conduct, associations or links with other criminals, social standing or deep-roots insociety of the accused, only the most deserving cases would be considered for bail through this clarification of legislative intent. The courts can examine whether past conduct, links or suspected associations indicate any likelihood of the accused having access to arms, ammunition, explosives or drugs, to form a reasonable belief of repetition or otherwise, of similar or connected offences. This can as a matter of judicial policy be limited to a first time accused or offender. Of course, it should be possible for the police to verify past conduct, associations and consequently the public prosecutor would get a full opportunity before the court to help it form a correct opinion." Those who have connections or affiliations with criminal elements should be subject to bail, while innocent individuals should be exempt. Judicial discretion in these matters is essential to ensure the provision's rigor while also preventing the abuse of power. In such circumstances, it would be exceedingly difficult to challenge the fairness and effectiveness of these provisions. If the legislature is unable to redraft, the judiciary can introduce these safeguards for freedom, liberty and Human Rights.

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CHAPTER 6: TYPES OF BAIL AND THE ESTABLISHED PROCEDURE UNDER THE INDIAN LEGAL SYSTEM:

BAIL AS PER SECTION 436-A:

There have been cases where detainees awaiting trial were incarcerated for periods surpassing the maximum imprisonment duration prescribed for the alleged crime. To tackle this issue, a new provision, Section 436A, has been introduced to the Code. This section states that if an undertrial detainee (excluding those accused of crimes punishable by death) has been held for a period equal to half of the maximum imprisonment term specified for the alleged offense, they should be released upon their own bond, with or without sureties. Additionally, it is mandated that undertrial detainees should not be detained beyond the maximum imprisonment term for which they could be convicted for the alleged offense.

"BAIL FOR NON-BAILABLE OFFENCES":

The provisions of "section 437" empower two authorities to consider the question of bail, namely

"(1) a court and (2) an officer-in-charge of the police station who has arrested or detained without warrant a person accused or suspected of the commission of a non-bailable offence."
"While this section discusses the discretion and authority of both the court and the police officer in charge of a police station to grant bail in cases of non-bailable offenses, it also outlines specific limitations on the police officer's authority to grant bail and certain rights of an accused person to seek bail when facing trial before a Magistrate. 'Section 437 of the Criminal Procedure Code' delineates the powers of the trial court and the Magistrate to determine whether to grant or deny bail to individuals accused of or suspected of committing any non-bailable offense, whether brought by the police or surrendering or appearing voluntarily."

The power to grant bail to an individual accused of a non-bailable offense is exclusively conferred upon a specific category of police officers, specifically the officer-in-charge of the Police Station as outlined in section 437, Subsection (1). As this discretion is discretionary rather than mandatory, it must be exercised with utmost caution considering the potential risks involved.

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Before exercising this authority, the station officer must ensure that releasing the accused on bail would not prejudice the prosecution's ability to establish the accused's guilt. If the officer-in-charge decides to grant bail to the accused, it is mandatory for them to record the reasons or special circumstances in the case

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diary and securely maintain the bail bonds until they are discharged either by the accused's appearance in court or by the order of a competent court.

For bail considerations in cases of non-bailable offenses, the legislature has categorized them into two groups:

(1) "those which are punishable with death or imprisonment for life; (2) those which are not so punishable."

"In the case of an offense punishable by death or life imprisonment, a station officer cannot release a person on bail if there are reasonable grounds to believe that they have committed such an offense. The age, sex, sickness, or infirmity of the accused cannot be considered by a police officer when deciding on bail; these factors are within the purview of the court. The officer-in-charge of the police station may grant bail only if there are no reasonable grounds to believe that the accused has committed a non-bailable offense, or if the offense complained of is non-bailable but not punishable by death or life imprisonment".

"JURISDICTION OF THE HIGH COURT OR SESSIONS COURT IN GRANTING BAIL (SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, 1973)":

As per Section 439(1) of the Code of Criminal Procedure, a High Court or Court of Session may direct,—

(a) "That any person accused of an offence and in custody be released on bail, and if the offence isof the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;"

b) "That any condition imposed by a Magistrate when releasing any person on bail be set aside or modified."

Nevertheless, the High Court or the Court of Sessions must, prior to granting bail to a person accused of an offense that falls under the exclusive jurisdiction of the Court of Sessions or, even if not exclusive, is punishable by life imprisonment, provide notice of the bail application to the public prosecutor. This notice requirement may be waived only if the court, with reasons recorded in writing, deems it impractical to provide such notice.

As per *"Section 439(2) of the Code of Criminal Procedure, a High Court or Court of Sessions*

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direct that any person who has been released on bail under Chapter XXXIII (i.e., relating to bail) be arrested and commit him to custody."

The High Court has broad powers to issue bail. However, even for non-bailable offences, certain factors must be considered before granting bail. According to Section 439(1) of the Code, the High Court can only release the accused on bail or reduce the amount of bail in cases pending anywhere in the State, but it cannot order the arrest or commitment to custody of any person who has been released on bail by the lower Court.

Nonetheless, it retains the authority to instruct the apprehension of an individual previously granted bail under Section 439(2).

In a latest judgment6, *"Hon'ble Supreme Court has held that there are no restrictions on the High Court or Sessions Court to entertain an application for bail, provided, accused is in custody."* The judgment has "put an to end the decades old practice of first filing a regular Bail Application before a Magistrate having jurisdiction, and get it rejected for the purpose of approaching the Sessions Court or High Court for bail."

REVOCATION OF BAIL:

The Code of Criminal Procedure includes explicit provisions for "revocation of bail and re-arresting the accused. *"Section 437(5) states that any court which has released a person on bail under sub- section (1) or sub-s. (2) of s. 437, may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody".* Similarly *"S. 439 confers on the High Court and the Court of Session power to cancel bail". "Section 439(2) The Code of Criminal Procedure makes clear provisions for cancellation of bail and taking accused back in custody."*

The power of revocation of bail can be resorted to broadly in the following two situations:

(i) "On merits of a case mainly on the ground of the order granting bail being perverse, or passed without due application of mind or in violation of any substantive or procedural law; and"

(ii) "On the ground of misuse of liberty after the grant of bail or other supervening circumstances."

In the first category of cases, bail can only be revoked by superior courts, while in the second

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category, the court that granted bail has the authority to cancel it. There seems to be considerable confusion in judicial rulings regarding the cancellation of bail based on merit or subsequent conduct of the accused already on bail, or due to supervening circumstances. At times, the principles

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governing the cancellation of bail due to subsequent conduct or new circumstances have been mistakenly applied to cases where bail cancellation is sought based on the merits of the case. It is therefore essential to clearly distinguish between these distinct principles of bail cancellation operating in these two separate domains.

"As stated herein above the legal provisions pertaining to cancellation of bail under Cr.P.C are mainly contained in S.437 (5) and 439(2)".

"Section 437(5) empowers a court other than the High Court or Sessions Court, typically a Magistrate court, to cancel bail. This provision allows such a court to direct the arrest and return to custody of a person previously released on bail if deemed necessary. Judicial interpretations have clarified that any court granting bail has the authority to order the arrest and custody of the accused if circumstances arise post-bail release that justify such action. Typically, this power is exercised when the accused abuses the liberty granted by the court or when new developments in the investigation reveal substantial evidence implicating the accused in serious crimes. However, bail should not be revoked in a mechanical manner; rather, the court should consider whether any new circumstances have arisen that make it inappropriate for the accused to remain free on bail, thereby ensuring a fair trial."

