



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1161/2022
(Arising out of Special Leave to Appeal(CrI.)No.3114/2022)

VIPUL

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

WITH

CRIMINAL APPEAL No.1162/2022
(Arising out of Special Leave to Appeal (CrI.) No.7162/2022
arising out of Special Leave to Appeal (CrI.) Diary
No.35524/2019)

O R D E R

CRIMINAL APPEAL NO.1161/2022
(Arising out of SLP (CrI.) No.3114/2022)

Leave granted.

The only reason for denying bail to the appellant was that despite being in custody for a period of 13 years and 9 months there were some other cases. We put specific query to learned counsel as to what are these cases, of what vintage, whether in this period of incarceration when he has been granted parole and whether any aggravating circumstances.

The State seems to be blissfully unaware.

In view of the facts and circumstances, nothing being pointed out as to cause why the appellant should not get bail

on account of any aggravating circumstance over this period of time of custody, we enlarge the appellant on bail on terms and conditions to the satisfaction of the trial Court.

The Criminal appeal stands disposed of.

Pending applications stand disposed of.

Criminal Appeal No.1162/2022

(Arising out of Special Leave to Appeal (CrI.) No.7162/2022 arising out of Special Leave to Appeal (CrI.) Diary No.35524/2019)

Delay condoned.

Leave granted.

Heard learned counsel for the appellant who has taken us through the evidence on record. what has weighed with the High Court in rejecting the bail is the fact that the recovery was made at his behest. On our query, learned counsel for the State submits that the appellant was in custody for a period of about 7½ months during trial and the remaining period is post his conviction. He has been in custody now for about 6½ years.

There is little doubt that in the given pendency of the criminal appeals in that Court, there is a little chance of it being heard, the appeal being of vintage 2017.

In view of the aforesaid facts and circumstances, the appellant is granted bail on terms and conditions to the satisfaction of the trial Court. Apart from any other condition, the appellant would be required to report to the

local Police Station in the forenoon of the first Monday of every month.

The criminal appeal stands disposed of.

Pending applications stand disposed of.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(M. M. SUNDRESH)

NEW DELHI
05th AUGUST, 2022

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No.3114/2022

(Arising out of impugned final judgment and order dated 17-02-2022 in CRLMSBA No.11/2019 passed by the High Court of Judicature at Allahabad)

VIPUL

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH

Respondent(s)

(I.A. No. 48999/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 49002/2022 - EXEMPTION FROM FILING O.T.)

WITH

Diary No(s). 35524/2019 (II)

(IA No. 160590/2019 - CONDONATION OF DELAY IN FILING
IA No. 69290/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 162005/2019 - EXEMPTION FROM FILING O.T.
IA No. 160591/2019 - EXEMPTION FROM FILING O.T.
IA No. 162004/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

SMW(Cr1) No. 4/2021 (PIL-W)

MA 764/2022 in Cr1.A. No. 491/2022 (II)
([FOR DIRECTIONS])

Date : 05-08-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

By Courts Motion

For Petitioner(s) Mr. Devadatt Kamat, Sr. Adv.
Mr. Rajesh Inamdar, Adv.
Mr. Pai Amit, AOR
Mr. Vasim L. Shaikh, Adv.Mr. Mohd. Irshad Hanif, AOR
Mr. Aarif Ali, Adv.

Mr. Mujahid Ahmad, Adv.
Mr. Rizwan Ahmad, Adv.
Mr. Mohit Kumar, Adv.
Mr. Pankaj Tiwari, Adv.
Mr. Kailesh U. Mere, Adv.
Ms. Nirmala D. Borade, Adv.

Mr. Brijender Chahar, Sr. Adv.
Mr. Nagendra Singh, Adv.
Mr. Ashish Pandey, Adv.
Ms. Akansha, Adv.
Dr. Amardeep Gaur, Adv.
Mr. Ronak Karanpuria, AOR

For Respondent(s) Mr. Ardhendumauli Kumar Prasad, AAG
Mr. Adarsh Upadhyay, AOR
Ms. Shreya Srivastava, Adv.
Mr. Ashish Madaan, Adv.
Ms. Ananya Sahu, Adv.

Mr. K. M. Nataraj, ASG
Mr. Adarsh Upadhyay, Adv.
Mr. Anuj Srinivas Udupa, Adv.
Mr. Nakul Chengappa K. K., Adv.

Ms. Garima Prasad, AAG (Sr. Adv.)
Mr. Ajay Vikram Singh, AOR
Mrs. Priyanka Singh, Adv.
Mr. Shekhar Shrotiya, Adv.
Ms. Pranjali Goel, Adv.

