

7 October 2024

Laxmikant Tiwari v. Directorate of Enforcement

- ❖ **TOPIC** : No Scheduled Offence In Complaint Or Charge Sheet, Supreme Court Grants Bail To Two Accused In Money Laundering Case
- ❖ **BENCH** : Justice Abhay Oka and Justice Augustine George Masih



- ❖ **FORUM**: Supreme Court
- ❖ **MAIN ISSUE**
 - Whether bail can be granted to two accused, Laxmikant Tiwari and Shiv Shankar Naag or not in a money laundering case connected with the Chhattisgarh coal levy scam case.
- ❖ **BACKGROUND**
 - Laxmikant Tiwari was arrested on October 13, 2022, following the registration of an ECIR by the ED on September 29, 2022.
 - The investigation stemmed from a raid by the Income Tax Department on June 30, 2022, at a hotel in Bengaluru, involving one Suryakant Tiwari.
 - The raid allegedly uncovered evidence of illegal coal levies orchestrated by Suryakant Tiwari. The ED alleged that Laxmikant Tiwari handled proceeds of crime amounting to Rs. 26 crores, which were used to purchase immovable properties.
 - He was also accused of storing illegal cash and assisting in money laundering activities.
 - The Chhattisgarh High Court had earlier denied bail to Laxmikant Tiwari, citing the seriousness of the offence and the risk of tampering with evidence.
 - Shiv Shankar Naag, a Deputy Director in the Mining Department, was arrested on January 25, 2023, also implicated in a scheme involving the illegal collection of levies on coal transportation led by Suryakant Tiwari.
 - The ED alleged that Naag verified coal delivery orders in exchange for bribes, thereby facilitating

the extortion racket. The Chhattisgarh High Court had also denied bail to Naag, citing his involvement in laundering the proceeds of crime and the potential for influencing witnesses.

❖ **OBSERVATIONS**

- The Supreme Court granted bail to two accused, Laxmikant Tiwari and Shiv Shankar Naag, in a money laundering case connected with the Chhattisgarh coal levy scam case.
- A bench of Justice Abhay Oka and Justice Augustine George Masih granted bail on the grounds of prolonged incarceration and the absence of a scheduled offence at the time of filing of the Enforcement Directorate's (ED) complaint under the Prevention of Money Laundering Act, 2002 (PMLA).
- “Thus, when the complaint under Section 44 of the PMLA Act was filed, the scheduled offence was not in existence. Even in the charge-sheet filed in the FIR which is stated to be a scheduled offence in the complaint, there was no allegation of commission of any scheduled offence.
- As late as on 19th July, 2024, now the charge-sheet has been filed in the State of Chhattisgarh for the offence punishable under Section 384 of the IPC.
- Considering the long period of incarceration and considering the peculiar fact of these appeals, continuation of custody of the appellants will be violation of their right under Article 21 of the Constitution of India”, the Court observed.
- The Court noted that the facts of both cases are similar, as they arise from the same Enforcement Case Information Report (ECIR) and the same complaint under Section 44 of the PMLA.
- Laxmikant Tiwari has been in custody for nearly two years, while Shiv Shankar Naag had been incarcerated for one year and nine months, the Court noted.
- An FIR was initially registered on July 12, 2022, at Kadugodi Police Station in Bengaluru, under Sections 186, 204, 353, and 120-B of the IPC.
- The Court noted that out of these, only Section 120-B was considered a scheduled offence under PMLA.
- However, it pointed out that in light of the Supreme Court's decision in Pavana Dibbur v. Directorate of Enforcement, Section 120-B could not be treated as a scheduled offence as a conspiracy to commit a scheduled offence was not alleged.
- The Court noted that Section 384 (extortion) of the IPC was added to the FIR later, and an ECIR was recorded based on this FIR.
- However, on June 8, 2023, a charge-sheet was

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filed, wherein it was noted that the offence under Section 384 had been committed in Chhattisgarh. Further, Section 120-B was dropped from the charge-sheet for want of evidence. Thus, as of the date of filing the charge-sheet, no scheduled offence existed, the Court noted.

