J&K JUDICIAL ACADEMY
e-NEWSLETTER

Official Newsletter of Jammu & Kashmir Judicial Academy

Volume 7 | **Monthly** | **July 2024**

LEGAL JOTTINGS

"Trial judges prefer playing safe by not granting bail on important issues of crime when it is looked at with a degree of suspicion. People who should be getting bail in the trial courts and not getting it there, as a result of which, they have to invariably move the high courts. People who should be getting bail in the high courts will not necessarily get it, as a result of which, they have to move to the Supreme Court. This delay compounds the problem of those who are facing arbitrary arrests."

-Justice Dr. D.Y. Chandrachud,
Hon'ble Chief Justice of India

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From the Editor's Desk

"There is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice"

…….. MONTESQUIEU.

The observations of Hon'ble the Chief Justice of India, Dr. D. Y. Chandrachud while speaking at an event organised by the Bar Council of India that there is a 'sense of fear' amongst trial courts Judges and they are reluctant to grant bail are of great significance. Hon'ble CJI has attributed it as the one major cause why the higher judiciary is flooded with bail matters. These concerns from Hon'ble CJI are also significant since more than four crore cases are currently pending in district courts and almost 75% of the prisoners languishing in various jails are undertrials.

Expressing dismay over the plight of undertrials, Hon'ble Supreme Court, in *Satinder Kumar Antil v. CBI,* 2022 (10) SCC 51, issued a slew of guidelines with a view to ease out the process of bail. This judgment also emphasized that Magistrates should not remand the accused to custody in a mechanical manner as Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty to every individual and to live with dignity and personal freedom is its necessary concomitant which includes the entitlement to seek bail when detained by any law enforcement agency. While the acknowledgement of judicial culture driven by fear by the CJI himself is a welcome step, however, the challenge remains as how to overcome this malady.

Justice Krishna Iyer, in State of Rajasthan versus Balchand alias Baliay, 1977 (4) SCC 308, tersely described the 'basic principle' as Bail not Jail' excepting the cases where there are circumstances suggestive of accused fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating the offences or intimidating witnesses and the like. An unjustifiable arrest and detention of a person can cause incalculable harm to the reputation and self-esteem of a person as has been observed by the Hon'ble Supreme Court way back in Joginder Kumar v. State of U.P. and Others, 1994 CrLJ 1981. Arrest shouldn't be made because police officer has power to do so on mere accusation of commission of an offence without some investigation as to the genuineness of the allegations in the complaint and a reasonable belief as to the complicity of accused as well as the circumstances necessitating such an arrest.

The issue of bail, as expounded by Hon'ble Justice Krishna Ayer in Gudikanti Narasimhulu v. State, 1978 (1) SCC 240, is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. In Sanjay Chandra v. CBI, 2012 (1) SCC 40 Hon'ble Supreme Court emphasized that object of bail is neither punitive nor preventative and went on to add that deprivation of liberty must be viewed as punishment, unless it is

required to ensure that an accused stands trial when called upon. Since punishment begins after conviction only and until then, every man is presumed to be innocent. Imprisonment before conviction has a substantial punitive content and as such, it would be improper for any court to refuse bail simply as a mark of disapproval of conduct of an accused or just to give him a taste of imprisonment.

Besides, gravity of offence is also a factor to considered in addition to the tripletest or the tripod test viz. (1) Flight risk: whether the applicant is a flight risk; (2) tampering with evidence: whether there is a possibility that applicant could tamper with evidence; and (3) threatening/influencing the witnesses: whether the prosecution has evidence to show that applicant has/could influence/prevent the witnesses against speaking the truth. Courts may also take into account the other factors when applying the triple test, such as the nature of the offence, the age and character and status of accused etc. The possibility of the trial being not concluded within a reasonable despatch is also an additional factor to be taken note of while dealing with a bail plea. It has also to be borne in mind that conditions of bail aren't so onerous which would tantamount to denial of bail. It is for the trial courts to rise up to the occasion and respond to the call of duty.

Citation: 2024 LiveLaw (SC) 441
SLP (Crl.) No. 6339-6340/2023
Frank Vitus v. Narcotics Control Bureau
Decided on: July 08, 2024

The Supreme Court held that there cannot be a bail condition that enables the police to constantly track the movements of the accused and virtually peep into the privacy of the accused. A bench of Justice Abhay S Oka and Justice Ujjal Bhuyan was examining *whether a bail condition requiring an accused to drop a pin on Google Maps for the investigating officer to access his location violates a person's right to privacy.*

> *"There can't be bail condition defeating the very objective of bail. There can't be a bail condition enabling the police to constantly track the movement of the accused and virtually peep into the private life of the accused,"* Justice Oka verbally pronounced the verdict.

The object of bail condition cannot be to keep a constant vigil on the movements of the accused. The court considered two main issues: whether an accused must share the Google PIN location with the investigating officer as a bail condition, and whether bail to a foreign accused can be conditioned on obtaining an assurance from their Embassy that they will not leave India.

> *"The object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21. If a constant vigil is kept on every movement of the accused released on bail by the use of technology or otherwise, it will infringe the rights of the accused guaranteed under Article 21, including the right to privacy. The reason is that the effect of keeping such constant vigil on the accused by imposing drastic bail conditions will amount to keeping the accused in some kind of confinement even after he is released on bail. Such a condition cannot be a condition of bail."*

Imposing any bail condition which enables the Police/Investigation Agency to track every movement of the accused released on bail by using any technology or otherwise would undoubtedly violate the right to privacy guaranteed under Article 21. In this case, the condition of dropping a PIN on Google Maps has been incorporated without even considering the technical effect of dropping a PIN and its relevance as a condition of bail," it added. Therefore, the Court directed the deletion of the said condition.

Citation: 2024 LiveLaw (SC) 443
Criminal Appeal No.: 1751 of 2017
Naresh Kumar v. State of Delhi
Decided on: July 09, 2024

The Supreme Court held that the non-questioning of an accused on 'incriminating

circumstances' and depriving him of an opportunity to explain the incriminating circumstances under Section 313 of the Code of Criminal Procedure ("CrPC") would vitiate the trial if such omission result in a miscarriage of justice. The Court said that non-adherence to the provision of Section 313 of CrPC would result in an acquittal of the accused if it prejudices the accused.

The bench comprising Justices CT Ravikumar and Sandeep Mehta acquitted the murder accused in a 29 years old case wherein the accused was neither questioned by the trial court on an incriminating circumstance nor provided an opportunity to explain the incriminating circumstances posed by the prosecution.