Mr. Vishwa Pal Singh, AOR
Mr. Shubham Singh, Adv.
Mr. Karan Thakur, Adv.
Mr. Chirag Anand, Adv.
Mr. Shubham Singh, Adv.
Mr. Ram Singh Baliyan, Adv.
Mr. Ombir Sangwan, Adv.
Mr. Vikas Gothwal, Adv.

Mr. Kedar Nath Tripathy, AOR

Mr. Nikhil Goel, AOR

Mr. Abhimanyu Tewari, AOR
Ms. Eliza Bar, Adv.

Mr. Sibho Sankar Mishra, AOR
Mr. Niranjan Sahu, Adv.
Mr. Debabrata Dash, Adv.
Ms. Kanika Chug, Adv.

Mr. Arjun Garg, AOR

Mr. Shobhit Jain, Adv.
Mr. Aakash Nandolia, Adv.
Mr. Sagun Srivastava, Adv.

Mr. Gopal Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

CRIMINAL APPEAL NO.1161/2022
(Arising out of SLP (CrI.) No.3114/2022)

Leave granted.

In view of the facts and circumstances, nothing being pointed out as to cause why the appellant should not get bail on account of any aggravating circumstance over this period of time of custody, we enlarge the appellant on bail on terms and conditions to the satisfaction of the trial Court.

The Criminal appeal stands disposed of in terms of the signed order.

Pending applications stand disposed of.

Criminal Appeal No.1162/2022
(Arising out of Special Leave to Appeal (CrI.) No.7162/2022
arising out of Special Leave to Appeal (CrI.) Diary
No.35524/2019)

Delay condoned.
Leave granted.

In view of the aforesaid facts and circumstances, the appellant is granted bail on terms and conditions to the satisfaction of the trial Court. Apart from any other condition, the appellant would be required to report to the

local Police Station in the forenoon of the first Monday of every month.

The criminal appeal stands disposed of in terms of the signed order.

Pending applications stand disposed of.

SWM (Cr1.) No.4/2021

1. Heard learned counsel, the learned Additional Solicitor General and pursued the affidavits filed.

2. Alarmed by the huge pendency of the criminal appeals in 10 States having the maximum numbers, with a constant flow of further cases, this court passed the following Order on 15.06.2020:

"List on 29.07.2020.

The petitioner was convicted under Section 302 of the IPC and sentence to life imprisonment. The appeal preferred by him against the conviction and sentence is pending before the High Court. As the application filed by him for suspension of sentence was rejected by the High Court, the petitioner filed this Special Leave Petition seeking for release on bail. The petitioner submitted that he has already undergone three years imprisonment and there no likelihood of appeal being heard in the near future.

On such submission, by an order dated 4.11.2019, this Court observed that a situation has arisen where a large number of criminal appeals are pending in certain High Courts for long periods of time. The court also observed that expeditious hearing cannot be directed only in cases where convicts approach this Court. At the same time, the Court was of the view that the convicted persons cannot be under incarceration for an indeterminate period of time.

We have heard Mr. Tushar Mehta, learned Solicitor General, Ms. Aishwarya Bhati, learned Additional Advocate General for the State of Uttar Pradesh and Mr. Devadutta Kamat, learned senior counsel for the petitioner.

According to the available statistics from the website of the National Judicial Data Grid [https://njdg.ecourts.gov.in/hcnjdg_public/main.php accessed on 15 June, 2020] the total number of criminal appeals in such High Courts which have been pending for 30 years or more is 14484. Criminal appeals which have been pending for over twenty years- and up-to thirty years are 33,045; criminal appeals which have been pending for over ten years, upto 20 years are 2,35,914. The following table with regard to pendency of such cases in various High Courts would throw light on the problem:

| Sl. No. | High Court | 10-20 years | 20-30 years | 30 years or more |
|---------|------------------|-------------|-------------|------------------|
| 1. | Allahabad | 88,738 | 19734 | 14,207 |
| 2. | Rajasthan | 22,945 | 5658 | 242 |
| 3. | Madhya Pradesh | 28738 | 2602 | |
| 5. | Bombay | 8474 | 838 | 8 |
| 6. | Orissa | 8884 | 832 | 8 |
| 7. | Punjab & Haryana | 19,864 | 317 | |
| 8. | Jharkhand | 19462 | 645 | 2 |
| 9. | Kerala | 8671 | 10 | 1 |
| 10. | Gujarat | 5,898 | 546 | |

The above table is illustrative of the nature of the most chronic pendency in the 10 High Courts. Other High Courts have twenty or more-year-old criminal appeals (but less than 30 years old); they have not been mentioned.

