# VIJAY DUTT SHARMA

ADVOCATE

OFFICE & RESIDENCE: 82, SHARDA-VIHAR, CITY-CENTRE,
NEAR NEW HIGH COURT, GWALIOR, MADHYA PRADESH
CONTACT: +91-9826265303
E-MAIL ID: vjdutt9@gmail.com


Date 12.04.2024

To,

The Registrar (Administration)
(Secretary of the Permanent Committee
for Designation of Senior Advocate)
High Court of Madhya Pradesh,
Jabalpur (M.P.).

**Sub:** Application for designation of Senior Advocate in terms of your notice dated 02.04.2024 bearing notice no. A/2706/I-1-27/63 (Rules 2018).

Respected Sir,

In respect to the subject cited above, I am enclosing herewith my application for designation as Senior Advocate in the prescribed form under Rule 13 of the amended High Court of Madhya Pradesh (Designation of Senior Advocates) Rules, 2018 along with requisite documents as enclosed underneath.

The said application is being submitted for the kind consideration of the Permanent committee.

Thanking you.

With Highest Regards,

**Vijay Dutt Sharma**

**Advocate**

Mobile No.- +91-98262-65303

E-mail- vjdutt9@gmail.com

**Enclosures:** (i) Application for Designation of Senior Advocate in prescribed proforma.

(ii) Copy of Sanad marked as enclosure 'A'.

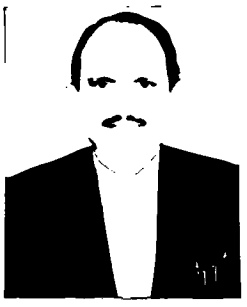
(iii) Copy of ITR returns & copy of PAN ID marked as enclosure 'B' & 'C', respectively.

(iv) Copy of the draft of synopsis submitted in different matters marked as enclosure 'D' to 'H'.

# HIGH COURT OF MADHYA PRADESH (DESIGNATION OF SENIOR ADVOCATES) RULES, 2018

## PROFORMA OF PARTICULARS

## (UNDER RULE 13)



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| 1. | Name | **VIJAY DUTT SHARMA** |
| 2. | Qualification | M.A., LL.B. |
| 3. | Date of Birth | 02nd July, 1967 |
| 4. | Permanent Address | House No. 82, Sharda Vihar Colony, Near New High Court Building, Gwalior, Madhya Pradesh [Pincode- 474011] |
| 5. | Address to which communications are to be sent | House No. 82, Sharda Vihar Colony, Near New High Court Building, Gwalior, Madhya Pradesh [Pincode- 474011] |
| 6. | Name of Bar Council<br><br>Date of Enrolment as an Advocate | State Bar Council of Madhya Pradesh<br><br>12th March, 1990 |

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| 7. | Number in the roll of advocates maintained by the State Bar Council | MP/393/1990<br><br>The copy of the Sanad is herewith enclosed as **'ENCLOSURE A'** |
| 8. | Whether he is a member of any association of lawyers? | High Court Bar Association Gwalior (M.P.) |
| 9. | Number of years of Practice<br><br>Place of Practice<br><br>Court(s), where practised | **34 years**<br><br>Gwalior<br><br>High Court of Madhya Pradesh, Gwalior Bench |
| 10. | Specialisation in any field of law | Criminal Laws |
| 11. | Whether a junior to any lawyer at present? | No |
| 12. | Whether any Junior lawyer is practising with him? If so, names of such lawyers and the period. | • Mr. Ashish Saxena Adv. (MP/2295/2011)- Since 2011<br><br>• Mr. Avinash Chaturvedi Adv. (MP/1667/2018)- Since 2018<br><br>• Mr. Harshit Sharma Adv. (MP/1228/2020)- Since August 2020 |

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| | | • Mrs. Monika Sharma Adv. (MP/866/2024) – Since March 2024 |
| 13. | Whether, he is an Assessee under the Income Tax Act in respect of professional income? If so, details of income assessed for the last three years accompanied by a copy of the Permanent Account Number Card? | Yes, I am Assessee under the Income Tax Act, since 2008. The copy of the ITR returns for the years 2020-2021, 2021-2022, 2022-2023 & 2023-2024 accompanied by the copy of the PAN ID is herewith enclosed as **'ENCLOSURE B'** and **'ENCLOSURE C'**, respectively. |
| 14. | Whether he is/was in the panel of the State or Central Government or whether holds ant office under the State or Central Government? | NO |
| 15. | Reference to any important matter in which appeared and rendered assistance | Appointed as Court Commissioner in the case of *Dinesh Singh Bhadauria v/s. Vinod Sharma & Ors [CONC No. 893/2017]* for the purpose of inspection of the road in Transport Nagar, whether the compliance of the Hon'ble Courts' order has been done or not?<br><br>Appointed as Amici curiae in various death references, including the following cases:<br><br>1. In Reference, State of M.P. v/s. Ravi@ Toli Malviya [CRRFC 13/2019] |

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| | | 2. The State of Madhya Pradesh v/s. Yogesh Nath @ Jogesh Nath [CRRFC 09/2019]<br>3. State of Madhya Pradesh v. Nandu @ Nand Kishore [CRA 6946/2018] connected with CRRFC 09/2018.<br>4. In Reference (Suo Moto) v. Manoj [CRRFC 08/2019]<br>5. In Reference v. Ravi @ Toli Malviya [CRRFC 03/2020]<br><br>Appointed as Amici curiae in cases pertaining to various facets of legal jurisprudence, which includes the following matters:<br><br>1. Smt. Usha Kanwar v/s. State of Madhya Pradesh [MCRC 2769/19]<br>2. Jagdish Pal v/s. State of Madhya Pradesh [WP 17026/2018]<br>3. Balveer Singh Bundela v/s. State of Madhya Pradesh [MCRC 5621/2020]<br>4. Smt. Sunita Gandharva v. State of Madhya Pradesh [MCRC 22615/2020]<br>5. Ashish Pratap Singh v. State of Madhya Pradesh & Ors. [WP 13544/2020]<br>6. Abhishek Joshi v. State of Madhya Pradesh & Ors. [WP 2603/2021]<br>7. Amar Singh Kushwaha v. Chairman, State Bank of India & Ors. [WP No. 8286/2021] |

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| | | 8. Prosecutrix v. State of M.P. & Anr. [W.P. No. 20499/2023]<br>9. Vidhi ka Ulanghan Karne Wala Balak v. State of M.P. & Anr. [2022 (3) M.P.L.J. (Cri.) 126]<br>10. Lakhvinder Kour v. State of M.P. & Anr. [W.P. 7488/2021] |
| 15. | (b) Reported judgments in which the concerned Advocate had appeared in last five years and rendered assistance | Reported judgments since 2019 are detailed underneath:<br><br>1. Munnalal Verma v/s. State of Madhya Pradesh [(2019) 1 Cr.L.R. (MP) 218]<br>2. Miss A v/s. State of Madhya Pradesh [(2019) 2 M.P.L.J. (Cri.) 402]<br>3. Ruchi Gupta v/s. State of Madhya Pradesh [(2019) 2 Cr.L.R. (MP) 495]<br>4. Ramkumar v/s. State of Madhya Pradesh [(2019) 2 Cr.L.R. (MP) 622]<br>5. Rakesh Garg v/s. State of Madhya Pradesh [(2019) 2 Cr.L.R. (MP) 713]<br>6. Shivraj Singh Chouhan v/s. Rajendra Gupta [(2019) 3 M.P.L.J. (Cri.) 80]<br>7. In reference v. Ankur @ Nitesh Dixit [2020 (1) M.P.L.J. (Cri.) 321]<br>8. State of M.P. v. Ravi @ Toli Malviya [2020 (2) M.P.L.J. (Cri.) 102]<br>9. Balveer Singh Bundela v. State of Madhya Pradesh [2020 (2) M.P.L.J. (Cri.) 235]<br>10. Smt. Sunita Gandharva v. State of Madhya Pradesh [2020 (3) M.P.L.J. (Cri.) 247] |

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| | | 11. Child in Conflict with Law v. State of M.P. & Anr. [2022 (3) M.P.L.J. (Cri.) 53]<br>12. Vidhi ka Ulanghan karne wala balak v. State of M.P. & Anr. [2022 (3) M.P.L.J. (Cri.) 126]<br>13. Vijay Dandotiya & Ors. v. State of M.P. & Anr. [2023 (1) M.P.L.J. (Cri.) 109]<br>14. Gopal Krishna Gautam @ Pandit v. Union of India [2023 (1) M.P.L.J. (Cri.) 260]<br>15. Jandel Singh v. State of M.P. [2023 (2) M.P.L.J. (Cri.) 419] |
| 16. | Whether he has written any book on law or made any contribution to a law publication or journal? If so, the details. | NO |
| 16a | Whether he has/had teaching assignments or delivers/delivered guest courses delivered at Law Schools? If yes, the details. | Yes, undertook multiple sessions of Drishyam Vidhi at Dharmashastra National Law University, Jabalpur (M.P.) under the able guidance of Hon'ble Shri Justice Anand Pathak Ji. |
| 17. | Whether he attended or participated in any | Yes, and I have been invited as resource person/keynote speaker in workshops, |

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| | seminar/conference relating to law? | seminars and lectures conducted by the Adhivakta Parishad, Office of District Prosecution Officer, Gwalior (M.P.), Economic Offences Wing Gwalior, Department of Forensic Medicine & Toxicology, GRMC, Gwalior in association with Medicolegal Society of Gwalior, M.P., etc. since 2017-till date<br><br>**In addition to the aforesaid, it's my honour to be a moderator/speaker at the Capacity Building special training programme for Advocates with zero to five-year experience at Madhya Pradesh High Court, Bench at Gwalior as organised by the Madhya Pradesh State Judicial Academy, Jabalpur at Gwalior on dated 18.03.2023 in the august presence of Hon'ble the Chief Justice of High Court of Madhya Pradesh Shri Ravi Malimath Ji as well as Hon'ble Justices of the High Court of Madhya Pradesh, Bench at Gwalior.** |
| 18. | Whether he is/was connected with any faculty of law. | Not directly associated to any faculty of law, but I have been regularly invited in Jiwaji University, ITM University and Amity University Gwalior to judge their moot court competitions and to deliver lectures as keynote speaker. |

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| 19. | Whether any application for designation as senior advocate had been made in the past to the High Court of Madhya Pradesh or any other Court? If so, when and with what result? | No |
| 20. | Whether ordinarily practising within the jurisdiction of the High Court of Madhya Pradesh? | Yes |
| 21. | Whether he has been ever been personally involved in any civil or criminal litigation or contempt proceedings or any disciplinary proceedings against him by the Bar Council? | No |
| 22. | Details of participation in Pro Bono work? | As being court appointed mediator, I have undertaken, mediation proceedings in the following cases as detailed below:<br>• Purushottam Rai v. State of M.P. [MCRC No. 8546/2017]<br>• Harsh v. State of M.P. [MCRC No.44936/2022]<br>• Pradeep Chauhan v. State of M.P. [MCRC No. 831/2023] |

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| | | • Neeraj Sharma & Ors. v. State of M.P. & Ors. [MCRC No. 37614/2022]<br>• Devendra Sharma v. State of M.P. & Anr. [MCRC No. 44435/2022]<br>• Ramdas Gurjar v. State of M.P. & Anr. [MCRC No. 24135/2022]<br>• Santosh v. State of M.P. [MCRC No. 37047/2022]<br>• Rajesh Jain & Ors. v. State & Anr. [MCRC No. 29175/2022]<br>• Brijesh @ Sentu Yadav v. State [MCRC No. 20907/2022]<br>• Deepak Rai & Ors. v. State of M.P. & Anr. [MCRC No. 52964/2023]<br>Also have rendered services as Amici curiae in death references as tabulated above. |
| 22a | Details of five best synopsis filed by the advocate concerned<br>(Copy of the draft of synopsis which are filed in these cases are marked as Enclosures so denoted adjacent to them underneath) | 1. Vidhi Ka Ulanghan Karne wala Balak v. State of M.P. & Anr. [CRR No. 2108/2021]- **Enclosure 'D'**<br>2. Balveer Singh Bundela v. State of Madhya Pradesh [2020 (2) M.P.L.J. (Cri.) 235]- **Enclosure 'E'**<br>3. Ajeet Gurjar v. State of M.P. [CRR No. 3000/2021]- **Enclosure 'F'**<br>4. Prahlad Singh v. State of M.P. & Ors. [CRR No.3085/2021]- **Enclosure 'G'**<br>5. Gopal Krishna Gautam @ Pandit v. State of M.P. & Anr. [2023 (1) M.P.L.J. (Cri.) 260]- **Enclosure 'H'.** |

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| 23. | Other information/particulars, if any, including legal services and as legal aid counsel | -N/A- |
| 24. | Details of services rendered by way of legal services, mediation work, other para legal activities, assistance rendered to various administrative committees of High Court, etc. | In the following matter, the court had appointed me the mediator to find the solution for amicable settlement, whose particulars are herewith reproduced:<br>• Purushottam Rai v. State of M.P. [MCRC No. 8546/2017]<br>• Harsh v. State of M.P. [MCRC No.44936/2022]<br>• Pradeep Chauhan v. State of M.P. [MCRC No. 831/2023]<br>• Neeraj Sharma & Ors. v. State of M.P. & Ors. [MCRC No. 37614/2022]<br>• Devendra Sharma v. State of M.P. & Anr. [MCRC No. 44435/2022]<br>• Ramdas Gurjar v. State of M.P. & Anr. [MCRC No. 24135/2022]<br>• Santosh v. State of M.P. [MCRC No. 37047/2022]<br>• Rajesh Jain & Ors. v. State & Anr. [MCRC No. 29175/2022]<br>• Brijesh @ Sentu Yadav v. State [MCRC No. 20907/2022]<br>• Deepak Rai & Ors. v. State of M.P. & Anr. [MCRC No. 52964/2023] |

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| | | Also, in the case of Raj Kumar Chaddha @ Raj Chaddha & Anr. v. State of M.P. & Ors. registered at W.P. No. 13570/2021 vide order dated 26.08.2021, the Hon'ble Court has constituted a committee to count standing trees at 30 hectares of land out of which on 13 hectares of land, the housing board was intending to implement re-densification scheme at Thatipur, Gwalior, of which I was the member of the team which went to survey the spot, as constituted by the Hon'ble Court. |

Date: 12.04.2024

**Vijay Dutt Sharma**

**Advocate**

Mobile No.- +91-98262-65303

E-mail- vjdutt9@gmail.com

(12)

