Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.618 OF 2024(F)
WITH
CRIMINAL WRIT PETITION NO.619 OF 2024(F)

CRIMINAL WRIT PETITION NO.618 OF 2024(F)

Chowgule and Company Pvt. Ltd.
Through Authorized Representative
of Mr. Harsh Shah, aged 25 years,
Having address at Chowgule house,
Mormugao Harbour, Goa-403803 .....PETITIONER

Versus

1) The Public Prosecutor,
State of Goa, Margao-Goa

2) The Police Inspector,
Sade Police Station,
Mormugao — Goa

3) Pradip Mahatme,
H. No. 8/65A
Near Telephone Exchange,
Altinho, Panaji, Goa ....RESPONDENTS

WITH
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Versus

1) The Public Prosecutor,
State of Goa, Margao-Goa

2) The Police Inspector,
Sade Police Station,
Mormugao — Goa

3) Vijay Chowgule
Chowgule House, Baina,
Vasco Da Gama, Goa-403802 ....RESPONDENTS

Mr. Rizwan Merchant, Mr. Gaurish Agni, Mr. Ramiz Shaikh, Mr. Nihal Kamat, Mr. Harshil Gandhi and Mr. Kishan Kavlekar, Advocates for the Petitioner.

Mr. Shailendra Bhobe, Public Prosecutor along with Mr. Nikhil Vaze, Additional Public Prosecutor for Respondent Nos. 1 and 2

Mr. Shivan Desai, Mr. Varun Bhandanker and Ms. Maria Viegas, Advocate for the Respondent No.3 in WPCR (F) No.618/2024.

Mr. Parag Rao, Mr. Akhil Parrikar, Ms. Sowmya Drago and Mr. Ajay Menon Advocate for Respondent No.3 in WPCR(F) No. 619/2024

CORAM: BHARAT P. DESHPANDE, J.

RESERVED ON: 01st August, 2024

PRONOUNCED ON: 02nd August, 2024

JUDGEMENT

1. Heard Mr. Rizwan Merchant along with Mr. Gaurish Agni,

Mr. Ramiz Shaikh, Mr. Nihal Kamat, Mr. Harshil Gandhi and

Mr. Kishan Kavlekar, learned Advocates for the Petitioner; Mr. Shailendra Bhobe learned Public Prosecutor along with Mr. Nikhil Vaze, Additional Public Prosecutor for Respondent Nos. 1 and 2; Mr. Shivan Desai along with Mr. Varun Bhandanker and Ms. Maria Viegas, learned Advocates for the Respondent No.3 in WPCR (F) No.618/2024 and Mr. Parag Rao along with Mr. Akhil Parrikar, Ms. Sowmya Drago and Mr. Ajay Menon, learned Advocates for Respondent No.3 in WPCR(F) No. 619/2024

2. Both these petitions are taken up together as it raises the same grounds and the prayers in connection with two anticipatory bail applications filed by the Respondents arising out of the same First Information Report (FIR).

3. Rule.

4. Rule is made returnable forthwith.

5. Both the matters are taken up for final disposal at the admission stage itself with the consent of the parties as it raises an important question regarding the interpretation of the new laws introduced by the Parliament which came into effect from 01.07.2024.

6. In the above petitions, the interpretation with regard to the provisions of the New Act/Code i.e. 'Bhartiya Nagarik Suraksha Sanhita 2023', and more particularly, the repeal provision under Section 531 of the said Sanhita is under consideration.

7. The Petitioners in both these petitions is a Private Limited Company who filed a complaint against the Private Respondent on the allegations that said Private Respondents committed offences punishable under Sections 409, 420, 477A r/w 120-B of the Indian Penal Code (I.P.C. for Short). The First Information Report was registered on 14.06.2024 by the Economic Offences Cell Goa.

8. The Private Respondents/Respondent No.3 preferred an application for bail in anticipation of arrest under Section 438 of Criminal Procedure Code, 1973 before the learned Sessions Court Panaji, which was filed on 19.06.2024. While dealing with such application and on 20.06.2024, the learned Sessions Judge North Goa Panaji granted ad-interim bail to Respondent No. 3 till the next date, i.e. on 24.06.2024. The Petitioners filed an intervention application before the learned Sessions Court at

Panaji on 24.06.2024 by opposing the bail application. Similarly, the Petitioner filed a Miscellaneous Application in the said bail matter on 25.06.2024 thereby raising maintainability of bail application before Panaji Court for want of territorial jurisdiction.

