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JUDICIAL CUSTODY AND POLICE CUSTODY - RECENT TRENDS

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INTRODUCTION:

Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, Courts must generally hear causes in open and must permit the public admission to the Court-room. See. Naresh Shridhar Mirajkar And Ors vs State Of Maharashtra And Anr, 1967 AIR, 1 1966 SCR (3) 744.

Article 22 (2) of the Constitution of India and Section 57 of Cr. P.C. give a mandate that every person who is arrested and detained in police custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of the arrest to the court of the magistrate and no such person shall be detained in the custody beyond the said period without the authority of a magistrate. These two provisions clearly manifest the intention of the law in this regard and therefore it is the magistrate who has to judicially scrutinise circumstances and if satisfied can order the detention of the accused in police custody. (See. State(Delhi Admn.) v. Dharam Pal and others, 1982 Crl. L.J.1103; Trilochan Singh's case (infra); Also see. Central Bureau Of Investigation vs. Anupam J. Kulkarni, 1992 AIR 1768, 1992 SCR (3) 158.

When does Section 167 come into play? Section 167 of Cr.P.C does not confer power on a Magistrate to dispense with police custody but what it does is to empower him to extend such custody beyond what is permitted under Section 57 thereof. Reading these two sections together one can safely conclude that Section 167 comes into play only when

(1) the accused is arrested without warrant and is detained by a police officer, (2) it appears that more than twenty-four hours will be needed for investigation, (3) there are grounds for believing that the accusation or information against him is well founded, and

(4) the officer in charge of the police station or the investigating officer not below the rank of a Sub-Inspector forwards the accused before the Magistrate.

When this happens, the Magistrate can refuse to detain him or direct his detention either in police custody or judicial custody. When once he directs judicial custody, there is no question of police remand for the simple reason that the conditions aforesaid are no more there. See.Trilochan Singh vs The State (Delhi Administration, 20 (1981) DLT 20 b.

The detention in police custody is generally disfavoured by law:- The provisions of law lay down that such detention can be allowed only in special circumstances and that can be only by a remand granted by a magistrate for reasons judicially scrutinised and for such limited purposes as the necessities of the case may require. The scheme of Section 167 is obvious and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers.

Accused should be produced before the nearest Magistrate within 24 hours:- Whenever any person is arrested under Section 54 Cr.P.C. he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred.

Custody of accused – either police or judicial from time to time:- The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. The Privy Council in Emperor Vs. Khwaia Nazir Ahmad, AIR 1945 PC 18 : 1945-46 Cri LJ 413 that under the Code there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime and that the functions of the judiciary and the police are complementary and not overlapping in this regard. On larger principle also, it seems apt that whilst the accused person must be guaranteed a fair investigation and a judicial trial thereafter, yet equally the police, which has a statutory duty to investigate, is not hampered or obstructed in the delicate task of unravelling crime at the threshold stage of the investigation. Therefore, the interpretative approach to these provisions is to strike a true balance in the larger social interest between a competent and incisive investigation into serious crimes by the police, on the one hand and the guaranteed right of the citizen to personal liberty under a reasonable and fair procedure established by law, on the other. See. S. Harsimran Singh vs State Of Punjab,1984 CriLJ 253. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa.

Executive Magistrate is empowered to authorise accused to detain only for a week:- If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only

for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records.

After the expiry of the first period of 15 days, the further remand during the period of investigation can only be in judicial custody:- When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage.

What is the exception to this general rule? But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167 (2) of Cr.P.C and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days thereafter in accordance with the proviso.

If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail :- If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167 (2) of Cr.P.C. The

period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police.

Duty of the Magistrate:- Investigation is one of the steps in that direction and that has got to be regulated by the provisions of the Code. Section 167 of Cr.P.C. insists that judicial custody can be permitted for specified period if the police custody is refused, or if allowed, the permitted days of such custody are over, only where the Magistrate is satisfied that adequate grounds exist for doing so. It is a dereliction of duty if the Magistrate did not ask for and peruse the case diary before he authorised any type of custody. He cannot be permitted to make an argument of his own lapse in the matter. See. Trilochan Singh's 20 (1981) DLT 20 b.

How to compute the first period of 15 days? The first period of fifteen days mentioned in Section 167 (2) of Cr.P.C has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody. In Chaganti Satynarayana and Ors. Vs. State of Andhra Pradesh, [1986] 3 S.C.C.141 the Hon'ble Supreme Court examined the scope of Section 167 (2) provisos (a)(i) and (ii) and held that the period of fifteen days, ninety days or sixty days prescribed therein are to be computed from the date of remand of the accused and not from the date of his arrest under Section 57 and that remand to police custody cannot be beyond the period of fifteen days and the further remand must be to judicial custody. Though the point that precisely arose before the Apex Court was whether the period of remand prescribed should be computed from the date of remand or from the date of arrest under Section 57, there are certain observations throwing some light on the scope of the nature of custody after the expiry of the first remand of fifteen days and when the proviso comes into operation. In Chaganti Satyanarayan's case it was held that "It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run from the date of order or remand." Therefore the first period of detention

should be computed from the date of order or remand.

Person arrested and produced before Magistrate-Remand to police custody after initial period of 15 days-Whether legal. It was observed thus As sub-section (2) of Section 167 as well as proviso (1) of sub -section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words “15 days in the whole “occurring in sub-section (2) of Section 167 would be tantamount to a period of “15 days at a time” but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods,if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed underlaw either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days , further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case. These observations make it clear that if an accused is detained in police custody, the maximum period during which he can be kept in such custody is only fifteen days either pursuant to a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody. See. Chaganti Satynarayana’s case; also See, Central Bureau Of Investigation vs. Anupam J. Kulkarni,1992 AIR 1768.

When formal arrest is necessary? As seen from Central Bureau Of Investigation vs. Anupam J. Kulkarni,1992 AIR 1768, if during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted than the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, the Apex court clarified that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be as different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the magistrate for detention in police custody.

Latest and Important judgments on the Police Custody and Judicial Custody:-

1. Sundeep Kumar Bafna vs State Of Maharashtra & Anr, Criminal Appeal No. 689 OF 2014[Arising out of SLP (Crl.)No.1348 of 2014, Dt. 27 March, 2014 where in it was observed that as follows: ”we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of Cr.P.C of the Code is made out by the investigating agency.” See. Gurbaksh Singh Sibbia Etc vs State Of Punjab, 1980 AIR 1632.

2. In Dinubhai Boghabhai Solanki vs State Of Gujarat & Ors, Criminal Appeal No. 492 OF 2014(Arising out of SLP (Crl.) No. 8406 of 2012)Date of judgment on 25 February, 2014, it was observed that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the

decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases." See. Bharat Petroleum Corporation … vs N.R. Vairamani And Anr.

3. As was observed in Dr KS Rao Vs. State of Hydrabad, AIR 1957 AP 416, in remanding the accused to police custody the Magistrate ought to follow the provisions of section 167 of the Code and should give proper reasons for handing over the accused to the police custody.

4. Important rulings as to the subject matter of 'police custody and judicial custody' — State Rep by Inspector of Police and Ors V NMT Joy Immaculate 2004 5 SCALE 330, CBI SIT New Delhi v Anupam J Kulkarni AIR 1992 SC 1768, Mithabhai Pashabhai Patel & Ors Vs St of Gujarat CDJ 2009 SC 1014.

5. S. Harsimran Singh vs State Of Punjab,1984 CriLJ 253

6. Gian Singh And Others vs State (Delhi Administration), 1981 CriLJ 670

7. Trilochan Singh vs The State (Delhi Administration, 20 (1981) DLT 20 b

8. Chaganti Satynarayana and Ors. Vs. State of Andhra Pradesh, [1986] 3 S.C.C.14. As was held in 1981 CriLJ 1773 (1776 – Para 9), Perusal of the case diary is a must before remand of any kind – be judicial or police custody. It is a dereliction of duty if the Magistrate did not ask for and peruse the case diary before he authorizes any custody.

9. A remand to Police custody should not be given unless the officer making the Application is able to show definite and satisfactory grounds. Remand order should

not be passed mechanically without proper application of mind. State of UP versus RamsagarYadav, (1985) 1 Crimes 344.

10. S.167(2) only prescribes the maximum period of 15 days, but that does not authorize the Magistrate automatically to remand the accused for the period. At every stage when the Police seeks a remand, the Police must satisfy the Magistrate that there is sufficient evidence against the accused and further evidence might be obtained; and it is only when the Magistrate is satisfied, after looking into the case diary, that he should direct a remand. AIR 1956 Orissa 129.To authorize remand to Police custody is a very serious and sensitive judicial function of utmost responsibility.

11. The scheme of the section after the amendment of the year 1978 is intended to protect the accused from unscrupulous police officers. Great care has now been taken to see that the accused persons are not unnecessarily remanded. The object of the section is to see that the person arrested by the Police are brought before the Magistrate with the least possible delay so that the Magistrate could decide whether the person produced should further be kept in Police custody and also to allow said accused to make such representation as he wish to make, 1980 CriLJ 1195.

12. The Magistrate should not authorize detention of an accused to any custody mechanically in routine. If the Law Officers charged with the obligation to protect the liberty of the person, are mindless of the constitutional mandate and the dictates of the Code, how can freedom survive for the ordinary citizen. See. Mantoo Majumdar Vs. State of Bihar, AIR 1980 SC 847.

13. It was held in Kana Vs. St of Rajasthan, 1980 CriLJ 344., Magistrate must give reasons for authorizing detention of accused to custody. Such orders cannot be passed as a matter of course.

14. Order of Remand is a judicial order to be passed on application of mind to the contents of the Remand report submitted by the investigating officer. It is not a empty formality or a routine course to extend remand time and again as and when sought by the police. The order therefore should contain the reason to extend remand further.

See. 2003 CriLJ 701 at page 702.

15. As has been observed in Muthoora Vs. Heera, AIR 1951 M B 70; 17 W R 55, if the evidence is not forthcoming, the Magistrate must not remand the prisoner in the hope that fresh evidence may turn up.

16. See Arnesh Kumar versus State of Bihar, JT 2014 (7) SC 527, Joginder Kumar Versus State Of Uttar Pradesh, 1994 (4) SCC 260 : AIR 1994 SC 1349, a critical and detailed observation of the Hon'ble Supreme Court in respect of unabated practice of mechanical arrests.

17. The Hon'ble Supreme Court in the case of Sanjay Chandra versus CBI (2012) 1 SCC 40 (Popularly known as 2G scam case), where in it was extensively discussed with the issue of granting or refusing the grant of Bail.

18. As was pointed out in Kalyan Chandra sarkar Vs. Rajesh Ranjan, AIR 2004 SC 1866, while a vague allegation that the accused may temper with the evidence or witnesses may not be a ground to refuse a bail, if the accused is of such a character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or temper with the evidence, then bail may be refused.

19. In D K Basu versu State of West Bengal, AIR 1997 SC 610, the Hon'ble Supreme Court has given certain guidelines- 1) That Policemen must wear visible and legible identification when arresting a person and when carrying out interrogation. Names and Particulars of police personnel handling interrogation must be recorded in the register; 2) It is the right of every person detained or questioned by Police to know the grounds for detention or questioning; 3) The Person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or detention; 4) A person arrested must be produced before a Judicial Magistrate/ Judge within 24 hours of his/her arrest; 5) A person arrested should be medically examined at the time of arrest and major & minor injuries on arrested person be recorded in Inspection Memo duly signed by both Police officer carrying out the arrest and the person arrested and the copy of this memo be provided to the

person arrested; 6) Any person arrested must be medically examined by a doctor from an independent and approved panel of doctors, every 48 hours during detention; 7) Arrest or Search of women should only take place in presence of Women Police Officers and it should not take place in night. And women should be detained separately from men; 8) While an accused is in Police custody, his lawyer should be permitted to visit him; 9) Information of the arrest of accused person should be given to the district Control Room and the State Police Headquarters.

20. Recent judgments in Rajesh Sharma Vs.Uttara Pradesh, Criminal Appeal NO. 1265 OF 2017[Arising out of Special Leave Petition (Crl.) No.2013 of 2017] which was pronounced in July 27, 2017 and Maharashtra -based NGO Nyayadhar's cases are also relevant to understand the issue of restoration of immediate arrest in matrimonial cases.

Conclusion:-

As seen from Central Bureau Of Investigation vs. Anupam J. Kulkarni,1992 AIR 1768, whenever any person is arrested under Section 57 Cr.P.C. such person should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen day in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records.

When the arrested accused is so transmitted the Judicial Magistrate, for the remaining

period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period o;f investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) of Cr.P.C and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the accused has to be released on bail as provided under the proviso to Section 167(2) of Cr.P.C. The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) of Cr.P.C has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody.

ROLE OF COURTS IN INVESTIGATION PROCESS

I. **Introduction:–** ‘Investigation’ is the process of inquiring, bring about and getting vital information, discovery of facts and circumstances to establish the truth. The key underlying principle of investigation of a crime is a concept that is known as ‘Locard’s Exchange Principle’. This principle is summed up by stating ”Every contact leaves a trace”. For investigation to commence, registration of a FIR is not a

sine qua non. (Emperor Vs. Khwaja Nazir, and Apren Joseph @ Current Kunjukunju and Ors Vs. State of Kerala, 1973 Crl.L.J 85).

Human dignity is a dear value of our Constitution. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. (State Of Haryana And Ors vs Ch. Bhajan Lal And Ors 1992 AIR 604).

