

X VERSUS THE STATE OF UTTAR PRADESH & ANR

- ❖ **TOPIC :** Mandatory To Hear Informant/Victim Before Granting Bail In Rape Offences, SC/ST Act Cases
- ❖ **BENCH :** Justices Bela M. Trivedi and Satish Chandra Sharma
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding the bail granted to a person accused of serious offences
- ❖ **OBSERVATION**
 - The bench comprising Justices Bela M. Trivedi and Satish Chandra Sharma heard the criminal appeal filed by a victim against the Allahabad High Court's order granting bail to the accused who neither impleaded the victim in the bail application, nor the public prosecutor informed the victim or her representative about the proceedings before the High Court.
 - The Court disapproved of the High Court's decision of casually deciding the bail application without following the mandatory provisions of law
 - The Court reasoned that it requires a meticulous examination of the bail application of an accused charged with a serious offence therefore not informing the victim about the proceedings, due to which she was not able to be present during the bail hearing violated her right to participate in the trial under Section 439(1A) of CrPC and Section 15A(3) of the SC/ST Act.
 - “In the instant case, there is gross violation of the said statutory provisions contained in Section 439(1A) of Cr.P.C. and Section 15A (3) of the SC/ST Act, at the instance of the respondents. The High Court also in the impugned order has not considered the said mandatory requirement of both the Acts and granted bail to the concerned respondents in a very casual and cursory manner and without assigning any cogent reasons, though the concerned respondents are prima facie involved in a very serious offence.” ”, the court observed
 - The accused was facing offences under Section 376DA(gang rape) of the IPC, and Sections 5(g) and 6 of POCSO Act, 2012, and Sections 3(2) and 5(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC/ST Act”)
 - For trial in offences punishable under sub-section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the IPC, the presence

- of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under Section 439(1A) of Cr.P.C.
- Further 15A (3) of the SC/ST Act mandates that “a victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.
 - “It is pertinent to note that as per Section 439(1A) of Cr.P.C., the presence of the informant or any person authorised by him or her is obligatory at the time of hearing of the application for bail to the person under sub-section (3) of Section 376 or Section 376AB or Section 376DA or Section 376DB of the IPC
 - Similarly, it is also mandatory on the part of the Special Public Prosecutor of the State Government to inform the victim about the court proceedings, including bail proceedings as contemplated in sub-section (3) of Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.”, the court said.
 - Noting that “the concerned respondents – accused had not impleaded the present appellant as the party – respondent in the bail proceedings filed by them before the High Court, and the concerned Public Prosecutor also had not informed the appellant – victim about the said proceedings”, the Court allowed the appeal.
 - “Under the circumstances, we are of the opinion that the impugned orders passed by the High Court in utter disregard of the mandatory provisions contained in the Cr.P.C. as well as in the SC/ST Act, deserve to be set aside and are hereby set aside. The concerned respondents, i.e., Khargesh @ Golu, s/o Mukesh Kumar and Karan, s/o Paramhans Singh shall surrender before the Trial Court on or before 30.12.2024.”

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NEW INDIA ASSURANCE CO. LTD. VERSUS VELU & ANR

- ❖ **TOPIC:** Mere Delay In FIR Registration No Ground To Reject Motor Accident Claim, But Delay Can Become Relevant Depending On Evidence
- ❖ **BENCH:** Justices Sudhanshu Dhulia and Ahsanuddin Amanullah
- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding Accident Compensation claim
- ❖ **OBSERVATION**
 - The Supreme Court observed that although the delay in lodging an FIR would not be a ground to reject a Motor Accident Compensation claim, it gains relevance in cases where other evidence does not support the claimant's allegations.
 - The bench comprising Justices Sudhanshu Dhulia and Ahsanuddin Amanullah was hearing the appeal filed by the New India Assurance Co. Ltd. against the Madras High Court's decision setting aside the Motor Accident Claims Tribunal ("MACT") decision to reject the respondent claimant's claim against the injuries sustained to the claimant due to skid and fall from the scooter
 - The Respondent Claimant met with an accident on Dec. 27, 2011, and lodged an FIR after a delay of 34 days i.e., on Jan. 30, 2012. He also filed a claim case before the MACT claiming Rs. 20 Lacs compensation from the Appellant/Insurer. Based on the medical reports stating that the injuries suffered by the claimant were due to the skid and fall of the scooter not from a collision and there was a delay in filing a FIR, the MACT rejected the Respondent claimant's claim
 - The matter was taken in appeal where the order/award of the Tribunal has been set aside by the High Court on the ground that mere delay of FIR cannot be a ground for rejecting the claim of respondent no.1 and ordered the claim of Rupees Eleven lakh fifty thousand along with interest @ 7.5 % with a period of six weeks.
 - Being Aggrieved, the Appellant/Insurer approached the Supreme Court.
 - Before the Supreme Court, the Appellant contended that the delay in lodging an FIR would justify the rejection of the Claimant's claim because all the evidence lies against the Claimant that the accident was due to skid and fall from the scooter and not from a collision.
 - Per contra, the Respondent Claimant contended that a mere delay in FIR registration would not deny his claim for a motor accident claim

