INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: https://www.ijlmh.com/

Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com/)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact **support@vidhiaagaz.com**.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to **submission@ijlmh.com.**

Legal Aspects of Legal Defences at the time of Pre-Arrest, Arrest, Remand, and Bail Stages to be Imbibed by Legal Aid Defence Counsels

DR. SYED WAHAB ABDULLAH*

ABSTRACT

The legal Aid Defence Counsel System is a mechanism by virtue of which eligible accused within the scope of Section 12 of the Legal Services Authorities Act, 1987 can resort to the qualitative defence mechanism established under the law. A fulcrum of rights of accused gets propelled when he/she is aware of his/her fundamental rights, especially the one enshrined under Article 21 of the mother law i.e., the Constitutional Law of India. The Constitution of India abrogated the draconian doctrine of ex post facto entanglement of accused in the law.

But then situation may emerge regarding fairness in the trial. The trial is considered to be fair and fruitful only when the defence, as required by the manifestation of legal philosophy of 'fair trial' under Article 21 of the Constitution, is practically set up by accused. Accused must be given fullest opportunity of structuring his defence at the behest of defence counsel. The opportunity shall be practically be provided in every legally possible way. If the philosophy of fair trial is not assured in all practical sense, the trial gets stuck in a quagmire of unfairness.

Therefore, in order to assure robust defence for the accused who are impecunious, indigent in their status, deprived of rights, eligible and fit person for the legal aid, the National Legal Services Authority, New Delhi (NALSA) has devised a Scheme called as Legal Aid Defence Counsel Scheme 2022 (For Short LADCs). Every District Legal Services Authority (DLSA) is conferred with effective monitoring of the mechanism of LADCs. The DLSA has every authority to undertake educational programmes and effective refresher courses for LADCs so that, the system works vibrantly.

Thus, in propinquity with the above guidelines, it is desirable to have a compendium of cases of law so that, there would be a scope for knowledge sharing. Resultantly, the object of refresher training and knowledge sharing would be served in real and pragmatic sense.

* Author is a Judicial Officer presently serving as Secretary at District Legal Services Authority, Beed, Maharashtra, India.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

I. Guidelines of the Hon'ble Supreme Court in Suhas Chakma's Case[1] in the Context of LADCs.

The Hon'ble Supreme Court in this Judgment[2] has issued slew of directions in respect of catena of legal aid measures to the convict and undertrial accused. The Supreme Court has ruled that, the Legal Services Authorities, at various levels, should ensure that the Legal Aid Defence Counsel System, which is a pioneering measure, functions to its full potential. In this regard, periodic inspection and audit of the work of the Legal Aid Defence Counsels should be carried out. Steps should also be taken to improve the service conditions of the personnel working in the Legal Aid Defence Counsel System, whenever it is felt necessary and appropriate. Furthermore, it held that, steps for continuing education of lawyers involved in prelitigation assistance and those associated with the Legal Aid Defence Counsel set-up should be provided by the Legal Servies Authorities.[3] In another case, the Hon'ble Supreme Court held that, it was the duty of defence counsel to confront the witness with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that, the learned defence counsel has no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872.[4]

A. Guidelines of the Hon'ble Supreme Court in Husainara Khatoon's Case.

In *Hussainara Khatoon v. Home Secretary, State of Bihar*[5], the Hon'ble Supreme Court ruled that, any accused person who is unable to hire a lawyer due to conditions like poverty, indigence or being incommunicado has a Constitutional right to have a lawyer appointed by the State if the needs of justice and the facts of the case so warrant. The Apex Court further ruled in another case that, the in order to render free legal aid to accused, it is an imperative on the part of system to provide quality legal aid practitioner.[6]

Thus, it can be unequivocally understood that, the role of DLSA in the context of LADCs is very promising and equally responsible in rendering qualitative legal coordination with LADCs so that the theme of providing legal aid by way of defence mechanism would subserve the purpose of achieving best interest as enumerated in the scheme.

---

[1] *Suhas Chakma v. Union of India* reported in 2024 SCC Online SC 3031.
[2] *ibid*.
[3] *ibid.*
[4] *Munna Pandey v. State of Bihar*, Cri. Appeal No. 1271-1272 of 2018 decided on 4 Sept, 2023.
[5] (1980) 1 SCC 98.
[6] *State of Maharashtra v. Manubhai Pragji Vashi,* reported in AIR 1996 SC 1.

II. Legal aid to accused before, at the time of arrest and at the remand stage

The stage of pre-arrest, arrest and remand is very crucial stage wherein the LADC has to immediately exert to provide legal assistance to accused. The LADC shall have a better idea of legal *nitty gritty* so that, the accused would not be trapped in egregious arrest and outlandish police custody orders. In order to fructify the apt LADC Scheme, it is a need of the hour to have handy material with relevant cases of law.

