

XV
IMPORTANT JUDGEMENTS HAVING BEARING ON RIGHTS OF
ARRESTEES/UNDERTRIALS/CONVICTS

Right to speedy trial

By virtue of the provisions contained in Section 7(2)(C) of the Legal Services Authorities Act, 1987, the Haryana State Legal Services Authority, apart from giving effect to policies and directions of National Legal Services Authority, is also required inter alia to undertake preventive and strategic legal aid programmes, qua the strategic aspect, some important judgements having bearing on vital issues concerning the rights of arrestees/accused undertrial/convicts are being adverted to hereunder for legal awareness amongst the masses:-

1. The Hon'ble Supreme Court, had as far back as in the year 1979 in the case titled **Hussainara Khatoon and others versus State of Bihar** reported in AIR 1979 SC 1396, and in yet another Judicial Magistrates/Sessions Judges in the entire country to inform every accused who indigence or incommunicado situation that he is entitled to free legal service at the cost of the State. It was further mentioned in the above quoted authorities that the aforesaid constitutional obligation to provide free legal service to an indigent accused does not arise only when the trial commences but also attaches when the accused, is for the first time, produced before the Magistrate and that it is at this stage that the accused-persons need sound legal advise and representation.
2. It was further laid down by the Hon'ble Supreme Court in the case titled **Sukh Dass Vs. Union Territory of Arunachal Pradesh** reported in AIR 1986 SC 991 that the entitlement to free legal aid is not dependent on the accused making an application before the Magistrate/Judge who instead is obliged to inform the accused of his right to obtain free legal aid.

Despite the above-referred pronouncement of the Apex court, accused sometimes ago unrepresented at the initial stages not only in cases tribal by the Sessions Court to which the provisions of Section 304 Cr. P.C. regarding legal aid to accused are applicable from the very beginning but also to magisterial trials whereto also the provisions of section 304 Cr.P.C. have been made applicable vide Haryana Government notification No. 20/5/78-JJ(4) dated 1-6-83.

The Judicial Magistrate must thus comply with the above-referred mandate of the Apex court regarding the provisions of legal aid to the accused from the inception of his production before the Magistrate.

3. The National Police Commission in its third report while referring to the quality of arrest by the police in India suggests that by and large nearly 60% of the arrests were either unnecessary or unjustified and further that such unjustified police action accounted for 43.2% of the expenditure of the jails. It is further mentioned therein that power of arrest is one of the chief sources of the corruption in the police.
4. Taking note of the aforesaid report of the National Police commission, the Hon'ble Supreme Court in the case titled **Joginder Kumar Vs. State of U.P. and another** reported in 1994 (2) CLR 428 has held as under:-

“No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the

reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent of a police officer in the interest or protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest would be made without a reasonable satisfaction, reached after some investigation as to the genuineness and bonafides of a complaint, and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.”

It was further observed therein by the Hon'ble Supreme Court that a person is not liable to arrest merely on the suspicion of complicity in an offence and that there must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. It was added that except in heinous offences, an arrest must be avoided if a police officer issues notice to the person to attend the Station House and not to leave Station without permission would do. It was held therein that these rights are inherent in Article 21 and 22(1) of the Constitution and are required to be recognized and scrupulously protected. In the light of the 3rd report of the National Police Commission as referred to in Joginder Kumar's case (Supra) the Hon'ble Supreme Court has observed that an arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:-

- (i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and, bring his movements under restraint to infuse confidence among the terror stricken Victims.
- (ii) The accused is likely to abscond and evade the process of law.
- (iii) The accused is given to violent behavior and is likely to commit further offences unless his movements are brought under restraint.
- (i) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It was added in the above context that it would be desirable to insist, through departmental instructions, that a police officer making an arrest should also record in the case diary the reasons for making the arrest thereby clarifying his conformity to the specified guidelines.

5. Subsequent to the mandate in **Joginder Kumar's case** (Supra), the Hon'ble Supreme Court in the case titled **D.K. Basu Vs. State of Bengal** reported in 1997 (1) SCC 416 has laid down certain basic requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as a measure to prevent, custodial violence. The said requirements read as follows:

- (i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogating of the arrestee must be recorded in a register.