9. It so happened that on 05.07.2024, learned Sessions Court North Goa Panaji allowed the preliminary objections raised by the Petitioner thereby holding that the said court is not having jurisdiction. However, while deciding such aspect, learned Session Judge Panaji granted protection to the Respondent No.3 for a period of 72 hours.

10. The Respondent No. 3 then preferred an application for bail in anticipation of arrest before learned Session Court at South Goa Margao on 06.07.2024. On the same day, the Respondent No.3 prayed for an ad-interim protection, however, the Court observed that since learned Sessions Judge Panaji granted such protection for a period of 72 hours which continued while filing the application for bail no further order is necessary and issued notices. However, on 08.07.2024, the Petitioner

intervened in the said application before learned Session Judge South Goa Margao which application was kept pending as on date. Learned Sessions Court at Margao vide impugned order dated 08.07.2024 granted interim bail to Respondent No.3 which is challenged under the present proceedings.

11. Mr. Merchant learned counsel appearing for the Petitioners strenuously urged that first of all new Code, herein after referred as 'Bhartiya Nagarik Suraksha Sanhita, 2023' ('BNSS' 2023 for short) came into force from 01.07.2024 and as per the repeal provisions, Code of Criminal Procedure, 1973 (Cr.P.C. 1973 for short) stands repealed. He would submit that from 01.07.2024, no proceedings under the repealed Code could be entertained including an application filed by Respondent No.3 under Section 438 of Cr.P.C. 1973.

12. Mr. Merchant would further submit that the interim protection granted by the learned Sessions Judge Panaji automatically came to an end when the application was presented for grant of bail in anticipation of arrest before South Goa Court and more specifically when no interim protection was

granted or continued, as on 06.07.2024. He would therefore, submit that entertaining any application under Section 438 of the Code of 1973 by the learned Sessions Court at South Goa Margao is itself erroneous. He submits that such application ought to have been rejected at the inception itself as not maintainable since by that time all the procedure which was available prior to 01.07.2024 stands repealed and the effect of such repeal is that provisions of code of 1973 are not on statute book. He would submit that any application for grant of bail in anticipation of arrest on or after 01.07.2024 must be under the provisions of BNSS 2023 and more particularly under Section 482. He submits that the Petitioners filed an application for intervention before the Session Judge at South Goa which is now kept for arguments and orders. However, allowing interim bail during pendency of main application is itself without jurisdiction.

13. Mr. Merchant would submit that there is no provision or scope under Section 482 of BNSS to grant any interim protection or any interim bail. Such protection cannot be inferred or looked

into when the Legislature in its full wisdom did not incorporate such provision of ad interim bail, though, it was available under Section 438 of Code of 1973. He submits that the intention of taking away such power has to be looked into and the Court cannot interpret what is not given under the said provision even by considering inherent power.

14. Mr. Merchant would submit that Section 531 of BNSS will have to be read with Section 358 of 'The Bhartiya Nyaya Sanhita, 2023' (BNS 2023 for short). He would submit that the BNS 2023 also repeals all the provisions of the Indian Penal Code 1860 and therefore, both the provisions will have to be read together.

15. Mr. Merchant would then submit that the word investigation as referred to in Section 358(2)(d) of BNS 2023 will have to be taken into consideration only with regard to penalty/punishment that too after the entire trial is over. He submitted that the saving clause is limited to the part of the investigation with regard to penalty and punishment but not otherwise. According to him the repeal provisions clearly goes to show that no provisions of the repealed Code shall be in force

