

Vikash Kumar Gupta v. The State Of Bihar

- ❖ **TOPIC :** Supreme Court Sets Aside HC Condition That Accused Who Got Bail Can Furnish Bail Bonds Only After Spending 6 Months In Custody
- ❖ **BENCH :** Justices Surya Kant, Dipankar Datta and Ujjal Bhuyan



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether HC Condition is correct or not, which says that Accused who got bail can furnish Bail Bonds Only After Spending 6 Months In Custody.
- ❖ **FACTS**
 - The petitioner was named as an accused in an FIR lodged under Section 30(a) of the Bihar Prohibition and Excise Amendment Act. The allegations were that around 231.6 liters of country-made and foreign liquor was recovered from three motorcycles and he was driving one of them.
 - After his arrest on 14 June, 2024, the petitioner applied for bail, which was declined by the Trial Court. He then approached the High Court vide impugned order, the High Court directed him to be released on bail (subject to furnishing bail bonds etc.), but imposed a further condition that “the petitioner shall furnish his bail bonds after completion of six months in custody from today”.
 - Aggrieved by the same, the petitioner approached the Supreme Court.
- ❖ **OBSERVATIONS**
 - Reiterating that the pre-trial process itself shall not become punishment, the Supreme Court set aside a bail condition imposed by the Patna High Court to the effect that the bail bonds be furnished by the accused after completion of 6 months in custody from the date of the order.
 - The condition in effect put on hold the implementation of the bail order for six months.
 - “We see no valid reason for the High Court to

impose the condition as contained in the impugned order whereby the bail bonds will have to be furnished by the petitioner after completion of six months in custody from the date of the High Court order”, said the bench of Justices Surya Kant, Dipankar Datta and Ujjal Bhuyan.

- Allowing his petition, the top Court set aside the impugned condition and directed the trial Court to release the petitioner forthwith on furnishing of bail bonds. In addition to the bail conditions imposed on the petitioner, it was directed:
- The petitioner shall remain present in Court on each and every date of hearing.
- Since the petitioner has a track record of his involvement in cases under the Excise Act, it is directed that in case the petitioner is found involved in such cases in future, it shall be taken as a misuse of the concession of bail.”
- Notably, during the hearing, Justice Bhuyan orally remarked that “the process itself should not become punishment”.

Devendra Kumar Pal v. State of UP and Anr.

- ❖ **TOPIC:** Section 319 CrPC - Order To Summon Additional Accused Passed After Acquittal/Conviction Of Co-Accused Is Unsustainable
- ❖ **BENCH :** Justice BR Gavai and Justice KV Viswanathan



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether Order to Summon Additional Accused Passed After Acquittal/Conviction Of Co-Accused Is Sustainable or not.
- ❖ **FACTS**
 - In the present case, the Additional Sessions Judge convicted some of the accused under Section 302 of the IPC and acquitted others on March 21, 2012.
 - The Trial Court passed the conviction orders for the accused and acquitted the remaining accused.
 - After recording the sentence for the convicted accused on the same day, the Trial Court invoked

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Section 319 of the CrPC, summoning the appellant to stand trial for the offence.

❖ **OBSERVATIONS**

- This order was upheld by the Allahabad HC. Thus, the appellant approached the Supreme Court.
- The Supreme Court recently quashed an order under Section 319 of the CrPC summoning a man for a murder trial after the trial of the original accused persons had already concluded.
- Section 319 of the CrPC grants the trial court the power to summon any person, not being an accused, to face trial if it appears from the evidence collected during the trial that such a person is also involved in the offence.
- A bench of Justice BR Gavai and Justice KV Viswanathan set aside Allahabad High Court judgment upholding the summoning order observing that the summoning of the appellant was not in accordance with the law laid down by a Constitution Bench in Sukhpal Singh Khaira v. State of Punjab.
- “The Constitution Bench has clearly held that if such a summoning order is passed, either after the order of acquittal or imposing of sentence in the conviction, the same may not be sustainable”, the Court observed.
- The Supreme Court Constitution Bench decision in Sukhpal Singh Khaira v. State of Punjab, addressed the issue of whether a trial court has the power under Section 319 of the CrPC to summon additional accused after the conclusion of the trial with respect to other accused.
- According to the judgment, the power under Section 319 of the CrPC must be invoked before the pronouncement of the sentence in cases of conviction. If an order of acquittal is involved, the power must be exercised before the pronouncement of acquittal.
- The Constitution Bench provided guidelines for cases where the summoning order and the judgment of conviction are passed on the same day, stating that the facts and circumstances of each case would need to be examined.
- The Supreme Court in the present appeal observed that the trial court, on March 21, 2012, had first passed the conviction and acquittal orders in the first half of the day, followed by the sentencing order in the second half.
- Only after pronouncing the sentence did the trial court issue the summoning order under Section 319 of the CrPC to summon the appellant.
- In light of the Sukhpal Singh Khaira decision, the Court held that since the summoning order was