A. The Constitutional Philosophy of Free Legal Aid to Accused

It is seldom witnessed that accused is given fair opportunity to know the grounds of his arrest. To know the grounds of arrest, is a fundamental right of accused. Upon knowing the grounds of arrest, accused has a right to consult a lawyer of his choice.[7]

The LADC can approach the police station to obtain necessary information regarding registration of crimes during preceding 24 hours and how many accused have had an opportunity to consult lawyer. It is a matter of concern that, accused has no first-hand knowledge regarding "a lawyer of choice". The lawyer of choice can be possibly be engaged only when accused is in better know how of available lawyer and it is not possible for any ordinary man to keep track of choicest lawyers.

State sponsored defence lawyer through the channel of LADCs is not meant to impose or burden the services of LADC without there being any resolute need, but to assure the legal services to the accused who is in practical need to lay a defence not only at the trial but also at the stage of investigation and inquiry. Thus, the Constitution of India takes into its sweep practical need of affording just and proper opportunity to economically weakened section of accused within the facets of Right of Life and Liberty,[8] and under the principle that, "the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".[9]

B. Constitutional Obligations of Police and Hon'ble Courts.

The police must not only give information regarding arrest to the LADC office but also as per settled law, the police station has obligation to inform the nearest legal service authority

[7] Art. 22 of the Constitution of India.
[8] Art 21 of the *Constitution of India*.
[9] Art. 39A of the *Constitution of India*.

regarding arrest of accused.[10]

The State is under a Constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the Magistrate as also when he is remanded from time to time.[11] The Supreme Court directs that, the Magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State. Unless he is not willing to take advantage every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation.[12] Thus, it is not only the duty of police to assist accused for engagement of advocate on legal aid but also it is a Constitutional obligations on the Court of Sessions Judge and of Magistrates to assure the engagement of advocate for accused on legal aid.

C. Role of LADC at the time of Pre-Arrest Stage.

As per the LADC Scheme, LADC shall exert in providing legal assistance at pre-arrest stage as per need and also in accordance with NALSA's scheme for providing such assistance. At pre-arrest stage, it is an obligation on LADC to see whether the offence is cognizable and attracts imprisonment which may be less than seven years but extend up to seven years within the purport of Section 35(1)(b) of the *Bhartiya Nagrik Suraksha Sanhita*, 2023(BNSS). The NALSA Scheme for LADC provides that, the LADC shall take into consideration the relevant Scheme for providing assistance at pre-arrest stage. In this context the NALSA has introduced, the Scheme called as "*Early Access to Justice at Pre-Arrest, Arrest and Remand Stage*". All LADCs are under obligation to go through the said scheme and rules framed thereunder pragmatically.

1. LADC to Make Sure about Service of Notice of Appearance on Accused in Deserving Cases.

After receiving information from the police station regarding registration of the First Information Report (FIR), it is the obligation of LADC to assess whether unrepresented accused has been arrested without following the procedure of issuance of notice of appearance in a well deserving case. Many a times arrests are made by police despite there is no cogent reasons for arrest of accused in a cognizable case in which the imprisonment is less than seven years.

---

[10] *Sheela Barse v. State of Maharashtra*, reported in 1983 SCR (2) 337.

[11] *Khatri and Ors v. State of Bihar* reported in 1981 Cri. L.J. 470.

[12] *Supra* note 15

The LADCs shall assess whether the IO has cogent reasons for making arrest of accused. If he has no reason available, the LADC shall insist in writing regarding lack of factual background requiring arrest of accused. He/she may request the police officer to issue notice of appearance instead.[13]

The notice of appearance incorporated under Section 35(3) BNSS corresponds to Section 41A of then Code of Criminal Procedure, 1973 (Code). The purpose of notice of appearance is to avoid unnecessary arrests. The notice shall clearly set out that the accused shall appear at the police station for the sake of cooperating during the investigation. It shall also clarify the repercussions of flouting of such notice of appearance. If these condition precedents of notice of appearance are not set out in such notice, the police is not at its liberty to arrest the accused on the ground of breach of conditions by accused. Thus, LADC shall minutely go through the notice of appearance because if service of notice is defective, the arrest becomes illegal.

The effect of non-compliance of Sec. 35 of BNSS by the police officer is far reaching. The Court while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.[14]

2. Rule of Law in *Arnesh Kumar v. State of Bihar.*[15]

The Hon'ble Apex Court in this landmark judgment issued slew of guidelines, *inter alia*, restraining the police officers form automatically arresting the police from automatically arresting the accused in dowry related cases and under Section 498A of the Indian Penal Code (now Section 85 of Bhartiya Nyaya Sanhita, 2023[16]).

It was held that, the police cannot automatically arrest on the sole belief that, accused may have committed offence of cruelty or dowry related offence. There is need to have adequate material to show the reason for the arrest as well as it shall be explained as to why it is necessary for the purpose of the investigation. It was clarified in this judgment that, these guidelines would apply equally to other provisions in the Indian Penal Code/ BNS under which accused could be sentenced to imprisonment for seven years or less.