from 01.07.2024 and the investigation is also required to be conducted from 01.07.2024 as provided under BNSS 2023. In other words, Mr. Merchant submits that even though the FIR is registered on 14.06.2024 and the investigation commenced as per the code of 1973, it has to continue only up to 30.06.2024 but from 01.07.2024, even investigation shall be conducted under the provisions of BNSS 2023. He tried to elaborate this submission on the ground that the object and reasons of BNSS 2023 are loud and clear and there are certain chapters added with regard to Scientific and technical investigation. He also submits that such investigation also expands beyond the territories of India and therefore, the FIR which has been lodged against Respondent no.3 will have to be conducted by investigating as per the provisions of BNSS of 2023. He submits that if there are any additional offences carved out during the investigation, the same must be investigated as per the provisions of BNSS 2023 and such additional offences could be on the basis of BNS 2023 and not under the provisions of IPC 1860. He further submitted that the Evidence Act is also now

repealed and its place a new 'The Bhartiya Sakhsya Adhiniyam, 2023' is introduced which also came into effect from 01.07.2024.

16. The main thrust of Mr. Merchant is on the entertainment of application under Section 438 of the Code of 1973 by the learned Sessions Court and by granting ad interim relief in terms of interim bail. While relying on various decisions on the interpretation as well as on the repeal of the provisions, he would submit that there is no question of reviving earlier orders which has been tried to be resorted by the learned Sessions Court. The intention of Legislature in BNSS 2023 clearly shows that there is no power to grant any interim bail. Even otherwise, when the application under Section 438 of the Code of 1973 is not maintainable, the learned Sessions Court was not empowered even to grant interim bail under the repealed provision.

17. Mr. Merchant would submit that there is no question of considering the application for bail in anticipation of arrest filed under Section 438 of the Code of 1973 to an application under Section 482 of BNSS 2023. When the provision itself does not

exist, the power to exercise the jurisdiction under such provision cannot be exercised.

18. With regard to interpretation of the provisions, Mr. Merchant claimed that internal and external aids are required to be taken into account and that the parliament while enacting BNSS 2023 clearly avoided to include the power of grant of interim bail under Section 482 of BNSS, it cannot be read into it by taking aid of the decisions.

19. Mr. Merchant while elaborating his submissions also claimed that if such power is considered as existing for grant of interim anticipatory bail, then even incase of regular bail, the Accused would apply for interim bail during pendency of regular bail application filed under Section 439 under the Code of 1973 or even under the provisions of BNSS 2023. Such interpretation would lead to absurdity.

20. Mr. Merchant would further submit that procedural law though could be applied retrospectively there is no vested right to grant interim bail to an accused under the provisions of BNSS 2023.

21. Mr. Merchant would submit that the object and reason in enacting BNSS 2023 is to bring transparency in investigation, trial and all other proceedings in a time bound frame. However, it is the experience that such investigation is hampered and delayed due to ad interim protection granted pending bail in anticipation of arrest. Such proceedings were protracted and kept pending for months together, with a purpose to avoid joining investigation and thereby destroying valuable evidence in the meantime. A conscious decision taken by the legislature not to incorporate any provision of interim bail in BNSS 2023 which has to be respected by the Court. He submits that the Court cannot read between the lines which is not intended to be incorporated by the legislature.

22. The following decisions are referred by Mr. Merchant, learned counsel for the Petitioner: ***(a) State of Uttar Prades Vs. Mohd. Afzal & Ors., in Criminal Appeal No. – of 2023 arising out of SLP(Crl.) No. 6740 of 2022 dated 18.07.2023, (b) Bipinchandra Parshottamdas Patel Vs. State of Gujarat and Others, (2003) 4 SCC 642,***

(c)Krishna Joshi Vs. State of Rajasthan, though Director General of Police Headquarters, Rajasthan Jaipur, 2024:RJ-JD:27741; (d) Abhishek Jain Vs. State of U.T. Chandigarh and anr.,CRM-M-31808-2024 decision dated 11.07.2024,(e) Abdul Khader Vs. State of Kerala order in CRL.A no.1186 of 2024 dated 15.07.2024;(f)S.Rukmini Madegowda Vs. State Election Commission and Others, 2022 SCC OnLine SC 1218;(g) Pernod Ricard India (P) Ltd., Vs. the State of Madhya Pradesh & Ors., 2024 LiveLaw (SC) 321;(h) Prince Vs. State of Government of NCT Delhi &Ors.,(2023) 300 DLT 714.

