

TINA SHARMA Vs UNION OF INDIA

- ❖ **TOPIC :** SC Allows Medical student with 70% hearing Impairment To Appear for PG Admission Counselling
- ❖ **BENCH :** Justices Vikram Nath and P.B. Varale
- ❖ **FORUM :** Supreme Court
- ❖ **MAIN ISSUE**
 - Regarding a petition filed by a medical student with a benchmark disability, having a 70% hearing impairment.
- ❖ **OBSERVATION**
 - The Supreme Court issued a notice returnable 4 weeks in a petition filed by a medical student with a benchmark disability, having a 70% hearing impairment, challenging the disability clause under the Post-Graduate Medical Education Regulations, 2023 whereby a person with a hearing disability of 40 % or more shall be ineligible for admission to Post-Graduate (PG) Medical Courses.
 - The petitioner has challenged the disability clause on grounds of being discriminatory and arbitrary in violation of Articles 14, 19(1)(g), and 21 of the Indian Constitution and Sections 3, 32, 33, 34 of the Rights of Persons with Disabilities Act, 2016 (RPwD Act).
 - As per the facts, the petitioner appeared in NEET (UG), 2018, for admission to the MBBS Course. She was issued a provisional allotment letter (Round 1)
 - Although the NEET (UG)-2018 Information Bulletin, published by CSBE, clearly provided for 5% of the annual sanctioned intake to be reserved for persons with benchmark disabilities (more than 40% disability) in terms of Section 32 of the RPwD, the petitioner was denied admission altogether.
 - The petitioner stated that she was denied admission citing a report dated June 5, 2018, based on the recommendation of the Expert Committee set up by the Medical Council of India.
 - The committee had recommended the incorporation of an ineligibility clause in the UG Medical Education Regulations, 2018, barring the admission of persons with an auditory disability greater than the set benchmark of 40% to undergraduate medical education.
 - Pursuant to an order passed by the Supreme Court in Ashutosh Purswani v. UOI & Ors(2018), the petitioner was held entitled to admission to MBBS by a division bench of the Delhi High Court.
 - After completion of her MBBS, the petitioner intends to pursue a PG Degree in medical

education. However, Regulation 4.8 of the 2023 Regulations issued by the National Medical Commission provides persons with a hearing disability of 40 % or more shall be ineligible for admission to PG Medical Courses unless the hearing loss is reduced to less than 40% with the help of assistive devices.

- Advocate Prashant Bhushan (for the petitioner) briefly submitted that so many posts are reserved for persons with disability in the medical field. Still, the present petitioner can only be eligible for the reservation if she is allowed to pursue M.D. He also pressed for an interim relief.
- A bench of Justices Vikram Nath and P.B. Varale, as a matter of interim relief, allowed her to participate in the ongoing counselling process. However, no equity was created in her favour stated the Court in its order.

STATE OF NCT OF DELHI vs. MOHD

- ❖ **TOPIC :** Intent of S.50 NDPS Act is To inform suspect of Right To Be taken to Officers who isn't Part of Search Party
- ❖ **BENCH :** CJI Sanjiv Khanna and Justice Sanjay Kumar
- ❖ **FORUM :** Supreme Court
- ❖ **MAIN ISSUE :**
 - Regarding the intent behind Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985
- ❖ **OBSERVATION:**
 - The Supreme Court has observed that the intent behind Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is to inform a suspect who is about to be searched of the right to be taken to a Gazetted Officer who is not part of the raid team.
 - "It is obvious that the intent behind the provision is to ensure that the person about to be searched is made aware of the option to be taken before a third person other than the one who is conducting the search," the Court observed
 - "Use of the expression "nearest" refers to the convenience as the suspect is to be searched. Delay should be avoided, as is reflected from the use of the word "unnecessary delay" and the exception carved in sub-section (5) to Section 50 of the NDPS Act. Nothing more is articulated and meant by the words used, or the intent behind the provision, " the Court added.