Recently in ***Ashfak Alam v. State of Jharkhand and Anr***[17] it was reiterated by the Hon'ble Apex Court that, the guidelines in Arnesh Kumar Case shall be strictly adhered to, by the police.

[13] Sec. 35(3) of BNSS.
[14] *Satinder Kumar Antil v. CBI*, *infra* Note 32.
[15] (2014) 8 SCC 273
[16] For short 'BNS'.
[17] 2023 LiveLaw (SC) 583.

3. Notification[18] of Hon'ble Bombay High Court in view of guidelines of Hon'ble Supreme Court in Arnesh Kumar case and Ashfak Alam case.

"In exercise of the powers conferred under Article 227 of the Constitution of India and all other enabling powers and in compliance of the directions issued by the Hon'ble Supreme Court of India vide order dated 31.07.2023 passed in Criminal Appeal No. 2207 of 2023, titled as Md. Asfak Alam Vs. The State of Jharkhand & Anr. 2023 SCC Online SC 892, the Hon'ble the Chief Justice is pleased to direct that:

i. The police shall not automatically arrest when a case under Section 498-A IPC is registered. The Police shall first satisfy themselves about the necessity for arrest under the parameters laid down in Arnesh Kumar Vs. State of Bihar and Anr. [Criminal Appeal No. 1277 of 2012] flowing from Section 41 CrPC;

ii. All police officers shall be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

iii. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding / producing the accused before the Magistrate for further detention;

iv. The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

v. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

vi. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the Distirct for the reasons to be recorded in writing;

vii. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court of Bombay.

viii. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate

[18] Notification of Hon'ble Bombay H.C. Rule/Misc01/2023 dated 21/10/2023

© 2026. International Journal of Law Management & Humanities

concerned shall be liable for departmental action by the Bombay High Court.

ix. The directions as aforesaid shall not only apply to the case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

However, in view of Supreme Court's Judgment dated 07th August 2023, in Criminal Appeal Nos. 2284-2285 of 2023 in the matter of *V. Senthil Balaji v. The State Represented by Deputy Director and Ors*., Section 41A of CrPC shall have no application to an arrest made under the Prevention of Money laundering Act, 2002. This Notification shall come into force with immediate effect. Strict compliance of the above directions is ensured.

4. Notice of Appearance shall not be Issued by WhatsApp or Electronic Means.

The notice under Section 35 of BNSS has immediate bearing on the liberty of the individual in case of its non-compliance. The summons issued by Court and notice issued by investigating agency cannot be equated with each other. A summons issued by Court is a Judicial act while notice issue by the IO is an executive act. Thus, electronic mode of service of notice is not prescribed under BNSS. It should not be adopted by the investigating agency. The Hon'ble Supreme Court in ***Satinder Kumar Antil v. CBI*** [19]reiterated that, notice under section 35 of BNSS shall not be issued electronically.

D. Role of LADC after Arrest of Accused.

To arrest someone is to curtail his liberty of movement. It shall be the duty of LADC to see whether arrest is justified with satisfactory reasons. Arrest must not be a casual and an empty formality of police. Proper circumspection shall be made by police before conducting arrest. In ***Satinder Kumar Antil v. CBI***, [20]it was held by the Hon'ble Supreme Court that, Courts are reminded that they must actively ensure that Section 41 and the Arnesh Kumar guidelines are followed, this duty must reflect in their judicial orders, i.e., the reasoning and findings in bail or remand orders should show that the Court has checked for compliance. The Court emphasizes that the directions laid down in Arnesh Kumar must be followed in both letter and spirit, by both investigating (police) and prosecuting agencies (public prosecutors) Non-compliance with Section 41 CrPC (conditions for arrest) is unacceptable, and its consequences, such as illegal arrest or wrongful detention must not be ignored. It is thus necessary to go through guidelines laid down by the Hon'ble Supreme Court in the context of arrest.

---

[19] 2025 LiveLaw (SC) 751.
[20] (2022) 10 SCC 51

1. **Guidelines of Hon'ble Supreme Court in *D.K. Basu v. State of West Bengal*[21]**

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. **The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register**.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a **memo of arrest** at the time of arrest a such memo shall be attested by at least one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have **one friend or relative or other person known to him** or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the **legal Aid Organization in the District and the police station** of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of **this right to have someone informed of his arrest** or detention as soon he is put under arrest or is detained.

(6) An **entry must be made in the diary** at the place of detention regarding the arrest of the person which shall also disclose the name of he next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "**Inspection Memo**" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to **medical examination** by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by

[21] AIR 1997 SC 610

Director, Health Services of the concerned Stare or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be **sent to the Magistrate** for his record.

(10) The arrestee may be permitted to **meet his lawyer** during interrogation, though not throughout the interrogation.

