XXXX v. XXXX

- **TOPIC :** Jurisdiction To Decide Guardianship of Hindu Child Below 5 Yrs lies Where Child Actually Resides, Not Where Mother Resides
- **BENCH :** Justice Sureshwar Thakur and Justice Sudeepti Sharma

- **FORUM:** : Punjab and Haryana High Court
- **MAIN ISSUE**
  - Whether the application seeking guardianship of a minor, particularly one aged below 5 years of age, will lie to the district or not where the child actually and physically resides.
- **FACTS**
  - In the present case, the husband challenged the order passed by a Family Court dismissing his application for rejection of a plaint filed by mother under Section 25 read with Section 12 of the Guardians and Wards Act, 1890 before the Family Court (Kaithal) seeking custody of their minor son (aged 3.5 year).
- **BACKGROUND**
  - The Family Court held that the intention of Section 6(a) is that even though the minor below 5 years may not be in physical custody/residing with mother but still his/her custody would be deemed to be at the place where the mother is residing and the respondent-mother at the time of instituting proceedings before the Family Court, was deemed natural guardian of the minor child since the child was below 5 years of age, therefore, the natural custody would also be presumed to be with the mother, regardless of the place where the child was actually or physically residing at that time
- **OBSERVATIONS**
  - The Punjab and Haryana High Court has made it clear that an application seeking guardianship of a minor, particularly one aged below 5 years of age, will lie to the district where the child actually and physically resides.
  - Bench of Justice Sureshwar Thakur and Justice Sudeepti Sharma said merely because as per Section 6(a) of the Hindu Minority and Guardianship Act, 1956 custody of a minor who has not completed five years of age will "ordinarily" be with the mother, it does not imply that the child is always living with the mother.
  - The Court highlighted that, a perusal of the definition of 'Guardian' shows that the guardian is the person who is having the care of the person and/or property of a minor.
  - The custody of the minor cannot be with the mother who is unchaste, insane, leading immoral life, insensitive, leading to estranged matrimonial relationship with her husband (the father of the child), sick, physically or mentally suffering from any disability, not conducive for ideal upbringing of the child", it added.
  - The division bench opined that a conjoint reading of all the above referred to statutory provisions shows that the intention of the legislature in Section 9 with respect to the jurisdiction is that application for the guardianship of the person of the minor shall lie to the District Court having jurisdiction in the place where the "minor is actually and physically residing" and not as per the proviso to Section 6(a) of Hindu Minority and Guardians Act, 1956.

Vishesh Films Private Limited v. Super Cassettes Industries Limited

- **TOPIC:** Delhi High Court Restrains T – series From Using 'Aashiqui' Title In Trademark Infringement Suit By Mukesh Bhatt's Firm.
- **BENCH :** Justice Sanjeev Narula

- **FORUM:** Delhi High Court
- **MAIN ISSUE**
  - Regarding the title used by the company in respect to trademark infringement.

❖ **FACTS**
- Vishesh Films, in collaboration with T-Series, produced films Aashiqui (1990) and Aashiqui 2 (2013). The former claimed rights over the trademarks ‘‘Aashiqui’’ and ‘‘Aashiqui Ke Liye" registered under the Trade Marks Act, 1999.

❖ **BACKGROUND**
- Vishesh Films sought to prevent T-Series from releasing any sequels and an anticipated third installment tentatively titled ‘‘Aashiqui 3’’ or ‘‘Tu Hi Aashiqui’’ or ‘‘Tu Hi Aashiqui Hai’’, without its express consent.
- The Delhi High Court has restrained film production company T-Series from using titles ‘‘Tu Hi Aashiqui’’, ‘‘Tu Hi Aashiqui Hai’’ and ‘‘Aashiqui’’ in respect of an upcoming film.
- Justice Sanjeev Narula granted an interim injunction in favour of Vishesh Films, a film company owned by Mukesh Bhatt, in a trademark infringement suit filed against Super Cassettes Industries Private Limited, which does business as T-Series.