ENCLOSURE 'A'

# स्टेट बार कौंसिल ऑफ मध्य प्रदेश

यतो धर्मस्ततो जयः

## प्रमाण-पत्र

स्टेट बार कौंसिल ऑफ मध्यप्रदेश

एतद् द्वारा प्रमाणित करती है कि

श्री विजयदत्त शर्मा

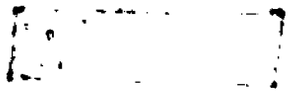
आत्मज श्री एस०पी० शर्मा (ग्वालियर)

को एडवोकेट के रूप में स्वीकृत कर एडवोकेट्स एक्ट १९६१ (अधिनियम क्रमांक २५ सन् १९६१) की धारा १७ के आधीन उनका नाम स्टेट बार कौंसिल की एडवोकेट सूची के क्रमांक म. प्र./३९३/१९९०/एड. पर अंकित किया गया है।

आज मिति ५ भाद्रपद शक संवत् २०५२ तदनुसार दिनांक १६ सितम्बर सन् १९९५. ई० को स्टेट बार कौंसिल के आदेशानुसार मेरे हस्ताक्षराधीन प्रदत्त।

अध्यक्ष

स्टेट बार कौंसिल ऑफ मध्यप्रदेश



ENCLOSURE 'B'

# INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4(SUGAM), ITR-5, ITR-6, ITR-7 filed and verified]
(Please see Rule 12 of the Income-tax Rules, 1962)

**Assessment Year 2020-21**

| | | | |
|---|---|---|---|
| **PAN** | AYWPS4496E | | |
| **Name** | VIJAY DUTT SHARMA | | |
| **Address** | 192 SHARDA VIHAR COLONEY, CITY CENTER, GWALIOR, GWALIOR, GWALIOR, Madhya Pradesh, 474006 | | |
| **Status** | Individual | **Form Number** | ITR-3 |
| **Filed u/s** | 139(1)-On or before due date | **e-Filing Acknowledgement Number** | 842719790181220 |

| | | | |
|---|---|---|---|
| **Taxable Income and Tax details** | **Current Year business loss, if any** | **1** | 0 |
| | **Total Income** | | 695800 |
| | **Book Profit under MAT, where applicable** | **2** | 0 |
| | **Adjusted Total Income under AMT, where applicable** | **3** | 695800 |
| | **Net tax payable** | **4** | 53726 |
| | **Interest and Fee Payable** | **5** | 1370 |
| | **Total tax, interest and Fee payable** | **6** | 55096 |
| | **Taxes Paid** | **7** | 55100 |
| | **(+)Tax Payable /(-)Refundable (6-7)** | **8** | 0 |
| **Dividend Distribution Tax details** | **Dividend Tax Payable** | **9** | 0 |
| | **Interest Payable** | **10** | 0 |
| | **Total Dividend tax and interest payable** | **11** | 0 |
| | **Taxes Paid** | **12** | 0 |
| | **(+)Tax Payable /(-)Refundable (11-12)** | **13** | 0 |
| **Accreted Income & Tax Detail** | **Accreted Income as per section 115TD** | **14** | 0 |
| | **Additional Tax payable u/s 115TD** | **15** | 0 |
| | **Interest payable u/s 115TE** | **16** | 0 |
| | **Additional Tax and interest payable** | **17** | 0 |
| | **Tax and interest paid** | **18** | 0 |
| | **(+)Tax Payable /(-)Refundable (17-18)** | **19** | 0 |

Income Tax Return submitted electronically on **18-12-2020 18:32:22** from IP address **103.109.176.3** and verified by **VIJAY DUTT SHARMA**

having PAN **AYWPS4496E** on **18-12-2020 18:35:44** from IP address **103.109.176.3** using Electronic Verification Code **64QEEHABGI** generated through **Aadhaar OTP** mode.

**DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU**

Vijay

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**Acknowledgement Number: 413132960251221** **Date of Filing: 25-Dec-2021**

# INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR- 4(SUGAM), ITR-5, ITR-6, ITR-7 filed and verified]
(Please see Rule 12 of the Income-tax Rules, 1962)

Assessment Year 2021-22

| | | | |
|---|---|---|---|
| PAN | AYWPS4496E | | |
| Name | VIJAY DUTT SHARMA | | |
| Address | 192 SHARDA VIHAR COLONEY , CITY CENTER , GWALIOR , GWALIOR , GWALIOR , 18-Madhya Pradesh , 91-INDIA , 474006 | | |
| Status | Individiual | Form Number | ITR-4 |
| Filed u/s | 139(1)-On or before due date | e-Filing Acknowledgement Number | 413132960251221 |

| | | | |
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| Taxable Income and Tax details | Current Year business loss, if any | 1 | 0 |
| | Total Income | | 10,35,200 |
| | Book Profit under MAT, where applicable | 2 | 0 |
| | Adjusted Total Income under AMT, where applicable | 3 | 0 |
| | Net tax payable | 4 | 1,27,982 |
| | Interest and Fee Payable | 5 | 1,27,982 |
| | Total tax, interest and Fee payable | 6 | 1,37,382 |
| | Taxes Paid | 7 | 1,37,382 |
| | (+) Tax Payable / (-) Refundable (6-7) | 8 | 0 |
| Dividend Distribution Tax details | Dividend Tax Payable | 9 | 0 |
| | Interest Payable | 10 | 0 |
| | Total Dividend tax and interest payable | 11 | 0 |
| | Taxes Paid | 12 | 0 |
| | (+) Tax Payable / (-) Refundable (11-12) | 13 | 0 |
| Accreted Income & Tax Details | Accreted Income as per section 115TD | 14 | 0 |
| | Additional Tax payable u/s 115TD | 15 | 0 |
| | Interest payable u/s 115TE | 16 | 0 |
| | Additional Tax and interest payable | 17 | 0 |
| | Tax and interest paid | 18 | 0 |
| | (+) Tax Payable / (-) Refundable (17-18) | 19 | 0 |

Income Tax Return submitted electronically on 25-Dec-2021 16:38:01 from IP address 10.1.36.236 and verified by VIJAY DUTT SHARMA having PAN AYWPS4496E on 25-Dec-2021 using paper ITR-Verification Form/ Electronic Verification Code C4EX9KT28I generated through Aadhaar OTP mode.

System Generated Barcode/QR code

AYWPS4496E044131329602512213020 5e467f00fee070feb8e2b406d3b55da614de

**DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU**

**Acknowledgement Number: 335228440310722** **Date of filing: 31-Jul-2022**

# INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT

Assessment Year 2022-23

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR- 4(SUGAM), ITR-5, ITR-6, ITR-7 filed and verified]
(Please see Rule 12 of the Income-tax Rules, 1962)

| | |
|---|---|
| PAN | AYWPS4496E |
| Name | VIJAY DUTT SHARMA |
| Address | 192 SHARDA VIHAR COLONEY , CITY CENTER , GWALIOR , GWALIOR , GWALIOR , 18-Madhya Pradesh , 91-INDIA , 474006 |

| | | | |
|---|---|---|---|
| Status | Individiual | Form Number | ITR-3 |
| Filed u/s | 139(1)-On or before due date | e-Filing Acknowledgement Number | 335228440310722 |

| | | | |
|---|---|---|---|
| Taxable Income and Tax details | Current Year business loss, if any | 1 | 0 |
| | Total Income | | 8,12,360 |
| | Book Profit under MAT, where applicable | 2 | 0 |
| | Adjusted Total Income under AMT, where applicable | 3 | 8,12,360 |
| | Net tax payable | 4 | 77,971 |
| | Interest and Fee Payable | 5 | 0 |
| | Total tax, interest and Fee payable | 6 | 77,971 |
| | Taxes Paid | 7 | 40,000 |
| | (+) Tax Payable / (-) Refundable (6-7) | 8 | (+) 37,970 |
| Accreted Income & Tax Details | Accreted Income as per section 115TD | 9 | 0 |
| | Additional Tax payable u/s 115TD | 10 | 0 |
| | Interest payable u/s 115TE | 11 | 0 |
| | Additional Tax and interest payable | 12 | 0 |
| | Tax and interest paid | 13 | 0 |
| | (+) Tax Payable / (-) Refundable (12-13) | 14 | 0 |

Income Tax Return submitted electronically on 31-Jul-2022 10:55:28 from IP address 103.118.115.122 and verified by VIJAY DUTT SHARMA having PAN AYWPS4496E on 18-Sep-2022 using Electronic Verification Code XBQTXQJ5DI generated through Aadhaar OTP mode.

System Generated Barcode/QR code

AYWPS4496E033352284403107 22c1500dbc27b906e2b2831b88fe0fda1c983520e1

**DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU**

(16)

**Acknowledgement Number:514603190170723** **Date of filing : 17-Jul-2023**

## INDIAN INCOME TAX RETURN ACKNOWLEDGEMENT

[Where the data of the Return of Income in Form ITR-1(SAHAJ), ITR-2, ITR-3, ITR-4(SUGAM), ITR-5, ITR-6, ITR-7 filed and verified]
(Please see Rule 12 of the Income-tax Rules, 1962)

Assessment Year 2023-24

| | | | |
|---|---|---|---|
| PAN | AYWPS4496E | | |
| Name | VIJAY DUTT SHARMA | | |
| Address | 192 SHARDA VIHAR COLONEY,CITY CENTER , GWALIOR, GWALIOR , GWALIOR , 18-Madhya Pradesh, 91-INDIA, 474006 | | |
| Status | Individual | Form Number | ITR-3 |
| Filed u/s | 139(1)- On or Before due date | e-Filing Acknowledgement Number | 514603190170723 |

| | | | |
|---|---|---|---|
| Taxable Income and Tax Details | Current Year business loss, if any | 1 | 0 |
| | Total Income | 2 | 8,41,570 |
| | Book Profit under MAT, where applicable | 3 | 0 |
| | Adjusted Total Income under AMT, where applicable | 4 | 8,41,570 |
| | Net tax payable | 5 | 84,047 |
| | Interest and Fee Payable | 6 | 3,825 |
| | Total tax, interest and Fee payable | 7 | 87,872 |
| | Taxes Paid | 8 | 87,900 |
| | (+) Tax Payable /(-) Refundable (7-8) | 9 | (-) 30 |
| Accreted Income and Tax Detail | Accreted Income as per section 115TD | 10 | 0 |
| | Additional Tax payable u/s 115TD | 11 | 0 |
| | Interest payable u/s 115TE | 12 | 0 |
| | Additional Tax and interest payable | 13 | 0 |
| | Tax and interest paid | 14 | 0 |
| | (+) Tax Payable /(-) Refundable (13-14) | 15 | (+) 0 |

Income Tax Return submitted electronically on 17-Jul-2023 20:12:37 from IP address 103.118.114.190 and verified by VIJAY DUTT SHARMA having PAN AYWPS4496E on 17-Jul-2023 using paper ITR-Verification Form /Electronic Verification Code 7U5E8S8QSI generated through Aadhaar OTP mode

System Generated Barcode/QR Code

AYWPS4496E03514603190170723a6e00e2382f92295fa2b714d8b546139276ba9b3

**DO NOT SEND THIS ACKNOWLEDGEMENT TO CPC, BENGALURU**

(17)

ENCLOSURE 'C'


ENCLOSURE 'D'

**IN THE HON'BLE HIGH COURT OF MADHYA PRADESH,**

**BENCH AT GWALIOR**

**CRIMINAL REVISION NO. 2108/2021**

**REVISIONIST.....** Vidhi ka Ulanghan Karne waala Balak

*Versus*

**NON-APPLICANT...** State of Madhya Pradesh & Anr.

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PLACE : GWALIOR

DATED : 14-09-2021

**Humble Amicus Curiae**

Vijay Dutt Sharma

**Advocate**

# *Synopsis*

***Most Respectfully Sheweth,***

***It is respectfully and humbly placed before Your Lordship,***

***In reference to the Hon'ble Court's anxiety reflected in the order dated 09.09.2021 passed in CRR 2108/2021 in the matter of Vidhi Ka Ulanghan Karne Waala Balak v. State of Madhya Pradesh & Ors. have posed the following questions for deliberation:***

1. *Whether a child in conflict with law completes more than one half of total period of retention of three years in special home, then whether he is entitled to avail the benefit of section- 436A of the Code of Criminal Procedure, 1973?*

2. *Whether a child in conflict law can be treated as an under-trial prisoner as contemplated u/s. 436A of the Code of Criminal Procedure, 1973?*

3. *Any additional submission can also be addressed by the amicus curiae in the matter.*

***Therefore, in order to address the issues contemplated hereinabove are dealt question-wise, for the convenience of the Hon'ble Court, hereinafter.***

**QUERY 1**

***"Whether a child in conflict with law completes more than one half of total period of retention of three years in special home, then whether he is entitled to avail the benefit of section- 436A of the Code of Criminal Procedure, 1973?"***

**&**

**QUERY 2**

***Whether a child in conflict law can be treated as an under-trial prisoner as contemplated u/s. 436A of the Code of Criminal Procedure, 1973?***

With Highest Regards,

It is submitted that, the aforesaid both queries are answered simultaneously because of the very nature of connection and inherence between them and therefore, in order to answer these questions, certain interregnum query is herewith reproduced,

> ***Firstly***, whether Code of Criminal Procedure, 1973 affects/overrides/applies to cases or matters pertaining to Children (including child in need of care and protection and children in conflict with law)?
>
> ***Secondly***, if the answer is in affirmative to the above question, then whether Juvenile Justice (Care and Protection of Children) Act, 2015 is a complete code in itself, specifically in relation to the bail matters of the juveniles?

Vijay

Thus, answering the clause ***Firstly,*** it is pertinent to reproduce the relevant provisions of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred as JJ Act), which is herewith provided.

> "**Section 1:** Short title, extent and commencement and application.
>
> (1).....
>
> (2).....
>
> (3).....
>
> (4) ***Notwithstanding anything contained in any other law for the time being in force,*** the provisions of this Act shall apply ***TO ALL MATTERS concerning children in need of care and protection and children in conflict with law,*** including --
>
> (i) ***apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;***
>
> (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection."

Thus, the legislative intent is very clear on the point that the JJ Act shall deal with '**all the matters**' in relation to children and overrides any other law for the time being in force, including the Code of Criminal Procedure, 1973, which is very well saved by the savings clause finding place u/s. 5 of the Code of Criminal Procedure, 1973, which is herewith reproduced for the kind perusal and consideration of the Hon'ble Court.