(11) A **police control room** should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

E. Role of LADC at the Stage of Remand.

If the offence attracts imprisonment up-to seven years or if it is less than seven years but the imprisonment may extend to seven years yet the arrest is made, in such scenario, LADC shall assess whether the Investigation Officer (IO) has formulated proper reason as per Section 35(1)(b)(ii) of the BNSS. If reasons are not satisfactory and do not meet the requirements of this provision, the LADC shall resist the police custody with his/her legally strenuous arguments and vehement submissions. It is necessary to have check list for assessing the legality of arrest and production of accused before the Court.

1. Checklist, may be considered at the time of Production of accused for Police custody Remand.

i. The guidelines regarding arrest in D. K. Basu case is followed by the IO or not.[22]

ii. Pre arrest counselling was needed and IO gave such opportunity to LADC for advising the accused or not.[23]

iii. Accusation against accused is well founded in the FIR or not?

iv. Whether accused is handcuffed by flouting the mandate under Section 43(3) of BNSS?

v. Accused was informed about the grounds of his arrest or not[24]

vi. IO has formulated reasons of arrest and complied the guidelines in Arnesh kumar case or not.

vii. Accused was medically examined through medical officer or registered medical

[22] *Ibid.*
[23] Art. 22, Supra note- 12
[24] Sec. 47 of BNSS.

practitioner or not[25]

viii. Copy of arrest Panchnama is submitted by IO to the Court and information of arrest is given to the relative or acquaintance of accused or not given.[26]

ix. The case diary is sent by IO for perusal of the Court or kept with himself or at police station. (the case diary cannot be called upon by accused, but LADC may insist upon the Court to kindly peruse the entries in the diary in compliance with Sections 187(2) and 192(2) of the BNSS)

x. Copy of FIR is annexed with the remand report and copy of remand application and FIR with copy of arrest Panchnama and checklist of grounds of arrest and reasons of arrest are provided for accused as of, right or there is denial to provide the same to accused.

xi. Whether there is any complaint of ill-treatment by accused or whether his relatives are complaining of ill-treatments at the hands of police?

xii. Whether accused has been brought before the Court immediately from the hospital where he was undergoing treatment?

xiii. Whether female accused is brought with a lady police officer/escort?

xiv. Whether the Police custody remand is put up by a police officer not below the rank of Sub Inspector (remand application shall bear signature of officer not below the rank of SI)?

xv. Whether Police Custody is sought only for arrest of other accused and without any substantial need?

xvi. Whether accused is produced within 24 hours or there is delay in the production i.e., within 24 hours from the time of arrest?

xvii. That it is impossible to complete interrogation within 24 hours or it would have completed within 24 hours.

2. Non-compliance of mandatory requirements under Sec. 35 BNSS would entitle the accused to get bail.

The Hon'ble Supreme Court in ***Satinder Kumar Antil v. CBI***, reported in SLP 5191of 2021 decided on 11 July, 2022 [27]held in that,

This provision (Sec. 41 Cr.P.C) mandates the police officer to record his reasons in writing while

[25] Sec. 53 of BNSS.
[26] Sec. 48 of BNSS
[27] *Supra* Note 19.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons. (Para-22)

"The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail". (Para-23)

2. **Purpose of Police Custody Remand is custodial interrogation.**

There must be cogent reasons available with IO that, investigation cannot be completed within 24 hours. IO must have reasonable record to reveal progress in the investigation during past 24 hours. The purpose of Police Custody is to extract valuable information from accused and to recover articles of crime. One of the greatest purpose of Police custody is to custodially interrogate the accused with connected progress of investigation.

LADC shall see whether the police is/are seeking remand as a matter of course and not for the purpose of investigation. If this is a situation, LADC shall resist for PCR vehemently and request the Court not to grant police custody. It is mandatory under the Criminal Manual[28] that, Magistrate shall not allow remand in such cases without being satisfied that there are really good grounds for it. The remand shall not be allowed as a matter of course. There shall be some satisfactory reasons for the purpose of investigation.

3. **Importance of submission of case diary to the Court.**

It is obligatory on the part of IO to furnish entries of case diary to the court. So also, Magistrates shall insist upon the copies of case diary and other relevant material being produced by the police and such entries shall be carefully examined by Magistrates in order to satisfy themselves that there are good grounds for remand.[29]

It is common course of action of the Police department that, they do not mention details of factual developments based on examination of witnesses. Mostly the case diary entries are replications of the remand application. This mistake on their part would not only make the prosecution case unbelievable but also it shows dereliction of duty by IO as mandated under Section 192(2) of BNSS (Corresponding Sec. 172(1-B) of Cr. PC.) Neither the police officers were keeping track of amendment in Cr. PC nor they are bothered to keep track regarding

[28] Chapter I, Para 4 (1) of Criminal Manual.
[29] Chapter I, Para 4 (2) of Criminal Manual and Section 187(1) of BNSS

© 2026. International Journal of Law Management & Humanities

incorporation of necessary provision under section 192 of BNSS. In the following case the Hon'ble Bombay High Court exhibited its anguish with regard to standoffish conduct of the Prosecution and Police officers.