These facts pose a challenge to the judicial system, inasmuch as right to speedy trial would also include the right to speedy disposal of appeals of those convicted. If such appeals are not taken up for hearing within a reasonable time, the right of appeal itself would be illusory, inasmuch as incarcerated convicts (who are denied bail) would have undergone a major part- if not whole of the period of their sentence. The other challenge is to ensure that old criminal appeals, where High Courts had earlier, in the course of proceedings, granted bail or suspension of sentence. It is in public interest- and the interests of the convicts, that such appeals too are disposed of on merits expeditiously.

The High Courts of Uttar Pradesh, Rajasthan, Madhya Pradesh, Patna, Rajasthan, Bombay and Orissa shall file affidavits submitting their plan of action for deciding the criminal appeals that have been pending before the High Courts for a long period of time. The High Courts shall, in addition to the figures and data available with them also co-ordinate with the Director General Prisons, in their respective states, to compile data with respect

to convicts in jails of those states, who are awaiting hearing of their appeals. While compiling such data, a suitable questionnaire, eliciting information with respect to appeal numbers, (of such convicts); the provisions under which the prisoners have been convicted; the period(s) of sentence undergone, the age(s) and gender of the prisoner/convicts, their health conditions (which of them are suffering from serious/ illnesses, shall be obtained. The state legal service authorities shall assist the DG Prisons, in drawing up suitable questionnaire, which shall be compiled and compared with the pendency of appeals.

The High Courts shall indicate, in their affidavits, the following:

(a) Total number of convicts awaiting hearing of their appeals pending before them.

(b) Segregation of single judge and Division Bench matters;

(c) The number of cases where - in such old pending cases, bail has been granted;

(d) Steps proposed to expedite hearing of appeals, including steps to prioritize hearing of cases of convicts in jail

(e) Steps proposed to trace and ensure hearing of cases of those who were granted bail, and the timeline for starting hearings

(f) Appropriate use of information technology, such as digitization of appeal records/paper books

(g) Feasibility of creation of a dedicated pool of *amicus curae* who would assist the court in such old matters

(h) Feasibility to creation of dedicated special benches for hearing and disposal of old cases or alternatively assigning a certain number of appeals to a large number of judges to be decided by them, regardless of which rosters they are assigned.

The above are only a few indicative steps, and shall not be considered exhaustive; the concerned High Courts are free to point out other steps and procedures they wish to adopt.

All the concerned state governments, prison authorities, state legal services authorities are directed to co-ordinate with the concerned High Courts in compiling the data.

The learned counsel appearing in this case shall also submit their proposals and suggestions relating to the adjudication of criminal appeals that have been pending for a long time in which cases, the appellants have been

released on bail as well as those cases where the appellants have not been released on bail. Suggestions may also be made as to the release of the appellants on bail, after completion of half the sentence.

Any other suggestions pertaining to the problems relating to the delay in disposal of the criminal appeals in the above courts may be made by the High Court as well as the learned counsel appearing in this case. The affidavits of the High Courts and suggestions/note of counsel (which shall not exceed five pages each) shall be filed at least five days in advance of the date of hearing."

3. Taking note of the worsening situation in the docket explosion of criminal appeals an attempt was made, facilitating the release of the convicts including those whose appeals are pending despite being under incarceration for long years. A direction was issued to the State of Uttar Pradesh to formulate an acceptable policy decision.

4. The following paragraphs which are relevant in *Saudan Singh v. State of UP 2022 SCC OnLine SC 697* are as under:

"5. We have also emphasized to learned counsel for the State that in reference to our observation on the last date about consideration of cases under the Uttar Pradesh Prisoners Release on Probation Rules, 1938, there should be better coordination between the States and the Registry of the High Court. Thus, for anybody who has completed 14 years of sentence, the case has to be put before the Board to be examined as per the norms. It is not appropriate that those cases lie in the High Court with sentences much beyond 14 years being served without even being examined on the question of their release under the Policy.

6. We thus call upon the High Court and the State Government to prepare a list of such of the cases where the accused have already served out 14 years of sentence and for one reason or the other, the appeal has not been heard (even if it be fault of the lawyer) and those cases should be put before the Board. It is also possible that in some of these cases, once the accused is released, the person may not at all be interested in prosecuting the appeal.

7. There may be cases where for whatever reason the

advocate may not be present as has been set out in the report of the High Court but if they have already completed 14 years of actual sentence, the State itself should take an appropriate stand and the learned Judge can himself pass appropriate orders to at least examine those cases for release and the absence of the advocate cannot come in the way in such a scenario.

xxx xxx xxx

9. The second category of cases can be one where the person has served out more than 10 years of sentence. In these cases also at one go bail can be granted unless there are any extenuating circumstances against him.”