- Setting aside the High Court's decision, the Court observed that while a delayed FIR cannot solely disqualify a claim, it gains significance when other evidence contradicts the claim.
- The Court observed that since the Claimant's claim was not corroborated by the medical evidence, therefore the delay in FIR would hold relevance and the MACT's findings cannot be interfered with by justifying the rejection of a claim on the ground of delay in FIR registration.
- "In a given case a delayed FIR will not matter. Merely because the FIR has been delayed a claim cannot be rejected but in the present case considering that all the available evidences points out towards a skid and fall and not a motor accident, the delayed FIR also, require a relevance, particularly now we have been told that FIR itself has not been proceeded. Even the police in the FIR also came to the conclusion that there was no motor accident and had filed a closure report.", the court observed.
- Accordingly, the appeal was allowed

Malliga (Died) and Others v. S Shanmugam (Died) and Others

- ❖ **TOPIC:** Hindu Succession Act Doesn't Disqualify Widows From inheriting Deceased Husband's Property After Remarriage
- ❖ **BENCH :** Justice R Subramaniam and Justice C Kumarappan
- ❖ **FORUM:** Madras High Court
- ❖ **MAIN ISSUE**
 - Regarding provision in the Hindu Succession Act
- ❖ **OBSERVATION**
 - The Madras High Court has observed that there is no provision in the Hindu Succession Act that prohibits a widow from inheriting or taking share in the property of her deceased husband, upon remarriage. • The bench of Justice R Subramaniam and Justice C Kumarappan noted that though the Hindu Remarriage Act, 1856 disqualified a widow from inheriting properties upon remarriage, this Act was repealed after the Hindu Succession Act came into effect.
 - The bench further noted that as per the Hindu Succession Act, only the widow of a pre-deceased son or widow of a predeceased son of the predeceased son or widow of the brother was disqualified upon remarriage. However, by way of the 2005 amendment, even this provision was repealed.

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- “ The Hindu Succession Act, 1956 does not contain a provision, which disqualifies widows from inheriting their husband's properties or disqualifying the widows from taking a share in the husband's property upon remarriage....A close reading of the above provision would show that only widows of a pre-deceased son or a predeceased son of a pre-deceased son or widow of a brother, would face a disqualification upon remarriage. Even that provision has now been repealed by the Hindu Succession Amendment Act, 39 of 2005,” the court observed.
- The court was hearing an appeal against the order of the Additional District Judge refusing share in the deceased husband's property to his widow who had later remarried the deceased husband's brother. The original suit was filed by another brother of the husband claiming equal share in the property.
- The suit properties originally belonged to one Chinna Gounder who had settled the property in favour of his 3 sons – Sevi Gounder, Chinnapaiya Gounder and Chinna Gounder. Sevi Gounder died leaving behind the original plaintiff and the defendant. The appellant's husband was the pre-deceased son of Sevi Gounder. • The defendant (original plaintiff) contended that the Hindu Widow's Remarriage Act will apply in the present case as Sevi Gounder's father, who had originally settled the property died much before the enactment of the Hindu Succession Act.
- The court, however, noted that as per the settlement, the properties were to be taken by the male issues of the settler. Thus, after execution of the settlement, as and when the male issues were born to the settler, they became vested remaindermen and if any male issues die prior to the life estate holder, they die possessed of the vested remainder. The court added that such vested remainder would, upon the death of the remainderman, devolve on his heirs.
- The court noted that the appellant's husband died in 1968, after the Hindu Succession Act came into effect and thus, upon his death, the wife and his two brothers would take the property at 1/3rd each. The court thus held that the trial court was not right in its conclusion and ordered accordingly.