- (ii) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respective person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- (iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- (iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8-12 hours after the arrest.
- (ii) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (iii) An entry be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of arrest and the names and particulars of the police officials in whose the custody the arrestee is.
- (iv) The arrestee should, where he so requests be also examined at the time of his arrest and major and minor injuries, if any present on his/her body must be recorded at that time. The inspection Memo must be signed both by the arrestee and the police officer effecting the arrest, and its copy provided to the arrestee,
- (v) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- (vi) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Ilaqa Magistrate for his record.
- (vii) The arrestee may be permitted to meet his lawyers during interrogation, though not throughout the interrogation.
- (viii) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of

custody of the arrestee shall be communicated by the office causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

6. In the case titled **Moti Ram and other Vs. Madhya Pradesh**, AIR 1978 SC 1594, it was observed by the Hon'ble Supreme Court that bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that 'bail' covers both release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables. It was further observed that poor men – (Indians are in monetary terms, indigent) – young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances – put whatever reasonable conditions you may. The Hon'ble Supreme Court went on to add that it shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs.10,000/-. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by "We, the People of India", is meant for the butcher, the baker and the candle-stick maker – shall we add, the bonded labour and pavement dweller. To add insult to injury, the magistrate has demanded sureties from his own district (We assume the allegation misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know anyone there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any State language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in a language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland, Swaraj is made of united stuff.
7. In case titled **Common Case Vs. Union of India & others** reported in 1996 SC 1619 decided on 8-10-1998, it was held as under :
 - i(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal Court are punishable with imprisonment not exceeding three years with or without fine and if trails for such offences are pending for one year or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to such condition if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code.

- i(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding five years, with or without fine, and if the trial for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437, Cr.P.C.
- i(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned Criminal Court shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437, Cr.P.C.
- ii(a) Where Criminal proceedings are pending regarding traffic offences in any Criminal Court for more than two years on account of non serving of summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close and cases.
- ii(b) Where the cases pending in Criminal Courts for more than two years under IPC or any other law for the time being in force are compoundable with permission of the Court and if in such cases trials have still not commenced, the Criminal Court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.
- ii(c) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be, and close such cases.
- ii(d) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if in such cases trial have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be and close such cases.
- ii(e) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to one year with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the

Criminal court shall discharge or acquit the accused, as the case may be and close such cases.

- ii(f) Where the cases pending in Criminal Courts under IPC or any other law for the time being in force are punishable with imprisonment up to three years with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the Criminal court shall discharge or acquit the accused, as the case may be and close such cases.
 - iii. For the purpose of directions contained in clauses (1) and (2) above, the period of pendency of Criminal Cases shall be calculated from the date the accused are summoned to appear in the Court.
 - iv. Directions(1) and (2) made hereinabove shall not apply to cases or offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) public tranquility, (g) offences relating to public servants, (h) offences relating to coins and Government stamps, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499, IPC.
8. The aforesaid judgment was clarified by the Hon'ble Supreme Court in the subsequent case, also titled **Common Cause Vs. Union of India**, reported in AIR 1997 SC 1539 (decided on 28-11-1996) wherein it was held as under:
- (i) The time limit mentioned regarding the pendency of criminal cases in paragraphs from 2(a) to 2(f) of our judgement shall not apply to cases wherein such pendency of the criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the concerned accused or on account of any other action of the accused which results in prolonging the trial. In other words, it should be shown that the criminal proceedings have remained pending for the requisite period mentioned in the aforesaid clauses o paragraph 2 despite full cooperation by the concerned accused to get these proceedings disposed off and the delay in the disposal of these cases is not at all attributable to the concerned accused, nor such delay is caused on account of such accused getting stay of criminal proceedings from higher Courts. Accused concerned are not entitled to earn any discharge or acquittal as per paragraphs 2(a) to 2(f) of our judgement if it is demonstrated that the accused concerned seek to take advantage to their own wrong or any other action of their own resulting in protraction of trials against them.

- (ii) The phrase 'pendency of trials' as employed in paragraphs from 1(a) to 1(c) and the phrase 'non-commencement of trial' as employed in paragraphs from 2(b) to (f) shall be constructed as under:
- (a) In case of trials before Sessions Court, the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.
 - (b) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police report, the trials shall be treated to have commenced when charges are framed under section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under section 246 of the Code of Criminal Procedure, 1973.
 - (c) In cases of trials of summons cases by magistrates, the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under section 251 whether they plead guilty or have any defence to make.
- (iii) In paragraph 4 of our judgement in the list of offences to which directions contained in paragraphs 1 and 2 shall not apply, the following additions shall be made:
- (n) matrimonial offences under Indian Penal Code including Section 498-A or under any other law for the being in force; (o) offences under the Negotiable Instruments Act including offences under Section 138 thereof; (p) offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under Indian Penal Code or under any other law for the time being in force; (q) offences under Section 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time in force.

It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to our judgement dated 1st May, 1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the concerned Criminal Court shall suo moto or on application by the concerned aggrieved parties issue within

three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law.

It is however made clear that in trials regarding other offences which are covered by the time limit specified in our earlier order dated 1st May 1996 wherein the concerned accused are already acquitted or discharged pursuant to the said order, such acquitted or discharged accused shall not be liable to be recalled for facing such trials pursuant to the present clarificatory order which qua such offences will be treated to be purely prospective and no such cases which are already closed shall be reopened pursuant to the present order.