5. A similar issue pertaining to the same State came up before a larger bench of this Court wherein a direction was issued to post *Suo Motu Writ Petition 4/2021* along with the other pending matters with a view to avoid multiplicity of proceedings.

6. We are at present concerned with two issues of utmost importance. The first issue is on the disposal of the pending criminal cases by means other than a regular trial. The other is on the premature release of the convicts by the policies of the respective State/Union Government. In both these cases the idea is to effect decongestion in the criminal courts and the prisons.

7. State as the prosecutor, court as the adjudicator are the two principal agents in the criminal dispensation of justice. These two public institutions do have a larger role to play even after the conviction attains finality. If a crime is considered as an act of social deviance, the necessary consequence would be that of a punishment followed by reformation. A mere punishment without reformation would not serve the purpose as it might have the propensity of creating more such actions. The ultimate idea is to

bring the convict back to the civil society. For this purpose, innovative solutions with respect to sentencing such as community service as an alternative may also be considered by the states/Union governments in due course.

PLEA BARGAINING

8. The concept of plea bargaining has a laudable objective. It is meant to facilitate all the stakeholders, assigning a specified role for the victim to move towards a resolution. It is a voluntary act leading to a satisfactory disposition of a criminal case. The consensus part is restricted to the sentencing part alone as the conviction stays on the acceptance of the guilt by the accused. Additionally, it reduces the burden of the court, the State, the victim, and the accused facing agonizing litigation, while serving the cause of justice.

9. In plea bargaining conviction is rendered on admission and therefore a case involving weak and defective investigation resulting in possible acquittal on the failure to prove beyond reasonable doubt would have the desired result.

10. The concept of plea bargaining has taken off very well, particularly in countries like the United States of America. About 90-95% of the criminal cases end with plea bargaining. However, the situation in India is unfortunately different. Hardly 1% of the cases are taken up for plea bargaining, presumably for the reason that the accused are either illiterate or reluctant to use this better option which would bring the case to a close at an earlier

date than expected. We do believe that it would only be appropriate to remind the stakeholders of the laudable objective in plea bargaining, compounding of offenses, and release on probation of good conduct or after admonition. For the said purpose we would like to highlight the respective provisions of the code seeking a suitable response from the States/Union Territories/Union Government.

11. Chapter XXIA deals with plea bargaining. The statement of objects and reasons took note of the huge arrears of criminal cases in various courts. Thus, the concept of pre-trial negotiations was brought into the statute by acknowledging speedy trial as a facet of justice, and the plight of those facing prolonged trial, appeal, and revision with many of them under incarceration.

S.265A CrPC:

"265A. Application of the Chapter -(1) This chapter shall apply in respect of an accused against whom—

(a) the report has been forwarded by the officer in charge of the police station under Section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-

economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country."

COMMENTS

The Central Government has, by S.O. 1042(E), dated 11th July, 2006, determined the offences under the following laws for the time being in force which shall be the offences affecting the socio-economic condition of the country for the purposes of sub-section (1) of section 265A, namely, -

- (i) Dowry Prohibition Act, 1961.
- (ii) The Commission of Sati Prevention Act, 1987.
- (iii) The Indecent Representation of Women (Prohibition) Act, 1986.
- (iv) The Immoral Traffic (Prevention) Act, 1956.
- (v) The Protection of Women from Domestic Violence Act, 2005.
- (vi) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
- (vii) Provisions of Fruit Products Order, 1955 (issued under the Essential Services Commodities Act, 1955).
- (viii) Provisions of Meat Food Products Orders, 1973 (issued under the Essential Commodities Act, 1955).
- (ix) Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (Protection) Act, 1972.
- (x) The Scheduled Castes and Scheduled Tribes (Prevention

- of Atrocities) Act, 1989.
- (xi) Offences mentioned in the Protection of Civil Rights Act, 1955.
- (xii) Offences listed in sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- (xiii) The Army Act, 1950.
- (xiv) The Air Force Act, 1950.
- (xv) The Navy Act, 1957.
- (xvi) Offences specified in sections 59 to 81 and 83 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002.
- (xvii) The Explosives Act, 1884.
- (xviii) Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995.
- (xix) The Cinematograph Act, 1952.”

