

**Court No. 65**

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 17912 of 2019

**Applicant :-** Ramu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Abhishek Kumar Chaubey, Ajay Kumar Pathak, Rahul Pandey

**Counsel for Opposite Party :-** Ajatshatru Pandey, G.A.

With

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 16379 of 2024

**Applicant :-** Kamil

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ashutosh Kumar Pandey, Gajendra Kumar Gautam

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14678 of 2024

**Applicant :-** Muneesh @ Khajanchi

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Dileep Singh Yadav

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 14084 of 2024

**Applicant :-** Mumtaj

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ali Hasan, Istiyaq Ali

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 17643 of 2024

**Applicant :-** Vinesh

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Uma Datta Tripathi

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 18960 of 2024

**Applicant :-** Titu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Kuldeep Kumar

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 6287 of 2024

**Applicant :-** Mintu

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Adarsh Srivastava, Ram Krishna Mishra, Reena Pal

**Counsel for Opposite Party :-** G.A.

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 21823 of 2024

**Applicant :-** Saleem @ Chhukali

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Satish Sharma

**Counsel for Opposite Party :-** G.A.

With

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 17888 of 2024

**Applicant :-** Sri Pramod Kumar

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Ajit Kumar

**Counsel for Opposite Party :-** G.A., Sunil Kumar Gaur

with

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 19701 of 2024

**Applicant :-** Sunil Kumar Alias Chuhi Alias Sandeep Kumar

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Rajnish Kumar Srivastava, Siddharth Srivastava

**Counsel for Opposite Party :-** G.A.

## **Hon'ble Ajay Bhanot, J.**

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

<b>I</b>	Introduction & Facts	
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<b>III</b>	Denial of Legal Aid to the applicant and some cases of similarly situated prisoners	
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2. Freedom's dawn held unlimited promise for all Indians.

“Bliss was it in that dawn to be alive,  
But to be young was very heaven”<sup>2</sup>

3. The audacity of hope of the young Republic was matched by the scope of ambition of the newly adopted Constitution resolved to secure justice to all citizens<sup>3</sup>.

4. The reality of independence is more sombre for many Indian citizens. The plight of a class of prisoners that emerges from this discussion dims the ardour of the fateful stroke of the midnight hour of August 1947:

"ये दाग़ दाग़ उजाला, ये शब-गज़ीदा सहर  
वो इन्तज़ार था जिस का, ये वो सहर तो नहीं"<sup>4</sup>

“This patchy light, this night-tormented dawn  
What we waited for is not this morn”

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1 2022 SCC OnLine All 623

2 William Wordsworth

3 (See: Preamble to the Constitution of India)

4 Faiz Ahmad Faiz

## **I. Introduction & Facts:**

5. In the simple facts of this case arise questions of highest constitutional significance. The bail application of the applicant was heard for the first time on merits, and he was enlarged on bail by this Court fourteen and a half years after his imprisonment. The trial has not concluded. The most consequential issues of the human condition located in the most inherent domain of the Indian Constitution also arise in the companion bail applications. On the morrow of 75<sup>th</sup> year of the Constitution, constitutional amnesia grips some spaces in the country. While the nation celebrates the Amrit Kaal of Azaadi, there is a class of Indian citizens who lead anonymized lives in the dark walls of prisons where the light of Constitutional liberties does not penetrate.

6. Briefly put the records disclose the following facts:

- (a) The applicant was in jail since 14.02.2008.
- (b) The first bail application was dismissed as not pressed on 15.11.2008.
- (c) The second bail application was filed on 25.04.2019.
- (d) The matter was listed from time to time but the bail application was not pressed. On other dates the matter was not taken up for hearing.
- (e) A listing application for expediting the hearing of the matter was filed on 07.08.2020.

7. The applicant was imprisoned on 14.02.2008 in connection with the criminal case registered as Case Crime No. 44 of 2008

under Sections 394/302 I.P.C. Police Station Jahangirabad, District Bulandshahar. This Court dismissed the first bail application of the applicant on 15.11.2008 by the following order:

“Sri Anil Raghav, learned counsel for the applicant states that the applicant does not want to press this bail application.

It is dismissed accordingly as not pressed.”

8. The applicant filed his second bail application as an undertrial on 25.04.2019. The order sheet discloses that the application was heard on merits for the first time on 16.07.2022 and the applicant was enlarged on interim bail on date. Sureties imposed by the trial court could not be provided by the applicant due to his penurious condition and social exclusion. Hence the applicant was not set forth at liberty. This fact was brought to the notice of this Court. The surety demands were made commensurate to his socioeconomic status by this Court's order dated 21.07.2022. A fresh report was also called from the trial court. The report dated 15.02.2024 sent by the learned Additional Sessions Judge, Court No. 2, Bulandshahar records that the applicant has been set forth at liberty pursuant to the interim bail granted to the applicant by this Court.

9. Bail application was earlier argued by the learned counsel for the applicant. On later dates when the matter was taken up for hearing, none appeared on behalf of the applicant. This Court did not dismiss the bail application for non prosecution in view of the law laid down by this Court in **Maneesh Pathak**

**vs. State of U.P.**<sup>5</sup> The Court appointed amicus curiae to represent the applicant at the hearing of the bail application.

## **II. Submissions of the learned counsels for the parties**

**10.** Shri N. I. Jafri, learned Senior Counsel assisted by Shri Sadrul Islam Jafri, and Shri Ali Jamal, learned counsels, Shri Vinay Saran, learned Senior Counsel assisted by Shri Saumitra Dwivedi, and Shri Tanzeel Ahmad learned counsels, Shri Dharmendra Singhal learned Senior Counsel assisted by Shri Shivendra Raj Singhal learned counsel, Shri Manish Tiwary learned Senior Counsel assisted by Shri Atharva Dixit learned counsel, Shri Rajiv Lochan Shukla, learned counsel and Shri Kunal Shah learned counsel were requested to appear on behalf of the respective applicant as amicus curiae and to assist the Court on the constitutional issues arising in these cases.

### **Counsels in connected bail applications:**

I. Shri Ashutosh Kumar Pandey, learned counsel for the applicant in Criminal Misc. Bail Application No. 16379 of 2024 (**Kamil Vs. State of U.P.**);

II. Shri Dileep Singh Yadav, learned counsel for the applicant in Criminal Misc. Bail Application No.14678 of 2024 (**Muneesh @ Khajanchi v. State of U.P.**);

III. Shri Istiyaq Ali, learned counsel assisted by Ms. Jagriti Pandey, learned counsel for the applicant in Criminal Misc. Bail Application No.14084 of 2024 (**Mumtaj v. State of U.P.**);

IV. Shri Uma Datta Tripathi, learned counsel for the applicant in Criminal Misc. Bail Application No.17643 of 2024 (**Vinesh v. State of U.P.**);

V. Shri Rajiv Lochan Shukla, learned amicus curiae assisted by Shri Kuldeep Kumar, learned counsel for the applicant in Criminal Misc. Bail Application No.18960 of 2024 (**Titu v. State of U.P.**);

VI. Shri Ram Krishna Mishra, learned counsel for the applicant in Criminal Misc. Bail Application No.6287 of 2024 (**Mintu v. State of U.P.**);

VII. Shri N. I. Jafri, learned Senior Counsel and Shri Vinay Saran, learned Senior Counsel assisted by Shri Satish Sharma on behalf of the applicant in Criminal Misc. Bail Application No. 21823 of 2024 (**Saleem @ Chhukali Vs. State of U.P.**);

VIII. Shri Irfan Ali, learned counsel assisted by Shri Ajit Kumar, learned counsel on behalf of the applicant in Criminal Misc. Bail Application No. 17888 of 2024 (**Pramod Kumar Vs. State of U.P.**);

IX. Shri Rajnish Kumar Srivastava, learned counsel on behalf of the applicant in Criminal Misc. Bail Application No. 19701 of 2024 (**Sunil Kumar Alias Chuhi Alias Sandeep Kumar Vs. State of U.P.**).

Shri Ashok Mehta, learned Additional Advocate General, Shri A. K. Sand, learned Government Advocate and Shri Paritosh Kumar Malviya, learned AGA-I have represented the State.



**11.** On similar facts and common legal issues learned amicus curiae and learned counsels for parties in this case and the companion bail applications made the following submissions:

I. The applicant belongs to a socially and economically marginalized class of citizenry. He has no effective pairokar to conduct his case.

II. The applicant was not apprised of his right to seek bail by filing a second bail application and lacked access to legal aid to file the second bail application for more than one decade. (Periods of delay in the filing the bails vary in the respective case. In many cases there was inordinate delay in filing the first bail application for the same reasons).

III. The bail application of the applicant was not pressed diligently before this Court in the absence of an effective pairokar.

IV. Lack of legal literacy and denial of legal aid despite the entitlement of the applicant delayed recourse to the legal remedy of bail, and caused their<sup>6</sup> unjustified incarceration.

V. Right of the applicant to legal aid which is a fundamental right evolved by constitutional law and also a statutory right vested in them by virtue of the Legal Services Authorities Act, 1987<sup>7</sup>, and under Section 304 of Cr.P.C. has been violated.

VI. Members of the Bar also submit that this problem is faced by many prisoners in U.P. jails. The learned counsels also highlighted non compliance of the judgement of this Court in

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<sup>6</sup> “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see:Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

<sup>7</sup> hereinafter referred to as the “LSA Act, 1987”

**Anil Gaur @ Sonu @ Sonu Tomar vs State of Uttar Pradesh<sup>8</sup>** in similar cases.

VII. Jail Superintendent has to discharge their<sup>9</sup> duties under Regulation 439 (a) of the Jail Manual<sup>10</sup>. The aforesaid provision has been amended by Rule 412 (a) of the UP Jail Manual, 2022.

VIII. Submissions on merits were prefaced by contending that the applicant's inability to access legal aid raises legal and constitutional issues directly affecting the right to seek bail and the personal liberty of the applicant. The adjudication of these issues is within the scope of bail jurisdiction.

**12.** Shri Ashok Mehta, learned Additional Advocate General, assisted by Shri A.K. Sand, learned Government Advocate and Shri Paritosh Malviya, learned AGA-I referred the relevant statutes and constitutional law holdings on the right to legal aid and the right to bail to the Court.

**13.** Shri Ashok Mehta, learned Additional Advocate General representing the State emphatically contends that State is unequivocally committed to uphold the fundamental rights of prisoners to legal aid as propounded by the Supreme Court in various pronouncements and created by various statutory provisions. In particular it is submitted that the duties of jail officials under the Jail Manual to realize the aforesaid rights of prisoner are liable to be implemented in letter and spirit. The

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9 “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

10 Substituted by the Uttar Pradesh Jail Manual, 2022 vide Notification No. 103/2022/1275/22.4.2022-80(2)/2000 dated 17.08.2022)

following submissions have also been made on behalf of the State:

I. The State Government is committed to providing legal aid to the deprived and eligible classes of prisoners and to uphold the law laid down by the Supreme Court in this regard.

II. The State Government have complied with its mandate under the LSA Act, 1987. Posts contemplated in the LSA Act, 1987 have been sanctioned and endeavours have been made to provide requisite infrastructure.

III. There is a need for strict compliance of the judgment of **Anil Gaur (supra)** by the concerned authorities upon whom directions were made.

IV. The learned courts have to faithfully implement their duties under Section 304 Cr.P.C. to provide legal aid to prisoners who appear before them so that the bail application can be filed and heard without delay.

V. The Jail Superintendent under Regulation 439 (a) of the Jail Manual/Rule 412(a) of UP Jail Manual, 2022 have an obligation under law to make recommendations for grant of legal aid to prisoners to the DLSAs and trial courts respectively without delay.

VI. The State Government shall make endeavours to provide IT solutions and infrastructure to enable the competent State authorities to have easy access to all relevant information necessary to discharge their duties to provide legal aid to prisoners.

VII. The State Government shall ensure full coordination between different departments for the abovesaid purposes. The

LR/Principal Secretary (Law), Government of UP, Director General (Prisons), Director General (Prosecution) and representative of Director General of Police have also been heard through video conferencing.

**14.** Learned Additional Advocate General has called attention to the instructions sent on behalf of the State and also the affidavits filed on behalf of the respective State authorities namely LR/Principal Secretary(Law), DG (Prisons) and Additional Director General of Police (Technical Services). It is submitted on the footing of the aforesaid affidavits that the State Government is making all out efforts to provide various facts and details pertaining to prisoners to the jail authorities in an auto-generated form to process grant of legal in an efficient manner.

### **III. Denial of legal aid to the applicant and some cases of similarly situated prisoners**

**15.** From the submissions made by the learned amicus curiae and learned counsel for the applicant<sup>11</sup> and the records of the cases these facts are most evident. The applicant had no access to legal aid for more than a decade (period varies in each case) which resulted in delay in filing of this bail application. The applicant is a financially destitute person belonging to a marginalized section of the society. The applicant does not have any paurokar to diligently prosecute his bail application before this Court due to which the case was not heard promptly. The accumulation of these circumstances of want paired with legal illiteracy and denial of legal aid prolonged the detention of the applicant and has led to a miscarriage of justice.

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<sup>11</sup> Applicant in this para refers to applicants' in all connected cases

**16.** The failure of justice for want of legal aid in the instant case is not a one off. Denial of legal aid has many facets with varied consequences. Prisoners belonging to the weaker sections of the society or facing circumstances of undeserved want or suffering from acute poverty or often do not have access to legal aid and consequently are unable to file bail applications for years on end. The resulting deprivation of liberties of this class of prisoners due to lack of legal aid is a recurring feature which has been repeatedly brought to the notice of this Court.