- A second FIR was registered in Chhattisgarh on January 17, 2024, alleging an offence under Section 384 of the IPC. A charge-sheet for this FIR was filed in Chhattisgarh on July 19, 2024.
- The Supreme Court noted that as of the filing of the ED's complaint under Section 44 of the PMLA in 2022, there was no scheduled offence in existence. Given the prolonged incarceration of both appellants, the Court held that their continued detention would violate their right to personal liberty under Article 21 of the Constitution.
- The Supreme Court, therefore, granted bail to both Laxmikant Tiwari and Shiv Shankar Naag.
- It directed that they be produced before the Special Court, which would enlarge them on bail on appropriate terms and conditions after hearing the ED's counsel. The Court clarified that its observations were limited to the consideration of bail and would not affect the merits of the complaint.

ABHISHEK UPADHYAY v. THE STATE OF UTTAR PRADESH AND ANR.

- ❖ **TOPIC :** Criminal Cases Can't Be Slapped Against Journalist For Criticising Govt, Supreme Court Grants Interim Protection To UP Journalist
- ❖ **BENCH :** Justices Hrishikesh Roy and SVN Bhatti



- ❖ **FORUM:** Supreme Court
- ❖ **MAIN ISSUE**
 - Whether interim protection to journalist Abhishek Upadhyay or not.
- ❖ **OBSERVATIONS**
 - The Supreme Court today granted interim protection to journalist Abhishek Upadhyay,

directing that no coercive steps shall be taken against him in connection with his article on the caste dynamics in the Uttar Pradesh State Administration.

- A bench of Justices Hrishikesh Roy and SVN Bhatti was dealing with Upadhyay's petition seeking the quashing of an FIR registered against him by the UP police, over his journalistic piece. Issuing notice to the State of Uttar Pradesh, the bench posted the matter on November 5.
- In its brief order, the bench made certain pertinent observations regarding journalistic freedom.
- "In democratic nations, freedom to express one's views is respected. The rights of the journalists are protected under Article 19(1)(a) of the Constitution of India. Merely because writings of a journalist are perceived as criticism of the Government, criminal cases should not be slapped against the writer," the Court observed in the order.
- Briefly stated, Upadhyay did a journalistic piece "Yadav Raj versus Thakur Raj (or Singh Raj)" and pursuant to the same, an FIR was lodged against him for offences punishable under Sections 353(2), 197(1)(C), 302, 356(2) of BNS Act and Section 66 of the IT (Amendment) Act, 2008.
- Through his plea, Upadhyay seeks quashing of the FIR registered by UP police, as well as other FIRs that may have been filed in relation to the incident at other places.
- The petitioner states that his piece became a topic of discussion after former Chief Minister and present Leader of Opposition Akhilesh Yadav hailed it in a post on 'X'. Following that, he started receiving threats online.
- Against such threats, he wrote an email to the UP Police Acting DGP and posted the same on his 'X' handle. The official handle of the UP Police replied to him on 'X' stating : "You are hereby cautioned and informed not to spread rumors or misinformation. Such unlawful activities, which lead to confusion and instability in society, could result in legal action being taken against you."
- The petitioner further points out that in the FIR registered against him, CM Adityanath had been addressed as God.

STAFF SELECTION COMMISSION & ORS. v. BHUPENDRA SINGH

- ❖ **TOPIC :** Tattoo Scar Should Not Be The Basis For Disqualification, Opportunity Must Be Given To The Candidate To Remove It, Delhi High Court Reiterates
- ❖ **FORUM:** Delhi High Court

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❖ **MAIN ISSUE**

- Whether Tattoo Scar Should Be the Basis For Disqualification or not.

❖ **BACKGROUND**

- The Respondent appeared in the examination for the post of Constable Male conducted by the Staff Selection Commission. He qualified the examination as well as the Physical Endurance and Measurement Test conducted by the Delhi Police.
- The document verification was also done on the day when the Physical Endurance and Measurement Test was held.
- The Detailed Medical Examination (DME) of the Respondent was conducted and he was declared unfit because he had a tattoo mark depicting the religious symbol of (OM) on his right forearm.
- Later the Review Medical Board conducted the Review Medical Examination on 20.01.2024 and the Respondent was declared unfit again because of the tattoo.
- As a result, the Respondent could not make his place in the selection list. Challenging the order of the Review Medical Board dated 20.01.2024, he approached the Central Administrative Tribunal.
- The Tribunal cited its decision in the case titled Deepak Yadav Vs. Staff Selection Commission & Ors., and allowed the Respondent (Petitioner in OA) to join services after tattoo removal as he was eligible for the post in all the other aspects,
- Aggrieved by the decision of the Tribunal, the Staff Selection Commission approached the High Court.