> *"When the finding of common intention was based on the twin incriminating circumstances and when they were not put to the appellant while he was being questioned under Section 313, Cr.P.C, and when they ultimately culminated in his conviction under Section 302, IPC, with the aid of Section 34, IPC, and when he was awarded the life imprisonment consequently, it can only be held that the appellant was materially prejudiced and it had resulted in blatant miscarriage of justice. The failure as above is not a curable defect and it is nothing but a patent illegality vitiating the trial qua the appellant."*, the Judgment authored by Justice CT Ravikumar said.

Section 313 of Cr. P.C. is one of the beneficial provisions from the perspective of the accused which provides an opportunity to an accused to put his defence against the incriminating circumstances posed by the prosecution against the accused. The general position is that if any incriminating circumstance, appearing against an accused in the prosecution evidence, is not put to him it should not be used against him and must be excluded from consideration.

Drawing reference from its precedents, the Court observed that it is a well settled position that non-examination or inadequate examination under Section 313, Cr.P.C., on any incriminating circumstance, by itself, would not vitiate a trial qua the convict concerned unless it has resulted in material prejudice to him or in miscarriage of justice.

The Court also referred to its judgment of *Raj Kumar @ Suman v. State (NCT of Delhi) 2023 LiveLaw (SC) 434*, wherein the Court lamented the trial court judges for not using Section 313(5) of CrPC properly by not taking assistance of the public prosecutors and defense counsel in preparing a question to be put to an accused on incriminating circumstances. The Court in *Raj Kumar's Case* summarized the law on the subject of a consequence of omission to make questioning on incriminating circumstances appearing in the prosecution evidence and the ways of curing the same.

Citation: 2024 LiveLaw (SC) 446
Har Narayan Tewari (D) Thr. Lrs. v. Cantonment Board, Ramgarh Cantonment & Ors.
Decided on: July 09, 2024

Observing that the principle of Res judicata is applicable not only between the plaintiff and the defendants but also between the co-defendants, the Supreme Court held

that the condition precedent to make the principle of res judicata applicable between the co-defendants is that there must be a conflict of interest between the co-defendants.

The bench comprising Justices Abhay S. Oka and Pankaj Mithal stated that the principle of res judicata would not be attracted unless there exists a conflict of interest between the co-defendants.

While explaining the meaning and context of the principle of Res judicata enshrined under Section 11 of the Code of Civil Procedure, the Judgment authored by Justice Abhay S Oka upon placing reliance on Govindammal v. Vaidyanathan culled out three necessary conditions to be fulfilled in applying the principle of res judicata between the co-defendants.

(i) there must be a conflict of interest between the co-defendants;

(ii) there is necessity to decide the said conflict in order to give relief to the plaintiff; and

(iii) there is final decision adjudicating the said conflict.

"Once all these conditions are satisfied, the principle of res judicata can be applied inter se the co-defendants.", the court said.

The Court opined that the right of the plaintiff-appellant to claim the suit land or the right of the Cantonment Board over the 2.55 acres of land settled in its favor never came to be adjudicated in the previous Suit filed by the Maharani, therefore the suit filed by the plaintiff-appellant claiming title over the suit land against the Cantonment Board, Ramgarh is not barred under Section 11 CPC.

Citation : 2024 LiveLaw (SC) 452
Special Leave to Appeal (Crl) 1614/2024
Mohd Abdul Samad v. The State of Telangana & Anr.
Decided on: July 10, 2024

The Supreme Court held that a divorced Muslim woman is entitled to file a petition for maintenance against her ex-husband under Section 125 of the Code of Criminal Procedure. The Court held that this right of a Muslim woman is in addition to the right under the Muslim Women (Protection of Rights on Divorce) Act 1986. The Bench of Justices BV Nagarathna and Augustine George Masih dismissed a petition filed by a Muslim man's plea against the direction to pay interim maintenance to his divorced wife under Section 125 CrPC.

The conclusions emerging from the concurring judgments of the judges are as follows :

a) Section 125 of the CrPC applies to all married women including Muslim married women.

b) Section 125 of the CrPC applies to all non-Muslim divorced women.

c) Insofar as divorced Muslim women are concerned, -

i) Section 125 of the CrPC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

ii) If Muslim women are married and divorced under Muslim law then Section 125 of the

CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the CrPC but in addition to the said provision.

iii) If Section 125 of the CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the CrPC. [This means that if any maintenance has been given to Muslim wife under the personal law, then it shall be taken into account by the Magistrate to alter the maintenance order under Section 127(3)(b)]

e) In case of an illegal divorce as per the provisions of the 2019 Act then,

i) relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the CrPC could also be availed.

ii) If during the pendency of a petition filed under Section 125 of the CrPC, a Muslim woman is 'divorced' then she can take recourse under Section 125 of the CrPC or file a petition under the 2019 Act.

iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the CrPC.

"A divorced Muslim woman is not restricted from exercising her independent right of maintenance under the secular provision of Section 125 of CrPC 1973, provided she is able to prove the requisites encompassed by the said statute, " Justice Masih stated in his judgment after referring to various precedents including the Daniel Latifi judgment.

"We are inclined to conclude that equivalent rights of maintenance ascertained under both, the secular provision of Section 125 of CrPC 1973, and the personal law provision of Section 3 of the 1986 Act, parallelly exist in their distinct domains and jurisprudence. Thereby, leading to their harmonious construction and continued existence of the right to seek maintenance for a divorced Muslim woman under the provisions of CrPC 1973 despite the enactment of the 1986 Act," Justice Masih stated.

Justice Nagarathna stated :*"One cannot read Section 3 of the 1986 Act containing the non- obstante clause so as to restrict or diminish the right to maintenance of a divorced Muslim woman under Section 125 of the CrPC and neither is it a substitute for the latter. Such an interpretation would be regressive, anti-divorced Muslim woman and contrary to Articles 14 and 15(1) and (3) as well as Article 39(e) of the Constitution of India. Therefore, inspite of an option of seeking maintenance under the provisions of the 1986 Act, Section 125 of the CrPC is applicable to a divorced Muslim woman."*

It was held that the 1986 Act is not a substitute for Section 125 of the CrPC and nor has it supplanted it and both can operate simultaneously at the option of a divorced Muslim woman as they operate in different fields.

"If Section 125 of the CrPC is excluded from its application to a divorced Muslim

woman, it would be in violation of Article 15(1) of the Constitution of India which states that the State shall not discriminate against any citizen only on the ground of religion, race, caste, sex, place of birth or any of them. Further, our interpretation is consistent with the spirit of Article 15(3) of the Constitution."

Justice Nagarathna clarified in her judgment that Muslim women, who are divorced through the illegal method of triple talaq, are also entitled to claim maintenance under Section 125 CrPC.Triple talaq has been declared as void by the Supreme Court and criminalised by the Muslim Women (Protection of Rights on Marriage) Act 2019.