> "**Section-5**: Savings.
>
> **Nothing contained in this Code shall,** *in the absence of a specific provision to the contrary,* affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

Therefore, the Code itself has saved the applicability of the special law, subject to the ***absence of a specific provision to the contrary***. At this juncture, it is trite to recapitulate the interpretation given by the Hon'ble Supreme Court in the Landmark case of ***Maru Ram v. Union of India & Ors[1] [1981] 1 S.C.C. 107*** regarding the words and phrase ***specific provision to the contrary,*** which is herewith reproduced:

In **Maru Ram v. Union of India and others, (1981) 1 SCC 107**, a Constitution Bench dealt with the pari materia provision to Section 4(1) of the Code of Civil Procedure contained in Section 5 of the Code of Criminal Procedure. This Court relied upon the Lahore High Court and the Allahabad High Court to explain what is meant by "specific provision". This Court held:- "Section 1(2) of the Criminal Procedure Code, 1898, is the previous incarnation of Section 5 of the Present Code and contains virtually the same phraseology. The expression "specific provision to the contrary" in the Code of 1898 was considered in the two Full Bench decisions (supra). The setting in which the issue was raised was precisely similar and the meaning of "specific provision to the contrary" was considered by Young, C.J., in the Lahore case where the learned Judge observed: [AIR 1940 Lah 129, 133] "The word 'specific' is defined in Murray's Oxford Dictionary as 'precise or exact in respect of fulfilment, conditions or terms; definite, explicit'." In a similar situation, the same words fell for decision in the Allahabad case where Braund, J., discussed the meaning of "specific provision" in greater detail and observed: [AIR 1940 All 263, 269] "I have, I confess, entertained some doubt as to what exactly the words 'specific provision' mean. I think first, that they must denote something different from the words 'express provision'. For a provision of a statute to be an 'express' provision affecting another statute or part of it, it would have, I think, to refer in so many words to the other statute or to the relevant portion of it and also to the effect intended to be produced on it. Failing this, it could hardly be said to be 'express' .... But the word 'specific' denotes, to my mind, something less exacting than the word 'express'. It means, I think, a provision which 'specifies' that some 'special law' is to be 'affected' by that particular provision. A dictionary meaning of the verb 'to specify' as given in Murray's New English Dictionary, is 'to mention, speak of or name (something) definitely or explicitly; to set down or state categorically or particularly....' and a meaning of the adjective 'specific' in the same dictionary is 'precise ... definite, explicit ... exactly named or indicated, or capable of being so, precise, particular'. What I think the words 'specific provision' really mean therefore is

[1] Maru Ram v. Union of India & Anr, (1981) 1 S.C.C. 107 (India).

that the particular provision of the Criminal Procedure Code must, in order to 'affect' the 'special ... law', clearly indicate, in itself and not merely by implication to be drawn from the statute generally, that the 'special law' in question is to be affected without necessarily referring to that 'special law' or the effect on it intended to be produced in express terms. Lord Hatherley in (1898) 3 AC 933 at p. 938 [Thomas Challoner v. Henry WF Bolikow, (1878) 3 AC 933] has defined the word 'specific' in common parlance of language as meaning 'distinct from general'.... It would, no doubt, be possible to multiply illustrations of analogous uses of the words 'specify' and 'specific'. But this is I think sufficient to show that, while requiring something less than what is 'express', they nevertheless require something which is plain, certain and intelligible and not merely a matter of inference or implication to be drawn from the statute generally. That, to my mind, is what is meant by the word 'specific' in Section 1(2) CPC...." In an English case [ Re Net Book Agreement, 1957, (1962) 3 All ER 751 (RPC)] Buckley, J., has interpreted the word 'specific' to mean explicit and definable. While Indian usage of English words often loses the Atlantic flavour and Indian Judges owe their fidelity to Indian meaning of foreign words and phrases, here East and West meet, and "specific" is specific enough to avoid being vague and general. Fowler regards this word related to the central notion of species as distinguished from genus and says that it is "often resorted to by those who have no clear idea of their meaning but hold it to diffuse an air of educated precision". [ Fowler's Modern English Usage, 2nd Edn., p. 574] Stroud [ Stroud's Judicial Dictionary Vol 4, 3rd Edn., p. 2836] says "specifically ..." means "as such". Black [Blacks Law Dictionary 4th Edn., p. 1571] gives among other things, the following meaning for "specific": definite, explicit; of an exact or particular nature ... particular; precise. While legalese and English are sometimes enemies, we have to go by judicialese which is the draftsman's lexical guide.

The contrary view in the Biram case [(1976) 3 SCC 470 : 1976 SCC (Cri) 428 : 1976 Supp SCR 552] is more assertive than explanatory, and ipse dixit, even if judicial, do not validate themselves. We are inclined to agree with the opinion expressed in the Lahore and Allahabad cases. [Biram Sardar v. Emperor, AIR 1941 Bom 146 – [AIR 1939 PC 47 : 1939 IA 66 : 40 Cri LJ 364] A thing is specific if it is explicit. It need not be express. The antithesis is between "specific" and "indefinite" or "omnibus" and between "implied" and "express". What is precise, exact, definite and explicit, is specific. Sometimes, what is specific may also be special but yet they are distinct in semantics. From this angle, the Criminal Procedure Code is a general Code. The remission rules are special laws but Section 433-A is a specific, explicit, definite provision dealing with a particular situation or narrow class of cases, as distinguished from the general run of cases covered by Section 432 CrPC. Section 433-A picks out of a mass of imprisonment cases a specific class of life imprisonment cases and subjects it explicitly to a

particularised treatment. It follows that Section 433-A applies in preference to any special or local law because Section 5 expressly declares that specific provisions, if any, to the contrary will prevail over any special or local law. We have said enough to make the point that "specific" is specific enough and even though "special" to "specific" is near allied and "thin partition do their bounds divide" the two are different. Section 433-A escapes the exclusion of Section 5. [at paras 35 – 38]

Thus, a conjoint reading of section-5 of the Code of Criminal Procedure, 1973 with section-1(4) of the J.J. Act, 2015 in light of the special provisions for children as endowed by the Indian Constitution by virtue of incorporations made under part-III and Part-IV being Fundamental Rights and DPSP, respectively coupled with the maxim ***Generalis Specialibus Non Derogant***, which means "*Special things derogate from general things. If a special provision is made on a certain matter, the matter is excluded from the general provisions*", the applicability of the Code is therefore ousted in matters governed by the JJ Act, as against the matters wherein specific averment as to applicability of the Act is provided in the latter.

Thus, now coming to the main question in dispute, whether the provision contained u/s. 436A of the Code of Criminal Procedure, 1973 can be applied to the cases relating to JJ Act, 2015, which is based on the ancillary foundation and answer to the aforesaid interregnum clause ***secondly***.

The law being settled in this respect by the Division Bench of this Hon'ble Court in the case of ***Ankesh Gurjar @ Ankit Gurjar v. State of M.P.*** registered at ***CRR No. 2112/2020***, wherein the Hon'ble Court ***vide order dated 20.01.2021***, in ***Para-8*** has categorically observed as follows:

> ***"Section 12 of 2015 Act is a complete Code in itself qua the subject of bail.*** *Interpreting the said provision to include the benefit of anticipatory bail would lead to stretching the limits laid down by the legislature. This Court cannot legislate and therefore Sec.12 by implication excludes the benefit of anticipatory bail. The legislature cannot be imputed to provide for a benefit which it did not intend to provide unless the provision textually reveals otherwise. More so, a fair reading of the provision of Sec.12 discloses the mind of the law makers that they were conscious of the absence of the concept of "custody" in police lock-up/jail and therefore did not intentionally provide for anticipatory bail. This Court cannot go beyond the parameters of Sec.12 laid down by the legislature."*

Thus, when ***section-12 of the JJ Act, 2015*** is considered to be a complete code in itself qua bail for juveniles and certainly **chapter XXXIII of the Code of Criminal Procedure, 1973** which specifically relates to general ***PROVISIONS AS TO BAIL AND BOND*** is the one dealing with the same subject matter, whose constituent is section-436A of the Code of Criminal Procedure, 1973, then it is subtle to point that the entire chapter has no applicability in relation to the bail of juveniles and therefore, 436A of the Cr.P.C. 1973 cannot be attracted in any case, relating to juveniles. **The copy of the Hon'ble Division Bench's order dated 20.01.2021 passed in CRR No. 2112/2020 is herewith marked and annexed as (ANNEXURE A-1).**

Furthermore, this question has neither been decided by any of the Hon'ble High Courts and even the Hon'ble Apex Court, as traced to the best of the research made in this respect.

Thus, the answer to the first question posed by your lordship goes in **Negative.**

Henceforth, when the first question is answered in **Negative**, the second question loses its character and is also answered in **Negative.**

## QUERY 3

***Any additional submission can also be addressed by the amicus curiae in the matter.***

It is humbly submitted before the Hon'ble Court, that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a beneficial legislation, specifically to deal with all the matters relating to children and vide ***section 3 of the JJ Act, 2015***, the legislature had intended to provided certain principles which are to be adhered whilst implementation and administration of the JJ Act, 2015.

These principles are to be taken care of whilst interpretating the actual intention of the legislature and to construct the actual meaning and interpretations of other provisions of the Act and the allied rules notified thereafter. More so, the entire statue should be read as a whole.

Further, this being the settled canon of interpretation, that a particular provision which is to be constructed/interpreted shall not be done in isolation, rather it is the entire scheme of the Act, which is to be taken into consideration as a whole, which is unequivocally enunciated in the case of ***Indore Development Authority v. Shailendra (Dead) through LRs & Ors.*** registered at Civil Appeal No. 20982/2017 judgment dated 08th February, 2018 and in the case of ***Godawat Pan Masala I.P. Ltd. & Anr. v. Union of India & Ors.*** registered at Civil Appeal No. 4674/2004 judgment dated 02nd August, 2004, wherein the Hon'ble Apex Court has observed the following:

> "It is an accepted canon of Construction of Statutes that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions of the same act so as to make a consistent, harmonious enactment of the

whole statute. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the scheme of the entire statute. The attempt must be to eliminate conflict and to harmonise the different parts of the statute for it cannot be assumed that Parliament had given by one hand what it took away by the other. [See in this connection **Commissioner of Income Tax v. Hindustan Bulk Carriers**[2] and **C.I.T. Central, Calcutta v. National Taj Traders**[3].]

This Court in ***O.P. Singla and Anr. v. Union of India and Ors.*** [4](Vide para 17), said: "However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter- related provision becoming otiose or devoid of meaning."

Thus, a conjoint reading of **section-3(xii)** with **section-12** coupled with **rule-8 of the 2016 Rules** of the JJ Act, 2015, provides that apprehension/detention of the child is an exception and should be a matter of last resort, that too by recording reasons for doing the same. This is the reason why, the scheme of the Code of Criminal Procedure, 1973 has been eclipsed from the cases/matters relating to juveniles, because the the primary purpose of the JJ Act is to reform and repatriate and is not deterrence or retributive.

This is the very reason, why even the child who is assessed to be tried as an adult, is neither jointly tried with the adult co-accused persons (section-23 JJ Act), nor is tried by the regular courts of law and therefore seeing the need of child friendly atmosphere, a special as well as dedicated Children's Court is established for their trial.

Recently, there came to be a dispute as to the falling of the offence under the category of serious and heinous offences, which was settled by the

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[2]Commissioner of Income Tax v. Hindustan Bulk Carriers, A.I.R. 2002 S.C. 3491 (India).
[3] C.I.T. Central, Calcutta v. National Taj Traders, 1980 A.I.R. 485 (India).
[4] O.P. Singla and Anr. v. Union of India and Ors., 1984 A.I.R. 1595 (India).

Hon'ble Apex Court in the case of ***Shilpa Mittal v. State NCT of Delhi & Anr.*** registered at Criminal Appeal No. 34/2020 judgment dated 09th January, 2020 has observed as follows:

> "36. In view of the above discussion, we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter."

Therewith, Parliament taking the call on the aforesaid legal question settled by the Hon'ble Apex Court, recently on dated 09th August, 2021 brought **THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) AMENDMENT ACT, 2021, which is herewith annexed as (ANNEXURE A-2)** for the kind perusal and consideration of the Hon'ble Court.

PLACE : GWALIOR

DATED : 14-09-2021

**Humble Amicus Curiae**

**Vijay Dutt Sharma**

**Advocate**

ENCLOSURE 'E'

# IN THE HON'BLE HIGH COURT OF MADHYA PRADESH,

# BENCH AT GWALIOR

## SYNOPSIS

*In*

***Balveer Singh Bundela***

***v/s.***

***State of Madhya Pradesh***

*MCRC 5621/2020*

### 1. ISSUE-IN-DISPUTE ADDRESSED

Counsel for the respondent raised the question regarding maintainability of application for anticipatory bail under Section 438 of Cr.P.C. on the ground that police has prepared Farari Panchnama in respect of present applicant and according to the counsel for the respondent/State, applicant is absconding.

Said fact has been disputed by the counsel for the applicant on the ground that unless proceedings under Section 82/83 of Cr.P.C. are taken by the competent Court; no person can be treated as Absconder or a person concealing himself. Word "absconsion or concealment' is to be seen in the light of Section 82 of Cr.P.C. Since, no proclamation has been issued by the competent court, therefore, he cannot be treated as absconder and, therefore, judgement pronounced by the Apex Court in the case of Lavesh Vs. State (NCT of Delhi), [(2012)8 SCC 730] and in the case of State of M.P. Vs. Pradeep Sharma, [(2014)2 SCC 171] do not come in the way of present applicant for maintainability of application under Section 438 of Cr.P.C.

E

**BRIEF OF AUTHORITIES REFERRED AND RESEARCH WORK PLACED FOR KIND PERUSAL OF THIS HON'BLE COURT**

1. Law Commission of India's Report in reference to the provision of Anticipatory Bail u/s. 438 of the Code of Criminal Procedure, 1973. (Volume-A of the submitted material)

   a. *Law Commission of India Report No. 41 of the year 1969* (Pg. 315-322) has categorically recommended for the insertion of the provision of the Anticipatory Bail in the old CrPC of 1898. By virtue of the same, Section 438 of CrPC 1973 is the offspring of.

   b. *Law Commission of India Report No. 203 of the year 2005* has perfectly pointed out the necessary amendments which is the need of the hour in Section 438 of the Code of Criminal Procedure, 1973 and the same has beautifully traced the law relating to Anticipatory Bail from its inception to till the year 2005.

