GULABRAO BABURAO DEOKAR
v.
STATE OF MAHARASHTRA & ORS.
(Criminal Appeal No. 2113 of 2013)

DECEMBER 17, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Bail – Cancellation of – Propriety – Economic offences – Defalcation of public money resulting into huge loss to the City Municipal Corporation – Number of accused including the appellant – Offence alleged punishable with imprisonment for life – Appellant granted bail by the Sessions Judge u/s.439(1) CrPC – High Court, however, allowed application filed by respondent Nos.2 to 4 u/ss.439(2) and 482 CrPC and cancelled the bail granted to the appellant – On appeal, held: Order passed by the Sessions Court was an order passed in breach of the mandatory requirement of the proviso to s.439(1) CrPC – The Sessions Court did not grant proper and full opportunity to the prosecutor to point out as to why bail should not be granted to the appellant – Order passed by the Sessions Court was perverse since none of the factors pointed out by the prosecutor were considered by it – When the prosecutor had pointed out to the Sessions Court that the role of the appellant was no less than that of the three other accused whose bail had been rejected, the Sessions Court ought to have considered these circumstances, justifying custodial interrogation, with due diligence – High Court is empowered u/s.439(2) CrPC to set aside an unjustified, illegal or perverse order granting bail – On facts, the order passed by the High Court recorded cogent and overwhelming circumstances justifying cancellation of bail – Besides, as attempts were made by the appellant to pressurize the witnesses and even the investigating officer, the order of the High Court cancelling the bail cannot be faulted on that

A *ground also – However, trial of this nature, for that matter every trial, ought to be conducted in a free and fearless atmosphere – Trial of the Sessions case in question accordingly transferred to the adjoining district in the peculiar facts and circumstances of the case – Code of Criminal Procedure,*
B *1973 – ss.439 and 482 – Penal Code, 1860 – ss.120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 r/w s.34 – Prevention of Corruption Act, 1988 – s.13(2) r/w s.13(1)(c) and 13(1)(d).*

The appellant (alongwith 56 others) was charged for offences under Sections 120-B, 406, 409, 411, 420, 465,
C **466, 468, 471, 109 read with Section 34 IPC, and under Sections 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The charge-sheet was essentially about defalcation of public money resulting into a huge loss of over Rs.169.60 crores to the**
D **Jalgaon Municipal Corporation in Maharashtra. It was *inter alia* alleged against the appellant that the Jalgaon Municipal Corporation had illegally given more than 30 contracts to the Construction Company belonging to the appellant as a beneficiary in the conspiracy. Accused no.**
E **31 to 50 including the appellant were granted bail by the Sessions Judge under Section 439(1) CrPC. The High Court, however, by the impugned order allowed the application filed by respondent Nos.2 to 4 under Section 439 (2) and 482 of CrPC and cancelled the bail granted**
F **to appellant.**

The question which arose for consideration in the present appeal was whether the High Court erred in cancelling the bail granted to the appellant.

G **Dismissing the appeal, the Court**

HELD:1.1. In the instant case, the Sessions Court had not complied with the mandatory proviso to Section 439(1) CrPC which lays down that before granting bail to
H **a person who is accused of an offence which is**

punishable with imprisonment for life (as in the case of appellant), and which is exclusively triable by the Court of Sessions, it shall give a notice of the application for bail to the public prosecutor. In the instant case, the appellant appeared before the Sessions Judge, when his application for bail was taken up for consideration. The Sessions Judge passed an order 'I.O. to say' but the matter was taken up there and then. The notice under the proviso under the Section 439 (1) implies a proper and full opportunity to the prosecutor to point out as to why bail should not be granted. The initial chargesheet in the instant case was itself running into more than 268 pages. The Sessions Judge ought to have granted adequate time to the prosecutor to reply on the basis of this chargesheet, for him to pass a considered order. Consequently the order of bail does not reflect upon the contents of the charge sheet. [Para 23] [1199-G-H; 1200-A-D]

1.2. As pointed out by the Investigating Officer [Deputy S.P., Jalgaon] in his affidavit that although the matter was heard there and then, the prosecutor did make a detailed argument pointing ought the prima facie case against the appellant. The past conduct of the appellant after the registration of the present crime was also pointed out in detail as well as his criminal antecedents with proof, and also the fact that the bail applications of 3 of the main accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The order passed by the Trial Court was thus a perverse order since none of these factors were considered by the Court. [Para 24] [1200-E-G]

1.3. The prosecutor applied for remand of at least 2 days which was declined. Obviously the prosecutor

A required time to interrogate the accused, and the custodial interrogation in such a situation, for at least two days, could not have been denied. It could have aided the investigation by unearthing relevant information. The bail order was however passed on the same day, there and then. Though the liberty of a citizen even if he is an B accused is undoubtedly important, but at the same time when the prosecutor had pointed out to the Court that the role of the appellant was no less than that of the three others whose bail had been rejected, the Judge ought to have considered these circumstances, justifying C custodial interrogation, with due diligence. [Paras 23, 25] [1200-C; 1201-A-D]

1.4. The order passed by the Sessions Judge was an order passed in breach of the mandatory requirement of D the proviso to Section 439(1) of Cr.P.C. It is also an order ignoring the material on record, and therefore without any justification and perverse. The High Court does have the power under Section 439 (2) of Cr.P.C. to set aside an unjustified, illegal or perverse order granting bail. This is E an independent ground for cancellation as against the ground of accused mis-conducting himself. [Para 26] [1201-D-F]

1.5. In the instant case, the attempts made by the appellant to pressurize the witnesses and even the F investigating officer are clearly placed on record through the affidavit of the Deputy S.P. (the Investigating Officer). On that ground also it could be said that the appellant will be pressurizing the witnesses if he is not restrained. This being the position, one cannot find any fault with the G order of the High Court cancelling the bail on that ground also. The order does record the cogent and overwhelming circumstances justifying cancellation of bail. The nature and seriousness of an economic offence and its impact on the society are always important

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considerations in such a case, and they must squarely be dealt with by the Court while passing an order on bail applications. [Para 27] [1201-F-H; 1202-A]

1.6. The objection raised by the appellant that respondent Nos. 2 to 4 had no locus to file an application seeking cancellation of bail, cannot be sustained. Respondent nos. 2 to 4 had invoked the inherent jurisdiction of the High Court under Section 482 CrPC, and the High Court has power to entertain such application. [Paras 28, 29 and 30] [1202-B, H; 1203-B]

Puran vs. Rambilas and another 2001 (6) SCC 338: 2001 (3) SCR 432 – relied on.

Dolat Ram vs. State of Haryana 1995 (1) SCC 349: 1994 (6) Suppl. SCR 69; *Bhagirathsinh vs. State of Gujarat* 1984 (1) SCC 284: 1984 (1) SCR 839; *Fida Hussain Bohra vs. State of Maharashtra* 2009 (5) SCC 150: 2009 (3) SCR 998; *Siddharam Satlingappa Mhetre vs. State of Maharashtra and others* 2011 (1) SCC 694: 2010 (15) SCR 201; *Gurcharan Singh vs. State (Delhi Administration)* 1978 (1) SCC 118: 1978 (2) SCR 358; *State of U.P. vs. Amarmani Tripathi* 2005 (8) SCC 21: 2005 (3) Suppl. SCR 454; *Masroor vs. State of Uttar Pradesh and another* 2009 (14) SCC 286: 2009 (6) SCR 1030 and *Nimmagadda Prasad vs. Central Bureau of Investigation* 2013(7) SCC 466 – referred to.

2. Although this appeal is not being entertained, it is found that the appellant along with 4 other accused who have been denied bail, had made numerous attempts to intimidate the witnesses, and even threatened the investigating officer. Some of the witnesses are the employees of the Jalgaon Municipal Corporation, and obviously the appellant and the 4 accused, though in jail, may still make every effort to influence them hereafter, and vitiate the trial if it is conducted in Jalgaon. A trial of

A **this nature, for that matter every trial, ought to be conducted in a free and fearless atmosphere. Hence, in the facts and circumstances of the present case, the trial of this Sessions case ought to be transferred outside that district. The transfer to the district Dhule, would be**
B **appropriate since that district is adjoining to the Jalgaon district, and it also falls within the jurisdiction of the Aurangabad Bench of the Bombay High Court. [Para 31] [1203-F, G; 1204-B-C]**

Case Law Reference :

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1994 (6) Suppl. SCR 69	**referred to**	**Para 11**
1984 (1) SCR 839	**referred to**	**Para 12**
2009 (3) SCR 998	**referred to**	**Para 17**
2010 (15) SCR 201	**referred to**	**Para 18**
2001 (3) SCR 432	**relied on**	**Para 19**
1978 (2) SCR 358	**referred to**	**Para 19**
2005 (3) Suppl. SCR 454	**referred to**	**Para 20**
2009 (6) SCR 1030	**referred to**	**Para 21**
2013(7) SCC 466	**referred to**	**Para 22**

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F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2131 of 2013.

From the Judgment and Order dated 06.08.2012 of the High Court of Bombay at Aurangabad in Criminal Appeal No. 2522 of 2012.

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A. V. Savant, Sudhanshu S. Choudhari, Vatsalya Vigya, for the Appellant.

B. H. Maralapalle, V. N. Raghupathy, Amol B. Karande,

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Manju Jetly, Sanjay Kharde, Asha Gopalan Nair for the Respondents. A

The Judgment of the Court was delivered by

H.L. GOKHALE, J. 1.Leave granted. B

2. This appeal seeks to challenge the judgment and order dated 6.8.2012 rendered by a Judge of the Bombay High Court at Aurangabad allowing the Criminal Application No. 2522/ 2012 filed by the respondent Nos.2 to 4 herein under Section 439 (2) and 482 of Code of Criminal Procedure, 1973 (Cr.P.C. C for short). The High Court order cancelled the bail granted to the appellant herein in Crime No.13/2006 registered at the City Police Station, Jalgaon. The appellant (alongwith 56 others) has been charged for offences under Sections 120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 read with Section 34 of D Indian Penal Code (I.P.C for short), and under Sections 13(2) read with 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act, 1988. The appellant is accused no.34 in that case. The appellant was granted bail on 21.5.2012 by a common order below the applications filed by accused nos. 31 to 50 under E Section 439(1) of Cr.P.C. by the Incharge Additional Adhoc District Judge No.1 and Additional Sessions Judge, Jalgaon. It is this order which has been set-aside by the High Court. The operation of the High Court has been stayed by this Court on 7.8.2012.