"When divorce is void and illegal, such a Muslim woman can also seek remedy under Section 125 of the CrPC," Justice Nagaratna stated.

Justice Masih said : *"this Act does not bar...it is the choice of the person who had applied or moved an application under 125...there is no statutory provision provided under the Act of 1986 which says that 125 is not maintainable".* Concurring, Justice Nagarathna said that there was nothing in the 1986 law which barred one remedy in favor of the other.

"If the Parliament had the intention to extinguish such rights of the Muslim woman, it would only be reasonable to expect the Parliament to speak in definite and specific language about such extinguishment. Parliament must have been aware that when 1986 Act was enacted, number of orders must have passed in favor of divorced Muslim women under Section 125...Message appears to us to be loud and clear...Both rights, under Section 125 of the Code and Section 3 were conferred on the divorced women. She has the right to choose."

If the Parliament intended for divorced Muslim women to no longer be entitled to file petitions under Section 125 CrPC from the date of commencement of the Act, it could have explicitly given an overriding effect to the Act, the Bench remarked. To quote Nagarathna J, *"In the absence of such a thing, can we add a restriction to the Act? That is the point".*

Citation: 2024 LiveLaw (SC) 467
Sanju Bansal v. State of Uttar Pradesh
Decided on: July 13, 2024

The Supreme Court said that courts must ignore confessional statements recorded by police officers if they form part of the charge-sheet.

Under section 25 of the Indian Evidence Act and corresponding provision section 23(1) of the Bharatiya Sakshya Adhiniyam, confessions made by an accused to police officer are not admissible as evidence. A bench of Justice Abhay Oka and Justice Augustine George Masih asked the trial court to ignore confessional statements included in the charge sheet in a case.

It is obvious that confessional statements recorded by the Police Officers which are part of the charge-sheet cannot remain a part thereof and the same must be ignored. The Trial Court to take note of this", the court stated in its order.

The court said this while dealing with an appeal against Allahabad High Court's judgement which upheld trial court's decision to reject the appellant's discharge application.

Prashant Kumar, Director General of Police (DGP), Uttar Pradesh, filed an affidavit stating that, generally, confessional statements are not recorded by investigating officers in Uttar Pradesh. Kumar claimed that the current case is an exception where such statements were included in the charge-sheet by the police.

The court had directed Amro Devi, the DGP of Uttar Pradesh to investigate this practice and submit a personal affidavit indicating whether this practice of including statements, particularly confessions made to the police, in the charge-sheet was prevalent in Uttar Pradesh.

Citation: 2024 LiveLaw (SC) 480
Ashok Daga v. Directorate of Enforcement
Decided on: July 17, 2024

The Supreme Court observed that an accused cannot be said to be a witness against himself if he was called upon to admit or deny the genuineness of the documents produced by the prosecution under Section 294 of the Code of Criminal Procedure (CrPC).

> *"We are of the opinion that calling upon the accused to admit or deny the genuineness of the documents produced by the prosecution alongwith the list under Section 294 of Cr.P.C., could not be said to be in any way prejudicial to the right of the accused, nor could it be said to be compelling him to be a witness against himself as contemplated under Article 20(3) of the Constitution of India.", the bench comprising Justices Bela M. Trivedi and Satish Chandra Sharma said.*

Article 20(3) of the Constitution states that no person accused of any offence shall be compelled to be a witness against himself. It is an individual's right against self-incrimination.

The object of Section 294 of CrPC is to accelerate the pace of the trial proceedings by reading into the relevant piece of evidence in the trial, leaving aside unnecessary material. Where the genuineness of any document is admitted or its formal proof is dispensed with, the same may be read in evidence.

The appellant/accused had denied the appearance to admit or deny the genuineness of the documents produced by the prosecution. Non-appearance of the accused led to the recording of adverse findings against the accused. The trial court had recorded that "his conduct in deliberately denying the genuineness of a document may be taken as an aggravating circumstance while determining quantum of sentence because it will lead to prolonged trial."

The Supreme Court held that there cannot be a violation of the right against self-incrimination if the accused was called upon to admit/deny the genuineness of the documents produced by the prosecution, and refused to interfere with the impugned order

of the trial court. However, the adverse observation recorded against the accused stands deleted by the Court.

Citation : 2024 LiveLaw (SC) 497
Civil Appeal No. 8176 of 2022
Kaushik Narsinhbhai Patel & Ors. v. M/s. S.J.R. Prime Corporation Private Limited & Ors.,
Decided on: July 22, 2024

The Supreme Court held that a party whose right to file a written statement in a case has been forfeited cannot introduce his case indirectly through evidence or written submission. Such a party can still participate in the proceedings and cross-examine the complainant, but cannot indirectly introduce his case.

> *"In the absence of any specific provisions dealing with non-filing of written statements/forfeiture of the right to file a written statement, taking note of the general position as above, it can only be held that it should bar the opposite party in a proceeding before the Consumer Redressal Forums to bring in pleadings, indirectly to introduce its/ his case and evidence to support such case.", the bench comprising Justices CT Ravikumar and Sanjay Kumar said.*
>
> *"In the situations mentioned above, the right of the opposite party is confined to participate in the proceedings without filing a written statement and to cross-examine witness(es), if any, examined by the complainant(s)," the Court added.*

Upon placing reliance on Karnataka High Court's Judgment *Nalini Sunder v. GV Sunder reported in AIR 2003 Kar 86*, the court observed that the defendant would not be allowed to bring forth anything admissible in view of the impact of forfeiture on the right to file a written statement. As evident from Order 6 Rule 7 of CPC, the defendant would be allowed to bring in those claims that are in consistent with the previous pleadings made by him. But, when previous pleadings are not available on account of forfeiture of the right to file a written statement then the defendant would not be allowed to bring in pleadings indirectly to introduce its case.

The Court said that once the right to file a written submission stands forfeited, then the defendant would not be permitted to introduce its case through written submissions. However, the forfeiture of the right to file a written submission would not bar the defendant from participating in the proceedings and cross-examining the witness(es), the Court said referring to *Nanda Dulal Pradhan & Anr. v. Dibakar Pradhan & Anr.*

The present case relates to the consumer dispute, wherein pursuant to the Supreme Court's order the Respondent/defendant had forfeited his right to file a written statement, however, liberty was granted to him to decide whether to participate in the proceedings or not.

Citation: 2024 Livelaw (SC) 45

M/S Al-Can Export Pvt. Ltd. v. Prestige H.M. Polycontainers Ltd. & Ors.