REVOCATION OF BAIL CERTAIN GROUNDS:

The grounds for revocation of bail under *"ss. 437(5) and 439(2) are identical, namely, bail granted under S.437(1) or (2) or s.439(1) can be cancelled where the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (7) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive."*

"Section 439(2) confers powers on the High Court and the Sessions Court to direct re-arrest of the accused who might have been released on bail by any court and commit him to custody". An analysis of "s. 439(2) and s. 437(5) makes it clear that the powers of cancellation of bail vested in the High Court and the Sessions Court are very wide vis-vis the powers of the Magistrate court."

"*S. 439(2) confers powers of cancellation of bail on the High Court and the Sessions Court in*

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respect of orders of bail passed itself as well as by any court subordinate to it also. The power to cancel an

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order of bail passed by itself by the High Court or the Sessions Courts as the case may be, can usually be exercised only where the person released on bail is guilty of misuse of the liberty granted by the court or there is substantial change in the facts of a case. However so far as the cancellation of bail order passed by a court subordinate to it is concerned no such restricted interpretation is justified. Section 439(2) clearly provides that any person who has been released on bail under this Chapter may be arrested and committed to custody by a High Court or Court of Sessions. So it is legally permissible to a High Court or a Court of Session to review and examine an order of bail passed by a court subordinate to it on merits and decide whether such order is legally sustainable or not."

The Magistrate possesses the authority to issue a subsequent order modifying, amending, or removing the conditions stipulated in the earlier bail order in any manner deemed necessary. "Section 437 (5) of Cr.P.C. impliedly confers such power on him. When the Magistrate is conferred with the power to cancel his order, then, as a logical corollary, it follows that he does have the power as well to amend or effect necessary alterations, short of cancellation, in the earlier bail order passed by him".

It is now established law that a complainant can always challenge an order granting bail if it is not lawfully issued. It is not the case where if once bail is granted by a court, the sole option is to have it rescinded due to its misuse. The bail order can also be challenged on its grounds. Bail that has already been granted cannot be revoked since the police require the accused to be interrogated in custody.

"ANTICIPATORY BAIL (SECTION 438 CR.P.C)":

Following the end of the emergency period, there has been a surge in petitions seeking anticipatory bail. Many of the petitioners were influential individuals who held significant power during the emergency and now feared arrest on charges of corruption, misuse of authority, and similar offenses in the post-emergency era.

Given the wealth and influence of those involved in these anticipatory bail proceedings, they made extensive efforts to leverage the law and its mechanisms to their advantage. As a result, the courts were required to interpret the law meticulously and with great caution. This process has provided momentum to the development and refinement of the law surrounding anticipatory bail.

Right to life and personal liberty is an important right granted to all the citizens under "*Article 21 of the Indian Constitution* and it is considered as one of the precious right". "Under Indian

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law, there is a provision for anticipatory bail under *Section 438 of the Criminal Procedure Code 1973".*

"The Law Commission of India, in its 41st Report dated September 24, 1969 pointed out the necessity of introducing a provision in the Code of Criminal Procedure enabling the High Court and the Court of Sessions to grant "anticipatory bail". This provision allows a person to seek bail in anticipation of an arrest on accusation of having committed a non-bailable offence". The primary intent behind including this provision was to ensure that no individual would be detained in any manner unless found guilty.

"ANTICIPATORY BAIL UNDER CRIMINAL CODE OF PROCEDURE"

If an individual has grounds to believe that they might face arrest for an alleged non-bailable offense, they have the option to petition the High Court or the Court of Session for a directive under this provision. This directive would ensure that, in the event of such an arrest, they would be granted anticipatory bail. The court will grant anticipatory bail after considering the following factors:

1. *"the nature and gravity of the accusation.*

2. *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*
3. *the possibility of the applicant to flee from justice.*

4. *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 order for the grant of anticipatory bail.*
5. *Where the High court or court of session grants interim bail to the applicant then the court forthwith a show cause notice attested with a copy of such order, served to 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. 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".*

WHO IS ELIGIBLE TO OBTAIN ANTICIPATORY BAIL?

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If an individual has reasonable grounds to suspect that they may be falsely arrested or targeted due to personal animosity, or if they fear that a false case may be fabricated against them, they have the

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right to approach the Session Court or the High Court under Section 438 of the Criminal Procedure Code to request bail in the event of their arrest. The court, if deemed appropriate, may order their release on bail upon arrest. Accused individuals who have been officially declared as absconders or proclaimed offenders under Section 82 of the Criminal Procedure Code, and have not participated with the investigation, should not be granted any Preventive release from custody. In the case of "State of M.P vs. Pradeep Sharma (criminal Appeal No.2049 of 2013 dt.06-12-2013)", the Honorable APEX Court ruled If an individual has been issued a warrant and is intentionally evading arrest or concealing themselves to avoid warrant execution, and has been declared a proclaimed offender under Section 82 of the Code, they are ineligible for anticipatory bail.

CONDITIONS FOR OBTAINING THE ANTICIPATORY BAIL":

- *"a condition that the person shall make himself available for interrogation by the police officer as and when required;"*
- *"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;"*
- *"a condition that the person shall not leave India without the previous permission of the court."*

In the case of "Siddharam Satlingappa," the Hon'ble Apex Court determined that certain conditions imposed by the High Court were unnecessary and inconsistent with the provisions of anticipatory bail.

An accused remains at liberty on bail until it is rescinded. The High Court or Court of Session can instruct the arrest and detention of any individual granted bail upon application by the complainant or prosecution.

In "Gurbaksh Singh Sibbia v. State of Punjab", the Hon"ble Apex Court held that "The distinction between an ordinary order of bail and an order of anticipatory bail is that where the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is, therefore, effective at the very moment of arrest".

"No Regular Bail shall be granted When Interim Anticipatory Bail Is Granted By Higher Courts

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And Matter Is Pending."

Hon'ble Apex Court, in "Rukmani mahato vs. state of Jharkhand (S.L.P Criminal no.2411 of 2016

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dt.03-08-2017)" The Court ruled that:

"Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior Court meaningless," a Bench comprising 'Justice Ranjan Gogoi and Justice Navin Sinha explained.'

"MANDATORY BAIL"

"Section 167(2) of the Criminal Procedure Code, 1973 empowers judicial magistrates to authorize custody of an accused person in cases wherein investigation cannot be completed in twenty-four hours. It provides for the maximum period of custody that can be authorized. It further contains a mandate that if the investigation is not completed within the stipulated maximum period", The accused is entitled to be granted bail, regardless of the nature of the accusation against them, as stipulated in Section 167(2):

"The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused person in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction."

Provided that:

"(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding:"

i. *"ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years."*

ii. *"sixty days, where the investigation relates to any other offence, and on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be*

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releasedon bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter."

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(B)……

"Section 167(2) deals with powers of the magistrate to detain the accused in custody and release him on bail on expiry of the statutory period. It is quite clear that power is conferred on the magistrate to release the accused on bail under the proviso". The Supreme Court judgment1 has firmly established the legal stance on this matter. The prevailing notion in certain judicial circles that only the Sessions Court, in cases where offenses are required to be tried by them, holds the authority to grant bail to the accused under section 167(2), is inaccurate. Restrictions placed on the magistrate's powers regarding the grant of regular bail under section 437 of the Code do not apply when the magistrate exercises authority under section 167(2).

In the case of Natbar Parinda, the Honorable Apex Court noted that the accused maintains the right to be granted bail under this provision, even in cases involving serious and heinous crimes.

The 90 or 60-day timeframe commences from the day the accused is initially remanded to custody by the magistrate. As individuals arrested must be brought before a magistrate within 24 hours, the date of remand to custody may differ from the date of arrest. The 90/60-day period encompasses the total duration of custody, including both police custody and/or judicial custody, which the magistrate can authorize.

In the case of "Union of India V Nirala Yadav" Hon'ble Apex court held that "Magistrate should decide the application for statutory bail on the same day it is filed."