In ***Alturi Padma Venkateshwara Rao v. P.I. Pawar and Ors,***[30] it was ruled that, "We are not so much concerned about compliance of that requirement in the case before us, but we are at a loss to know as to why the Home Department has so far not informed all the Police Officials who are expected to maintain the case diary, about the changed legal position which has come into effect from 31.12.2009. The fact that the Senior Police Officers of the rank of Superintendent of Police are not aware about such change, presupposes that the other Officers including the Officers lower in rank must be totally unaware about such requirement.

It was further ruled that, "We therefore direct the Secretary of the Home Department to forthwith issue appropriate instructions to all concerned to comply with the mandate of changed legal position which has come into force w.e.f. 31.12.2009; and which must be observed by every Police Officer entrusted with the investigation of a case under Chapter XII of the Code, to maintain case diary in the form so prescribed. Such instructions be issued forthwith in any case not later than two weeks from today. **Needless to observe that the trial Courts across the State must also insist for compliance of the above requirements in every case before them hereafter**."

4. **Role of LADC at the time of Police Custody Remand.**

a) To resist the claim of Police Custody when there is no reason to believe that valuable information would be received from accused.

b) To resist the Police custody when it is claimed merely to arrest the other accused and to verify the statement of accused.

c) To resist the claim of Police custody when the Magistrate has no jurisdiction to entertain the offence and charge.[31]

d) To see whether Police custody is sought for not exceeding 15 days in the whole or in parts at any time during the initial 40 days or 60 days out of detention period of 60 days or 90 days. (If the investigation is to complete within 60 days, the period of police custody would run from day one to day forty of registration of the crime. If it is 90 days, it would run from day one to day 60, maximum period in both the cases is 15 days of police

[30] Criminal Writ Petition No. 2315 of 2010, Decided on 27 Jan. 2011.
[31] Para 5(iii) of Chapter I of Criminal Manual.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

custody.[32])

e) If 15 days police custody is exhausted during initial 40 and 60 days, no further police custody shall be sought.

5. Copy of Remand Application not given to accused would vitiate the arrest.

In *Prabir Purkayastha v. State (NCT Delhi)*, (D. No. 42896/2023) decided on 15/05/2024, it was held by the Hon'ble Supreme Court that, --Para 50. "From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant."

6. Communication of grounds of arrest is mandatory.

In ***Mihir Rajesh Shah v. State of Maharashtra*** reported in **2025 SCC Online SC 2356**, ruled that, the grounds of arrest must be communicated in writing to the arrestee in the language he/she understands. In case where the arresting officer/person is unable to communicate the grounds the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate. In case of noncompliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

7. Difference between Grounds of Arrest and reasons of arrest.

In ***Prabir Purkayastha v. State (NCT Delhi)*, (D. No. 42896/2023) decided on 15/05/2024** it was ruled by the Hon'ble Supreme Court in Para 49 as under,

Para-49. It may be reiterated at the cost of repetition that **there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'**. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person

---

[32] *State of Karnataka v. Kalandar Shafi and Ors* Cri WP No.13459 of 2024

arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature.

8. Remedy in case of violation of Article 22(1) of the Constitution

In ***Vihaan Kumar vs The State of Haryana*** **2025 INSC 162** it was held in Para-21 that, When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and when a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

III. Cases of Law on Bail

A. Elements necessary to be Assessed before arguing the Bail application.

The Hon'ble Supreme Court in the case of ***Suman Pande vs. State of Uttar Pradesh and another*** reported in **2007 (3) Mah.L.R.698 SC**, laid down following factors necessary for grant of bail.

1- The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

2- Reasonable apprehension of tampering of witness or apprehension of threat to complainant.

3- Prima facie satisfaction of the court in support of the charge.

The Supreme Court in ***Shri P. Chindambaram v. CBI***, Criminal Appeal No. 1603/2019. In this matter it was observed by Their Lordships that in **Kalyan v. Rajesh & Anr (2004) 7 SCC 528**, that the law with regard to grant of bail is very well settled. The discretion has to be exercised in judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) *Prima facie* satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v. Rambilas (2001) 6 SCC 338.

B. Pre-trial detention/long incarceration shall not be punishment itself in disguise.

Hon'ble Supreme Court of India held in ***Babua Tazmul Hossain vs. State of Orissa***, Appeal (Crl.) 593 of 2002 that pre-trial detention should not be reinstated as a punishment measure.

The Hon'ble Supreme Court in ***Manoranjana Sinh @ Gupta v. CBI***, Criminal Appeal No. 240/2017. It was observed by Their Lordships that, the detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution of India.

In ***Akash Satish Chandila v. State of Maharashtra***, Criminal Bail Application No. 1779/2023, it was observed by the hon'ble Bombay High Court in paragraph No. 7 that, "the seriousness of an offence and it's heinous nature may be one aspect, which deserve a consideration while exercising the discretion to release an accused on bail, but at the same time, the factor of long incarceration of an accused as under-trial prisoner also deserve its due weight-age. Pending the trial, a person cannot be kept in custody for an indefinite period of time and it clearly violate the fundamental right enshrined in the Constitution and time and again, has been considered to be a justiciable ground to exercise the discretion to release an accused". "Various orders/judgments from the highest Court are placed before me which have directed release of an accused on the ground of long incarceration and the impossibility of conclusion of trial in a time bound manner".