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3. Mr. A.V. Savant, learned senior counsel and Mr. Sudhanshu Chaudhary have appeared for the appellant. Mr. Sanjay Kharde, learned counsel has appeared for the first respondent-State of Maharashtra. Mr. B.H. Marlapalle, learned senior counsel and Ms. Kamini Jaiswal, learned counsel have G appeared for the respondent Nos.2 to 4.

4. The above referred Crime/FIR No.13/2006 was registered at the City Police Station, Jalgaon on 3.2.2006. The Charge-sheet therein came to be filed after completion of the H

A investigation much later on 25.4.2012. It is essentially about the defalcation of public money resulting into a huge loss of over Rs.169.60 crores to the Jalgaon Municipal Corporation in Maharashtra. This Corporation was a Municipal Council until about January 2004. It had framed a housing scheme in the year 1997 named as 'Gharkul' (i.e. Small house) to construct 11,424 B houses on the Municipal land for the benefit of slum dwellers. As stated above, although there are 57 accused, the main persons involved in this defalcation are stated to be two former Presidents of the erstwhile Municipal Council, namely, one Shri Sureshdada Jain and one Pradeep Raysoni, and two partners C of a construction company known as Khandesh Builders viz. Rajendra Mayur and Jagannath Vani. Shri Sureshdada Jain is said to be the main share-holder of this company.

5. Shri Sureshdada Jain is stated to have been the D President of Jalgaon Municipal Council from May 1985 to July 1994. Thereafter he was the Minister of Housing in the Shivsena–Bharatiya Janata Party (BJP) Government, in the State, during 1995-2000. He is presently an MLA of Nationalist Congress Party (NCP) from Jalgaon city. He was a minister in E the present Congress-NCP Government until recently. The appellant is also an MLA of NCP from Jalgaon (Rural) Constituency, and on the date of the impugned order he was a Minister of State in the State Government. Subsequently he has resigned as a Minister. Out of the 57 accused persons 4 have F died. Out of the remaining, 2 accused are absconding, and the above referred 2 former Presidents and 2 contractors are in custody. Remaining 47 accused including the appellant have been granted bail.

6. In 1997 when he was a Minister of Housing, Shri G Sureshdada Jain persuaded HUDCO to give loan of about 66 crores to the Jalgaon Municipal Council for the above Housing Scheme. He is said to have been instrumental in constituting a 'High Powered Committee' in the Municipal Council which was to supervise this work. The appellant was one of its

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members. The scheme was to be completed in 9 months but has not been completed so far. Pradeep Raysoni was the President of the Municipal Council during May 1996 to May 1997. As per the Charge-sheet the execution of the scheme was entrusted to Khandesh builders, violating all norms, and statutory and other legal requirements. They have been given huge interest-free mobilization advances which amongst other reasons have led to this huge liability. The work not having been completed, and the loan not having been repaid, the liabilities for the Municipal Corporation towards the interest amount have increased, and it will take quite a few years for the Corporation to repay the loan.

7. The above referred Shri Sureshdada Jain was arrested sometimes in March, 2012, and the charge-sheet has been filed on 25.4.2012. The appellant was issued a notice dated 16.5.2012 under Section 160 of Cr.P.C. to attend at the Jalgaon Police Station on 19.5.2012. Accused nos. 31 to 50 including the appellant applied for bail under Section 439(1), and they were so released by the above referred order passed on 21.5.2012. This order has been set aside by the impugned order of the High Court. We are informed that the charges have been framed by the trial court, and the recording of the evidence is yet to start. Out of various charges, the charge under Section 409 has not been framed, but Mr. Sanjay Kharde, learned counsel for the State, has informed us that the State is going to apply for framing of the charge under this section also. A supplementary charge sheet has also been filed on 2.6.2012.

8. The initial charge-sheet leading to the prosecution has been placed on record. It runs into more than 268 pages and contains various details. Shri Sureshdada Jain is said to have led the majority in the Jalgaon Municipal Council at the relevant time under a group known as the 'Shahar Vikas Aghadi' (i.e. City Development Front). It is alleged that Shri Sureshdada Jain in his capacity as the Minister decided to use the lower income group scheme for wrongful gain, which has resulted into huge

A liability to the Municipal Corporation, and wrongful gain for himself and other conspirators. It is alleged that he arranged the funds from HUDCO for this particular project, and saw to it that the contract is given to Khandesh builders at exorbitant rates, ignoring the lower bid given by another contractor. The B councilors were made to approve all the decisions of the above referred committee which was controlled by earlier referred Pradeep Raysoni. The investigation revealed that the committee was only for the namesake, and it was Raysoni who was taking all the decisions. No written orders were passed. C Large advances were released to the builders under what was called as 'Ummeed Manjuri' (i.e. approval in anticipation), and all the Municipal Councilors were made to sign those decisions.

9. When the accused no. 31 to 50 including the appellant moved for bail under Section 439, the respondent No.2 herein D appeared in the proceeding and sought permission to assist the Special Public Prosecutor. This is recorded in the order of the Sessions Judge. The order records the objection that it was a serious economic offence involving public money, and that the appellant was a powerful and influential person in Jalgaon, E and there was a possibility that he may misuse his liberty and tamper with the prosecution. The learned Sessions Judge has however observed that beyond the aforesaid apprehension nothing has been pointed out that the appellant had misused his status. The learned Judge has then observed that F considering the nature of the offence, it may be said that the evidence to be collected and available with the prosecution must be in the form of documents, and the apprehension by pressurizing the prosecution witnesses can be checked by imposing reasonable conditions. The learned Judge therefore G observed that there was no point in detaining the accused in jail particularly in the circumstances when the investigation of the crime was on the verge of completion. The Judge, therefore, released all those accused nos. 31 to 50 on personal bonds in the sum of Rs.50, 000/- with one solvent surety in the like H amount.

10. The respondent Nos. 2 to 4 sought to set-aside this order by filing Criminal Application No. 2522 of 2012 dated 11.6.2012, and the High Court has allowed it, by passing the impugned order. The High Court has noted in its order that:- A

(i) The appellant was arrested on 21.5.2012 and was produced before the Special Court along with some councillors on the same day with the remand report. Bail application was moved on the same day. B

(ii) In paragraph 14 of his order the learned Judge noted that under the proviso to Section 439(1) of Cr.P.C. where the person concerned is accused of an offence which is punishable with imprisonment of life (such as Section 409 I.P.C. in the present case), the Sessions Judge has to give the notice of the application for bail to the public prosecutor, unless for the reasons to be recorded in writing, it is not practicable to give such notice. In the instant case, no order was made giving notice to the public prosecutor, nor reasons for the same were recorded in the order granting bail. The only order made on the very day was "I.O. (i.e. investigation officer) to say". The matter was heard immediately there and then. C D E

(iii) Even so, the special prosecutor had requested for police custody at least for 2 days. The same was, however, refused. He then filed a reply running into 8 pages to oppose the application, but the order passed by the learned Session Judge did not refer to this reply or the contents thereof. F

(iv) Paragraph 15 of the impugned order notes that the appellant was not detained nor kept behind the bars even for a single day. This was in spite of the fact that there was a record like giving 5 work orders to the brother of the appellant, and during custodial investigation more material could have been collected. G

11. The learned Judge has noted in paragraph 16 of his order that cogent and overwhelming circumstances are H

A necessary for an order of cancellation of bail already granted, as laid down by this Court from time to time. He has referred to the judgment in *Dolat Ram Vs. State of Haryana* reported in 1995 (1) SCC 349 in this behalf. He has, however, also observed in paragraph 17 that if the order is by a wrong and B arbitrary exercise of discretion, it deserves to be cancelled. He has further observed that nature and seriousness of the offence and impact on the society particularly in economic offences are always important considerations in such a case.

C 12. Mr. A.V. Savant, learned senior counsel appearing for the appellant has relied upon various judgments to submit that cancellation of bail is not something to be easily granted. He has drawn our attention the judgment of this Court in *Bhagirathsinh Vs. State of Gujarat* reported in 1984 (1) SCC 284 where this Court has observed that very cogent and D overwhelming circumstances are necessary for an order seeking cancellation of bail, and power to grant bail is not to be exercised as if it is a punishment before the trial. The Court has held in that matter that the material considerations in such a situation are whether the accused would be readily available E for his trial, and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

13. Mr. Pandharinath Ramchandra Pawar, Deputy S.P., Jalgaon, who is the investigating officer, has filed a detailed F affidavit in reply, dated 28.9.2012, in this Court, placing on record voluminous material as to how Shri Sureshdada Jain and some of the principal accused including the appellant have resorted to pressure tactics at various stages of the case. Amongst other statements against the appellant, he has G specifically placed on record the following material:-

(i) In paragraph 5 (iii) of his affidavit he has placed on record that the appellant brought a 'morcha' (i.e. a procession to protest) on the police station on 29.3.2006. He has stated therein as follows:-

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"That right from the time when the crime was registered, the petitioner-accused have tried to create pressure on investigation machinery by bringing morcha on police station by the leadership of petitioner and Suresh Jain and demanding arrest of themselves by police, therefore, offence was registered against the Councillors including the present petitioner as crime no.27/2006 on 29.3.2006."

He has annexed the extract of the station diary entry dated 30.3.2006 as Annexure R2 to this affidavit. This extract from the station diary records that some of the Municipal Councillors including the appellant had moved a no-confidence motion against the Municipal Commissioner, Mr. Praveen Gedam, who had lodged the complaint leading to this prosecution, and then these councillors created a ruckus in the Council Hall. Thereafter, they took out a 'morcha' to the police station and held a demonstration. The appellant is specifically named in this station diary entry, as a person leading the 'morcha'.

(ii) Thereafter, he has placed on record that Sureshdada Jain and his associates, including the appellant, on various occasions resorted to pressure tactics like taking out the 'morcha', threatening the investigation officer, slapping the civil surgeon and so on, and thereby they created an atmosphere of terror in the city. Thereafter in this connection he has stated in paragraph XXV and XXVI as follows:-

"[XXV] All the above conduct clearly shows that the petitioner himself and through his supporters sent a message in society that they are able to teach a lesson to the witnesses, the Complainant, who is I.A.S. Officer, Investigation Officer, who is I.P.S. Officer, Jailor, who is class one Officer and Dr. Rathod, who is also class one Officer of Civil Hospital then, anybody may not dare to go against them.