12. This provision amplifies the application of Chapter XXIA to both categories of cases involving the one on a report forwarded by the police officer under Section 173 of the Code and a private complaint leading to the issuance of process under Section 204. It applies only to the offenses punishable up to 7 years while the offenses affecting the socio-economic conditions of the country, committed against a woman or a child below the age of 14 years form exceptions.

S.265B:

“265B. Application for plea bargaining-(1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain

a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused *in camera*, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).”

13. Under sub-section (1) it is well open to an accused to file an application seeking plea bargaining starting from the stage mentioned under Section 265A. This process has to be facilitated with due encouragement by the courts. Courts have a significant role to play by duly informing the accused on the availability of plea bargaining.

14. Sub-section (2) speaks of the procedure on the application filed by the court concerned which is duty bound to examine the

accused in camera while arriving at its subjective satisfaction on his voluntary action. It is only when it finds that an application is filed involuntarily or there exists a previous conviction for the same offense that it shall proceed further with the trial. The court is thus expected to exercise its power preferably at an earlier stage with due notice to the accused as the idea is to avoid the process of trial.

S.265C:

"265C. Guidelines for mutually satisfactory disposition.—In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of Section 265B, the Court shall follow the following procedure, namely:—

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, may participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case."

15. As per this section the accused, the prosecutor, and the

police officer who had investigated the case, and the victim are to participate in the meeting. As the conviction is rendered voluntarily, the sentence also shall follow suit but with the approval of all the participants. However, the primary role must be that of the victim, of course, under the aegis of the court.

16. The court then shall prepare a report which shall be signed by all the participants with its approval.

S.265E

"265E. Disposal of the case.—Where a satisfactory disposition of the case has been worked out under Section 265D, the Court shall dispose of the case in the following manner, namely:—

- (a) the Court shall award the compensation to the victim in accordance with the disposition under Section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under Section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;
- (b) after hearing the parties under clause (a), if the Court is of the view that Section 360 or the provisions of the Probation of Offenders Act, 1958 (20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;
- (c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;
- (d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence."

17. The above provision deals with compensation, the release of

the accused, and imposition of a lesser sentence, depending upon the provisions governing Section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 or any other law in force providing for release of an accused are to be taken note of while disposing of the case *qua* the sentence.

Other Provisions

“265F. Judgment of the Court.—The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment.—The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining.—A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265-I. Period of detention undergone by the accused to be set off against the sentence of imprisonment.— The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings.—The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.—For the purposes of this Chapter, the expression “Public Prosecutor” has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Statements of accused not to be used.—Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the

purpose of this Chapter.

265L. Non-application of the Chapter.—Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).”

18. The judgment of the court would attain finality with no appellate remedy and the court is at liberty to exercise all its powers vested in it as available in respect of bail, trial, or other matters. A set-off allowed under Section 428 is made applicable and the provisions will have supremacy by the existence of a non-obstante clause. Even in the event the accused is given further protection by barring the statement or facts made by him to be used for any other purpose.

19. We may note, the Code being a comprehensive one, drafted with a view to helping the accused and victim has been kept dormant and used seldom by the courts.

SECTION 320

“320. Compounding of offences.—(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table;

TABLE

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|---|---|---|
| 1 | 2 | 3 |
| Uttering words, etc., with deliberate intent to wound the religious feelings of any person. | 298 | The person whose religious feelings are intended to be wounded. |

| 1 | 2 | 3 |
|--|---------------------|---|
| Voluntarily causing hurt. | 323 | The person to whom the hurt is caused. |
| Voluntarily causing hurt on provocation. | 334 | Ditto. |
| Voluntarily causing grievous hurt on grave and sudden provocation. | 335 | Ditto. |
| Wrongfully restraining or confining any person. | 341, 342 | The person restrained or confined. |
| Wrongfully confining a person for three days or more. | 343 | The person confined. |
| Wrongfully confining a person for ten days or more. | 344 | Ditto. |
| Wrongfully confining a person in secret. | 346 | Ditto. |
| Assault or use of criminal force. | 352, 355, 358 | The person assaulted or to whom criminal force is used. |
| Theft. | 379 | The owner of the property stolen. |
| Dishonest misappropriation of property. | 403 | The owner of the property misappropriated. |
| Criminal breach of trust by a carrier, wharfinger, etc. | 407 | The owner of the property in respect of which the breach of trust has been committed. |