9. Subsequent thereto, in the case titled **Raj Deo Sharma Vs. The State of Bihar** (Crl. Appeal no. 1045 of 1998 decided on 8-10-1998), the Apex Court issued the following supplementary directions:
- (i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail, or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.
 - (ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.
 - (iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided bylaw for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.
 - (iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protecting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses (1) to (3).
10. In the case titled **Dharam Pal Vs. State of Haryana** reported in 1999 (4) RCR (Crl.) 600 decided on 8-9-99, it has been held by a Division Bench of our own Hon'ble High Court that the under mentioned category of convicts who apply

for bail during the pendency of the hearing of their appeals against convictions ordered by the trial courts are entitled to be released on bail.

- (i) Life convicts who have undergone five years of imprisonment, of which three years should after conviction, should be released on bail pending hearing of their appeals.
- (ii) Same principles ought to apply to those convicted by court martial.
- (iii) Period of five years should be reduced to four years for females and minors, with at least two years imprisonment after conviction.

It was however held in the aforesaid judgement that the above referred directions will not apply in cases where grant of bails is forbidden by law and nor to those who are convicted of heinous offences such as dacoity with murder, rape with murder or murder, of a child below 14 years of age.

11. The apex-Court in the case titled Sunil Ful chand Shah Vs. Union of India and Others (2000(3) SCC 400 had observed interalia as under:-

“.....Since release on parole is a temporary arrangement by which a detenu is released for a temporary fixed period to meet certain situations, it does not interrupt the period of detention and, thus, needs to be counted towards the total period of detention unless the rules, instructions or terms of grant of parole, prescribe otherwise.”

While advertng to the above observations in **Sunil Ful Chand Shah’s Case** (supra), the apex-Court in the latest judgement titled **Avtar Singh Vs. State of Haryana & Others** ; Criminal Appeal No. 271 of 2002; arising out of S.L.P. (Crl.) No. 4361 of 2000 has upheld the constitutional validity of sub-section (3) of Section 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which reads as hereunder:-

“(3) Temporary release of prisoners on certain grounds:-

The period of release under this section shall not count towards the total period of sentence of a prisoner.”

The Apex-Court has further observed in the above noted case as under:-

“We also do not find force in the contention of the learned counsel for the appellant that sub-section (3) of Section 3 of the Act is hit by Article 21 of the Constitution. By a valid legislative act, the period of temporary release on parole has been denied while counting the actual sentence undergone by the prisoner. It cannot be said that such right of a prisoner has been taken away without due process of law.”

It was also observed in the above noted case as under:-

“On close look at both the sections, it would appear that these sections operate on different fields. Section 3 has been enacted to meet certain situation of the prisoner but Section 4 has been enacted as a reformative measure as a prisoner has to show good conduct while in incarceration. In our considered opinion

this classification is based on rational criteria and cannot be said to be discriminatory in nature.”

12. Medical assistance to injured without waiting for police.

In case titled **Pt. Parmanand Kataria Vs. Union of India** and others reported in AIR 1989, Supreme Court, at page 2039, it was held as under:

Every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. There is no legal impediment for a medical professional when he is called upon or requested to attend to an injured person needing his medical assistance immediately. The effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation.

There is also no doubt that the effort to save the persons should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation. But on behalf of the medical profession there is one more apprehensions which some time as he apprehends that he will be a witness and may have to face that police interrogation which some time may need going to the police station repeatedly and waiting and also to be a witness in a court of law where also he apprehends that he may have to go on number of days and may have to wait for a long time and may have to face some times long unnecessary cross examination which some time may even be humiliating for a man in the medical profession who is not entrusted with the duty of handling medico-legal cases. We therefore have no hesitation in assuring the person in the medical profession that these apprehensions, even if have some foundation, should not prevent them from discharging their duty as a medical professional to save a human life and to do all that is necessary but at the same time we hope and trust that with this expectation from the members of the medical profession, the police, the members of the legal profession, our law courts and every one concerned will also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formalities and should not be dragged during investigations at the police station and it should be avoided as far as possible. We also hope and trust that our law courts will not summon a medical professional to give evidence unless the evidence is necessary and even if he is summoned, attempt should be made to see that the men in this profession are not made to wait and waste time unnecessarily and it is known that our law courts always have respect for the men in the medical profession and they are called to give evidence when necessary and attempts are made so that they may not have to wait for long. We have no hesitation in saying that it is expected of the members of the legal profession which is the other Hon'ble profession to honour the persons in the medical profession and see that they are not called to give evidence so long as it is not necessary harassment of the members of the medical profession either by way of request for adjournments or by cross-examination should be avoided so that the

apprehension that the men in the medical profession have which prevents them from discharging their duty to a suffering person who needs their assistance utmost, is removed and a citizen needing the assistance of a man in the medical profession receives it.