[XXVI] Moreover, they have created terrorized atmosphere in the society of Jalgaon city. In fact, most of the witnesses in this case are ordinary people and

A *many witnesses are employee in Jalgaon Municipa Corporation, in which, the party of this group is in power. Therefore, considering, the human probabilities, witnesses will not come forward to depose against the present accused and other accused."*

B 14. Mr. A.V. Savant, learned senior counsel for the appellant submitted that these allegations are essentially against Sureshdada Jain and not so much against the appellant herein. It is difficult to accept this submission. The station diary entry dated 30.3.2006 specifically records the name of the C appellant as amongst those who took out the 'morcha' to the police station. It is also clear from what the Deputy S.P. has stated in his affidavit that the appellant was associated with Shri Sureshdada Jain on different occasions when an attempt was made to take the law into hands.

D 15. It is specifically stated in the paragraph 4 of the above referred affidavit of Mr. Pawar that a detailed argument was made before the Sessions Judge on behalf of the prosecution pointing out a prima facie case against the appellant. It is also stated therein that the Jalgaon Municipal Council had illegally E given more than 30 contracts to Jalgaon Construction Company belonging to the appellant as the beneficiary in the conspiracy. The past conduct of the appellant after the registration of the present crime was pointed out in detail, as well as his criminal antecedents with proof, and also the fact that the bail F applications of 3 of the main accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge by the orders dated 17.5.2012 and 19.5.2012. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The counsel G for the State of Maharashtra has, therefore, submitted that the order passed by the Sessions Judge was a perverse order since none of these factors was considered by the Court.

16. Mr. Savant, learned senior counsel appearing for the appellant submitted that it is a well established proposition that

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"bail not jail" is the rule of law, and cancellation of bail is not to be lightly resorted to. He referred to the judgment of this Court in *Bhagirathsinh* (supra) where the appellant facing the charge under Section 307 IPC, was granted bail by the Sessions Judge, but the bail was cancelled by the High Court. In paragraph 7 of the judgment this Court has observed as follows:-

> *"**7.** In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."*

A 17. Thereafter he referred to the judgment in *Fida Hussain Bohra Vs. State of Maharashtra* reported in 2009 (5) SCC 150 where in the case of a charge involving criminal misappropriation of public funds some accused were granted bail, but the High Court had cancelled the bail granted to the B appellant. This Court held that the appeal from an order granting bail had to be considered differently. It is, however, material to note that this Court also observed in paragraph 8 that correctness or otherwise of the order passed by the Appellate Court setting aside an order granting bail or an order C of cancellation of bail had to be considered on particular facts of each case.

18. The judgment of this Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others* reported on 2011 (1) SCC 694 was heavily relied upon, wherein this Court has D held that where the accused has joined the investigation, is cooperating with the investigating agency, and is not likely to abscond, custodial interrogation should be avoided.

19. These submissions were countered by the counsel for the respondents. They referred to what this Court has observed E in paragraphs 10 and 11 of *Puran Vs. Rambilas and another* reported in 2001 (6) SCC 338. In paragraph 10 this Court has referred to *Daulat Ram Vs. State of Haryana* (supra) which was also referred to by the High Court in the impugned order. After referring to this judgment, this Court has noted that rejection F of a bail in a non-bailable case at an initial stage or a cancellation of bail already granted had to be considered on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. The Court has also noted that it has been held G that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or abuse of the concession granted to the accused. Thereafter, this Court has observed in paragraph 10:-

H ***"10.....*** *It is, however, to be noted that this Court has*

clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected."

In paragraph 11, the Court has referred to the judgment in *Gurcharan Singh Vs. State (Delhi Administration)* reported in 1978 (1) SCC 118, and thereafter observed that the remedy under Section 439(2) to approach the High Court is also available where the State is aggrieved by the Sessions Judge granting bail on the basis of unjustified, illegal or perverse order. This paragraph 11 reads as follows:-

"***11.*** *Further, it is to be kept in mind that* ***the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself*** *or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn. ((1978)1SCC118). In that case the Court observed as under: (SCC p. 124, para 16)*

> "If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. **The State may as well approach the High Court being the superior court under**

A **Section 439(2) to commit the accused to custody.** When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile
B for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court."

C (emphasis supplied)

20. The judgment of this Court in *State of U.P. Vs. Amarmani Tripathi* reported in 2005 (8) SCC 21, was also relied upon in support. In that matter the respondent and his wife were admitted to bail by an order passed by the High Court
D on 29.4.2001 and 8.7.2004. Considering the totality of the factors including that there was a clear possibility of the respondents intimidating the witnesses, this Court cancelled the bail by its order dated 26.9.2005 which was passed more than a year after the grant of bail. What is relevant for our purpose
E is what this Court has observed in paragraph 18 to the following effect:-

"18.....While a vague allegation that the accused may tamper with the evidence or witnesses may not be a
F *ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused....."*

G *(emphasis supplied)*

21. *Masroor Vs. State of Uttar Pradesh and another* reported in 2009 (14) SCC 286 was referred wherein this Court has observed in paragraph 12 that this Court does not interfere with the order of High Court granting or rejecting the bail but

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where there was a manifest error in the matter of grant of bail, it required interference. In paragraph 15 this Court observed as follows:-

> *"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned...."*
>
> *(emphasis supplied)*

22. Paragraph 25 of *Nimmagadda Prasad Vs. Central Bureau of Investigation* reported in 2013 (7) SCC 466 was brought to our notice wherein with respect to the economic offences the Court has observed as follows:-

> ***"25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.*** *The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*
>
> *(emphasis supplied)*

23. We have noted the submissions of the counsel for the appellants as well as the respondents. In the present case we are concerned with the question as to whether High Court was in error in cancelling the bail granted to the appellant. Having noted the above aspects we are clearly of the view that the Sessions Court had not complied with the mandatory proviso to Section 439(1). This proviso lays down that before granting

A bail to a person who is accused of an offence which is punishable with imprisonment for life, and which is exclusively triable by the Court of Sessions, it shall give a notice of the application for bail to the public prosecutor. In the instant case, the facts reveal that the appellant appeared before the learned B Sessions Judge on 21.5.2012, when his application for bail was taken up for consideration. The Sessions Judge passed an order 'I.O. to say'. The matter was taken up there and then. The prosecutor applied for remand of at least 2 days which was declined. The notice under the proviso under the Section 439 C (1) implies a proper and full opportunity to the prosecutor to point out as to why bail should not be granted. The initial chargesheet in the instant case was itself running into more than 268 pages. The Sessions Judge ought to have granted adequate time to the prosecutor to reply on the basis of this D chargesheet, for him to pass a considered order. Consequently the order of bail does not reflect upon the contents of the charge sheet.

24. As pointed out by Mr. Pawar, Deputy S.P. in his affidavit that although the matter was heard there and then, the E prosecutor did make a detailed argument pointing ought the prima facie case against the appellant. The past conduct of the appellant after the registration of the present crime was also pointed out in detail as well as his criminal antecedents with proof, and also the fact that the bail applications of 3 of the main F accused (i.e. Sureshdada Jain and others) had been rejected by another Sessions Judge by the order dated 17.5.2012 and 19.5.2012. That there was a wrongful loss of about Rs.169 crores to Jalgaon Municipal Council was also brought to the notice of the Court. The counsel for the State of Maharashtra G has therefore rightly submitted that the order passed by the Trial Court was a perverse order since none of these factors were considered by the Court.

25. The appellant and the accused have been charged for an offence which may result into the punishment for H imprisonment for life. It is a serious charge supported by a

detailed charge-sheet running into over 268 pages. It is stated therein that the Jalgaon Municipal Corporation had illegally given more than 30 contracts to Jalgaon Construction Company belonging to the appellant as a beneficiary in the conspiracy. Obviously the prosecutor required time to interrogate the accused, and the custodial interrogation in such a situation, for at least two days, could not have been denied. It could have aided the investigation by unearthing relevant information. The bail order was however passed on the same day, there and then. We are conscious of the fact that the liberty of a citizen even if he is an accused is undoubtedly important, but at the same time when the prosecutor had pointed out to the Court that the role of the appellant was no less than that of the three others whose bail had been rejected, the learned Judge ought to have considered these circumstances, justifying custodial interrogation, with due diligence.

26. Thus it could certainly be said that the order passes by the Sessions Judge was an order passed in breach of the mandatory requirement of the proviso to Section 439(1) of Cr.P.C. It is also an order ignoring the material on record, and therefore without any justification and perverse. As held by this Court in *Puran Vs. Rambilas* (supra), the High Court does have the power under Section 439 (2) of Cr.P.C. to set aside an unjustified, illegal or perverse order granting bail. This is an independent ground for cancellation as against the ground of accused mis-conducting himself.

27. In the instant case, the attempts made by the appellant to pressurize the witnesses and even the investigating officer are clearly placed on record through the affidavit of the Deputy S.P. Mr. Pawar. On that ground also it could be said that the appellant will be pressurizing the witnesses if he is not restrained. This being the position, we cannot find any fault with the order of the High Court cancelling the bail on that ground also. The order does record the cogent and overwhelming circumstances justifying cancellation of bail. The nature and seriousness of an economic offence and its impact on the

A society are always important considerations in such a case, and they must squarely be dealt with by the Court while passing an order on bail applications.