II. The Process of Investigation and Role of Courts:- (i) The adjudicatory function of the judiciary. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173 (8) there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court.

There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326. The Court should be quite loathe to interfere at the stage of investigation, a field of activity reserved for Police and the executive. See. King Emperor v. Khwaja Ahmad, [1944] L.R. 71 I.A. 203 at 213

(ii) Process of Investigation:- To understand the process of investigation succinctly, I intend to quote the an important judgment of the Hon’ble Supreme Court wherein the stages of investigation is clearly explained. If we go through this ruling in

H.N.Rishbud Vs. State of Delhi, AIR 1955 SC 196, we can easily understand the process of investigation. Under the Code of Criminal Procedure,1973 investigation consists generally of the following steps:
(1) Proceeding to the **spot**, (2) Ascertainment of the **facts and circumstances** of the case,
(3) **Discovery** and arrest of the suspected offender, (4) **Collection of evidence** relating to the commission of the offence which may consist of (a) the **examination of various persons** (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
(b) the **search** of places of **seizure** of things considered necessary for the investigation and to be produced at the trial, and (5) **Formation of the opinion** as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a **charge-sheet** under section 173 of Cr.P.C. Investigation under the Code thus constitutes, as interpreted by the apex court in **H.N. Rishud v. State of Delhi**, AIR 1955 SC 196: 1955 Cr LJ 526.

iii.(a).Registration of First information report: After receiving the information, Officer-in-charge of the police-station verifies the contents of the first-information-report (FIR) and decides whether the contents of the information are of a cognizable offence or non-cognizable offence. See. Section 154 of Cr.P.C. The initial stage of any criminal case is investigation that is reached when a police officer either by himself [s. 156(1) Cr.P.C.] or under orders of a Magistrate [Sections. 156(3), 154, 155(3), 202(1) Cr.P.C.], investigates into a case. **See. Youth Bar Association of India vs. Union of India and Ors, 2016 SCC online SC, 914, the Apex Court has issued 10 important Guidelines on First Information Report.**

Principle of law: The powers of the police officer to investigate a cognizable offence as given u/s. 156 Cr.P.C. are wide and unfettered (in strict compliance of the provisions of Chapter XII of the Code). As was held in Nazir Ahmed, (1944) 47 Born

LR 245, The court has no control over the investigation, or over the action of the police in holding such investigation. However, it was held in State of Haryana v. Ch. Bhajan Lal, AIR 1992 SC 604, in case a police officer transgresses the circumscribed limits and improperly and illegally exercises his powers in relation to the process of investigation, then the Court has the necessary powers to consider the nature and extent of the breach and pass appropriate orders.

iii. 'Case Diaries' under the process of investigation: Every investigating officer is required by law to keep a record of the proceedings of the investigation in a diary in narrative form that should be made with promptness in sufficient details mentioning all significant facts on careful chronological order and with complete objectivity which may have a bearing on the result of the case. Haphazard maintenance of a case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. See. BhagwantSingh v. Commissioner of Police, AIR 1983 SC 826.

A copy of the diary relating to each day's investigation (along with copy of any statement that may have been recorded u/s. 161 Cr.P.C.) shall be despatched to the circle inspector the following day. In special report cases, another copy shall be sent to the Superintendent of Police. It is interesting to see that the Hon'ble Apex court observed in OmPrakash v. State, 1979 Crl.L.J 141, that "the case diary must be written at the place of investigation and not at the end of the day. See. 1980 Cr LJ N.O.C. 67 (Del.); Jagannath v. State of Himachal Pradesh, 1982, Cr LJ 2289 (H.P.)

v.(a) Collection of Evidence:- The collection of evidence involves several steps and methods that comprise the crucial task of investigation process. The object behind is this task such that is to collect all available forms of evidence, physical, documentary and circumstantial, that are necessary for a comprehensive presentation of the same with regard to successful and effective prosecution of the case.

v.(b). Recommendations of the Malimath Committee:-The **Malimath Committee** of 2003 makes certain recommendations with regard to mitigating the present handicaps of the investigating units, the thanas. It attempts to make them more self-

reliant and to turn them over to more comprehensive units of investigation, as its impact would also amend the prevalent police practice that has evolved without them. While favouring the use of modern and forensic technologies right from the commencement of the investigation, the Committee recommends:
1. for the creation of "a cadre of Scene of Crime Officers" for the preservation of scene of crime and collection of physical evidence there-from. II. to provide optimal forensic cover to the investigating officers, the network of CFSL' s and FSL's in the country need to be strengthened, mini-FSL's and Mobile Forensic Units should also be set up at the district/range level and these including the finger print bureaux need to be equipped with well-trained and adequate manpower and financial resources. Forensic Medico legal Services should also be strengthened at the district and the state/central level, with adequate training facilities at the state/central level for the experts doing medico legal work. 111. The State Governments must prescribe time frame for submission of medico legal reports. The Padmanabhaiah Committee on Police Reforms has recommended that every police station should be equipped with 'investigation kids' and every sub-division should have a mobile forensic science laboratory. In the present context, where there is a lack of equipment for collecting physical evidence, as well as the lack of training in its use, and the failure to be alert to physical clues, the investigation Officers rely more on oral testimonies. They are, therefore, more oriented to persons and not to things.

vi. (a) Examination of Witnesses:- The examination of witnesses is only one part of the collection of evidence, included within the meaning of the word "investigation". Wadha J. Said, "A criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or circumstantial evidence." See. Swaran Singh v. State of Punjab, (2000)5 SCC 68 at 678.

The procedure for examination of witnesses by the police is provided in ss. 161 and 162 Cr.P.C. It provides for the recording of statements of all those persons who are acquainted with the facts and circumstances of the case, directly or indirectly, and the

use to which they may subsequently be put in the trial.

vi. (b). Magistrate is kept in the picture at all stages of the police investigation:- In this case of State of Haryana's (1992 AIR 604), it was observed that a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.

Under section 161 of Cr.P.C, a police officer making an investigation can examine the person acquainted with the facts of the case, and reduce the statement made by such person into writing. No oath or affirmation is required in an examination under this section. Persons to be examined include whosoever may subsequently be accused of the offence in respect of which the investigation is made by the police officer. See. Pakala Narayana Swami, (1939) 66 IA 66: 41 Born LR 428: 18 Pat 234; Velu Viswanathan, 1971 Cr LJ 725.

It is obligatory on a person examined in the course of a police investigation to answer all questions put to it "other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture." See. s. 161(2) Cr.P.C. Consonant to this procedural law is the provision laid down in the constitution, Article 20(3) that protects one from being made witness against itself.

The person questioned is legally bound to state the truth. A person who gives false information in answer to such questions can be prosecuted under sections 202 and 203 of the Indian Penal Code,1860. See. Sankaralinga Kone, (1990) 23 Mad.

Section 161 (3) Cr.P.C. prohibits the making of precis of a statement of a witness or merely recording that one witness corroborates another. The statement, if recorded, must be recorded as made and should not be in indirect form of speech. The writing should be a record in the first person. See. Sudhir Kumar Mandai, (1950) 2 Cal 343. Where investigating officers not recording statement of witness u/s. 162 Cr.P.C. in extenso but making a note that he corroborated the FIR, its held by the court that this is not a statement but the officer's opinion. 1962 Cuttack Law Times (2) 6282/685.

As was pointed out in Bommabayina Ramaiah v. State of A.P., AIR 1960 AP 160:1960 Cr LJ 311, it is essential to note that each statement recorded could be read by itself without necessarily looking into the others. This is made to minimise the chances of contradiction and also avoid any allegation against the IO for having even inadvertently distorted the statement during the process of translating the statement made in a language other than in which it is recorded. If the statement is first recorded in a vernacular language and then translated into English, mere supply of a copy of the English version would not meet the requirements of law. In such a case, the statement in the vernacular being the original statement, copy of it should also be furnished to the accused. See. Muniswamy v. State, 1954 Cr LJ 905 Mysore; In re Rangaswami, 1957 Cr LJ 866 Mad.; Public Prosecutor v. Parasurama Prabhu, 958 Cr LJ 392 Mad. See R. Deb, op. cit., p. 70; Syed M. Afzal Qadri, op. cit., p. 63.

The principle embodied in s. 162 Cr.P.C. ensures that no statement made to the police which is reduced to writing be signed by the person who makes it65 and that no such statement or record of such a statement shall be used for any purpose other than those stated in the section. See. If an investigating officer obtains the signature of a witness on his recorded statement, the evidence of the witness is not thereby rendered inadmissible. It merely puts the court on caution and may necessitate an in-depth scrutiny of such an evidence. State of UP. v. M.K Anthony, AIR 1985 SC 48; Tellu v. State, 1988 Cr LJ 1063 (Del.); Zahiruddin v. Emp., 48 Cr LJ 679 (P.C.); State ofKerala v. Samuel, 1961(1) Cr LJ 505 (Kerala-F.B.)

That is, u/s. 162, a statement recorded under 161 Cr.P.C. can only be used for contradicting the particular prosecution witness by the accused as of right and also by the prosecution to contradict such witness in the manner provided by s. 145 of the Indian Evidence Act, 1872. [Hazari Lal v. State (Delhi Administration), AIR 1980 SC 873: 1980 Cr LJ 564; M.S. Reddy v. State Inspector of Police, 1923 Cr LJ 558 (AP); Mohd. Islam v. State of UP., 1993 Cr LJ 1736 (All.); Hamidulla v. State ofGujarat, 1988 Cr LJ 98 (Guj.); Fateh Singh v. State, 1995 Cr LJ 96. The statement cannot be used for the purpose of contradicting a defence witness or a court witness. Ganga,

(1929) 4 Luck 726; Tahsildar Singh, AIR 959 SC 02: 1959 Cr LJ 1231; Shakila Khader v. Nausher Gama, AIR 975 SC 1324.] They cannot be used either as a substantive or corroborative piece of evidence on behalf of the prosecution. [Sat Paul v. Delhi Administration, AIR 1976 SC 294: 1976 Cr LJ 295; Rameshwar Singh v. State ofj&K, AIR 1972 SC 102: 1972 Cr LJ 15; Prakash Sen 11. State, 1988 Cr LJ 1275; jadumanikhant/4 v. State of Orissa, 1993 Cr LJ 2701 (Ori.); jahri Gope, (1928) 8 Pat 279; Sahdeo Gosain, (1944) FCR 223.] They can only be used for raising suspicion against credibility of the witness. [Chinamma v. State of Kerala, 1995 Cr LJ 171 (Ker.).]

According to section 162 (2) of Cr.P.C does not affect the provisions of section 27 of the Indian Evidence Act and therefore information leading to the discovery of a fact made to the police and admissible under section 27 of the Evidence Act , is not rendered inadmissible under this section. As also s. 162 does not affect a dying declaration recorded during investigation u/s. 32 of the Evidence Act and thus it is admissible in evidence. See. Najjam Faroqui v. State, 1992 Cr LJ 2574 (Cal.). See. R. Deb, op. cit. Satish Chandra Seal, (1944) 2 Cal 76; Safi Mohd. Hussain v. U.P., 1992 Cr LJ 755 (All.); Public Prosecutor v. P.N. Rao, 1993 Cr LJ 2789 (AP).

The practice of the investigation officer itself recording a dying declaration ought not to be encouraged. However, such a dying declaration is not altogether excluded but may be used depending upon its veracity. See. Harej Ali v. Assam, 1980 Cr LJ 745 (Gau.); jamiruddin Mol/a v. The State, 1991 Cr LJ 356 (Cal.). The police have to arrange for recording the dying declaration whenever it is necessary.

Provisions of ss. 161 and 163 Cr.P.C. emphasize the fact that a police-officer is prohibited from offering or making any inducement, threat, or promise as is mentioned in s. 24 of the lEA with a view to procureany to make a statement. See. Atma Ram, AIR 1966 SC 1736; Venu Gopal, AIR 1964 SC 33; State of Bombay v. Kathi Kalu, 1961(2) Cr LJ 856 (SC).

But a police officer or other person shall not prevent by any caution any person from making any statement which he may be disposed to make of his own free will. See.

Section 163(2) Cr.P.C.