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- A bench comprising CJI Sanjiv Khanna and Justice Sanjay Kumar was hearing Govt. of NCT Delhi's challenge to Delhi High Court order which granted bail to a person allegedly accused of purchasing and possessing 500 grams of Heroin. An FIR u/s 21 and 29 of the NDPS Act was registered against the accused.
- The Delhi High Court bench of Justice Jagmeet Singh had granted bail to the respondent on two main aspects: (1) the notice served to the accused under S.50 NDPS was ill informed and (2) the search on the accused was done not by an independent officer but by the ACP who was part of the raiding team.
- Additional Solicitor General (ASG) Aishwarya Bhati appearing for the State contended that the High Court's order is now being used as reference to grant bail in other NDPS matters
- Senior Advocate Mukta Gupta appearing for the accused reiterated the reasoning of the Delhi High Court, and stressed that S.50 notice was violated in terms of the 'plain and natural' reading of the words.
- S. 50(1) of the NDPS Act states that "When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or Section 43
- he shall, if such person so requires, take such person without unnecessary delay to nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate."
- However, the High Court noted that the notice served upon the accused stated, " You have the legal right to get yourself searched in the presence of any Gazetted Officer or Magistrate.
- However, the CJI verbally observed that in the present context, a plain and natural interpretation of the term 'nearest' u/s 50 meant same as 'any'
- "It makes no difference at all, if 'any' and 'nearest' are identical, it makes no difference," CJI said.
- Considering the aspect of how the ACP who was part of the raiding team, and the search was also conducted in his presence as the 'Gazetted Officer' under S.50, the bench agreed to clarify the provision's interpretation to that extent.
- "If they (notice under S.50) are saying -any Gazetted Officer, they are meaning not a Gazetted Officer who is a member of the team- that portion we will clarify. But the reasoning of the High Court is wrong," the CJI expressed verbally.
- The Bench while allowing the appeal for cancellation by the State clarified that it is not expressing anything on the merits of the case. The

accused was also granted liberty to file bail application in case of changed circumstances.

- In the order, the bench observed :
- "We are unable to appreciate the reasoning given by the High Court in the impugned judgment, which states that use of the word 'any' does not satisfy the mandate of the 'nearest' Gazetted Officer and, hence, the respondent, Mohd. Jabir is entitled to bail. The option given to the respondent, Mohd. Jabir, about to be searched, with reference to a Gazetted Officer or a Magistrate, does not refer to the authorized person in the raiding team itself. It is pertinent to mention that the respondent, Mohd. Jabir, did not exercise the option."
- The High Court opined that the intent of S. 50(1) was to ensure independence and impartiality when carrying out the search of the accused.
- "In my opinion the use of the word "nearest" by the legislature is intentional and has been used to ensure neutrality and independence at the time of search."
- However, in the present scenario the intent of the provision is defeated considering that the ACP who was a member of the raiding team and upon whose direction the entire investigation was initiated.
- The High Court therefore granted bail to the accused, while observing
- In my opinion, there is illegality in notice served U/s 50 NDPS Act dated 27.10.2020. The section 50 categorically mandates that where the accused requires a search, the search has to be done by nearest gazetted officer/nearest magistrate
- However, the section 50 notice served upon the applicant and the co-accused informs incorrectly that they can be searched by any gazetted information/magistrate. This, in my opinion, is where the violation of section 50 lies.

Anand Vs Union of India

- ❖ **TOPIC :** Constable with colour Blindness could cause Danger to Public : J & K High court upholds Dismissal of constables From BSF
- ❖ **BENCH :** Justice Vinod Chatterji Koul
- ❖ **FORUM:** Jammu and Kashmir and Ladakh High Court
- ❖ **MAIN ISSUE**
 - Regarding the petitions challenging the termination of two Border Security Force (BSF) constables diagnosed with colour blindness.
- ❖ **OBSERVATION**
 - Emphasising the critical role of physical fitness in armed forces, the Jammu and Kashmir and Ladakh

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High Court dismissed petitions challenging the termination of two Border Security Force (BSF) constables diagnosed with colour blindness.