      One of the material things pinpointed in the report is the representation from the Bar side, which has raised some technical difficulty in applying the provision of Anticipatory Bail, to which certain significant suggestions were pointed out.

   c. *Law Commission of India Report No. 268 of the year 2017* has specifically dealt with the proposed difficulties and amendments thereof to the genus provisions of Bail in the laws for the time being enforced in India.

      Further to quote, Pg. 46-53 and Pg. 94-96 of the Commission's 268th Report has minutely dealt with the Provision of Anticipatory Bail and its development.

2. Research Work in reference to the evolution, development and changes brought to the proposed insertion of Section 497A in the 1898 CrPC (hereinafter referred as 'Old CrPC') to the interpretation of Section 438 of 1973 CrPC (hereinafter referred as 'New CrPC'). [Volume D of the submitted material]

   a. It is of prime importance to quote here and to cite the Shodhganga's Research Work on the historical background of the provisions relating to Bail, which has in depth as well as in detail analysed the concept of Bail in National as well as International Perspective, which elaborately specifies the following details:

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b. Shodhganga's Research Work on Anticipatory Bail and Supreme Court on Law of Bails have also been presented to the Hon'ble Bench which owes significance on the point of applicability, interpretation and formulation of requisite conditions purporting to the discretion of the Court while enlarging the applicant on Bail.

c. A research work in respect of 'The Law on Anticipatory Bail: from 'Sibbia' to 'Chidambaram" and 'Latest Judgments on Bail' have been presented for the kind perusal of the Court to trace the path which Judiciary has taken in respect of development of the provisions of the Anticipatory Bail.

Further, the same is the genesis and brief of all the judgments till date in respect of Bail in India.

3. Series of Supreme Court Judgments and the operative part laid thereon is briefly reproduced below in relation to Anticipatory Bail, Absconsion, Proclaimed Offender and Section-82/83 of the Code of Criminal Procedure. (Volume B of the submitted material)

a. The State v/s. Captain Jagjit Singh (1962 AIR 253)

*"The respondent who was a former Captain of the Indian Army and was employed in the delegation in India of a French Company was prosecuted along with two others for conspiracy and passing on Official Secrets to a foreign agency under ss.3 and 5 of the Official Secrets Act. His application for bail was rejected by the Sessions judge but the High Court allowed bail on the ground inter alia that his case might fall only under s.5 which was bailable and not s. 3 which was not bailable. It did not express any opinion whether the case fell under s. 5 or s. 3 in view of the commitment proceedings which were going on at the time. On appeal by the State. Held, that the High Court should have proceeded to deal with the application for bail on the assumption that the offence was under s. 3 and therefore not bailable. It should have then taken into account the various considerations such as, nature and seriousness of the offence, the character-of the evidence circumstances peculiar to the accused, possibility of his absconding, tampering with witnesses larger interests of the public. and the State and similar other considerations Which arise When bail is asked for in a nonbailable offence. The fact that the- applicant for bail might not abscond was not by itself a sufficient ground for granting bail."*

## b. Gurbaksh Singh Sibbia v/s. State of Punjab (1980 AIR 1632)

*"1. The society has a vital stake in both of these interests namely, personal liberty and the investigational power of the police, though their relative importance at any given time depends upon the complexion and restraints of political conditions. The Court's task is how best to balance these interests while determining the scope of section 438 of the Code of Criminal Procedure, 1973.*

*2. The High Court and the Court of Session should be left to exercise their jurisdiction under section 438 by a wise and careful use of their discretion 385 which by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general application. It is customary, almost chronic, to take a statute as one finds it on the ground that, after all, "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected.*

*3. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a nonbailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large, as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusation, likely or unlikely. [417 E-H, 418 A] Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438. [418 A-B] Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed. [418 B-C] Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.*

*Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.*

*4. However, a "blanket order" of anticipatory bail should not generally be passed. This flows from the very language of the section which requires the appellant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's*

*apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for which ever offence whatsoever". That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be bad. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.*

*5. An order of bail can be passed under section 438(1) of the Code without notice to the Public Prosecutor. But notice should issue to the public prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties.*

*6. Equally the operation of an order passed under section 438(1) need not necessarily be limited in point of time. The Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an F.I.R. in respect of the matter covered by the order. The applicant may in such cases be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the F.I.R. 387 as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time. [419 F-H] 7. Bail is basically release from restraint, more particularly release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Personal recognizance suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself as the trial of offence or offences of which he is charged and for which he was arrested. [397 E-G] The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas 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. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction under section 438 is intended to confer conditional immunity from this 'touch' or confinement. [397 G-H. 398 A-B] 8. No one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminal to needless harassment. But the crimes, the criminals and even the complaints can occasionally possess*

*extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973. [398 C-F] 9. Clause (1) of Section 438 is couched in terms, broad and unqualified. By any known canon of construction, words of width and amplitude ought not 388 generally to be cut down so as to read into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose. This is especially true when the statutory provision which falls for consideration is designed to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep grained in our Criminal Jurisprudence as the presumption of innocence.*

*10. The amplitude of judicial discretion which is given to the High Court and the Court of Sessions, to impose such conditions as they may think fit while granting anticipatory bail, should not be cut down, by a process of construction, by reading into the statute conditions which are not to be found therein like those evolved by the High Court.*

*11. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior inotive, the object being to injure and humiliate the applicant by having him arrested a direction for the release of the applicant on bail in the event of his arrest would generally, be made. On the other hand, if it appears likely considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides."*

c. State Rep. by CBI v/s. Anil Sharma (Indian Kanoon 1500075)

*"The above observation are more germans while considering an application for post-arrest bail. Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate learned Single Judge ought not have side-stepped the apprehension expressed by the CBI (that respondent would influences the witness) as one which can be made against all accused person all cases. The apprehension was quite reasonable when considering the high position which respondent held and in the nature of accusation relating to a period during which he held such office.*

*After bestowing our anxious consideration, including a perusal of the Case-Diary file, we definitely feel that the High Court has mis-directed itself in exercising the discretionary power under Section 438 of the Code by granting a pre-arrest bail order to the respondent. We, therefore, upset the impugned order. The appeal is allowed accordingly."*

d. State of Maharashtra v/s. Mohd. Sajid Hussain (Criminal Appeal No. 1402-1409 of 2007)

*"13. The four factors, which are relevant for considering the application for grant of anticipatory bail, are :*

*(i) the nature and gravity or seriousness of accusation as apprehended by the applicant;*

*(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;*

*(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and*

*(iv) the possibility of the appellant, if granted anticipatory bail, fleeing from justice.*

*21. Immoral trafficking is now widespread. Victims, who are lured, coerced or threatened for the purpose of bringing them to the trade should be given all protection. We at this stage although cannot enter into the details in regard to the merit of the matter so as to prejudice the case of one party or the other at the trial, but it is now well-settled principle of law that while granting anticipatory bail, the court must record the reasons therefor."*

e. Jayendra Vishnu Thakur vs State of Maharashtra (CRIMINAL APPEAL NO. 981 OF 2009)

*"17. In this case moreover the appellant had not been absconding after he was arrested. The term `absconding' has been defined in several dictionaries. We may refer to some of them.*

*`Black's Law Dictionary - To depart secretly or suddenly, esp. to avoid arrest, prosecution or service of process. P. Ramanatha Aiyar - primary meaning of word is `to hide'. Oxford English Dictionary `To bide or sow away'. Words and phrases - `clandestine manner/intent to avoid legal process' In Kartarey v. State of U.P., [(1976) 1 SCC 172 [this Court held :*

*"43. Further it is wrong to say that Baljeet never absconded. Contrary to what Baljeet has said in his examination under Section 342 of the Cr PC, the Investigating Officer, PW 7, testified that Baljeet was found hiding in a chhappar in the village from where he was arrested. This account of Baljeet's arrest was not challenged in cross-examination. To be an "absconder" in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home. We therefore, do not find any ground to distinguish the case of Baljeet from that of Sitaram and to treat him differently."*

*Furthermore for the purpose of invoking Section 299 of the Code the learned Designated Judge was required to hold on the date of passing of the order, namely 1st January, 1994 that he had been absconding on that date."*

**NOTE:** This case has purportedly laid down a the interpretation of Section 299 of the Code of Criminal Procedure, 1973 in depth.

f. Ravindra Saxena v/s. State of Rajasthan (CRIMINAL APPEAL NO.2406 OF 2009)

*"8. We may notice here that the provision with regard to the grant of anticipatory bail was introduced on the recommendations of the Law Commission of India in his 41st Report dated 24.09.1969. The recommendations were considered by this Court in a Constitution Bench decision in the case of Gurbaksh Singh Sibbia and others vs. State of Punjab, (1980) 2 SCC 565. Upon consideration of the entire issue this Court laid down certain salutary principles to be followed in exercise of the power under Section 438 Cr.P.C. by the Sessions Court and the High Court. It is clearly held that the anticipatory bail can be granted at any time so long as the applicant has not been arrested. When the application is made to the High Court or Court of Sessions it must apply its own mind on the question and decide when the case is made out for granting such relief. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 Cr.P.C."*

g. Paramjeet Singh@ Pamma v/s. State of Uttrakhand (CRIMINAL APPEAL NO. 1699 of 2007), Sunil Clifford v/s. State of Punjab

(CRIMINAL APPEAL NO. 2001 of 2010), Sujit Biswas v/s. State of Assam (CRIMINAL APPEAL NO. 1323 of 2011)

*"32. In Matru @ Girish Chandra v. The State of U.P., AIR 1971 SC 1050, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person, observing as under:*

> *"The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self- preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence."*

h. Siddharam Satlingappa Mhetre vs State of Maharashtra (CRIMINAL APPEAL NO. 2271 of 2010)

*This case is one of the landmark cases on Provisions relating to Anticipatory Bail and has laid down the law at what time and for what duration, the Anticipatory Bail will be in operation.*

i. Lavesh v/s. State (NCT of Delhi) [CRIMINAL APPEAL NO. 1331 OF 2012] & State of M.P. v/s. Pradeep Sharma (CRIMINAL APPEAL NO. 2049 OF 2013)

*"We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code is not entitled the relief of anticipatory bail."*

j. Central Bureau of Investigation vs Rathin Dandapath (CRIMINAL APPEAL NO.1081 OF 2015)

*"Settled the law on the question, whether no remand in police custody can be given to the investigating agency in respect of the absconding accused who is arrested only after filing of the charge sheet."*

k. Bhadresh BipinBhai Seth v/s. State of Gujarat (Criminal Appeal No. 1134-1135 of 2015)

*"In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that*

*anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicants presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and the larger interests of the public or the State are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, AIR 1962 SC 253 : (1962) 3 SCR 622 : (1962) 1 Cri LJ 216, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail. It is pertinent to note that while interpreting the expression may, if it thinks fit occurring in Section 438(1) of the Code, the Court pointed out that it gives discretion to the Court to exercise the power in a particular case or not, and once such a discretion is there merely because the accused is charged with a serious offence may not by itself be the reason to refuse the grant of anticipatory bail if the circumstances are otherwise justified. At the same time, it is also the obligation of the applicant to make out a case for grant of anticipatory bail. But that would not mean that he has to make out a special case. The Court also remarked that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use."*

l. Jagdamba Devi vs Union of India (CIVIL APPEAL NO. 1260 OF 2017)

*The present case has categorically differentiated between being underground and absconding, bringing both the terms on different footing.*

m. P. Chidambaram v/s. Enforcement Directorate (CRIMINAL APPEAL NO. 1340 2019) & 17. Sushila Agrawal v. State (NCT of Delhi)

[SPECIAL LEAVE PETITION (CRIMINAL) NOS.7281-7282/2017]

*These pertains to the latest judgments and precedents in respect of the law relating to Anticipatory Bail and latter one specifically talks about for what duration the order of Anticipatory Bail shall remain operative by highlighting the object & purpose for incorporating the same.*

4. <u>Series of High Court Judgments and the operative part laid thereon is briefly reproduced below in relation to Anticipatory Bail, Absconsion, Proclaimed Offender and Section-82/83 of the Code of Criminal Procedure.</u> (Volume C of the submitted material)

a. The State vs Umraokhan And Ors. (Rajasthan HC- 1957 CriLJ 477)

*"4. On a careful examination of the whole matter, it seems to me that "absconding" does not necessarily mean absconding from one's residence although usually when a person is hiding from his place of residence he is said to abscond. The primary meaning of this word is "to hide". A person may hide even in his place of residence or away from it and in either case he will be absconding when he does so. In this view of the matter, it seems to me to be an undue simplification to say that a person can only be said to abscond when he has run away from his place of residence. Again for aught one knows, there may be offenders who have no fixed place of residence at all, and if an offender of this type having committed a crime runs away from the place of the crime or the country in which it was committed, then on the reasoning of the courts below Section 512, Cr. P. C., could have no application to the case of such an offender; and yet having regard to the object underlying this section, it may indeed be highly expedient in the interests of justice to preserve evidence to be used when necessary and after the offender is arrested and which evidence otherwise might well be lost altogether. 5. In this connection I have also examined the dictionary meaning of the word "abscond". Its primary meaning is "to hide"; but that of course is not strictly applicable in the present contest.*

*The other meaning is to quit the country in order to escape a legal process. Thus Wharton's Law Lexicon (Fourteenth Edition) gives the meaning as "to fly the country in order to escape arrest for crime." To the same effect is the meaning given in the Oxford English Dictionary (Vol. 1 A-B) where it is said that the word is generally used of criminals eluding the law. We have it from the Webster's New International Dictionary (Vol. 1 A-L) that the word is used specifically of a per son who leaves the jurisdiction of a court or secretes himself within its jurisdiction for a fraudulent purpose such a hindering or defrauding creditor by avoiding legal process. The purpose stated in the definition is clearly just one example and there may be others, and another example of a fraudulent purpose may be the escaping of a trial for a crime committed. Having regard to this meaning of the word, it is clear that the country or the place which an offender quits or flies from need not be the country where he lives or has his home. It may as well be the country where he has committed a crime and where, therefore, he would be ordinarily liable to be tried according to the law of that country and from where he escapes the arm of the law. Where, therefore, a person having committed an offence in a particular country leaves it, I am quite clear in my mind that he must be said to abscond so far as that country and its laws are concerned."*

b. KTMS Abdul Kader v/s. Union of India (Madras HC- 1977 CriLJ 1708)