C. Not all offences of cheating are economic offences.

The Supreme Court in ***Satender Kumar Antil v. CBI,***[33] emphasised structured guidelines for arrest and bail. The need to avoid unnecessary incarceration, especially once charge sheet is filed. The principle that even economic offences must be assessed on a case-by-case basis, not

[33] (2022) 10 SCC 51

treated as an automatic bar to bail.

The LADC shall note that, each case differs from facts and circumstances.

In ***Narinder Kumar Joshi v. Directorate General, Goods & Service Tax Intelligence***[34] it was held by the Hon'ble Punjab and Haryana High Court that, while considering the prayer for grant of bail in any offence, including economic offences, "it is not a rule that bail should be denied in every case where the allegation is one of grave economic offences since there is not such bar created in the relevant enactment passed by the Legislature nor does the jurisprudence provide so."

Thus, the LADC shall delve deep into the aspects of nature of offence. It shall convince the court that, the offence is not an economic offence, rather it is a civil case entailing civil remedy of recovery of money. Therefore, it shall be kept in mind that, not all offences form economic offences under a single category warranting uniform denial of bail. Facts shall be assessed properly for proper line of arguments and submissions before Court.

D. Bail granted on Undertaking of accused is deprecated practice.

The LADC shall never insist a Court to release the accused based on undertaking of accused that, he would comply by paying the amount in favour of complainant/informant. In ***Gajanan Dattatray Gore v. State of Maharashtra***,[35] it was held by the Supreme Court that, "Nonetheless, the Court clarified its position unequivocally: henceforth, no High Court or Trial Court shall pass any order granting regular bail or anticipatory bail based on an undertaking by the accused or their family members to deposit a particular amount. All such pleas shall be decided strictly on their own merits, in accordance with law. It was further held that, if a case for bail is made out on merits, the court may exercise its discretion to grant relief. However, if no such case is made out, the plea must be rejected. Under no circumstances, it emphasized, shall the High Courts or Trial Courts pass a conditional order of bail based on monetary undertakings.

E. Undue delay in completion of Trial.

In ***Ankur Chaudhary v. State of MP,***[36] The Hon'ble Supreme Court observed that if there's an undue delay in the completion of the trial, then there would be no impediment to consider the grant of bail to the accused under the Narcotics Drugs and Psychotropic Substances Act despite not meeting the stringent test under Section 37 of the NDPS Act.

It is significant to note that, mere filing of chargesheet with large number of witnesses are not

[34] CRM-M-5987-2025 (O&M)
[35] 2025 SCC OnLine SC 1571
[36] 2024 LiveLaw (SC) 416

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

mere factors for presumption of future undue delay in the completion of trial. Furthermore, LADC shall have convincing material to justify that, the delay is undue which is against the spirit of fair trial within the ambit of Art. 21 of the Constitution of India.

F. Gratuitous Conditions impinging upon privacy of accused-Illegal.

In ***Frank Vitus v. Narcotics Control Bureau***,[37] the Hon'ble Supreme Court held that there cannot be a bail condition that enables the police to constantly track the movements of the accused and virtually peep into the privacy of the accused.

G. Bail is a Rule Jail is an Exception.

In ***Manish Sisodia v. Directorate of Enforcement*** [38] While allowing the bail plea the Hon'ble Supreme Court today observed that, Trial Courts and High Courts in the country have forgotten the principle that 'bail is the rule, jail an exception' and attempt to play safe. It further observed that, "From our experience, we can say that it appears that the trial Courts and the High Courts attempt to play safe in the matters of grant of bail. The principle that 'bail' is a rule and refusal an exception is at times followed in breach...on account of non-grant of bail, even in open-and-shut cases, this court is getting huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial Courts and the high Courts should recognise that bail is the rule and jail an exception",

In ***Alaluddin Khan v. Union of India*** [39] the Hon'ble Supreme Court held that 'bail is the rule, jail is the exception' even in special statutes like the Unlawful Activities (Prevention) Act 1967. If the conditions in the special statute for the grant of bail are met, then bail should be granted.

H. Accused unable to find Multiple Sureties-Liberal approach.

In ***Girish Gandhi v. The State of Uttar Pradesh & Ors***, [40] the Hon'ble Supreme Court held that if an accused, involved in multiple cases, is enlarged on bail and is unable to find multiple sureties, the court must balance the requirement of sureties with his right to personal liberty guaranteed under Article 21.