**17.** The other set of cases are where a bail application is filed only to be left in the cold storage. In the latter cases no efforts are made to argue the matter or press for an early hearing. These prisoners have no contact with their counsels, and are not aware of the status of their bail applications. This class of prisoners does not have effective pairokars or means of oversight to ensure diligent prosecution of their bail applications. Some cases of undertrials filing bail applications after long delays which were brought in the notice to the Court are depicted hereinunder as exemplars:

<b>Sr. No.</b>	<b>Case Title</b>	<b>Particulars of Case</b>	<b>Under Sections</b>	<b>In Jail Since</b>	<b>Date of rejection of bail by trial court</b>	<b>Date of filing of bail before the High Court</b>	<b>Date of grant of bail by the High Court</b>
1.	Krishna Kumar@ K.K. Vs State of UP	Criminal Misc. Bail Application No. 29984 of 2018	Sections 302, 201, 377 IPC	02.11.2011	25.07.2012	07.08.2018	20.12.2023
2	Akil Vs State of UP	Criminal Misc. Bail Application No. 31440 of 2023	Sections 147, 148,149, 452, 302,307, 34, 120B IPC	19.04.2012	13.07.2022	10.07.2023	Interim bail on 26.07.2023 Bail on 20.12.2023
3	Kanhaiya Pal Vs State of UP	Cri. Misc. Bail Application No. 47521 of 2023	Section 302 IPC	06.12.2013	05.03.2014	31.10.2023	25.01.2024

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4	Vinesh vs State of U.P.	Criminal Misc. Bail Application No. 17643 of 2024	Sections 147, 148, 149, 302, 120-B IPC	30.04.2014	10.10.2022	30.04.2024	Interim Bail 18.07.2024 Bail on 07.08.2024
5	Mukesh Vs. State of U.P.	Criminal Misc. Bail Application No. 12832 of 2024	Sections 147, 148, 149, 302, 506, 504, 120B IPC	02.01.2016	17.03.2021	11.03.2024	09.07.2024
6	Ramandeep Vs State of UP	Criminal Misc. Revision Defective No. 848 of 2023	Sections 420, 467, 468, 471 IPC	As per custody report, applicant is in jail for 5 years, 5 months and 3 days	Appeal was dismissed on 22.09.2022	03.01.2023	14.06.2023
7	Ramandeep Vs State of UP	Criminal Misc. Revision Defective No. 849 of 2023	Sections 406, 420, 467, 468, 471 IPC	As per custody report, applicant is in jail for 5 years, 10 months and 24 days	Appeal was dismissed on 23.09.2022	02.06.2023	14.06.2023
8	Ramandeep Vs State of UP	Criminal Misc. Revision Defective No. 850 of 2023	Sections 406, 420, 467, 468, 471 IPC	As per custody report, applicant is in jail for 4 years, 9 months	Appeal was dismissed on 23.09.2022	02.06.2023	14.06.2023
9	Mintu vs State of U.P.	Criminal Misc. Bail Application No. 6287 of 2024	Sections 302, 307, 394, 411, 34 IPC	03.05.2016	29.11.2023.	13.02.2024	Interim Bail on 24.7.2024 Bail on 07.08.2024
10	Daya Ram Vs. State of U.P.	Criminal Misc. Bail Application No. 13523 of 2024	Sections 302, 34 IPC	28.08.2016	31.10.2023	02.01.2024	15.07.2024
11	Akash Vs State of UP	Criminal Misc. Bail Application No. 38204 of 2022	Section 307 IPC	05.10.2016	22.07.2022	05.08.2022	11.01.2023
12	Sunil Kumar Alias Chuhi Alias Sandeep Kumar	Criminal Misc. Bail Application No. 19701 of 2024	Sections 394, 302, 412 IPC	10.10.2016	23.12.2022	23.04.2024	Interim Bail on 19.07.2024 Bail on 07.08.2024
13	Sanjeev Joshi Vs. State of U.P.	Criminal Mic. Bail Application No. 22230 of 2024	Sections 302, 120B, 506 IPC	25.12.2016	17.10.2022	02.05.2024	16.07.2024
14	Irshad vs State of UP	Criminal Misc. Bail App. 15389 of 2024	Sections 302, 452, 506, 34 IPC	06.02.2017	04.05.2023	16.04.2024	15.07.2024

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15	Titu vs State of UP	Criminal Misc. Bail App. 18960 of 2024	Sections 302, 201 IPC	10.08.2017	01.02.2024	01.05.2024	Interim Bail on 19.07.2024 Bail on 07.08.2024
16	Ashik Vs. State of UP	Criminal Misc. Bail Application No. 12175 of 2024	Sections 302, 34, 504, 506	18.10.2017	06.01.2018	20.03.2024	15.07.2024
17	Rehan @ Rihan vs State of UP	Criminal Misc. Bail Application No. 20315 of 2024	Sections 302, 201 IPC	29.12.2017	29.04.2024	16.05.2024	08.07.2024
18	Matthu Kahar vs State of UP	Criminal Misc. Bail Application No. 24262 of 2024	Sections 376D, 506 IPC, Section 3(2) 5 S.C./S.T. Act and Section 5/6 POCSO Act	31.01.2018	22.04.2024	24.06.2024	30.07.2024
19	Arjun Nishad Vs State of UP	Criminal Misc. Bail Application No. 2187 of 2024	Section 302 IPC	22.05.2018	16.11.2023	17.01.2024	23.02.2024
20	Anand alias Lakkad vs State of U.P.	Criminal Misc. Bail Application No. 22386 of 2024	Section 341,307,302, 34 and 504 IPC	04.12.2018	25.03.2019	28.05.2024	19.07.2024
21	Sanjeev Vs State of UP	Criminal Misc. Bail Application No. 42220 of 2022	Section 498A, 304B, 323 I.P.C. and Section 3/4 of Dowry Prohibition Act	10.06.2018.	04.01.2019	15.09.2022	Interim bail on 11.07.2023 bail on 20.12.2023
22	Sachin Vs. State of UP	Criminal Misc. Bail Application No. 17484 of 2024	Sections 302, 120B, 34 IPC	22.09.2018	08.01.2024	26.04.2024	15.07.2024
23	Farookh @ Montu Vs State of UP	Criminal Misc. Bail Application No. 17291 of 2024	Sections 376(a)(b) IPC and 5/6 of POCSO Act	01.11.2018	21.02.2024	26.04.2024	30.05.2024
24	Ravi Kumar Gupta Vs. State of U.P.	Criminal Misc. Bail Application No. 53329 of 2023	Sections 147, 148, 149, 302, 120B, 34 IPC	02.11.2018	09.10.2023	06.12.2023	16.07.2024
25	Munna @ Jaheer Ansari Vs State of UP	Criminal Misc. Bail Application No. 1464 of 2023	Section 394 IPC	19.11.2018	16.11.2022	03.01.2023	17.01.2023
26	Bhawani Vs State of UP	Criminal Misc. Bail Application No. 29480 of 2023	Sections 363, 376 IPC and S. 3/4 POCSO Act	28.11.2018	18.01.2023	28.06.2023	Interim bail 13.07.2023 Bail on 20.12.2023
27	Bijendra Singh Vs State of UP	Criminal Misc. Bail Application No. 51651 of 2022	Section 8/22 of NDPS Act	17.12.2018	26.05.2022	09.11.2022	05.01.2023

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28	Sunita Vs State of UP	Criminal Misc. Bail Application No. 18902 of 2024	Sections 302, 201 IPC	29.12.2018	22.02.2023	08.05.2024	09.07.2024
29	Pramod Kumar vs State of UP	Criminal Misc. Bail Application No. 17888 of 2024	Sections 498-A, 304, 302 IPC	25.01.2019	16.02.2024	03.05.2024	Interim bail on 19.07.2024 Bail on 07.08.2024
30	Amarpal Vs. State of U.P.	Criminal Misc. Bail Application No. 21189 of 2024	Sections 498A, 302 IPC	20.03.2019	10.05.2024	20.05.2024	26.07.2024
31	Sanni Kumar Vs State of UP	Criminal Misc. Bail Application No. 14467 of 2024	Sections 323, 376, 506, 354A, 394, 411, 511 IPC	20.03.2019	23.02.2024	04.04.2024	22.05.2024
32	Kamlesh Prajapati Vs State of UP	Criminal Misc. Bail Application No. 10153 of 2024	Sections 363, 366, 376, 368, 109 IPC and S.3 / 4 POCSO Act and S.3(2)(v) SC/ST Act	01.05.2019	26.02.2020	04.03.2024	01.05.2024
33	Nurulhuda Vs State of UP	Criminal Misc. Bail Application No. 7583 of 2024	Sections 363, 366, 376D IPC and S. 5/6 of the POCSO Act	24.06.2019	21.11.2023	05.01.2024	21.05.2024
34	Rupa Choursiya Vs State of UP	Criminal Misc. Bail Application No. 16716 of 2024	Sections 302, 201, 120B IPC	26.07.2019	22.09.2019	25.04.2024	09.07.2024
35	Mohit @ Nemu	Criminal Misc. Bail Application No. 252 of 2024	Sections 302, 201, 34 IPC	12.12.2019	27.09.2021	03.01.2024	23.07.2024
36	Dhanush Jogi Vs State of UP	Criminal Misc. Bail Application No. 17390 of 2021	Sections 147, 148, 149, 302, 201 IPC and 10/14 DAA Act	13.02.2020	20.03.2020	20.03.2021	Interim bail on 03.07.2023 Bail 20.12.2023
37	Pintu @ Pankaj Yadav Vs. State of U.P.	Criminal Misc. Bail Application No. 297 of 2024	Sections 323, 504, 506, 308, 304	27.07.2020	29.11.2023	03.01.2024	23.07.2024
38	Smt. Aneeta Vs. State of U.P.	Criminal Misc. Bail Application No. 12100 of 2024	Sections 302, 34 IPC	17.09.2020	19.02.2024	07.03.2024	23.07.2024
39	Kirshan vs State of UP	Criminal Misc. Bail App. 17810 of 2024	Sections 302, 34 IPC	24.08.2020	10.11.2020	01.05.2024	08.07.2024
40	Laxman vs State of UP	Criminal Misc. Bail App. 25159 of 2024	Sections 323, 504, 506, 325, 304 IPC	16.02.2021	23.01.2024	01.07.2024	30.07.2024
41	Indrajeet @ Bhole Vs State of UP	Criminal Misc. Bail Application No. 741 of 2024	Sections 363, 366, 376(3) IPC and S. ¾ POCSOAct	09.03.2021	04.04.2023	03.01.2024	27.05.2024



<u>Sr. No.</u>	<u>Case Title</u>	<u>Particulars of Case</u>	<u>Under Sections</u>	<u>In Jail Since</u>	<u>Date of rejection of bail by trial court</u>	<u>Date of filing of bail before the High Court</u>	<u>Date of grant of bail by the High Court</u>
42	Usha Devi vs State of UP	Criminal Misc. Bail App. 20387 of 2024	Sections 302, 201, 120-B IPC	25.08.2021	02.03.2023	13.05.2024	08.07.2024
43	Ram Kishun Yadav @ Chaku @ Sanjay Yadav Vs State of UP	Criminal Misc. Bail Application No. 18349 of 2024	Sections 302, 201, 120B IPC	25.08.2021	15.03.2024	03.05.2024	02.07.2024
44	Laxman Harijan Vs State of UP	Criminal Misc. Bail Application No. 13442 of 2024	Sections 376AB, 506 IPC and S. 5M/6 of POCSO Act	08.11.2021	18.02.2022	28.03.2024	28.05.2024
45	Shiv karan Verma @ Sikanna Vs State of UP	Criminal Misc. Bail Application No. 35903 of 2022	Sections 354Kha, 504, 506 IPC and S. 9/10 of POCSO Act	15.01.2022	07.04.2022	08.08.2022	28.01.2023
46	Jyoti Prasad urf Daroga Vs State of UP	Criminal Misc. Bail Application No. 12316 of 2024	Sections 363, 376 IPC and S. ¾ of POCSO Act	02.03.2022	17.05.2022	21.03.2024	24.04.2024
47	Mohammad Wasim Vs State of UP	Criminal Misc. Bail Application No. 26321 of 2023	Sections 363, 366, 376, 323 IPC and S.3/4 POCSO Act	08.06.2022	02.11.2022	06.06.2023	12.06.2023

### **Second bail or subsequent bails filed before this Court**

<u>Sr. No.</u>	<u>Case Title</u>	<u>Particulars of Case</u>	<u>Under Sections</u>	<u>In Jail Since</u>	<u>Date of rejection of bail by High Court</u>	<u>Date of filing of bail before the High Court</u>	<u>Date of grant of bail by the High Court</u>
48	Saleem @ Chhukali Vs State of UP	Criminal Misc. Bail Application No. 21823 of 2024	Sections 302, 323, 504 IPC	20.06.2012	08.07.2022	28.05.2024	Interim bail on 01/08/2024 Bail on 07.08.2024
49	Mumtaz vs State of U.P.	Criminal Misc. Bail Application No. 14084 of 2024	Sections 302, 201 IPC	06.05.2015	09.02.2017	22-03-2024	Interim Bail on 18.07.2024 Bail on 07.08.2024
50	Gaurav @ Shilpi Vs State of UP	Criminal Misc. Bail Application No. 54898 of 2022	Section 302 IPC	07.10.2015	08.11.2022	24.11.2022	13.07.2023
51	Deepak Tiwari Vs. State of UP	Criminal Misc. Bail Application No. 21468 of 2024	Section 302 IPC	26.05.2016	18.11.2019	20.05.2024	05.08.2024
52	Jabbar Vs State of UP	Criminal Misc. Bail Application No. 2533 of 2023	Sections 363,366,328, 342,506,376 -D IPC&5/6 POCSO Act	08.08.2016	28.11.2017	12.01.2023	19.01.2024
53	Muneesh alias Khajanchi vs State of UP	Criminal Misc. Bail Application No. 14678 of 2024	Sections 302, 120-B	26.09.2016	20.07.2021	01.04.2024	Interim bail on 18.07.2024 Bail on 07.08.2024

<u>Sr. No.</u>	<u>Case Title</u>	<u>Particulars of Case</u>	<u>Under Sections</u>	<u>In Jail Since</u>	<u>Date of rejection of bail by trial court</u>	<u>Date of filing of bail before the High Court</u>	<u>Date of grant of bail by the High Court</u>
54	Abhimanyu Kol vs State of UP	Criminal Misc. Bail App. 17144 of 2024	Sections 302, 504, 506, 34 IPC	24.01.2017	08.07.2022	29.04.2024	08.07.2024
55	Lavkush Kol vs State of UP	Criminal Misc. Bail App. 35716 of 2023	Sections 302, 504, 506, 34 IPC	31.01.2017	12.01.2021	26.07.2023	21.2.2024
56	Lalit V. State of U.P.	Criminal Misc. Bail Application No. 20268 of 2024	Sections 302, 307, 147, 148, 149 IPC	09.06.2018	28.07.2021	13.05.2024	16.07.2024
57	Gullan Alias Ajay vs State of UP	Criminal Misc. Bail App. 16618 of 2024	Sections 302, 504, 120-B IPC	21.01.2019	14.07.2022	16.04.2024	09.07.2024
58	Monu Kumar Jatav vs State of UP	Criminal Misc. Bail Application No. 6880 of 2024	Section 304 IPC	01.03.2019	21.07.2022	17-02-2024	02.08.2024
59	Kamil Vs. State of UP	Criminal Misc. Bail Application No. 16379 of 2024	Sections 364, 302, 201 IPC	12.04.2019	16.07.2021	19.03.2024	07.08.2024
60	Shivchandra Vs State of UP	Criminal Misc. Bail Application No. 16606 of 2024	Sections 323, 324, 504, 304 IPC	02.04.2020	01.09.2021	23.04.2024	09.07.2024

#### **IV A. Right to seek bail and scope of bail jurisdiction**

**18.** Right of bail is vested by virtue of Section 439 of Code of Criminal Procedure, 1973<sup>12</sup> (and other provisions in various special statutes).