23. Per contra, Mr. Shivan Desai learned Advocate appearing for Respondent No. 3 in WPCR. 618 of 2024(F) would submit that quoting wrong provisions of law would not in any manner preclude the concerned Court from considering the application for grant of bail in anticipation of arrest under the correct provisions though the Code of 1973 is now repealed, since similar provision by way of Section 482 under BNSS 2023 which could be considered for deciding the application.

24. Besides, Mr. Desai would submit that the filing of bail application is itself during investigation and once the investigation is saved under the repealed code, application filed under Section 438 of the Code of 1973 is also saved.

25. Mr. Desai would submit that the provisions of Section 531 of BNSS are in *pari materia* of the old Code 1973 and more specifically Section 484 of the Old Code and therefore the provisions will have to be governed when a specific saving clause exist. He submits that the pending investigation under the old code of 1973 is clearly saved under the saving clause of Section 531 of BNSS. Thus, when FIR was registered on 14.06.2024, the investigation commenced under the Code of 1973 and such investigation has to be considered as pending investigation as on the date of 01.07.2024, when BNSS 2023 came into effect. Mr. Desai would submit that the word 'pending' clearly means what was going on as on the date BNSS 2023 came into force. He would further submit that the allegations against Respondent No. 3 is clearly with regard to the offences concluded prior to filing of the FIR and that too under the Indian Penal Code which

is also saved by the provisions of BNS 2023 and more specifically by Section 358 in Chapter XX dealing with repeal and savings.

26. Mr. Desai would submit that earlier bail application was admittedly filed under Section 438 of Code of 1973 and though it was withdrawn from the Sessions Court at Panaji, separate application was filed before the session Court South Goa Margao by mentioning in the title itself that such application is under Section 438 of the Code of 1973 or under Section 482 of BNSS of 2023.

27. Mr. Desai would further submit that it is well settled proposition of law that if the Court is having power to grant final relief in the form of bail in anticipation of arrest the Court is also having power to grant interim relief. For that purpose, there is no requirement of such power to be mentioned in the particular Section as it is inherent power to grant any relief till the application is decided on merit.

28. Mr. Desai would further submit that though under Section 482 of BNSS, there is no mention of any power to grant interim relief likewise there is no restriction on the Court. He therefore

submits that the interpretation has to be for advancing justice and not scuttling the provisions. He submits that liberty of a person is of utmost importance as provided under Article 21 of Constitution of India which cannot be curtailed except by the procedure established by law. When BNSS provides power to grant of bail in anticipation of arrest, such power must be interpreted of having inherent power to grant interim relief otherwise application itself would become infructuous in case the accused or the applicant is arrested before finally deciding the application.

29. Mr. Desai placed reliance on the flowing decisions: ***Natabar Parida Bisnu Charan Parida Batakrusna Parida Babaji Parida Vs. State of Orissa (1975) 2 SCC 220, (b)Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & ors.(1994) 4 SCC 602;(c) Pragya Singh Chandrapalsingh Thakur Vs. State of Maharashtra (2017) SCC Online Bom 493, (d) Lal Kamlendra Pratap Singh Vs. State of U.P. & Ors. (2009) 4 SCC 437, (e) Sukhwant Singh & Ors. Vs. State of Punjab (2009) 7***

SCC 559; (f) Manorati Mukund Gaude & Ors. Vs. Guru Sheddu Gaude & Ors., (Writ Petition No. 102 of 2024), (g) Sakiri Vasu Vs. State of Uttar Pradesh (2008) 2 SCC 409 and Dr. Ashok Shrawan Bawaskar Vs. National Medical Commission, (2022) 4 Mah LJ 691; (h) Gurbaksh Singh Sibbia & Ors. Vs. State of Punjab (1980) 2 SCC 565.

30. Mr. Parag Rao learned Advocate appearing for Respondent No. 3 in WPCR. 619 of 2024(F) would submit that by filing a complaint dated 08.04.2024 and by registering an offence on 14.06.2024 by the Economic Offences Wing, investigation commenced under the provisions of Cr.P.C. 1973 and with the connection of the offences allegedly committed by the Respondent/Accused persons under the provisions of IPC. He would submit that the allegations in the complaint clearly goes to show that the offences were committed much prior to the date of registration of the complaint and such offences were completed and accordingly the relevant provisions/Sections of IPC were invoked. He, therefore, would submit that the

collection of evidence during investigation must be under the provisions of Cr.P.C. and not under BNSS 2023.