In the case of "Thangavel Ravi vs. State of A.P", the Honorable High Court asserted that if a petitioner is accused of an offense punishable under Section 307 IPC but has not caused any harm, it falls within the first part of Section 307 IPC, which prescribes imprisonment of up to ten years. According to proviso (a) (ii) of Section 167(2) of Cr.P.C, the maximum period of detention in custody would be 60 days. Therefore, if the charge sheet is not filed within sixty days of detention, the petitioner is eligible for bail.

More recently, in Rakesh Kumar Paul vs. State of Assam (16-08-2017), the Honorable Apex Court ruled that an accused is entitled to statutory bail (default bail) under Section 167(2)(a)(2) of the Code of Criminal Procedure if the police fail to file the charge-sheet within 60 days of their arrest for an offense punishable with imprisonment of up to ten years.

The issue/query in this case was "whether in a case regarding offence for which the punishment

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imposable may extend upto ten years, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure 1973 due to default on the part of investigating agencyin not filing the charge sheet within sixty days?"

Hon'ble Apex Court answered this issue/query that "Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment".

"BAIL AFTER CONVICTION: (SECTION 389 OF THE CR.P.C)"

The suspension of the sentencing while awaiting the appeal; granting the appellant's release on bail:

1. Unless a condemned individual files an appeal, the Appellate Court has the authority to defer the execution of the sentence or order being reviewed, and may also grant bail or release the person on their own bond if they are currently in confinement. The reasons for such decisions must be documented in writing by the court. Before granting bail or releasing a convicted person who has been found guilty of a crime that carries a punishment of death, life imprisonment, or imprisonment for at least ten years, the Appellate Court must allow the Public Prosecutor to present written arguments against such release. In situations when a person who has been convicted is granted bail, the Public Prosecutor has the option to submit an application to revoke the bail. The authority granted by this provision to an Appellate Court can likewise be exercised by the High Court if a convicted individual appeals to a lower court.

2. If a person who has been convicted of a crime convinces the court that they plan to appeal the conviction, the court must release them on bail, unless there are specific reasons to deny bail. This applies when the person is sentenced to a maximum of three years in prison or when the offense they were convicted of is bailable. The person will be released on bail for a period of time that allows them to present the appeal and obtain the orders of the Appellate Court. While on bail, the sentence of imprisonment is considered suspended for the person appealing is ultimately given a jail sentence or a life sentence, the period of time during which they are freed from prison will not be counted for calculating the length of their sentence.

3. Section 389 (1) and (2) of the Criminal Procedure Code (Cr.P.C.) address the circumstances

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in which a convicted individual might be granted bail by the appellate court upon filing a criminal appeal. Section 389 (3) pertains to a scenario in which the trial court has the authority to grant bail to a

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convicted defendant, allowing them to file an appeal. Considering the authority of the trial court to temporarily postpone the punishment, it is imperative to consider section 389(3).

"SECTION 389(3) IS APPLICABLE ONLY IN THE FOLLOWING CONDITIONS":

1. *"The Court must be the convicting Court*

2. *The accused must be convicted by the Court*

3. *The convict must be sentenced to imprisonment for a term not exceeding three years*

4. *The convict must express his intent to present appeal before the appellate Court*

5. *The convict must be on bail on the day of the judgment".*

"TRIAL COURT'S POWERS U/S 389(3) OF CR.P.C":

1. *The accused cannot automatically secure bail but must demonstrate eligibility to be granted bail.;*

2. *"If the trial Court is convinced to the extent that there are "special reasons" for not releasing the convict on bail, then the Trial Court can very well do";*

3. *"The sole purpose of this provision is to enable the convict to present appeal to the appellate Court;"*

4. *"No maximum period is prescribed for releasing the convict on bail;"*

5. *"Under this section 389(3) suspension of sentence is "deemed" suspension;"*

6. *"Suspension of sentence is by product of the accused being released on bail;"*

7. *"The Trial Court has no power to suspend the sentence and then order the release of the*

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convict on bail."

"Difference in operations of Sub-section (1) and (3) of Sec.389 Cr.P.C":

1. *"Sub- section (1) comes into play when appeal is pending". "Sub-section (3) comes into play when the convict expresses his intention to present appeal".*

2. *Sub-section (1) tells "suspension" primarily and then "release on bail" or "own bond" But Sub- section (3) tells "release on bail" primarily and then "suspension" is then the "automatic" effect.*

3. *"Sub-section (1) does not prescribe that the accused must be on bail but Sub- section (3) can be used only if the accused is on bail on the Day of Judgment."*

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4. "Sub-section (1) gives option to release the convict on "bail" or "his own bond" but Trial Court vide Sub-section (3) does not have power to release the convict on "his own bond". However, trial Court can also release accused on his own bond if the accused is poor etc."

5. Vide subsection (1) "suspension is cause and bail is effect" and vide Sub-section (3) "is cause and suspension is effect".

The Patna High Court in "Suddu kumar vs. State of Bihar" has ruled that "if a prayer for suspension of sentence and release of an appellant on bail, convicted of a capital crime and sentenced to undergo imprisonment for life, it is to be considered favorably and he isordinarily allowed bail if he has completed seven years of incarceration in connection with such case before conviction and after conviction, taken together when his appeal is not likely to be heard on merits in near future, on the ground of possible delay in the disposal of the appeal".

A two-judge panel of the Apex Court, in the case of "Atul Tripathi Vs. State of UP", deliberated on the extent and application of Section 389 of the Cr.P.C and provided the following guidelines regarding the suspension of sentence during the duration of a Criminal Appeal:

a. "The appellate court, if inclined to consider the release of a convict sentenced to punishment for death or imprisonment for life or for a period of ten years or more, shall first give an opportunity to the public prosecutor to show cause in writing against such release.

b. On such opportunity being given, the State is required to file its objections, if any, in writing.

c. In case the public prosecutor does not file the objections in writing, the appellate court shall, in its order, specify that no objection had been filed despite the opportunity granted by the court".

d. "The court shall judiciously consider all the relevant factors whether specified in the objections or not, like gravity of offence, nature of the crime, age, criminal antecedents of theconvict, impact on public confidence in court, etc. before passing an order for release."

Individual freedom is of utmost significance within our constitutional framework, as recognized under Article 21. Any deprivation of personal liberty must be justified by compelling

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considerations that serve the welfare objectives outlined in the Constitution and Hon‟ble Higher courts in various cases have tried to intervene and also have laid down certain guidelines to be followed but unfortunately nothinghas been done about it. There is also a strong need felt for a complete review of the bail system keeping in mind the socio-economic condition of the majority of our population. While granting bail the court must also look at the socio-economic plight of the accused and must also have a compassionate attitude towards them. A proper scrutiny may be done to determine whether the accused has his roots in the community which would deter him from fleeing from the court.

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CHAPTER 7: PREVENTIVE DETENTION LAWS IN INDIA

The thorny issue of preventive detention emerges in public discourse every time detentions under the infamous National Security Act are reported. Preventive arrests for dissent-protesting against controversial laws, or criticizing government officials and policies-have now become routine. This is an attempt to look at the extent and reach of preventive detention in India and argues that it is far more rampant and ubiquitous than one might believe.

The need to include preventive detention within the ambit of the Constitution was hotly debated at the time of its drafting. But the savage violence that accompanied Partition convinced the Constituent Assembly that preventive detention was required to maintain peace and public order in an India torn apart in more ways than one. This paper argues that with draconian measures like preventive detention, comes the inherent risk that they will keep expanding in practice.