**19.** With coming of the Constitution and development of constitutional law, the statutory domain of bails was transformed into a constitutional jurisdiction. The right to seek bail is derived from statute but cannot be removed from constitutional oversight.

**20.** The right of bail has statutory origins but can never be isolated from its constitutional moorings. The right of consideration of bail is irretrievably embedded in the

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<sup>12</sup> hereinafter referred to as the Cr.P.C.

fundamental right of liberty enshrined under Article 21 of the Constitution of India by holdings of constitutional courts.

**21.** The aforesaid authorities establish the undeniable linkage between right of bail and fundamental right to personal liberty. Every prisoner has a fundamental right to file an application for bail before the competent court as per law and without delay. (See **Junaid v. State of U.P. and another**<sup>13</sup> & **Ajeet Chaudhary v. State of U.P. and another**<sup>14</sup>).

**22.** The discussion has the benefit of good authorities which entrench the right of an accused to seek bail in the charter of fundamental rights assured by the Constitution of India. Bail jurisprudence was firmly embedded in the constitutional regime of fundamental rights in **Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh**<sup>15</sup>. Casting an enduring proposition of law in eloquent speech, V.R. Krishna Iyer, J. held:

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

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13. 2021 SCC OnLine All 463

14. 2021 SCC OnLine All 17

15 (1978) 1 SCC 240

After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.”

**23.** The Supreme Court in **Satender Kumar Antil v. Central Bureau of Investigation and another**<sup>16</sup> held that the delays in hearing of the appeal may also be considered as a sufficient cause for grant of bail in appropriate cases. Relevant paras are extracted hereunder:

“50. Sub-section (2) has to be read along with sub-section (1). The proviso to sub-section (2) restricts the period of remand to a maximum of 15 days at a time. The second proviso prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded. Certain reasons for seeking adjournment are held to be permissible. One must read this provision from the point of view of the dispensation of justice. After all, right to a fair and speedy trial is yet another facet of Article 21. Therefore, while it is expected of the court to comply with Section 309 of the Code to the extent possible, an unexplained, avoidable and prolonged delay in concluding a trial, appeal or revision would certainly be a factor for the consideration of bail. This we hold so notwithstanding the beneficial provision under Section 436-A of the Code which stands on a different footing.

57. Thus, we hold that the delay in taking up the main appeal or revision coupled with the benefit conferred under Section 436-A of the Code among other factors ought to be considered for a favourable release on bail.”

**24.** More recently the interplay of constitutional liberty assured under Article 21 and statutory right of bail of an undertrial prisoner was affirmed by the Supreme Court in **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**<sup>17</sup>.

**25.** Lastly the Supreme Court in **Javed Gulam Nabi Shaikh v. State of Maharashtra and another**<sup>18</sup>, while iterating that

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<sup>16</sup> (2022) 10 SCC 51

<sup>17</sup> Special Leave Petition (Criminal) No. 915 of 2023 (2023 SCC OnLine SC 352)

<sup>18</sup> 2024 SCC OnLine SC 1693

delay in trials may also constitute a ground for grant of bail held:

“7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are inclined to exercise our discretion in favour of the appellant herein keeping in mind the following aspects:

- (i) The appellant is in jail as an under-trial prisoner past four years;
- (ii) Till this date, the trial court has not been able to even proceed to frame charge; and
- (iii) As pointed out by the counsel appearing for the State as well as NIA, the prosecution intends to examine not less than eighty witnesses.

8. Having regard to the aforesaid, we wonder by what period of time, the trial will ultimately conclude. Howsoever serious a crime may be, an accused has a right to speedy trial as enshrined under the Constitution of India.

9. Over a period of time, the trial courts and the High Courts have forgotten a very well settled principle of law that bail is not to be withheld as a punishment.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

**26.** Engagement of fundamental rights in bail jurisprudence is a constant in constitutional law.

#### **IV.B Legal issues arising in the cases and bail jurisdiction**

**27.** These questions arise for consideration in the facts of this bail application and in the companion bail applications. What is the nature and scope of the right to legal aid and the correlation between the right to legal aid and right to seek bail? What are the duties of magistrates, trial courts, District Legal Services Authorities<sup>19</sup> and Jail authorities to secure the right to legal aid and the right to seek bail vested in the prisoners?

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<sup>19</sup> hereinafter referred to as the DLSA

**28.** The determination of merits of the bail will be predicated by a discussion on the jurisdiction of this Court to address the aforesaid issues while deciding a bail application.

**29.** While sitting in bail determination, this Court is not denuded of its constitutional status. The High Court is a court of record and a constitutional court irrespective of the nomenclature of the jurisdiction it is exercising. Needless to add that the High Court always exercises its jurisdiction as per law.

**30.** The High Court while exercising bail jurisdiction always possesses the necessary powers to pass appropriate orders for dispensing fair justice and to realize the fundamental right of an accused to seek bail. While deciding bail applications the High Court exercises a composite jurisdiction of statutory powers and constitutional obligations. At times various legal issues which directly impinge on the fair administration of justice arise for determination before this Court in bail jurisdiction. The Court cannot neglect consideration of such issues when they arise in the bail jurisdiction. Issues relating to denial of legal aid arising in the instant case and companion bail applications directly impact the right of a prisoner to apply for bail. The powers to decide all relevant legal issues having a direct bearing on the right of bail are intended to be within the jurisdiction of the High Court unless a contrary ruling is made by this Court. Declining to decide such issues which are essential for fair administration of justice in bail jurisdiction would amount to abdication of the constitutional obligations

and statutory functions of this Court. To refuse the jurisdiction in such matters would amount to absolute denial of justice.

**31.** The judgements rendered by this Court in **Ajeet Chaudhary v. State of U.P. and another**<sup>20</sup>, **Junaid v. State of U.P. and another**<sup>21</sup>, **Monish v. State of U.P. and others**<sup>22</sup>, **Anil Gaur @ Sonu Tomar v. State of U.P.**<sup>23</sup> & **Maneesh Pathak v. State of U.P.**<sup>24</sup>, **Anurudh Vs. Sate of U.P.**<sup>25</sup> enable the court in bail jurisdiction to decide the legal issues which impede the realization of the right to seek bail vested in the accused by statute, or infringe the personal liberties of the accused secured by the Constitution, or otherwise interfere in the fair administration of justice in bail jurisdiction. The legal issues were twined with the merits of the bail in the said cases as in the instant case and companion bail applications. It is a well accepted practice of Constitutional Courts while deciding bails to direct the trial courts to expedite the trial. This practice which is applied in facts and circumstances of a case also depicts the enlarged scope of bail jurisdiction.

**32.** While examining the scope of powers of this Court to decide legal issues in bail jurisdiction this Court in **Aman @ Vansh v. State of U.P. and 3 others**<sup>26</sup> held as under:

"This Court has consistently held that while sitting in the bail determination the High Court is not denuded of its constitutional status. The bail jurisdiction though created under the statute is also a constitutional jurisdiction of first importance since the most precious right of life and liberty are engaged in the process of consideration of bail. Consequently when legal issues which directly impact the

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20. 2021 SCC OnLine All 17

21. 2021 SCC OnLine All 463

22. 2024 (6) ADJ 361

23. 2022 SCC OnLine All 623

24. 2023 SCC OnLine All 64

25. Criminal Misc. Bail Application No. 4880 of 2024

26. Criminal Misc. Bail Application No. 2322 of 2024

life and liberty of a citizen arise during consideration of a bail application, the Court has to squarely deal with the said (sic) issues."

[Also see: i. (**Anil Gaur @ Sonu @ Sonu Tomar v. State of U.P.**<sup>27</sup>) ii. (**Bhanwar Singh @ Karamvir v. State of U.P.**<sup>28</sup>) iii. (**Noor Alam v. State of U.P.**<sup>29</sup>)]

### **V A. Legal Aid : General**

33. Legal aid has to be made accessible to prisoners who cannot approach the competent courts to seek bail due to their marginalized social condition, financial penury or other "circumstances of undeserved want". The task before this Court is to ensure grant of legal aid to the said class of citizens within the existing framework of laws and through the agencies, authorities and courts nominated for the said purpose.

### **V B. Legal Aid : Article 39A of the Constitution of India and Constitutional Law**

34. The search for justice inspired our freedom struggle<sup>30</sup>, the promise to secure justice defines our Constitution. Redemption of the preambled promise to serve justice to all citizens has animated legislative endeavours and judicial discourse alike in the country.

35. The Constitutional Courts in India knew that understanding the significance of life was key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Supreme Court embraced life in all its breadth and profundity and eschewed a narrow interpretation.

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27 2022 SCC OnLine All 623

28 2023 SCC OnLine All 734

29 Criminal Misc. Bail Application No. 53159 of 2021

30 'The Idea of Justice' by Amartya Sen—It is fair to assume that Parisians would not have stormed the Bastille, Gandhi would not have challenged the empire on which the sun used not to set, Martin Luther King would not have fought white supremacy in 'the land of the free and the home of the brave', without their sense of manifest injustices that could be overcome.



36. A watershed moment came when the Supreme Court liberated life from the fetters of mere physical existence. While examining the meaning of life under Article 21 of the Constitution of India, the Supreme Court added meaning to life in the case of **Olga Tellis Vs. Bombay Municipal Corporation**<sup>31</sup>, when it cited the holdings of **Munn v. Illinois**<sup>32</sup> and **Kharak Singh Vs. State of U.P.**<sup>33</sup> with approval and imbibed their ratio in our constitutional bloodstream:

“32.....”Life”, as observed by Field, J. in *Munn v. Illinois* means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh Vs. State of U.P.*”.

37. Article 21 was set on a career of constantly expanding boundaries and the ambit of life was progressively enlarged.

38. **Maneka Gandhi v. Union of India**<sup>34</sup> was a landmark in the law wherein the Supreme Court brought “reasonable, fair and just” procedure to deprive a person of his liberty within the embrace of Article 21 of the Constitution of India.

39. **Hussainara Khaton (IV) v. Home Secy., State of Bihar**<sup>35</sup> comprehended availability of legal aid to a prisoner for securing his liberation as an essential ingredient of “reasonable, fair and just procedure” by stating:

“6....It is now well settled, as a result of the decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] that **when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some**

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31 1985 (3) SCC 545

32 1877 (94) US 113

33 AIR 1963 SC 1295

34 (1978) 1 SCC 248

35 (1980) 1 SCC 98

semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be “reasonable, fair and just”. Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as “reasonable, fair and just”. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him. .....Free legal services to the poor and the needy is an essential element of any “reasonable, fair and just” procedure. It is not necessary to quote authoritative pronouncements by Judges and Jurists in support of the view that without the service of a lawyer an accused person would be denied “reasonable, fair and just” procedure.”

(emphasis supplied)

**40.** Liberty was assured to all citizens in the constitutional text, but justice is dear to many citizens in the real world. Inalienable constitutional rights may be severed by compelling socio economic disadvantages. Poverty, social exclusion and lack of legal aid can impede the course of justice. Article 39A of the Constitution of India removes the barriers to secure justice for all citizens.

**41.** Article 39A of the Constitution of India underscores the importance of providing legal aid to serve equal justice to all citizens and states so:

**“39A. EQUAL JUSTICE AND FREE LEGAL AID.**

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

**42. Hussainara Khatoon (IV) (supra)** after referencing Article 39A of the Constitution of India propounded the law as under:

“7. We may also refer to Article 39-A the fundamental constitutional directive which reads as follows:

39-A. *Equal justice and free legal aid.*—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”  
(emphasis added)

This article also emphasises that free legal service is an unalienable element of “reasonable, fair and just” procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. **The right to free legal services is, therefore, clearly an essential ingredient of “reasonable, fair and just”, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.**

(emphasis supplied)

**43.** Historically speaking Allahabad High Court had pioneered the concept of legal aid as intrinsic to a fair trial in the fabled dissent of Syed Mahmood J. in **Queen-Empress v. Pohpi and others**<sup>36</sup>.

**44.** Denial of legal aid causes violation of fair, reasonable and just procedure, unjustified incarceration, and curtailment of liberty. Articles 14 and 21 of the Constitution of India which assure equality and protecting the life and liberty of a citizen respectively are engaged in these circumstances.

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36. ILR (1891) All 171 (FB)

45. Laying down the jurisprudential foundations of the right of an accused to a lawyer at the pre trial stage, the Supreme Court in the landmark judgment of **Hussainara Khatoon (IV) (supra)** acknowledged that poverty and lack of awareness of right to obtain release on bail result in injustice to the poor:

“6. Then there are several undertrial prisoners who are charged with offences which are bailable but who are still in jail presumably because no application for bail has been made on their behalf or being too poor they are unable to furnish bail. It is not uncommon to find that undertrial prisoners who are produced before the Magistrates are unaware of their right to obtain release on bail and on account of their poverty, they are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the Magistrate in that behalf. Sometimes the Magistrates also refuse to release the undertrial prisoners produced before them on their personal bond but insist on monetary bail with sureties, which by reason of their poverty the undertrial prisoners are unable to furnish and which, therefore, effectively shuts out for them any possibility of release from pre-trial detention. This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme, but so far, these cries do not seem to have evoked any response. We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nation-wide legal service programme to provide free legal services to them.

(emphasis supplied)

Black, J., observed in *Gideon v. Wainwright* [372 US 335 : 9 L Ed 2d at 799] :

“Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of

the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our State and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

The philosophy of free legal service as an essential element of fair procedure is also to be found in the passage from the judgment of Douglas, J. in *Jon Richard Argersinger v. Raymond Hamlin* [417 US 25 : 25 L Ed 2d 530 at 535-36] :

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. *If that be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect.*

Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty.

The court should consider the probable sentence that will follow if a conviction is obtained. The more serious the likely consequences, the greater is the probability that a lawyer should be appointed .... The court should consider the individual factors peculiar to each case. These, of course would be the most difficult to anticipate. One relevant factor would be the competency of the individual defendant to present his own case.”