❖ **OBSERVATIONS**
- The court said that Vishesh Films' mark ‘‘Aashiqui’’ is registered under the Trade Marks Act, 1999 and that it is crucial to protect titles of expressive works that become part of a series and have the potential of acquiring distinctiveness.
- ‘‘The ‘‘Aashiqui’’ title is not just an instance of isolated use, but rather, has become part of a recognised film series, with two successful installments released in 1990 and 2013,’’ the court said.
- The court said that the word ‘‘Aashiqui’’ was prima facie not a mere descriptive term but rather a distinctive mark that suggested a specific brand of romantic films, capable of being protected under trademark law.
- It added that the Aashiqui Franchise has, prima facie, built a strong following amongst viewers who are likely to be misled by T-Series' use of a similar title, particularly given the overlap in the thematic content suggested by both titles and the history of association between the parties.
- Justice Narula concluded that prima facie, the phonetic and conceptual similarities in the marks in question, combined with the likelihood of confusion among the target audience, infringed upon the Vishesh Films' trademark right.
- ‘‘The Plaintiff's brand is closely tied to the title ‘‘Aashiqui’’ and therefore, allowing the Defendant to use a deceptively similar title would not only dilute this brand but could also lead to consumer confusion, causing long term harm to the Plaintiff's reputation and diminishing the value of their intellectual property,’’ the court said.

Laxman Charan v. State of Rajasthan & Anr.

❖ **TOPIC :** Compromise in Rape Cases Involving Minors Has No Legal Value, State Has Duty To Prosecute Accused With Full Rigour

❖ **BENCH :** Justice Rajendra Prakash Soni

❖ **FORUM:** Rajasthan High Court

❖ **MAIN ISSUE**
- Whether in a case of rape involving a minor girl, a compromise arrived at by the accused with the victim girl and her parents has legal value or not

❖ **FACTS**
- It was the case of the petitioner that the victim had denied any allegations of rape during her statement to the police, however, completely changed her statement in front of the magistrate.
- Hence, her statements could not be trusted.
- Furthermore, it was submitted that the victim and her parents had reached a compromise with the accused in light of which he should be granted bail.

❖ **BACKGROUND**
- The prayer was opposed by the public prosecutor who submitted that in light of the gravity of the offence, the compromise reached between the parties could not be enforced in such a matter.
- Rajasthan High Court has held that in a case of rape involving a minor girl, a compromise arrived at by the accused with the victim girl and her parents has no legal value and cannot be given effect since such compromises are often laced with coercion, undue influence or even financial incentives.
- The bench of Justice Rajendra Prakash Soni was hearing a bail petition filed by an accused charged

with raping an 11-year-old girl.

❖ **OBSERVATIONS**
- The Court stated that if such compromises were allowed to affect the legal proceedings, it would potentially encourage similar offences. It was observed that the POCSO Act aimed to prioritize the protection of vulnerable individuals and the accountability of perpetrators over any private settlements.
- Accordingly, the Court dismissed the bail application, ruling that looking at the nature and gravity of the accusation, the accused was not entitled to bail.

Jitendra Paswan Satya Mitra v. State of Bihar

❖ **TOPIC :** Court Can't Postpone Implementation of Bail Order After finding Accused Entitled to Bail

❖ **BENCH** : Justice Abhay Oka and Justice Augustine George Masih

❖ **FORUM:** Supreme Court

❖ **MAIN ISSUE**
- Whether the delay in implementation of the bail order is correct or not.

❖ **FACTS**
- The appellant is implicated in a case under Sections 147, 148, 149, 341, 323, 324, 326, 307, and 302 of the IPC. The FIR was lodged against 19 named accused, including Paswan, for allegedly attacking the informant and his family when they protested against the accused plowing their field.
- Specifically, it is alleged that on the instigation of Paswan, the other accused assaulted the informant's family.

❖ **BACKGROUND**
- The HC granted bail to Paswan, to be effective six months from the order date, with a bail bond of Rs. 30,000 and two sureties.
- It also imposed several conditions, including regular court appearances, monthly attendance at the police station, and prohibitions against tampering with evidence or committing further offenses.
- The Supreme Court ruled that once a court concludes that an accused is entitled to bail, it cannot delay the implementation of the bail order, as doing so may violate the rights guaranteed under Article 21 of the Constitution.

❖ **OBSERVATIONS**
- A bench of Justice Abhay Oka and Justice Augustine George Masih deleted the condition imposed by Patna High Court while granting bail to an accused that the bail order will be executed after six months. The HC in the impugned judgment did not provide any reason for imposing such a condition.
- The Supreme Court partly allowed the appeal and deleted the words ''but after 6 months from today'' from paragraph 9 of the impugned judgment.
- The bench also noted that the appellant, Jitendra Paswan, had already been released on interim bail under its earlier orders and directed that this interim bail would continue until the completion of the trial.

Achan Kumar v. State Of Punjab & Ors.