BACKGROUND OF PREVENTIVE DETENTION:

Preventive detention ('PD') involves detention on mere suspicion, without charge or criminal trial. PD has openly been practised in India since 1818, under the Bengal State Prisoners Regulation III. The Defence of India Act 1939, which was enacted after the outbreak of World War II authorised the government to detain any person seen as a threat to public order, national security, or the maintenance of supplies and services essential to the community. The post- colonial state incorporated PD through Article 22 of the Constitution. The draft Constitution had excised the phrase "due process of law", and instead provided that life and personal liberty could be taken away by "procedure established by law". This phrasing ensured that "procedure established by law" could only be interpreted as law enacted by the legislature and not as natural law. The members of the Constituent Assembly believed that substantive interpretation of due process might interfere with legislation for social and welfare purposes. To mitigate the harm caused by the exclusion of a due process clause, Ambedkar introduced Draft Article 15-A, which finally became Article 22.

Though many members of the Constituent Assembly had themselves been at the receiving end of detention orders, they were convinced that PD provided the surest weapon against communal violence that had shaken the country during partition. In a tug-of-war between individual liberty and public security, the unsettled conditions of the country tipped the scales in favour of restraints on personal liberty for the good of the people.

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Clauses (3) to (7) of Article 22 delineate the procedural safeguards that PD laws are required to follow. They provide that no PD law shall authorise the detention of a person for a period longer than three months without the approval of an Advisory Board ('AB'). These ABs consist of persons who "are, or have been, or are qualified to be appointed as, judges of a high court." The Parliament can prescribe the circumstances and classes of cases under which a person might be detained for longer than three months without obtaining the opinion of an AB. The detaining authority is required to communicate the grounds of detention to the detenu and to afford him the earliest opportunity to make a representation against the order unless disclosing the facts would be against public interest. Entry 9 of List I of the 7th Schedule of the Constitution empowers the

Parliament to enact PD laws for defence, foreign affairs or the security of India. Entry 3 of List III of the 7th Schedule empowers both the Parliament and state legislatures to enact PD laws for the security of a state, maintenance of public order, or the maintenance of supplies and services essential to the community.

THE FIRST POST- INDEPENCE PREVENTIVE DETENTION LAW AND SUBSEQUENT LEGISLATIONS:

The Constituent Assembly had placed their confidence in the integrity of the legislature and the moral qualities of their leaders. This trust was initially challenged in February 1950, just one month after the Constitution was adopted, when the Parliament enacted the Preventive Detention Act, 1950 ('PDA'). The provision allowed for the imprisonment of anyone who engaged in activities that posed a threat to the defense and security of India, its relations with foreign countries, and the maintenance of public order, as well as the availability of necessary supplies and services. Section 14 of the Act granted the State extensive authority that the courts were explicitly prohibited from scrutinizing the need for any government-issued order; the subjective contentment of the authorities was deemed adequate to establish the legality of the order. In the case of AK Gopalan v. State of Madras, the constitutionality of the PDA was questioned. The Supreme Court, in a majority ruling, determined that the Act was valid. However, it was deemed unconstitutional for violating Article 22(5). The Court recognized the constitutional authority granted to the Parliament in the form of PD and expressed confidence in the legislature's capacity to enact laws with sincerity. This ruling established a highly unfavourable precedent, which granted the legislature significant freedom to pass preventive detention laws without much oversight.

The Act was supposed to exist only for a year, but on 19th February 1951, the Parliament extended

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it for another year.1 3 The PDA was repeatedly extended, until it lapsed on December 3, 1969. The Parliament, under Indira Gandhi's leadership, enacted the Maintenance of Internal Security Act, 1971 ('MISA') two years later. Following the Emergency of the mid-1970s, where PD was notoriously used as a political weapon, MISA was also allowed to expire in 1978 under the Janata Government. Two years later, upon Indira Gandhi's return to power, new PD law was enacted - the National Security Act, 1980 ('NSA'), the terms of which were almost identical to those of PDA. The NSA was challenged in AK Roy v. Union of India, where the Supreme Court upheld the validity of the law and stressed on the wisdom of the Constituent Assembly in including PD in the Constitution. With Indira Gandhi's second tryst with power in 1980, PD had become well and truly entrenched as a permanent measure in Indian governance. Today, we have twenty-five PD laws in the country. Courts blindly continue to set store by the notion of a 'benign' State, one that only resorts to oppressive measures when left with little else. In the coming sections, I shall demonstrate how the Indian State has been anything but benign. The enactment of these legislations, central or state, has been shrouded in secrecy and opacity. Ruling dispensations have never demonstrated the need for such legislations and the very letter of the law is vague and overly expansive. Predictably, such poorly written laws lead to handing overarching powers to the police and local administration, which subsequently leads to the violation of both individual rights and the larger criminal justice system. Be it the enactment of PD laws, the letter and spirit of the very text of these laws or their implementation-the Indian State has left little room for us to cling to the optimism that dominated the thinking of the Constituent Assembly.

ENACTMENT OF PD LAWS LEGISLATION BY ORDINANCE:

Of most concern is the lack of transparency in the enactment of these legislations, by the Centre and the states. All central PD legislations and their ensuing amendments have been enacted subsequent to an ordinance. An ordinance is used by the President to pass laws when the Parliament is not in session. The power to issue an ordinance is conferred upon the President to enable him to act in unusual and exceptional circumstances, requiring immediate enactment of laws". States have adopted the opaque practice of issuing ordinances as a precursor to enacting laws through the promulgation of Presidential Decrees.

In twelve out of the seventeen states permitting Presidential Decrees (PD), ordinances were enacted prior to the passing of the statute. Additionally, states have made numerous amendments to their legislation in response to these ordinances. This prompts the question: why have both states and the central government opted for the "exceptional" route of ordinances rather than following

the routine and "ordinary" procedure?

The Maharashtra assembly argued that the presence of anti-social and extremist elements necessitated prompt action, with ordinances being proposed as a means to address these concerns. However, despite claims of the necessity for ordinances, no evidence has been presented to demonstrate the existence of unusual or exceptional circumstances. For instance, both Maharashtra and Tamil Nadu amended their laws concerning preventive detention to enable state governments to detain individuals involved in the distribution or attempted distribution of pirated music and movies through ordinances. In the statement of objects and reasons accompanying the ordinance, the Governor of Maharashtra asserted that video piracy posed a public order issue and that the film industry was facing a severe crisis due to extensive video piracy, thus justifying the need for an ordinance. While acknowledging that the legislative process can be time-consuming and that emergent situations may require immediate action, it appears highly unlikely that an ordinance was necessary to safeguard these states against the public order disruption posed by video pirates.

Legislation through ordinances should only be utilized in exceptional circumstances and not manipulated for narrow political agendas. It is the responsibility of the Executive to justify the necessity of an ordinance by demonstrating the existence of extraordinary circumstances. Once enacted, ordinances restrict elected representatives from scrutinizing or voting on a bill following a thorough and open discussion. For governments resistant to transparency or accountability, ordinances offer a convenient bypass: they require no deliberation or voting. Essentially, ordinances undermine parliamentary authority and subvert the democratic process.

"SCOPE OF ACTIVITIES PREVENTED BY THE LAWS – VAGUE AND EVER EXPANDING":

The introduction of the National Security Act (NSA) marked the onset of a series of new restrictive laws. The NSA allowed for detentions aimed at preventing an individual from engaging in activities deemed harmful to India's defense or security, its relations with foreign powers, public order, or the maintenance of essential supplies and services. Concurrently, various state legislatures enacted their own Preventive Detention (PD) laws, either mirroring the central government's legislation or crafting specific laws for the comprehensive control of various criminal activities, including communal, anti-social, and dangerous activities such as bootlegging, drug offenses, and gang-related crimes. These laws intentionally incorporate vague and expansive definitions of offenses. Terms like "acts threatening state or national security," "public order," and

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"prevention of activities of anti-social elements," "goondas," or "dangerous persons" remain undefined, granting governments wide latitude to interpret them as they see fit.