**46.** The need to rescue the credibility of the legal system and duties of the Government of India and the State Government to put a comprehensive legal service programme in place to

restore the faith of the common man in the justice system was emphasized in **Hussainara Khatoon (IV) (supra)**:

**“9. We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contract with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor". The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community.** It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.

....We would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A.”

(emphasis supplied)

**47.** The courts have a paramount duty to ensure that prisoners appearing in criminal proceedings have access to legal aid at all times. Courts cannot remain mute spectators when legal aid is denied to prisoners in legal proceedings before them.

**48.** The trial courts stand at a vantage point in these matters and are best circumstanced to understand the need of legal aid of the prisoners appearing before them.

49. The importance of a lawyer's professional expertise in a criminal trial and the right of a prisoner to seek his liberation with the assistance of a lawyer's services in the court process were found to be integral to fair procedure in the criminal justice system by the Supreme Court in **M.H. Hoskot v. State of Maharashtra**<sup>37</sup> wherein it was held :

**“14. The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side.** Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said: [ Justice and Reform, Earl Johnson, Jr. p. 11]

“What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?”

(emphasis supplied)

50. The discussion in **Hoskot (supra)** also relied on various international authorities in point:

“15. Gideon's trumpet has been heard across the Atlantic. Black, J. there observed: [ Processual Justice to the People, (May 1973) p. 69 (372 US at 344 : 9 L Ed 2d at 805)]

“Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect

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37. (1978) 3 SCC 544

the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That Government hires lawyers to prosecute and defendants who have the money hires lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

16. The philosophy of legal aid as an inalienable element of fair procedure is evident from Mr Justice Brennan's [ Legal Aid and Legal Education, p. 94] well known words:

“Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

17. More recently, the U.S. Supreme Court, in Raymond Hamlin has extended this processual facet of Poverty Jurisprudence. Douglas, J. there explicated: [Jon Richard Argersinger v. Raymond Hamlin, 407 US 25 : 35 L Ed 2d 530 at 535-36 and 554]

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that



be true of men of intelligence, how much more true is it of the ignorant and illiterate or those of feeble intellect.

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries but it is in ours. From the very beginning our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. (372 US at 344. 9 L Ed 2d at 805, 93 ALR 2d 733.)

Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty.

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The court should consider the probable sentence that will follow if a conviction is obtained. The more serious the likely consequences, the greater is the probability that a lawyer should be appointed .... The court should consider the individual factors peculiar to each case. These, of course would be the most difficult to anticipate. One relevant factor would be the competency of the individual defendant to present his own case.”

(emphasis added)

18. The American Bar Association has upheld the fundamental premise that counsel should be provided in the criminal proceedings for offences punishable by loss of liberty, except those types of offences for which such punishment is not likely to be imposed. Thus in America, strengthened by the Powell, Gideon and Hamlin cases, counsel for the accused in the more serious class of cases which threaten a person with imprisonment is regarded as an essential component of the administration of criminal justice and as part of procedural fair-play. This is so without regard to the sixth amendment because lawyer participation is ordinarily an assurance that deprivation of liberty will not be in violation of procedure established by law. In short, it is the warp and woof of fair procedure in a sophisticated, legalistic system plus lay illiterate indigents aplenty. The Indian socio-legal milieu makes free legal service, at trial and higher levels, an imperative processual piece of criminal justice where deprivation of life or personal liberty hangs in the judicial balance.”

**51. The Supreme Court in *Khatri and others (II) v. State of Bihar*<sup>38</sup> underscored the pervasive legal illiteracy in the country**

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38. (1981) 1 SCC 627

and cast an obligation on trial judges to provide free legal aid by expounding the law thus:

“5. That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial Magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first time before the Judicial Magistrate nor at the time when the remand orders were passed, was any legal representation available to most of the blinded prisoners. The records of the Judicial Magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the Judicial Magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost. The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail. It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in *Hussainara Khatoon (IV) case* [*Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, (1980) 1 SCC 98 : 1980 SCC (Cri) 40 : (1979) 3 SCR 532] . This Court has pointed out in *Hussainara Khatoon (IV) case* [ Under Article 32 of the Constitution] which was decided as far back as March 9, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. It is unfortunate that though this Court declared the right to legal aid as a fundamental right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence. We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding throughout the territory of India. Mr K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to

an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in *Rhem v. Malcolm* [377 F Supp 995] “the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty” and to quote the words of Justice Blackmun in *Jackson v. Bishop* [404 F Supp 2d 571] “humane considerations and constitutional requirements are not in this day to be measured by dollar considerations”. **Moreover, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a Magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the Magistrate as also when he is remanded from time to time.**

**6. But even this right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law.** There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. **The Magistrate or the Sessions Judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable**

**to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. Unfortunately, the Judicial Magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided.**

We would, therefore, direct the Magistrates and Sessions Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage of the free legal services provided by the State, he must be provided legal representation at the cost of the State. We would also direct the State of Bihar and require every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicable situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State.”

(emphasis supplied)

52. The summit court in **Suk Das v. Union Territory of Arunachal Pradesh**<sup>39</sup> did not lose sight of the prevailing ground realities of social marginalization, financial destitution and legal illiteracy which cause denial of legal aid and also call into question the fairness of the criminal justice system in the country. The obligations cast on the trial courts in this regard were reiterated:

“6. **But the question is whether this fundamental right could lawfully be denied to the appellant if he did not apply for free legal aid.** Is the exercise of this fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate legal representation being afforded to him? Now it is common knowledge that about 70 per cent of the people living in rural areas are illiterate and

39. (1986) 2 SCC 401

even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis-oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. **Moreover, because of their ignorance and illiteracy, they cannot become self-reliant: they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness.** This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. This is the reason why in *Khatri (II) v. State of Bihar* [(1981) 1 SCC 627 : 1981 SCC (Cri) 228 : (1981) 2 SCR 408] , **we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State.** We deplored that in that case where the accused were blinded prisoners the Judicial Magistrates failed to discharge their obligation and contented themselves by merely observing that no legal representation had been asked for by the blinded prisoners and hence none was provided. We accordingly directed “the Magistrates and Sessions Judges in the country to inform every accused who appear before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State” unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country “to make provision for grant of free legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations,” the only qualification being that the offence charged against an accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a

nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. It is quite possible that since the trial was held before the learned Additional Deputy Commissioner prior to the declaration of the law by this Court in *Khatri (II) v. State of Bihar* [(1981) 1 SCC 627 : 1981 SCC (Cri) 228 : (1981) 2 SCR 408] the learned Additional Deputy Commissioner did not inform the appellant that if he was not in a position to engage a lawyer on account of lack of material resources, he was entitled to free legal assistance at State cost nor asked him whether he would like to have free legal aid. But it is surprising that despite this declaration of the law in *Khatri (II) v. State of Bihar* [(1981) 1 SCC 627 : 1981 SCC (Cri) 228 : (1981) 2 SCR 408] on December 19, 1980 when the decision was rendered in that case, the High Court persisted in taking the view that since the appellant did not make an application for free legal assistance, no unconstitutionality was involved in not providing him legal representation at State cost. **It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellant that he was entitled to free legal assistance nor did he inquire from the appellant whether he wanted a lawyer to be provided to him at State cost. The result was that the appellant remained unrepresented by a lawyer and the trial ultimately resulted in his conviction. This was clearly a violation of the fundamental right of the appellant under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellant must be set aside.**

(emphasis supplied)

53. Prophetic words which fell on institutions with short memories.

## **VI. Statutory Schemes for Legal Aid:**

### **VI A. Legal Services Authorities Act, 1987:**

54. Free legal aid which was earlier exalted as a fundamental right by constitutional law is today enshrined as a statutory right in the LSA Act, 1987 and Section 304 Cr.P.C.

55. The LSA Act, 1987 was enacted in compliance with the Directive Principles of State Policy enshrined in Article 39-A of the Constitution of India and with the avowed object to

provide “free and competent legal services (to the weaker sections of the society) to ensure that the opportunities of securing justice are not denied to any citizens by any reason of economic and any other disabilities”.

**56.** Holdings of Constitutional Court form the backdrop of the LSA Act, 1987. The scheme of Legal Services Act, 1987 vests the right of legal aid in all prisoners and simultaneously cast an iron clad obligation on authorities created thereunder to ensure fruition of the aforesaid right. Various authorities including the State Legal Services Authorities and the District Legal Services Authorities have been created under the said Act to realize the beneficent legislative aim of providing legal aid to the weaker and deprived classes of the citizenry or those who suffer from other disabling circumstances which deny them access to legal aid.

**57.** Repeated instances of inordinate delays in filing of bails due to lack of access to legal aid were noticed by this Court in **Anil Gaur (supra)**. These facts and the above stated legal setting formed the basis of the directions of this Court in **Anil Gaur (supra)**. **Anil Gaur (supra)** made upon authorities created under the LSA Act, 1987 to provide legal aid to the said class of prisoners to apply for bail.

**58.** Section 12(e) of LSA Act, 1987 contemplates “circumstances of undeserved want” as one of the prerequisites or eligibility conditions for grant of legal aid. In **Anil Gaur (supra)** this Court interpreted the phrase “circumstances of

undeserved want” in Section 12(e) of the LSA Act,1987 as conditions of “externalities.”

**59.** Externalities are conditions of deprivation which are imposed by misfortune. Such conditions are caused by forces beyond the control of the victim, and the cure is not within the capacity of the victim. In the context of the LSA Act,1987 these “conditions of undeserved want” result in denial of legal aid to the prisoners. The very nature of externalities leaves the prisoners to their own devices and prevents them from approaching the District Legal Services Authorities. These externalities which operate to the detriment of the prisoners can be remedied by intervention of the statutory authorities. The authorities under the LSA Act, 1987 have to approach all the prisoners, identify the prisoners who are entitled to legal aid and provide them with the same. The District Legal Services Authorities have to proactively go to the prisoners and cannot wait for the prisoners to come to them. Similarly even prisoners who are represented by counsels/defence counsels at the trial court are liable to be approached by the DLSA in case they do not file bail applications in the appointed time frame.

**60.** Every accused is expected to file a bail application in a reasonable time frame. [Suggested timeline was provided in **Anil Gaur(supra)**]. Delay in filing of a bail application leads to a prima facie presumption that the prisoner has no access to legal aid. When a bail application is not filed in the indicated period in the timeline, the District Legal Services Authority has to apprise the prisoners of their right to seek bail and suo moto



required to make enquiries into the need for legal aid and facilitate the filing of the bail application. (See **Anil Gaur(supra)**). The concept of District Legal Services Authorities processing legal aid only after receipt of application from the victims of “undeserved want” or declining to commence enquiry into need for legal aid merely because the prisoner is represented by a counsel/defence counsel at the trial is liable to be discarded in respect of persons imprisoned in jails.

### **VI B. Section 304 Cr.P.C./ Section 341 of BNSS, 2023**

**61.** The legislature was cognizant of the importance of the right of legal aid for prisoners who for various reasons are unable to engage a lawyer and the need to provide for a mode of implementation of the right. Section 304 Cr.P.C. vests the right of legal aid in a prisoner and casts a duty upon the Courts to secure the said right. The right to free legal aid, the responsibility of the courts and the Government as stated in Section 304 of Cr.P.C. is extracted below:

“304. Legal aid to accused at State expense in certain cases.-  
 (1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

- (a) the mode of selecting pleaders for defence under sub-section (1);
- (b) the facilities to be allowed to such pleaders by the Courts;
- (c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub- sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.”

**62.** The legislative intent is clear from a plain reading of the provision and the word “shall” which prefaces the duty of the court to assign a pleader.

**63.** The provision shall be interpreted in light of the settled canons of statutory interpretation. The word 'shall' employed in the statute depicts the legislative intent of giving the provision mandatory force [See: **State of Haryana Vs. Raghubir Dayal**<sup>40</sup>, and **Ram Dhani And Another Vs. State of U.P.**<sup>41</sup>]

**64.** In view of the phraseology or words employed by the legislature in Section 304 Cr.P.C. and the holdings of Constitutional Courts discussed earlier, this court finds that the provision is mandatory in character and defines the imperative obligations of the trial courts. Under Section 304 Cr.P.C., the duty of the trial courts is to grant of legal aid to needy/eligible prisoners (appearing before them) commences from the pre trial stage. In light of the constitutional law backdrop and the authorities in point discussed earlier “Court of Session” in Section 304 Cr.P.C. shall mean all trial courts and magistrates.

**65.** Section 304 Cr.P.C. which has been referenced and interpreted in this judgement shall also mean to include Section 341 of Bharatiya Nagarik Suraksha Sanhita, 2023<sup>42</sup>. The newly introduced provision under the BNSS, 2023 which

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40 (1995) 1 SCC 133

41 2021 (1) ADJ 376

42 hereinafter referred to as BNSS, 2023

corresponds to Section 341 of BNSS, 2023 is extracted hereinunder:

“ Legal aid to accused at State expense in certain cases.

341. (1) Where, in a trial or appeal before a Court, the accused is not represented by an advocate, and where it appears to the Court that the accused has not sufficient means to engage an advocate, the Court shall assign an advocate for his defence at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for—

(a) the mode of selecting advocates for defence under sub-section (1);

(b) the facilities to be allowed to such advocates by the Courts;

(c) the fees payable to such advocates by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.”

**66.** The provision is analogous/pari materia with Section 304 Cr.P.C. insofar as it relates to the duties of the courts to engage an advocate for an accused in need of legal aid. The duties of the courts flowing from Section 304 Cr.P.C. as interpreted in this judgement shall also apply to the duties of the courts contemplated in Section 341 of BNSS, 2023.

**67.** The right to legal aid exists whenever the applicant is produced before the magistrate or trial court and not only at the start of the trial.

**68.** The duty of the trial court under Section 304 Cr.P.C./ Section 341 of BNSS, 2023 extends to apprise every prisoner of the right to seek bail, and to provide legal aid to a needy accused to file a bail application before the competent court. The phrase “where it appears to the trial court” envisages that the magistrate trial court should apply their mind to germane

facts and make relevant enquiries to determine the need for legal aid of the accused appearing before them. Various relevant facts including the details/information enumerated in **Appendix-I** have to be factored in by the trial courts while examining the need of legal aid of a prisoner.

**69.** While making the aforesaid enquiry under Section 304 Cr.P.C./Section 341 of BNSS, 2023 the trial court may consider the material in the record and may also requisition relevant details/information from various authorities like the public prosecutor, police authorities, District Legal Services Authority, Secretary High Court Legal Services Committee, jail authorities, High Court Registry.

**80.** Many of the said details are already available on the web resources/in auto-generated form with various institutions which can be legally accessed.