passed after the imposition of the sentence, it was not sustainable.

- Therefore, the Court allowed the appeal and set aside the judgment of the Allahabad HC and the order of the Additional Sessions Judge summoning the appellant.

S. K. Golam Lalchand v. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes & Ors

- ❖ **TOPIC :** Co-Owner Whose Share In Joint Property Remained Undetermined Cannot Transfer Entire Property
- ❖ **BENCH :** Justices Sudhanshu Dhulia and Pankaj Mithal



- ❖ **FORUM:** Supreme Court

❖ **MAIN ISSUE**

- Whether a co-owner whose share in the joint property remained undetermined can transfer or not the entire suit property to another person without its partition being completed by metes and bounds.

❖ **FACTS**

- A matter wherein the subsequent purchaser/appellant was transferred with the entire suit property by the transferor/co-owner via sale deed despite there existing other co-owners.
- Moreover, the share of the transferor was not determined in the suit property. While transferring the suit property, it was claimed by the transferor that initially his uncle and father had equal share in the property.

❖ **BACKGROUND**

- Before his uncle's death, he (uncle) had gifted his share to the transferor's father, and after the death of the transferor's father, it was claimed that the transferor became the absolute owner of the property as his sisters had also relinquished her share in the suit property.
- It was contended by the transferor that since he had exclusive ownership over the suit property, therefore the transfer of the entire suit property to

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the appellant cannot be disputed with.

- On the other hand, the respondent (being co-owner) disputed the transaction by contending that the appellant cannot acquire rights, and interest in the suit property as the transfer made to it of the whole suit property was void as there was no express approval of other co-owners who had vested interest in the property.
- The Supreme Court observed that a co-owner whose share in the joint property remained undetermined cannot transfer the entire suit property to another person without its partition being completed by metes and bounds.

❖ **OBSERVATIONS**

- In other words, when there exist various co-owners in the property, then the subsequent purchaser of the suit property cannot acquire right, title and interest in the whole of the suit property solely based on the sale deed executed by one co-owner/transferor.
- The Court observed that the actions of the transferor to sell the entire suit property (where the other co-owners also had interest) could not bind the other co-owners as it would tantamount to depriving them from their valid share in the suit property.
- "It is held that Brij Mohan alone was not competent to transfer the entire property without getting his share determined and demarcated so as to bind the other co-owners. Accordingly, the defendant-appellant S.K. Golam Lalchand has rightly been restrained by the decree of injunction in acting in derogation of the proprietary rights of the co-owners until and unless the partition takes place.", the court held.
- According to the Court, the Appellant is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against transferor but he would not be entitled to claim ownership and control over the entire suit property.
- Given the aforesaid, the Appeal was dismissed and the impugned judgments were upheld.

In Re Policy Strategy For Grant Of Bail

- ❖ **TOPIC** : Rejection Of Remission Must Be Immediately Conveyed To Prisoners To Enable Them To Seek Legal Aid
- ❖ **BENCH** : Justices Abhay S. Oka and Augustine George Masih
- ❖ **FORUM**: Supreme Court

❖ **MAIN ISSUE**

- Whether Rejection of Remission can be Immediately Conveyed To Prisoners or not.



❖ **FACTS**

- The Supreme Court heard the suo moto plea instituted to issue a comprehensive policy strategy for the grant of bail to prisoners.
- The Court, while taking notice of the list of States that were asked for compliance reports, issued further directions for States that are yet to comply with the orders.