Decided on: July 09, 2024

The Supreme Court held that a person aggrieved by an auction sale conducted by the public functionary in gross violations of the mandatory provisions of law cannot be called upon to establish the dual conditions stipulated in Order XXI Rule 90 of the Code of Civil Procedure, 1908 ("CPC") for setting aside the auction sale.

"We are of the view that in cases such as the one at hand wherein the legality, validity and propriety of the auction sale conducted by the State through its authorities is questioned on the ground of mala fides, undue favour for extraneous considerations and gross violation of the mandatory provisions of law, it would be hazardous to apply the principles enshrined in Order XXI Rule 90 of the CPC.", the bench comprising Justices JB Pardiwala and Manoj Misra said.

The Court said that when a writ petition was filed by the person challenging the sale of its property in gross violation of the mandatory provisions of law, then a person cannot be asked to challenge the sale under Order 21 Rule 90 of CPC.

Taking note of the Explanation contained under Section 141 of CPC and placing reliance on the case of *Chilamkurti Bala Subrahmanyam v. Samanthapudi Vijaya Lakshmi and Another(2017) 6 SCC 770*, the Court held that the provisions of CPC would not apply to the proceedings under Article 226 of the Constitution, and it would be a travesty of justice to the person if he was asked to challenge the sale proceedings, being nullity in the eyes of law, under Order 21 Rule 90 of CPC.

"Times have changed. Human values and ethics in public functionaries have degraded to a considerable extent. Corruption is on a rampage. Having regard to the same and in order to protect and uphold the rule of law, the courts have a duty to ensure that the State authorities have conducted public auctions in a fair and transparent manner and have not done anything by which public exchequer has suffered. It would be too much to say that although the writ court may find an auction sale conducted by a public functionary to be in gross violation of the mandatory provisions of law and the action of such public functionary to be arbitrary, yet the aggrieved party complaining about the same should be told to establish the dual conditions stipulated in Order XXI Rule 90 of the CPC.", the judgment authored by Justice JB Pardiwala said.

The Court held that the provisions of Order 21 Rule 90 of CPC are in any case not applicable to writ proceedings.

"The High Court while exercising jurisdiction under Article 226 of the Constitution has jurisdiction to pass appropriate orders. Such power can neither be controlled nor affected by the provisions of Order XXI Rule 90 of the CPC. It would not be correct to say that the terms of Order XXI Rule 90 should be mandatorily complied with while exercising jurisdiction under Article 226 of the Constitution."

"The public functionaries should be duty conscious rather than power charged. Its

actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion has been established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason.", the Court added.

The Court said that the failure of the Appellant to deposit the required amount would result in a direction to the competent authorities to take over the possession of the entire unit with the land in question and put the same once again for sale by way of a fresh auction process.

Citation : 2024 LiveLaw (SC) 457
Yogesh Goyanka v. Govind & Ors.
Decided on: July 11, 2024

The Supreme Court reiterated that a registered sale deed cannot be held to be void merely because it was executed during the pendency of a suit in relation to the property. The doctrine of lis pendens under Section 52 of the Transfer of Property Act 1882 does not render the *pendente lite* transfer void.

The Court also held that there is no bar for impleadment of the transferee who has purchased the suit property via a registered sale deed during the pendency of the suit. The Court clarified that the transferee's knowledge of the underlying suit (*pendente lite*) would not preclude him from pleading impleadment in the underlying suit. In other words, Section 52 of the Transfer of Property Act cannot be employed to deny the impleadment of the transferee to the underlying suit even though the transferee has knowledge of the pendency of a suit.

Reversing the findings of the High Court, the bench comprising Justices Vikram Nath and Satish Chandra Sharma stated that the doctrine of lis pendens as provided under Section 52 of TPA does not render all transfers pendente lite to be void ab initio. It only impacts the rights of the persons who are party to the pending litigation.

"At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab-initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.", the Court said.

The Court said that the law of impleadment provides an opportunity for the transferee to defend its title owing to a weak transferor or a possibility of collusion with the opposite party.

"While that is the admitted position, there exists no bar to the impleadment of

transferees pendente lite with notice. Permitting the impleadment of a transferee pendente lite is, in each case, a discretionary exercise undertaken to enable a purchaser with a legally enforceable right to protect their interests especially when the transferor fails to defend the suit or where there is a possibility of collusion.", the court added.

Citation : 2024 LiveLaw (SC) 464
Civil Appeal Nos. 7256-7259 of 2024
Army Welfare Education Society New Delhi v. Sunil Kumar Sharma & Ors. etc.,
Decided on: July 11, 2024

The Supreme Court held that a writ petition under Article 226 of the Constitution couldn't be entertained against a private education society for adjudication of private service disputes.

The Court also held that the Army Welfare Education Society cannot be considered as "State" under Article 13 of the Constitution.

"We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents (private teachers) herein holding that the appellant society is a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. Imparting education involves public duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents.",

The Court clarified that although a writ jurisdiction could not be invoked against the private institution for adjudication of a private dispute, there is no bar for the High Court to entertain Writ Petitions under Article 226 against the private authority if an authority violates the fundamental right or other legal rights of any person or citizen.

The Court took a cue from a case of *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V. R. Rudani & Ors. (1989) 2 SCC 691*, wherein the Court spelled out two exceptions to the writ of mandamus. The Court said if the rights are pure of a private character, and if the management of the college is purely a private body "with no public duty", then mandamus against the private body would not lie.

The Court said that the writ jurisdiction cannot be invoked by private persons against private unaided institutions to resolve service-related disputes unless the Statutory provisions govern the services rendered by private persons.

Citation : 2024 LiveLaw (SC) 491
SLP (C) No. 2246 of 2017

P. Ravindranath & Anr. v. Sasikala & Ors.
Decided on: July 19, 2024

The Supreme Court recently reiterated that the plaintiff in a suit for specific performance of a contract must provide direct, specific, and accurate pleadings that he is willing and ready to perform his obligations in the contract and such pleadings must be proved with evidence.

"*The pleadings in a suit for specific performance have to be very direct, specific, and accurate. A suit for specific performance based on bald and vague pleadings must necessarily be rejected. Section 16(C) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory.*"

"*The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief*."

Court concluded that the decree of specific performance was not warranted, and the suit should have been dismissed. The defendants' appeal was allowed, the impugned order set aside, and the suit dismissed.

Citation: 2024 LiveLaw (SC) 482
Amro Devi & Ors. v. Julfi Ram (Deceased) Thr. Lrs. & Ors.
Decided on: July 17, 2024

The Supreme Court held that a compromise deed cannot be recognized unless it is reduced to writing and signed by the parties.