**81.** The said authorities (including police authorities, jail authorities, DLSA, Secretary HCLSC) are liable to cooperate with the trial courts and provide the demanded information with promptitude. Any delay on part of the trial courts or the said authorities will defeat the purpose of legal aid.

**82.** Proper coordination between different wings of governance and IT facilities will be needed to enable the trial courts to retrieve the said information with ease to execute the mandate of Section 304 of Cr.P.C./ Section 341 of BNSS, 2023.

**83.** The right of legal aid under Section 304 Cr.P.C./ Section 341 of BNSS, 2023 will be effectuated when enquiries of such nature are made by the learned trial court at every trigger event

in the time line provided in this judgment and appropriate action is taken by the trial court. (See: Paras 111,112,113,114 ).

**84.** The narrative will be fortified by authorities in point handed down by constitutional courts. The cases discussed hereinunder shall apply in equal measure to grant of legal aid by trial courts to prisoners for seeking bail.

**85.** The appellant in **Mohd. Hussain @ Zulfikar Ali v. State (Govt. of NCT of Delhi)**<sup>43</sup>, was a foreign national who did not have a defence counsel and was tried and convicted by the trial Court. Upon examining the facts of the case and after considering the relevant provisions of Cr.P.C., the Supreme Court in **Mohd. Hussain @ Zulfikar Ali (supra)** opined that the appointment of an effective a counsel is a prerequisite of a fair trial and laid down the law as follows:

"11. The appellant was initially assisted by a learned counsel employed by the learned Sessions Judge. However, in the midway, the learned counsel disappeared from the scene, that is, before the conclusion of the trial. It is apparent from the records that he was not asked whether he is able to employ counsel or wished to have the counsel appointed. When the parties were ready for the trial, no one appeared for the accused. The court did not appoint any counsel to defend the accused. Of course, if he had a defence counsel, I do not see the necessity of the court appointing anybody as a counsel. **If he did not have a counsel, it is the mandatory duty of the court to appoint a counsel to represent him.**

(emphasis supplied)

12. The record reveals that the evidence of 56 witnesses, out of the 65 witnesses examined by the prosecution in support of the indictment, including the eyewitnesses and the investigating officer, were recorded by the trial court without providing a counsel to the appellant. **The record also reveals that none of the 56 witnesses were cross-examined by the appellant-accused. It is only thereafter, the wisdom appears to have dawned on the trial court to appoint a learned counsel on 4-**

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43. (2012) 2 SCC 584

12-2003 to defend the appellant. The evidence of the prosecution witnesses from 57 to 65 was recorded in the presence of the freshly appointed learned counsel, who thought it fit not to cross-examine any of those witnesses. Before the conclusion of the trial, she had filed an application to cross-examine only one prosecution witness and that prayer in the application had been granted by the trial court and the learned counsel had performed the formality of cross-examining this witness. I do not wish to comment on the performance of the learned counsel, since I am of the view that “less said the better”. In this casual manner, the trial, in a capital punishment case, was concluded by the trial court.

(emphasis supplied)

23. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the accused charged with a serious offence must not be stripped of his valuable right of a fair and impartial trial. To do that, would be negation of concept of due process of law, regardless of the merits of the appeal. The Criminal Procedure Code provides that in all criminal prosecutions, the accused has a right to have the assistance of a counsel and the Criminal Procedure Code also requires the court in all criminal cases, where the accused is unable to engage counsel, to appoint a counsel for him at the expenses of the State. Howsoever guilty the appellant upon the inquiry might have been, he is until convicted, presumed to be innocent. It was the duty of the court, having these cases in charge, to see that he is denied no necessary incident of a fair trial.

(emphasis supplied)

24. In the present case, not only was the accused denied the assistance of a counsel during the trial but such designation of counsel, as was attempted at a late stage, was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. The court ought to have seen to it that in the proceedings before the court, the accused was dealt with justly and fairly by keeping in view the cardinal principles that the accused of a crime is entitled to a counsel which may be necessary for his defence, as well as to facts as to law. The same yardstick may not be applicable in respect of economic offences or where offences are not punishable with substantive sentence of imprisonment but punishable with fine only. The fact that the right involved is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our judicial proceedings, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of a counsel was a denial of due process of law. It is equally true that the

**absence of fair and proper trial would be violation of fundamental principles of judicial procedure on account of breach of mandatory provisions of Section 304 CrPC.**

(emphasis supplied)

26. The learned counsel for the respondent State, Shri Attri contends that since no prejudice is caused to the accused in not providing a defence counsel, this Court need not take exception to the trial concluded by the learned Sessions Judge and the conviction and sentence passed against the accused. I find it difficult to accept the argument of the learned Senior Counsel. The Criminal Procedure Code ensures that an accused gets a fair trial. It is essential that the accused is given a reasonable opportunity to defend himself in the trial. He is also permitted to confront the witnesses and other evidence that the prosecution is relying upon. He is also allowed the assistance of a lawyer of his choice, and if he is unable to afford one, he is given a lawyer for his defence. The right to be defended by a learned counsel is a principal part of the right to fair trial. If these minimum safeguards are not provided to an accused; that itself is “prejudice” to an accused.”

**86. In Manglu Vs. State of U.P.**<sup>44</sup> rendered by the Allahabad High Court the appellant/prisoner was not represented by a counsel when he was produced before the Court from jail custody before the court and when he was charged. Upon consideration of authorities in point and the provisions of Cr.P.C. this Court in **Manglu (supra)** held:

“21. From perusal of the aforesaid provisions of law as well as the law laid down by Hon'ble the Supreme Court in the above judgments, now it is clear that right to legal aid to indigent and poor person is implicit in the right of guarantee as provided under Article 21 of the Constitution of India. An accused is entitled to avail the aforesaid right of free legal aid at the first instance that is at the time of his production before the Magistrate and/or Sessions Judge. The Magistrate and Sessions Judge are legally bound to inform the accused about the said right and it is imperative for them to engage a lawyer on behalf of the accused on the first day, at the State cost. Rule 37 of the General Rule (Criminal), 1977 framed by Allahabad High Court makes it imperative upon the Sessions Judge to engage a counsel on behalf of the accused persons on the first date on which the case has come before

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44. 2018 SCCOnLine All 5751

it, if the charge against him is such that a capital sentence is possible. It is also clear that if there is any violation of aforesaid law and the judgments, then the same will vitiate the trial as the same is not in accordance with the procedure established by the law.

24. It is not out of place to mention that the under Section 227 of the Code of Criminal Procedure, the accused persons has a right to be released by filing an application for discharge and for that purpose, the accused persons has a right to be heard by learned Additional Sessions Judge before framing the charge. In this background of the case, the aforesaid valuable right of the accused has been denied in this case. We further find that by doing so, the learned Additional Sessions Judge had violated the mandatory provisions of Rule 37 of General Rule (Criminal), 1977, which makes it imperative for the learned Additional Sessions Judge to engage a lawyer for defending the accused if the charge against him is such that a capital sentence is possible. As noticed above, in this case charge-sheet has been submitted in this case under Section 302 of the Indian Penal Code in which capital sentence is possible.”

**87. After citing relevant provisions of the Constitution and the Cr.P.C., the Madras High Court spoke in similar terms regarding the precious right to legal aid of a prisoner in S. Yuvaraj Vs. State rep. By The Inspector of Police, Gobichettypalayam<sup>45</sup> :**

“16. 'Hearing' a person, who is accused of having committed certain offences should not be a 'mere hearing'. Hearing him without the assistance of a legally trained person is like hearing a deaf and dumb person. It will not be giving him a 'reasonable opportunity'. It will be an 'empty formality'. It will be negation of principles of natural justice. Thus, Article 22(1) Constitution of India provides right to accused persons to be defended by a lawyer of their choice.

17. Assuring their constitutional right to legal representation enshrined in Article 22(1), Section 303 Cr.P.C. has been inserted in the New Code of Criminal Procedure, 1973. It provides for right of accused to be defended by a lawyer of his choice. Article 22 (1) read with Article 21 and Section 303 Cr.P.C. reiterates a facet of human right of the accused persons. It is really a matter of 'access to justice'.

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45. 2023 SCC OnLine Mad 3035



18. Such right cannot be denied nor deprived due to financial constraints. Thus, a duty is cast on the State to provide legal assistance, legal aid to the needy. Section 304 Cr.P.C. is for providing legal aid to persons more particularly who are facing trial in a Sessions Court. This has also been strengthened by the introduction of Article 39-A in the Constitution through the 42 Amendment.

19. It is pertinent here to mention that in 1981, in Khatri (II) case relating to the infamous Bhalpur blinding of prisoners in certain Bihar jail, Hon'ble Apex Court directed all the Magistrates and the Sessions Judges to inform the accused persons of their constitutional right to be defended by a lawyer. But, in practice, this mandate has been observed much in breach than observance.”

**88.** The duty to appoint lawyers cast upon the trial courts is not merely an empty procedural formality but a judicial act with serious repercussions. The need to appoint counsels of marked ability was emphasized by the Patna High Court in **Darpaon Potdrain v. Emperor**<sup>46</sup>:

“10...We desire to make some remarks about the defence of prisoners who are too poor to instruct lawyers on their own account. To see whose duty it is to select lawyers to defend at the expenses of the Crown should not treat the selection as a matter of patronage for the benefit of the lawyer so appointed. The selection should be made from among young men of marked ability. We have frequently observed that the persons actually appointed, do their work very badly and conspicuous opportunities for cross examination and obvious arguments are entirely ignored...”

**89.** In the same vein a Division Bench of this Court emphasised the duties of the courts while coming to the following conclusions in **Ram Awadh v. State of U.P.**<sup>47</sup> :

“14. The requirement of providing counsel to an accused at the State expense is not an empty formality which may be not by merely appointing a counsel whatever his calibre may be. When the law enjoins appointing a counsel to defend an accused, it means an effective counsel, a counsel in real sense who can safeguard the interest of the accused in best possible manner

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<sup>46</sup> 1938 (39) Cri LJ 384

<sup>47</sup> 1998 SCC OnLine All 1234

which is permissible under law. An accused facing charge of murder may be sentenced to death or imprisonment for life and consequently his case should be handled by a competent person and not “by a novice or one who has no professional expertise. **A duty is cast upon the Judges before whom such indigent accused are facing trial for serious offence and who are not able to engage a counsel, to appoint competent persons for their defence. It is needless to emphasis that a Judge is not a prosecutor and his duty is to discern the truth so that he is able to arrive at a correct conclusion.** A defence lawyer plays an important role in bringing out the truth before the Court by cross-examining the witnesses and placing relevant materials or evidence. The absence of proper cross-examination may at times result in miscarriage of justice and the Court has to guard against such an eventuality.”

(emphasis supplied)

### **VIC. General Rules (Criminal)**

**90.** Rule 37 of General Rules (Criminal) casts a duty on the committing magistrate to enquire into the fact as to whether the accused has engaged a counsel and as regards his means to do so. The provision is extracted hereinbelow:

“37. When counsel should be engaged for accused—In anycase which comes before a court of session, the court may engage counsel to defence the accused person if—

- (a) the charge against him in such that a capital sentence is possible, and
- (b) it appears that he has not engaged counsel and is not possessed of sufficient means to do so.”

To enable the Session court to arrive at a decision as regards the second condition in the preceding paragraph, the committing magistrate shall in such case make enquires from the accused at the time of commitment and after making such other enquiries as may be necessary, report within a month of the commitment order to the court to which the commitment is made whether the accused is possessed of sufficient means to engage counsel. Each case must be decided on its merits and no hard and fast rule as to insufficiency of means should be applied. The sessions court in making its decision shall not be bound by the report of the committing Magistrate.

Counsel appointed under this rule, shall be furnished with the necessary papers free of cost and allowed sufficient time to prepare for the defence.”

**91.** Rule 37 of General Rules (Criminal) has to be interpreted in light of the right to legal aid propounded by the Supreme

Court and the right to seek bail enunciated by constitutional courts as discussed earlier. A narrow interpretation will not be consistent the intent of the provision. Rule 37 of the General Rules (Criminal) enjoins upon every magistrate to also examine the need for legal aid for seeking bail and for his defence at the trial of every accused appearing before them<sup>48</sup>. The task will be performed by the magistrate whenever the accused appears and also in consonance with the trigger events in the timeline drawn up in the latter part of the judgement.

#### **VI D. Jail Manual**

**92.** Jail manual does not merely confer policing duty on the jail officials. The Jail Manual contemplates that jail officials are the protectors of the rights of prisoners under their watch. Duties of jail officials for ensuring access to legal aid to the prisoners are provided in the Jail Manual. The relevant provisions are extracted hereinunder:

"439(a). Whenever an undertrial prisoner is detained in jail for an undue long period the Superintendent shall address the District Magistrate or the Sessions Judge, as the case may be, with a view to the speedy disposal of his case or the exercise by him of the power of releasing the prisoner on bail."

**93.** The aforesaid provision was substituted and Rule 412(a) of UP Jail Manual, 2022 was introduced which is extracted hereinunder:

"412. **Precautions against undue detentions—(a)** Whenever an undertrial prisoner is detained in jail for an unduly long period the Superintendent shall address the District Magistrate and the Chief Judicial Magistrate or the Sessions Judge, as the case may be, with a view to the speedy disposal of his case or the exercise by him of the power of releasing the prisoner on bail."

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<sup>48</sup> "them" is being used as a gender inclusive Pronoun in place of "him" or "her". "Them" is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

**94.** The manner of the communication with the legal adviser for a fulsome legal consultation with the prisoner are provided for in Rule 434 of UP Jail Manual, 2022 which is reproduced hereinunder:

“434. **Written communications from undertrials for legal advisers**—Any bonafide written communication prepared by an undertrial prisoner as instructions to his legal adviser shall be forwarded to that legal adviser and the Superintendent shall not disclose the contents of the communication or any portion thereof to any other person.

The following facilities shall be extended to all undertrial prisoners—

- (a) Legal defence,
- (b) Signing Vakalatnama,
- (c) Delegation of power-of-attorney,
- (d) Execution of will,
- (e) Applications for legal aid at Government cost as per provisions of law,
- (f) Other applications to Courts,”

**95.** The importance of the duties of the Jail Superintendent defined in Regulation 439(a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022 lies in the fact that they have a direct bearing on realization of the fundamental rights of life and liberty guaranteed to each prisoner under Article 21 of the Constitution of India.