❖ **TOPIC** : Prisoners Not Disentitled to Parole For Merely Possessing Phones In Prison, state Should Provide Calling Facility In Jails

❖ **BENCH:** Justice Sureshwar Thakur, Justice Deepak Sibal, Justice Anupinder Singh Grewal, Justice Meenakshi I. Mehta and Justice Rajesh Bhardwaj

❖ **FORUM:** Punjab & Haryana High Court

❖ **MAIN ISSUE**
- Whether finding mobile phones in possession of prisoners would be sufficient or not without cogent evidence to deny parole.

❖ **OBSERVATIONS**
- The Punjab & Haryana High Court held that merely finding mobile phones in possession of prisoners would not be sufficient without cogent evidence to deny parole and the same is "extremely harsh and oppressive."
- The larger bench opined that denying parole on "mere possession" of the mobile phones will be a violation of fair trial as the accused is presumed

innocent until proven guilty.

- The larger bench was constituted to decide a set of ten questions.
- The main question in the case was, "whether without any conviction becoming handed over by the regular Court concerned, the mere detection of unauthorized possession of a mobile phone from the prisoner concerned, does disentitle him to seek the privilege of parole, especially when even in heinous offence, subject to imposition of certain conditions, the regular Courts of competent jurisdiction can grant bail to the accused concerned."
- Speaking for the bench Justice Thakur held that denying the privilege of parole to inmates who were found in possession of mobile phones is "unreasonable classification" and "arbitrary".
- The Court elucidated that denial of parole only on mere possession of mobile phones "without the imperative evidence" are "antithetical to the norms of fair trial."
- The Court further said that to curb the illegal activity of possessing mobile phones inside prisons, the State should provide a calling facility to the inmates so that they can communicate with their family and friends on payment of relevant charges.
- Justice Thakur highlighted that the concerned authorities reject parole applications by giving "stereotyped reasons" which are "not well-informed".
- "Consequently, the District Magistrates/competent authority concerned are directed to hereinafter ensure that, they shall consider and apply their mind objectively to the relevant material furnished by the police, local Panchayats and only in cases where they receive cogent, tangible and concrete evidence indicating that the prisoner, if released on parole, would be an imminent threat to the security and peace of the area concerned, thus thereupon they may well consider, on good reasons, reject his/her application for parole," added the Court.
- The bench concluded that parole should not be denied in a mechanical manner, without application of mind.
- "In the event of the competent authorities not objectively applying their mind vis-a-vis cases for release of prisoners on parole, thereupon they would be liable for censure/disciplinary action for their prompting frivolous and avoidable litigation," it said.
- The reference plea was consequently disposed of.

R Gopal Reddy v. Mohammed Mukaram

- **TOPIC:** Owner of Premises Where Drugs Are Found Can Only Be Prosecuted If He Knowingly Permitted Use For Commission of Offence
- **BENCH :** Justice M Nagaprasanna

- **FORUM:** Karnataka High Court
- **MAIN ISSUE**
  - Whether the owner or occupier of a premise only if he knowingly permits it to be used for commission of the offence under the Narcotic Drugs and Psychotropic Substances Act (NDPS), would he become punishable or not.
- **FACTS**
  - As per the prosecution case one M/s Victory an event management Company enquired about the property of the petitioner and made a payment of Rs 1,10,000, to the property manager towards renting out the property for an event of one person named Vasu for the celebration of his birthday.
- **BACKGROUND**
  - In the early hours of 20-05-2024, on receipt of credible information, a raid was made and seized several narcotic drugs and psychotropic substances.
  - Following this, the premises were sealed and the accused who is the owner of the property was made an accused in the case.
  - The petitioner contended that he is 68 years old and residing elsewhere. The property in question is managed by the property manager.
  - The prosecution opposed the plea saying whether the petitioner had the knowledge or not is a matter of trial. He cannot escape the clutches of law, as the investigation is still pending in the case.

❖ **OBSERVATIONS**

- The Karnataka High Court has reiterated that the owner or occupier of a premise only if he knowingly permits it to be used for commission of the offence under the Narcotic Drugs and Psychotropic Substances Act (NDPS), would he become punishable.
- A single judge bench of Justice M Nagaprasanna allowed the petition filed by one R Gopal Reddy and quashed the proceedings initiated against him under Sections 8(c), 22(b), 22(C), 22(A), 27(B), 25, 27 of the Act.
- The bench noted that the official who conducted the seizure panchnama had said that the petitioner was not in the know of things. No other person has pointed a finger at the petitioner as to the knowledge of the consumption or distribution of drugs on the said date in the said premises.
- The court referred to Section 25 of the Act which deals with punishment for allowing the premises to be used for the commission of an offence.
- Accordingly, it allowed the petition and quashed the proceedings