Victim v State of Rajasthan & Ors

- ❖ **TOPIC :** Fully Developed Fetus Has Right To Enter This World, Live A Healthy Life : Rajasthan HC Declines Termination of 30 Weeks Pregnancy
- ❖ **BENCH :** Justice Anoop Kumar Dhand
- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Regarding the application for termination of 30 weeks pregnancy
- ❖ **OBSERVATION**
 - While rejecting the application for termination of 30 weeks pregnancy by an alleged rape victim, the Rajasthan High Court reiterated that a fully developed foetus also has the right to life under Article 21 of the Constitution.
 - “The medical report indicates that the fetus is gaining weight and fat and is closure to its natural birth. Vital organs, like brain and lungs are almost fully developed, preparing for life outside the womb
 - The fetus has, in fact life with heart beats, hence termination of pregnancy, at this stage, is not advisable and possible. The fully developed fetus also has right to life under Article 21 of the Constitution of India to enter in this world and live a healthy life without any abnormalities.
 - The bench of Justice Anoop Kumar Dhand observed that the report by the Medical Board indicated that at such an advanced stage termination was not safe as it presented the risk of premature delivery which was likely to affect the neurotic development of the unborn child apart from exposing the petitioner's life to danger.
 - The Court was hearing a writ petition wherein the petitioner was alleged to have been raped and was seeking Court's permission to terminate her 30-weeks pregnancy It was the case of the petitioner that since the child was conceived as a result of an offence, giving birth to such a child would be like a constant reminder to her of the atrocities committed upon her.
 - As per the opinion of the Medical Board, the termination was not safe for the petitioner due to the advanced gestational period as well as her age. It was opined that an attempt to terminate such advanced pregnancy might result in premature delivery of the unborn child which might subject him/her to suffer from abnormality
 - In this background, the Court held that there was no material on record based on which the Court could differ from the opinion of the Medical Board.

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It was held that the delay caused in approaching the Court, on the petitioner's end, had aggravated the situation, hence any direction to terminate the pregnancy would endanger her life as well as the life of the fetus.

- The Court further opined that even though law recognized woman's autonomy in deciding whether to continue the pregnancy or not, looking at the un rebutted opinion of the Medical Board, the circumstances in the present case did not permit termination of pregnancy.
- Accordingly, the petition was disposed off with necessary directions to the State for providing maternal and nursery care to the petitioner, option to the petitioner of handing over the child for adoption after birth, and adequate compensation to the petitioner.

Nikita Singhania And 3 Others vs. State of U.P. and Another

- ❖ **TOPIC :** Atul Subhash Case| Allahabad HC Grants Transit Anticipatory Bail to Accused – Wife's Uncle For Four Weeks
- ❖ **BENCH :** Justice Ashutosh Srivastava
- ❖ **FORUM:** Allahabad High Court
- ❖ **MAIN ISSUE**
 - Regarding transit anticipatory bail
- ❖ **OBSERVATION**
 - The Allahabad High Court today allowed transit anticipatory bail for 4 weeks to Sushil Singhania, the uncle of the estranged wife of 34-year-old Bangalore techie Atul Subhash, in connection with the abetment to suicide case.
 - A bench of Justice Ashutosh Srivastava noted that denying interim protection to enable him to make a prearrest bail application before a Court of Competent Jurisdiction would result in irremediable and irreversible prejudices to him.
 - It may be noted that the Uncle of the deceased's wife is facing an FIR lodged in Karnataka, and the Allahabad HC has now granted him the relief so that he can invoke appropriate legal remedies before a court of competent jurisdiction in Karnataka.
 - The Court also noted that, upon a prima facie perusal of the suicide note, it comes out that the allegations of instigating suicide are primarily directed against the Principal Judge, Family Court, Jaunpur, the mother-in-law, and the wife.
 - As for Applicant No. 4 (the accused applicant), the court noted that the allegations appear to be limited to issuing threats over the phone and in person