"for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court.", the Court said.

"In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of Order XXIII Rule 3 of the CPC. Therefore, the compromise decree is not valid.", the court added.

As per Order 23 Rule 3 of the Code of Civil Procedure, 1908, a compromise decree may be passed by the Court upon the parties to the suit arriving on a lawful agreement or compromising in writing. The Rule also states that the compromise cannot be recognized unless it was signed by the parties to the suit.

In other words, the compromise cannot be recorded if the mandatory conditions stipulated under Order 23 Rule 3 CPC weren't followed.

"When a compromise is to be recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code requires that the terms of compromise should be reduced to writing and signed by the parties.", the bench comprising Justices Vikram Nath and Prashant Kumar

Mishra said.

Restoring the findings made by the trial court, the Judgment authored by Justice Vikram Nath observed that it is impermissible under the law to arrive at a compromise without the existence and production of a written compromise duly signed by the parties of the suit.

"In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise. Even the question of proving such document to the satisfaction of the Court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20.08.1984 (earlier suit) was an order under Order XXIII Rule 3 CPC.", the court said.

HIGH COURT OF J&K AND LADAKH JUDGMENTS

CRIMINAL

Citation: 2024 LiveLaw (JKL) 180
Mehraj ud din Andrabi v. Zia Darakshan
Decided on: July 07, 2024

The High Court of Jammu & Kashmir and Ladakh has asserted that a Magistrate cannot exercise inherent jurisdiction to restore a complaint once dismissed due to the complainant's non-appearance.

A bench comprising Justice Vinod Chatterji Koul has declared that such dismissals are final orders, emphasizing the absence of any provision in the Code of Criminal Procedure (Cr.P.C.) that confers this power on the Trial Court. Justice Koul examined the records and noted that the Cr.P.C. lacks any provision allowing a Magistrate to review or recall its orders, except for correcting clerical or arithmetical errors. He emphasized that a dismissed complaint cannot be restored due to the absence of specific statutory authority.

"It may be mentioned here that dismissal of complaint for non-appearance of complainant, or discharge or acquittal of accused on the same ground is a final order, and in absence of any specific provision in the Code of Criminal Procedure, a Magistrate cannot exercise any inherent jurisdiction", the bench underscored.

The court further cited the precedent set in Maj. Genl. A.S. Gauraya and another v. S.N. Thakur and another, AIR 1986 affirming that the Trial Court lacked the jurisdiction to restore the complaint. Justice Koul highlighted the inherent powers of the High Court under Section 482 of the Cr.P.C., which can be exercised to give effect to an order under the Code, to prevent abuse of the process of court, and to secure the ends of justice.

Citation: 2024 LiveLaw (JKL) 184
Rajinder Kumar and others v. UT of J&K
Decided on: July 12, 2024

The Jammu and Kashmir and Ladakh High Court has cautioned that an FIR and the consequent charge-report resulting from an investigation cannot be quashed routinely under Section 482 of the Code of Criminal Procedure merely because the parties have settled their differences.

Raising an alarm of watchfulness Justice Mohammad Yousuf Wani reasoned, *"In case the FIRs and the criminal cases culminating from the investigations are allowed to be quashed at the wish of the complainants and/or accused, the criminal justice system is likely to become causality and the society at large will have to bear the consequences".* The Court referenced the Supreme Court's precedent in *"B. S. Joshi vs. State of Haryana*," where the quashing of an FIR was permitted following a mutual compromise leading to the dissolution of marriage.

The provisions of the Section 320 of the Code of 1973 corresponding to the Section 359 of the new Code i.e. Bharatiya Nagrik Suraksha Sanhita, 2023 („BNSS" for Short) do not restrict but limit and circumvent the powers of this Court under Section 482 of the Code corresponding to Section 528 of the new Code (BNSS) regarding quashment of FIR"s and criminal proceedings, for the sake of the society at large, which is the real beneficiary of the criminal justice delivery system", the bench opined.

Citing *Gopakumar B. Nair Vs. CBI reported in (2014)* the court reiterated, *"Though quashment of non-compoundable offence under Section 482 Cr. P.C. following settlement between parties would not amount to circumvention of Section 320, but such power has to be exercised with care and caution and would depend on facts of each case."*

Ultimately, considering the specific facts and the amicable resolution between the parties, the court allowed the petition and quashed the FIR along with the investigation proceedings.

Citation: 2024 LiveLaw (JKL) 186
Mohammad Sultan Najar v. UT of J&K
Decided on: July 15, 2024

The Jammu and Kashmir High Court has ruled that denying an accused the right to adduce evidence constitutes a denial of a fair trial. The order overturned an earlier decision by the Fast Track Court POCSO, Srinagar, which had rejected the accused's application to summon defense witnesses.

In his ruling, Justice Javed Iqbal Wani cited Section 233 of the Cr.P.C, which stipulates that if an accused is not acquitted under Section 232, they must be allowed to present their defense and adduce evidence. The section mandates that the judge must issue processes for compelling the attendance of any witness or the production of documents unless such applications are made for purposes of vexation, delay, or to defeat the ends of justice. Justice Wani cited the Supreme Court judgments in *Satbir Singh & Anr. v. State of Haryana & Ors and Natasha Singh v. CBI (State)*, reinforcing the principle that fair trial is the cornerstone of criminal procedure.

Reiterating that the Apex Court has repeatedly held that denying an accused the

right to adduce evidence is a violation of their right to a fair trial, the Court observed that *"Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner."*

Justice Wani further emphasized that this procedural right aligns with the rebuttable presumption established under Section 113-B of the Evidence Act. This alignment underscores the necessity for courts to diligently uphold these rights, ensuring that the accused is provided with a fair opportunity to present their defense and that the principles of justice are meticulously followed, the court maintained.

The bench underscored the paramount importance of adhering to procedural rules designed to ensure justice, stating that these rules must be "scrupulously followed."

Referring to the Supreme Court's directions to the courts for ensuring a fair trial, the court added ,*"The rules of procedure designed to ensure justice must be scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."*

Citation: 2024 LiveLaw (JKL) 193
Union Of India v. Ravinder Singh
Decided on: July 18, 2024

The Jammu and Kashmir and Ladakh High High Court has underscored the necessity of corroborative evidence alongside confessional statements under Section 67 of the NDPS Act for the prosecution to establish a case against the accused.

A bench comprising Justice Rajesh Sekhri has reiterated that confession of co-accused alone cannot be taken into consideration for conviction of the accused, unless some other material is produced by the prosecution to indicate his involvement in the commission of the offences. These observations came in response to a petition challenging the discharge of Ravinder Singh by the Principal Sessions Judge, Jammu, in connection with a narcotics case.