*"22. The words 'absconding debtor' with reference to Bankruptcy Laws, according to Stroud's Judicial Dictionary of words and phrases, 3rd Edn., means one who departs for distant countries before the necessary proceedings can be taken to make, him bankrupt or being outside the country continues to remain there with intent to defeat or delay his creditors. The primary meaning of the word 'abscond' is to hide and when a person is hiding from his place of residence, ha is said to abscond. A person may hide even in his place of residence or away from it and in either case he would be absconding when he hides himself. In Wharton's Law Lexicon, 14th Edn., 'abscond' has been taken to mean to fly the country in order to escape, arrest for crime. Therefore, persons who get scent of the action to be taken by the detaining authorities and leave the country in order to escape the arm of the law can be said to abscond. Similarly persons who have already left the country without the knowledge of any action to be taken against them under the Act, but who continue to remain outside the country with a view to avoid any detention order that may be passed Under Section 3 can also be taken to be absconding. It cannot be disputed that a person committing an offence in a particular country would ordinarily be liable to be tried according to the law of that country. If he leaves the country with a view to avoid or escape the arm of the law, he can be said to abscond so far as that country and its laws are concerned. In Chambers's Twentieth Century*

*Dictionary, the word 'abscond' has been defined as to hide or to quit the country in order to escape a legal process. Therefore, if a person, before the legal process could be issued somehow or other comes to know of the issue of such a process or anticipates the issue of the process and quits the country he can be said to have absconded.*

*23. In these cases, two of the petitioners are admittedly citizens of India and the other even though a non-citizen, is having residence in India as his family continues to have residence in India. As already stated, it is impossible to believe that the petitioners have no knowledge of the. detention orders passed against them and are remaining abroad for bona fide purposes and not with a view to avoid or evade the detention orders. Even though the petitioners have left India before the passing of the detention orders, if they continue to remain outside India with a view to defeat or delay the execution of the detention orders, they have to be taken to be absconding persons. It has been held in Jagdev Khan v. Emperor AIR 1948 Lah 151 : 48 Cri LJ 624, that the onus of proving that the accused did not abscond for the purpose of avoiding execution of warrant of arrest and that he had no notice of the proclamation issued Under Section 87 of the old 2 I. P. C., lies on the accused. In these cases we are of the view that the petitioners have not discharged their onus. Even assuming that they did not leave the country in anticipation of the detention orders being passed against them, they should have become aware of the detention orders through their family members who admittedly reside here. There is, therefore, no substance in the contention advanced on behalf of the petitioners that they cannot be taken to be persons absconding or concealing themselves with a view to evade the warrant of arrest.*

*The expression 'reason to believe' occurring in Section 7 of the Act and in Section 82 seems to suggest, in our view, that the appropriate Government acting Under Section 7 of the Act and the Metropolitan Magistrates acting Under Section 82 of the Code must be subjectively satisfied that the person against whom a detention order has been passed has absconded or has concealed himself on the materials before them as the above statutory provisions do not set out any criteria on the basis of which the conclusion that the person sought to be detained has absconded or concealed himself should be arrived at. As has been pointed out in Easwaramurthi v. Emperor AIR 1944 PC 54, 57 : 45 Cri LJ 721 at p. 723-724, "reason to believe" that one has absconded does not mean 'factually absconded". Therefore, to invoke the power Under Section 7(1)(a) of the Act the appropriate Government can, on the basis of the materials before it, form an opinion that the person sought to be detained has absconded or concealed himself and it is not necessary that it must actually be shown that the person has in fact absconded before invoking the power thereunder. Similarly the Magistrate acting Under Section 82 of the Code has to form an opinion on the materials before him that the person sought to be detained has absconded or concealed himself without necessarily finding that the person has in fact absconded. We are not in a position to say that the materials on the basis of which the appropriate Government Under Section 7(1) and the Magistrate Under Section 82 of the Code, had reason to believe that the petitioners have absconded or concealed themselves are in any way inadequate or insufficient. As already stated, the detention orders have been passed more than two years before and the petitioners have consciously kept away from the arm of law with the knowledge of the order of detention. The fact that they, have come before the court in these proceedings seeking relief for quashing the proceedings initiated Under Section 82 of the Code clearly shows that they are aware,, of the detention orders. The fact that notwithstanding the knowledge of the detention orders the petitioners continued to remain abroad is sufficient to form the basis for the reason to believe that they continue to live abroad with a view to defeat or delay the enforcement of the order of detention."*

c. Ashok Vasudeo Shetye v/s. State of Maharashtra (Bombay HC-1989 CriLJ 1399)

*"Now, it is no doubt true that a prisoner who absconds while he enjoys the benefit of an order of parole or furlough would be liable to be kept in prison for 24 years of actual sentence. But the facts and circumstances of our case do not show that the petitioner had absconded when he was either on parole or on furlough. It is important to note here that in 'absconding' there should always be an element of concealing or hiding. In our case, there is not even an iota of evidence or material to show that while on parol and/or furlough the petitioner concealed himself with a view to avoid the process of law. On the first occasion, it is stated, that he was arrested from his house and on the second occasion, it is further stated, that he was freely moving about and visiting Mantralaya making efforts that the impugned order to be revoked or withdrawn by the Government. Thus the record nowhere shows that he had at any point of time concealed himself in such a manner that he would successfully avoid the process of law. The dictionary meaning of the word "abscond" as can be seen from the New Webster's Dictionary is 'to withdraw or absent oneself in a private manner; run away, often with stolen valuables, in order to avoid a legal process; decamp.' In other words, to abscond means to depart clandestinely with a view to steal of or secret one's self from the jurisdiction of a court for a fraudulent purpose such as hindering or defrauding the creditors by avoiding legal process. It was held by the Supreme Court in Kartarey v. State of U.P., that 'to be an 'absconder' in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home' which shows that in absconding there is an element of hiding or concealing or secreting oneself."*

d. Ruchi Goyal v/s. State (Delhi HC- 2003 (69) DRJ 479)

*"5. Learned Counsel for the State has relied upon a judgment of the Supreme Court of India in Jagtar Singh v. Satendra Kaur @ Bhavana Graver and Ors. reported in 2002(6) SCALE P-177 to contend that the petitioner who is absconding, cannot be given the benefit of anticipatory bail. To counter this argument, learned Counsel for the petitioner has relied upon a judgment of the Lahore High Court in Ranjit Singh v. Karim Baksh reported in AIR 1922 Lahore P-475 in which it was observed that Section 87 of the Code of Criminal Procedure(old) could be resorted to only when a Court has reason to believe that the accused against whom a warrant has been issued is absconding or is concealing himself so that such a warrant may not be executed. It was observed that a person who files a petition against the order issuing the warrant and takes steps to procure an order of a Superior Court can neither be said to be absconding nor concealing himself. After considering the submissions made by learned Counsel for the parties, this Court is of the considered view that the judgment in Jagtar Singh's case given by the Apex Court is the law of the land. Challenging non-bailable warrants pursuant to which proceedings under Section 82/83, Cr.PC are initiated is one thing and merely applying for anticipatory bail is another. A person who fails to get anticipatory bail cannot contend that proceedings under Section 82/83, Cr.PC could not be initiated against him."*

e. Anandan @Douglas Devanadh v/s. State by Inspector of Police (Madras HC- CRL.O.P.No.18861 of 2010)

*29. The first part of sec.82 requires the accused, against whom a warrant is pending, which could not be executed as he is concealing or absconding, to appear on the specified time. Failing appearance, and, if the person is accused of any of the offences mentioned in sub clause 4, the court may pronounce him a proclaimed offender. In any event, the procedural consequences is that the court can either transfer the case to the long pending case register or proceed to examine the witnesses in his absence and wait for the accused to appear or to be produced to pronounce judgment. The court may also proceed under section 83 of the code to attach the properties of the accused, if any. The legal consequences after issue of proclamation under the first part is that the proclamation itself is as good as a warrant and he can be arrested and produced. The accused can also appear before the court and plead to recall warrant by showing sufficient cause for his non appearance. The second part is to pronounce him as a proclaimed offender. The legal consequence*

*will be that any person competent under the provisions of the Code can arrest the person and produce him before the court. The remedy available to such proclaimed offender is to surrender before the Court and show sufficient cause for non appearance and recall warrant and as well as the proclamation. However, it is the discretion of the court either to condone the absence or to detain him so that the proceedings could be concluded.*

*Therefore, the procedural aspects to issue an order of proclamation are;*

*i)pending of non-bailable warrant is sine qua non;*

*ii)all efforts should have been taken to execute the warrant;*

*iii)the un executed warrant shall be returned along with a report;*

*iv)the court must satisfy itself that the accused is concealing and absconding so that the warrant can not be executed before ordering proclamation as per section 82 (1);*

*v)the proclamation shall be effected as per section 82 (2);*

*vi)the court shall record that the publication as per provision was complied with;*

*vii)failing appearance of the accused the court,*

*a)may proceed to examine witnesses;*

*b)may transfer the case to long pending case register;*

*c)may proceed to attach the property under section 83;*

*d) may pronounce the accused as proclaimed offender.*

*The legal consequences shall be;*

*i)publication of proclamation is to require or compel the appearance of the accused;*

*ii)he shall surrender or arrested and be produced before the magistrate;*

*iii) If the accused has sufficient cause for his non-appearance on the specified time and date;*

*a)he may approach the Court for recalling the warrant and if he has been pronounced as "proclaimed offender",*

*b)he shall surrender himself before the Court and plead to set aside the order passed by the trial court.*

*c)on such application, the Court may pass suitable orders.*

*That being the procedural and legal position, let us consider the present case."*

f. Nitin Chandrrkant Kadam v. State of Maharashtra, (Bombay HC- 2016 SCC OnLine Bom 9850)

*"In a case pertaining to custodial death, where proclamations under Section 82 of CrPC, 1973 were issued by the investigating agency to the accused during the pendency of their applications seeking pre-arrest bail, the Bench of Sadhana S. Jadhav, J. held that the proclamation issued against the present applicants shall not be acted upon during the pendency of the hearing of these applications. The Court observed that in fact, when the applications under Section 438 of the Code of Criminal Procedure, 1973 are pending before any court of law, it cannot be said that the accused are absconding. It only means that the accused are evading arrest to take their applications under Section 438 CrPC to its logical end.*

*The Court observed that "the deceased had died in the custody of the police. The guardians of law have committed a heinous offence which shocks the conscience of the society, which believes the police to be the guardian of their life and liberty."*

*The counsel for the applicants submitted that the applicants had left the police chowki on completion of their duty hours after handing over the custody of the deceased to the A.P.I. They were unaware of the incident that happened subsequently. They assured to cooperate with the investigating agency to the best of their capacity. Initially, there were proclamations issued against present applicants and therefore, this Court had not granted ad-interim relief. However, after proper inquiry into all evidences, the Court opined that the applicants herein deserved ad-interim relief as they had undertaken to cooperate with the investigating agency to the best of their capacity."*

g. Ipsita Pratihari v/s. State of Orissa & Bapi @ Arindam Sarkhel v/s. State of Orissa (Orissa HC- (2017) 67 OCR – 94)

*These cases have laid down various judicial precedents in respect of different aspects of Bail and particularly, in relation to the provisions of Anticipatory Bail.*

h. Aarif P. v. State of Kerala (Kerala HC- 2018 SCC OnLine Ker 1446)

*"A Single Judge Bench comprising of B. Sudheendra Kumar, J. decided a bail application, wherein the petitioner was granted anticipatory bail on the reasoning of him being a first time offender.*

*The petitioner was accused for the offences under Section 379 IPC along with Section 23 read with Section 20 of the Kerala Protection of River Banks and Regulation and Removal of Sand Act. It was alleged that the petitioner was illegally carrying the river sand in his vehicle and when apprehended by the police, he left his lorry and ran away. The petitioner filed the instant application under Section 438 CrPC seeking anticipatory bail.*

*The High Court perused the record and found that the petitioner was not involved in any other offence; he had no criminal antecedents; he was a first time offender. In such circumstances, the Court was of the view that the application of the petitioner for grant of anticipatory bail deserved to be allowed. Hence, the respondents were directed to enlarge the petitioner on bail in event of his arrest under the said offence."*

i. Balaji S.N. v. State of Karnataka., (Karnataka HC- CRLP No. 2194 of 2018)

*"A Single Judge Bench of John Michael Cunha, J., rejected a criminal petition filed under Section 438 of the Code of Criminal Procedure, 1973. The Court held that an accused against whom a non-bailable warrant and a proclamation is pending, cannot be granted anticipatory bail.*

*The petitioner was earlier granted anticipatory bail by Sessions Court and was ordered to appear before the Magistrate on or before 10 days, but the appellant failed to comply owing to accident.*

*The High Court after considering the submissions of both the parties observed that in a case where, in consequence of the continuous absence of accused a non-bailable warrant and further, a proclamation is issued against him, he cannot be admitted to bail.*

*The Court placed reliance on* Lavesh v. Sate (NCT of Delhi) *(2012) 8 SCC 730, wherein the Supreme Court had held that, when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and is declared as a proclaimed offender in terms of Section 82 of CrPC, is not entitled to the relief of anticipatory bail. Accordingly, the petition was rejected."*

j. Narinder Awasthy v. State of H.P. (Himachal Pradesh HC- 2018 SCC OnLine HP 1592)

*"A Single Judge Bench comprising of Sandeep Sharma, J. allowed a bail application due to full cooperation of the petitioner during the investigations.*

*A bail petition has been filed under Section 438 CrPC for grant of anticipatory bail with regard to the FIR under Sections 419, 420, 467, 468 and 120-B IPC.*

*It was stated by the petitioner that the object of bail was to secure the attendance to which he was fully cooperative during the time of investigation and that at this stage nothing was required to be recovered from him.*

*The Court relied on the Supreme Court decision in the case of* Dataram Singh v. State of U.P., *(2018) 3 SCC 22, whereby relevance was drawn towards participation in the investigation and not absconding when required by the investigating officer. It further held that if the accused was hiding due to the fear of being victimized, the court shall take it into account and act accordingly.*

*Accordingly, the Court allowed the bail petition but warned the petitioner that if he misuses his liberty or violates any of the conditions imposed upon him the bail shall be cancelled."*

k. Pawan Kamra v. State (Delhi HC- 2019 SCC OnLine Del 10665)

*"Brijesh Sethi, J. dismissed a criminal writ petition challenging the order of the Special Judge (Prevention of Corruption) whereby proceedings against the petitioner under Section 83 CrPC* (attachment of property of person absconding) *were initiated.*

*The High Court noted that in the case against the petitioner under PC Act, he had moved an anticipatory bail which was first dismissed by the trial court, then by the High court, and finally by the Supreme Court. It was further noted that the petition for quashing of the FIR was filed approximately one month after the dismissal of the anticipatory bail application by the Supreme Court. The Court was of the view that the petitioner, whose anticipatory bail was dismissed by the Supreme Court, ought to have surrendered himself before the Investigating Officer or the Court concerned.*

*The court found no grounds to quash the impugned order. It was held that the petition for the quashing of FIR would, no doubt be decided by the High Court in due course including the issue of its maintainability. However, the proceedings initiated by the IO under Section 83 CrPC could not have stayed at the initial stage. The IO was carrying out the proceedings as per law and no interference was required from the Court in that regard."*

Dated: 29-02-2019

Place: Gwalior

***Submitted with Kind Regards,***

***Vijay Dutt Sharma,***

***Advocate.***

E

(46)

ENCLOSURE 'F'

**IN THE HON'BLE HIGH COURT OF MADHYA PRADESH,**

**BENCH AT GWALIOR**

**CRIMINAL REVISION NO. 3000/2021**

**REVISIONIST.....** Ajeet Gurjar

*Versus*

**NON-APPLICANT...** State of Madhya Pradesh

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PLACE : GWALIOR

DATED : 23-11-2021

Vijay **Through Counsel**

Vijay Dutt Sharma

Harshit Sharma

**Advocates**

# *Synopsis*

***Most Respectfully Sheweth,***

***It is respectfully and humbly placed before Your Lordship,***

***In reference to the questions posed by the Hon'ble Court in deciding the maintainability of the present criminal revision u/s. 102 of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred as JJ Act, 2015), the following heads are being answered in the present synopsis:***

**(a)** When upon a preliminary assessment made by the JJB under section 15(2) of the JJ Act, the JJB is of the opinion that there is need for trial of the child as an 'adult' and it transfers the trial to the Children's Court, does the child in conflict with law de-juré become an 'adult', to be treated as such in all subsequent proceedings?