28. We must note one more objection raised on behalf of the appellant, namely, that respondent Nos. 2 to 4 had no locus B to file an application seeking cancellation of bail. It is contended that respondent Nos. 3 and 4 had not even filed any application before the Trial Court. They later on joined the respondent No. 2 to move the High Court by filing SLP (Crl.) Application to quash and set aside the order granting bail. Mr. Marlapalle, C learned Senior Counsel and Ms. Kamini Jaiswal learned counsel appearing for these respondents pointed out in reply that the Criminal Application filed in the High Court was moved under Section 439(2) read with Section 482 of Cr.P.C. Paragraph 2 of the said Criminal application stated as follows:-

D

> *"2. The applicants submit that they are residents of Jalgaon. They are citizens of India. They are tax payers. They are beneficiaries of various policies and amenities provided by the Municipal Corporation to the citizens of Jalgaon. The applicants are victims of the offence* E *committed by the Respondent No.2 alongwith other accused. The applicants have locus standi to seek the cancellation of the bail granted to the respondent No. 2 and the other accused persons."*

F 29. It was submitted by these learned counsel that respondent No. 2 had appeared before the Sessions Judge to assist the prosecution, which is recorded in the order passed granting bail. As far as filing of the aforesaid Criminal Application before the High Court by respondent Nos. 2 to 4 is concerned, the same has not been specifically objected to G in the High Court, and therefore, there was no occasion for the High Court to look into any such objection. Now, this objection is being raised in this Court. The learned counsel submitted that the respondent Nos. 2 to 4 had invoked the inherent jurisdiction of the High Court under Section 482 of Cr.P.C., and the power H of the High Court to entertain such an application has been

upheld by this Court in paragraph 17 of *Puran Vs. Rambilas* (supra). In that matter bail had been granted by the Sessions Court, and the bail order was cancelled by the High Court, not on any petition by the State, but on one filed by the complainant invoking Sections 439 (2) and 482 of Cr.P.C.

30. In our view the objection raised by the appellant cannot be sustained in view of what is observed by this Court in paragraph 17 in *Puran Vs. Rambilas* (supra) which reads as follows:-

> ***17.*** *Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect.* ***It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified*** *(Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551 and Krishnan v. Krishnaveni (1997) 4 SCC 241)*
>
> *(emphasis supplied)*

For all these reasons, we do not find any merit in this appeal and the same does not deserve to be entertained.

31. Although this appeal is not being entertained, what we find is that the appellant along with 4 other accused who have been denied bail, had made numerous attempts to intimidate the witnesses, and even threatened the investigating officer. Some of the witnesses are the employees of the Jalgaon Municipal Corporation, and obviously the appellant and the 4 accused, though in jail, may still make every effort to influence them hereafter, and vitiate the trial if it is conducted in Jalgaon. Mr. Kharde, learned counsel appearing for the State has submitted that it will be in the fitness of things that the trial be transferred outside the district. Mr. Savant, learned senior

A counsel appearing for the appellant has no objection for the same. Mr. Marlapalle and Ms. Kamini Jaiswal appearing for the respondents No.2 to 4 have also supported this submission. We quite see the merit of this submission. A trial of this nature, for that matter every trial, ought to be conducted in a free and
B fearless atmosphere. Hence, in the facts and circumstances of the present case we are of the view that the trial of this Sessions case ought to be transferred outside that district. The transfer to the district Dhule, would be appropriate since that district is adjoining to the Jalgaon district, and it also falls within the
C jurisdiction of the Aurangabad Bench of the Bombay High Court.

32. Before we conclude we make it clear that the observations made herein are for the purposes of deciding whether the High Court was in any way in error in cancelling
D the bail granted to the appellant. This order is being passed on the basis of the material that has been placed on record for that purpose. Needless to state, but we make it clear that as and when the trial is conducted, it will be decided on the basis of the evidence, which will be brought on record during the
E course of the trial.

33. The appeal is accordingly dismissed. The appellant will surrender to the City Police Station Jalgaon, within two weeks hereof. The Sessions case arising out of Crime/FIR No.13/ 2006 registered at the City Police Station Jalgaon on 3.2.2006
F is hereby transferred to the Addl. Sessions Judge, Dhule, incharge of cases under the Prevention of Corruption Act, 1988. The learned Addl. Sessions Judge, Jalgaon seized of this matter will transfer the records of the concerned proceeding within four weeks to the said Court. Registrar General of the
G Bombay High Court is directed to see to it that necessary follow up steps are taken forthwith. Registry to send a copy of this Judgment to the Registrar General High Court Bombay, District Judge, Jalgaon and District Judge, Dhule.

Bibhuti Bhushan Bose Appeal Dismissed
H

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instructions requiring workmen beyond the shift hours clearly tantamounted to changing the conditions of service of the workmen which was impermissible without complying with the requirements of s.9-A of the Industrial Disputes Act – Even assuming that the finding regarding the commission of misconduct is left undisturbed, the circumstances in which the workmen were alleged to have disobeyed the instructions issued to them did not justify the extreme penalty of their dismissal – In any event, no compelling reason to invoke extraordinary power under Article 136 or to interfere with the orders passed by the two courts below – Industrial Disputes Act, 1947 – s.9A – Constitution of India, 1950 – Arts. 136 and 226.

(ii) Misconduct – Punishment – Proportionality – Held: Whether or not the punishment is disproportionate more often than not depends upon the circumstances in which the alleged misconduct was committed, as also the nature of the misconduct.

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would not be appropriate to pronounce upon merit of the case.

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(i) s.166 – Accident claim – Award of compensation – Use of multiplier method – Selection of multiplier based on age group of the deceased/victim – Split multiplier method – Applicability of – Held: The 1988 Act does not envisage application of split multiplier – In absence of any specific reason and evidence on record, Tribunal or Court should not apply split multiplier in routine course and should apply multiplier as per decision of Supreme Court in the case of *Sarla Verma* as affirmed in the case of *Reshma Kumari*.

(ii) ss.163A and 166 – Principles relating to determination of liability and quantum of compensation different for claims made u/s.163A and claims made u/s.166 – Structured formula as prescribed under the Second Schedule in s.163A and the multiplier mentioned therein not binding for claims u/s.166.

(iii) s.163A, Second Schedule – Applicability and purpose of.

(iv) s.163A, Second Schedule – Amendment in – Need for – Held: The Second Schedule was enacted in 1994 – It has now become redundant, irrational and unworkable, due to changed

scenario including the present cost of living and current rate of inflation and increased life expectancy – Specific direction to Central Government to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament.

(v) s.171 – Accident claim – Compensation – Award of interest – Duty bestowed upon Tribunal and Courts – Held: Under s.171, no rate of interest has been fixed and duty is bestowed upon the Tribunal to fix the rate of interest – Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by the Supreme Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

(vi) s.168 – Compensation – Grant of – Difference between English law and Indian law – Held: According to the English Law compensation/ damages are payable according to the proportionate loss whereas in India compensation is payable which appears to the Tribunal to be just is payable – English Fatal Accidents Act, 1846.

(vii) s.166 – Accident claim – Compensation – Determination of – Deceased was 48 years old and drawing gross salary of Rs. 13,331/- per month and paying a sum of Rs.889/- per month towards tax – Deceased left behind four

dependent family members – Tribunal awarded compensation of Rs.9.3 lakhs – High Court enhanced the compensation to Rs.11.25 lakhs – Held: Since deceased left behind four dependent family members, deduction towards his personal and living expenses should be 1/4th – High Court did not consider the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years – When age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in '*Sarla Verma*' – Claimants entitled for total compensation of Rs.23.43 lakhs and also interest on the enhanced compensation at the rate of 12% p.a. from the date of filing of the complaint petition.

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24, 75 and 94 were wrongly acquitted under charge of conspiracy – Hence convicted for the charge of larger conspiracy and sentenced to life imprisonment – Acquittal of rest of the respondent-accused upheld.

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(3) ss.120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 r/w s.34.

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(4) 120-B, 302, 307, 326, 427, 435, 436, 201 and 212.

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(6) s.302 and s.120-B r/w s.201 – Naina Sahni murder case – Prosecution case that the accused A-1 killed his wife since he was suspecting her having some relationship with PW-12 and also because appellant did not want to make his marriage with the deceased public while the deceased was insisting on the same – After

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(Also see under: Sentence/Sentencing).

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(7) ss. 302, 342, 218, 193 r/w. s. 34 – Custodial death – Prosecution of police officials – Circumstantial evidence – Acquittal by trial court – Conviction by High Court – Held: Since the arrest Panchnama and Arrest Register have been duly proved by PWs 21 and 22 and there is no evidence to show that they were fabricated, accused cannot be held guilty u/ss. 218 and 193 – Accused also cannot be convicted u/s. 342 because the deceased was a co-accused in a kidnapping case – Injuries on the deceased

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(ii) s. 4 – Effect of – Held: The provision will have overriding effect and shall prevail, if conditions prescribed therein are fulfilled – Code of Criminal Procedure, 1973 – s. 360.

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turn, subject to procedural checks mentioned in the said provision and further substantive checks in s.433-A CrPC – Penal Code, 1860 – s.302 and s.120-B r/w s.201 – Code of Criminal Procedure, 1973 – ss.432 and 433A.

(See under: Sentence/Sentencing)

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(ii) s.15 – Confessional statement under – Evidentiary value of – Held: A confessional statement is a substantive piece of evidence and can be the sole basis for conviction, if recorded in accordance with the provisions of TADA – A voluntary and truthful confessional statement requires no corroboration – But if such statement is to be used against the co-accused, the Court may look for corroboration as a matter of prudence – Minor and curable irregularities in recording such statement do not affect the admissibility of the said evidence.

(iii) s.15 – Confessional statement – Retraction of – Effect – Held: A voluntary and free confession even if retracted later, can be relied upon.

(iv) s.15 – Confessional statement under –

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(ii) ss. 3 and 5 – Bombay serial blasts of 1993 – Participation of A-31 in landing and transportation of smuggled arms, ammunition and explosives – Conviction – Justification – Held: Evidence on record proves that A-31 had participated in landing operation and transportation of smuggled Arms Amuminitions and explosive – Therefore, liable to be convicted – Arms Act, 1959.

(iii) ss.3(3) and 6 –Bombay serial blasts of 1993 – Facilitation of commission of terrorist activities – Smuggling and landing of arms, ammunition,

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(iv) ss.3 and 6 – Bombay serial blasts of 1993 – Participation in landing and transportation of contraband smuggled into the country – Abetting and participating in terrorist activities – Conviction of A-46 – Held: Confession of A-46 revealed that he was in employment of the Memon family and a very close confidant of Tiger Memon (AA) – He handed over a motor vehicle containing arms and ammunitions at residence of A-68 – Confessions of co-accused also established his involvement along with A-10 for taking co-accused, who were sent for training to Pakistan via Dubai, though he may not be aware of the purpose for which the co-accused were sent – Conviction confirmed.