TABLE

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|--|---|
| 1 | 2 | 3 |
| Uttering words, etc., with deliberate intent to wound the religious feelings of any person. | 298 | The person whose religious feelings are intended to be wounded. |
| Causing hurt. | 323, 334 | The person to whom the hurt is caused. |
| Wrongfully restraining or confining any person. | 341, 342 | The person restrained or confined. |
| Assault or use of criminal force. | 352, 355, 358 | The person assaulted or to whom criminal force is used. |
| Mischief, when the only loss or damage caused is loss or damage to a private person. | 426, 427 | The person to whom the loss or damage is caused. |
| Criminal trespass. | 447 | The person in possession of the property trespassed upon. |
| House-trespass. | 448 | Ditto. |
| Criminal breach of contract of service. | 491 | The person with whom the offender has contracted. |
| Adultery. | 497 | The husband of the woman. |
| Enticing or taking away or detaining with criminal intent a married woman. | 498 | Ditto. |
| Defamation, except such cases as are specified against Section 500 of the Indian Penal Code (45 of 1860) in Column 1 of the Table under sub-section (2). | 500 | The person defamed. |

| 1 | 2 | 3 |
|---|-----|---|
| Printing or engraving matter, knowing it to be defamatory. | 501 | Ditto. |
| Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | 502 | Ditto. |
| Insult intended to provoke a breach of the peace. | 504 | The person insulted. |
| Criminal intimidation except when the offence is punishable with imprisonment for seven years. | 506 | The person intimidated. |
| Act caused by making a person believe that he will be an object of divine displeasure. | 508 | The person against whom the offence was committed." |
| Dishonestly receiving stolen property knowing it to be stolen. | 411 | The owner of the property stolen. |
| Assisting in the concealment or disposal of stolen property, knowing it to be stolen. | 414 | The owner of the property stolen. |
| Cheating. | 417 | The person cheated. |
| Cheating by personation. | 419 | The person cheated. |
| Fraudulent removal or concealment of property, etc., to prevent distribution among creditors. | 421 | The creditors who are affected thereby. |
| Fraudulent preventing from being made available for his creditors a debt or demand due to the offender. | 422 | The creditors who are affected thereby. |
| Fraudulent execution of deed of transfer containing false statement of consideration. | 423 | The person affected thereby. |
| Fraudulent removal or concealment of property. | 424 | The person affected thereby. |

| 1 | 2 | 3 |
|--|----------|---|
| Mischief, when the only loss or damage caused is loss or damage to a private person. | 426, 427 | The person to whom the loss or damage is caused. |
| Mischief by killing or maiming animal. | 428 | The owner of the animal. |
| Mischief by killing or maiming cattle, etc. | 429 | The owner of the cattle or animal. |
| Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person. | 430 | The person to whom the loss or damage is caused. |
| Criminal trespass. | 447 | The person in possession of the property trespassed upon. |
| House-trespass. | 448 | The person in possession of the property trespassed upon. |
| House-trespass to commit an offence (other than theft) punishable with imprisonment | 451 | The person in possession of the house trespassed upon. |
| Using a false trade or property mark. | 482 | The person to whom loss or injury is caused by such use. |
| Counterfeiting a trade or property mark used by another. | 483 | The person to whom loss or injury is caused by such use. |
| Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark. | 486 | The person to whom loss or injury is caused by such use. |
| Criminal breach of contract of service. | 491 | The person with whom the offender has contracted. |
| Adultery. | 497 | The husband of the woman. |

| 1 | 2 | 3 |
|--|-----|---|
| Enticing or taking away or detaining with criminal intent a married woman. | 498 | The husband of the woman and the woman. |
| Defamation, except such cases as are specified against Section 500 of the Indian Penal Code (45 of 1860) in column 1 of the Table under sub-section (2). | 500 | The person defamed. |
| Printing or engraving matter, knowing it to be defamatory. | 501 | The person defamed. |
| Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | 502 | The person defamed. |
| Insult intended to provoke a breach of the peace. | 504 | The person insulted. |
| Criminal intimidation. | 506 | The person intimidated. |
| Inducing person to believe himself an object of divine displeasure. | 508 | The person induced. |

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table;

TABLE

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|----------------------|---|--|
| 1 | 2 | 3 |
| Causing miscarriage. | 312 | The woman to whom miscarriage is caused |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|---|
| Voluntarily causing grievous hurt. | 325 | The person to whom hurt is caused. |
| Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others. | 337 | The person to whom hurt is caused. |
| Causing grievous hurt by doing an act so rashly, and negligently as to endanger human life or the personal safety of others. | 338 | The person to whom hurt is caused. |
| Assault or criminal force in attempting wrongfully to confine a person. | 357 | The person assaulted or to whom the force was used. |
| Theft by clerk or servant of property in possession of master. | 381 | The owner of the property stolen. |
| Criminal breach of trust, where the value of the property does not exceed two thousand rupees. | 406 | The owner of the property in respect of which the breach of trust has been committed. |
| Criminal breach of trust by a clerk or servant, where the value of the property does not exceed two thousand rupees. | 408 | Ditto. |
| Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect. | 418 | The person cheated. |
| Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security. | 420 | The person cheated. |
| Marrying again during the | 494 | The husband or wife |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|--|
| lifetime of a husband or wife. | | of the person so marrying. |
| Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his public functions when instituted upon a complaint made by the Public Prosecutor. | 500 | The person defamed. |
| Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman. | 509 | The woman whom it was intended to insult or whose privacy was intruded upon. |