- Justice Vinod Chatterji Koul upheld their dismissal, observing that such a condition could potentially endanger public safety due to the nature of their duties
- “A Constable (General Duty) in the BSF is deployed for different kinds of duties like drivers and traffic duties. They are also deputed to perform the duty of Pilot and Escort. Thus, a Constable with colour blindness could cause danger to the life of public by giving or noticing wrong coloured signal”, the court remarked.
- The petitioners, Anand and another individual, were selected as Constables (General Duty) in BSF in 2011 following a rigorous recruitment process, including medical examinations. Upon joining the BSF training centre at Udhampur, they underwent another medical evaluation, during which they were found to have defective colour vision. Confirmed by multiple medical boards, their condition rendered them unfit to continue the training or serve in roles requiring accurate colour perception. Consequently, their services were terminated under Rule 13 of the BSF Rules, 1969.
- Challenging this, the petitioners contended that their dismissal violated procedural fairness as they were declared fit during initial recruitment and were not informed of their condition beforehand. They alleged that the termination lacked a proper opportunity for representation and was arbitrary and unlawful.
- Represented by DSGI Mr. Vishal Sharma, the BSF argued that colour vision is a critical requirement for constables who perform duties such as signaling and piloting, where incorrect recognition of colours can pose grave risks
- The dismissals adhered to BSF Rules and Standard Operating Procedures (SOPs), they added.
- Upholding the necessity of stringent medical standards for BSF personnel Justice Koul noted that a Constable (General Duty) often performs duties like traffic regulation, piloting, and escorting, where accurate colour vision is essential. A colour-blind constable could misinterpret signals, potentially leading to accidents or compromising public safety, he underscored.
- Since Medical Board's findings, based on tests conducted at both BSF and government hospitals, confirmed defective colour vision in the petitioners the Court refrained from questioning the Medical Board's conclusions, emphasizing its authoritative

role in such matters.

- Justice Koul also distinguished this case from precedents cited by the petitioners, including *Union of India v. Satya Prakash Vashishst* (1994) and *Mohamed Ibrahim v. CMD*, 2023
- Unlike those cases, which involved roles less dependent on physical abilities or where accommodations were feasible, the duties of a BSF constable necessitate unimpaired colour vision.
- “Once incumbent does not conform to the test prescribed qua medical fitness, he cannot be enlisted as constable in BSF and he cannot be inducted as member of the (BSF) Force”, the court concluded and dismissed the petition.

UNION OF INDIA & ORS. versus COLONEL BK CHHIMWAL RETIRED IC

- ❖ **TOPIC** : ‘Disability Pension can’t Be Denied Merely Because officer was Posted At Peace station Later’
- ❖ **BENCH** : Justices Navin Chawla and Shalinder Kaur
- ❖ **FORUM**: Delhi High Court
- ❖ **MAIN ISSUE**
 - Regarding a Petition observed that the disability element of Pension
- ❖ **OBSERVATION**
 - A Division Bench of Delhi High Court comprising Justices Navin Chawla and Shalinder Kaur while dismissing a Petition observed that the disability element of Pension could not be denied to the Respondent merely on the grounds that the Respondent was posted at a peace area. It was held that the relationship between the disability and the Respondent's service conditions were to be considered by the Medical Board while deciding whether the disability was attributable to such service.
 - The Respondent was commissioned as a Lieutenant in the Army Corps of Electronics and Mechanical Engineers in Shape-1 and retired on 31.05.2012. He claimed the benefit of the disability element of pension and the same was denied by the Petitioners. The Release Medical Board stated that the Respondent had 50% composite disability for the diseases CAD TVD CABG, Primary Hypertension, and Open Angle Glaucoma in both the eyes.
 - While it was initially stated that the first disability was attributable to service, later the Board changed its opinion suggesting that it could not be attributed to service since the Officer served in a peace area

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while the disability arose and therefore, had no connection or relationship to any physical exertion on duty.

- The Respondent made representations before the Petitioners, however, the same were rejected.
- Aggrieved, the Respondent approached the Armed Forces Tribunal. The Tribunal agreeing with the contentions of the Counsel for the Respondent (Petitioner before the Tribunal) held that the Hypertension was detected when the Respondent was posted in Leh, which is a high-altitude area. The Court accepted that the Respondent went through strain and stress while he was posted in the area despite the area being a peace area.
- Moreover, the Tribunal held that as per the Guide to Medical Officers, 2008, the Medical Officers were provided guidelines to ascertain the attributability of Hypertension and whether the service compulsions aggravated Hypertension while an Officer was serving in peace areas
- The Tribunal referred to the proceedings of the RMB and held that while initially the Board opined that the first disability CAD TVD CABG was aggravated by military service,
- later it gave an opinion suggesting non-attributability owing to the Respondent being posted in a peace area later.
- The Tribunal cited the decision of the Supreme Court in Dharamvir Singh's case wherein it was held,
- 'As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service,
- it is immaterial whether the cause giving rise the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions.'
- The Tribunal further reiterated the observations of the Supreme Court stating that if an officer at the time of joining services was found to be physically fit and free from any disability, the disabilities arising after joining the services would be attributable to or aggravated by service
- Making these observations, the Tribunal set aside the Orders that denied the Respondent the benefit of disability element of pension. Moreover, it directed the respondent to be grant disability element of pension for the disabilities of CAD TVD CABG and Primary Hypertension to the Respondent.
- Aggrieved by the decision of the Tribunal, the Petitioner approached the High Court.
- The Counsel for the Petitioner submitted that the