❖ **OBSERVATIONS**

- It also noted that the rejection of the remission application must be immediately informed to the prisoner.
- The Court has reiterated its intention to lay down guidelines for the premature release of prisoners under Section 432 of the Code of Criminal Procedure and its corresponding Section 474 of the Bharatiya Nagarik Suraksha Sanhita 2023 in light of the non-uniform policies of States.
- A bench of Justices Abhay S. Oka and Augustine George Masih is hearing a suo moto case which was initiated after the Supreme Court recognised that there is a lack of uniformity in the remission policy of different States.
- It was informed that more than 50 percent of prisoners in various jails are undertrial and are languishing in prisons despite having served maximum punishment and that they should have been released on bail under Section 436A CrPC after having served 1/2 of the maximum punishment prescribed.
- The Court has earlier passed directions to avoid delay in the release of prisoners who have secured bail orders and that the bail conditions imposed by the Courts must be reasonable.
- All States and UT are directed to ensure that the decision of rejection of the remission shall be immediately provided to the concerned prisoner so that NALSA can provide legal aid in cases where required.
- "Necessary to make the prisoner aware of his right

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to challenge the order of rejection of remission," the Court stated.

Noora v. Union of India

- ❖ **TOPIC :** Kerala HC Invokes 'Parens Patriae' Jurisdiction To Protect Vulnerable Minors, Allows Mother To Take Children To UAE Without Father's Consent
- ❖ **BENCH :** Justice V G Arun



- ❖ **FORUM:** Kerala High Court
- ❖ **MAIN ISSUE**
 - Whether a mother can take her minor children to UAE by invoking its parens patriae jurisdiction or not.
- ❖ **FACTS**
 - The petitioner, a mother of two children aged 11 and 8, is seeking the Court's permission to obtain custody of the children to take them to the UAE, where she is employed.
 - One of the children has autism, and the other has a learning disability.
- ❖ **BACKGROUND**
 - The petitioner stated that, in order to secure permanent residency for her children in the UAE, she either needs to obtain a no-objection certificate from the third respondent or an order from a competent court granting custody.
 - Since the 3rd respondent did not provide no objection certificate, the petitioner has approached the High Court seeking to invoke its parens patriae jurisdiction to allow her to take her children to the UAE.
 - The petitioner and 3rd respondent solemnized their marriage in 2011. The 3rd respondent is working in Abu Dhabi. The petitioner filed a criminal complaint alleging the commission of offences under Section 498A (cruelty) and 323 (punishment for voluntarily causing hurt) of IPC against the 3rd respondent.
 - The petitioner submitted that only she can provide the children special care and attention. She submitted that she has to obtain permanent

residency for children to educate them in the UAE.

- She submitted that she can support the children financially only by continuing her employment in the UAE.
- The Kerala High Court has permitted a mother to take her minor children to UAE by invoking its parens patriae jurisdiction. The Court stated that constitutional courts can invoke parens patriae jurisdiction to protect the rights of vulnerable adults and minors.
- ❖ **OBSERVATIONS**
 - A petitioner mother has approached the Court seeking permission to take her children to the UAE to obtain permanent residency, as the children's father did not provide a no-objection certificate for their relocation.
 - Justice V G Arun was considering whether it could invoke parens patriae jurisdiction, step into the father's shoes, and permit children to be taken to UAE.
 - "The Constitution of India makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to secure and assert their rights, the State must come into picture and protect and fight for those rights. Likewise, when circumstances warrant, the constitutional courts should also invoke the parens patriae jurisdiction for safeguarding the interest of vulnerable adults and minors. As the interest of the minors in this case will be best subserved by the children being permitted to reside with their mother and pursue their studies in the UAE, the permission sought by the petitioner ought to be granted."
 - Invoking its parens patriae jurisdiction, the Court permitted the petitioner to take her minor children with her to the UAE. The Court ordered that the petitioner will not prevent the 3rd respondent from visiting the children.
 - It also stated that the petitioner would abide by any conditions that will be imposed by the Family Court.

Dr Irfan Ansari v. The State of Jharkhand

- ❖ **TOPIC:** Disclosure Of Rape Victim Identity Via WhatsApp Group Also Barred, Jharkhand High Court Upholds Charges Against Jamtara MLA
- ❖ **BENCH :** Justice Arun Kumar Rai
- ❖ **FORUM:** Jharkhand High Court

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❖ **MAIN ISSUE**

- Whether charges against Jamtara MLA and Minister for State's Rural Development, Dr. Irfan Ansari, can be quashed who has been accused of circulating the identity of a minor rape victim to the media via WhatsApp.