**(b)** Whether an application for bail is maintainable before the High Court under section 439 Cr.P.C. for a child in conflict with law, who is sent-up for trial as an adult before the Children's Court?

**(c)** Whether an application for bail is maintainable before the High Court under section 12 of the JJ Act for a child in conflict with law, who is sent-up for trial as an adult before the Children's Court?

**(d)** Whether an application for bail as in (c) above, is maintainable before the High Court as a proceeding of first instance or only as an appellate or revisional proceeding under section 101 read with section 8 of the JJ Act?

For the sake of brevity, it is pertinent to highlight that the same questions hereinbefore quoted is answered by the Hon'ble Delhi High Court in the case of ***CCL 'A' v. State (NCT of Delhi) registered at Bail Application No.2510/2020 vide judgment dated 19th October, 2020.***

To address the above questions, it is pertinent to have a glance and to have a conjoint reading of sections 1(4), 2(12)(20)(33)(35), 8(2), 12, 15, 18(3), 19, 101(5) of the JJ Act, 2015 r/w. section 5 of the Code of Criminal Procedure, 1973.

The answer to this query is self-evident. ***Firstly***, a child is sent-up for trial as an adult upon a preliminary assessment made by the JJB under sections 15(1) read with 18(3) only with regard to his mental and physical capacity to commit such offence and his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. This preliminary assessment is further subject to a decision by the Children's Court as to whether there is need for trial of the child as an adult. If the Children's Court so opines under section 19(1) and thereby confirms the preliminary assessment of the JJB, the child is then tried as an adult subject to safeguards under the Cr.P.C., but still considering the special needs of the child, the tenets of fair trial and maintaining a child-friendly atmosphere.

Clearly therefore, even when a child is sent-up for trial as an adult before a Children's Court, the child does not become an adult or 'major', but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child's "mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence". If the intention of the Legislature was that upon such assessment, the child would de-juré become an adult, then the question of

there being a separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

Upon a conjoint reading of the provisions extracted above, it is seen that the bare provisions of section 12 read with section 8(2) are clear and express. These provisions say that the powers conferred on the JJB can be exercised by the High Court if a matter comes before it in appeal, revision or otherwise. Accordingly, the powers of the High Court are co-extensive with those of the JJB if a matter comes before the High Court in appeal, in revision or otherwise.

In fact, the words ***'or otherwise'*** appearing in section 8(2) refer to 'proceedings' that may come before the High Court otherwise than in appeal or revision. The words 'or otherwise' would therefore include a bail plea that is filed before the High Court as a proceeding of first instance, namely otherwise than as an appeal or a revision from an order of the JJB or the Children's Court denying bail and the rule of ejusdem generis would not apply in the present case because of the very factum that the rule of ejusdem generis is attracted where a restricted meaning is to be given to the general word accompanying the specific words, only when intended by the legislature, but herein the word ***'otherwise'*** used by the legislature is any other proceeding apart from appeal or revision, which can also include suo motu cognizance and even deciding the petition/application as a court of first instance.

In formulating the above position, this court finds support in the view taken by the Division Bench of the Chhattisgarh High Court in ***Tejram Nagrachi Juvenile vs. State of Chhattisgarh Through the Station House Officer 2019 S.C.C. OnLine Chh. 24***, where the Division Bench has opined that an application for grant of bail under section 437 Cr.P.C. or 439 Cr.P.C. would not be maintainable in the case of a juvenile. The relevant paras of the judgment are as under:

*"7. A conjoint analysis of the provisions contained in Sections 437 and 439 of the Code viz a viz Sections 8, 10 and 12 of the Act, 2015 would discern that while there are certain general guidelines under Sections 437 & 439 of the Code, power in respect of grant of bail to a juvenile is more liberal in the nature of command under Section 12(1) that whenever an apparent juvenile alleged to have committed a bailable or non-bailable offence is detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only rider for not releasing the apparent juvenile is that whenever there appear reasonable grounds for believing that the release is likely to bring that person (Juvenile) into association with any known criminal or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances that led to such a decision. This rider as contained in proviso to Section 12(1) requires the Board to record reasons for denying the bail. It would mean that ordinarily the bail is to be allowed to a juvenile. The denial being exceptional on certain reasons to be recorded by the Board as provided in the proviso. This special provision is not contained under Section 439 of the Code.*

*"8. ..... While there is no denial of the fact that when the Court of Sessions exercises appellate power under Section 101(2) and the High Court exercises revisional power under Section 102 of the Act of 2015, it shall exercise power of the Board provided under Section 8(2), but this power of the Board would also be available to the Court of Sessions or to the High Court when it proceeds to examine the plea of juvenile for grant of bail whenever such occasion arises on account of bail application of juvenile being rejected under Section 12 of the Act of 2015. Therefore, by use of the term "otherwise" in Section 8(2), jurisdiction under Section 439 of the Code would not be attracted which is otherwise excluded by use of the term "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force", as occurring in Section 12(1)."*

Vijay

**The copy of the judgment rendered by the Hon'ble Delhi High Court and the copy of the judgment rendered by the Hon'ble Chhattisgarh High Court is herewith marked and annexed as (FLAG A) and (FLAG B), respectively.**

Furthermore, the conjoint reading of section 5 and 6 of the JJ Act, 2015 extensively clarifies the position as to what shall be the procedure when a child during the inquiry ceases to be a child, which is herewith reproduced:

> **5. Placement of person, who cease to be a child during process of inquiry.**
>
> Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.
>
> **6. Placement of persons, who committed an offence, when person was below the age of eighteen years.**
>
> (1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.
>
> (2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.
>
> (3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.

Vijay

Thus, applying the maxim ***generalia specialibus non derogant*** coupled with the factum that section 12 of the JJ Act, 2015 starts with the ***non obstante clause***, clearly excludes the application of section 439 of the Code of Criminal Procedure, 1973 in any of the event and therefore, the only resort for the bail of a juvenile is adherence to the procedure prescribed under the JJ Act, 2015 and therefore the present revision is maintainable or otherwise, any order can be passed by the Hon'ble Court being par with the JJ Board as per the scheme of the JJ Act, 2015.

Another important aspect which is to be placed before the Hon'ble Court is in respect of the procedure which is to be adopted by the Board whilst dealing with the offenders of heinous offences being within the age range of 16-18, which is herewith provided step-wise:

1. At first instance, the board or committee need to satisfy themselves about the age of the juvenile apprehended.
2. Thereafter, the preliminary assessment needs to be taken up by the board into the matters where the age of the juvenile is between 16-18 and is alleged to have committed heinous offence as defined u/s. 2(33) of the JJ Act, 2015.
3. After making the preliminary assessment as per the procedure endowed u/s. 15 of the JJ Act, 2015 r/w. rule 10A of the Model Rules, 2016.
4. If the assessment is in affirmative to the effect that the child needs to be tried as an adult before the Children's Court, then the case is transferred to the Children's Court and the procedure provided u/s. 19 of the JJ Act, 2015 is to be adhered.
5. At the very first instance, the Children's Court as defined u/s. 2(20) of the JJ Act, 2015 need to first decide as to whether there is a need for trial of the child as an adult or not, which is MANDATORY provision when read with rule 13 of the Model Rules, 2016 whereby the Children's Court need to record reasons for arriving at the conclusion and the word

Vijay

**may** is to be read as **shall** so as to give effect to the legislative intent, because the meaning of preliminary assessment itself shows that a further assessment is to be required, which is made by the Children Court u/s. 19 of the JJ Act, 2015 and has also been unequivocally accepted by the Coordinate bench of this Hon'ble Court in the case of Ojef Khan v. State of M.P. registered at CRR No. 2071/2021 vide judgment dated 21.09.2021. **The copy of the judgment dated 21.09.2021 passed in CRR No. 2071/2021 is herewith marked and annexed as (FLAG C).**

6. Thereafter, the procedure as prescribed under rule 13 of the Model Rules, 2016 is to be adhered, in both the cases, whether the child is to be tried as an adult or not.

More so, while trying the child as an adult by the Children Court, the following important aspects are to be taken care of which is provided in the following sections of the JJ Act, 2015:

> **21. Order that may not be passed against a child in conflict with law.** No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.
>
> **22. Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against child.** Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.
>
> **23. No joint proceedings of child in conflict with law and person not a child.** (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in

force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

## Arguments Augmented on the Merits of the Case

It is respectfully submitted and placed before your lordship, that all the material witnesses have been examined in the present matter and in respect of the case in which the revisionist/applicant was apprehended/arrested and was thereby produced in the present case through production warrant, has been enlarged on bail.

Furthermore, there is no possibility of his tampering with the evidence and the pretrial detention being anathema to the concept of personal liberty and therefore, prays for the grant of bail in the present matter.

PLACE : GWALIOR

DATED : 23-11-2021

**Through Counsel**

**Vijay Dutt Sharma**

**Harshit Sharma**

**Advocates**

(55)

ENCLOSURE 'G'

**IN THE HON'BLE HIGH COURT OF MADHYA PRADESH,**

**BENCH AT GWALIOR**

**CRIMINAL REVISION NO. 3085/2021**

**REVISIONIST.....** Prahlad Singh

*Versus*

**RESPONDENT.....** State of Madhya Pradesh & Ors.

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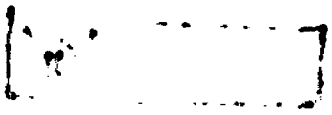
PLACE : GWALIOR

DATED : 23-03-2022

**Humble Amicus Curiae**

Vijay Dutt Sharma

**Advocate**



## *Synopsis*

Most Respectfully Sheweth,

It is respectfully and humbly placed before Your Lordship,

In reference to the question posed by the Hon'ble Court in the case registered at CRR No. 3085/2021 vide order dated 11.03.2022, the submission in respect of the said issue is herewith placed before the Hon'ble Court, to the effect of answering the solitary question as raised by the Hon'ble Court which goes on to state as follows:

> ***"Whether Juvenile Justice Board can decide an application u/s. 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as Act of 2015), even prior to making preliminary assessment u/s. 15 of the Act of 2015 or the Board should take up the application filed u/s. 12 of the Act of 2015 only after making a preliminary assessment u/s. 15 of the Act of 2015."***

In respect of the same, it is important to reproduce the bare text of section- 12 of the Act of 2015, which postulates as below,

**"Section-12: Bail to a person who is apparently a child alleged to be in conflict with law.**

**(1)** When any person, ***who is apparently a child and is alleged to have committed a bailable or non-bailable offence,*** is apprehended or detained by the police or appears or brought before a Board, such person shall, ***notwithstanding anything*** contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, ***be released on bail*** with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that ***such person shall not be so released*** if there appear reasonable grounds for believing that the release is ***likely to bring that person into association with any known criminal*** or ***expose the said person to moral, physical or psychological danger*** or the ***persons release would defeat the ends of justice,*** and ***the Board shall record the reasons for denying the bail and circumstances*** that led to such a decision.

**(2)** When such person having been apprehended is not released on bail under sub-section (1) by the ***officer-in-charge of the police station,*** such officer shall cause the person to be kept only in an observation home in such manner as may be ***prescribed***[1] until the person can be brought before a Board.

**(3)** When such person is not released on bail under sub-section (1) by the ***Board,*** it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period ***during the pendency of the inquiry*** regarding the person, as may be specified in the order.

**(4)** When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

---

[1] As is prescribed under Rule 8 & 9 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 made by virtue of power conferred by proviso to sub-section (1) of section 110 of the Act of 2015, which came into force on September 21, 2016.

Thus, the aforesaid provision is very clear on the point that releasing of the child in conflict with law (hereinafter referred as CCWL) on bail is the MANDATORY proposition unless is hit by the conditions stipulated in the proviso to sub-section (1) of section 12 of the Act of 2015. Furthermore, the power to release the child in conflict with law on bail is endowed on the officer-in-charge of police station as well as on the Board by virtue of sub-section (2) & sub-section (3) of section 12 of the Act of 2015, which categorically implies that the child should be released on bail when apprehended, unless the otherwise course is adopted that too only after recording the reasons in writing, which is not necessary so to be done, when the CCWL is decided to be released on bail, either by the officer-in-charge of the police station or the Board.

More so, the aforesaid provision immediately comes into effect, as soon as a person apparently a child and is alleged to have committed a bailable or non-bailable offence is apprehended or detained by the police or appears or is brought before the Board and if the order passed by the Board under sub-section (3) of section 12 of the Act of 2015 is to the effect of non-release of the child on bail, then it may send the child to an observation home or place of safety, as the case may be, for such ***period during the pendency of the inquiry*** regarding the person as may be specified in the order.