Test Identification Parade:- Evidence in regard to test identification parades (TIPs) are held in matters of person as well as property. The basic procedural norms for conducting TIPs in either case are essentially the same. The method of conducting tip is enumerated in rule 34 of the Criminal Rules of Practice and Circular Orders, 1990. The precaution that need to be taken by the police is to prevent the identifying witness(es) from seeing the recovered property or the suspects,as the case may be, before the test identification. The TIP has to be held without much delay and before the accused goes on bail for once on bail, there is the chance of the accused not only being seen by the witnesses but they could also be influenced by the accused at large. In case the above precautions are not taken that may greatly hamper the value of the evidence in identification. The police should ensure that all the procedural norms are strictly followed to ensure a fair conduct of the TIP and in that regard, the police manual also prescribes that the panch witnesses need to satisfy themselves.

ix. Arrest: The arrest and detention of a person for the purpose of investigation of an offence forms an integral part of the process of investigation. Sections 41 and 154 of the Code deal with the powers of arrest by the police. The powers of the police to arrest a person without an order from a Magistrate and without a warrant as provided in s. 41(1) is confined to such persons who are accused or concerned with the offences that are enumerated under nine categories of cases (a-i) or are suspects thereof. The phraseology of this section entails on one hand a cognate character in consonant with s. 2(c) of the Code wherein the expression “cognizable offence” means an offence for which a police officer may arrest without warrant. Thus proceeding from s. 154, vide s. 156 of the Code, the derivative impression in correspondence with s. 41 is that the arrest of the accused is mandatory as part of the process of investigation. **See. Arnesh Kumar Vs. State of Bihar, Rajesh Sharama Vs. UP, Judgment dated July 27,2017, and Recent case in Maharashtra-based NGO Nyayadhar’s case (2017).**

Section 41 Cr.P.C. is a depository of general powers of the police officer to arrest but

this power is subject to certain other provisions contained in the Code as well as in the special statute to which the Code is made applicable. See. AvintiSh Madhukar Mukhedkar v. State of MahartiShtra, 1983 Cr LJ 1833 (Born.). See. Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

Section 41 (l)(d) will have to be read in conjunction with the provisions contained in ss. 155 and 156. Ass. 155(2) prohibits a police officer from investigating a non-cognizable offence without an order of the Magistrate, then in respect of such an offence a police official cannot exercise the powers contained in s. 41 (I) (d). But in case of a person committing or accused of committing a non-cognizable offence in the presence of a police officer does not reveal its name and residence or does so that is believed to be false, the concerned person may then be taken into custody in order that the same may be ascertained. See. Section 42(1), Cr.P.C.

Even in cases u/s. 34 Indian Police Act, 1861, the police shall exercise their powers of arrest without warrant. It is not necessary that arrest is effected only on the occasion of the commission of an offence. The police have also been armed with extensive powers to prevent commission of cognizable offences (ss. 149-151), i.e. offences for which they could arrest without a warrant. If the person so concerned is believed to have “a design to commit any cognizable offence” and “cannot be otherwise prevented,” the police officer can forthwith arrest “the person so designing” (s. 151). See.]agdish Chander Bhatia v. State, 1983 Cr LJ NOC 235 (Del.) Even in cases of bad livelihood, an officer may arrest any person belonging to one or more categories of persons as specified ins. 109 or s. 110 Cr.P.C.

Govind Prasad v. W.B., 1975 Cr LJ 1249 (Cal.). It has been held in Virna/ Kumar Sharma v. State ofU.P. [1995 Cr LJ 2336 (All.)] that a person who has been arrested must be informed of the grounds of arrest with greatest despatch as soon as possible however, it may nor be immediately.

The Hon’ble Full Bench of the Allahabad High Court [vikram v. State, 1996 Cr LJ 1536 (All.)] held that the arrested person must be informed of the bare necessary facrs leading to his arrest including the facts that in respect of whom and by whom

the offence is said to be committed, date, rime and place of occurrence of the offence and if this is contested by the accused of being nor informed, it is the burden of the prosecution to establish that the requirements of section 50(1) Cr.P.C. and Art. 22(1) of the Constitution have been fully complied with.

Section 51 of the Code prescribes for passing a receipt in respect of articles seized, other than necessary wearingapparel, from the search of the person arrested under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, as a precautionary measure for accounting for the articles. Where the accused is not given the grounds of such arrest as per section 50 of the Code, the search under such conditions becomes illegal.

Section 54 of the Cr.P.C confers the right on an arrested person to have his medical examination done. It is the duty of the Magistrate to inform the arrested person about his right to get himself medically checked and direct the examination of the body of such person by a registered medical practitioner, when an arrested person alleges, either when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body.

Section 56, 57 and 76 of Cr.P.C. has the constitutional sanction vide Art. 22(2) of the Constitution of India which directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to the Court of the Magistrate.

Section 56 provides that a police officer shall on making an arrest without warrant produce the concerned before a Magistrate having jurisdiction in the case or before the OIC of the thana.

Section 57 echoes clause 2 of Art. 22, mentioned above, but it is to be read with s. 167, as stated in rule 172(a) of the Orissa Police Manual that requires that an accused

shall be sent forthwith to the nearest magistrate, together with the copy of the entries in the case diary, within the stipulated time period.

The counterpart of s. 57, s. 76 becomes applicable in case of a person arrested under a warrant. Section 57 and 76 empowers the police officer to keep the arrested person in its custody for a period not exceeding twenty-four hours for investigation in relation to the case for which such arrest has taken place.

In **D.K Basu v. State of West Bengal, (1997) 1 SCC 416**, the Apex Court lamented the growing incidence of torture and deaths in police custody and felt necessary as it laid down that in addition to the statutory and constitutional requirements, it would be useful and effective to structure an appropriate mechanism for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. To that effect, the court issued 11 commandments "to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures."

x. Bail:- The police has on hand another prescriptive process that follows the arrest of an accused or suspect with or without a warrant and that is its decision to either forward the arrestee to the Court or take bail from such person. The Code of Criminal Procedure lays down the provisions as regards bail for which purpose they are broadly classed into two categories in consonance with the classification of the offences, bailable and non-bailable. The police powers to admit to bail is contained in ss. 436, 437, 438, and 441 of the Code. **The basic rule is to release him on bail unless there are circumstances suggesting the possibility of his fleeing from justice or thwarting the course of justice.**See. State of Rajasthan v. Balchand, AIR 1977 SC 2447: 1978 Cr LJ 195; Gudikanti Narasimhulu v. Public Prosecutor, A.P., AIR 1978 SC 429: 1978 Cr LJ 502.

Another area is concerned, Section 441 Cr.P.C. It contemplates furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties conditioned with the time and place for his appearance.

The critical aspect about this section is the discretionary power of the police officer to

fix the amount of the bond for such sum of money that it thinks sufficient that shall be executed by such person to be released on bail. It has been held that an accused person is entitled as of right to bail, provided the necessary conditions prescribed by law are fulfilled and under this section that contemplates the execution of a bond with sureties, the amount of the bond is not to be excessive and is to be fixed with due regard to the circumstances of each case. The amount of the bond should be in accordance with the position in life occupied by the person to be released on bail. Further, not monetary suretyship but undertaking by relations of the petitioner or organisations to which he belongs may be better and more relevant. See. Daulat Singh, (1891) 14 All. 45; Rajballam Singh, (1943) 22 Pat. 726; Niamat Khan, (1950) 30 Pat. 886; Banarashidas, (1937) Nag. 168; State of Rajasthan v. Balchand, AIR 1977 SC 2447: 1978 Cr LJ 195; Mohd Tariq v. Union of India, 1990 Cr LJ 474: 1989 All LJ 85. See Syed H. Afzal Qadri, op. cit., pp. 99, 101;

In this case, the Court demonstrated an uncompromising posture to any such police deviance in the following citation: In Advocate General Bihar v. M.P. Khari Jndustries, AIR 1980 sc 946: this Court held that" …. It may be necessary to punish as a contempt a course of conduct, which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest and vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and so it is contempt of Court not in order to protect the dignity of the Court against 'Contempt of Court' may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

xi. Remand: When any investigation cannot be completed within 24 hours of the arrest of an accused vide s. 57 of the Code and that there are reasonable grounds for

believing that the accusation or information is well-founded and the station officer is further in a position to show satisfactory grounds for the application for a special order for the detention of the accused in police custody u/s. 167 Cr.P.C., (for detailed discussion on 'police custody', refer to 'CBI Vs. Anupama Kulkarni, 1992 SCR (3) 158) the SHO of the police station or the investigation officer not below the rank of sub-inspector shall forward the accused to the nearest Judicial Magistrate (whether or not he has the jurisdiction to try the case), together with a copy of the entries in the case diary relating to the case, and report the matter to the Superintendent, but in no case shall the accused remain in police custody for a longer time than is reasonable without the authority of a Magistrate. See. Article 22(2), Constitution ofindia; Section 167(1), Cr.P.C.

Where a Judicial Magistrate is not available, it is the Executive Magistrate that does the needful with the procedures remaining the same except that the detention will be for a term not exceeding seven days and any further extension of the remand will be done by the competent Magistrate with the Executive Magistrate transmitting all the records of the case to the nearest Judicial Magistrate. Section 167(2A), Cr.P.C.

Where the accused surrendered in the Court and the prosecution applied for police custody, but the prayer could not be granted till the expiry of first fifteen days, it was held that the Magistrate rightly refused police custody (Bhajan Lal v. State of U.P., 1996 Cr LJ 460 (All.).

Where members of the army or the para-military come in aid of civil authorities for maintenance of law and order, they have absolutely no authority or power of investigation or interrogation. The Court has held that the remand of accused to the army custody on prayer of IO is highly improper, illegal and ultra vires of the Constitution. Shri joyanta Borbora v. State of Assam, 1992 Cr LJ 2147 (Gau.)

In Khatri v. State of Bihar, popularly known as the "*Bhagalpur Blinding case*," (1981) 1 SCC 632: AIR 1981 SC 928: 1981 Cr LJ 470, that the Magistrate or Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage a lawyer on account of poverty, he is entitled to

obtainfree legal service at the cost of the State. The Supreme Court has given necessary directions to Magistrate,Sessions Judges and State Government with guidelines to be followed in this regard.

The police have no right to refuse to allow the legal adviser of an accused person, remanded to their custody, to interview him, or his relatives to supply him with food and clothing, as long as they satisfy themselves that no objectionable articles are supplied. Llewelyn Evans, (1926) 28 Born LR 1043: 50 Born 741. The right of the accused to consult and to be defended by a lawyer of his choice is guaranteed under Art. 22(1) of the Constitution of India.

In Khatri v. State of Bihar, Sandip Kumar Dey and Hussainara Khatoon cases, it was held that the Magistrates need to see that the accused is produced before the court when the remand order is passed and cautioned the Magistrates that in granting remand they should not act mechanically.

xii. Interrogation: Interrogation is an engagement process that represents one of the first points of contact between the police and the 'publics' related to the case, as s. 161 of the Code do not distinguish those who are interrogated as complainant, victim, accused, accomplices or witnesses. See also. Criminal Law (Amendment) Act,2013.

Section 162, Cr.P.C. does not affect the provisions of s. 27 of the Indian Evidence Act, 1872 and therefore information leading to the discovery of a fact made to the police and admissible ufs. 27 of the Evidence Act, is not rendered inadmissible u/s. 162 and do not offend against Art. 14 of the Constitution oflndia. Ramakrishna v. State of Bombay, 1955 Cr LJ 196 (SC).

The process of interrogation comprises of the act of an impeller-custodian against a person in its custody by arrest, police remand, or even where the custody per se is unauthorised. The police habit of charging the people, then beat up with standardised crimes even got the name of mock crime. The larger problem is that the victims of the commonly reported incidents of police violence are generally the poor alleged in case of petty crimes.

xiii. Investigation: its subsequent adjudication between the police and the Magistrate.

1. The executive function of the police department. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take congizance of the offence under section 190 of the Code its duty comes to an end subject to the provision contained in Section 173 (8).

xiv. Whether a magistrate could direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a report of the action taken under s. 169, Cr.P.C., that there was no case made out for sending up the accused for trial.

”Magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the results of an investigation conducted by the police. In the case the police concludes that no case is made out against the accused, the Magistrate has to issue a notice to the informed/victim and hear him out. After hearing the informant, the court can, notwithstanding the closure report, choose to proceed with the matter, as a case based on police report or even a prior complaint.”

1. There was no such power conferred on a magistrate either expressly or by implication. See. Abhinandan Jha & Ors vs Dinesh Mishra, 1967 SCR (3) 668

2. When a cognizable offence is reported to the police they may after investigation take action under s. 169 or s.170 Cr.P.C. If the- police :think there is not sufficient evidence against the accused, they may, under s. 169 release the accused from

custody on his executing a bond to appear before a competent magistrate if and when so required; or, if the police think there is sufficient evidence, they may, under s.170, forward the accused under custody to a competent magistrate or release the accused on bail in cases where the offences are bailable. In either case the police should submit a report of the action taken, under s.173, to the competent magistrate who-considers it judicially under s. 190 and takes the following action :

(1) If the report is a charge-sheet under s.170 it is open to the magistrate to agree with it and take cognizance of the offence under s.190 (1) (b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was not sufficient evidence.
(2) If the report is of the action taken under s.169, then the magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under s.156 (3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under s.170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed.
(3). Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he .can take cognizance under s.190 (1) (c). The provision in s.169 enabling the Police to take a bond for the appearance of the accused before a magistrate if so required, is to meet such a contingency of the magistrate taking cognizance of the offence notwithstanding the contrary opinion of the police. The power under s.190 (1) (c) was intended to Secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or he police either wantonly or through a bona, fide error do not submit a charge-sheet. But the magistrate cannot direct the Police to submit a charge-sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the magistrate. The magistrate, if he disagrees with the report of the police, can. himself

take cognizance of the offence under s.190 (1) (c) or (c), but, be cannot compel the police to form a particular opinion on investigation and submit a report according to such opinion. In Abhinandan Jha's case, State of Gujarat v. Shah Lakhamshi, A.I.R. 1966 Gujarat 283 (F.B.); Venkatusubha v. Anjanayulu, A.I.R. 1932 Mad. 673; Abdul Rahim Vs. Abdul Muktadin, A.I.R. 1953 Assam 112 ;Amar Premanand Vs. State, A.I.R. 1960 M.P. 12 and A.K.Roy vs. State of West Bengal. A.I.R. 1962 Cal. 135 (F.B.) approved. State Vs. Muralidhar Govardhan, A.I.R. 1960 Bom. 240 and Ram Wandan v. State, A.I.R. 1966 Pat. 438, disapproved.

xv. Investigation by Police-Further investigation in case in which one investigating officer had submitted a final report under Section 172 (2) of Criminal Procedure Code, 1973, but on which the Court had not passed any order- Section 156 enables the officer in-charge of a Police Station to investigate without the order of a Magistrate into a cognizable case committed within the area of the police station. Section 173 (8) enables an officer-in-charge of the Police Station to undertake for their investigation in a case where he has already submitted a report under sub-section (2) of Section 173 and if in course of such further investigation he collects additional oral or documentary evidence, he has to forward the same in the prescribed form to the Magistrate. See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326.

xvi. Magistrate Can't Order Further Investigation At Post Cognizance Stage:- On 2 February, 2017, a two Judge bench of the Hon'ble Supreme Court in Criminal Appeal No. 1171 OF 2016 (Arising out of S.L.P (Criminal) No.3338 OF 2015), Amrutbhai Shambhubhai Patel Vs.Sumanbhai Kantibhai Patel and Ors,held that Magistrate cannot order further investigation after the cognizance has been taken, process has been issued and accused has entered appearance in response thereto. Similarly, In Nandita Sethi vs. State of Orissa, Crl. Revision no. 478 of 2016, the Hon'ble Orissa High Court held that Magistrate Can't Direct Further Investigation On Defacto Complainant's Plea.