Justice Sekhri, after detailed deliberation, highlighted several precedents, including the Supreme Court's rulings in *Tofan Singh vs. State of Tamil Nadu* and *Pallulabid Ahmad Arimutta & Anr.*, which clarify the inadmissibility of confessional statements made under Section 67 of the NDPS Act unless supported by additional evidence. The bench recorded, *"Even if we are to proceed on the premise that such statement under Section 67 of the NDPS Act may amount to confession, in our view, certain additional features must be established before such a confessional statement could be relied upon against a co-accused.".*

The Court acknowledged the principle established in "*Tofan Singh Vs. State of Tamil Nadu*" that statements under Section 67 are inadmissible as confessions. However, it distinguished this from the situation at hand. The Court emphasized that the NCB had not solely relied on Gurjit Singh's statement but also on evidence of meetings in jail between Ravinder Singh and Gurjit Singh.

In light of these considerations Justice Sekhri set aside the trial court's order, directing it to frame charges against Ravinder Singh and proceed with the trial.

CIVIL

Citation: 2024 LiveLaw (JKL) 190
Ghulam Mohiudin Lone v. UT of J&K
Decided on: July 17, 2024

The Jammu and Kashmir and Ladakh High Court has declared that the appropriate approach to address the disobedience or breach of an injunction order is through Order 39 Rule 2-A of the CPC, rather than the registration of an FIR. In quashing an FIR arising out from a civil dispute Justice Javed Iqbal Wani explained that Order 39 Rule 2-A of the CPC exists to enforce court orders, not punish violations vindictively. Since the purpose is corrective, the trial court cannot order an FIR for disobeying an injunction order, he underlined.

> *".. the provisions of Order 39 Rule 2-A CPC are to be exercised without there being any element of vindictiveness therein as the said provision is curative in nature with a purpose to ensure that order passed by the courts are implemented and disobedience is remedied",* the bench remarked.

The case involved a civil dispute over immovable property in Kupwara. Respondent Ghulam Mohammad Lone, filed a civil suit against the Petitioners/defendants in which an interim order of status quo was initially passed by the Sub Judge Kupwara. This order was later modified allowing the defendants to continue construction/repair of the disputed property.

> Justice Wani observed,*"... the petitioners herein have been violating the said order rendering them liable for prosecution in which application, admittedly the trial court without issuing notice to the non-applicants therein petitioners herein inasmuch as instead of proceeding against them in terms of the provisions of Order 39 Rule 2-A CPC for disobedience and breach of an injunction proceeded to direct respondent 2 straightaway to register the FIR against the petitioners herein, whereupon the respondent 2 registered the impugned FIR".*

Emphasising that Order 39 Rule 2-A CPC is designed to ensure compliance with court orders and maintain the authority of the judiciary Justice Wani highlighted that the trial court, instead of following the procedure under Order 39 Rule 2-A for any breach of injunction, erroneously directed the registration of an FIR without issuing notice to the petitioners. Reiterating the inherent powers under Section 482 CrPC which enable the High Court to quash an FIR that constitutes an abuse of the judicial process the court underscored that judicial proceedings should not be used as tools for harassment or persecution.

Citation: 2024 LiveLaw (JKL) 198
Abdul Majid Kirmani & Anr. v. Bilal Ahmad Kirmani
Decided on: July 22, 2024

Emphasising the importance of the nature of issues in civil suits the Jammu and Kashmir and Ladakh High Court has ruled that its not the nature of relief being sought but the nature of issues which are involved in the two suits that are crucial to attract applicability of Section 10 of the CPC.

A bench comprising Justice Sanjay Dhar has explained that if the matter in issue in the subsequent suit is directly and substantially in issue in the previously instituted suit, Section 10 of the CPC has to be invoked, because the same is mandatory in nature.

Section 10 of CPC prohibits the trial of any suit when the matter in issue in that suit is also directly and substantially in issue in a previously instituted suit between the same parties. Justice Sanjay Dhar meticulously examined the provisions of Section 10 of the CPC, which mandates that no court shall proceed with the trial of a suit where the matter in issue is substantially similar to that in a previously instituted suit between the same parties. He highlighted that the core issue was whether the property in question was partitioned or unpartitioned, and this determination would dictate the reliefs in both suits.

The court noted that the petitioners' suit sought a decree of partition and an injunction against Bilal's construction activities and Bilal's suit claimed the property was already partitioned and sought an injunction to prevent interference from the petitioners.

Emphasising that the trial court erred in focusing on the nature of relief sought rather than the nature of issues involved in the suits Justice Dhar remarked,*"..*

> *The issues involved in the two suits are, therefore, identical in nature and it can safely be stated that the matter in issue in the previously instituted suit by the petitioners is directly and substantially in issue in the subsequent suit filed by the respondent. The conditions for applicability of Section 10 of the CPC are, therefore, clearly attracted to the case at hand".*

Underlining the mandatory nature of Section 10 CPC in cases with substantially identical issues in previously instituted suits Justice Dhar asserted that allowing both suits to proceed concurrently would result in contradictory findings and further complicate the matter.

> *".. Both these orders cannot stand together, inasmuch once status quo has been directed to be maintained with regard to the suit property, which is common in the two suits, it was not open to the learned trial court to allow the respondent to alter this status quo",* the bench maintained.

Citation: 2024 LiveLaw (JKL) 202
Union of India v. M/s Onkar Nath Bhalla and Sons Contractor Pvt. Ltd.
Decided on: July 23, 2024

Emphasising the significance of the amended Section 36 of the Arbitration and Conciliation Act, which allows for the enforceability of non-stayed awards the Jammu and Kashmir and Ladakh High Court has ruled that an arbitration award attains the status of a

civil court decree after three months if no challenge is posed.

This transformation grants the award immediate executability at the discretion of the award holder, it added.

A bench of **Justice Rahul Bharti** observed,

"... Amended section 36(1) very correctly envisages holding back from an arbitration award the deemed status of a decree of a civil court till the expiry of time available for challenging an award under section 34.... In case no challenge comes to be posed against an arbitration award within given period, the very next moment a given award self earns de jure status".

Adjudicating upon the matter Justice Rahul Bharti made several critical observations while interpreting the amended Section 36:

The court underscored the legal definitions of "enforcement" and "execution," emphasizing that the execution of a law or judgment involves putting it into effect.

Under Section 36(1), an arbitration award attains the status of a civil court decree after three months if no challenge is posed. This transformation grants the award immediate executability at the discretion of the award holder.

"It needs to be kept in mind that an execution of a decree of a court attaining finality is an irreversible legal process under the CPC and that will apply equally to an award deemed to be decree under section 36(1) of A&C Act, 1996", the bench remarked.