TABLE

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|--|
| 1 | 2 | 3 |
| Voluntarily causing grievous hurt. | 325 | The person to whom hurt is caused. |
| Voluntarily causing grievous hurt on grave and sudden provocation. | 335 | Ditto. |
| Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others. | 337 | Ditto. |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|---|
| Causing grievous hurt by doing an act so rashly, and negligently as to endanger human life or the personal safety of others. | 338 | Ditto. |
| Wrongfully confining a person for three days or more | 343 | The person confined. |
| Wrongfully confining for ten or more days. | 344 | Ditto. |
| Wrongfully confining a person in secret. | 346 | Ditto. |
| Assault or criminal force to woman with intent to outrage her modesty. | 354 | The woman assaulted to whom the criminal force was used. |
| Assault or criminal force in attempting wrongfully to confine a person. | 357 | The person assaulted or to whom the force was used. |
| Theft, where the value of property stolen does not exceed two thousand rupees. | 379 | The owner of the property stolen. |
| Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed two thousand rupees. | 381 | Ditto. |
| Dishonest misappropriation of property. | 403 | The owner of the property misappropriated. |
| Criminal breach of trust, where the value of the property does not exceed two thousand rupees. | 406 | The owner of the property in respect of which the breach of trust has been committed. |
| Criminal breach of trust by a carrier, wharfinger, | 407 | Ditto. |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|---|---|--|
| etc., where the value of the property does not exceed two thousand rupees. | | |
| Criminal breach of trust by a clerk or servant, where the value of the property does not exceed two thousand rupees. | 408 | Ditto. |
| Dishonestly receiving stolen property, knowing it to be stolen, when the value of the stolen property does not exceed two thousand rupees. | 411 | The owner of the property stolen. |
| Assisting in the concealment or disposal of stolen property, knowing it to be stolen, where the value of the stolen property does not exceed two thousand rupees. | 414 | The owner of the property stolen. |
| Cheating. | 417 | The person cheated. |
| Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect. | 418 | Ditto. |
| Cheating by personation. | 419 | Ditto. |
| Cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security. | 420 | Ditto. |
| Fraudulent removal or concealment of property, etc., to prevent distribution among creditors. | 421 | The creditors who are affected thereby. |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|---|
| Fraudulent preventing from being made available for his creditors a debt or demand due to the offender. | 422 | Ditto. |
| Fraudulent execution of deed of transfer containing false statement of consideration. | 423 | The person affected thereby. |
| Fraudulent removal or concealment of property. | 424 | Ditto. |
| Mischief by killing or maiming animal of the value of ten rupees or upwards. | 428 | The owner of the animal. |
| Mischief by killing or maiming cattle, etc., of any value or of any other animal of the value of fifty rupees or upwards. | 429 | The owner of the cattle or animal. |
| Mischief by injury to works of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to private person. | 430 | The person to whom the loss or damage is caused. |
| House-trespass to commit an offence (other than theft) punishable with imprisonment | 451 | The person in possession of the house trespassed upon. |
| Using a false trade or property mark. | 482 | The person to whom loss or injury is caused by such use. |
| Counterfeiting a trade or property mark used by another. | 483 | The person whose trade or property mark is counterfeited. |
| Knowingly selling, or | 486 | Ditto. |

| Offence | Section of the Indian Penal Code applicable | Person by whom offence may be compounded |
|--|---|--|
| exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark. | | |
| Marrying again during the lifetime of husband or wife. | 494 | The husband or wife of the person so marrying. |
| Defamation against the President or the Vice-President or the Governor of a State or the Administrator of a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor. | 500 | The person defamed. |
| Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman. | 509 | The woman whom it was intended to insult or whose privacy was intruded upon. |

(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under Sections 34 or 149 of the Indian Penal Code (45 of 1860) may be compounded in like manner.

(4)(a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under Section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section."

20. As could be seen, a spate of sections punishable under the IPC are made available for compounding. Unfortunately, even this provision has not been put into use. Compounding is to be made obviously between the complainant and the accused. Even here the courts are extremely reluctant to put the provision to use, though warranted only by consent.