31. Mr. Rao would submit that Section 4 of BNSS 2023 deals with trial of offences which are referred to as an offence under the BNS 2023 and not under IPC. He therefore, would submit that by way of saving clause in the repeal Section, investigation is clearly saved as if, the provisions of Cr.P.C. are still in force.

32. Mr. Rao would further submit that the purpose of considering the anticipatory bail application will have to be looked into, qua the offences alleged against Accused persons which are basically covered under Indian Penal Code and not under BNS 2023.

33. Mr. Rao would further submit that the offences alleged against the Respondents are squarely covered under the provisions of IPC and are made cognisable under the Schedule I of Cr.P.C. Thus, investigation which commenced immediately on registration of FIR as provided under Section 154 of Cr.P.C., the investigating agency is entitled to invoke the provisions of Section 41 of Cr.P.C. for the purpose of carrying out arrest of the

accused if required and that too without warrant. Such arrest would certainly be a part of investigation which is saved under the provisions of Repeal Section of BNSS 2023 and therefore, even Section 41 of Cr.P.C is applicable to the matter in hand. He would further submit that if it is considered that the arrest shall govern under Section 41 of Cr.P.C., the Respondents are also entitled to avail their right to protect their liberty by filing application under Section 438 of Cr.PC. and not under the provisions of Section 482 of BNSS 2023. He would further submit that the Court will have to consider *inter alia* the nature and gravity of accusation, the role of accused, the possibility of tampering, the availability of the accused at the time of Trial, etc. while considering either regular bail or bail in anticipation of arrest.

34. Mr. Rao would further submit that even if it is considered that the application for bail in anticipation of arrest has to be under the provisions of Section 482 of BNSS 2023, such provision being *pari materia* with Section 438 of Cr.P.C, implied in it the power to grant ad interim bail during pendency of such

application. In this respect, he also placed reliance on the decisions cited by Mr. Desai including the decision of the Constitutional Bench in the case of ***Gurbaksh Singh (supra).***

35. Mr. Rao would submit that the power under Section 438 of Cr.P.C. and now of Section 482 of BNSS 2023 which are *pari materia* are widely couched and no unnecessary restrictions should be read into, more particularly when the intent is to protect life and liberty which is a cherished goal of the Constitution and traceable to Article 21 of the Constitution of India. He would submit that the object and purpose of bail in anticipation of arrest is to avoid unnecessary harassment, and curtailment of liberty, by allowing the accused to participate in the investigating process on certain conditions.

36. Mr. Rao would submit that the Legislature with intent avoided putting any particular provision for the grant of interim bail in the provision of Section 482 since the Legislature is well aware of the settled proposition of law that the power to grant final reliefs includes the power to grant interim relief.

37. Mr. Rao placed reliance on the following decisions: ***(a) Gurbaksh Singh Sibia and Ors. Vs. State of Punjab (1980) 2 SCC 575, (b) Sakiri Vasu Vs. State of Uttar Pradesh and Ors., (2008) 2 SCC 409, (c) Shail Kumari Devi and Anr. Vs. Krishan Bhagwan Pathak, (2008) 9 SCC 632, (d) Manorati Mukund Gaude & Anr. Vs. Guru Sheddu Gaude & Ors., W.P. No.102/2024; (e)Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Anr.(2016) 1 SCC 152***

38. Mr. Shailendra Bhobe, the learned Public Prosecutor appearing for the State while supporting the contentions raised by Mr. Shivan Desai and Mr. Parag Rao further elaborated that original Section 438 of Cr.P.C. introduced in the year 1973, is *pari materia* with provision of Section 482 of BNSS 2023. He would therefore submit that the interpretation of Section 438 by the Constitutional Bench in the case of ***Gurbaksh Singh (supra)*** would apply to Section 482 of BNSS 2023 with full force.