**96.** Regulation 439(a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022, mandates the Jail Superintendent to be alert to prolonged imprisonment of any prisoner. The phrase “unduly long period” has to be read in light of the suggested timeline of events discussed in the later part of the narrative (see paras 111,112,113,114) Thereafter the Jail Superintendent is under an obligation of law to apply their<sup>49</sup> mind to all relevant aspects of the case and make a recommendation to the Sessions Judge/DLSA for grant of legal aid to process the bail application of the said prisoner. Some of the relevant facts and

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<sup>49</sup> “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see:Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

issues which have to be factored in while making the said recommendation for grant of legal aid are depicted in Appendix-I. In absence of such details the Jail Superintendent will be hampered in performing the duties under Regulation 439(a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022.

97. Similarly, the Rule 434 of the UP Jail Manual, 2022 contemplates effective consultations of undertrial prisoners with their legal advisers. Legal advisers may include the legal aid counsel provided by the DLSA or the trial court as the case may be. Rule 434 of the Jail Manual, 2022 also embraces bail applications. Prisoners at times cannot arrange for documents required for filing the bail application due to their imprisonment. The prisoners have to be assisted by the Jail Superintendent to obtain the said documents as per law.

**VI E. Decision making process for grant of legal aid: Relevant considerations and availability of necessary information:**

98. The process of grant of legal aid contemplates a personal interface or the interaction of each prisoner with the magistrates, trial courts, DLSAs and jail authorities. Further while processing grant of legal aid to prisoners the magistrates, trial courts, DLSAs, jail authorities also need to consider relevant facts and germane issues. Some of the facts which the learned trial courts, learned magistrates, DLSAs and the jail authorities are liable to consider in the aforesaid process are depicted in Appendix I. Absent consideration of relevant facts

or lack of easy accessibility to such factual details may vitiate the process of grant of legal aid.

**99.** Many a time the aforesaid factual details of the prisoners (whose case for grant of legal aid is under examination) are not readily available with the learned trial courts or DLSAs or the jail authorities. Individually the task of gathering such information for each prisoner by the trial court/DLSA or the jail authority may prove to be a time consuming and cumbersome exercise. The said factual information by its nature is voluminous and requires regular updation. Regular updation of such information entails collection and processing of large amounts of data. Such vast amounts of information can be managed more efficiently by use of IT. IT solutions/digital platforms can auto generate the said information in respect of each prisoner in every jail. The responsibility falls on the State Government to provide all relevant and updated details (including those appended in Appendix-I) in an auto generated form to the Jail Superintendents.

**100.** The State Government may establish appropriate coordination with the High Court. Such auto-generated information/data can be shared with District Legal Services Authorities, magistrates and trial courts in consultation with the High Court.

**101.** A lot of the data and information (depicted in Appendix I) which is required in the aforesaid process is already available on various digital platforms/digital interfaces being administered by different courts and authorities. The criminal

history of each accused is available with the police authorities in an auto generated form with the U.P. Police. As per the standard operating procedures the police authorities are also required to update the status of bail applications pending in different courts. The said procedures need to be strictly implemented. The updated status of all bail applications are posted on the High Court website which is accessible to all.

**102.** The data already available on official digital platforms can be consolidated and upgraded to include various relevant facts and details. Digital infrastructure/I.T. platforms of this nature will enhance the capacity of the trial courts, DLSAs and jail authorities to process the grant of legal aid to prisoners in an efficient manner.

### **VII. Stand of the State Government : Instructions & Affidavits**

**103.** Instructions sent by the State Government departments to the learned AGA are taken in the record. The said instructions disclose that the criminal case details of the accused are available with the police (CCTNS) which are shared with ICJS portal and the data is accessible to all pillars. The instructions also state that various coordination meetings are held under the Chairmanship of DGP, Chief Secretary, Govt. of UP regularly and requirements can be highlighted by each pillar. The said instructions also suggests that the prosecution/court need to update bail applications on relevant portals.

**104.** The affidavits have been filed on behalf of LR/Principal Secretary (Law), DG (Prisons), and Additional Director General of Police (Technical Services), Government of UP. in a

connected bail application (Criminal Misc. Bail Application No. 16379 of 2024, Kamil Vs. State of UP) are most encouraging and depict a supportive and positive role of the Government. The affidavits also acknowledge that a number of details including Appendix-I which are required for determining the need for legal aid and to process the bail applications of needy prisoners are also available on the web portals which are administered by the various stakeholders. Regular coordination meetings are also being proposed to ensure that said information can be smoothly accessed by the pillars i.e. departments/courts/jails.

**105.** From the instructions and affidavits filed by the State authorities and the submissions of learned Additional Advocate General assisted by the learned GA and learned AGA-I it is evident that the State authorities consider themselves as stakeholders and not adversaries in the controversy. The State Government/authorities have owned up to their responsibilities in regard to prisoners in need of legal aid and have acknowledged the requirement to make relevant information available to the Jail Superintendents for processing grant of legal aid to prisoners.

**106.** The State Government through the Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar Pradesh Lucknow, Additional Chief Secretary (Home), Government of Uttar Pradesh Lucknow, Director General of Police, Government of Uttar Pradesh Lucknow, Director General (Prosecution), Government of Uttar Pradesh Lucknow, Director General (Prisons), Government of Uttar Pradesh



Lucknow shall take necessary and urgent steps to provide the details of every prisoner (including those in Appendix-I) to the jail authorities and to upgrade the jail infrastructure for the said purpose.

### **VIII A. Right to Legal Aid & Quality of Legal Aid**

107. The Constitutional Courts have not been oblivious to the wide variations in the quality of legal aid and competence of defence counsels representing the prisoners.

108. The role of the court is not limited to be mere appointment of the counsel for the accused. While appointing counsels for the accused the courts have to be alert to the benchmark standards of professional expertise, diligence and integrity required for effective prosecution of the case on behalf of an accused. Furthermore the court also has to ensure that the said threshold standards are duly adhered to by the counsels at all times during the criminal proceedings. Faithful discharge of these functions by the courts not only subserves the legislative intent of Section 304 Cr.P.C./ Section 341 of BNSS, 2023 but also fulfils the constitutional guarantees of a fair trial assured to every accused. [Also see: Supreme Court in **Ramanand @ Nandlal Bharti v. State of U.P. of U.P.**<sup>50</sup>]

### **VIIIB. Right to Legal Aid and Right to seek Bail : A Composite Scheme**

109. Right to seek bail and the right to legal aid are part of an integrated scheme comprising of holdings of constitutional law and enactments of the legislature. Infact the right to seek bail has a symbiotic relationship with the right of legal aid.

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<sup>50</sup> 2022 SCC OnLine SC 1396 [Criminal Appeal No.65 of 2022]

**110.** The right to seek bail will be an illusion till the right to legal aid becomes a reality. This particularly so for a large number of prisoners belonging to marginalized classes of the citizenry and those suffering from “circumstances of undeserved want” or facing other disabling conditions which prevent them to file bail applications for lack of legal aid. Providing legal aid to this category of citizens is a prerequisite for realizing their right to seek bail and bringing their fundamental rights and liberties to fruition.

**111.** Failure to file a bail application<sup>51</sup> on a timely basis gives rise to an inference that the prisoner could not approach the Court for grant of bail due to lack of access to legal aid. An obligation is cast on the trial courts/Magistrates, the DLSAs and the jail authorities to proactively and independently examine the need of each prisoner for legal aid at each trigger event in a timeline proposed below. [Also see **Anil Gaur(supra)**]. The presumption about the need of the said class of legal aid will exist till such enquiry is completed. Thereafter legal aid shall be provided to every eligible prisoner/accused to apprise them<sup>52</sup> of the right to seek bail and to file a bail<sup>53</sup> application before the competent court. The enquiry into the need for legal aid shall be made by the magistrate, trial courts, District Legal Services Authorities, Jail Superintendents without waiting for an application from the prisoners seeking legal aid and irrespective of the fact whether the accused/prisoner is represented through a counsel before

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51 Bail application includes subsequent bail applications filed after rejection of earlier ones

52 “them” is being used as a gender inclusive Pronoun in place of “him” or “her”. “Them” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

53 Bail includes second or subsequent bail applications

the trial court or has been provided a defence counsel before the trial court. (emphasis supplied)

112. A suggested timeline of events to trigger the magistrates/trial courts, District Legal Services Authorities and the jail authorities respectively to examine the issue of grant of legal aid to advise a prisoner to file a bail application and to help process the bail application are depicted below:

**SUGGESTED TIMELINE OF TRIGGER EVENTS FOR ENQUIRY INTO NEED FOR LEGAL AID**

1.	Time period since the imprisonment when the bail application should be filed before trial court	3 months
2.	Time period when the bail application should be filed before High Court after rejection of the bail application by the trial court	6 months
3.	Time period of filing subsequent bail applications after rejection of earlier bail application by the High Court. (The process will be repeated after the time gap).	1 year Or if advised at a prior period in time.
4.	Time period for bail application after earlier bail application was dismissed for non prosecution	One week

113. Trigger event is the point in the above suggested time line when enquiry has to be made by the trial court, District Legal Services Authority or the jail authority or the Secretary, High Court Legal Services Committee into the need for legal aid of a prisoner. Thereafter the District Legal Services Authorities or the jail authority or the trial court or the magistrate shall provide legal aid to every eligible prisoner to file the bail application<sup>54</sup>. The said authorities/courts respectively shall

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<sup>54</sup> Bail application includes second or subsequent bail application

mandatorily and independently examine the case for grant of legal aid to the each prisoner.

114. It is reiterated that the above said time line is only suggestive in nature and may be shortened by trial courts/magistrates, DLSAs, Secretary, HCLSC or the jail authorities as the case may be in the facts and circumstances of each case or by means of a rule made in that regard.

115. Fundamental rights defined in the constitution are multi faceted. Often concomitant rights are derived from the constitutional text of the Fundamental Rights and evolved in holdings of constitutional country. At times concomitant rights are inalienable from the respective Fundamental Rights. The concomitant rights of the right to legal aid and right to seek bail which bring both the fundamental rights to fruition are enumerated below. The integration of various concomitant rights in the Constitutional right to life under Article 21 of the Constitution is evident from the case literature in point. In **Navtej Singh Johar v. Union of India**<sup>55</sup>, the Supreme Court referencing the importance of concomitant rights in the effectuation of the Right to Life under the Constitution held:

“483..... In the evolution of its jurisprudence on the constitutional right to life under Article 21, this Court has consistently held that the right to life is meaningless unless accompanied by the guarantee of certain concomitant rights including, but not limited to, the right to health... The right to health is understood to be indispensable to a life of dignity and well-being, and includes, for instance, the right to emergency medical care and the right to the maintenance and improvement of public health. [*CESC Ltd. v. Subhash Chandra Bose*, (1992) 1 SCC 441 : 1992 SCC (L&S) 313; *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604; *Paschim Banga Khet Mazdoor Samityv. State of W.B.*, (1996) 4 SCC 37; *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1 : 4 SCEC 453; *Devika Biswas v. Union of India*, (2016) 10 SCC 726; *Common Cause v. Union of India*, (2018) 5 SCC 1.]”

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55 (2018) 10 SCC 1

**116.** In wake of the preceding discussion, various facets of the right to seek bail and right to legal aid which are entrenched by Articles 14 and 21 of the Constitution of India and also vested by statutes can be summed up as follows:

(a) Every prisoner has a right to promptly seek bail from the competent court. This right includes the right to file subsequent bail applications after rejection of the earlier bail applications.

(b) Every prisoner has to be apprised of the right to seek bail at various stages of the criminal law process/ trigger events in the suggested time line by the magistrate, trial court, DLSA and superintendent of jail (A suggestive time line has been drawn up in the preceding part of the narrative, See: Paras 111,112,113,114)

(c) Every eligible prisoner is entitled to legal aid to file a bail application<sup>56</sup> at every such stage/ trigger events in the suggested time line. (A suggestive time line has been drawn up in the preceding part of the narrative, See: Paras 111,112,113,114). The said stages in the timeline are the “trigger events” for the learned trial courts, magistrates and DLSAs to process the grant of legal aid to each prisoner.

(d) Every prisoner has a right to timely and updated information about the status of their<sup>57</sup> bail application.

(e) Every prisoner has a right to be informed of the steps taken by their counsel/DLSA for effective and diligent prosecution of the bail application to ensure its early hearing.

<sup>56</sup> Bail application includes subsequent bail applications filed after rejection of earlier ones

<sup>57</sup> “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

(f) Delay in filing and hearing of the bail application frustrates the right to legal aid and defeats the right to seek bail.

**117.** Various statutes contain provisions for grant of legal aid to prisoners. Several statutory authorities/Courts under the respective statutes are vested with the powers and charged with the duties to provide legal aid to eligible persons. The overarching intent of different statutes is to undertake multipronged efforts to provide legal aid to needy prisoners. The task before this Court is to distil the statutory duties of the courts and authorities under the said enactments and to create concert between them to achieve the statutory aims.

### **IX. Charter of Prisoners' Rights**

**118.** The rights of prisoners distilled in para 116 shall be called the "Charter of Prisoners' Rights". The aforesaid paragraph 116 (alongwith those mentioned therein) shall be translated in Hindi (alongwith the other paragraphs mentioned therein) and posted at every barrack in every jail. The Charter shall be read out to the prisoners on national festivals like August 15, October 2 and January 26.

### **X. Duties of the magistrates / trial courts / DLSAs / jail authorities :**

**119.** In wake of the preceding discussion it can be safely stated that an ironclad obligation is made by law upon the learned magistrate, learned trial courts, DLSAs and jail authorities to realize the rights of a prisoner to legal aid and to seek bail. The

duties of the magistrates/trial courts/DLSAs/HCLSC/jail authorities are summed up as follows:

**A. The duties of the magistrate/trial courts:**

I. The learned trial court/learned magistrate shall examine whether the accused/prisoner appearing before them<sup>58</sup> has been apprised of the right to file a bail application at different stages or trigger events in the suggested timeline and whether such right has been exercised (See: Paras 111,112,113,114 of this judgment) and the eligibility of said accused for legal aid.

II. The learned magistrate/learned trial court after the above consideration at the occurrence of the trigger event or expiration of the time limit in the suggested time frame (see: Paras 111,112,113,114) shall make a finding on the need/eligibility of the prisoner for legal aid and exercise either of the following options:

a) The learned magistrate or learned trial court shall send a requisition to the District Legal Services Authority or the Secretary, High Court Legal Services Committee to provide legal aid to the prisoner to apprise them of the right to seek bail<sup>59</sup> and to file the bail application before the competent court.

b) The learned magistrate or learned trial court may pass orders for grant of legal aid to the accused/prisoner for the above said purpose.