(v) ss.3(3) and 6 – Bombay serial blasts of 1993 – Landing and transportation of arms and ammunition for committing terrorist activities – Possession/storage of arms, ammunition and explosives – Conviction of A-73 – Justification – Held: A-73's involvement and participation in the landing operations of the contraband substances

was clearly established – His own confessional statement revealed that he, being fully aware of the contents of the contraband, shifted the same from the truck to other vehicles and that despite the fact that he knew that the contraband contained arms, ammunition and RDX, he continued to be associated with the other co-accused – Therefore, he aided and abetted terrorist activities – However, the said acts were committed by him in the early phases of the conspiracy, even prior to Tiger Memon (AA) deciding the target of the Blast; and after this particular incident, A-73 had not been involved in any landing job – Therefore, cannot be held guilty for the larger conspiracy.

(vi) s.3(3) – Bombay serial blasts of 1993 – Landing & transportation of smuggled arms, ammunition and explosives – Conviction of A-62 – Held: A-62, watchman of Government premises had allowed the same to be used for the purpose of facilitating the smuggling and landing of arms, ammunition, handgrenades and explosives as organized by Tiger Memon (AA) and his associates – The evidence further establishes his involvement in concealing 59 bags of RDX explosives in a field existing in his name – Thus, he was rightly convicted u/s.3(3) – Being a Government servant, he intentionally omitted giving information to the authorities about the offences committed in his presence, which he was legally bound to do – Hence, also liable to be convicted u/s. 202 IPC – Penal Code, 1860 – s.202.

(vii) s.3 – Bombay serial blasts of 1993 – Larger conspiracy – Involvement in landings and transportation of smuggled arms, ammunition and

explosives – Whether A-42 could be held guilty for the offence of larger conspiracy – Held: Having regard to the fact that A-14 had chosen A-42 for the purpose of keeping two revolvers with him and the fact that A-42 had readily kept the same, reveals that he was a man in which the prime accused had confidence with respect to the conspiracy – A-42 was involved in landing operations, however, since he had committed the relevant acts much prior to the date of the bomb blasts and had not participated in any meetings, nor was he connected with the same in any manner, and the fact that the acts were committed by him at a time when even the targets of the Bomb blasts had not been fixed, he could not be held guilty for the offence of larger conspiracy.

(viii) s.3 – Bombay serial blasts of 1993 – Larger conspiracy – Acquittal of A-79 by Special Judge – Justification – Held: The Special Judge was not justified in acquitting A-79 from the charge of larger conspiracy merely on the ground that he did not know about the places where the bombs had to be thrown and he was not the resident of Bombay and did not participate in the conspiratorial meetings – Finding of fact recorded by the Special Judge is also contradictory as the court held that he participated in the arms' training at Sandheri, however, he also observed that the evidence does not disclose that any of those accused had been trained in handling of handgrenades – Arms Act, 1959.

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(1) Rights of the apartment owners *vis-à-vis* the colonizers.

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(3)(See under: Terrorist and Disruptive Activities (Prevention) Act, 1987) 1

BAIL:

Cancellation of – Propriety – Economic offences – Defalcation of public money resulting into huge loss to the City Municipal Corporation – Number of accused including the appellant – Offence alleged punishable with imprisonment for life – Appellant granted bail by the Sessions Judge u/s.439(1) CrPC, however, High Court, cancelled the bail – Held: Order passed by the Sessions Court was perverse since none of the factors pointed out by the prosecutor were considered by it – When the prosecutor had pointed out to the Sessions Court that the role of the appellant was no less than that of the three other accused whose bail had been rejected, the Sessions Court ought to have considered these circumstances, justifying custodial interrogation, with due diligence – High Court is empowered u/s.439(2) CrPC to set aside an unjustified, illegal or perverse order granting

bail – Order passed by the High Court recorded cogent and overwhelming circumstances justifying cancellation of bail – Code of Criminal Procedure, 1973 – ss.439 and 482 – Penal Code, 1860 – ss.120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 r/w s.34 – Prevention of Corruption Act, 1988 – s.13(2) r/w s.13(1)(c) and 13(1)(d).

Gulabrao Baburao Deokar v. *State of Maharashtra & Ors.* 1181

CODE OF CIVIL PROCEDURE, 1908:

Or.XLI, r.22 – Judgment – Held: A judgment can be supported by the party in whose favour the same has been delivered not only on the grounds found in his favour but also on grounds that may have been held against him by the court below.

Management of Sundaram Industries Ltd. v. *Sundaram Industries Employees Union* 1090

CODE OF CRIMINAL PROCEDURE, 1973:

(1) ss.200 to 204, 397 and 482.

(See under: Criminal Trial) 542

(2) ss. 301 and 311 – Criminal prosecution – Trying charge u/s. 376(2)(g) IPC – Evidence of Statutory Authority (PW 18) who had conducted Test Identification Parade, not in consonance with the record of Test Identification Parade – Application of prosecutrix for recalling the evidence of that witness – Dismissed by courts below in view of s. 301 – Held: The courts should have made an attempt to reconcile ss. 301 and 311 and ensured that the trial proceeded in right direction – Trial court directed to recall the

evidence of PW 18 and call upon the prosecutor to cross-examine the witness on the disputed aspect of his statement and provide opportunity to the prosecutrix to file written arguments as provided u/s. 301.

Sister Mina Lalita Baruwa v. *State of Orissa and others* 788

(3) s. 360.

(See under: Probation of Offenders Act, 1958) 368

(4)(i) s.397 – Scope of power and jurisdiction of the Revisional court u/s.397.

(ii) ss.197, 198 and 53, 54 – Sanction for prosecution – Protection of s.197 if available – Test of direct and reasonable connection between official duty of the accused and the offences allegedly committed – According to appellant, based on a complaint that the appellant and 'R' were living in an illicit relationship, the respondent Executive Magistrate/SDM, acted without authority of law and without any lawful justification, harassed the complainant-appellant, violated her right to privacy, and subjected her to an unwarranted public humiliation – Whether offences allegedly committed by the respondent were committed while he was 'acting or purporting to act in the discharge of his official duty'; and whether sanction u/s. 197 was necessary for prosecuting him – Held: Since none of the actions alleged against the respondent by the appellant can be held to be one in which he acted in his capacity as the Executive Magistrate, invocation of s.197 wholly

uncalled for – Plea of respondent that prosecution barred u/s.197 rejected – Penal Code, 1860 – Chapter XX; ss. 323, 354, 389, 452, 458, 500 and 506 r/w ss.34 and 120-B.

Urmila Devi v. *Yudhvir Singh* 542

(5) ss.432 and 433A.

(See under: Sentence/Sentencing) 616

(6) ss.439 and 482.

(See under: Bail) 1181

COMPENSATION:

(1) Acquisition for public purpose – Compensation – Determination of.

(See under: Land Acquisition Act, 1894) 1079

(2) Compensation for motor accident.

(See under: Motor Vehicles Act, 1988) 831

(3) Illegal termination of daily wage worker – Reinstatement with back wages not automatic – Monetary compensation to serve ends of justice.

(See under: Industrial Disputes Act, 1947) 1023

CONSTITUTION OF INDIA, 1950:

(1) Arts. 14 and 21.

(See under: Urban Development) 1119

(2) Arts. 14, 19, 21 and 226.

(See under: Gujarat Agricultural Produce Markets Act, 1963) 969

(3) Arts. 14 and 21 – Conveyance allowance, paid to disabled Government employees (visually and

orthopaedically disabled) – Demand of, by deaf and dumb Government employees – Denial by the Government – Held: Is violative of Arts. 14 and 21 – A person having any of the disabilities mentioned in s. 2(i) of Disabilities Act, entitled to benefit of all the Schemes and benefits provided by the Government – There cannot be further discrimination among the persons with varied or different types of disabilities – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Deaf Employees Welfare Association & Another v. *Union of India & Others* 1059

(4) Arts. 136 and 226.

(See under: Labour Laws) 1090

(5) Arts. 136 and 226 – Powers under – Scope of – Held: Findings of facts not to be interfered, in exercise of powers u/Arts.136 or 226, unless such findings are totally perverse and based on no evidence – Insufficiency of evidence is not a ground to interfere.

B.S.N.L. v. *Bhurumal* 1023

(6) Art. 226 – Jurisdiction under – Nature and Scope – Held: Jurisdiction of High Court u/Art. 226 is equitable and discretionary – Such jurisdiction cannot be exercised, if there is error of law – If a person has taken undue advantage, the Court in its extra-ordinary jurisdiction would be within its domain to deny discretionary relief.

Eastern Coalfields Ltd. and others v. Bajrangi Rabidas 895

CONTRACT LABOUR (REGULATIONS AND ABOLITION) ACT, 1970:

(See under: Industrial Disputes Act, 1947) 706

CRIMINAL TRIAL:

(1) Role of court – While conducting a criminal proceeding, the courts should maintain a belligerent approach, instead of a wooden one.

Sister Mina Lalita Baruwa v. *State of Orissa and others* 788

(2) Summoning order – Nature of – How to construe order passed by a Magistrate in exercise of its power u/ss. 200 and 202 CrPC when it decides to issue process as against the accused – Whether such an order could be the subject matter of challenge by way of revision u/s.397 CrPC – Held: The order issued by the Magistrate deciding to summon an accused in exercise of his power u/ss.200 to 204 CrPC would be an order of intermediatory or quasi-final in nature and not interlocutory in nature – Thus, the revisionary jurisdiction provided u/s.397 CrPC, either with the District Court or with the High Court can be worked out by the aggrieved party – Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power u/ss.200 to 204 CrPC, can always be subject matter of challenge under the inherent jurisdiction of the High Court u/s.482 CrPC – Code of Criminal Procedure, 1973 – ss.200 to 204, 397 and 482.

Urmila Devi v. *Yudhvir Singh* 542

DELHI FACTORIES RULES OF 1950:

(See under: Industrial Disputes Act, 1947) 706

DEVELOPMENT CONTROL REGULATIONS FOR GREATER MUMBAI, 1991:

(See under: Urban Development) 1119

ECONOMIC OFFENCE:

Defalcation of public money – Resulting into huge loss to the City Municipal Corporation.

(See under: Bail) 1181

ENGLISH FATAL ACCIDENTS ACT, 1846:

(See under: Motor Vehicles Act, 1988) 831

ESTOPPEL:

Application of.

(See under: Service Law) 895

EVIDENCE:

(1) Circumstantial evidence.

(See under: Penal Code, 1860) 910

(2)(i) Identification of accused – Murder case – Death caused due to assault with knife – Wife of the deceased, an eye witness described the assailant having trimmed beard but in the court when he was identified, he had a full grown beard – Held: The eye-witness cannot be said confused as regards identification of the assailant.