I. No surety since considerable time- Release on PR

In ***Ramchandra Thangappan Aachari v. State of Maharashtra*** [41]

The Supreme Court directed the release of a POCSO convict who continued to remain in custody

[37] 2024 LiveLaw (SC) 441
[38] 2024 LiveLaw (SC) 563
[39] 2024 LiveLaw (SC) 571
[40] 2024 LiveLaw (SC) 593
[41] 2024 LiveLaw (SC) 715

despite a bail order passed in May 2024. The petitioner had been unable to secure release due to his inability to furnish local surety. The Court directed the petitioner's release on his personal bond without the requirement of local surety, ensuring compliance with the bail order of May 3, 2024.

J. Rejection of Bail on presupposition of commencement of trial in future

In ***Rup Bahadur Magar @ Sanki@ Rabin v. State of West Bengal,***[42] The Supreme Court emphasized that bail cannot be rejected merely on the ground that the trial will be expedited.

A. Sec. 479 of BNSS (Old Sec. 436A CRPC) has retrospective application.

In, *in Re-Inhuman Conditions In 1382 Prisons v. Director General of Prisons and Correctional Services and Ors.*, [43]

In a significant development, the Supreme Court held that Section 479 of Bharatiya Nagarik Suraksha Sanhita (BNSS) - the replacement of the Code of Criminal Procedure- would apply retrospectively to the undertrials across the country. It means that the provision will apply to all undertrials in cases was registered before July 1, 2024.

As per Section 479 BNSS, undertrials can be released on bail if they have undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law.

B. Mere suspicion does not take shape of proof- Cautions o bound the accused not to tamper with.

In ***Partha Chatterjee v. Directorate of Enforcement*** [44] while granting bail to ex-WB minister Partha Chatterjee, the Supreme Court reiterated the principle that "a suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention."

"The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial,"

C. Copy of Bail Order be forwarded to Prison.

In***, in Re to Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trial v. State of Andhra Pradesh*** [45] it was held by the Hon'ble Supreme Court that, the bail

[42] Special Leave to Appeal (Crl.) No(s). 11589/2024
[43] W.P.(C) No. 406/2013 SC
[44] 2024 LiveLaw (SC) 987
[45] 2022 LiveLaw (SC) 433

order should be furnished by the prison authorities to the accused.

LADC shall see that the order of bail is forwarded to the prison via email of the concerned Court. LADC shall obtain copy of bail order and shall forward the same with the release order if the release order is obtained by hand. If it is sent by the Court, the Court shall append the copy of order of bail with such release warrant/order.

D. Bail Applications be disposed of expeditiously.

In ***Anna Waman Bhalerao v. State of Maharashtra*** [46] It was held by the Hon'ble Supreme Court that, High Courts shall ensure that applications for bail and anticipatory bail pending before them or before the subordinate courts under their jurisdiction are disposed of expeditiously, preferably within a period of two months from the date of filing, except in cases where delay is attributable to the parties themselves

Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application. **(Satender Kumar Antil vs. C.B.I.& Anr. (2022) 10 SCC 51)**

IV. Standard Operating Procedure as per Directions in Satender Kumar, for Poor Prisoner

Satender Kumar Antil vs. C.B.I.& Anr. (2024) 9 SCC 198 (Date of Judgment: 13thFebruary, 2024)

The Apex Court issued the "Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners". It provides that,

Funds to the States/UTs will be provided through the Central Nodal Agency (CNA). The National Crime Records Bureau has been designated as the CNA for this scheme. ii) States/UTs will draw the requisite amount from the CNA on case-to-case basis and reimburse the same to the concerned competent authority (Court) for providing relief to the prisoner. iii) **An 'Empowered Committee' may be constituted in each District of the State/UT, comprising** of i) District Collector (DC)/District Magistrate (DM), ii) Secretary, District Legal Services Authority, iii) Superintendent of Police, iv) Superintendent/ Dy. Supdt. of the concerned Prison and v) Judge incharge of the concerned Prison, as nominee of the District Judge.

Note: This Empowered Committee will assess the requirement of financial support in each case

[46] 2025 INSC 1114

for securing bail or for payment of fine, etc. and based on the decision taken, the DC/DM will draw money from the CNA account and take necessary action.

Note: The Committee may appoint a Nodal Officer and take assistance of any civil society representative/social worker/ District Probation Officer to assist them in processing cases of needy prisoners. iv) An Oversight Committee may be constituted at the State Government level, comprising of i) Principal Secretary (Home/Jail), ii) Secretary (Law Deptt), iii) Secretary, State Legal Services Authority, iv) DG/IG (Prisons) and v) Registrar General of the High Court.

Note: The composition of the State level 'Empowered Committee' and 'Oversight Committee' are suggestive in nature. Prisons/persons detained therein being 'State-List" subject, it is proposed that the Committees may be constituted and notified by the concerned State Governments/UT Administrations.