Wherever acts adversely affecting public order are defined, they are either tautologically described, for instance, "acting in any manner prejudicial to the maintenance of public order means,-(i) in the case of a bootlegger, when he is engaged, or is making preparations for engaging, in any of his activities as a bootlegger, which affect adversely, or are likely to affect adversely, the maintenance of public order" or are loosely defined as follows:

"Public order shall be deemed to have been affected, or deemed likely to be affected if activities of persons are causing, or are likely to cause harm, danger or alarm, a feeling of insecurity to the public, or actual danger to life, property or public health." Many of these laws aim to address activities that have raised public concerns, particularly in urban areas. Individuals may be categorized as "anti-social elements," "dangerous persons," or "goondas" if they habitually commit, attempt to commit, or aid in offenses against the body (outlined in Chapter XVI of the Indian Penal Code, 1860), offenses against property (outlined in Chapter XVII of the Indian Penal Code, 1860), or offenses related to trafficking or indecency towards women. Chapters XVI and XVII of the IPC encompass over one hundred and sixty offenses, many of which are minor and bailable, with punishments as lenient as imprisonment for a month. This broad range of offenses grants detaining authorities virtually unrestricted detention powers. States have increasingly expanded the scope of their Preventive Detention (PD) laws to encompass regular crimes, thereby enlarging the pool of individuals subject to arrest without the need for investigation or evidence gathering. A notable example of this is Telangana, which, in 2018, amended its PD Act to encompass offenses related to spurious seeds, insecticides, fertilizers, food adulteration, fake documents, scheduled commodities, forest crimes, gaming, sexual offenses, explosives, arms, cybercrime, and white-collar or financial crimes. This recent amendment has led to Telangana's PD law being titled: "The Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, Land Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertilizer Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders, and White Collar or Financial Offenders Act, 1986."

EXPANSIVE DETENTION POWER OF THE AUTHORITIES:

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These laws, aside from potentially encompassing a large number of individuals, grant extensive authority to delegated officials to issue detention orders. This authority is bestowed upon district magistrates, sub-divisional officers, commissioners of police, and similar officials. The sole oversight on the actions of these local officers is that state governments must be notified of detentions ordered by their subordinate officers within 12 days of the detention date, or else the order becomes nullified. The duration of detention permitted under various acts ranges from a minimum of 6 months to a maximum of two years. Thirteen central and state laws permit the separation of the grounds on which preventive detention (PD) was ordered. This grants detaining authorities broad discretion. Separability entails that if an order was based on multiple grounds, each ground is treated independently rather than cumulatively. Hence, a detention order can be upheld as long as at least one valid ground is specified. All of these laws specify that a detention order remains valid even if one or some of the grounds for detention are ambiguous, nonexistent, irrelevant, not connected, or invalid for any other reason.

APPLICATION OF PD LAWS ON THE GROUND:

Preventive detention (PD) laws have been portrayed as essential emergency measures, intended for safeguarding public safety rather than administering punishment. However, in reality, they have frequently been employed by law enforcement agencies to manage routine criminal activities. As far back as 1960, preventive detention came under scrutiny for being utilized as a substitute for regular criminal law, primarily targeting common offenders. This reliance on preventive detention appears to have intensified, with certain police officers acknowledging in informal discussions that they frequently resort to this measure when habitual criminals evade their control.

“CONCLUDING REMARKS”:

In reality, preventive detention strays far from being a last resort for addressing serious threats to public order, instead being utilized to detain individuals suspected of offenses such as cow smuggling, burglary, and food adulteration. These laws serve as a crutch, leading to not only injustices against individuals but also a decline in investigative and prosecutorial capabilities. Law enforcement agencies, sometimes admitting as much, have grown accustomed to preventive arrests as a convenient tool for crime control, seen as a simpler alternative to the challenging and uncertain process of convicting offenders, regardless of whether they are minor criminals or political and economic offenders. The rationale behind preventive detention has often been framed as necessary

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for dealing firmly with anti-national elements in the broader interests of India.

However, it is apparent that the state's motivation for such powers is not to preserve public order or national security but rather to suppress and conceal its own inadequacies. Information regarding preventive detention remains limited, with reporting often erroneously portraying its primary use as the suppression of political dissent. There is scarce information available on the composition and functioning of Advisory Boards, their frequency of disagreement with the executive, and the manner in which police utilize preventive detention. Despite their existence for many years, there has been no comprehensive review conducted on the necessity and application of such laws. A thorough review would likely reveal widespread misuse of preventive detention across various legislations. Merely citing constitutional provisions to justify preventive detention may no longer suffice; indeed, it may be time to consider eliminating sub-clauses (3) to (7) of Article 22 altogether.

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CHAPTER 8: APPROACH OF COURT IN RECENT BAIL ORDERS

Individuals detained under the nation's primary anti-terrorism legislation have been held in prisons for prolonged periods without trial due to a legal restriction on granting regular bail and a court prohibition on thoroughly reviewing the existing evidence during the bail process. The Delhi High Court's decision to give bail to three student activists, who had been imprisoned for more than a year due to their alleged involvement in the February 2020 riots in Delhi, demonstrates a deliberate and rational attempt to overcome such obstacles. In legal reasoning and interpretation, Justices Siddharth Mridul and Anup Jairam Bhambhani have made a clear distinction between individuals accused of crimes against the country's integrity and security, and protesters or dissenters who are unjustifiably labeled as "terrorists". The Delhi Police has invoked the Unlawful Activities (Prevention) Act against activists and other individuals involved in organizing rallies against the Citizenship (Amendment) Act. The police believe that these individuals also instigated the violence. According to Section 43D(5), bail cannot be granted if the court believes that there are substantial grounds to assume that the charge against the defendants is prima facie true. Further exacerbating the already burdensome task for the accused to prove the falsity of the charge is a ruling by the Supreme Court in 2019, which prohibits a thorough examination of the evidence during the bail proceedings and allows bail to be rejected based on the general likelihood of the case.

The High Court has determined that the bail court has the authority to examine the existing evidence in order to ascertain the initial plausibility of the case. Put simply, the fact that the UAPA has been invoked does not grant the prosecution an absolute immunity in their case. It has been determined that none of the three individuals, Asif Iqbal Tanha, Natasha Narwal, and Devangana Kalita, were expressly or notably charged with any "terrorist act," "funding of a terrorist act," or an act that can be considered a conspiracy to commit terrorism.

Engage in a terrorist act or engage in activities that are intended to prepare for a terrorist act. If the UAPA charges were found to be false, the court had the option to grant normal bail until the trial was completed. In addition, considering the 740 witnesses that have been cited, it is unlikely that the trial will reach a resolution in the near future. Riots pertain to the maintenance of public order,

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rather than the protection of the state. The court's remark that the state, in its eagerness to crush dissent, has obscured the distinction between the constitutionally protected freedom to demonstrate

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and "terrorist activity", is a strong criticism of the government. The Delhi Police has filed an appeal with the Supreme Court, probably out of concern that the verdict will hinder their intention to portray demonstrators as "terrorists". If the High Court's stance on granting bail is confirmed, it will safeguard the freedom of other dissenters detained under the UAPA in different locations, despite the lack of substantial grounds. The Chief Justice of India, N.V. Ramana, expressed his dissatisfaction on Friday with the prolonged delay in the release of individuals granted bail by the courts, including the Supreme Court. The Chief Justice of India (CJI), leading a Special Bench, expressed the court's frustration with the prison officials who insisted on physically getting the "genuine" printed version of the bail decision, disregarding the fact that it was causing harm to people's personal freedom. "Despite the advancements in information and communication technology, we are still relying on pigeons to convey orders," he commented verbally. In order to address the issue, the Chief Justice, along by Justices L. Nageswara Rao and A.S. Bopanna, publicly introduced a new program named "FASTER" or "Fast and Secure Transmission of Electronic Records." This system enables the court to rapidly, directly, and securely transmit electronic records.