The phrase ***'during the pendency of the inquiry'*** makes it clear that even before conclusion of the preliminary assessment undertaken u/s. 15 of the Act of 2015, an order u/s. 12 of the Act of 2015 can be made, because of the very factum that preliminary assessment made u/s. 15 of the Act of 2015, is the part of the inquiry as has been echoed by virtue of section 14(5)(f)(ii) of the Act of 2015.

Further, the language enshrined u/s. 12 of the Act of 2015 clearly postulates that when the child alleged to be in conflict with law is brought before the Board or as the case may be, there must be an order either to the effect of releasing the child on bail or quoting reasons for non-release on bail or even an order must be passed under sub-section (3) of section 12 of the Act of 2015 for sending the child to an observation home or place of safety, pending the inquiry, making in either direction disposal of the application u/s. 12 of the Act of 2015 at the first instance mandatory, and thereafter the inquiry is initiated to the effect of making orders u/s. 14 r/w. section 17 & 18 of the Act of 2015, as the case maybe.

This proposition also finds support whilst going through Rule 8 & 9 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred as Model Rules, 2016), which states as follows:

> **"8. Pre-Production action of Police and other Agencies. -**
>
> (1) No First Information Report shall be registered except where a heinous offence is alleged to have been committed by the child, or when such offence is alleged to have been committed jointly with adults. In all other matters, the Special Juvenile Police Unit or the Child Welfare Police Officer shall record the information regarding the offence alleged to have been committed by the child in the general daily diary followed by a social background report of the child in Form 1 and circumstances under which the child was apprehended, wherever applicable, and forward it to the Board before the first hearing:
>
> ***Provided that the power to apprehend shall only be exercised with regard to heinous offences, unless it is in the best interest of the child. For all other cases involving petty and serious offences and cases where***

***apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offence alleged to be committed by the child along with his social background report in Form 1 to the Board and intimate the parents or guardian of the child as to when the child is to be produced for hearing before the Board.***

(2) When a child alleged to be in conflict with law is apprehended by the police, the police officer concerned shall place the child under the charge of the Special Juvenile Police Unit or the Child Welfare Police Officer, who shall immediately inform:

(i) the parents or guardian of the child that the child has been apprehended along with the address of the Board where the child will be produced and the date and time when the parents or guardian need to be present before the Board;

(ii) the Probation Officer concerned, that the child has been apprehended so as to enable him to obtain information regarding social background of the child and other material circumstances likely to be of assistance to the Board for conducting the inquiry; and

(iii) a Child Welfare Officer or a Case Worker, to accompany the Special Juvenile Police Unit or Child Welfare Police Officer while producing the child before the Board within twenty- four hours of his apprehension.

(3) The police officer apprehending a child alleged to be in conflict with law shall:

(i) not send the child to police lock-up and not delay the child being transferred to the Child Welfare Police Officer from the nearest police station. ***The police officer may under sub-section (2) of section 12 of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e.,***

***within twenty-four hours of his being apprehended and appropriate orders are obtained as per rule 9 of these rules;***

(ii) not hand-cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child;

(iii) inform the child promptly and directly of the charges levelled against him through his parent or guardian and if a First Information Report is registered, copy of the same shall be made available to the child or copy of the police report shall be given to the parent or guardian;

(iv) provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require, as the case may be;

(v) not compel the child to confess his guilt and he shall be interviewed only at the Special Juvenile Police Unit or at a child-friendly premises or at a child friendly corner in the police station, which does not give the feel of a police station or of being under custodial interrogation. The parent or guardian, may be present during the interview of the child by the police;

(vi) not ask the child to sign any statement; and

(vii) inform the District Legal Services Authority for providing free legal aid to the child.

(4) The Child Welfare Police Officer shall be in plain clothes and not in uniform.

(5) The Child Welfare Police Officer shall record the social background of the child and circumstances of apprehending in every case of alleged involvement of the child in an offence in Form 1 which shall be forwarded to the Board forthwith. For gathering the best available information, it shall be necessary

upon the Special Juvenile Police Unit or the Child Welfare Police Officer to contact the parent or guardian of the child.

(6) A list of all designated Child Welfare Police Officers, Child Welfare Officers, Probation Officers, Para Legal Volunteers, District Legal Services Authorities and registered voluntary and non-governmental organisations in a district, Principal Magistrate and members of the Board, members of Special Juvenile Police Unit and Childline Services with contact details shall be prominently displayed in every police station.

(7) When the child is released in a case where apprehending of the child is not warranted, the parents or guardians or a fit person in whose custody the child alleged to be in conflict with law is placed in the best interest of the child, shall furnish an undertaking on a non-judicial paper in Form 2 to ensure their presence on the dates during inquiry or proceedings before the Board.

(8) The State Government shall maintain a panel of voluntary or non-governmental organisations or persons who are in a position to provide the services of probation, counselling, case work and also associate with the Police or Special Juvenile Police Unit or the Child Welfare Police Officer, and have the requisite expertise to assist in physical production of the child before the Board within twenty-four hours and during pendency of the proceedings and the panel of such voluntary or non-governmental organisations or persons shall be forwarded to the Board.

(9) The State Government shall provide funds to the police or Special Juvenile Police Unit or the Child Welfare Police Officer or Case Worker or person for the safety and protection of children and provision of food and basic amenities including travel cost and emergency medical care to the child apprehended or kept under their charge during the period such children are with them.

**9. Production of the child alleged to be in conflict with law before the Board. -**

(1) When the child alleged to be in conflict with law is apprehended, he shall be produced before the Board within twenty-four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police.

(2) On production of the child before the Board, ***the Board may pass orders as deemed necessary, including sending the child to an observation home or a place of safety or a fit facility or a fit person.***

(3) Where the child produced before the Board is covered under section 83 of the Act, including a child who has surrendered, the Board may, after due inquiry and being satisfied of the circumstances of the child, transfer the child to the Committee as a child in need of care and protection for necessary action, and or pass appropriate directions for rehabilitation, including orders for safe custody and protection of the child and transfer to a fit facility recognised for the purpose which shall have the capacity to provide appropriate protection, and consider transferring the child out of the district or out of the State to another State for the protection and safety of the child.

(4) Where the child alleged to be in conflict with law has not been apprehended and the information in this regard is forwarded by the police or Special Juvenile Police Unit or Child Welfare Police Officer to the Board, the Board shall require the child to appear before it at the earliest so that measures for rehabilitation, where necessary, can be initiated, though the final report may be filed subsequently.

(5) In case the Board is not sitting, the child alleged to be in conflict with law shall be produced before a single member of the Board under sub-section (2) of section 7 of the Act.

(6) In case the child alleged to be in conflict with law cannot be produced before the Board or even a single member of the Board due to child being

apprehended during odd hours or distance, the child shall be kept by the Child Welfare Police Officer in the Observation Home in accordance with rule 69 D of these rules or in a fit facility and the child shall be produced before the Board thereafter, within twenty-four hours of apprehending the child.

(7) When a child is produced before an individual member of the Board, and an order is obtained, such order shall be ratified by the Board in its next meeting."

In the light of the aforesaid rules, it is pertinent to submit that the Board is required to pass an order when a child alleged to be in conflict with law appears before it and the word *'may'* by virtue of the judgment passed in the case of ***Ojef Khan v. State of M.P. registered at CRR No. 2071/2021 vide judgment dated 21.09.2021*** rendered by the Coordinate bench of this Hon'ble Court, has in respect of Rule 10A of the Model Rules, 2016 has observed that the word ***'may' is to be read as 'shall'***, and the same analogy is being applied in the present case also. **The copy of the judgment dated 21.09.2021 passed in CRR No. 2071/2021 is herewith marked and annexed as (FLAG A).**

Now, addressing the second half of the controversy-in-question, which relates to the fact that, whether the application u/s. 12 of the Act of 2015 be disposed of only after the preliminary assessment is done u/s. 15 of the Act of 2015.

In the conspectus of the aforesaid, it is of utmost importance to submit that though the preliminary assessment is a mandatory step prior to the holding of inquiry/trial, as the case may be, of the child who is alleged to be in conflict with law, aged 16 years & above, by the Board

or Children's Court, according to the provisions of the Act of 2015 & the Model Rules, 2016 notified thereunder, but certainly, it is not an important concomitant to be decided whilst first deciding the application u/s. 12 of the Act of 2015, which in itself is a ***suo motu*** power endowed upon the Board, for which even if no application is moved, the Board is required to pass an order u/s. 12 of the Act of 2015, either to release the child on bail or to order for his/her continuous stay at institutions, so established under the Act of 2015.

The reading of Rule 10 & 10A of the Model Rules, 2016 clearly demonstrates that, there is no bar/condition stipulated either in the Act of 2015 or the Model Rules, 2016 made in consonance of the power granted by section 110 of the Act of 2015, because if that would be the intention of the legislature, that preliminary assessment is to be done before deciding the application u/s. 12 of the Act of 2015, then the entrie provision of section 12 of the Act of 2015 r/w. rule 8 & 9 of the Model Rules, 2016 would be redundant, which clearly states that beyond the period of 24 hours, the custody of the child or his stay shall be governed by the order passed by the Board under Rule 9 of Model Rules, 2016, without any other condition to the fulfilled.

More so, sub-rule (1) of Rule 10 of the Model Rules, 2016, clarifies the aforesaid stance, which goes on to state as follows:

> **"10. Post-production processes by the Board. -**
>
> (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and

the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:

> (i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;
>
> (ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;
>
> (iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and
>
> (iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4....."

Where there is no condition precedent that, before the release, preliminary assessment u/s. 15 of the Act of 2015 is must to have undertaken and as the sphere of section 12 of the Act of 2015 is different, whose parameters are different and the course u/s. 12 of the Act of 2015 is adopted during the pendency of the inquiry is stipulated and as preliminary assessment u/s. 15 of the Act of 2015 is a part of inquiry and therefore the answer to the query raised by the Hon'ble Court is answered accordingly:

1. Disposal of an application u/s. 12 of the Act of 2015 by the Board is not stipulated on the condition of whether the preliminary assessment has been done u/s. 15 of the Act of 2015 or not and

is only governed by the parameters as has been stipulated in the said section itself, due to the insertion of non-obstante clause and the intention of the legislature when gather after perusing the entire scheme of the Act along with the Model Rules, 2016, made thereunder.

2. The provision relating to inquiry is governed by section 14 of the Act of 2015 and in relation to the offence allegedly committed by a child of 16 years & above is specifically governed by section 15 of the Act of 2015, which has no bearing on the provisions relating to the bail.
3. The aforesaid concept of bail is mutatis mutandi to the concept of grant of bail in relation to cases where there is no applicability of Act of 2015 (or its predecessor) and as such the procedure of trial has no material bearing on the grant of anticipatory bail/regular bail, in those cases. Similarly, the only rider for the grant or refusal of bail to the CCWL is section 12 of the Act of 2015 itself, *as has been considered to be the complete code in itself qua the subject of bail*, as observed by the Division Bench of this Hon'ble Court in the case of ***Ankesh Gurjar @ Ankit Gurjar v. State of M.P. registered at CRR No. 2112/2020 vide judgment dated 20.01.2021.*** **The copy of the judgment dated 20.01.2021 passed in CRR No. 2112/2020 is herewith marked and annexed as (FLAG B).**
4. That, before inquiring the matter in respect of CCWL apprehended in relation to heinous offence and is of 16 years & above, at the first instance, the preliminary assessment be done in accordance with the provisions of section 15 of the Act of 2015 r/w. rule 10A of the Model Rules, 2016 and thereafter the course be adopted as

has been stipulated under rule 11 of the Model Rules, 2016 by the Board and where the trial is transferred to the Children's Court u/s. 18 of the Act of 2015 on the need of the child being tried as an adult, then the procedure is to be followed as has been stipulated u/s. 19 of the Act of 2015 r/w. 13 of the Model Rules, 2016.

5. That, even the provisions of the Code of Criminal Procedure, 1973 are not applicable on the cases dealt under the Act of 2015 as has been recently held by the Coordinate bench of this Hon'ble Court while deciding that a particular provision which is to be constructed/interpretated shall not be done in isolation but entire scheme of the Act is to be seen, in the case of Vidhi ka Ulanghan Karne Wala Balak v. State of M.P. & Anr. registered at CRR No. 2108/2021 vide judgment dated 03.03.2022. **The copy of the judgment dated 03.03.2022 passed in CRR No. 2108/2021 is herewith marked and annexed as (FLAG C).**

PLACE : GWALIOR

DATED : 23-03-2022

**Humble Amicus Curiae**

Vijay Dutt Sharma

**Advocate**

(69)

ENCLOSURE 'H'

**IN THE HON'BLE HIGH COURT OF MADHYA PRADESH,**

**BENCH AT GWALIOR**

**CRIMINAL REVISION NO. 2068/2021**

**REVISIONIST.....** Gopal Krishna Gautam @ Pandit

Versus

**RESPONDENTS.....** State of Madhya Pradesh & Anr.

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PLACE : GWALIOR

DATED : 09-11-2021

**Humble Applicant**

Gopal Krishna Gautam @ Pandit

Vijay

**Through Counsel**

Vijay Dutt Sharma

Harshit Sharma

**Advocates**

# SYNOPSIS

## RESPONSIBILITY OF THE LAND-HOLDER AND CERTAIN OFFICERS TO DISCLOSE THE COMMISSION OF CRIME UNDER NDPS ACT: EXPLAINER

***Most respectfully Sheweth before your Lordship,***

To elaborate the concept of responsibility statutes and the usage of the same to curb the crime at its initial bud, it is pertinent to highlight the responsibility/liability/duty provisions enshrined under the NDPS Act, 1985 in relation to Land-holders and certain officers, including Panch, sarpanch etc.

> ***"46. Duty of land holder to give information of illegal cultivation.***
>
> *Every holder of land shall give immediate information to any officer of the police or of any of the departments mentioned in section 42 of all the opium poppy, cannabis plant or coca plant which may be illegally cultivated within his land and every such holder of land* **who knowingly neglects** *to give such information, shall be liable to punishment.*

> ***47. Duty of certain officers to give information of illegal cultivation.***
>
> *Every officer of the Government and every Panch, sarpanch and other village officer of whatever description shall give immediate information to any officer of the Police or of any of the departments mentioned in section 42* **when it may come to his knowledge** *that any land has been illegally*

*cultivated with the opium poppy, cannabis plant or coca plant, and every such officer of the Government, Panch, sarpanch and other village officer* **who neglects to give** *such information, shall be liable to punishment."*

The highlighted portion of the aforesaid provisions is to be perused in depth, which categorically endows with the Land-Holder and the officer's working in village with the duty to disclose any commission of offence under the Act, which comes to their knowledge and thereby they neglected to disclose the same to the competent authority as has been established under the NDPS Act, 1985 and is therefore liable for the punishment.