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<sup>58</sup> “them” is being used as a gender inclusive Pronoun in place of “him” or “her”. “Them” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

<sup>59</sup> bail includes subsequent bail applications

III. There are many prisoners who face trial in a district court but are lodged in a jail in another district. The learned magistrate/trial court shall recommend grant of legal aid to the District Legal Services Authorities of either district.

Alternatively the learned magistrate or learned trial court, can pass orders for grant of legal aid to the accused/prisoners.

IV. To process the need for legal aid the learned magistrate/learned trial court can rely on the materials in the record, and may also seek the necessary information (suggested details in Appendix-I) from any competent authority which can furnish the said information including Public Prosecutor/ State, Police authorities, District Legal Services Authorities, Jail authorities, High Court Registry or official websites which can be legally accessed. (At a later stage the said details shall be made available to the learned magistrate/ learned trial court in an auto-generated form by the competent authorities).

V. The learned magistrate/ learned trial court may take any other step or measure to realize the rights of prisoners to legal aid and to seek bail respectively and to implement this judgement.

VI. The learned magistrate/learned trial court shall examine the need of legal aid irrespective of whether



such prisoner is represented by a local counsel at the trial or has been provided with a defence counsel.

VII. After the rejection of any bail application the learned trial court/learned magistrate are directed to ensure that the trial process is expedited in strict adherence to provisions of Section 309 Cr.P.C. and in conformity with fundamental principle of fair trial. In doing so the trial court shall be guided by the law laid down by this Court in **Bhanwar Singh @ Karamvir Vs. State of U.P.**<sup>60</sup> and **Noor Alam Vs. State of U.P.**<sup>61</sup>.

### **B. Duties of District Legal Services Authorities:**

**120.** In wake of the preceding discussion the duties of the District Legal Services Authorities are summed up as follows:

I. The District Legal Services Authorities shall maintain records of each prisoner containing all information required for determining the need of a prisoner for legal aid and to file a bail application before the competent court. A suggested framework of such details is appended as appendix-I which can assist the District Legal Services Authorities to perform its functions.

II. As of now the DLSAs may utilize the available resources like Allahabad High Court Website, obtain information from authorities and “any other official resources/digital platforms” they can lawfully access.

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60. 2023 SCC OnLine All 734

61. 2024 (5) ADJ 766

III. The task of gathering the aforesaid factual details (Appendix-I) is undoubtedly a time consuming exercise. The DLSAs may also need additional resources. The DLSAs may consider feasibility of taking the assistance of para legal volunteers and law students for collecting the said factual details. The DLSAs may also make local innovations with the existing resources to create the database of the said details. (Appendix-I) (At a later stage the said details shall be made available to the DLSA in an auto generated form by the competent authorities).

IV. To inform every prisoner of their<sup>62</sup> right to legal aid to file a bail<sup>63</sup> at different stages/proposal timeline/trigger events (as discussed earlier in Paras 111,112,113,114).

V. To provide legal aid to every eligible prisoner at different stages/trigger events in the proposed time lines (as discussed in Paras 111,112,113,114) to file the bail<sup>64</sup> application before the competent court.

VI. To ensure relevant documents and informations and other requisite assistance are provided to legal aid counsels and assist in any other manner to facilitate the filing of the bail application.

VII. To update the said prisoners on their status of the bail applications.

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62 “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see : Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

63 bail includes subsequent bail applications

64 Bail includes subsequent bail application.

VIII. To constantly oversee diligent prosecution and steps taken by the legal aid counsel to ensure an early hearing of the bail application so filed and keep a record of the same.

IX. To ensure proper coordination with the learned trial courts, HCLSC and District Jail Authorities.

X. To strictly comply with the directions issued in **Anil Gaur (supra)** in the case of prisoners whose cases are pending in other district and in this case.

XI. To take any other step or measure to realize the rights of prisoners to legal aid and to seek bail respectively and to implement this judgement and the judgment in **Anil Gaur (Supra)**.

[Note: Also see para 111]

### **C. Duties of Secretary, High Court Legal Services Committee:**

**121.** In wake of the preceding discussion the duties of the Secretary, High Court Legal Services Committee are summed up as follows:

I. Secretary, High Court Legal Services Committee shall ensure proper coordination with the District Legal Services Authority and jail authorities to comply with the directions in **Anil Gaur (supra)** as well as this case.

II. To facilitate filing of the bail application and to ensure that the bail applications<sup>65</sup> filed through legal

<sup>65</sup> bail includes subsequent bail applications

aid counsels before the High Court are diligently prosecuted.

III. To provide necessary support (if needed) to all DLSAs to gather the details appended as Appendix-I.

IV. To take any other step or measure as deemed fit to implement the judgement of this Court in **Anil Gaur (supra)** as well as this case

#### **D. Duties of Secretary, State Legal Services Authority:**

122. In wake of the preceding discussion the duties of the Secretary, State Legal Services Authority are summed up as follows:

A. To take steps as deemed fit to implement the directions of this Court in **Anil Gaur (supra)** and this case.

#### **E. Duties of District Judges/Sessions judges:**

123. In wake of the preceding discussion the duties of the District Judges/Sessions judges are summed up as follows:

I. Every learned Sessions Judge/District Judge shall regularly supervise the implementation of the directions of this Court in **Anil Gaur (supra)** and this judgement as well and constantly alert the respective learned magistrates, learned trial judges, DLSAs and jail authorities to their mandatory duties as outlined in this judgement and **Anil Gaur (supra)** and hold them to account if required.

II. In every district the District Judge shall support and guide the DLSA to gather the aforesaid details depicted in Appendix I from avoidable legal sources. All authorities shall abide by the directions of the learned District Judge in this regard. Local innovations at the district level will play a prominent role in collecting the said information (Appendix I) in a quick time frame<sup>66</sup>. It is open to the learned Sessions Judge/District Judge to look into the feasibility of taking the assistance of para legal volunteers and law students to achieve this task.

III. To take status reports from DLSA, magistrates, trial judges at least once in three months.

IV. Every learned Sessions Judges/District Judges shall take steps to ensure coordination between trial courts, DLSA, Secretary SLSA, jail authorities, police authorities, district administration, Secretary HCLSC and High Court Registry for effective implementation of this judgment.

V. It is open to every learned District Judge/Sessions Judge to devise or evolve procedures and take any other steps to support effective implementation of the directions of this Court in **Anil Gaur (supra)** and this judgment in letter and spirit.

VI. This procedure shall be followed till the High Court and the State Government are in a position to

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<sup>66</sup> In this regard a pilot project initiated at the District Jail, Meerut by the District Judge, Meerut may be studied and developed further

provide I.T. solutions/digital infrastructure providing auto-generated the information for readily accessing the said details (including in Appendix I).

**F. Duties of Jail Superintendent/Competent Jail Authority :**

**124.** In wake of the preceding discussion the duties of the Jail Superintendent/competent jail authority in every district are summed up as follows:

I. Shall maintain records of each prisoner in the respective jails containing various details and information required for determining the need of the prisoner for legal aid and to file bail applications before the competent courts. A suggestive framework of such details is appended as Appendix-I.

II. To coordinate with District Legal Services Authorities and Secretary High Court Legal Services Committee.

III. To inform every prisoner of their right to legal aid to file a bail<sup>67</sup> at different stages/proposal timeline/trigger events (as discussed earlier in Paras 111,112,113,114), and the Charter of Prisoners' Rights.

IV. To send requisition to DLSA and the Secretary, HCLSC to facilitate filing of the bail applications of needy/eligible prisoners at different stages /timelines/trigger events (discussed earlier in Paras 111,112,113,114) through the legal aid counsel.

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<sup>67</sup> bail includes subsequent bail applications

V. To assist legal aid counsel in securing all relevant details and documents from lawful sources for filing the bail application like criminal history of the respective accused and the status of other criminal cases pending against them.

VI. To ensure that full and updated status of the bail applications of each prisoner as available on the High Court website is made accessible to them.

VII. To implement the mandate of Regulation 439(a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022 in light of this judgement.

VIII. To make arrangements for video conferencing of prisoners and their counsels (particularly High Court counsels) in tandem with DLSA/Secretary HCLSC.

IX. To submit a bimonthly report regarding compliance of these directions to the Director General of Prisons. The Director General of Prisons shall prepare a detailed report on a quarterly basis depicting compliance of the directions issued in this judgment.

X. To take any other step or measure to realize the rights of prisoners to legal aid and to seek bail respectively and to implement this judgement.

#### **G. Duties of the State Government:**

I. The State Government through Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar

Pradesh Lucknow, Additional Chief Secretary (Home), Government of Uttar Pradesh Lucknow, Director General of Police, Government of UP, Director General (Prosecution), and Director General (Prisons), Government of Uttar Pradesh, Lucknow to take steps in coordination with each other to provide the details of every prisoner comprised in Appendix-I to this order and any other relevant information to the Jail Superintendent/competent jail authority in every district of the State to facilitate the process of grant of legal aid and to file bail application of prisoners from jail.

II. The State Government through Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar Pradesh Lucknow, Additional Chief Secretary (Home), Government of Uttar Pradesh, Director General of Police, Director General (Prosecution) and Director General (Prisons), Government of Uttar Pradesh make efforts to develop I.T. solutions to provide the relevant information (including details in Appendix-I) in an auto generated form to the Jail Superintendent/competent jail authorities of every district. The said IT solutions/platform may be shared with the DLSAs, magistrates and the trial courts.

III. The State Government shall ensure that the different departments of the State work in tandem to achieve the aforesaid task of realizing the fundamental rights of disadvantaged prisoners as discussed in this order.



IV. The State Government through Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar Pradesh, Lucknow, Additional Chief Secretary (Home), Government of Uttar Pradesh, Lucknow shall examine the quarterly reports submitted by the Director General (Prisons) as regards providing legal aid in terms of the directions in this judgement and to take appropriate action thereon.

V. The State Government through Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar Pradesh Lucknow, Additional Chief Secretary (Home), Government of Uttar Pradesh Lucknow, Director General of Police, Director General (Prosecution) and Director General (Prisons), Government of Uttar Pradesh, Lucknow take any other action to facilitate the implementation under Rule 412 of the Jail Manual, 2022 by Jail Superintendent in light of this judgement.

**Suggestions to facilitate the realization of fundamental rights of prisoners and implementation of the legislative mandate of LSA Act, 1987 and Section 304 Cr.P.C., Rule 37 of General Rules (Criminal) as determined in this judgement**

I. The implementation of this judgment as well as **Anil Gaur (supra)** has to be made by the respective magistrates, trial courts, and DLSAs and the Jail Superintendent/competent jail authority of the district, and Secretary HCLSC. However systemic support from the High Court, State Government will facilitate the realization of fundamental rights of prisoners and

faithful implementation of the legislative mandate of Section 304 Cr.P.C., LSA Act, 1987, Rule 37 of General Rules (Criminal) and Regulation 439 (a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022 by the concerned courts and authorities respectively.

#### **H. Registrar General of High Court:**

**Suggestive measures to the learned Registrar General of High Court for effective implementation of the rights of the accused persons as discussed in this judgment. (Note: These are only suggestive measures and not directions)**

I. To render all assistance to the learned magistrates/ trial courts/DLSAs for obtaining the current details as are currently available with the High Court in respect of every prisoner suggested in Appendix-I from the existing infrastructure and IT resources.

II. To provide infrastructural support system including digital infrastructure and IT solutions to the learned magistrates, learned trial courts, DLSAs as may be required for effective implementation of the directions in this judgement and in order to realize the fundamental rights of the prisoners to legal aid for seeking bail from the competent court.

III. The capacity of the magistrate, trial courts and the DLSAs to provide legal aid to prisoners will be greatly enhanced if relevant details (including those suggested in Appendix-I) are made available to them in an auto generated form. Steps may be taken to achieve this goal.

IV. To establish necessary coordination with the State Government to implement the judgment including sharing of relevant information on existing IT Platforms being administered by the State pillars/verticals.

V. The Registrar General may implement the above directions only if necessary permissions/directions on the administrative side are forthcoming.

### **I. High Court**

I. To frame Rules to facilitate filing of Jail Bails (in the manner of Jail Appeals).

### **XI. Right to fair and expeditious trial:**

**125.** The right to a speedy trial has been exalted as a fundamental right in constitutional law. **Hussainara Khatoon and others (I) v. Home Secretary, State of Bihar**<sup>68</sup> recognized the right of speedy trial of a prisoners flowing from Article 21 of the Constitution of India “to be implicit in the broad sweep” of Article 21 of the Constitution.

**126.** The legislature was also cognizant of the need to continue the trial proceedings if necessary on a day to day basis until all witnesses in attendance has been examined. Section 309 Cr.P.C. may be extracted with profit:

**“309. Power to postpone or adjourn proceedings-**

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

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68. (1980) 1 SCC 81

(2). If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

127. When the bail application of an accused/prisoner is rejected by the trial court, the obligation to expedite the trial of such accused becomes much stronger. This Court in **Bhanwar Singh (supra) & Jitendra v. State of U.P.**<sup>69</sup> had examined one of the persisting causes for delays in the trial. The cause which arose for consideration in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** was the inability of the police authorities to serve summons and execute coercive measures taken out by the courts to compel appearances of the witnesses on a timely basis. In this context this Court had issued various directions to make the police authorities accountable to the courts for their failure to serve summons or execute coercive measures to compel appearance of witnesses. The Director General of Police,

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69. (Criminal Misc. Bail Application No.9126 of 2023)

Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out relevant orders in compliance of judgements of **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** which included nomination of nodal police officials for every district in U.P. who are charged with the duty to complete the aforesaid tasks with promptitude. The trial courts are also vested with the duty to ensure strict compliance of the judgements of this Court in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)**.

128. The other cause for delay in trial which also a widespread problem was the lawyers' abstaining from work on account of strike calls and declining to examine witnesses on the appointed dates before the trial court. The attempt was made to address the problem by calling the Bar Council of Uttar Pradesh to clear its stand on the subject. Upon consideration of the aforesaid stand of the Bar Council of Uttar Pradesh which supported the cause of justice against striking lawyers, various directions were issued in **Noor Alam Vs. State of U.P.**<sup>70</sup>. The judgement of **Noor Alam (supra)** is also liable to be implemented strictly by the trial court in the aforesaid cases.

## **XII. Anil Gaur @ Sonu @ Sonu Tomar Vs. State of U.P.**

### **A. Post Script**

129. In **Anil Gaur (supra)** it was observed "Injustice is the birthmark of a slave nation. Justice is the birthright of a free people and our Constitution says they shall have it."