The power of the Magistrate under section 156 (3) to direct further investigation is

clearly an independent power and does not stand in conflict with the power of the State Government. The power conferred upon the Magistrate under section 156 (3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case and even after submission of the report as provided in section 173 (8). See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326.

xvii. "inquiry" and "investigation"-Difference between. Investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and there are several authorities of the Supreme Court where interference by the Court into police investigation has not been approved. There is however. residuary jurisdiction left in the court to give directions to the investigating agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude. The court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the court. See. State Of West Bengal & Ors. Etc vs Sampat Lal & Ors. Etc, 1985 SCR (2) 256.

"The main distinction, therefore, was that inquiry was a magisterial process while investigation was the process of collection of evidence through the police machinery."

"When an unnatural death occurs or a prima facie case of the commission of a cognizable offence is brought to the notice of the police authorities, it is their duty under the Code of Criminal Procedure to conduct an investigation and ascertain the cause of the death. See. State Of West Bengal & Ors. Etc vs Sampat Lal & Ors. Etc, 1985 SCR (2) 256.

III. Conclusion: As stated by A.S. Gupta, the bad reputation of the police had led to the recommendation by the Second Law Commission in 1855 that they should not

have any authority to record the confession of an accused person. See. A.S: Gupta, The Police in British India (1861-1947), Concept Publishing Co., New Delhi, 1979, p. 204. Bench of the Hon'ble Supreme Court, consisting of Justice Doraiswamy Raju and Justice Arijit Pasayat, described the acquittal of the 21 accused by the High Court that upheld the fast track court's judgment, as nothing but a travesty of truth and a fraud on the legal process. It also said that "no sanctity or credibility can be attached and given to the so-called findings." The Hon'ble Bench noted that "the investigation (in the case) appears to be perfunctory and anything but impartial, without any definite object of finding out the truth and bringing to book those who were responsible for the crime."

Inasmuch as the cutting edge of the rule of law that wields so great a power, there was the only one thing in the police that affected the people and the government the most and according to Sir John Woodburn, Lieutenant-Governor of Bengal, "the evil is essentially in the investigating staff. It is dishonest and it is tyrannical … ". According to him, "The honest policeman rigs the evidence to convict the man he knows is guilty. Perhaps it is the only way he can get a conviction. The dishonest policeman rigs the evidence to convict a man he knows is innocent." That the process of investigation characterizes the nature of policing to a great extent and constitutes as one of the most important occasions for bringing the police and 'publics' into contact. The process is not an indivisible whole, but involves many interactional stages assuming different forms of contact appropriate to each. There prevails a serious crisis of confidence that afflicts public opinion toward the police. Thus, to minimize the improprieties in the process of criminal investigation, it requires a holistic approach that studies the issues and problems of police work in its wider organizational and societal contexts to formulate meaningful schemes in significantly altering the contemporary practice of police investigation, a fortiori, an illegal investigation does not vitiate trial.

STATEMENTS UNDER SECTION 161 AND 164 CODE OF CRIMINAL

PROCEDURE :

Introduction:-

'Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable.' (Ref: Appabhai Vs. State of Gujrat AIR 1988 SC 696). This observation was made by the Hon'ble Apex Court when prosecution could not produce independent witnesses in that case. In the process of investigation, under Section 161 of Cr.P.C, any Police officer making an investigation is accredited and empowered to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to records statement of witnesses. These statements are predominantly called as section 161 Cr.P.C statements. This task is to gather evidence against accused. After filing charge sheet, these statements will also be perused by the Court to take cognizance of an offence. Such a statement can only be utilized for contradicting the witness in the manner provided by Section 145 of the Evidence Act.

What is a contradiction? In case of a witness testifies before the court that a certain fact is existed without stating same before police; it is a case of conflict between the testimony before the court and statement made before the police. This is a contradiction. Therefore statement before the police can be used to contradict his testimony before the court. In Appabhai .Vs. State of Gujrat AIR 1988 S.C. 694 [1988 Cri.L.J. 848], The Hon'ble Apex Court has observed as under: "The Court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded.

What is an 'Omission'? An omission is either skip or slip, it means 'exclusion' or 'leaving out'. If a certain fact is testified by a witness in his Examination-in-Chief',

such fact, which is testified in Court, had been omitted to state before police, it is called an ‘Omission’. Now, it is to be tested by the Court whether it is a material omission or not. If it is a material omission, it amounts material contradiction. The Hon’ble Apex Court opines that relevant and material omissions amount to vital contradictions, which can be established by cross- examination and confronting the witness with his previous statement. (Ref; Tahsildar Singh ..Vrs..State of U.P., 1959 SCR Supl. (2) 875; AIR 1959 1012 (1026)). However, as was held in Ponnuswamy Chetty v. Emperor (A.I.R. 1957 All. 239), ‘ a bare omission cannot be a contradiction’.

Non-production of Independent witnesses: It is settled law of criminal jurisprudence that conviction can be based on the testimony of official witnesses and it is not necessary that in each and every case, public persons must be joined in investigation. In the case of “Appabhai Vs. State of Gujrat” AIR 1988 SC 696, it has been held as under, “It is no doubt true that the prosecution has not been able to produce any independent witness to the murder that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused.”

How to know whether it is a contradiction or an omission or not? ” Statement ” in its dictionary meaning is the act of stating or reciting. Prima facie a statement cannot take in an omission. A statement cannot include that which is not stated. But very often to make a statement sensible or self-consistent, it becomes necessary to imply words which are not actually in the statement. Though something is not expressly stated, it is necessarily implied from what is directly or expressly stated. To illustrate: ‘ A’ made a statement previously that he saw ‘ B ‘ stabbing ‘ C ‘ to death; but before the Court he deposed that he saw ‘B’ and ‘D’ stabbing ‘ C’ to death: the Court can imply the word “only ” after ‘ B ‘ in the statement before the police. Sometimes a positive statement may have a negative aspect and a negative one a positive aspect. Take an extreme example : if a witness states that a man is dark, it also means that he is not fair. Though the statement made describes positively the colour of a skin, it is implicit in that statement itself that it is not of any other colour. (See Tahsildar Singh’s case (supra)).

The statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement:- In Sunil Kumar and others Vs. State of M.P. (AIR 1997 SC 940), in this case the Supreme Court, while dealing with the statement of injured witness, which was then recorded as a dying declaration by the Magistrate, observed that the statement of injured which was recorded as a dying declaration which, consequent upon his survival, is to be treated as a statement under Section 164 of the Criminal Procedure and can be used for “corroboration or contradiction”, unlike the statement under Section 161, which can be used only for “contradiction”.

If signature of a person obtained on his statement recorded under section 161 of Cr.P.C, whether such statement should be ignored? Basically, signature of witness on section 161 of Cr.P.C statement is not necessary. However, it is not the law that whenever the signature of the person is obtained in his statement recorded in the

course of investigation that statement should be ignored. The law on the point informs me that in such situation the Court must be cautious in appreciating the evidence that the witness who gave the signed statement may give in Court (See Tilkeshwar Vs. Bihar State (AIR 1956 SC 238), State of U.P VS. M.K Anthoni (AIR 1985 SC 48), (1985) 1 SCC 505.and State of Rajasthan Vs. Teja Ram and Ors. (AIR 1999 SC 1776). It has been held that obtaining the signature of the witness in the statement recorded under Sec.161 of the Code does not render it inadmissible under Sec.161 of the Code but, it may affect the weight to be attached to the evidence of such witness. Notwithstanding that the statement is signed, it continues to be a statement recorded under Sec.161 of the Code, going by the said decisions. (See also M. Sundaramoorthy vs State Of Kerala, (2011), Hon'ble Kerala High Court, Crl.MC.No. 464 of 2011).

Improvements in the evidence of prosecution witnesses:- The Court disbelieves the evidence of prosecution witness, if there are improvements in the deposition of such witness made over his statement recorded under section 161 of Cr.P.C. In the cases of Ashok Vishnu Davare Vs. State of Maharasthra, (2004) 9 SCC 431, Radha Kumar v. State of Bihar (now Jharkhand) [(2005) 10 SCC 216] and Sunil Kumar Sambhudaval Gupta (Dr.) and Others Vs. State of Maharashtra, (2010) 13 SCC 657, in which the Hon'ble Supreme Court has not believed the evidence of prosecution witnesses on account of improvements in the deposition of the witnesses made over their statements recorded under Section 161, Cr.P.C. (See also Baldev Singh vs State Of Punjab, , criminal appeal No. 1303 of 2005, [2013], Baldev Singh vs. State of Punjab (1990 (4) SCC 692 = AIR 1991 SC 31)). However, in Arjun and others ..Vs.. State of Rajsthan, AIR 1994 SC 2507, The Hon'ble Court has held that – A little bit of discrepancies or improvement do not necessarily demolish the testimony. Trivial discrepancy, as is well known, should be ignored. Under circumstantial variety the usual character of human testimony is substantially true. Similarly, innocuous omission is inconsequential.

Even honest and truthful witnesses may differ in some details unrelated to the main incident:-

In State of U.P. Vs. M.K. Anthony AIR 1985 SC 48, the Hon'ble Apex Court laid down certain guidelines in this regard, which require to be followed by the courts in such cases. The Court observed as under :- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross examination is an unequal duel between a rustic and refined lawyer."

Confrontation of Statement:- Dandu Lakshmi Reddi vs. State of A.P. (AIR 1999 SC 3255), it was observed that Section 162 of the Code of Criminal Procedure (for short the Code) interdicts the use of any statement recorded under Section 161 of the Code except for the limited purpose of contradicting the witness examined in the trial to whom such statement is attributed. Of course, this Court has said in Raghunandan Vs. State of U.P., (AIR 1974 SC 463) that power of the court to put questions to the witness as envisaged in Section 165 of the Evidence Act would be untrammeled by the interdict contained in Section 162 of the Code. The following observations in the aforesaid decision, in recognition of the aforesaid power of the court, would be useful in this context: We are inclined to accept the argument of the appellant that the language of Section 162 Criminal Procedure Code, though wide, is not explicit or specific enough to extend the prohibition to the use of the wide and special powers of

the Court to question a witness, expressly and explicitly given by Section 165 of the Indian Evidence Act in order to secure the ends of justice. Therefore, we hold that Section 162 Criminal Procedure Code does not impair the special powers of the Court under Sec. 165 Indian Evidence Act. Ultimately, in the said ruling Dandu Lakshmi Reddi (supra), it was held that ‘ It must now be remembered that the said procedure can be followed only when a witness is in the box. Barring the above two modes, a statement recorded under Section 161 of the Code can only remain fastened up at all stages of the trial in respect of that offence. In other words, if the court has not put any question to the witness with reference to his statement recorded under Section 161 of the Code, it is impermissible for the court to use that statement later even for drawing any adverse impression regarding the evidence of that witness. What is interdicted by the Parliament in direct terms cannot be obviated in any indirect manner.’

A statement under Section 161 Cr. P. C is not a substantive piece of evidence:– As has been held In Rajendra singh vs. State of U.P – (2007) 7 SCC 378, “a statement under Section 161 Cr. P. C is not a substantive piece of evidence. In view of the provision to Section 162 (1) CrPC, the said statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Therefore, the High Court committed a manifest error of law in relying upon wholly inadmissible evidence in recording a finding that Respondent 2 could not have been present at the scene of commission of the crime.”

Conclusion:-

1. If we go through section 145 of Evidence Act, it expatiates how to contradict a witness. The words ” to contradict him ” appearing in s. 145 of the Evidence Act must carry the same meaning as the words ” to contradict such witness ” in s.162 of the Code. (See Tahsildar Singh And Another’s case infra).

2. It was pointed out in Baldev Singh vs State Of Punjab, AIR 1991 SC 31 that the statement recorded under Section 161 of the CrPC shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162

(1) and that the first information report is not a substantial piece of evidence. 3. Nuts and bolts of impeaching credit of witness are speculated under section 155 of the Evidence Act.