- regarding beating up, killing, and filing false cases.
- The Court also relied upon the Supreme Court's 2023 judgment in the case of Priya Indoria v. State of Karnataka 2023 LiveLaw (SC) 996, wherein it was observed that there is no fetter on the part of the High Court in granting a transit anticipatory bail to enable an accused to approach the Courts including High Courts where the offence is alleged to have been committed and the case is registered.
- " There is no doubt that the right to liberty is enshrined in Part-III of the Constitution of India and such rights cannot be impinged except by following procedure established by law," the Court further remarked.
- Against this backdrop, the Court granted him the relief under Section 173 (2) Cr.P.C., on furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Magistrate/Court concerned.
- The Court has directed that the applicant shall make himself available for interrogation by a Police Officer as and when required.
- Earlier today, appearing for the accused, Senior Counsel Manish Tiwari questioned the haste shown by the police in apprehending the accused persons as he vehemently submitted that 'even Osama Bin Laden wasn't caught this 'quickly'.
- It may be noted that the wife of 34-year-old Bangalore techie Atul Subhash, along with three of her family members (including the accused-applicant/Sushil Singhania), had filed an anticipatory bail petition before the Allahabad High Court in connection with an FIR lodged against them concerning abetment to suicide case
- However, pursuant to the arrest of Nikita, her mother (Nisha Singhania) and her brother (Anurag Singhania) on Saturday, their plea became infructuous and only the plea of Accused-Sushil remained.
- Subhash, who allegedly died by suicide due to alleged harassment by his wife through the filing of matrimonial cases, left behind a 'justice is due' placard and a 24-page suicide note
- He also recorded an 81-minute video in which he accused his wife, Nikita Singhania, and her family members of subjecting him to harassment during an ongoing legal battle over divorce, alimony, and child custody in a family court in UP's Jaunpur district.
- An FIR was lodged against Nikita and her three family members by Bikas Kumar, the brother of Atul, in Bengaluru for abetment of suicide against them

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A. K. Sreekumar v The Director and Others

- ❖ **TOPIC :** Members of Charitable Society Running Private College Are “Public Servants”
- ❖ **BENCH :** Justice K. Babu
- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Regarding the grant of admission, collection of fees etc. of a private pharmacy college.
- ❖ **OBSERVATION**
 - The Kerala High Court held that the authority which can decide the grant of admission, collection of fees etc. of a private pharmacy college is a 'public servant' as defined under the Prevention of Corruption Act (PC Act). The Court was dealing with an issue regarding the collection of the capitation amount.
 - The Court noted that the admission and fixation of fees to the institution is governed by the provision of the Kerala Medical (Regulation and Control of Admission to Private Medical Institutions) Act, 2017. Justice K. Babu held that since the authorities are discharging a 'State function' under the obligation of existing laws, they are discharging a public duty and are public servants.
 - “ ‘Public duty’ as defined in Section 2(b) of the PC Act, means a duty in the discharge of which the State, the public or the community at large has an interest.
 - Thus a 'public servant' must be under the positive command of a State law or valid executive direction to discharge such a 'public duty'. If a body or a corporation exercises a State function under the obligation of the existing law, it is to be treated as a discharge of 'public duty.’”
 - The Court concluded that the college authorities were public servants by virtue of Section 2(b) and 2(c)(vii) of the PC Act
 - Section 2(c)(vii) says that any person who holds an office by virtue of which he is authorized or required to perform any public duty is a public servant. Public duty is defined in 2(b) as a duty in discharge of which the State, the public or the community at large has an interest.

- The petitioner had made a complaint before the Director of Vigilance saying that the members of the charitable society who was running 'Nazareth Pharmacy College' denied admission to eligible students to the seats allotted to the Government and sold those seats to private students after accepting a huge capitation fee from them.
- The complaint alleged that the members misappropriated that amount
- It is alleged that the said act is in violation of the provision of Kerala Professional College or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitation Fee & Other Measures To Ensure Equity & Excellence in Professional Education) Act, 2006. The complaint said that the authorities have committed offences punishable under Section 5 r/w Section 15 of the Act, Section 13 of the PC Act and Sections 406 & 409 of the Indian Penal Code
- When there was no action from the vigilance, the petitioner approached the Court of Enquiry Commissioner and Special Judge, Kottayam. The Court asked the petitioner to get approval under Section 17A of the PC Act. The Vigilance sought approval from the competent authority. The Government informed the Vigilance to drop the enquiry as the matter is being considered by the Admission Supervisory Committee. The petitioner challenged this order of the Government.
- The Court observed that as per Section 17A of the PC Act, prior approval is needed only for conducting an investigation into acts which are related to any recommendations made or decisions taken by a public servant in the discharge of his official function or duties. The Court held that the alleged acts did not come within its ambit.
- The Court directed the Vigilance Department to conduct a preliminary inquiry into the issue

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