39. Mr. Bhobe would submit that the amendment brought in the year 2005 to Cr.P.C. and mainly to Section 438 (1) though was inserted by the Amendment 2005 was never notified till date. He would therefore submit that such amendment by Act 25 of 2005 to the Code of Criminal Procedure has not been brought on the statute book since no effective date was notified and thus it remains only on in the Amendment Act without making it as a provision which is applicable or becoming a law.

40. Mr. Bhobe submits that subsequently such amendment was introduced by some of the States by way of State amendment and one of such State is the State of Maharashtra. Thus, according to Mr. Bhobe, the original Section 438 is *pari materia* with Section 482 of BNSS of 2023. In both these provisions there is no disclosure of powers to grant ad interim bail pending the decision of the main bail application. However, when the Apex Court and that too a Constitutional Court observed that the Sessions Court or the High Court while dealing under Section 438 of Cr.P.C . is having such power, it implied in this the power to grant ad interim bail.

41. Mr. Bhobe would then submit that once such power is implied in the Act itself, the question whether the application is filed either under Section 438 of Cr.P.C. or under Section 482 of BNSS 2023 would make no difference.

42. Mr. Bhobe would further submit that in Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, there is specific bar to entertain anticipatory bail application, however, in spite of this, the Apex Court has observed that under certain circumstances the Sessions Court or the High Court is entitled to entertain application in anticipation of arrest. Accordingly, the power cannot be restricted to curtail the jurisdiction of the Court when such curtailment is not mentioned by the Legislature.

43. Mr. Bhobe placed reliance in the case of ***Dr. Sameer Narayanrao Paltewar Vs. State of Maharashtra***, dated ***21.082021 in Criminal Application (APL) No. 393 of 2021*** that "*it is perhaps for this reason that such an amendment never found its way in Section 438 pf the Cr.P.C., as applicable to the other parts of the country.*"

44. In rejoinder, Mr. Merchant while reiterating his earlier submission would submit that the investigation must continue after 01.07.2024 under the provisions of BNSS 2023 including the offences if found during the investigation. He would further submit that the decision in case of ***Gurbaksh Singh (supra)*** cannot be relied upon as a dicta since such observations are within the specific power of the Apex Court under Article 142 and the same were completely on different context. He submits that the discussion in the case of ***Gurbaksh Singh (surpra)*** are only regarding final decision in the anticipatory bail application and not on any interim application.

45. With the able assistance of the learned counsel appearing for the respective parties and after going through the entire record, decisions, provisions, or the relevant Acts, the points for determination are as under together with my findings against it:-

> Point No.1- In a case where an FIR is lodged/registered prior to 01.07.2024, what could be the procedure of investigation that is whether it should be continued under the

provisions of Cr.P.C. 1973 or under the provisions of BNSS 2023.

Point No.2- Whether bail application filed by Respondent No.3 on 06.07.2024 would be governed by the provisions of Section 438 of Cr.P.C. or by Section 482 of BNSS 2023.

Point No. 3- If it is observed that such bail application has to be considered under Section 482 of BNSS 2023, whether the Court is empowered/having jurisdiction to grant ad interim bail pending decision of the main bail application.

POINT NO.1

46. Firstly, I would like to discuss whether the investigation in the present FIR could be governed by the provision of Cr.P.C. or under the provision of BNSS 2023. In this regard, Section 531 which deals with repeal and savings, reads thus:-

531. Repeal and savings. -(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have

been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.

47. A plain and simple reading of this provision and more particularly the saving clause ie. Sub Section 2(a) as quoted above would clearly go to show that the pending investigation immediately before the date on which the said 'Sanhita' comes into force shall be disposed of/continued, held or made as the case may be in accordance with the code of Criminal Procedure 1973 as in force immediately before such commencement as if this Sanhita has not come into force.

48. Thus the saving clause in Section 531 of BNSS 2023 clearly and unambiguously save the investigation pending prior to commencement of the BNSS 2023. The wordings in sub Section 2(a) of Section 531 of the BNSS 2023 would make it clear, that even such pending investigation shall be disposed of, continued, held or made as the case may be in accordance with the Code of Criminal Procedure 1973.

49. Admittedly, BNSS 2023 came into effect from 01.07.2024. The FIR in the present proceedings was lodged admittedly on 14.06.2024 which was registered as FIR no. 1 of 2024 before the Economic Offences Cell for offences punishable under Section 409, 420, 477A r/w 120-B of IPC.