4. However, merely because there is ‘inconsistency in evidence it is not sufficient to impair the credit of the witness.

5. As was held in Binay Kumar Singh Vs. State of Bihar, (AIR 1997 SC 322), it is axiomatic that evidence is not to be counted but only weighed and it is not the quantity of evidence, but the quality that matters.

6. Under Section 161 of Code of Criminal Procedure, a police officer, making an investigation can examine the person acquainted with the facts of the case and reduce the statement made by such person into writing.

7. Although signature of witness on section 161 of Cr.P.C statement is not necessary, it is not the law that whenever the signature of the person is obtained in his statement recorded in the course of investigation that statement should be ignored. (Ref: Tilkeshwar Vs. Bihar State, AIR 1956 SC 238).

8. Under Section 162 of Cr. P. C., statement made to the police which is reduced into writing may be used by either prosecution or by defence to contradict such witness under purview of section 145 of the Indian Evidence Act.

9. Section 145 of Indian Evidence Act,1872 manifests one of the modes in which the credit of the witness may be impeached.

10. In view of Section 155 (3) of Indian Evidence Act, the credit of a witness may be disparaged or impeached by the adverse party by way of contradiction.

Examination of witness under section 164 of Code of Criminal Procedure.Use of the statement recorded under section 164 of Code of Criminal Procedure with reference to section 145 of Evidence Act

The subject for the workshop basically draw our attention to the main two provisions i.e. section 164 of Code of Criminal Procedure hereinafter referred to as “CODE” and section 145 of Evidence Act hereinafter referred to as “ACT”. Normally, statements in the Code is recorded under section 162. Under section 164 the confession of the accused is recorded, so also the statements of the witnesses. As per section 164(1) of Code Judicial Magistrate or Metropolitan Magistrate whether or not having jurisdiction in the case can record any statement or confession made to him in the course of investigation. Section 164(5) of code empower the Judicial Magistrate to record statement (other than the confession) which is in the opinion of the Magistrate a best fitted to the circumstances of the case. The Magistrate is also empowered to administer the oath to the person making such statement. The statement of the witnesses recorded in the course of investigation under section 164 of the Code shall be forwarded to the Judge by whom the case is enquired into or tried. The procedure for recording confession statements is envisaged in Rule 32 of Criminal Rules of Practice as follows:

32. Confessions: - (1) No confession shall be recorded unless:

(a) the Magistrate has explained to the accused that he is under no obligation at all to answer any question and that he is free to speak or refrain from speaking as he pleases; and

(b) the Magistrate has warned the accused person that it is not intended to make him an approver and that anything said by him will be taken down and thereafter be used against him.

(2) Before recording a statement, the Magistrate shall question the accused in order to ascertain the exact circumstances in which his confession is made and the extent to which the Police have had relations with the accused before the confession is made.

The Magistrate may usefully put the following questions to the accused :-

(a) When did the police first question you?

(b) How often were you questioned by the Police?

(c) Were you detained anywhere by the Police before you were taken Formally into custody, and if so, in what circumstances?

(d) Were you urged by the Police to make a confession?

(e) Have the Statements you are going to make been induced by any ill-treatment? And if so, by whom?

(f) Do you understand that the statement which you are about to make may be used against you at your trial?

These questions and any others which may suggest themselves and the answers to them shall be recorded by the Magistrate before he records the accused's statement and shall be appended to the Memorandum prescribed by Section 164(3) of the Code of Criminal Procedure. The Magistrate shall add to the Memorandum a statement in his own hand of the grounds on which he believes that the confession is voluntary and shall note the precautions which he took to remove the accused from the influence of the police and the time given to the accused for reflection.

(3) If the Magistrate has any doubt whether the accused is going to speak voluntarily, he may, if he thinks fit, remand him to a sub-jail, before recording the statement; and ordinarily the accused shall be withdrawn from the custody of the Police for 24 hours before his statement is recorded. When it is not possible or expedient to allow so long a time as 24 hours, the Magistrate shall allow the accused atleast a few hours for reflection.

(4) The statement of the accused shall not be recorded, nor shall the warning prescribed in paragraph (1) of this Rule be given nor shall the question prescribed in paragraph (2) of this Rule be asked in the presence of a co-accused or of the police officers who have arrested him or produced him before the Magistrate or who have investigated the case.

02.The term “statement” is not defined anywhere in the Act. However, it has got wide connotation. Section itself contemplates that statement which is either written by the

witness himself or reduced to writing by someone else and so, the statement recorded under section 164 of the Code is previous statement of the witness. The section speaks of " In his confession or statement". It may be the statement of an accused person which is a non- confessional statement or of a witness capable of giving useful information relating to an offence. The word statement means a statement of a witness does not mean a statement of the accused person. Section 164 of the code does not provide for recording of any statement of an accused person other than a confession. This section specifically provides record of two clauses of a thing i.e. (1) the statement of the witnesses and (2) confession of a person accused of an offence. The word statement in sub-clause (1) has been used in wider sense and may include statement either of a person or even of a different person and they would have recorded in course of the Chapter XII if they were intended to be a statement made during the course of investigation. The statements which were made by the persons at identification parade are nothing but the statement under section 164 of the Code. A statement made under section 164 of the code is not inadmissible in he evidence and may be used ocorroborate or contradict a statement made in the Court in the manner provided under section 157 and 145 of the Evidence Act. The statement made under this section cannot be used as a substantive piece of evidence. But it can be used for the purpose of corroboration. It can be used to cross-examine the persons who made it to show that the evidence of the witness is false but that does not establish that what he stated out of court under this section is true. A statement made by a witness under section 164 of the Code can be used for the purpose of cross-examining him and discrediting his evidence in the session's court.

THE NEED FOR RECORDING STATEMENT U/S 164 OF CODE

A question may arise as to why there is need to record the statement under section 164 of the code in addition to statement recorded under section 162 of the Code. The object of recording of statements of witnesses under section 164 of the Code is two

fold;

(1) to deter witnesses from changing their versions subsequently and

(2) to get over the immunity from the prosecution in regard to information given by the witnesses under section 162 of the code. The another reason of recording statement of witnesses under section 164 of the code is to minimize the chances of changing the versions by the witnesses at the trial under the fear of being involved in perjury.

A question may also arise at to why a Magistrate is empowered to record statement in addition to the statements recorded by police under section 162 of the Code and particularly examination of Magistrate is not necessary to prove contradiction which is unlike the case of statement recorded by police under section 162.In the above authority the Apex court has endorsed the judgment of Privy Council in Nazir Ahmed v/s. King Emperor reported in A.I.R. 1936 P.C. 253. In case of Guruvind palli Anna Rao - of A.P. reported in 2003 Cri. L.J. 3253, it has been specifically observed that –

“Statement of witness recorded under section 164 of the code is a public document which does not require any formal proof.”

Hence summoning of Magistrate by Sessions Court to prove contents of the said statement is improper. Section 80 of the Evidence Act, states that–Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the court shall presume that the document is genuine, that any statements as to the circumstances under which it was taken, purporting to be made by the

person signing it, are true, and that such evidence, statement or confession was dully taken. In case of Patiram V/s.State of Maharashtra of reported in 2003 Cri.L.J. 4718, it is specifically observed that -

“The statements recorded under section 164 of the code are part and parcel of the case diary of investigation. Even in the charge sheet there should be mention of recording of statement by the magistrate”.

Section173(5)(b) specifically mention about the statement recorded under Section 161 of the Code and does not speak about statement recorded under section 164 of the code. Keeping this section in the mind or by following the old practice of the station if he kept the statement in a sealed envelop and commit it
to the Sessions Court after receiving charge sheet then there is sheer contravention of section 207 of the code which is mandatory. Section 207 (iv) of the code specifically states that the copies of confession and statement recorded under section 164 has to be supplied to the accused before committing the case under section 209 of the Code.

C O N C L U S I O N:

In view of the above discussion and the nature and scope of provisions under section 164 of Code of Criminal Procedure with reference to the recording of statement of witnesses along with section 145 of Evidence Act,a specific duty is cast upon the Magistrate to record statement of child witnesses and witnesses under Protection of Childern From Sexual Offences Act,2012 for insuring friendly atmosphere. So also at the time of recording of evidence of child witness presence of parents of the child or any person in whom child has trust or confidence is permitted. The Magistrate can seek the assistance of translator, interpreture or special educator which is necessary for the same. The Magistrate has been given discretion to record statement of the witnesses either sponsored by investigating agency or the witnesses directly before the Court for recording such statement. Considering the importance of the topic, it is

necessary for all the Judicial Officers to pay special attention to the provisions of section 164 of Code with reference to Section 145 of Evidence Act, so as to enable them to have clear notions about all relevant provisions in this regard.

CONDUCT OF TEST INDENTIFICATION PARADES FOR SUSPECTS AND PROPERTY RECOVERED DURING INVESTIGATION

IDENTIFICATION

The role of the witness is very important in establishing the identity of the accused. One of the methods of establishing the identity is "Test Identification Parade" required Under Section 9 of Indian Evidence Act. The idea of the parade is to test the veracity of the witness on the question of his capability to identify from among several persons, an unknown person whom the witness had seen in the context of an offence.

The procedure for conducting Identification of suspects is laid down under Rule 35 of Criminal Rules of Practise, which envisages as follows:

34. Identification parades: - In conducting identification parades of suspects, the Magistrate shall observe the following Rules.

[(i) (a) The Police should sent a requisition for holding identification parade by the Magistrate as nominated by the Sessions Judge. On such requisition, the Magistrate shall conduct the identification parade as expeditiously as possible.

(b) Where bail application is pending for the release of the accused and on being informed so by the Police Officer, the Magistrate shall as far as possible fix a date earlier to the date of arguments on the bail application and hold the identification parade.]

(ii)(a) As far as possible, non-suspects selected for the parade shall be of the same

age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall if possible, either arrange for similar wear to other or induce the suspected person to remove such garment.

(b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order. in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.

(iii)(a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.

(b) Before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall also be asked to state the marks of identification by which he can identify the suspects.

(c) Each witness shall be fetched by a peon separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting to see the persons paraded.

(iv) Every circumstances connected with the identification including the act if any attributed to the person who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not. Particularly any objection by any suspect to any point in the proceeding shall be recorded.

When a witness says that he can identify accused persons or others connected with the case under investigation, the Investigating Officer shall record in the case diary their description in detail, noting the following points:-
(a). their descriptions;

(b). the extent of prevailing light at the time of the offence (daylight, moonlight,flashing of torches, burning kerosene, electric or gas lights, etc.,);
(c). details of opportunities of seeing the accused at the time
of the offence; anything outstanding in the features or conduct of the accused which impressed him (identifier);
(d). distance from which he saw the accused; and
(e). the extent of time during which he saw the accused.

When a parade has to be held for the identification of a person or persons by a witness such person or persons shall be carefully kept out of the view of the witnesses, and mingled with a considerable number of other persons of a like class.

Identification parades shall be conducted by a Judicial Magistrate at the Jail as far as possible. While making arrangements for the parade, the Police Officers should completely efface themselves, leaving it to the Magistrate to conduct the actual identification proceedings.

The accused should as far as possible be mingled with persons of similar description, status, build and age in the proportion of a minimum of 1:5 and a maximum of 1:10, and they must be made to take their positions along with the persons with whom they are mingled up in a line. They should not be made to stand together. The Magistrate or other persons conducting the parade should satisfy himself or themselves that no Police Officer takes part in the actual identification proceedings, that witnesses are kept out of view from the premises where the parade is taking place and that it is not possible to communicate with them by signals or other communications. Witnesses should then be called in, one by one, and they should be asked to go round the persons assembled for the parade and point out the accused, if any. If the identification is held by a Magistrate the proceedings should be drawn up and signed by him. Statements made by the identifying witness during the identification parade should be recorded in the proceedings. Even if a witness makes a mistake, it should

be recorded. In short, the proceedings must contain a complete record of all that takes place in the identification parade. After the identification by one witness is over, care should be taken to see that the witness does not mingle or communicate with the other witnesses for whom identification parade is yet to be conducted or other outside persons and the whole parade will be reshuffled and the accused made to take different positions. If the accused so desire, they should be allowed to change their dress also. The same procedure will be repeated in the case of other witnesses also. Any well-founded objection by any accused during the identification parade should be recorded. After the completion of the identification parade and the drawing up of the proceedings, a certificate must be appended as follows and signed by the Magistrate who conducted the Test Identification Parade.

(1). "I, the undersigned, took all necessary precautions, and am satisfied that no Police Officer was present at any time of the proceedings, when the parade was held.
(2) No opportunity was given to the witnesses to see or know about the proceedings of the parade." The proceedings of an identification parade cannot be used as evidence against accused persons, unless the Magistrate who recorded it has been called as a witness.

Since the identification parade is held in the Jail, the following should be ensured:-
(1). the Jailor on admission of the suspect should be informed of the coming identifications;
(2). the Jailor should prohibit any change in the appearance of the prisoner from that in which he was admitted to jail, e.g., beard not to be shaven or grown and the same clothes to be worn as at the time of the entry;
(3). the conducting officer should keep a detailed record of the proceedings;
(4). if any person injured and admitted into a hospital is an in-patient, the Investigating Officer should ascertain in writing from the concerned medical authority whether the injured is in a fit condition to identify his assailants;
(5). if the medical authority certifies that the injured is in

a fit condition to be present at parade and also to identify, the Investigating Officer should arrange for the identification parade without any loss of time;

(6). if, for such parade, the injured cannot be taken near a Police Station, court or such other place, the parade should be held in the premises of the hospital itself;

(7). if, on the contrary, the concerned medical authority certifies that the injured is not in a fit condition to be present at a parade and identify his assailants, the Investigating Officer should wait till such time as may be necessary and only

after the medical authority issues the necessary certificates, arrange for the parade; and

(8). if the injured is certified to be not fit to be present at a parade and to identify his assailants and the parade therefore, cannot be held, evidence should specifically be adduced in the court explaining all the reasons why the parade could not be held.