❖ **OBSERVATIONS**

- A Division Bench of Delhi High Court comprising Justices Suresh Kumar Kait and Justice Girish Kathpalia reiterated that any person with a tattoo should be given an opportunity to have the tattoo removed in a time bound manner and a scar from the tattoo should not be a reason to disqualify such a candidate.
- The Court referred to its earlier decision in “Staff Selection Commission & Ors Vs. Deepak Yadav”, wherein it had held; “when any candidate having a tattoo on his/her forearm and entering in the

selection process of any Force, including Delhi Police, which is objectionable to the Selection Board; then opportunity has to be granted to such a candidate to get the tattoo removed, within a time bound manner. Despite this, if he or she still does not get the tattoo removed, his or her candidature is liable to be rejected.”

- The Court physically observed the arm of the Respondent and held that the tattoo had already been removed. Additionally, the mark could not even be seen from the naked eye.
- Observing that the candidate was eligible for appointment in all aspects and that the tattoo had been removed surgically and wasn't even visible, the Court dismissed the Petition and directed the petitioners to allow the respondent to join the training.

Kusum Sahu Versus v. The State Of Madhya Pradesh And Others

- ❖ **TOPIC:** Accused Belongs To Lower Strata Of Society, Doesn't Have Finances To Approach SC, MP HC Releases Man Who Was Made 'Scapegoat' In Fraud Case
- ❖ **BENCH :** Justice Suresh Kumar Kait and Justice Vivek Jain



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

❖ **MAIN ISSUE**

- Whether a petitioner's father can be released or not, who had been imprisoned for nearly a year without substantial evidence linking him to the charges under the IPC for being the director of a company which had been accused of financial fraud.

❖ **BACKGROUND**

- The petition, filed by Jibrakhan Lal Sahu's daughter, Kusum Sahu, sought relief under Article 226 of the Constitution, challenging multiple previous bail rejections. Petitioner's father was accused of misappropriating Rs. 1.98 lakh from various investors in connection with the company.

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- He was charged under Sections 420 and 409 of the Indian Penal Code. However, as per the petitioner, her father neither held the position of Director nor Managing Director in the company and had not collected any money from complainants.
- Despite these facts, his four successive bail applications had been rejected, which the petitioner deemed wrongful and unlawful detention.
- The petitioner argued that her father was wrongfully implicated in a case involving the misappropriation of investor funds by a company called Suvidha Land Developers India Pvt. Ltd.
- ❖ **OBSERVATIONS**
 - The Madhya Pradesh High Court has ordered the release of a petitioner's father, who had been imprisoned for nearly a year without substantial evidence linking him to the charges under the IPC for being the director of a company which had been accused of financial fraud.
 - The court discussed that the petitioner could have either availed the remedy under Article 226 or approached the Supreme Court but due to belonging to the lower strata of society, he had no finances to approach the Apex Court.
 - "In the present case also, the petitioner could have approached the Supreme Court but a person who is having equity share of Rs.6,250/ only and belongs to a lower strata of the society, has no courage/finances to approach the Supreme Court by engaging a private counsel; and is facing mental agony of rejection of multiple bail applications on the false averments/allegations, as apparent on the fact of the record by the concerned Police Station"
 - Further, the court stated that this continuous detention amounted to illegal custody, as the petitioner's father was neither a director nor a managing director of the company, which had been accused of financial fraud.
 - The court stated: "The undisputed fact is that only the father of the petitioner has been made a scapegoat. It is shocking that except for the father of the petitioner, no one else has been arrested so far."
 - Furthermore, the Court ordered that the Superintendent of Police personally monitor the interrogation of the actual directors and managing director of Suvidha Land Developers India Pvt. Ltd., "In the interest of justice and to save the interest of the investors, we hereby direct the concerned Police Station to interrogate the Directors and Managing Director of the Company."

Smt. T. Ramadevi, W/o.T. Srinivas Goud v. The State of Telangana, rep. by its Principal Secretary and Others

- ❖ **TOPIC:** Accused To Be Produced Before Magistrate Within 24 Hours From 'Apprehension', Not From Official Arrest, Telangana High Court
- ❖ **BENCH :** Justice P. Sam Koshy and Justice N. Tukaramji
- ❖ **FORUM:** Telangana High Court