❖ **FACTS**

- The Jharkhand High Court has declined to quash charges against Jamtara MLA and Minister for State's Rural Development, Dr. Irfan Ansari, who has been accused of circulating the identity of a minor rape victim to the media via WhatsApp.
- A single bench of Justice Arun Kumar Rai referred to Section 228A IPC which prohibits printing or publishing the name or rape victim identity in any matter.

❖ **OBSERVATIONS**

- It further held that Section 23 of POCSO Act, which bars revealing the identity of minor rape victim in "any form of media or studio or photographic facilities", includes WhatsApp groups.
- Ansari had challenged the Sessions Court order which dismissed his plea for discharge.
- The case stems from a 2018 incident when Ansari, along with his supporters, visited a minor rape victim admitted to Sadar Hospital, Jamtara.
- It was alleged that during the visit, the victim's name, address, and photograph were taken and later shared with media outlets and other organizations on WhatsApp groups.
- The Court, after careful consideration, determined that a prima facie case was established under Section 228A of the IPC, noting that it was an admitted fact by the petitioner that messages and photographs of the victim had been forwarded to a social media platform
- This was corroborated by witness Suman Bhattacharya, who testified that he had created a WhatsApp news group called "Nala News" in 2016.
- Bhattacharya further stated that the group included

representatives from the district, administrative and police officials, as well as intellectuals and reporters.

- He also mentioned his previous affiliation with Zee Media and his current role as an active reporter for "News Flash – The Face of India."
- The Court further highlighted Bhattacharya's statement to the Investigating Officer (I.O.), which revealed that a photograph of a teenage girl, along with a message, had been posted in the WhatsApp group from Ansari's phone.
- The content of the message indicated that the teenage girl was a victim of rape, and her name was disclosed in the post.
- Though Ansari claimed that the message was posted by his Secretary, the Court observed that prima facie "involvement of the petitioner in disclosing the identity including the photographs of the victim over the social media via whatsapp" is established.

Smt. Monika v. Praveen

- ❖ **TOPIC:** Loan Taken Voluntarily By Spouse After Separation To Bring Down Net Salary Cannot Be Considered While Calculating Quantum Of Maintenance
- ❖ **BENCH:** Justice G. S. Ahluwalia



- ❖ **FORUM:** Madhya Pradesh High Court
- ❖ **MAIN ISSUE**

- Whether Loan deductions, voluntarily undertaken by the respondent after the couple's separation can be grounds for not enhancing the monthly payment of maintenance under Section 125 CrPC.

❖ **FACTS**

- In this case, the petitioner had challenged the order of the Family Court, which awarded ₹5,000 per month under Section 125 of the Cr.P.C. and argued that the amount of maintenance was insufficient given her husband's net salary of ₹38,373, and thus

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sought an increase in maintenance.

- The respondent claimed the total maintenance should be appropriately adjusted since his monthly home loan repayments of ₹13,700 left him with limited financial resources, and that his wife was already entitled to a monthly payment of Rs 7,500 under the Protection of Women from Domestic Violence Act.
- The Madhya Pradesh High Court at its Indore bench held that loan deductions, voluntarily undertaken by the respondent after the couple's separation, cannot be grounds for not enhancing the monthly payment of maintenance under Section 125 CrPC.

❖ **OBSERVATIONS**

- Justice G. S. Ahluwalia, in a matter regarding increasing the maintenance under Section 125 of CrPC, stated that “So far as the loan is concerned, it is clear that it is a voluntary deduction and the amount in lump sum was already received by the respondent in advance which is being repaid by him in different installments, therefore, the said installment cannot be said to be a statutory and mandatory deduction”.

- The court further deliberated that the loan was taken after the separation by the respondent to reduce his net income and the loan installment is not a statutory deduction.
- It was stated that in case the amount awarded under the Domestic Violence Act was adjusted, then the applicant would not be getting anything by virtue of the impugned order, and total monthly maintenance would be Rs.7,500/- only.
- Therefore, the court concluded that the maintenance awarded under Section 125 Cr.P.C. should be enhanced from ₹5000 to ₹7500 and the enhanced amount shall be payable from the date of application.
- “Considering the price index, status of the parties as well as the price of the goods of daily needs, this Court is of the considered opinion that the total amount of Rs.7,500/- is on the lower side,” it concluded.



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