(ii) Testimony of witness – Appreciation of – Held: Merely because the PW did not approach the police immediately on the date of the incident but after he had read the public notice; his testimony is not liable to be thrown out.

(iii) Discrepancy in testimony of two witnesses – Effect of – Held: In the facts of the case discrepancy is not significant enough to discard the veracity of the statements of either PW1 or PW2.

(iv) Motive – Proof – Held: When a high degree of animosity is established, existence of motive may be taken to be established.

(v) Discrepancies in evidence – Appreciation – Held: Minor inconsistent versions/discrepancies do not necessarily demolish the entire prosecution story, if it is otherwise found to be creditworthy.

Bakhshish Singh v. *State of Punjab & Anr.* 589

(2) Recalling of evidence.

(See under: Code of Criminal Procedure, 1973) 788

(3) Recovery evidence – Appreciation – Held: Signature of the accused is not required on the seizure memo – Plea that evidence of recovery cannot be relied upon for the reason that the same did not bear the signature of accused, not acceptable.

Ahmed Shah Khan Durrani @ A. S. Mubarak v. *State of Maharashtra* 1

(4) (See under: Terrorist and Destructive Activities (Prevention) Act, 1987) 368

EVIDENCE ACT, 1872:

(1) s.27 – Scope of – Held: s.27 is attracted even

when identification is of the person, instead of place where the article is to be found.

Sanjay Dutt (A-117) v. *The State of Maharashtra, through CBI (STF), Bombay* 368

(2) s. 106.

(See under: Penal Code, 1860) 910

EXPLOSIVES ACT, 1884:
(1) ss.3, 4(a),(b), 5 and 6.

(See under: Penal Code, 1860) 244

(2) s.9B(1)(a)(b)(c).

(See under: Terrorist and Destructive Activities (Prevention) Act, 1987) 368

EXPLOSIVE SUBSTANCES ACT, 1908:
ss. 3, 4(a)(b), 5 and 6.

(See under: Terrorist and Destructive Activities (Prevention) Act, 1987) 368

FACTORIES ACT, 1948:

(See under: Industrial Disputes Act, 1947) 706

FATAL ACCIDENT:

(See under: Motor Vehicles Act, 1988) 831

GRANITE CONSERVATION AND DEVELOPMENT RULES, 1999:
r.19(2).

(See under: Mines and Minerals (Development and Regulation) Act, 1957) 1107

GUJARAT AGRICULTURAL PRODUCE MARKET RULES, 1965:
(1) r.48 – Levy of market fee on castor seeds.

(See under: Agricultural Produce Market Fee) 939

(2) r.48(2) – Market fee – Levy of.

(See under: Gujarat Agricultural Produce Markets Act, 1963) 969

GUJARAT AGRICULTURAL PRODUCE MARKETS ACT, 1963:
(1) ss.2(1)(i) and 28.

(See under: Agricultural Produce Market Fee) 939

(2) ss.28A and 59 – Gujarat Agricultural Produce Market Rules, 1965 – r.48(2) – Gujarat Agricultural Produce Markets (Amendment) Act, 2007 – Entitlement to levy market fee on the respondent-Company for purchase of castor seeds – Held: On facts, demand for market fee by the APMC for castor seeds was justified since the castor seeds were bought in the market area and not brought into the market area –Matter remanded to High Court to place the matter before the Single Judge to examine the validity of r.48(2), as questioned with reference to s.28A of the amended provision of Act No. 17 of 2007 and the impugned order of the Revisional Authority –Constitution of India, 1950 – Arts. 14, 19, 21 and 226.

Agricultural Produce Market Committee v. *Biotor Industries Ltd. & Anr.* 969

GUJARAT AGRICULTURAL PRODUCE MARKETS (AMENDMENT) ACT, 2007:

(See under: Gujarat Agricultural Produce Markets Act, 1963) 969

HARYANA APARTMENT OWNERSHIP ACT, 1983:

ss. 3(i), 3(f), 11(2) – Rights of the apartment owners vis-à-vis the colonizers – Apartment owners filed writ petition to quash declaration filed by appellant-colonizer, on the ground that the same was not in conformity with s.3(f) of the Apartment Act since the appellant failed to include certain areas of the complex as "common areas and facilities" within the declaration, thereby effectively depriving the apartment owners of their rights over the same – High Court held in favour of the apartment owners – Held: In a given case if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape etc. the Competent Authority can look into the objections of the apartment owners but when statute has given a discretion to the colonizer to provide or not to provide as per s.3(f)(7) of the Apartment Act the community and commercial facilities referred to in s.3(3)(a)(iv) of Development Act, no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user – High Court erred in directing the DTCP (Director, Town and Country Planning) to decide the objections of the apartment owners with regard to the declaration made by the appellant-colonizer – Haryana Development and

Regulation of Urban Areas Act, 1975 – s. 3(3)(a)(iv).

DLF Limited v. Manmohan Lowe and Others 979

HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS ACT, 1975:
s. (3)(a)(iv).

(see under: Haryana Apartment Ownership Act, 1983) 979

INDUSTRIAL DISPUTES ACT, 1947:
(1) ss.2(k), 2(ra), 2(s), 25T and 25U – Vth Schedule, Entry No.10 – Factories Act, 1948 – Delhi Factories Rules of 1950 – Contract Labour (Regulations and Abolition) Act, 1970 – Whether the concerned workmen of Chefair, a unit of Hotel Corporation of India (HCI) with which Air India had entered into a contract to provide canteen services at its establishment, were entitled to be treated as being regular employees of Air India – And whether engaging the contract workmen in the canteen situated in the premises of Air India through HCI amounted to sham and camouflage by Air India to deprive the legitimate statutory and fundamental rights of the concerned workmen as provided under the provisions of the Industrial Disputes Act and the Constitution – Matter referred to larger bench in view of difference of opinion.

Balwant Rai Saluja & anr. Etc. Etc. v. *Air India Ltd. & Ors.* .... 70[illegible]

(2) s.9A – Compliance of.

(See under: Labour Laws) 1090

(3) s.25F – Retrenchment – Of daily wage worker – Industrial dispute raised – Management denied employer-employee relationship – Industrial Tribunal held that the workman was working under the Management and his services were illegally terminated and awarded his reinstatement with back wages – Award of Tribunal confirmed by High Court – Held: Termination of workman is rightly held to be illegal being violative of s.25F – In the case of illegal termination of a daily wage worker, reinstatement with back wages is not automatic – Instead monetary compensation would serve the ends of justice – However, where the persons junior to the terminated workmen are regularized, the workman cannot be denied reinstatement – In such cases reinstatement should be rule and denial thereof should be only in exceptional cases – In the facts of the instant case, grant of compensation of Rs.3 lakhs in lieu of reinstatement would serve the interest of justice.

B.S.N.L. v. *Bhurumal* 1023

INTEREST:

Interest on compensation for motor accident.

(See under: Motor Vehicles Act, 1988) 831

INVESTIGATION:

Entrustment of investigation – To CBI – Allegation of abduction of minor girl belonging to a de-notified tribal community – By Government officials – Writ of Habeas Corpus – Dismissed relying of Report of State police without taking into consideration statement of the eye-witness – Held: There is infirmity in the investigation conducted

by the State police – CBI is appointed to conduct investigation in the case.

Alsia Pardhi v. *State of M.P. & Ors.* 815

JURISDICTION:

(1) Jurisdiction of High Court u/Art. 226 – Scope of.

(See under: Constitution of India, 1950) 895

(2) Jurisdiction of the tribunal in service matters.

(See under: Armed Forces Rules, 1954) 495

(3) Revisional jurisdiction u/s. 397 Cr.P.C.

(See under: Code of Criminal Procedure, 1973 and Criminal Trial) 542

LABOUR LAWS:

(1)(i) Misconduct – Punishment – Proportionality – Issuance of fresh instructions by management of appellant-Company requiring the workmen (working as moulders to operate the rubber moulding machines) to place the bag of their production on the electronic weighing scale instead of placing them on the floor at the end of the shift as they were doing till that time – Workmen considered this responsibility to be involving not only additional work in carrying the production bag to the weighing machine but also in devoting additional time beyond the shift hours without any additional remuneration for the same and refused to carry out the fresh instructions – Held: Refusal was not without a lawful or reasonable justification and could not at any rate be described as contumacious – Refusal to carry out the

instructions requiring workmen beyond the shift hours clearly tantamounted to changing the conditions of service of the workmen which was impermissible without complying with the requirements of s.9-A of the Industrial Disputes Act – Even assuming that the finding regarding the commission of misconduct is left undisturbed, the circumstances in which the workmen were alleged to have disobeyed the instructions issued to them did not justify the extreme penalty of their dismissal – In any event, no compelling reason to invoke extraordinary power under Article 136 or to interfere with the orders passed by the two courts below – Industrial Disputes Act, 1947 – s.9A – Constitution of India, 1950 – Arts. 136 and 226.

(ii) Misconduct – Punishment – Proportionality – Held: Whether or not the punishment is disproportionate more often than not depends upon the circumstances in which the alleged misconduct was committed, as also the nature of the misconduct.

Management of Sundaram Industries Ltd. v. *Sundaram Industries Employees Union* 1090

(2) Retrenchment – Daily wage workers.

(See under: Industrial Disputes Act, 1947) 1023

LAND ACQUISITION ACT, 1894:

ss. 4, 18 & 23(1-A) – Acquisition for public purpose – Land acquired falling in the Revenue Estate of Tohana, Tehsil Tohana, District Fatehabad, Haryana – Compensation – Determination of – Held: Land value enhanced by

applying the formula of 12% per annum increase for a period of 4 years, instead of taking entire period 1993 and 2001 – When calculated in this manner, valuation of land in the year 2001 comes to Rs.770/- per square yard – After making one-third deduction therefrom, the net valuation comes to Rs.514/- per square yard – Compensation accordingly fixed @ Rs.514/- per square yard for the acquired land of appellants.