opinion of the Medical Board was final and did not require for the Tribunal to interfere.

- Meanwhile, the Counsel for the Respondent stated that the Medical Board had initially opined that the disability was attributable to service, however, at a later stage, it changed its opinion merely because the Respondent was posted at a peace station, that is, Ambala.
- Stating the nature of duties that the respondent was performing at that station, the Counsel held that the Respondent could not be denied the Disability Element of the Pension
- The Court agreed with the contentions of the Counsel for the respondent stating that since the initial finding of the Medical Board suggested that the Respondent's disability had arisen after being in service, it could not have changed its opinion merely because the respondent was posted in a peace area.
- The Court further held that the service conditions of the respondent and the relationship of the same with the onset of the disability were factors that needed to be taken into consideration by the Medical Board.
- Accordingly, the Court upheld the Order of the Tribunal granting the Respondent the Disability element of Pension.

Peerzada Mohd Yehya Vs UT Of J&K

- ❖ **TOPIC** : Victim's Right to Participate is Vital, But Hearing May Not Be Essential in certain cases before Granting Relief
- ❖ **BENCH** : Justice Sanjay Dhar
- ❖ **FORUM**: Jammu and Kashmir and Ladakh High Court
- ❖ **MAIN ISSUE**
 - Regarding interim bail to an accused has emphasised that although a victim has the right to participate in criminal proceedings at all stage
- ❖ **OBSERVATION:**
 - The Jammu and Kashmir and Ladakh High Court, while granting interim bail to an accused has emphasised that although a victim has the right to participate in criminal proceedings at all stages, there are instances where hearing the victim may not be necessary before granting relief.
 - Justice Sanjay Dhar observed that if notifying the victim could defeat the purpose of the relief sought, the court may proceed to grant interim protection in such cases.
 - Admitting an accused on bail the court recorded, "Victim has a right to participate in criminal

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proceedings at all stages. In the instant case also, the victim has been made a respondent by the petitioner but that does not mean that in an appropriate case where the issuance of notice to the victim will defeat the relief sought in the application, it is necessary to hear her before granting such relief”.

- The petitioner accused had approached the High Court seeking anticipatory bail in connection with FIR for offs under Sections 376 (rape) and 420 (cheating) of the Indian Penal Code. According to the complainant, the petitioner entered into a marital agreement with her four years ago but consistently delayed formalizing their marriage. She alleged that they lived as husband and wife during this period
- The complainant further claimed that, under the petitioner's influence, she obtained a loan of ₹9 lakhs from a bank. Upon default, her father's pension account, being the guarantor, was subjected to recovery proceedings.
- The respondents, represented by the Deputy Advocate General, raised two preliminary objections. They argued that the petitioner directly approached the High Court without first seeking relief from the Sessions Court, as required by established judicial practice.
- Reliance was placed on Mohd. Shafi Masi v. Union Territory of J&K, wherein the High Court ruled that accused persons must ordinarily approach the court of first instance for anticipatory bail.
- Citing Jagjeet Singh v. Ashish Mishra, the respondents contended that granting interim relief without first hearing the victim would violate her participatory rights under the law.
- In response, the petitioner through counsel Shah Ashiq, with Mr. Wajid Haseeb argued that his pending challenge to the FIR before the High Court justified bypassing lower courts. On the merits, it was contended that the complainant, a consenting adult, lived with the petitioner as his wife, making the allegations of sexual assault baseless.
- Addressing each contention in detail Justice Dhar clarified that while the general practice requires the accused to approach the Sessions Court first, the High Court retains concurrent jurisdiction in anticipatory bail matters.
- Given that the petitioner's challenge to the FIR was already pending before the High Court, the court found it appropriate to directly entertain the anticipatory bail application in this case
- “Having regard to the fact that subject matter of the present bail application is already under

consideration of this Court in another petition, therefore, in such circumstances this Court is of the opinion that the application of the accused for grant of anticipatory bail can be entertained without asking him to approach the court of first instance”, the court opined