50. Thus, the investigation commenced immediately on registration of FIR as provided under Section 157 of the Code of Criminal Procedure which provides about the procedure for investigation. The officer incharge of the Police Station on receipt of information of a cognisable offence or he has reason to suspect commission of an offence which he is empowered under Section 156 to investigate shall forthwith send a report to the

Magistrate empowered to take cognisance and shall proceed in person or shall depute one of his sub ordinate officer not below such rank as the State Government may by general or special order prescribe in this behalf to proceed, to the spot, to investigate the fact and circumstances of the case and if necessary, to take measures for the discovery of the arrest of the offender. Such investigation must continue as provided under the provisions of the Cr.P.C. under the Chapter XII till submission of the report of the Police Officer under Section 173 of Cr.P.C to the concerned Court.

51. Thus, on registration of the FIR no.1/2024 on 14.06.2024 i.e. prior to the provisions of BNSS 2023 coming into force, the investigation began and was pending. Such pending investigation is clearly saved under the provisions of Section 531 of the BNSS 2023 as quoted above. Such investigation must conclude under the provisions of Cr.P.C., as if provisions of BNSS 2023 are not on the Statute Book or had not come into force.

52. In the case of ***Krisha Joshi (supra)***, the Rajasthan High Court while dealing with a similar petition observed in para 6 that if the FIR is registered prior to 01.07.2023 under the provisions of Cr.P.C it would amount to the pending inquiry/investigation within the meaning of Section 531(2)(a) of BNSS 2023 and thus, entire subsequent investigation and even the trial procedure qua such a FIR shall be then governed by CrPC and not under BNSS.

53. We are only concerned in this petition with regard to conclusion of investigation or continuation of investigation under the provisions of Cr.P.C. and not with regard to the trial or appeals etc. The observations of Rajasthan High Court only to the effect that the subsequent investigation must conclude under the provisions of Cr.P.C., has to be considered and the same is required to be accepted for deciding the present proceedings.

54. In the case of ***Abhishek Jain (supra)*** the Punjab and Haryana High Court after discussing various decisions of the Apex Court clearly observed that the provisions of BNSS 2023 shall apply only with effect from 01.07.2024 but not to prior

proceedings including pending investigation, applications, trial, appeals, etc. It is clearly observed that only pending proceedings should be continued and disposed of in accordance with the provision of Cr.P..C. 1973.

55. In the case of ***Prince (supra)*** the Delhi High Court endorsing a similar view but in a different context observed that the bail application filed in case FIR was registered prior to 01.07.2024, shall be governed by the provisions of Cr.P.C.1973, however, petition filed after 01.07.2024 will have to be governed by the BNSS 2023. The Delhi High Court observed that the petition could be considered as filed under Section 482 of BNSs 2023.

56. In the case of ***Abdul Khader (supra)*** the Kerela High Court considered the question of filing of appeal on 10.07.2024 as objections were raised with regard to the applicability of provisions of criminal procedure code 1973 or that of BNSS 2023. In that context it has been observed that when an appeal is filed after 01.07.2024, the same has to be under the provisions of BNSS 2023 and not under the provisions of Cr.P.C. 1973.

57. Though, all the above judgments were referred by MR. Merchant he was trying to canvass that the investigation will have to be carried out under the provisions of BNSS after 01.07.2024. With respect, I am not inclined to accept such contention for the simple reason that the saving clause under Section 531 (2) (a) in clear and unambiguous terms saved the provisions of Cr.P.C. 1973 with regard to pending investigation. The contention of Mr. merchant cannot be accepted for the purpose of continuing investigation partly under Cr.P.C. and thereafter, from 01.07.2024 under the provisions of BNSS.

58. In the case of ***Pernod Richard India Limited (supra)***, the Apex Court considered the distinction between supersession of the rule and substitution of the rule and observed that the process of substitution consists of 2 steps- (i) the old rule is repealed and the next, a new rule is brought into existence in its place. While considering various decision of the Apex Court, para 13 it is observed that the operation of repeal or substitution of a statutory provision is thus clear, a repealed provision will cease to operate from the date of repeal and a

substituted provision will commence to operate from the date of its substitution. This principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, the substituted provisions which operates prospectively, if it affects vested rights, subject to statutory prescription can also operate retrospectively.