The court distinguished between scenarios where awards are challenged and stayed unconditionally versus conditionally. An unconditionally stayed award loses its enforceability until the Section 34 challenge is resolved. Conversely, a conditionally stayed award may still allow for certain benefits to the award holder, provided the conditions are met.

The court highlighted its discretion in deciding whether to enforce an un-stayed award, ensuring the award challenger's earnestness and not merely delaying tactics. The court can impose conditions to protect both parties' interests during the pendency of the challenge. The bench added,*" Option to avail the release of benefit or not under the challenged un-stayed award will always be subject to exercise of discretion by an award bearer/holder".*

An order granting or refusing a stay on the award's operation is not appealable under Section 37, ensuring the enforcement mechanism remains within the court's control until the final adjudication of the Section 34 proceedings.

Addressing the respondent's application for the release of the deposited award amount, the court noted that the previous direction for deposit served no party's interest if it remained idle. The court leaned towards allowing the release of the award amount under specific conditions to balance the equities

In light of these observations the court allowed the respondent's plea for the release

of the deposited amount, subject to the furnishing of an unconditional bank guarantee from a nationalized bank equivalent to the award amount plus interest accrued.

Citation: 2024 LiveLaw (JKL) 205
Mubashir Manzoor v. Mushtaq Ahmad Wani
Decided on: July 24, 2024

The Jammu and Kashmir and Ladakh High Court quashed three orders passed by the Chief Judicial Magistrate, Srinagar, awarding interim compensation to a complainant under Section 143-A of the Negotiable Instruments Act (NI Act). The Court held that interim compensation can be granted only after the accused pleads not guilty to the accusation and the Magistrate applies his mind to relevant factors.

In allowing a plea against impugned interim compensation orders Justice Sanjay Dhar observed, *"In the instant cases, the plea of the accused was yet to be recorded but the learned Magistrate proceeded to pass the order of interim compensation in favour of the complainant, which is clearly in contravention of the provisions contained in Section 143-A of the N. I. Act. On this ground also, the impugned orders are not sustainable in law"*

The controversy began with three separate complaints filed by respondent Mushtaq Ahmad Wani, leading to orders by the Chief Judicial Magistrate, Srinagar. The Magistrate awarded interim compensation amounting to 20% of the cheque amount to Wani, invoking Section 143-A of the Negotiable Instruments Act. This prompted Mubashir Manzoor, the petitioner, to challenge these orders.

The Court, after hearing the petitioner and perusing the record, observed that the Magistrate had failed to provide any justification for awarding the maximum amount of interim compensation. It emphasized that the power to award interim compensation under Section 143-A is discretionary and must be exercised based on valid reasons.

The Court referred to the Supreme Court's judgment in *Rakesh Ranjan Shrivastava vs. State of Jharkhand,* where it was held that interim compensation can be granted only if the complainant makes out a prima facie case and the Court considers relevant factors like the nature of the transaction and the relationship between the accused and the complainant.

In view of the above, the High Court allowed the petitions and quashed the impugned orders. The matter was remanded to the Magistrate with directions to pass fresh orders after considering the Supreme Court's judgment and recording the plea of the accused.

Citation: 2024 LiveLaw (JKL) 204
Kamran Khan And & Ors. v. Bilkees Khanam
Decided on: July 24, 2024

The Jammu and Kashmir and Ladakh High Court has unequivocally condemned the use of coercive processes like warrants of arrest in domestic violence cases. A bench

of Justice Sanjay Dhar while hearing a petition challenging the issuance of such warrants, observed that proceedings under the Protection of Women from Domestic Violence Act (DV Act) are inherently civil in nature and not criminal.

The petitioners had challenged a petition filed by the respondent under Section 12 of the DV Act and the subsequent order by the Judicial Magistrate 1st Class, Baramulla, which issued process against them. According to the petitioners, Kamran Khan married Bilkees Khanam in 2021, and no children were born from this marriage.

Adjudicating the matter Justice Dhar emphasized that proceedings under Section 12 of the DV Act are civil, not criminal. Hence, a Magistrate should not use coercive measures like warrants of arrest to ensure the presence of respondents, he underscored:

> *"In view of this, the warrants of arrest stated to have been issued by the learned Magistrate against the petitioner are not in operation. Therefore, there is no requirement of passing any direction to the learned trial Magistrate in this regard".*

Addressing the allegations of Frivolity the Court pointed out that the trial Magistrate could consider the petitioners' claims of the petition being vengeful and based on false allegations while reviewing their reply. The Magistrate holds the authority to recall orders and dismiss petitions if the reply is deemed substantial, the bench stated while adding,

Granting the petitioners the liberty to approach the trial Magistrate with an application to drop the proceedings the court directed the trial Magistrate to handle such applications expeditiously, considering the parties' pleadings.

Two Days Sensitization Programme on *"The relevant provisions of BNSS on arrest, remand and bail with special reference to the Role of Trial Judges in ensuring just, fair and speedy trial (as guaranteed under article 21 of the constitution)"*

J&K Judicial Academy organized Two Days Sensitization Programme on *"The relevant provisions of BNSS on arrest, remand and bail with special reference to the Role of Trial Judges in ensuring just, fair and speedy trial (as guaranteed under article 21 of the constitution)"* at its Srinagar Campus, Mominabad, Srinagar on **20-21 July, 2024** for Judicial Officers (Sr./Jr. Division) across the Kashmir Division and UT of Ladakh along with Trainee Civil Judge (Jr. Division) through physical as well as virtual mode.

The training programme was inaugurated by Hon'ble Mr. Justice Sanjeev Kumar, Judge, High Court of J&K and Ladakh as Hon'ble Chairperson of the Governing Committee for J&K Judicial Academy, in presence of Mr. Rajiv Gupta, Member, J&K Special Tribunal, Jammu who happens to be the resource person in the opening session of the first day.

Delivering his inaugural address Hon'ble Mr. Justice Sanjeev Kumar highlighted the need and significance of the training programme in view of the coming into force of the three new criminal laws with effect from first of July 2024. His lordship delved upon some of the salutary changes made in the relevant provisions for arrest, remand and bail. Elaborating further, Justice Sanjeev Kumar highlighted the conflicting judgments of two coordinate benches of the Hon'ble Supreme Court in Anupam Kulkarni and Vikas Mishra's cases and consequent reference to the larger bench in B Senthil Balaji's case as to whether police could ask for police remand after initial fifteen days of arrest, the provisions of section 187 BNSS have now taken care of this question and as per new law, police can seek remand to police custody even after initial 15 days of arrest within the outer limit of first 60 days in offences punishable with death or imprisonment for life or 10 years and 40 days in other

offenses. He further emphasised that in every bail matter, court has the herculean task of balancing the conflicting interests of the three stakeholders; the accused who is facing the charge, the victim who is wronged and interest of the society at large in maintenance of rule of law for peace and harmony.