Facilitate the electronic transmission of bail and other orders to jail officials, district courts, and the High Courts. The Attorney General, K.K. Venugopal, expressed his approval of the court's initiative.

When Solicitor General Tushar Mehta mentioned that orders were already placed on the court website, Justice Rao responded by stating that the purpose of the scheme is to safely transfer orders.

The Bench instructed the State governments to submit their findings regarding the Internet connectivity in jails in order to avoid any potential technological issues in the future. The Chief Justice instructed the Secretary General of the Supreme Court to prepare a detailed report outlining the plan within a period of two weeks.

SUO MOTU CASE

The hearing was conducted in response to a suo motu case titled "In Re: Delay in release of convicts after grant of bail", which was initiated by the Chief Justice of India (CJI) to address the issue that impacts the freedom and respect of inmates.

The suo motu case was registered due to the Agra Jail authorities' delay in releasing 13 prisoners who had been imprisoned for up to twenty years, despite being declared as "juveniles" by the Juvenile Justice Board at the time of their crimes. According to The Hindu, the prison authorities

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took almost four days to release the individuals, even though the Supreme Court had granted them bail on July 8.

Furthermore, the Indore Central Jail authorities inexplicably delayed the release of stand-up comic Munawar Faruqui, even after the Supreme Court granted him bail.
"Pinjra Tod activists Devangana Kalita and Natasha Narwal", together with "Jamia Millia Islamia student Asif Iqbal Tanha", were released from Tihar Jail around 48 hours after being granted bail by the Delhi High Court.

Three individuals who were detained in connection with the "Bhima Koregaon-Elgar Parishad" case have drafted a letter addressed to the CM of Maharashtra, "Uddhav Thackeray". The letter asserts that Father Stan Swamy, a tribal rights advocate residing in Jharkhand, did not die of natural causes. Signed by human rights lawyer "Surendra Gadling" and cultural activists "Ramesh Gaichor" and "Sagar Gorkhe", the letter characterizes the incident as an institutional murder. These individuals were incarcerated at the time and claim to have witnessed the torture endured by Swamy.

Swamy, who was 84 years old, was apprehended in October 2020 under the stringent UAPA anti-terrorism legislation. He endured more than eight months of incarceration before succumbing to a heart attack in July 2021. Among the 16 detainees seized in the case, he was the eldest. They are accused of having connections with Maoists, "planning the assassination of Prime Minister Narendra Modi", and inciting violent riots at the "Bhima Koregaon war memorial", which is located 40 kilometres away from Pune. Reports suggest that the allegations against them have been deliberately fabricated.

Annually, on January 1st, a multitude of dalit-bahujan devotees congregate at the Bhima Koregoan war memorial. The event recalls the momentous victory of the British Army, which included a substantial number of dalit soldiers, over the peshwas. The conflict holds significant meaning for the dalit community as it represents their struggle against the practice of untouchability.

Thus, in 2018, on the bicentennial of the event, the gathering at the Bhima Koregaon war memorial exceeded its typical size. Nevertheless, the assembly was attacked purportedly by higher caste rioters affiliated with Right-wing factions.

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Following the rioting, Anita Sawale, an anti-caste activist from Pune, lodged a complaint accusing Milind Ekbote and Sambhaji Bhide, prominent Hindutva activists, of being the orchestrators behind the attack.

However, the investigative agencies shifted their attention to the Elgar Parishad, a gathering that took place in Pune city one day prior to the outbreak of violence. During this event, numerous groups and activists made a pledge to refrain from supporting communal forces through their votes.

The urban division of Pune Police and NIA conducted following raids and apprehended well-known human rights lawyers, intellectuals, and campaigners.

After being imprisoned, Swamy's health declined dramatically while in jail, ultimately resulting in his death while awaiting bail on medical grounds. The killing of the individual in question has been strongly criticized by commentators, human rights campaigners, and political leaders. Some have gone so far as to describe it as a judicial murder.

Following Swamy's demise, the Indian government stated that they take action against unlawful activities rather than legal exercise of rights. Due to the precise nature of the charges levied against him, the courts denied his bail applications.

Now, three of Swamy's fellow prisoners in the Taloja Central Prison, situated on the outskirts of Mumbai, have provided a comprehensive account of the treatment he received in a letter to Thackeray, based on their first-hand observations.

Additionally, it is sent to the home minister of Maharashtra, “Dilip Walse Patil”, the CJ of Bombay High Court, and the Human Rights Commission of the state.

The letter, penned within 48 hours of his demise on July 5, 2021, asserts that we are both implicated with our father in the case, and we possess first-hand knowledge of the plot against him. "In our book, he did not pass away from natural causes." It was a meticulously orchestrated act of homicide within an organization. We are deeply perturbed and sorrowful by the demise of our father. Furthermore, we have made the decision to abstain from food for a 24-hour period as a symbolic act of dissent.

The letter attributes the responsibility for Swamy's death to the superintendent of Taloja Prison, Kaustubh Kurlekar, and accuses him of intentionally causing significant harm to Swamy's physical and mental well-being.

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The situation was resolved through the denial of appropriate medical care, confinement in isolation despite the need for assistance, and the act of forcibly removing the individual's clothing in the presence of the entire staff during the search at the prison door.

The letter states that the father was already afflicted with Parkinson's disease and several other illnesses at the time of his incarceration. "Under Kurlekar's supervision, the individual's health significantly declined while in custody due to the deliberate denial of adequate medical care."

Despite Swamy's deteriorating health, the letter indicates that there were limitations placed on his transfer to a hospital located outside the prison. The letter provides additional details that he was refused essential medications and a straw-sipper for drinking water. "He was in urgent need of an assistant as a result of his Parkinson's disease." In order to prevent him from receiving assistance from his other convicts, he was placed in solitary confinement.

Kurlekar deliberately aimed to weaken him both physically and mentally. In an effort to separate him from his fellow activists who were also accused, three separate attempts were made over a span of 4 months to relocate him to Arthur Road Prison.

Upon Swamy's return to jail from a medical examination, he was subjected to a search at the gate, during which he was required to undress in front of the entire staff. The letter states that it was an endeavour to disgrace him.

The letter asserts that Swamy's stroke was a direct consequence of the persecution he experienced, and that his death was a result of incompetence and inadequate medical care. It demands that Kurlekar be prosecuted with murder and calls for a court investigation into Swamy's demise. The statement concludes with a plea: We implore you to take into account our demands so that we and our co-defendants do not suffer the same consequences that our father did.

During Swamy's bail hearing following his death, the high court judges expressed profound admiration for his work. Nevertheless, opponents questioned why he was unable to secure bail under those circumstances. During his last bail hearing, Swamy accurately anticipated his own outcome.

Mortality. "I would prefer to endure and potentially perish in this place in the near future if this were to continue," he had said the judges.

The Bombay High Court has granted bail to poet Varavara Rao for a period of six months in the Bhima Koregaon case, citing medical reasons. This decision reaffirms the notion that even the

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strict terms of an anti-terrorism law cannot override a prisoner's constitutional rights. Mr. Rao, 82, was imprisoned under the severe Unlawful Activities (Prevention) Act. He had several illnesses and his health was worsening until he received medical care at Nanavati Hospital, thanks to the intervention of the National Human Rights Commission.