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70. 2024 (5) ADJ 766

**130.** Thereafter upon noticing repeated instances of miscarriages of justice due to denial of legal aid **Anil Gaur (supra)** recorded the distress of the Court:

“59. The failure of justice in the said cases was occasioned by poverty, social exclusion, legal illiteracy, impersonal administration and denial of legal aid.” “For them the glorious dawn of the 75<sup>th</sup> year of independence has lost the sheen of freedom’s ideals and the substance of the republic's promise.”

**131.** However, the Court regrets to say that substantial improvement in the state of the prisoners cannot be seen despite a clear mandate of the legislature in the LSA Act, 1987 and explicit directions of this Court in **Anil Gaur (supra)** to the concerned authorities under the said Act.

**132.** Violation of directions in **Anil Gaur (supra)** causing prolonged imprisonment of prisoners of this class has come to light in a larger number of cases. The concerned DLSAs were also noticed from time to time on the need to work scrupulously for realizing the rights of prisoners as per the mandate of the LSA Act, 1987 and directions in **Anil Gaur (supra)**. Non compliance or at any rate lack of effective implementation of the directions in **Anil Gaur (supra)** has caused manifest injustices, “upon which it is difficult to speak, and impossible to be silent”<sup>71</sup>. Exactions of injustice can be more severe than the curse of poverty. Prompt implementation of the directions in **Anil Gaur (supra)** (as well as in the instant case) and accountability for failure have to go hand in hand if the legislative object of legal aid for

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71 Edmund Burke

prisoners is to be achieved and their constitutional rights are to be realized.

**133.** This Court in **Anil Gaur (supra)** after noticing the grave consequences of failure to provide legal aid to prisoners suffering from conditions of want or other disabling circumstances had called for institutional introspection:

“61. All stakeholder institutions have to pause and reflect. The judiciary too have to turn the searchlights inwards. The courts have the power to judge, but cannot escape the judgement of the nation's collective conscience. Independence of judiciary is strengthened by honest introspection and self correction.”

**134.** But the preceding narrative goes to show that much more needs to be done. Hence apart from renewing the call for introspection within the institution, this Court would now insist on a system of accountability in the institution.

**135.** Many prisoners of this class who are forgotten by fellow Indians and go unheard by the courts and remain unwept by their<sup>72</sup> families would even question the meaning of life:

"ज़िंदगी से बड़ी सज़ा ही नहीं  
और क्या जुर्म है पता ही नहीं" <sup>73</sup>

**136.** The fate of these voiceless prisoners is a muted indictment of the system. If the silent indictment by the disadvantaged is not heeded, the vocal censure of history will

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72 “their” is being used as a gender inclusive Pronoun in place of “his” or “her”. “Their” is used as a singular in such situations. [see: Time (Everything You Ever Wanted to Know About Gender-Neutral Pronouns)]

73 कृष्ण बिहारी 'नूर

impose heavy forfeits. The facts of these cases and those discussed by way of exemplars will shock the conscience of any court and give good reason to go back to the founding ideals of the Republic and the first principles of judicial ethics.

**137.** The Supreme Court has exalted the rights of prisoners to legal aid and to seek bail in constitutional law discourse and irretrievably embedded them in the charter of fundamental rights. The legislature took cognizance of the plight of undertrials belonging to marginalized sections of the society living under circumstances of destitution and want. The farsighted legislative enactments contain comprehensive schemes to reach legal aid to such citizens and secure justice to them.

**138.** The State Government too rose to the occasion by sanctioning the post of DLSA in every district and by emphasizing its commitment to implement the LSA Act, 1987 and judgments of the Supreme Court.

**139.** The conditions of service of judicial officers in the State are most exemplary. The salary scales, perks of judicial office, conditions of service and the environment of functioning provide the most conducive support systems to serve fair justice to all citizens. Infact they never had it so good! After being so well provided for by the Government and protected under the Constitution no excuse for failure is good enough. Infact the stakes cannot be higher and failure is



not an option. Availability of wherewithal and absence of results can be compared to the instance cited in “ In the Service of Free India” by B. D. Pande.<sup>74</sup> The systemic inability to implement the directions in **Anil Gaur (supra)** has to be recognized and redressed urgently.

**140.** Aspiring to perks of office and savouring the privileges of power are the attributes of an entitlement culture and not the elements of the judicial ethos. Judicial ideals put power in the service of justice and employ office to uphold the law. The hallmark of judicial values is to serve and not to be.

**141.** The citizens’ faith in the judiciary has elevated judicial decision making to a high moral ground. But trust of the citizenry and respect of the Government bring great responsibility to the judiciary. Judicial decision making has to be alert to pitfalls which can vitiate the judicial process.

**142.** When judicial conscience is not shocked at the denial of right of legal aid to prisoners, or when apathy to the legislative mandate informs judicial functioning, or when the holdings of Constitutional Courts are violated with impunity a crisis point will be reached. The situation will result in miscarriages of justice which will bring discredit to the process of the courts. In that event the judiciary will have to yield the moral high ground and the foundations of a just State shall be shaken.

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<sup>74</sup> **In the Service of Free India ~ by B. D. Pande** “At this stage this gentleman told us a tale that I never quite forgot. He spoke of a newly married couple, the husband went out to work and the wife started to cook with the help of a cookery book. She put in all the ingredients as directed and waited. The husband came back and asked if the food was ready. She said she had been waiting but it was not ready. He looked down and found she had not lit the fire. The cookery book did not say ‘light the fire’. So what was happening in India was that, although we had all the necessary wherewithal for tremendous advance, the ‘fire’ was somehow missing. Who will light it and when?”

**143.** This Court is not assessing blame and the same is not remit of this discussion. The purpose of these observations is to shine light on the task before various institutional stakeholders. The stakeholders have to ensure that the luminous legislative mandates of the LSA Act, 1987 and Section 304 Cr.P.C., Rule 37 of General Rules (Criminal) and the laudable object of Regulation 439 (a) of the Jail Manual/ Rule 412(a) of UP Jail Manual, 2022 read with Rule 434 of Jail Manual, 2022 and the radiant vision of the holdings of the Supreme Court putting the plight of disadvantaged prisoners at the summit of constitutional goals are not frustrated for some want in the judicial system or deficiency in the administration of prisons.

### **B. Lessons Drawn**

**144.** Hearing of the connected bail applications and also those referenced in the narrative gave valuable insights in the impediments faced by prisoners of the deprived classes to file bail applications.

**145.** Many prisoners of this class are unable to provide details of their criminal history without assistance. However, explanation of criminal history is a sine qua non for deciding a bail application. Criminal antecedents cannot be neglected from consideration by the courts while deciding bail applications of the accused. The right to seek bail of such prisoners cannot be postponed indefinitely for want of updated criminal history. This presents a dilemma to the courts and poses a challenge to the legal aid framework. The

situation can be remedied by concerted actions of various statutory agencies and the State authorities. The State shall ensure that such details are always available with the jail authorities and provided to the prisoners/their legal counsel.

**146.** During the course of various hearing of bail applications, responses of the DLSAs regarding failure to comply with **Anil Gaur (supra)** highlight various systemic deficiencies which need correction. The said DLSA reports variously justified denial of legal aid to the said class of prisoners on the following grounds:

- i. No application for grant of legal aid was filed by the prisoner before the DLSA.
- ii. The prisoner had engaged a private counsel at the trial court.
- iii. A defence counsel/legal aid counsel had been appointed to represent the prisoner at the trial proceedings.
- iv. The legal aid counsels had met the prisoners during jail visit but no demand for legal aid was made by the prisoner.

**147.** I am afraid, the responses or the aforesaid justifications tendered by the DLSAs in various cases for not providing legal aid show a complete misreading of the judgement of this Court in **Anil Gaur (supra)** and a misconception of their own duties under the LSA Act, 1987 and right of legal aid propounded in holdings of the Supreme Court. As held earlier the DLSAs shall independently examine the need for legal aid for every prisoner without waiting for an application from

such prisoner or being influenced by the fact that the prisoner has a private counsel or has been provided with a defence counsel in the trial court.

**148. I would hasten to act that none of the observations should be construed as an adverse comment on any judicial officer. Rather these should be examined in the context of systemic infirmities which call for corrective measures.**

**149.** In matters of liberty each moment is an eternity. There is not time to lose. This is a most opportune moment for this Court to reaffirm that circumstances of want cannot deny Indian citizens fair justice and the fruits of liberty under the Indian Constitution. The Constitution of India holds the irrevocable guarantee of equal justice to all citizens, and all institutions of governance bear the inflexible resolve to redeem the pledge.

### **C. The Road Ahead**

**150.** There is an urgent need for the JTRI, Lucknow and the learned District Judges to study the aforesaid systemic faults in depth and create appropriate programmes for learned magistrates, trial judges and DLSAs to sensitize them to their statutory duties towards under trial prisoners and to their obligations to bring the fundamental rights of the aforesaid class of prisoners (as discussed in this judgment) to fruition.

**151.** The power of superintendence conferred upon the High Court by Article 227 of the Constitution of India contemplates the role of a benign guardian for the High Court

which has to provide the necessary support systems through administrative measures and other guidance as may be deemed fit.

**152.** Upgradation of digital infrastructure and creation I.T. solutions and digital platforms for autogenerating the requisite information and facts (including those depicted in Appendix I) will play a critical role in achieving the task of processing legal aid to needy prisoners. Only when the magistrates, trial courts, DLSAs and jail authorities have smooth access to the said information can the legislative aims of Section 304 Cr.P.C., the Legal Services Authority Act, 1987 and the Jail Manual be achieved in letter and spirit.

**153.** The facts of the cases and the fate of the prisoners which have been examined go to the heart of constitutional values and the *raison detre* of the High Courts. In view of the matter being of great moment, a copy of this judgment be respectfully placed before the pater familias the Hon'ble Chief Justice of High Court of Judicature at Allahabad.

### **XIII. Order in Bail Application**

**154.** Matter is taken up in the revised call.

**155.** By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 44 of 2008 at Police Station Jahangirabad, District Bulandshahar under Sections 394/302 IPC.

**156.** The applicant is on interim bail granted by this Court on 16.07.2022.

**157.** The following arguments made by learned amicus curiae on behalf of the applicant, which could not be satisfactorily refuted by learned AGA from the record, entitle the applicant for grant of bail:

I. The applicant has been falsely implicated in the instant case.

II. The applicant was not named in the FIR.

III. No incriminating article has been recovered from the applicant.

IV. The applicant does not have any motive to commit the offence.

V. Prosecution evidence does not connect the applicant with the offence.

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

VII. The applicant never influenced any witness or tampered with the evidence.

VIII. The applicant never adopted any dilatory tactics or impeded the process of the trial.

IX. The trial is on foot. The trial is moving at a snail's pace and is not likely to conclude anytime in the near future. The applicant is not responsible for the delay in the trial.

X. The applicant has already undergone more than 14 years of imprisonment as an undertrial.

XI. The trial is not likely to conclude soon due to heavy docket of the trial court.

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

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

**158.** In the light of the preceding discussion and without making any observations on the merits of the case, the bail application is allowed.

**159.** Let the applicant- **Ramu** be released on bail in the aforesaid case crime number based on personal bond and sureties given earlier before the learned trial court at the time the applicant was released on interim bail. No further sureties will be demanded from the applicant. The following conditions be imposed in the interest of justice:-

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

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

**Copy of this order:-**

**160.** Registry shall forthwith ensure service of copy of this order on:

I. Secretary, High Court Legal Services Committee

II. Director, JTRI, Lucknow

III. All District Judges (for circulation amongst the trial courts, DLSAs in the respective judgeships)

IV. Secretary, State Legal Services Authority

**161.** Government Advocate to ensure copy of this judgement on:

I. Law Remembrancer (L.R.)/Principal Secretary (Law), Government of Uttar Pradesh Lucknow,

II. Additional Chief Secretary (Home), Government of Uttar Pradesh Lucknow,

III. Director General of Police, Government of Uttar Pradesh Lucknow,

IV. Director General (Prosecution), Government of UP

V. Director General (Prisons), Government of Uttar Pradesh Lucknow

**162.** A Hindi translated copy of this order shall be provided to the accused in the respective jails through the concerned District Legal Services Authority.

**XIV. Acknowledgements of the role of the Bar & and the State:**

**163.** The discussion cannot conclude without acknowledging the role of the Bar and other stakeholders.

**164.** In the highest traditions of this Court and the profession, the learned Senior Counsels with their assisting counsels,



learned amicus curiae and learned counsels on behalf of the respective applicants have argued with ability and scholarship.

**165.** This Court would like to record appreciation of the assistance rendered by Shri Ashok Mehta, learned Additional Advocate General, assisted by Shri A.K. Sand, learned Government Advocate and Shri Paritosh Kumar Malviya, learned AGA-I.

**166.** The Court also commends the positive approach of the State Government in the matter and its genuine concern for providing all support to the disadvantaged class of prisoners to enable them to realize their rights to legal aid and to seek bail from the competent courts.

**Order Date :-** 07.08.2024  
Kumar Dhananjai

## **i Appendix-I**

### **I. Date of Imprisonment**

### **II. Type of warrant of commitment with dates**

- (i) Custody warrant
- (ii) Sentence warrant
- (iii) Production warrant

**III. Time frame triggers suggested in the judgment: Specific dates in the facts of the case and action taken thereon. (To be filled by the trial court, DLSA, Jail Superintendent respectively and independently). Systems to alert the stakeholders to the appointed dates may be built into the system.**

### **IV. Bail before trial court**

- (a) Date of filing and details
- (b) Status -Pending/Decided
- (c) Date of bail rejection by the trial court

### **V. Bail before the High Court**

- (a) Date of filing and details
- (b) Status – pending/Decided
- (c) Past dates of listings of bail application
- (d) Likely dates of listing of bail application
- (e) Ordersheet of bail application

### **VI. Subsequent bails before the High Court:**

- (I) Date of rejection of earlier bail applications by High Court
- (II) Copy of the bail rejection order
- (III) Court in which the subsequent bail application has been filed
- (IV) Date of filing of subsequent bail applications
- (V) Past dates of listing of bail application
- (VI) Likely date of listing of bail application
- (VII) Ordersheet of the bail application

### **VII. Criminal history of accused with status of bails and the cases**

### **VIII. Details of Counsel:**

- (I) Name -
- (II) Enrollment Number of UP Bar Council -
- (III) Enrollment Number of Bar Association(High Court/District Court) -
- (IV) Mobile No. -
- (V) Address -
- (vi) E-mail id -

**Order Date:- 07.08.2024**

Kumar Dhananjai