SALIENT POINTS TO BE REMEMBERED

The following are the salient points to be borne in mind by Police Officers arranging identification parades:-

(1). Warn the accused person that he will be put up for a parade and he could keep himself veiled;

(2). Secure the services of a Magistrate for holding an identi

fication parade; If this is not possible, secure two or move respectable and independent persons of the locality to hold the parade; do not select persons already known to the

identifying witnesses to stand along with the suspects in the parade; arrange for the identification parade immediately an accused is arrested. There should be no delay.

(3). when one accused is arrested in a case in which more than one accused is required to be identified, do not postpone the parade of the arrested accused, till the others are secured. As each accused is arrested, go on arranging for the parade.

(4). other persons participating in the parade should be of the same build, age, dress and appearance as the suspects;

(5). maintain a minimum proportion of 1;5 and a maximum proportion of 1;10, distribute the accused among others. They should not be made to stand together;
(6). keep the accused out of the view of the witnesses and take precautions to prevent their being seen by others from the time of their arrest, if they are to be put up for identification parade subsequently;
(7). shuffle the persons in the parade after identification by each witness and make a record of having done so in the proceedings;
(8). in respect of each accused persons are required to be identified, the innocent persons mixed up with one accused at one parade, should not be mixed up with another accused at a second parade. They should be changed, with every change of an accused person.

AIR 2016 SUPREME COURT 1844: Shiek Sintha Madhar alias Jaffer alias Sintha, etc V STATE BY Inspector Of Police With Shahjahan v.state. (Para 16) – section 9 Indian Evidence Act – Holding of joint T.I.Parade- validity- There is no invariable rule that two accused persons cannot be made part of same TIP- Joint TIP would thus in no manner affect validity of TIP.

IDENTIFICATION BY PHOTOGRAPHS

(1). Photographs of certain classes of criminals are maintained
in the District Crime Record Bureau and the Police Stations (History Sheets) Photographs exist also for dossier criminals. Witnesses may be shown the photographs and asked to identify. In cases where criminals are identified through photographs, a regular identification parade should also be held after the apprehension of the accused.

(2). When identification is sought to be made through photographs, single and individual photographs should not be shown to witnesses. Photographs of as many persons as possible, among which should be the suspect’s photograph, should be

shown to the witness, who should be asked to pick out from among them the suspect's photograph, if it is there.

Note:

It shall be ensured that the photograph of the accused who is to be identified is not published in the print media, nor exhibited in the electronic media before the conduct of the Test Identification Parade. (TIP).

IDENTIFICATION THROUGH FINGER AND FOOT IMPRESSIONS

Identification can also be established from finger impressions
left on the scene. Finger impressions found on the scene can be developed and tested to find out whether they tally with those of the suspected persons or not. Foot impressions left on the scene can also be lifted and compared later with foot impressions of the suspects.

PREVIOUS CONVICTION OR ACQUITTAL, HOW PROVED
As prescribed by Section 298 of the Cr.P.C. a previous acquittal can be proved by a certified extract from the court record and the previous conviction either by such extract or by a certificate from the jailor or the warrant of commitment together with evidence in each of such cases, as to the identity of the accused persons with the person so acquitted or convicted.

IDENTIFICATION OF PROPERTY

The procedure for conducting Identification of property proceedings is envisaged under Rule 35 of Criminal Rules of Practice, which envisages as follows:

35. Identification of property: - (1) Identification parades of properties shall be held

in the Court of the Magistrate where the properties are lodged.

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or five similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not be allowed to communicate with the witness not yet called in.

(1) During investigations it may sometimes be necessary to conduct test identifications of articles involved in criminal cases.

(2) It should be noted that –
(a) a test identification of properties which do not bear any special marks of identification is of immense value in enhancing the credibility of identification evidence in court; and
(b) a test identification of properties which bear definite marks of identification is not necessary.

(3) When a witness states that he can identify properties connected with a case under investigation, the following should be ascertained:-
(a). their descriptions and other marks of identification,
(b). the circumstances under which he had previously seen them,
(c). the several occasions during which he had previously handled them, and
(d). any other relevant circumstances,

The following procedure should be followed in holding a test identification of property;
(1). Ascertain and record whether or not at the time of the sale, there was any

bargaining.The purchase of the property at a much lower price than its market price on the relevant day without any bargaining will be indicative of the receiver's intention and of the nature of the transaction.

(2). The date, time and place of such transactions should be clearly ascertained and recorded in the case diary.

(i). The date will help to establish the interval between the date of theft and date of sale.
(ii). If the time and place of the transaction are unusual, they will help to establish that the transaction was not bonafide.
(3) Make a clear record in the case diary, of the following:
(a). the nature of the article
(b). age of the seller,
(c). his status in life
(d). his social group,
(e). age of the receiver,
(f). his status in life

(i). These circumstances will again help to establish that the transaction was not bonofide but dishonest.
(ii). Remember that the sale of a valuable article by an ordinary person which is beyond his means or of a jewel not worn by the members belonging to his social group, is an indication to the received that the seller has come by it by dishonest means.
(iii). There is a similar indication when an young boy sells a valuable article

(4). Make a clear record in the case diary and the search list of the places from which and how the stolen property was recovered. Evidence that the stolen property was buried under ground or was concealed in the walls or secreted in back yards or

houses, etc., will help to establish the receiver's belief as to the nature of the property.

(5). During the investigation, please do not fail to collect evidence about the previous and subsequent conduct of the receiver especially on the following points;
his expression of anxiety –
(i). before the search of his house
(ii). at the time of the search, and
(iii). after the search;

When questioned by you about the stolen property, his attempts –
(i). to remove such property,
(ii). to gain time to do away with it,
(iii). to prevent or obstruct you from making a search and recovering it,
(iv). to refuse to open the door of his house to facilitate search,
(v). to refuse to produce the key of a box or safe from which stolen property is subsequently recovered,
(vi). to run away with the stolen property,
(vii). to eradicate identification marks, and
(viii). to tamper with the form of stolen articles.
(6). If the received has already done or got done any of the acts described in (vi) to (viii) of sub Clause (b) of clause -5, collect evidence of witness es to prove such acts
(7). Attempt to collect evidence about
(i). the display of the seller's anxiety in the presence of the receiver to get rid of the property by some means or the other; and
(ii). his conduct in the presence of the receiver to avoid being seen with the property and others.

Such conduct on the part of the seller gives indication to the receiver of the nature of property received by him.

(8). Collect evidence of previous convictions of the receiver for receiving stolen property.

Such conviction will be helpful to prove the state of mind of the receiver in his trial.

VERIFICATION OF DESCRIPTION GIVEN IN THE CASE DIARY

(9). After the identification parade of person or property is held, proceedings are drawn up and received by the Investigating Officer, it should be verified and ensured that description of such identified person or property tallies with the description recorded in the case diary.

The Investigating Officer should remember that the Magistrate who recorded the Identification Parade of the accused person (s) is cited as a witness in the memo of evidence to speak about the conduct of the Identification Parade and to mark the report of the parade.

CRIMINAL MISCELLANEOUS PETITIONS

1) The meaning of Criminal Miscellaneous Petitions in general cull out from the dictionary and in practice is " a formal expression of request submitted by way of an application filed before the criminal court in or otherwise in the criminal proceedings on different actions of reliefs for some privilege, right, benefit or for an action". In general Criminal Miscellaneous Petition is an application filed into the Court for seeking a specific relief.

2) The Criminal Miscellaneous Petitions are one of the important task of the

Magistrate/Judge in the criminal courts. The filing of Criminal Miscellaneous Petitions will start even before registering the case by way of Anticipatory bail application. The Criminal Miscellaneous Petitions may be filed even at the inception of a criminal proceeding, during the criminal proceedings or after conclusion of the same. The Courts must cautious while dealing with these petitions with regard to their maintainability on the point of jurisdiction.

3) The orders passed in these petitions are mostly interim in nature, some of the petitions are for specific purpose and some period either interim or final. When a petition is filed seeking interim relief, it is registered as Criminal Miscellaneous Petition. A memo filed before the court of law need not be treated as a petition. The main difference between petition and memo is that memo is nothing but brining a fact to the notice before the court of law and no relief can be sought for in a memo, however, where a petition is filed requiring some relief from the court, a notice to opposite party is mandatory in most of the cases.

4) When a miscellaneous petition is filed a criminal cases, it is registered as Criminal Miscellaneous Petition. As soon as a petition is filed, primary duty of the court is to see whether the relief sought is provided under the Criminal procedure Code or not. If it is provided, petition shall be called in court by assigning a miscellaneous number and notice shall be ordered to the opposite party. Having heard both the parties, a detailed order has to be pronounced. In a day to day, criminal courts come across several Criminal Miscellaneous Petition seeking different reliefs.

5) When a petition is filed under section 239 of Criminal Procedure Code in a Magistrate Court and under Section 227 of Criminal procedure Code in a court of Sessions, seeking discharge of accused from the warrant case or Sessions case, before allowing that petition, the Court has to see whether there is any prima facie case appears against the accused. The court has to find out whether or not allegations made are groundless so as to order discharge. The court is not expected to go deep into the matter and hold material would warrant a conviction. What needs to be consider is whether there is a ground for presumption that offence has been committed and not where ground for convicting the accused has been made out.

6) When a petition is filed before the Magistrate of I Class Court, seeking discharge of accused in a case exclusively triable by the Court of Sessions, the Magistrate cannot discharge the accused, in view of the decision reported in AIR 1978 SC 514 in between Sanjay Gandhi vs. Union of India. A criminal petition for discharge of accused in summons case is not at all maintainable. It was held by the Hon'ble Supreme Court of Indian in a case in between A.Prasad vs. Rooplal Zindal reported in AIR 2004 SC 4674 that " a criminal miscellaneous petition for discharge of accused in summons case is not at all maintainable" Because there is no question of discharge in summons cases. Discharge of accused in summons case amounts to recall of summons which is not permissible under law. It was held by Hon'ble Supreme Court of India in a decision reported in AIR 2008 SC 1903 in between Hemachandar vs. State of Jharkhand that " when a petition is filed seeking for discharge of the accused,

the court cannot look into the documents produced by the accused.

7) Petition filed by the accused under Section 309 of Criminal Procedure Code, where a witness is present in a court but a party or his advocate is not present or the party or his advocate though present in a court , is not ready to examine or cross examine the witness, the court may, if it thinks fit , record the statement of witnesses and pass such orders as it thinks fit dispensing with the examination of witness in chief or cross examination of that witness as the case may be. Trial Court cannot be permitted to flout the mandate of Sec.309 (1) of Criminal procedure Code, unless the court has very cogent and strong reasons. No court is permitted to adjourn the examination of witnesses who were in attendance beyond the next working day.

It was held in Thampi Vs. State of Kerala reproted in 1994(1) ALT -Criminal -69, that " Order of Sessions Judge directing Advocate of accused to deposit an amount of Rupees one thousand for adjourning a Sessions trial at his instance to be paid to witnesses present as day costs – Not legal. Power of Court to adjourn proceedings on such terms as it thinks fit" does not include power to direct Counsel to pay costs. Counsel cannot be identified or equated with that of a party . When witnesses are present, adjournment shall not be granted without examining them except for special reasons to be recorded in writing. Engagement of Counsel in another case not a special reason for adjourning the trial when witnesses are present. Advocate seeking adjournment can be asked to cross examine witnesses. If he is unwilling, accused can be asked to cross examine. If both of them do not avail opportunity without adequate

reasons, Court can record " no cross" and proceed with case.

8) Section 310 of Criminal procedure Code. In some cases the accused comes with a petition under section 310 of Criminal Procedure Code by praying the Court to make a local inspection in some cases any judge or Magistrate may, at any stage of the inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place in which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant fats observed at such inspection. Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him on free of cost.

9) In some cases, the accused comes with a petition under section 310 of Criminal procedure Code by praying the court to make local inspection, but it is not desirable for the court to do so. In a decision held in between Vathadu Venkanna vs. State of Andhra Pradesh, our Honourable High Court held that " local inspection by presiding officer is not at all a step in a criminal proceedings in normal parlance".

10) Generally we come across with petitions filed under section 311 of Criminal procedure Code by praying the court to recall witnesses who were already examined, power under Section 311 of Criminal procedure has to be exercised to find out the

truth render a just decision of the case.

11) When the prosecution filed a petition under section 319 of Criminal Procedure Code, praying the Court to proceed against other persons other than the accused who are facing trial, the court can pass orders basing on the examination in chief itself, there is no need of giving an opportunity to the proposed accused for cross examination, which was held in a case in between Gangadhar Nandagiri Swamiji vs. State of Uttar Pradesh reported in 2002 (1)ALD 680.

12) In some occasions, the accused used to file petitions under section 91 of Criminal Procedure Code to summon the documents. At the time of framing charges, the court has to examine the material which is produced by the prosecution and it cannot summon any document at the instance of accused, the same was held by the Hon'ble Supreme Court of India in a case in between State of Odisha vs. Devendranath Padi

13) In cases relating to applications for return of case property for interim custody , the court pass an order for interim custody after ascertaining the ownership of that property with a direction to produce the same as and when required or directed by the Court.