The next portion shall deal with the foundational ingredients to constitute the offences under the aforesaid provisions and the practical working of the same, at the pretext of the presumptions laid down in the NDPS Act, 1985.

## I. Section-46 essential ingredients to hold the Land-holders liable.

In the conspectus of this concept, it is pertinent to highlight the meaning of the word **Land-Holder**.

According to Black's Law Dictionary (10th Edition) by Bryan A. Garner, the word Land holder means

***"Landholder(17c). Someone who possesses or owns land"*** at page 1010.

To elaborate the same, a person who possess a land, is also categorised as a landholder and the word possess according to the Black's Law Dictionary means as follows

> ***"Possess, vb.(14c) 1. To have in one's actual control; to have possession of*** at page 1351.

Thus, by observing the same, even the tenant, contractor, power of attorney holder or any other person who is having actual authority over a particular dominion despite not being the owner is also attracted with the corollary duty to disclose any illegal act being committed on the said dominion under the NDPS Act and mechanically the owner is not liable for the said disclosure, if for any of the reasons, he is not coming under the category of landholder and for the time being is not exercising actual control over the property, which is in entirety a factual question to be considered on case-by-case basis.[1]

More so, a landholder is duty bound under the NDPS Act to disclose any illegal activity or cultivation prohibited by the said Act being committed on his land (being a landholder) and when he ***knowingly neglects*** (with an intent to hide or conceal the said activity, with or without receiving any benefit from such concealment) meaning thereby, intentionally concealing this fact from being disclosed to concerned authorities empowered under the Act, is liable for the punishment.

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[1] Lawinsider, *land holder definition*, LAWINSIDER (Nov. 06, 2021, 06:32 AM), https://www.lawinsider.com/dictionary/land-holder.

**II. Section-47 essential ingredients to hold certain officers liable.**

The very difference between the yester-section and this section is that, every officer of the government and every Panch, sarpanch and other village officer of any description is duty bound to immediately furnish information of illegal cultivation as soon as it comes within their knowledge and thereby ***neglects (whether knowingly or unknowingly or intentional or accidental)*** to forward the same to the concerned authority.

The previous section bolstered that neglect should be knowingly or intentionally, but this section doubles the burden on the officer's and allied persons, that it is not sine qua non to show that neglect was intentional so as to bring their omission punishable under this section, but what is required is only to show that they knew about the said thing and they neglected to furnish the information, for the reasons best known to them.

Furthermore, when the provisions enshrined under section-46 & 47 of the NDPS Act, 1985 is perused and applied at the touchstone of the presumptions laid down under the Act 61 of 1985 as echoed under section- 35 & 54 of the same, the true applicability and efficacy of these provisions can be achieved. This can be said because, to prove a mental element is sometimes very difficult and controversial and for this very purpose their came to be a hailing provision of ***'reverse burden of proof/shift in burden of proof on the accused'***, which has the capacity to bring these positive offences based on omission of the duty to be invoked for nipping the offences under the NDPS Act, 1985 in the bud, itself.

Now, we shall discuss the punishment for which the said officers be liable for, because of the very reason, that section 46 & 47 of the NDPS Act, 1985 does not provide for any specific punishment in respect of violation of these provisions.

## III. Punishment for violation of section 46 & 47 of the NDPS Act, 1985.

At this juncture, a kind perusal to section 32 of the NDPS Act, 1985 is worth attracting, whose bare text is herewith reproduced:

> ***"32. Punishment for offence for which no punishment is provided.***
>
> *Whoever contravenes any provision of this Act or any rule or order made, or any condition of any licence, permit or authorisation issued thereunder for which no punishment is separately provided in this Chapter, shall be punishable with* **imprisonment for a term which may extend to six months, or with fine, or with both.***"*

Thus, the violation whilst neglecting in furnishing the information of illegal cultivation by land holder or any officer of the government etc. attracts the punishment for imprisonment for a term which may extend to six months, or with fine or with both.

More so, the actions of illegal omission of the officers can also come within the ambit of abetting the commission of the offence under the NDPS Act, 1985, which is specifically dealt u/s. 29 of the NDPS Act, 1985 which goes onto state as follows:

***"29. Punishment for abetment and criminal conspiracy.***

*(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860),* ***be punishable with the punishment provided for the offence.***

*(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—*

*(a) would constitute an offence if committed within India; or*

*(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."*

Thus, to bring the actions of authorities under this section, it is to be proved that the abetment was made vide intentionally aiding the perpetrators by illegal omission, i.e. not furnishing immediate/timely information to the concerned officer about illegal cultivation, which forms one of the essential ingredient to constitute offence of abetment as defined u/s. 107 of the Indian Penal Code, 1860 which clearly applies to the NDPS Act, 1985 by virtue of section 3 of the General Clauses Act, 1897, which goes on to state as follows:

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***"3. Definitions***

*In this Act, and in all Central Acts and regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context-*

*(1) "abet", with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860);...."*

In the conspectus of the same, it is important to highlight one of the most notable examples from our school days in respect of criminal laws, which forms the part of Legal Studies Class XII textbook[2] and is also frequently asked in competitive examinations and suits the very present situation in respect of illegal omission, which follows:

*"An omission is nothing but inaction or not doing something. Section 32 of the Indian Penal Code (IPC) clarifies that acts which may be considered as Crime include "illegal omissions". But mere moral omissions of not doing something would not complete the requirement of actus reus.*

***Illustration**: A man is sinking in the swimming pool of a resort. A boy who is beside the pool does not make any attempt to save this man. This is a moral omission of not saving someone's life. The boy cannot be held criminally liable for such an omission.*

***But** in the same scenario, if there is a lifeguard on duty at this resort, and if he does not make any attempt to save the man sinking in the pool, then he can be held criminally liable for such omission."*

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[2] Central Board of Secondary Education, *Legal Studies Class XII*, CBSE (Nov. 06, 2021, 07:38 AM), http://cbseacademic.nic.in/web_material/doc/legal_studies/legal%20studies%20text%20book%20class%20xii.pdf.

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**NOTE:** Though the situation in France and some other jurisdiction is a bit different, wherein the moral omission too makes the person liable for criminal offences, which is punishable with imprisonment from 03 months to 05 years or with fine of 360 francs to 20,000 francs, or with both.[3]

In the light of the same, recently the single judge bench of this Hon'ble High Court of Madhya Pradesh at Principal Seat Jabalpur in the case of ***Virendra Singh Purviya v. State of Madhya Pradesh*** registered at **MCRC No. 9334/2019 vide judgment dated 07th January, 2020** came to be dealing with the similar issue of what **"illegal omission"** constitutes and observed as follows:

> *"Therefore, the issue that arises for consideration is whether thirdly of Section 107 IPC with Explanation 2 of Section 107 is attracted in the facts and circumstances of the present case. In order to convict a person of abetment by illegal omission, it is necessary to show that the accused intentionally aided the commission of offence by his non-interference and that the omission involved a breach of legal obligation. Abetment by omission would only be punishable if the omission were an illegal omission. The word 'illegal' means against or not authorised by law and omission is something that has not been done either deliberately or accidentally.*
>
> *There is nothing on record to show that failure of the applicant to prevent his brother co-accused Govind to commit rape upon prosecutrix (his wife) was against the law or the applicant was under an obligation by law to prevent such incident.*

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[3] Kristyna Domokosava, *Letting drown or killing by drowing: A moral challenge for lawmakers*, KEEP CALM TALK LAW (Nov. 06, 2021, 07:46 AM), http://www.keepcalmtalklaw.co.uk/letting-drown-or-killing-by-drowning-a-moral-challenge/.

*Although it is also alleged that after the first incident when prosecutrix told applicant Virendra Purviya about the incident on mobile, he asked her to allow co-accused Govind to do whatever he wanted whenever he came to her room, but neither in the case diary statement of prosecutrix nor in the FIR, it is mentioned that Prosecutrix allowed the co-accused Govind to make sexual intercourse with her against her will due to the pressure of the applicant. So, in the considered opinion this Court the act of the applicant does not come within the expression 'illegal omission' also and accordingly he cannot be held liable for abetment of the offence. There is no allegation against the applicant that he threatened prosecutrix. So, from the charge-sheet no offence under Sections 376 (2)(n) & 376 (2)(f), 109, 506 & 34 of the IPC is made out against the present applicant Virendra Purviya."*

More so, the similar observations in respect of illegal omission becoming part of abetment were dealt by this Hon'ble Court in the case of ***Surendra Agnihotri v. State of M.P. (1998 Cr.L.J. 443),*** whose observations is worth quoting:

*"Plain reading of Section 107 of the Indian Penal Code makes it clear that doing of a thing by illegal omission amount to abetment. Shri Dutt submits that there is no illegal omission on part of the appellant for the act of commission of suicide by the deceased, whereas according to the learned counsel for the State, it was the duty of the appellant to prevent the deceased from setting her on fire and after she has set herself on fire to put it off to save her. This leads to consideration what is meant by illegal omission.*

*14. The word 'illegal' means against or not authorised by law and omission is something that has not been done either deliberately or*

*accidentally. Nothing has been pointed out on behalf of the respondent to show that the appellant's act of not making any endeavour to save life of the deceased is against law or the appellant was under an obligation by law to prevent such incident. Individuals act differently in same situation. It may be possible that the appellant seeing the flames got so shocked that he did not re-act or he might not have attempted to put off the fire apprehending danger of his life. I am of the opinion that the act of the appellant does not come within the expression 'illegal omission' and accordingly he cannot be held guilty for abetment of the offence. As such the conviction and sentence of the appellant cannot be sustained."*

The copy of the judgment dated 07th January, 2020 passed in MCRC No. 9334/2019 is herewith marked and annexed as **(FLAG A)**.

Though, in the aforesaid matter, the offence alleged came to be quashed on the basis that there was no legal duty endowed upon the petitioner from omitting his brother to not commit rape on the prosecutrix (though it being moral and social duty to intervene), but the situation in the present matter is totally different, where there is a legal duty upon the landholder and the officer's to furnish information to the competent and concerned authority established under the NDPS Act, 1985 in relation to illegal cultivation and therefore, they can also be held liable for abetment of the said crime, which may or may not have been committed.

It is important to highlight that even preparation has also been brought into the category of offence.

Furthermore, a similar provision to this effect has been provided under the M.P. Excise Act, 1915, which provides for the following,

***"50. Land-holders and others to give information.***

*Whenever any intoxicant is manufactured or collected, or any hemp plant is cultivated on any land in contravention of this Act—*

*(a) any owner or occupier of such land and any agent of an y such owner or occupier; and*

*(b) all village-headmen, village-accountants, village-watchmen, and all officers employed in the collection of revenue or rent of land on the part of the Government or the Court of Wards in the villages,*

*shall,* ***in the absence of reasonable excuse****, be bound to give notice of the fact to a Magistrate or to an officer of the Excise, Police of Land Revenue Department, as soon as the fact comes to their knowledge."*

Though, this provision differs from the provision incorporated under NDPS Act, 1985 in relation to that wherein section 50 doesn't provide for any punishment specifically in this section which the contravener be liable and therefore, for the punishment purposes, a kind perusal is to be made on provision 37 of the M.P. Excise Act, 1915, which provides for the following,

**"37. Penalty for offence not otherwise provided for**

Whoever, is guilty of any act or intentional omission in contravention of any of the provisions of this Act or of any rule, notification or order made, issued or given thereunder and not otherwise provided for in this Act, shall be ***punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both."***

**IV. Latest developments noted in relation to NDPS Act, 1985.**

In this respect, it is pertinent to highlight the judgment dated 30.05.2019 passed by the co-ordinate bench of this Hon'ble Court in the case of **Ismail Khan v. State of Madhya Pradesh registered at CRR 482/2012**, wherein the Hon'ble Court has observed the defects in the investigation of the offences under the NDPS Act, 1985 and has also provided the remedial measures to the effect of the same. **The copy of judgment dated 30.05.2019 passed in CRR 482/2012 is herewith marked and annexed as (FLAG B).**

Recently the Hon'ble Apex Court has discharged the accused being implicated merely on the basis of the disclosure statement of the co-accused recorded u/s. 67 of the NDPS Act, 1985 being holding it to be totally inadmissible, while relying on the Tofan Singh's[4] Judgment. **The copy of the judgment dated 25th October, 2021 passed in the case of Sanjeev Chandra Agrawal & Anr. v. Union of India registered at Criminal Appeal No. 1273/2021 is herewith marked and annexed as (FLAG C).**

More so, the Hon'ble Punjab & Haryana High Court recently vide order dated 28th October, 2021 passed in the case of ***Bhim Sain v. State of Haryana registered at CRR 1300/2021 (OM)*** has granted the benefit of default bail while observing that the challan without FSL or Chemical Examiner's report is incomplete and it doesn't qualify for the requirements of section 167(2) of the Cr.P.C. 1973, subject to the decision being passed in the reference made to larger bench in the case of ***Julfkar v. State of Haryana (CRR 1125/2020).*** **The copy of the judgment**

[4] Tofan Singh v. State of Tamil Nadu, (2021) 4 S.C.C. 1 (India).

**dated 28.10.2021 passed in CRR 1300/2021 (O.M.) is herewith marked and annexed as (FLAG D).**

Though, a contrary view has been taken by the Division Bench of the Hon'ble Bombay High Court at Goa in the case of **Manas Krishna T K Vs. State, (Criminal Misc. Application (Bail) No.88 of 2021 (F), decided on September 17,2021)** on account of the reference referred by the Hon'ble Chief Justice of Bombay High Court in relation to differing judgments on this aspect, wherein it has been held that the challan/charge sheet filed without accompanying the CA/FSL report doesn't amount to incomplete challan and therefore, the applicant is not entitled to default bail.

**PLACE :** GWALIOR

**DATED:** 09-11-2021

**Through Counsel**

Vijay Dutt Sharma

Harshit Sharma

**Advocates**

**The Registrar (Administration)**

Secretary of the Permanent Committee

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13.6.14

AO (R.R) Admn.