SECTION 360

"360. Order to release on probation of good conduct or after admonition.-(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any

woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class forwarding the accused to or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860) punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such

Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of Sections 121, 124 and 373 shall, so far as may be apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1) shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

21. Section 360 pertains to an order after conviction, to be passed by the court after admonition, facilitating a release and also probation of good conduct. It is to be exercised on two categories of persons. The first category consists of persons attaining 21 years and above with the proposed punishment for a term of 7 years or less. While the other for a larger term except punishable with death or imprisonment for life. This is made

applicable to a convict aged under 21 years or any woman. The court has to weigh the age, character and antecedent of the convict with the circumstances leading to the offense committed. If satisfied, it can release the convict on entering into a bond while a direction to keep the peace and maintain good behaviour can be ordered during the said period. As discussed, this provision can be pressed into service while dealing with Chapter XXIA other than convicting a person after trial. Like the other two provisions involving plea bargaining and compounding, Section 360 of the Code is also a forgotten one.

22. On the aforesaid analysis, we would call upon all those States already represented before us and the others to whom we would like to issue notices to respond.

REMISSION

23. In the light of the order passed by us in *Saudan Singh v. State of UP 2022 SCC OnLine SC 697* we would like to hear the responses from all the States/UTs on the policy governing remission. The idea is to arrive at uniformity on certain issues. We would also like them to furnish the particulars of cases pending for more than 10 years and 14 years respectively with the data pertaining to the convicts under incarceration.

24. We have put to Mr. K. M. Nataraj, learned Additional Solicitor General, that when the country is celebrating 75 years of Azadi Ka Amrit Mahotsav, it is an appropriate time to look to the issue of accused who have been incarcerated for a long period of time or who may be from weaker economic and social sections of society with a

single incident involved, and as to what administrative orders can be issued in such a scenario to give relief to these persons may also be explored.

25. The clogging of the Courts by the criminal matters on all hues of various vintages is an important aspect. We consider it appropriate to put it to the Government of India, for that matter for discussion with the States as to whether in offences where period in custody before the High Court has acceded a certain percentage of the maximum sentence say one-third or forty percent and the person is willing to submit a bond of good behaviour, those cases can be closed in one go after scrutiny so that the trial Courts are unburdened of these cases and are able to concentrate on more heinous cases. We say so in the context that though plea bargaining has been introduced in the provisions of CrPC, somehow it has not worked because the social stigma of conviction may be preventing the accused from accepting the bail and accepting a plea-bargaining position. In fact, we do not even know in how many cases is the availability of the plea bargain remedy put to the accused and would like to say that the Trial Courts must use this provision usefully.

26. An out-of-the-box thinking is required at least as a one-time measure to unclog the trial Courts and other aspects explored even for matters pending in appeal but this can be used as a one-time measure where the conviction has not taken place, the trial is pending, then the trial Court where cases may be upto 7 years or 10 years maximum sentence, single episode cases, not a multiple episode cases, it can be put to accused that they have served

substantive substance, and on the basis of good behaviour these categories can be considered.

27. The learned Additional Solicitor General on our query submitted that on the sentiments expressed by the Hon'ble Prime Minister of India in the recently concluded "First District Legal Services Authorities Meet, 2022" held under the aegis of the National Legal Services Authority, a scheme is under contemplation and would apprise the Court on the next date of hearing.

28. Learned Additional Solicitor General will report on both these aspects by the next date.

29. The Registry is directed to issue notices to all the State Governments/UTs and the High Court's other than the ones represented before us, indicating the date of hearing. Affidavits will have to be filed by 05.09.2022 after duly serving the learned Additional Solicitor General and Mr. Gaurav Agrawal whom we appoint as amicus curiae for the present case as well, as he is functioning in the said capacity, pertaining to connected issues qua by the criminal courts on behalf of National Legal Services Authority.

30. A copy of the order to accompany the notice to the Union Government, State Governments/Union Territories, and the High Courts.

31. List on 14th September, 2022.

Misc. Application No. 764/2022 in Cr1.A. No. 491/2022

It appears from submission of the State counsel and the High Court that they would like to reconcile the figures as there is

apparently a discrepancy in respect of what was stated on 25.7.2022.

Registry to look into as to why one more matter dealing with the Allahabad High Court being Writ Petition (Cr1.) No.170/2022 was not listed today as accordingly to the learned counsel for the High Court that is also to be listed along with these matters.

List on 14th September, 2022.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER

(Signed order is placed on the file)