14) In addition to the above Criminal Miscellaneous Petitions , another important Criminal Miscellaneous Petition used to be filed by the accused in criminal cases are

bail applications filed under Section 436 of Criminal Procedure Code and Sec.437 of Criminal Procedure Code before the Magistrate Court and Sec.438 of Criminal Procedure Code and Sec.439 of Criminal Procedure Code before the Sessions Court for seeking the bail against the accused who is in judicial custody . Under Section 436 of Criminal Procedure Code, Sec.437 and Sec.439 of Criminal Procedure Code seeking bail applications against the accused who is in judicial custody seeking protection from arrest under section 438 of Criminal Procedure Code. There is a separate topic in this workshop for discussion about the bails, Anticipatory bail. Therefore, there is no need to refer anything more in respect of the bail applications.

RECORDING OF DYING DECLARATION

(I) IMPORTANCE OF DYING DECLARATIONS:

01. Dying Declaration is a legal concept refers to the effect that the statement which is made by a dying person explaining the circumstances of his death.

The word Dying Declaration itself tells the meaning. A statement by a person who is conscious and knows that death is imminent concerning what he believes to be the cause or circumstances of his death. A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that their about to die “do not lie”. As a result, it is an exception to the general rule “hear say”, which prohibits the use of a statement made by some one other than the person who repeated it while testifying during trial.

02 **Section 32(1) of the Indian Evidence Act** deals with the admissibility of dying declaration, which reads as follows:

Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable are themselves relevant facts in the following cases:

(1) When it relates to cause of death:- When the statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases, in which the cause of that persons' death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. So, recording of dying declaration becomes very important.

(II) MANNER OF RECORDING DYING DECLARATIONS:

01. **Rule 33 of Criminal Rules of Practice** deals with the manner to be followed by the Magistrate while recording Dying Declarations: It reads as follows:

While recording a Dying Declaration, the Magistrate shall keep in view the fact that the object of such declaration is to get from the declarant the cause of death or the circumstances of the transaction which resulted in death.

Before taking down the declaration, the Magistrate shall disclose his identity and also ask the declarant whether he is mentally capable of making a declaration. He should also put simple questions to elicit answer from the declarant with a view to knowing his state of mind and should record the questions and answers, signs and gestures together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.

The declaration should be taken down in the words of the declarant as far as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.

After the statement is recorded, it shall eb read over to the declarant and his signature obtained thereon, if possible, and then the Magistrate shall sign the statement.

02. Rule 33 of Criminal Rules of Practice itself says about the precautions to be taken by the Magistrate while recording the Dying declarations. They are as follows

1. The Magistrate shall disclose his identity to the declarant first.
2. He shall ask the declarant whether he is mentally capable of making a declaration.
3. He shall ask simple questions to elicit answers from the declarant to know his state of mind.
4. Magistrate shall record questions and answers, signs and gestures together with his own conclusion.
5. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.
6. The declaration should be taken down in the words of the declarant as far as possible.
7. The Magistrate should try to obtain from the declarant the particulars necessary for identification of the accused.
8. Every question put to the declarant and every answer or sign or gesture made by declarant in reply shall be recorded.
9. After recording statement, it shall be read over to the declarant and his signature should be obtained thereon if possible.

03. Our Honourable High Court in a decision "**P. Srinivasulu Versus State of Andhra Pradesh"** reported in **"2004 Law Suit (AP) 121"** observed that:

"In the present case, as the deponent was unable to put the thumb mark since her hands were burnt, her toe mark was taken. The Court can always take judicial note of the fact that there used to be a practice previously prevailing of taking toe marks when it was not possible to take thumb impressions of the hands of the deponent. By mentioning the word 'signature', it causes considerable inconvenience to the Magistrate and creates a doubt whether he can take thumb impressions of the deponent or toe marks. Under the said circumstances, I am of the considered view that the Rule itself requires amendment and it should be clarified that in case of illiterate persons, and when a person is unable to put the signature, thumb marks can be obtained. It shall also be stated that in case hands were burnt, the toe marks could be taken. It is a matter to be considered by the High Court to bring about amendment to the necessary Criminal Rules of Practice and Circular Orders, 1990"

(III) WHO CAN RECORD DYING DECLARATIONS:

01. Rule 33 of Criminal Rules of Practice casts duty on Magistrate to record the Dying Declarations. Sub Rule (d) of Rule 2 of Criminal Rules of Practice says "*Chief Judicial Magistrate"* includes the Chief Metropolitan Magistrate,m "*Magistrate*" includes the Metropolitan Magistrate, and "*Special Magistrate*" includes Special Metropolitan Magistrate. So, under Rule 33 of Criminal Rules of Practice, Judicial Magistrate is empowered to record the Dying Declarations. However, in some parts of the Country, Executive Magistrates are recording the Dying Declarations.

02. In case of non-availability of the Magistrate and in view of the urgency, some times the Dying Declarations recorded by the Police Officers and the Medical Officers working there, the Courts are accepting the Dying Declarations recorded by the Police Officers and the Medical Officers.

03. The proper method for recording dying declaration by a Magistrate or a doctor or a police official is that they should see that the declarant is in a fit state of mind to give declaration. If the declarant is not in a fit condition to give statement, the Magistrate should not proceed further beyond making a note that the declarant was not in a fit condition to give statement. The endorsement of the duty doctor is also equally important.

Some relevant case laws:

The deceased must be in a fit state of mind and capable of making a statement at the time of recording of dying declaration **AIR 2001 SC 2383.**

Prior to recording of statement of deceased, the doctor shall do a thorough and professional assessment of physical and mental condition of the patient. **1998 Crl.LJ 585.**

Dying declaration is not mandatorily required to be recorded by any Magistrate or particular person. However, it is normally accepted that such declarations would be recorded by Magistrate or by doctor to eliminate chances of any doubt of false implication. **2010 AIR SCW 5494**.

More sanctity is attached to a dying declaration recorded by Magistrate since the recording of dying declaration by a Magistrate assures the Court that the statement has been correctly understood and truthfully recorded by an impartial person. **2010(3) SCC (Crl.) = 2010 AIR SCW 5993.**

At the time of recording of dying declaration as far as possible the language used by maker of declaration should be used. **(1999)3 Mah. LJ 581 (DB) Bomaby.**

Dying declaration cannot be rejected merely because it was recorded in other

language than that deposed by deceased 2001 Crl.LJ 3780.

The prosecution should specifically bring on record that deceased had heard the statement recorded by Executive Magistrate and she admitted it to be true and correct. This is not mere formality but an essential part while recording the dying declaration. **2000 (2) Mah. LJ 3 (DB) Bombay.**

The Magistrate who had recorded dying declaration and the doctor who certified about the condition of the deceased out to be summoned as a witness **2000(2) ALT (Crl.) 448.**

Where Magistrate was not present at the time of recording of statement of deceased and statement recorded by the Head constable was fully convincing, it can be safely relied upopn. **AIR 1997 SC 234**.

Statement recorded by police officer is reliable when evidence of doctor w`as showing that the deceased was fit to making statement at that time **AIR 1983 SC 164.**

Although a dying declaration could not be rejected on the ground that in absence of any other person available it was recorded by a police officer as the deceased was in a critical condition, the dying declaration was left out of consideration as it contained a statement which was a bit doubtful **AIR 1979 SC 1173.**

Where police personnel who recorded dying declaration did not mention time required for recording it and did not obtain medical certificate on completion of recording of dying declaration that the victim was conscious such dying declaration was not reliable. **2010(3) AIR Bomb. R.27 (DB).**

Where doctor apprehended that the injuries could result into death of deceased and therefore he sent for Magistrate to record dying declaration but the Magistrate was

reported to be out of town, the doctor was most capable and authorized person to record the dying declaration. The dying declaration recorded by doctor after certifying that deceased was in full senses and the statement was read over to him and on which after fully understanding the deceased had put his thumb impression, is itself sufficient to base conviction of accused. **1991 All (Crl.R.)303.**

Where dying declaration recorded by doctor was suffering from infirmities and also it was uncorroborated by other evidence, conviction solely on basis of such dying declaration was not proper. **1995 Crl.LJ 2412. (DB) (Orisha)**

Conclusion:

So, the role of Magistrates in recording dying declarations is very important.

BAILS

Bail:- literally the expression 'Bail' denotes a security for appearance of a prisoner for his release. Bail is not defined in the code of criminal procedure. As per the Whartons Law Lexicon ' Bail' means to set at liberty a person arrested on security being taken for his appearance.

Roget's Thesaurus of English words and Phrases defines bail as sucurity, surety or guarantee etc.,

According to **Shorter Oxford English Dictionary** bail means temporary release from imprisonment on finding sureties or security to appear for trail.

OBJECT:-

The object of the bail is secure the attendance of the accused at the time of the trail, as the accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself in the trail than if he is in custody. However the purpose of bailing out before the trail is to secure the presence of the accused when required, when there is the hardship of incarceration before the guilt

has been proved. While the presumption of innocence is to be given effect to in other words. The act of arrest directly arrest the freedom of movement of person arrested. An order of bail gives back the accused that freedom, on condition that he would appear to takes his trail and that the proper test to be applied for the solution of question whether bail should be granted or not, is whether it is possible that the party will appear to take his trail.

Therefore, the effect of granting bail is, accordingly not to set the prisoner free from jail or custody, but release him from the custody of law and to entrust him to the custody of his sureties who were bound to produce him to appear at his trail.

The UN Declaration of Human Rights of 1948, the concept of bail formerly pierced into the arena of personal liberty. It is constitutional bull work is to be found in Article 21 of the Constitution of India, 1950 which also sub sums the spirit of Clause 12 of the Magna Carta. It was practiced in India through the procedural jurisprudence of bail. Accordingly, an application for bail in essence meant invoking a process for once right to the safety of life and limb, as well as, for insulating once self against the depredations of authority upon enjoyment of once personal liberty. The administrators of Law and Justice, in this changed context, are mandated to function in a manner that the constitutional equilibrium between the *"freedom of person"* and *"interest of social order"* are maintained effectively.

The broad principles specified by the Law commission, on the subject of bail are:
- bail is a matter of right if the offense is bailable
- bail is a matter of discretion if the offense is non-bailble
- bail is not be granted if the offense is punishable with death or imprisonment for life, but the court has got discretion in limited cases to order release of the person.

The law commission has also stated that even in respect of offences punishable with death or imprisonment for life, the sessions court and the High Court ought to have

even a wider discretion in the matter of granting bail.

Blackstone :- defines bail as :- *" A delivery or bailment, of a person to his sureties upon thier giving sufficient security for his appearance."*

Types of Bails:-

Admission to bail:- Order of court of Magistrate that an accused person be discharged from custody upon taking bail. Admission to bail necessarily and essentially implies the substitution of the custody of the detaining authority by the control of the bail (Surety) into whose hands the person bailed is delivered. As held in M.Abbas Vs The Crown (PLD 1950 Sindh 80 (pak))

Anticipatory bail:- An order of anticipatory bail constitutes an Insurence against police custody following upon arrrest for offence or offences in respect of which the order is issued. As held in Gurubaksh Singh Sibbia Vs State of Punjab AIR 1980 SC 632. The object of U/S 438 Cr.P.C. is to prevent undue harassment of the accused person by pre-trail arrest and detention.

The fact that a court has either taken cognizance of the complaint or the investigating agency has filed a charge sheet would not by itself prevent the courts concerned from granting anticipatory bail, in appropriate cases. As held in Bharat Choudhary Vs State of Bihar, 2003(8) SCC 77.

Backed for bail:- describing a warrant for arrest issued by magistrate or by the crown court to a police officer, directing him to release the accused upon arrest on bail under a specified conditions. The police officer is bound to release the arrested person if his sureties are approved.

Continuous Bail:- bail granted by a Magistrates court directing the accused to appear

at every time and place to which the procedings my from time to time by adjourned as apposed to a direction to appear at the end of fixed period of remand

Fix bail:- To set the amount and terms of bail.

Interim Bail:- The courts possess jurisdiction to release an accused on interim bail pending final disposal of the bail application. No hard and fast rule can be laid down in this regard. However few illustrations can be given when it would be proper to grant such release.

1) offence of trivial in nature in which bail generally granted.

2) Women, children, minors and aged persons of 70 years or more should invariably released on interim bail.

3) Students whose examinations are to commence should also be given interim relief.

4) cases in which accusations appear to be frivolous or malafidee.

But release on interim bail in no ground for grant of bail, which has to be made only on merits. However, it may not be desirable to grant interim bail in cases punishable with death except with death. Except to women, children, minors, aged persons offences under TADA, case of Narcotic Drugs, offences committed by organized gangs are habitually criminals. As held by Hon'ble Apex Court in case of Hazupeer bux Vs State of U.P. 1993 Cr.L.J.3574

Jump Bail:- failure of the accused to appear in the court at the appointed time even after furnishing a bail bond and promising to appear.

Justifying bail:- demonstrating to a court granting bail that one is capable of meeting

the surety specified in the bail (for example disclosing once financial resources) a person standing surety for bail must be able to provide the bail out of his own resources. It is a criminal offence for a defendant who is granted bail to agree to indeminify his surety against any laws arising out of standing surety.