The court rejected the National Investigation Agency's objection that bail should not be given on medical grounds after an undertrial prisoner's bail application was refused based on the merits of the case under UAPA. The court held that release can be granted as long as the prisoner has access to medical treatment in a government hospital. The NIA contended that granting bail on health reasons would set a precedent that could lead to an influx of similar petitions, as it is prohibited by Section 43D(5) of the UAPA to provide bail if the accusation against a person is prima facie accurate. The court examined Mr. Rao's predicament in relation to his entitlement to life as stipulated in Article 21. The court determined that a Constitutional Court cannot passively observe the undertrial being transported to prison and then to government hospitals, where their health worsens, only to be eventually transferred to private super speciality hospitals due to court involvement. The reason for the back and forth was solely due to the rejection of his bail application based on its merits. In the majority of instances, bail is consistently refused under the UAPA. The embargo on releasing those imprisoned under UAPA on bond became extremely strict with the Supreme Court's ruling in 2019. This ruling made it exceedingly difficult for anyone to be granted bail, unless they could prove that the charges against them were clearly false. Nevertheless, a small number of recent legal rulings have attempted to establish

Exceptions. The Supreme Court has established that extended imprisonment without the chance of an early conclusion of the trial may be considered as a basis for granting bail. In the instance of Mr. Rao, the High Court has observed that charges have not yet been formally established, and once the trial commences, a total of 200 witnesses will need to be questioned. The interim release of the octogenarian poet should redirect public focus towards the other individuals who have been imprisoned for an extended period in the Bhima Koregaon case. This case involves allegations that lawyers and activists conspired with Maoists to overthrow the government.

The prosecution's assertions regarding the existence of a scheme have been undermined by recent discoveries that suggest certain electronic evidence in the case may have been remotely manipulated by malware. Regrettably, there is currently no indication of a speedy trial or any chance of the release of individuals who were arrested following a case involving alleged

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inflammatory comments made during a Dalit commemoration event on December 31, 2017 in Pune. The police have portrayed the incident as a malevolent Maoist conspiracy.

The Supreme Court denied activist "Sudha Bharadwaj's" plea for temporary release on Thursday, citing insufficient evidence in the medical report to support the request on medical grounds. Nevertheless, it is asserted that Bharadwaj has a robust case based on its merits. The case in which Sudha Bharadwaj and 14 others are detained is currently under scrutiny.

Bharadwaj was apprehended on August 28, 2018 in relation to the Bhima Koregaon/Elgar Parishad case.

On January 1, 2018, a huge number of Dalits assembled near Pune to observe the 200th anniversary of the Battle of Bhima Koregaon. This battle, which took place in 1818, was won by the British army, which consisted mostly of men from the Dalit caste, against the Peshwas.

An incident of violence was reported on a certain day, and based on the testimony of an eyewitness, a First Information Report (FIR) was filed at Pimpri police station on January 2. The FIR named Milind Ekbote and Sambhaji Bhide, who are Hindutva activists, for their alleged role in inciting the violence. However, on January 8, the Pune police filed another First Information Report (FIR) asserting that the violence occurred as a result of an event named Elgar Parishad, which took place on December 31, 2017 at Shaniwar Wada in Pune.

Six individuals belonging to the cultural organization Kabir Kala Manch were mentioned in the First Information Report (FIR) for their involvement in coordinating the event. After a period of three months, the police carried out searches on ten individuals and confiscated their electronic devices. Subsequently, the police asserted that they were guided to more individuals, including Bharadwaj, who resides in Faridabad. In January of this year, the NIA assumed control of the investigation from the Pune police. In addition to the first nine arrests, 6 more individuals were apprehended in relation to the case. Currently, all fifteen individuals implicated in the case are incarcerated.

Accusations levelled against Sudha Bharadwaj?

In 2018, the police in Pune submitted a chargesheet against the accused, including Bharadwaj. The chargesheet stated that some documents were found in possession of her co-accused, which detailed her activities and provided evidence of her involvement as a "active member" of the banned organization CPI (Maoist).

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The Elgaar Parishad case: Relatives of the defendant and attorneys convene in a virtual meeting. Although the NIA has not yet submitted an additional chargesheet in the case, the Pune police, while challenging her bail based on the merits last year, asserted that there were six documents purportedly found in possession of her co-accused that are related to her.

During the bail hearing, the Bombay High Court determined that a document, specifically the minutes of a Special Women's Meeting held on January 2, 2018, allegedly attended by Bharadwaj and Sen, cannot be considered as incriminating evidence. This conclusion was reached due to discrepancies found in the Call Data Records, which indicated that the two individuals were in different locations at the time of the meeting. The remaining five documents include alleged conversations about the activities of CPI (Maoists) in Chhattisgarh and Maharashtra, meetings of the Indian Association of Peoples' Lawyers, where Bharadwaj holds the position of vice-president, a conference in Delhi on the Unlawful Activities Prevention Act (UAPA), and records suggesting discussions about finances within the banned organization. In October 2019, the Bombay High Court denied her bail, stating that these records provide the first evidence supporting the charges against her.

What is the defense strategy employed by Bharadwaj?

Bharadwaj's legal representatives asserted that no "objectionable" items were found in her possession. Furthermore, there are no testimonies from witnesses, and the documents presented as evidence lack admissibility. The origin of these documents remains unverified, as they were typed rather than handwritten, lack any date, and were not produced using the computers and other devices that were seized. According to her lawyers, the Pune police falsely claimed that the Indian Association of People's Lawyers, of which she is a member, is connected to the banned organization CPI (Maoists). However, the association is completely apart from the banned organization and consists of respected legal experts.

The IAPL, established in 2004 as the Indian branch of the International Association of People's Lawyers, released a statement at the time asserting that these allegations were a "endeavour to suppress human rights lawyers, activists, and organizations engaged in human rights advocacy."

Bharadwaj's legal representatives assert that she holds a position as a guest lecturer at the National Law University, has no prior criminal record, and has been actively involved in assisting marginalized people in Chhattisgarh for an extended period of time. She opened Janhit in

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Chhattisgarh to offer legal assistance to communities. Janhit was chosen by a court to receive cash in order to sustain her legal endeavors.

From 2015 to 2017, the Chhattisgarh government appointed her as a Member of the Chhattisgarh State Legal Services Authority.

Bharadwaj's applications for health and temporary release:

Bharadwaj, along with "Sen" and "Jyoti Jagtap", a member of Kabir Kala Manch, is currently incarcerated in Byculla women's jail. Following the Covid-19 pandemic, she submitted a temporary request for release on bail to the special court, citing medical reasons. She stated that she has underlying health conditions such as diabetes, hypertension, and a history of pulmonary TB.

According to her daughter, Maaysha, Bharadwaj has developed a heart illness, which is certainly caused by the stress she is experiencing in jail. This is a new health issue for her, as she did not have any previous complaints before being imprisoned in 2018. The NIA objected to the requests, arguing that the jail authorities are adequately attending to the convicts and providing her with medical treatment. Her requests for interim relief were denied by both the special court and the Bombay High Court. As a result, she submitted a plea to the Supreme Court, but later withdrew it on Thursday.

Safoora Zargar, a 27-year-old student at Jamia Milia University, was refused bail by the Patiala House Court on June 4, citing Section 43D(5) of the Unlawful Assembly (Prevention) Act (UAPA), 1967.

In essence, Section 43D(5) stipulates that individuals accused of offenses under Part IV (Punishment for Terrorist Activities) and Part VI (Terrorist Organizations) of the UAPA will not be granted bail if, upon reviewing the case diary or the report filed under Section 173 of the Cr.P.C., the court finds reasonable grounds to believe that the accusation against the person is prima facie true.