Kashmir Singh v. *State of Haryana & Ors.* 1079

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

(See under: Urban Development) 1119

MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957:

ss. 4(1) and 4(1-A) – Tamil Nadu Minor Mineral Concession Rules, 1959 – rr. 36(4) and 36(1) – Granite Conservation and Development Rules, 1999 – r.19(2) – Suspension of quarrying operation – Alleging unauthorized quarrying – Single Judge of High Court permitted continuation of investigation of criminal cases against the petitioner, but permitted him to continue the quarry operations – Thereafter, suspension orders were passed under 1999 rules and show cause notices issued to the petitioners – Writ appeal – Division Bench allowed the appeal taking into consideration the subsequent suspension order – Held: In view of the fact that several writ petitions are pending for consideration before High Court on the issue, and that in the instant case, High Court had issued some equitable directions, it

would not be appropriate to pronounce upon merit of the case.

M/s PRP Exports & Etc. v. *The Chief Secretary, Government of Tamil Nadu & Ors* 1107

MOTOR VEHICLES ACT, 1988:

(i) s.166 – Accident claim – Award of compensation – Use of multiplier method – Selection of multiplier based on age group of the deceased/victim – Split multiplier method – Applicability of – Held: The 1988 Act does not envisage application of split multiplier – In absence of any specific reason and evidence on record, Tribunal or Court should not apply split multiplier in routine course and should apply multiplier as per decision of Supreme Court in the case of *Sarla Verma* as affirmed in the case of *Reshma Kumari*.

(ii) ss.163A and 166 – Principles relating to determination of liability and quantum of compensation different for claims made u/s.163A and claims made u/s.166 – Structured formula as prescribed under the Second Schedule in s.163A and the multiplier mentioned therein not binding for claims u/s.166.

(iii) s.163A, Second Schedule – Applicability and purpose of.

(iv) s.163A, Second Schedule – Amendment in – Need for – Held: The Second Schedule was enacted in 1994 – It has now become redundant, irrational and unworkable, due to changed

scenario including the present cost of living and current rate of inflation and increased life expectancy – Specific direction to Central Government to make proper amendments to the Second Schedule table keeping in view the present cost of living, subject to amendment of Second Schedule as proposed or may be made by the Parliament.

(v) s.171 – Accident claim – Compensation – Award of interest – Duty bestowed upon Tribunal and Courts – Held: Under s.171, no rate of interest has been fixed and duty is bestowed upon the Tribunal to fix the rate of interest – Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by the Supreme Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the case is pending.

(vi) s.168 – Compensation – Grant of – Difference between English law and Indian law – Held: According to the English Law compensation/ damages are payable according to the proportionate loss whereas in India compensation is payable which appears to the Tribunal to be just is payable – English Fatal Accidents Act, 1846.

(vii) s.166 – Accident claim – Compensation – Determination of – Deceased was 48 years old and drawing gross salary of Rs. 13,331/- per month and paying a sum of Rs.889/- per month towards tax – Deceased left behind four

dependent family members – Tribunal awarded compensation of Rs.9.3 lakhs – High Court enhanced the compensation to Rs.11.25 lakhs – Held: Since deceased left behind four dependent family members, deduction towards his personal and living expenses should be 1/4th – High Court did not consider the question of prospect of future increase in salary of the deceased though it noticed that the deceased would have continued in pensionable services for more than 10 years – When age of the deceased was 48 years at the time of death it wrongly applied multiplier of 10 and not 13 as per decision in '*Sarla Verma*' – Claimants entitled for total compensation of Rs.23.43 lakhs and also interest on the enhanced compensation at the rate of 12% p.a. from the date of filing of the complaint petition.

Puttamma & Ors. v. *K. L. Narayana Reddy & Anr.* 831

NATURAL JUSTICE:

Bias.

(See under: Armed Forces Rules, 1954) 495

PENAL CODE, 1860:

(1) s.120B and s.202.

(See under: Terrorist and Disruptive Activities (Prevention) Act, 1987) 1

(2) s. 120-B, 302, 307, 326, 324, 427, 435, 436, 201 and 201 – Serial bomb-blast in Bombay – Acquittal of respondents-accused – By Designated Court – Appeal by State – Held: In the facts of the case, respondent-accused Nos.17,

24, 75 and 94 were wrongly acquitted under charge of conspiracy – Hence convicted for the charge of larger conspiracy and sentenced to life imprisonment – Acquittal of rest of the respondent-accused upheld.

State of Maharashtra v. *Fazal Rehman Abdul* 244

(3) ss.120-B, 406, 409, 411, 420, 465, 466, 468, 471, 109 r/w s.34.

(See under: Bail) 1181

(4) 120-B, 302, 307, 326, 427, 435, 436, 201 and 212.

(See under: Terrorist and Destructive Activities (Prevention) Act, 1987) 368

(5) s. 302 and s.302 r/w. 120-B – Murderous assault leading to death – Three accused – Conviction of all the accused, by Courts below – Held: Conviction justified – Motive of accused 'B' along with other circumstantial evidence sufficient to convict the three accused – Evidence of PW1 and other prosecution witnesses was convincing, reliable and trustworthy.

Bakhshish Singh v. *State of Punjab & Anr.* 589

(6) s.302 and s.120-B r/w s.201 – Naina Sahni murder case – Prosecution case that the accused A-1 killed his wife since he was suspecting her having some relationship with PW-12 and also because appellant did not want to make his marriage with the deceased public while the deceased was insisting on the same – After

killing, the accused A-1 with the help of A-2 burnt the dead body of the deceased in the tandoor of the Bar-be-Que restaurant owned by A-1 – Conviction of A-1 u/s.302 and s.120-B r/w s.201 and of A2 u/s.120-B r/w s.201 – Held: Chain of circumstances complete and unerringly pointed to the guilt of appellant – Established circumstances capable of giving rise to inference inconsistent with any other hypothesis except the guilt of appellant – Prosecution, therefore, proved that the appellant alone committed the murder of deceased in the flat where they were staying together and then conspired with A2 to do away with the dead body of the deceased so as to cause disappearance of the evidence of murder – At the instance of A-1, A2 burnt the dead body in the tandoor – A-1, therefore, rightly convicted u/s.302 IPC and u/s.201 r/w s.120-B IPC – A-2 rightly convicted u/s.201 r/w s.120-B.

(Also see under: Sentence/Sentencing).

Sushil Sharma v. *The State of N.C.T. of Delhi* 616

(7) ss. 302, 342, 218, 193 r/w. s. 34 – Custodial death – Prosecution of police officials – Circumstantial evidence – Acquittal by trial court – Conviction by High Court – Held: Since the arrest Panchnama and Arrest Register have been duly proved by PWs 21 and 22 and there is no evidence to show that they were fabricated, accused cannot be held guilty u/ss. 218 and 193 – Accused also cannot be convicted u/s. 342 because the deceased was a co-accused in a kidnapping case – Injuries on the deceased

noticed in the post mortem, which were the cause of death, were not described in Arrest Panchnama – Therefore, it would be inferred that those injuries were caused to the deceased while in police custody – It is established that the deceased was last in the custody of accused No. 1 in the police lock-up – Burden to prove the injuries was on accused No. 1, which he failed – Therefore, accused No. 1 would be held responsible for the injuries – Circumstances of the case established that accused No.1 did not intend to cause death, he can be held guilty of culpable homicide not amounting to murder u/s. 304 – His conviction altered to one u/s. 304 from 302 – Hence, his sentence reduced to seven years RI with fine of Rs. 3000/- – Since accused Nos. 2 and 3 left the Police Station soon after the arrest, deceased cannot be said to be in their custody – Hence, they cannot be held responsible for the fatal injuries on the deceased – Therefore, their conviction set aside – Evidence Act, 1872 – s. 106.

Sunil Mahadeo Jadhav v. *The State of Maharashtra* 910

(8) Chapter XX; ss. 323, 354, 389, 452, 458, 500 and 506 r/w ss.34 and 120-B.

(See under: Code of Criminal Procedure, 1973) 542

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

(See under: Constitution of India, 1950) 1059

PRACTICE AND PROCEDURE:
Subsequent events – Consideration of – Permissibility.

M/s PRP Exports & Etc. v. *The Chief Secretary, Government of Tamil Nadu & Ors.* 1107

PREVENTION OF CORRUPTION ACT, 1988:
s.13(2) r/w s.13(1)(c) and 13(1)(d).

(See under: Bail) 1181

PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984:
s.4.

(i) (See under: Penal Code, 1860) 244

(ii) (See under: Terrorist and Destructive Activities (Prevention) Act, 1987) 368

PROBATION OF OFFENDERS ACT, 1958:
(i) s.4 – Scope of – Held: s. 4 is intended to attempt possible reformation of an offender instead of inflicting upon him the normal punishment – Such exercise of discretion needs a sense of responsibility, by taking into consideration the attendant circumstances.

(ii) s. 4 – Effect of – Held: The provision will have overriding effect and shall prevail, if conditions prescribed therein are fulfilled – Code of Criminal Procedure, 1973 – s. 360.

Sanjay Dutt (A-117) v. *The State of Maharashtra, through CBI (STF), Bombay* 368

REFERENCE TO LARGER BENCH:

(See under: Industrial Disputes Act, 1947) 706

REVISION:

(See under: Code of Criminal Procedure, 1973 and Criminal Trial) 542

SALE OF GOODS ACT, 1930:
ss. 19, 20 and 21.

(See under: Agricultural Produce Market Fee) 939

SENTENCE/SENTENCING:

Appropriate sentence – Murder – Death sentence –Mitigating circumstances – Appreciation of – Held: Medical evidence did not establish that the dead body was cut – No recovery of any weapon like chopper which could suggest that appellant had cut the dead body – Murder was the outcome of strained personal relationship – It was not an offence against the Society – The accused was not remorseless – Accused had no criminal antecedents – No evidence led by the State to indicate that he was likely to revert to such crimes in future – He was the only son of his parents, who were old and infirm – He already spent more than 10 years in death cell – The offence was brutal but brutality alone would not justify death sentence in this case – Death sentence commuted to life imprisonment in view of the mitigating circumstances – Life sentence for the whole of remaining life subject to remission granted by the appropriate Government u/s. 432 CrPC, which, in

turn, subject to procedural checks mentioned in the said provision and further substantive checks in s.433-A CrPC – Penal Code, 1860 – s.302 and s.120-B r/w s.201 – Code of Criminal Procedure, 1973 – ss.432 and 433A.