Main Prise Bail:- manhood makes this difference between main prise and bail. He that is main prised is said to be at large after the day is said to main prise, untill the day of his appearance; but where a man is left to bail by any judge etc., until a certain day, there he always accounted by the law to be in their ward of time; and they may;if they will ; keep him in prison so that he that is so bailed shall not be said to be at large or at his own liberty.

Perfecting Bail:- A Phrase used to signify the completion of the proceeding where by persons tendering themselves as sureties for the appearance of a party in court on a day assigned or admitted in that capacity. When they have established their pecuniary sufficiency.

Released on Bail:- Released on bail "as used in criminal practice relating to the accused who had been released on bail". Implied that the person so released is not in prison after such release.

Straw Bail:- A worth less surety, a bail and bail common.

Special Bail:- Bail to the action, given a security to abide the event.

Temporary Bail:- The court which has authority to try an issue and grant a relief has authority and jurisdiction to consider and dispose off all incidental questions pertaining to it. If a court has a authority to decide bail matter, has authority to consider a temporary bail or parole or dealing with the custody of the accused and manner of it till the required material is collected. The same view was held by

Hon'ble Supreme Court in the case of Raisa Begum Vs State of U.P. 1995 Crl.L.J. 1067(All).

BAIL AND ANTICIPATORY BAIL

The distinction between bail and anticipatory bail is that where as the bail is granted after arrest and therefore means release from the custody of police. Anticipatory bail is granted in anticipation of arrest and is there fore effective at the very movement of arrest. The same view was held by Hon'ble Supreme Court in the case of

Gurubaksh Singh Sibbia Vs State of Punjap AIR 1980 SC 1632.

State of A.P. Vs Bimal Krishna Kundu AIR 1997 SC 3589

RELAVANT PROVISIONS UNDER CODE OF CRIMINAL PROCEDURE :

Section.436. In what cases bail to be taken.—(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, 1[may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

2[Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

Provided further that nothing in this section shall be deemed to affect the provisions

of sub-section (3) of section 116 3[or section 446A].

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

[436A. Maximum period for which an undertrial prisoner can be detained.—Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

Section.437. When bail may be taken in case of non-bailable offence.—1[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or

appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of 2[a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that the shall comply with such directions as may be given by the Court:]

3[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, 4[the accused shall, subject to the provisions of

section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) 5[the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any 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 any police officer or tamper with the evidence,and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its 6[reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

If, at any time after the conclusion of the trial of a person accused of a non-

bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Section.438. Direction for grant of bail to person apprehending arrest.—1[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:—

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith

cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.]

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including—

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any 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 any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

Section.439. Special powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

Section.446. Procedure when bond has been forfeited.—(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,

or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited,

the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation.—A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code:

1[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, 2[after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.

[446A. Cancellation of bond and bailbond.—Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by

one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient.]

GRANTING OF BAIL WHEN ILLEGAL :

The personal liberty of an individual can be cured by the procedure established by law and the CrPC is one such procedure. The law permits curtailment of liberty of anti social and anti national elements and Art. 22 of the Constitution casts certain obligations on the authorities in the event of arrest of an individual accused of the commission of crime against society or the nation. The court is called upon to decide whether to release the accused on bail or to commit him to prison and this decision has to be taken having regard to the nature of crime, the circumstances in which it was committed, the background of the accused, the possibilities of his release on the prosecution witnesses and its impact on the society.

Normally the Hon'ble Supreme Court does not interfere with an order granting bail, but considering the exceptional circumstances, the Hon'ble Supreme Court exercised its jurisdiction under Art. 136 in view of the judicial discipline.

DEFAULT BAIL OR STATUTORY BAIL

Sec. 167 CrPC contemplates the procedure when the investigation cannot be completed in 24 hours. Before proceeding further, it is better to know the rights of the person arrested U/s. 56 and 57 CrPC.

Sec. 56 CrPC speaks that the person arrested to be taken before the magistrate or officer in charge of police station.

Sec. 57 CrPC speaks that the person arrested not to be detained more than 24 hours.

If Secs. 56 and 57 CrPC have to be read together and also with Art. 22(2) of the Constitution, it is clear that the constitutional and legal requirements to produce an arrested person before a judicial magistrate within 24 hours of the time of arrest is mandatory.

Though a limit of 24 hours is allowed, there is no absolute right to keep in custody till that period and in no case can a police officer detain for a minute longer if he can send the accused to a magistrate at once except upon some reasonable ground.

THE SCOPE AND APPLICATION OF SEC. 167 CrPC

It appears from Sec. 57 CrPC and the opening words of this section that it is contemplated that after a person is arrested without a warrant, an investigation by the police ought to be completed within 24 hours.
When (1) the investigation cannot be completed within 24 hours[Sec. 57]; and (2) there are grounds to believe that the charge is well founded it is obligatory upon the investigating officer, under Sec. 167, to produce the accused with a copy of his dairy [U/s. 172 CrPC] before the nearest judicial magistrate (with or without jurisdiction) for a remand to custody to enable him to continue or complete investigation. Production before the magistrate within 24 hours of arrest is a fundamental right of accused under Art. 22 of the Constitution of India.

The word “remand” is not defined. But it connotes “ a re-committal to custody of a person who has been brought up in custody”.

The word “remand” does not occur either in Sec. 167(2) CrPC or in Sec. 437 CrPC. It only occurs in Sec. 309 CrPC.

Sec. 167(2) CrPC authorises the magistrates (1) for detention of the accused from time to time; (2) whether the magistrate has or has not jurisdiction to try the case; (3)

for a term not exceeding 15 days in the whole, provided that :
the magistrate may authorise the detention of the accused person beyond the period of 15 days, but not magistrate shall authorise the detention of the accused person in custody for a total period exceeding (i) 90 days, when the investigation relates to an offence punishable with death imprisonment for life or imprisonment for a term of not less than 10 years.

(ii) 60 days, when the investigation relates to any other offence; and on the expiry of the said period of 90 days or 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail, and every person released on bail under the above said provision shall be deemed to be released under the provision of Chapter XXXIII of CrPC.

From the above reading, it is clear that the police has to complete the investigation and to file the report as prescribed by this section i.e. within 90 days or 60 days.

The provisions under Sec. 167(2)(i)(a) CrPC creates an indefeasible right to an accused person on account of the default of the investigating agency in completing investigation within the maximum period prescribed to seek an order for his release on bail.

An obligation is cast upon the court to inform the accused of his right of being released on bail and enable him to make an application in that behalf. It is a settled principle of law that the right to compulsive bail does not survive after filing of charge sheet and it is the abundant duty of the court to examine the availability of the right to compulsive bail on the date it is considering the question of bail and not barely on the date strengthen of petition for bail and that " the date on which the accused remanded to judicial custody should be excluded" and the day on which the charge sheet is filed in the court should be included.

How to calculate the period whether the charge sheet filed within the time or not is clarified by the Hon'ble High Court of A.P. In a decision reported in 1994 Crl.L.J. at page 2579 between veledi purnam vs. State.

LAND MARK JUDGMENTS RELATING TO BAILS:-

Hussainara Khatoon and ors. Vs Home Secretary, State of Bihar, Patna

at para No.7 the Honble Supreme Court in its Order dated.26-02-1979 in W.P.NO. 57 OF 1979 was pleased to held:-

" It would, therefore, be seen that the undertrail prisoners against whomcharge sheets have been filed by the police within the period of limitation provided in sub-section (2) of Section 468 can not be proceeded againt all and they would be entitled to be released forthwith as their further detention would be unlawful and in violation of their fundamental right under Article 21."

In the same case the Hon'ble Supreme court in its Order dated 09-03-1979 at para No.6 1979 AIR 1369, 1979 SCR (3) 532 *pleased to held that:-*

"We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nation-wide legal service program to provide free legal services to them. It is now well settled, as a result of the decision of this court in Maneka Gandhi v. Union of India that wen Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, heave to through the trail without legal assistance, cannot possible to regarded as ' reasonable,fair, and just'. It is an essential ingredient of reasonable, fair and just

procedure to a prisoner who is seek his liberation through the court's process that he should have legal services available to him.”

In Moti Ram and ors Vs State of Madhya Pradesh, 1978 AIR 1594, 1979 SCR (1) 335

the Hon'ble Supreme Court was pleased to held at para No.17 that:-

“ The vice of the system is brought out in the Report” The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trail detention. Both these consequences are fraught with great hardship to the poor. In one case the the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trail and convictionand this leads to grave consequences. Namely: 1) though presumed innocent he is subjected to the psychological and physical deprivations of jail life; 2) he loses his job, if he has one, and is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily on the innocent member of the family; 3) he is prevented from contributing to the preparation of his defence; and 4) the public exchequer has to bear the cost of maintaining him in jail (Report of the Legal Aid Committee appointed by the Government of Gujarath, 1971 and headed by the then Chief Justice of the state, Mr. Justice P.N. Bhagwati, p.185)

in the same Order at paraNo.18A. The Hon'ble Supreme Court held that:-

“ Again we should suggest that the magistrate must always bear in mind that monetary bail is not a necessary element of the criminal process and even if risk of monetary loss is deterrent against fleeing from justice, it is not only deterrent and ther are other factors which are sufficient deterrents against flight. The Magistrate must abandon the antiquated concept under which pre-trail release could be ordered only

against monetay bail. That concept is out-dated and experince has shown that it has done more than good."

On the aspect of granting bail by High court or court of Session to the persons accused of non-bailable offence:-

In the case of State Vs Captain Jagjeeth Singh, AIR 1962 SC 253:1962 (1) Crl.L.J215:- the Hon'ble Suprement court was pleased held that:-
Gurucharan Vs State (Delhi Administration)AIR 1978 SC 179 : 1978 Crl.L.J.129
State Vs Veera Pandey, 1979 Cr.L.J.455 Mad.
Niranjan Vs Prabhakar, 1980 Crl.L.J 426 (SC)

On the aspect of likelihood of fleeing from justice and tampering with the prosecution evidence:-

G.Narasimhulu Vs Public Prosecutor, A.P. 1978 Crl.L.J 502(SC): AIR 1978 SC 429
The Hon'ble Appex court was pleased to held that:-

If there is likelihood of accused fleeing from justice, no bail should be granted. If a person has been convicted and sentenced to death there are chances of his not presenting in the court if his appeal is dismissed, Consequently, High court, should be andis reluctant in granting bail to persons convicted and sentenced to death, specially when the evidence is right. Other strong ground for rejecting bail is chances of by the accused tampering with the prosecution evidence.

Vishwanath Keshav Vs State , 1980 Crl.L.J 943 (Goa)

Granting of bail in a non-bailable offence is discretionay:-

Granting of bail in a non-bailable offence is discretionay, but discretion must be exercised juidcially. The principle to guide the court is probality of accused appearing

to take trail and not his supposed guilt or innocence.

As held in the case of *N.Iboton Singh Vs U.T. Of Manipur, AIR 1969 Mani.6: 1969 Crl.LJ.128 and also in the case of G.Narasimhulu Vs Public Prosecutor, A.P. 1978 Crl.L.J 502(SC): AIR 1978 SC 429*

Distinction between Ordinary Bail Vis-a-Vis Anticipatory Bail:-

The power exercisable under section 438 is some what extraordinary in character and it is only in exceptional cases where it appears that the person may be falesely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power is to be exercised under Section,
held in D.K.Ganesh Babu Vs P.T. Manokaran, AIR 2007 SC 1450 at 1452: 2007 Crl.L.J. 1827.

Rejection of bail by High Court-Power of lower court to grant bail:-

Generally when the High court has rejected bail, the subordinate courts have no power to grant bail. But if new circumstances have come into existence, the lower courts have power to grant bail even after the High court has rejected it.
Held in Bohre Singh Vs State, AIR 1956 All 671 : 1956 Crl.L.J.1275.

Accused in custody for two years-Released with conditions:-

where accused was in custody for two years. Trail was being postponed on adjournments. Delay in trail was not because of accused's fault. Further as trail was not likely to be concluded soon, hence accused was released on with conditions:- as held in *Abdul Basar Laskar Vs State of West Bengal, 2005 Crl.L.J.2737 (Cal):*

Bail to minor, woman, sick and infirm by magistrate:-

Choki Vs State, AIR 1957 Raj 10: 1957 crl.L.J 102.

The circumstances where bail not to be granted:-

In the following circumstances bail should not be granted:-

1. when there is chance of tampering, but the mere allegation is not enough. There must be material to prove that the witnesses may be tampered with-
   held in Mang Karai Vs State AIR 1967 Tri 32 : 1967 Cr.L.J.1704
   in case of State Vs Mahbub, AIR 1956 Bom.548.

2. When there is likelihood of the accused absconding. In proof of absconding, the past conduct of the accused has to be seen.
   Held in Pramode Chandra Vs State AIR 1969 Tri 42: 1969 Crl.L.J.1534.

   State Vs Mohd. Hussain, AIR 1968 Bom 344 : 1968 Crl.L.J 1231.

Who can cancel bail:-

Sub-Section (5) authorieses a Magistrate granting bail to cancel it. It must be remembered that under this section bail may be cancelled only by the court who has granted it. A successor Magistrate is the same court and so he can cancel bail.

Held in Dhena Suren Vs State, 1977 Cr.L.J. 781

A court to whom a case is transferred can cancel the bail.
Emperor Vs Rautmal, AIR 1940 Bom 40

CONCLUSION:- Thus bail is not a charity of the court when a right accrued to the accused over a period of time which must be given effect judiciously.

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