- ❖ **MAIN ISSUE**
 - Regarding Official Arrest
- ❖ **BACKGROUND**
 - The court passed the order while hearing a habeas corpus plea concerning the alleged detention of five individuals accused of offences under the IPC and the TSPDFE Act.
 - The petitioner had initially filed a habeas corpus petition which was disposed of after the authorities confirmed the arrest and judicial remand of the accused.
 - Subsequently, the petitioner filed a second habeas corpus petition raising two legal questions, which was the subject matter before the bench.
 - The petitioner's counsel argued before the court that the 24-hour period for producing the accused before a magistrate should start from the moment of apprehension, not from the time of official arrest.
 - It was contended that as per the TSPDFE Act, the accused should have been produced only before the designated special court, not a regular judicial magistrate.
 - The state, represented by the Special Government Pleader, countered that the production before the nearest judicial magistrate was in accordance with the Criminal Procedure Code (CrPC), which the TSPDFE Act does not entirely oust. They argued that the CrPC provisions continue to apply, and the special court's exclusive jurisdiction does not extend to the initial remand stage.

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❖ OBSERVATIONS

- Addressing the subject of detention and production of accused persons, the Telangana High Court recently said that the 24-hour period for producing a person before a magistrate is to be calculated from the moment a person is apprehended, not from when the arrest is officially recorded.
- A division bench comprising of Justice P. Sam Koshy and Justice N. Tukaramji said, "Accordingly, this Bench has no hesitation in reaching to the conclusion that question No.1 as regards the commencement of the period of apprehension is concerned, it is held that the period of apprehension is also to be taken into consideration for the purpose of calculating the period of 24 hours as is envisaged under Section 57 of Cr.P.C.
- In other words, 24 hours is not to be calculated from the time of the official arrest being shown by the police personnel in the arrest memo, but from the time he was initially apprehended or taken into custody".
- The bench further ruled that for offences under the Telangana Protection of Depositors of Financial Establishments Act (TSPDFE Act), accused persons can be produced before the nearest judicial magistrate for their first remand, rather than exclusively being produced before the special court designated under the TSPDFE Act.
- It said, "When we read the provisions of Sub-Section (2) of Section 167 (CrPC) along with Section 13(1) and (2) of the TSPDFE Act, it will clearly give an indication that the TSPDFE Act has not completely ousted the applicability of Cr.P.C.
- Rather it is a case where the procedure to be adopted by the special Court notified under the said Act also follows the procedure laid down under Cr.P.C.
- We find sufficient force in the contentions of the learned Special Government Pleader that Sub-Section (1) of Section 13 of TSPDFE Act categorically envisages that the special Court may take cognizance of the offence even without the offence being committed to it."
- Section 13 of the TSPDFE Act pertains to procedure and powers of Special Courts regarding offences under the act.
- Section 167 pertains to the procedure to be followed by investigating authorities when investigation cannot be completed in twenty-four hours
- This however does not mean, the bench said, that after a person is apprehended for an offence under

the TSPDFE Act, then even for obtaining the first remand under Section 167 CrPC, the authorities have to go before the special Court notified under the Act and not the nearest Judicial Magistrate as is envisaged under Cr.P.C.

- Section 57 states that a person who is arrested is not to be detained for more than twenty-four hours.
- It thereafter said, "In the aforesaid backdrop, when we look into the provisions of Section 57 of Cr.P.C, the very first line of the said provision refers to the term detention. It does not use the term "from the time of arrest", which further strengthens the case of the petitioner when they say that period of detention starts the moment they stand apprehended by the police, as from that moment itself there is a restraint so far as personal liberty of the concerned person and there is also an arrest of his movement, as he remains under confines of police personnel. Thus, it would amount to a detention of a person right from the time he is apprehended by the police personnel".
- With respect to the case at hand it then said, "Therefore, there is clear violation of the statutory requirement under Section 57 of Cr.P.C so far as accused Nos.3 and 4 are concerned, and they are accordingly liable to be given the benefit for the illegal act which the respondent-authorities have committed".
- The court further said that TSPDFE Act does not completely oust the applicability of the CrPC, particularly concerning the initial production before a magistrate.
- The court emphasized that Article 22(2) of the Constitution and Section 167 of the CrPC mandates production before the nearest judicial magistrate within 24 hours of arrest. It concluded that in the context of Section 13(1) of TSPDFE Act the power of the special court is a discretionary power and not a mandatory direction.
- The High Court thereafter ordered the release of two accused who had been in custody for more than 24 hours before being produced before a magistrate. However, it dismissed the petition for the other three who had been produced within the 24-hour timeframe.