On the first day, the first session was chaired by Mr. Rajiv Gupta, who gave a detailed overview of Provisions of Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS) governing arrest, remand and Bail. The learned resource person lay threadbare and discussed various principles governing remand to Police/Judicial Custody and those amended provisions for the benefit of the participants.

Mr. Y.P. Bourney, Director, J&K Judicial Academy were the resource person in the second session. He discussed that way back in the year 1994, in *Joginder Kumar versus State of U.P.* emphasised that arrest shouldn't be made simply because police have the power to do so. He added that in the constitutional scheme, paramountcy is given to the liberty and power to arrest must be exercised only as a necessity. Therefore, any person facing accusation of being in conflict with law is first to invoke the bail jurisdiction of court. He emphasised the judicial approach in the light of precedents and guidelines including the various judgments of Hon'ble Supreme Court titled Siddharth vs. State of UP; Satender Kumar Antil vs. CBI,etc.

On Day 2, the working session was chaired by HMJ Atul Sreedharan, Judge, High Court of J&K and Ladakh, who in his very opening remarks said that he is not here only to address participants but expects questions from them regarding the subject programme. He discussed the role and responsibilities of Trial Judges in ensuring strict compliance with the provisions for arrest and remand by assessing independently the necessity to

justify such an arrest before granting a remand and not to go simply by the claim of arresting officer as gospel. Citing from his personal experiences at bar; both as prosecutor as well as defence lawyer and also his job as Judge of High court. His lordship discussed the various provisions incorporated in the CrPC and now in BNSS. His lordship exhorted the judicial officers to adopt a proactive approach and cut the delays by getting the unnecessary witnesses struck off after having a word with the prosecutor. He further called upon the Judicial Officers to have a meeting with the prosecutor as well as defence lawyer before actual posting of a case for trial and chalk out a time schedule for examining the witnesses to conclude the trial within the given time frame.

All the sessions remained very interactive during which all the participants actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource persons. The programme concluded with vote of thanks to one and all and more particularly the Hon'ble Chairman and worthy Resource Persons for spearing their valuable time for all round success of the programme.

Two Days Sensitization Programme on *"The relevant provisions of BNSS on arrest, remand and bail with special reference to the Role of Trial Judges in ensuring just, fair and speedy trial (as guaranteed under article 21 of the constitution)"*

J&K Judicial Academy organized Two Days Sensitization Programme on *"The relevant provisions of BNSS on arrest, remand and bail with special reference to the Role of Trial Judges in ensuring just, fair and speedy trial (as guaranteed under article 21 of the constitution)"* at its Jammu Campus, Janipur, Jammu on **27-28 July, 2024** for Judicial Officers (Sr./Jr. Division) across the Jammu Division along with Trainee Civil Judge (Jr. Division) through physical as well as virtual mode.

The training programme was inaugurated by Hon'ble Mr. Justice Rahul Bharti, Judge, High Court of J&K and Ladakh as Hon'ble Member of the Governing Committee for J&K Judicial Academy, in presence of Hon'ble Mr. Justice Atul Sreedharan, Judge, High Court of

J&K and Ladakh who happens to be the resource person in the opening session of the first day.

Delivering his welcome and introductory remarks, Hon'ble Mr. Justice Rahul Bharti quoted Michaelangelo, an Italian sculptor who once said "*Every block of stone has a statue inside it and it is the task of the sculptor to uncover it.*" His Lordship highlighted that ensuring the dignity of the individual is the core of the preamble of the constitution of India. His Lordship said that being sensitive to the litigants we can uplift the society. Justice Bharti gave various real-life illustrations and reiterated that any institution doesn't have an expiry date whereas what we contribute passes on to the next generation which only keeps the institution flourishing. His Lordship also interacted with the participants and elaborated on the purpose of remand, including rejection of a remand. His Lordship advised the participants to be pro-active rather than passive listeners as individuality of an individual is on stake while undergoing a trial.

On the first day, the first session was chaired by Hon'ble Mr. Justice Atul Sreedharan,

who in his very opening remarks quoted Former Chief *Justice,* MP High Court *Justice* Akil *Kureshi* and said, *"Judges have no personal ambition and you have nothing to fear"*. His Lordship discussed the role and responsibilities of Trial Judges in ensuring strict compliance with the provisions for arrest and remand by assessing independently the necessity to justify such an arrest before granting a remand and not to go simply by the claims of arresting officer as gospel. His Lordship discussed the various powers and duties of magistrates. His Lordship exhorted the judicial officers to adopt a judicial approach and justice must be done in accordance with law. Justice Sreedharan further elaborated that speedy trial is a fundamental right implicit in the broader sweep and content of Article 21 of the Constitution. His Lordship added that aforesaid Article confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and the procedure so prescribed must ensure conclusion of trial within reasonable time frame for determination of the guilt of

such person. The session was highly interactive and various aspects of the subject topic were discussed by His Lordship.

Mr. Rajinder Saproo, Registrar Rules, High Court of J&K and Ladakh, the resource person in the second session gave a detailed overview of Provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) governing arrest, remand and Bail. The learned resource person lay threadbare and discussed various principles governing remand to Police/ Judicial Custody and those amended provisions for the benefit of the participants. He discussed the different remand provisions to be adopted for litigants in special cases like transgender, mother of child of age 6 or below, etc. He explained that Section 479 of BNSS, which is the counter-part of Section 436A CrPC, has brought some crucial changes in the provision granting bail to the undertrial prisoners, such as in early release of first-time offender, and obligation is now cast upon the jail Superintendent to move an application on behalf of the undertrial who completes one half or one-third of the maximum term of the sentence for the offence, as the case maybe, for which he/she is detained.

The brain storming deliberations of day one had already set the tone and tenor of the second day orientation. On the second day, the session was conducted by Mr. Y.P. Bourney, Director, J&K Judicial Academy. All the sessions remained very interactive during which all the participants actively participated and shared their experiences, difficulties and also discussed various aspects of the subject topics. They also raised a number of queries which were answered satisfactorily by the worthy resource persons. The programme concluded with vote of thanks to one and all more particularly the Hon'ble Chairman and worthy Resource Persons for spearing their valuable time for all round success of the programme.

The programme was concluded by Mr. Yash Paul Bourney, Director, J&K Judicial Academy with thanking one and all for making the programme a great success.