(See under: Sentence/Sentencing)

Sushil Sharma v. *The State of N.C.T. of Delhi* 616

SERVICE LAW:

(1) Appointment – Under scheme of employer for assistance to displaced persons whose land was acquired for setting up its establishment – After death of the appointee, his brother seeking appointment – Held: Claim for appointment was neither covered under the scheme of 'land displaced persons' nor under the scheme of compassionate appointment – Hence, the claim for appointment rightly rejected by the employer.

Chairman-cum-Managing Director & Others v. *Bharat Chandra Behera & Another* 1045

(2) Date of birth – Determination of – Date of birth of employee recorded as 2.4.1946 at the time of initial employment – Later employee seeking rectification of his date of birth as 2.4.1948 on the basis of his Matriculation Certificate – Permissibility – Held: Date of birth mentioned in Matriculation Certificate has to be accepted as authentic – But in the instant case, the employee in order to gain eligibility for appointment did not produce Matriculation Certificate at the time of initial appointment –

Hence, he is estopped from relying on the Matriculation Certificate – Estoppel.

Eastern Coalfields Ltd. and others v. *Bajrangi Rabidas* 895

(3) Conveyance allowance – Claim of, by deaf and dumb government.

(See under: Constitution of India, 1950) 1059

SUBSEQUENT EVENTS:
Consideration of.

(See under: Practice and Procedure) 1107

TAMIL NADU MINOR MINERAL CONCESSION RULES, 1959:
rr. 36(4) and 36(1).

(See under: Mines and Minerals (Development and Regulation) Act, 1957) 1107

TERRORIST AND DESTRUCTIVE ACTIVITIES (PREVENTION) ACT, 1987:
(1) ss.3(2)(i)(ii), 3(3) and (4), 5 and 6.

(See under: Penal Code, 1860) 244

(2)(i) ss. 3(2)(i)(ii), 3(3), (4), 5 and 6 – Penal Code, 1860 – 120-B, 302, 307, 326, 427, 435, 436, 201 and 212 – Arms Act, 1959 – ss. 3, 7 and 25(1-A), 25(1-B)(a) – Explosives Act, 1884 – s.9B(1)(a)(b)(c) – Explosive Substances Act, 1908 – ss. 3, 4(a)(b), 5 and 6 – Prevention of Damage to Public Property Act, 1984 – s. 4 – Prosecution under – Designated Court convicted A-117 under the provisions of Arms Act and sentenced him to 6 years imprisonment; convicted A-118 under the

provisions of Arms Act and u/s. 201 IPC and sentenced him to 5 years RI – A-124 was convicted u/s. 25(1-B)(a) of Arms Act and s.201 IPC and sentenced to 2 years RI – Acquittal of A-120 – Conviction of A-53 u/s. 3(3) TADA and sentenced of 9 years RI – Conviction of A-119 u/ss. 3(3) and 5 of TADA and sentenced to 5 years RI – Appeal by all the appellants-accused – Appeal by the State against acquittal of A-120 and cross-appeals in respect of A-53 and A-119 – Held: Order of the Designated Court upheld as regards conviction/acquittal of the accused persons – However, in the circumstances of the case, sentence of A-117 reduced to 5 years RI from 6 years RI; sentence of A-124 reduced to 1 years RI from 2 years; and sentence of A-53 reduced to the period already undergone.

(ii) s.15 – Confessional statement under – Evidentiary value of – Held: A confessional statement is a substantive piece of evidence and can be the sole basis for conviction, if recorded in accordance with the provisions of TADA – A voluntary and truthful confessional statement requires no corroboration – But if such statement is to be used against the co-accused, the Court may look for corroboration as a matter of prudence – Minor and curable irregularities in recording such statement do not affect the admissibility of the said evidence.

(iii) s.15 – Confessional statement – Retraction of – Effect – Held: A voluntary and free confession even if retracted later, can be relied upon.

(iv) s.15 – Confessional statement under –

Reliance on – Permissibility – When accused is acquitted of TADA charges – Held: Confession recorded u/s. 15 can be relied upon in case of a joint trial, even if the accused is subsequently acquitted of TADA charges.

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(3)(i) s.5 – Bombay serial blasts of 1993 – Possession of weapon – A-20 charged for keeping one AK-56 rifle and two magazines – Conviction – Justification – Held: Sufficient material to show that recovery had been made at the behest of A-20 from the factory, of which he was the partner – His statement lead to the discovery of the assault weapon and two magazines kept in his workshop and the same had been found concealed on the loft – Reasonable inference drawn is that he himself had kept the same at that place – Thus cannot escape from the liability of possessing and concealing the same and hence, liable to be punished.

(ii) ss. 3 and 5 – Bombay serial blasts of 1993 – Participation of A-31 in landing and transportation of smuggled arms, ammunition and explosives – Conviction – Justification – Held: Evidence on record proves that A-31 had participated in landing operation and transportation of smuggled Arms Amuminitions and explosive – Therefore, liable to be convicted – Arms Act, 1959.

(iii) ss.3(3) and 6 –Bombay serial blasts of 1993 – Facilitation of commission of terrorist activities – Smuggling and landing of arms, ammunition,

hand grenades and explosives – Conviction of A-30 – Held: A-30 was aware that the smuggled goods were arms and ammunition, and even after acquiring such knowledge, he had continued the landing of said goods and continued to help the smugglers – Thus, liable to be convicted u/s. 3(3) and 6 – Further, he had close association with A-82, officer of the customs department, who had been helping the smugglers by taking a bribe through A-30 – Therefore, also convicted for conspiracy – Penal Code, 1860 – s.120B – Arms Act, 1959.

(iv) ss.3 and 6 – Bombay serial blasts of 1993 – Participation in landing and transportation of contraband smuggled into the country – Abetting and participating in terrorist activities – Conviction of A-46 – Held: Confession of A-46 revealed that he was in employment of the Memon family and a very close confidant of Tiger Memon (AA) – He handed over a motor vehicle containing arms and ammunitions at residence of A-68 – Confessions of co-accused also established his involvement along with A-10 for taking co-accused, who were sent for training to Pakistan via Dubai, though he may not be aware of the purpose for which the co-accused were sent – Conviction confirmed.

(v) ss.3(3) and 6 – Bombay serial blasts of 1993 – Landing and transportation of arms and ammunition for committing terrorist activities – Possession/storage of arms, ammunition and explosives – Conviction of A-73 – Justification – Held: A-73's involvement and participation in the landing operations of the contraband substances

was clearly established – His own confessional statement revealed that he, being fully aware of the contents of the contraband, shifted the same from the truck to other vehicles and that despite the fact that he knew that the contraband contained arms, ammunition and RDX, he continued to be associated with the other co-accused – Therefore, he aided and abetted terrorist activities – However, the said acts were committed by him in the early phases of the conspiracy, even prior to Tiger Memon (AA) deciding the target of the Blast; and after this particular incident, A-73 had not been involved in any landing job – Therefore, cannot be held guilty for the larger conspiracy.

(vi) s.3(3) – Bombay serial blasts of 1993 – Landing & transportation of smuggled arms, ammunition and explosives – Conviction of A-62 – Held: A-62, watchman of Government premises had allowed the same to be used for the purpose of facilitating the smuggling and landing of arms, ammunition, handgrenades and explosives as organized by Tiger Memon (AA) and his associates – The evidence further establishes his involvement in concealing 59 bags of RDX explosives in a field existing in his name – Thus, he was rightly convicted u/s.3(3) – Being a Government servant, he intentionally omitted giving information to the authorities about the offences committed in his presence, which he was legally bound to do – Hence, also liable to be convicted u/s. 202 IPC – Penal Code, 1860 – s.202.

(vii) s.3 – Bombay serial blasts of 1993 – Larger conspiracy – Involvement in landings and transportation of smuggled arms, ammunition and

explosives – Whether A-42 could be held guilty for the offence of larger conspiracy – Held: Having regard to the fact that A-14 had chosen A-42 for the purpose of keeping two revolvers with him and the fact that A-42 had readily kept the same, reveals that he was a man in which the prime accused had confidence with respect to the conspiracy – A-42 was involved in landing operations, however, since he had committed the relevant acts much prior to the date of the bomb blasts and had not participated in any meetings, nor was he connected with the same in any manner, and the fact that the acts were committed by him at a time when even the targets of the Bomb blasts had not been fixed, he could not be held guilty for the offence of larger conspiracy.

(viii) s.3 – Bombay serial blasts of 1993 – Larger conspiracy – Acquittal of A-79 by Special Judge – Justification – Held: The Special Judge was not justified in acquitting A-79 from the charge of larger conspiracy merely on the ground that he did not know about the places where the bombs had to be thrown and he was not the resident of Bombay and did not participate in the conspiratorial meetings – Finding of fact recorded by the Special Judge is also contradictory as the court held that he participated in the arms' training at Sandheri, however, he also observed that the evidence does not disclose that any of those accused had been trained in handling of handgrenades – Arms Act, 1959.

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URBAN DEVELOPMENT:

(1) Rights of the apartment owners *vis-à-vis* the colonizers.

(See under: Haryana Apartment Ownership Act, 1983) 979

(2) Sanction for construction of high-rise building going upto 198.50 meters – Provision for Public Parking Lot upto 13 floors – During the construction work, decision of Government to limit the height of Public Parking Lot to ground plus 4 upper floors – Competent authority directing the builder to restrict the work of Public Parking upto ground plus 4 floors instead of 13 floors – By further order, the authority allowed Public Parking to the extent of already executed construction – High Court quashed the orders passed by the authorities as being contrary to law – On appeal, settlement arrived at between the parties – The Court also noticed certain violations while granting initial sanction in respect of the building in question – Memorandum of Settlement taken on record and parties directed to act strictly in accordance thereof – Suggestions given regarding height of buildings vis-à-vis the adjoining roads and impact of additional FSI on the traffic situation – State Government, Development Plan Drafting Committee, and appellant-Municipal Corporation directed to consider the suggestions while framing the Development Plan for Greater Mumbai – 'Technical Committee for High-Rise Buildings' reconstituted – Development Control Regulations for Greater Mumbai, 1991 – Maharashtra Regional

and Town Planning Act, 1966 – Constitution of India, 1950 – Arts. 14 and 21.

Municipal Corporation of Greater Mumbai and Ors. v. Kohinoor CTNL Infrastructure Company Private Limited and another 1119

WORDS AND PHRASES:

(1) Expression "official duty" – Meaning of.

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(2) 'Open space' and 'Site' – Meaning of, in the context of Urban Development.

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