- Referring to Jagjeet Singh, the court recognized the victim's right to participate at all stages of criminal proceedings
- However, Justice Dhar underscored that this right is not absolute. In cases where issuing notice to the victim might defeat the relief sought by the accused, such as when anticipatory bail is sought to prevent arrest, the court can grant interim relief without prior notice to the victim, the court maintained.
- On the merits of the case, the court noted that the complainant admitted to a long-standing consensual relationship with the petitioner, during which she cohabited with him as his wife.
- Considering these assertions, Justice Dhar observed that even if sexual relations occurred, they appeared consensual. The allegations, therefore, lacked sufficient prima facie grounds to deny interim protection to the petitioner, the court reasoned
- Granting interim bail, the court ordered that in the event of his arrest, the petitioner be released on bail upon furnishing a personal bond of ₹50,000 with a surety of the same amount.
- Additionally, the court imposed conditions requiring the petitioner to cooperate with the investigation, refrain from tampering with evidence, and seek prior permission before leaving the Union Territory

REKHA AHIRWAR AND OTHERS vs. NIRMAL CHANDRA

- ❖ **TOPIC :** Undue Sympathy For Husband In Granting Maintenance Neither in Interest of wife & children Nor in Interest of Justice
- ❖ **BENCH :** Justice Gural Singh Ahluwalia
- ❖ **FORUM :** Madhya Pradesh High Court
- ❖ **MAIN ISSUE**
 - Regarding the maintenance, undue sympathy with the husband for no good reason is neither in the interest of the wife and children who are living a deserted life nor in the interest of justice
- ❖ **OBSERVATION**
 - The Madhya Pradesh High Court has observed that while granting maintenance, undue sympathy with the husband for no good reason is neither in the

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interest of the wife and children who are living a deserted life nor in the interest of justice

- A bench of Justice Gural Singh Ahluwalia observed thus while enhancing the interim maintenance amount granted by a Gwalior Family Court to a wife and child.
- The Single Judge enhanced the maintenance for the wife from Rs. 2,000 per month to Rs. 10,000; for the child, it was raised from Rs. 1,000 per month to Rs. 5,000.
- Hearing a revision petition filed by the wife and child under Section 397, 401 of the CrPC, read with Section 19(4) of the Family Courts Act, the court found that the amount initially awarded by the Family Court was shockingly on the lower side, given the respondent's salary
- The Court added that the Trial Court must remember that the wife and child/children are entitled to enjoy the same status that they would otherwise have enjoyed in their matrimonial/parental home.
- In this case, the Family Court had initially granted interim maintenance of Rs. 2,000 per month to the wife (Applicant No. 1) and Rs. 1,000 per month to the child (Applicant No. 2)
- The applicants argued that the husband/father's gross salary is Rs. 68,228/—, and his statutory deductions are Rs.14,278/-; thus, his take-home income is Rs.53,950/-.
- It was argued that the loan the respondent had already received in advance could not be deducted from his takehome salary.

- Additionally, the husband's claim that the loan was taken for marriage expenses was also refuted on the grounds that the salary slip of the husband/father clearly shows that the loan was taken in February 2022,
- while the marriage took place in May 2019.
- Against the backdrop of these submissions, the Court noted that since the loan amount is nothing but receipt of money in advance, it is not only a voluntary deduction; the respondent has already received the amount in advance.
- The Court further observed that only statutory deductions can be considered when calculating the takehome salary and the husband's voluntary loan must be ignored.
- Therefore, the Court said that it is clear that in February 2024, the take-home salary of the Husband/father was Rs.53,950/-. Under these circumstances, the Court concluded that the interim maintenance of Rs.2,000/— awarded to the wife and Rs.1,000/—awarded to the child was shockingly low.
- In view of this, the Court enhanced the maintenance amount and allowed the petition.

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