A. Standard Operating Procedure UNDERTRIAL PRISONERS (Satinder Kumar Rule)

1. If the undertrial prisoner is not released from the jail within a period of 7 days of order of grant of bail, then the jail authority would inform Secretary, District Legal Services Authority (DLSA).
2. Secretary, DLSA would inquire and examine whether the undertrial prisoner is not in a position to furnish financial surety for securing bail in terms of the bail conditions. For this, DLSA may take the assistance of Civil Society representatives, social workers/ NGOs, District Probation officers or revenue officer. This exercise would be completed in a time bound manner within a period of 10 days.
3. Secretary, DLSA will place all such cases before the District Level Empowered Committee every 2-3 weeks.
4. After examination of such cases, if the Empowered Committee recommends that the identified poor prisoner be extended the benefit of financial benefit under 'Support to poor prisoners Scheme", then the requisite amount upto Rs. 40,000/- per case for one prisoner, can be drawn and made available to the Hon'ble Court by way of Fixed Deposit or any other method, which the District Committee feels appropriate.
5. This benefit will not be available to persons who are accused of offences under Prevention of Corruption Act, Prevention of Money Laundering Act, NDPS or Unlawful Activities Prevention Act or any other Act or provisions, as may be specified later.
6. If the prisoner is acquitted/convicted, then appropriate orders may be passed by the trial

Court so that the money comes back to the Government's account as this is only for the purposes of securing bail unless the accused is entitled to the benefit of bail U/s. 389 (3) Cr.P.C. in which event the amount can be utilised for bail by Trial Court to enable the accused to approach the Appellate Court and also if the Appellate Court grants bail U/s. 389 (1) of Cr.P.C.

7. If the bail amount is higher than Rs. 40,000/-, Secretary, DLSA may exercise discretion to pay such amount and make a recommendation to the Empowered Committee. Secretary, DLSA may also engage with legal aid advocate with a plea to have the surety amount reduced. For any amount over and above Rs. 40,000/-, the proposal may be approved by the State level Oversight Committee.

B. SOP FOR CONVICTED PRISONERS: (Satinder Kumar Rule)

1. If a convicted person is unable to get released from the jail on account of non- payment of fine amount, the Superintendent of the Jail would immediately inform Secretary, DLSA (Time bound manner: 7 days).
2. Secretary, DLSA would enquire into the financial condition of the prisoner with the help of District Social Worker, NGOs, District Probation Officer, Revenue Officer who would be mandated to cooperate with the Secretary, DLSA. (Time bound manner: 7 days)
3. The Empowered Committee will sanction the release of the fine amount upto Rs. 25,000/- to be deposited in the Court for securing the release of the prisoner. For any amount over and above Rs.25,000/-, the proposal may be approved by the State level Oversight Committee.

V. In re policy strategy for grant of bail SLP(Crl) No. 529/2021 (II-C). The Hon'ble Supreme Court has given a slew of directions with regard to policy of grant of bail.

It held that, with a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

"1) The Court which grants bail to an undertrial prisoner/convict would be required to send a **soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent** on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the PrisonDepartment].

2) **If the accused is not released within a period of 7 days** from the date of grant of bail, it

would be the **duty of the Superintendent of Jail to inform the Secretary, DLSA** who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the **e-prison software** so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may ***Suo* moto take up the case and consider whether the conditions of bail require modification/ relaxation.**

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety."

(No Need to approach the appellate Court for modification of conditions of bail in above contingency at point 06)

VI. Anticipatory bail cases of law

Shajan Skaria v. The State of Kerala & Anr.[47]

If a complaint does not make out a prima facie case for the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 i.e., SC/ST Act, the Court would not be precluded from granting anticipatory bail to the accused.

Suhana Khatun and Others v. The State of West Bengal (Case Number: CRM 2739 of 2021) Calcutta HC

Application for pre-arrest bail filed by a juvenile or a child in conflict with law in terms of Section 438 of the Code of Criminal Procedure, 1973 is maintainable

[47] 2024 INSC 625

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Priya Indoria vs State of Karnataka & Ors. Etc.[48]

The Supreme Court held that High Courts and Sessions Courts can grant interim anticipatory bail even when the FIR is registered in another State.

M. Senthil v. State of Tamil Nadu. [49]

The Supreme Court has recently observed that once an accused (herein the petitioner) is arrested during the pendency of the anticipatory bail application, such an application became infructuous and does not require to be decided on merits.

Pradip N. Sharma v. State of Gujarat & Anr.[50]

The Supreme Court held that anticipatory bail can be granted where custodial interrogation is not essential, particularly in cases where the allegations hinge on official records and the presence of the accused can be secured without pretrial detention.

The State of Andhra Pradesh v. N. Sanjay [51]

The Supreme Court has quashed an order of anticipatory bail granted to IPS Officer N Sanjay in an alleged case of corruption and observed that interference in a matter where a person comes before the Court seeking anticipatory bail does not, and should not, automatically lead to the presumption that custody would be required and he/she would be arrested.

Sushila Aggarwal v. State of NCT of Delhi,[52]

The life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

*****

[48] 2023 INSC 1008
[49] SLP 13489/2023
[50] 2025 INSC 291
[51] 2025 INSC 973
[52] 2020 SCC OnLine SC 98,