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Kavita Devi @ Kabbo Devi and Ors v. Union of India

- ❖ **TOPIC :** 7 Yrs After Husband's Accidental Death By Falling From Running Train, Jharkhand High Court Grants ₹8 Lakh Compensation To Widow
- ❖ **BENCH:** Justice Subhash Chand



- ❖ **FORUM:** Jharkhand High Court
- ❖ **MAIN ISSUE**
 - Regarding Compensation to Widow
- ❖ **OBSERVATIONS**
 - The Jharkhand High Court has granted Rs 8 Lakh along with interest as compensation to the widow of a man who died in 2017 after accidentally falling from a running train, setting aside a decision by the Railway Claims Tribunal which had rejected her claim.
 - In doing so the high court ruled that the deceased was a bona fide passenger, despite the absence of a ticket during the inquest report.
 - While delivering the judgement, a single judge bench of Justice Subhash Chand observed, “As such, this fact is well proved that the deceased was a bona fide passenger. Even if the ticket was not recovered from his person while preparing the inquest report of the deceased. Mere filing of the affidavit on behalf of the claimant (appellant wife) is sufficient to raise the presumption that the deceased was a bona fide passenger. Neither oral nor any documentary evidence has been adduced on behalf of the respondent to show that the deceased was not a bona fide passenger. Initial burden having been discharged on behalf of the appellants, the burden of proof is shifted upon the respondent to prove the fact that the deceased was not bona fide passenger.”
 - The ruling came in a miscellaneous appeal moved by the appellant wife against the Railway Claims Tribunal, Ranchi Bench's dismissal of her claim for compensation.
 - The Tribunal in its 2019 order had held that the deceased—Shambhu Sahni, was not a bona fide

- passenger and that the incident was not an 'untoward incident' under Section 123(c)(2) of the Railways Act, 1989.
- The appellant wife filed the claim petition under the Railway Claims Tribunal Act, as per which on June 7, 2017 Sahni had boarded the Howrah-Gaya Express at Sahibganj Junction with a valid second-class ticket purchased by his brother for a journey to Pirpainti Station.
 - As the train neared Pirpainti, the deceased moved towards the door of the train to alight.
 - Due to a crowd of passengers gathering near the door, there was intense jostling, causing Sahni to lose his balance and he accidentally fell down from the moving train between Ammapali Halt and Pirpainti Station. He sustained fatal injuries and died on the spot.
 - Upon being informed of the incident, the wife and family members identified the body of Shambhu Sahni.
 - The local rail police registered an Unnatural Death (UD) case; Following the postmortem, the body was handed over to the family and cremated.
 - She deposed in her affidavit that the valid ticket of her deceased husband was lost during the untoward incident.
 - The Court, in its judgment, observed that while the respondent's written statement claimed the deceased had died while crossing the railway track, the documentary evidence provided by the Railways showed that the untoward incident occurred when the deceased fell from a running train between Sahebganj and Pirpainti Station.
 - The Court further noted that, based on the investigation conducted by the Investigating Officer in the UD case, the untoward incident occurred when the deceased fell from the running train.
 - The court said that the claimant wife had discharged the burden of proof by submitting an affidavit asserting that the deceased had purchased a ticket and was traveling as a bona fide passenger.
 - The affidavit stated that the deceased fell from the train due to jostling by other passengers near the gate as they attempted to disembark.
 - The Court concluded, “the presumption in favour of the appellants in regard to being the bona fide passenger will be raised. On behalf of the respondent the burden of proof which shifted on it, has not rebutted and the presumption of being not bona fide passenger by not adducing the cogent evidence.”

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- The Court also held that the claimants were entitled to compensation of Rs. 8 lakhs, along with interest of 9% per annum from the date of filing the claim petition up to the date of the order, and 6% per annum from the date of the order until actual payment.
- Referring to the applicable rules, the Court observed, “in view of Notification No. G.S.R. 1165(E) dated 22nd December, 2016 with effect from 1st January, 2017 Rule 3(2) of Railway Accidents and Untoward Incidents (Compensation) Rules, 1990 the words “rupees four lakh”, has been substituted with the words “rupees eight lakh”.
- The Court added, “Since this untoward incident occurred on 7th June 2017, after the enforcement of Notification No. G.S.R. 1165(E), the claimants are entitled to compensation of Rs. 8 lakhs along with interest as specified.”
- Based on its analysis of the evidence on record, the Court allowed the appeal, setting aside the judgment passed by the Railway Claims Tribunal, Ranchi Bench.



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