In essence, the Court's decision to reject bail indicates that there is a strong initial indication that Safoora Zargar is implicated in an offense under Part IV and Part VI, although this is not explicitly stated.

Safoora has been charged with violating various provisions of the Indian Penal Code, as well as Sections 3 and 4 of the Prevention of Damage to Public Property (PDPP) Act and Sections 13, 16,

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17, and 18 of the UAPA. Among these charges, only Sections 16, 17, and 18 fall under Chapter IV of the UAPA. Below are the excerpts of the three sections:

"16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall,— (a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine; (b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

17. Punishment for raising funds for terrorist act. —Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directly or knowingly facilitates the commission of, a terrorist act or anyact preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

The term "terrorist act" as per Section 15, is reproduced below:

"15. Terrorist act.—*(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—*

a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances of a hazardous nature or by any other means of whatever nature to cause or likely to cause:

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(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in anyforeign country; or

(iiia) damage to, the monetary stability of India by way of production or smuggling or circulationof high-quality counterfeit Indian paper currency, coin or of any other material; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(p) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organization or any other person todo or abstain from doing any act; or commits a terrorist act."

Hence, the Court, in rejecting the bail application under the guise of Section 43D(5) of the UAPA, should have demonstrated initial satisfaction that Safoora is implicated in any of the aforementioned sections.

Remarkably, the court provided a detailed explanation of the interpretation of "unlawful activities" under the UAPA, which falls outside the scope of "Section 16, 17, and 18 of the UAPA". Instead, the penalties for illegal actions are specified in Section 13 of UAPA, which falls outside either Part IV or Part VI of UAPA.

The court has relied on a ruling as precedent to build a case against Safoora under UAPA. However, this judgment is extraneous and unrelated to the requirements of "Section 43D(5) of UAPA".

The court referred to the judgment of "Kedar Nath v. State of Bihar" to establish the meaning of

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disaffection towards India. There are no legal restrictions on giving bail to anybody accused of

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participating in illegal activities, including those who have expressed their dissatisfaction with India. The embargo is only invoked when a person is accused of engaging in terrorist activities, even though this may involve repeating the information.

At this point, it is important to take note of the court's observation. Following a discussion on a proposition unrelated to the meaning of unlawful conduct and the term of "disaffection against India," the order states,

Thus, the simple act of violence is not the central point of the allegation under section 2(o) of the UAPA. An activity that causes significant disorder or disruption of law and order, to the point where the entire city is paralyzed and the government machinery comes to a complete stop, would be considered an unlawful activity according to Section 2(o) of UAPA. Based on the statement recorded under sections 161 and 164 of the Criminal Procedure Code, along with the WhatsApp discussion accessible as evidence, it can be concluded that there is clear evidence to suggest a conspiracy to block the roadways (chakka jaam).

In addition, the court proceeded to include, Even if the applicant/accused cannot be directly linked to any acts of violence, she cannot escape her responsibility under the requirements of the mentioned Act. “If you decide to play with embers, you cannot hold the wind responsible for carrying the spark too far and causing the fire to spread”.

Two main concerns arise from the rationale employed by the court, among others. Firstly, this observation is inconsequential to the matter at hand, as the court once again failed to provide any explanation for the terrorist act in which she was implicated. Surprisingly, the entire order does not contain any mention of the phrases "Terrorist Act," "Part IV," "Part VI," or Section 16, 17, and 18.

This demonstrates that the court did not make any effort to analyze and consider the relevant legal provisions and apply them to the specific circumstances of the current case. Undoubtedly, the judge has the authority to exercise discretion when determining a bail application for a specific defendant. However, the discretion mentioned is not unrestricted to the point of fully disregarding the literal interpretation of the law.

Furthermore, this finding contradicts the fundamental and established principles of interpreting criminal law, which require laws to be narrowly construed and not given a broad interpretation. Thus, until the court has clear evidence that Safoora Zargar is engaged in terrorist activities, any mention of Section 43D(5) of UAPA is entirely unlawful.

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To provide background information, Safoora has been charged with delivering provocative comments at Chand Bagh on February 23, 2020, and participating in a plot to obstruct highways during anti-CAA demonstrations in New Delhi.

In order to strengthen its case against Safoora, the prosecution referred to a ruling by the Supreme Court in the NIA v. Zahoor Ahmad Shah Watali case.

This ruling states that the court's task at this stage, which is to provide reasons for granting or denying bail, is distinct from analyzing the strengths or weaknesses of the evidence. Performing a detailed analysis or dissection of the evidence is not necessary at this point. It is on the court to make a determination based on general likelihoods regarding the accused's involvement in the commission of the declared offense or lack thereof.

Nevertheless, the court has not documented any determination that Safoora was implicated in the crimes specified in Section 16, 17, or 18 of UAPA. However, even though the court was made aware of the issue, it utterly disregarded and overlooked the ruling of the highest court.

Given that the court definitively saw her involvement in the conspiracy to block roadways, it may be deduced that the court regarded this act as a clear instance of terrorism, as it was the sole basis for denying bail to Safoora. The decision to refuse bail to Safoora is founded on a clear misinterpretation of the UAPA and a demonstration of thorough judicial supervision.

However, it is necessary to further investigate whether there is any chance for Safoora to be granted bail, considering that the Court has already shown that she is prima facie participating in a terrorist act.

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CONCLUSION

I must frankly suggest that the record of our Courts, both Constitutional Courts and other wise has been abysmal in matters related to 'Bail'. I must make it clear that I am confining myself to Bail and Detention matters only.

I have discussed about the cases of Late Father Stan Swamy and Poet Varavara Rao and their pleas for medical bails in the High Court of Bombay. I have also discussed other cases like one ones of Mr. P Chidambaram's bail plea, Sudha Bharadwaj's plea, pleas of Safoora Zargar, Devangana Kalita and others. Thousands of arrested individuals have been kept in jails, without trials, where leads to gross violations of their individual liberties. The Government machineries like the CBI, EB, NCB, Income Tax etc. are used by those in power to settle scores.

On closely scrutiny, I find that the lower courts are the most reluctant in allowing bail applications, perhaps because of an apprehension that Higher Courts may reject it. These judges should bear in mind that it is not only the job of the Constitutional Courts to uphold the 'Rule of Law' and protect the 'Life and Liberty' of people by granting them bail. The lower courts have equal stake in my view to protect the liberty of citizens. Hussaina Khantoon and Khatri are two very important cases that relate to offering of free legal assistance to the people in need to promoting equality and equal protection of laws.

The Constitutional Courts in our country can also use their powers under Article 142 (Only SC) and Sec. 482 of the Constitution and CrPC to grant bails in matters. Burden of proof lies on the prosecution side, there is a tremendous amount of discretion that goes into allowing a bail application. Judges, who are the custodians of our Constitution, should remember that BAIL is the rule and JAIL is the exception.

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SUGGESTIONS/FINAL REMARKS

1. Lower Court Judges should also consider them as the protector of Fundamental Rights of people, even though they are not judges of Constitutional Courts. The simple reason is that- an accused gets their first opportunity to apply for Bail in their courts.
2. The evidence courts should record the findings very carefully, instead of accepting the State's version.
3. There should be a mechanism to expedite the Trials of people languishing in jails, only on the suspicion or prima facie finding of having committed an offence.
4. We should free ourselves from antique laws and shallow principles; like the law of Sedition, certain principles of the UAPA and many others.
5. The States should make sure that everyone who is in need of Legal Aid is given the opportunity.
6. The procedure of release from jails post the grant of a bail order shall be made easy and less cumbersome.
7. The Government Counsel, being the officers of the court should assist the courts in reaching at a right conclusion, rather that only focusing on advocating the cause of the State.