59. The above observations are infact supporting the contention raised by the Respondent for the simple reason that while repealing provisions of Cr.P.C 1973, the Legislature in its full wisdom protected the pending investigation, applications, inquiry, appeals, etc. to be governed by the repealed Act as if the provisions of BNSS 2023 had not come into force. Thus, while repealing the old Act, the provisions of the repealed Act are saved and shall continue to apply to the transactions that have commenced before the repeal. Admittedly, registration of FIR in the matter is before the provisions of BNSS 2023 came into effect.

60. Thus, by such a saving clause which is construed to be an internal aid for the purpose of construction of a statute, save the provisions of the old Code/repealed Code for certain categories of investigation, inquiry, appeals, application etc.

61. In the case of ***Bipinchandra (supra)*** it has been held that a statute is to be construed according to the intent of the legislature as the golden rule of interpretation of the statute is that it has to be given its literal and natural meaning. The intention of the Legislature must be found out from the language implied in the statute itself. The question is not what is supposed to have been intended but what has been said. The Court is not concerned with the reasons as to why the Legislature thought it fit to lay emphasis on one category then the rest. This principle would certainly apply to the matter in hand with full force. The provision of repeal and savings under Section 531 of BNSS with clear and unambiguous terms express the intention of the legislature which is found in the language implied therein. Thus, what has been stated in the said provision will have to be considered in its letter and spirit. When there is no ambiguity,

the plain meaning of such provision will have to be taken into account.

62. In the case of ***Natabar Parida (surpa)***, the Apex Court while discussing the provisions of Section 167(2) of Cr.P.C. observed that an occurrence took place on 08th March 1974 which resulted in filing FIR on 09.03.1974 and accordingly the police investigation started for the offence punishable under Section 147, 148, 307, 302 r/w 149 f IPC. The Accused persons were arrested by the Police during the course of investigation on 10.03.1974 and 14/03/1974, respectively. The said Accused person were produced before the magistrate for remand from time to time. The learned Sessions Judge released 4 Accused persons on bail but refused to grant bail to others. An argument was raised that in accordance with the provisions of Section 167(2)(a) of Cr.P.C. 1973 that the remaining Accused persons are entitled to bail in default for filling of Chargesheet within time was rejected. The Apex Court observed that the provisions of Cr.P.C. 1973 came into force from 01.04.1974 and Section 484 (1) deals with repeal and saving clause of the old Code of

Criminal Procedure 1898. While dealing with this aspect, the Apex Court observed that immediately before 01.04.1974, the investigation into the FIR was pending and thus, as per the saving clause (a) enjoins that the said investigation shall be continued or made in accordance with old Code provisions. (1898). The police officer conducting investigation has to continue and complete it in accordance with the provisions of old Code, and Section 167 of the Code of Criminal Procedure, 1973 could not enable the Magistrate to remand the Accused persons to Jail custody during the pendency of the investigation. Even the aid to Section 344 of the old Code would not be helpful. In such decision, the Apex Court observed that remaining Accused persons were not entitled to claim benefit of Section 167 (2) (a) of Cr.P.C. 1973 for claiming default bail.

63. Above observations in the case of ***Natabar Parida (supra)*** are squarely applicable to the Facts and circumstances of the matter in hand as far as conducting of pending investigation under the provisions of Cr.P.C. 1973.

64. In the case of ***Hitendra Thakur(supra)*** it is observed in para 26 that A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished. Such observations necessarily apply to the matter in hand since the provisions of BNSS 2023 are procedural in nature and more particularly, to the investigation part, thereby replacing the provisions of CRPC 1973. The Legislature with utmost care and caution provided saving clause under Section 531(2)(a) of BNSS with an intention to avoid any confusion, anomaly or controversy. Therefore, such procedural statute has to be considered as prospective in nature and would not apply to the pending investigation.

65. Similar is the view taken by the Division Bench of this Court in the case of ***Pragya Singh (supra)*** which is found from para 39-41 and mostly relying upon the decision of ***Hitendra Thakur (supra)***.

66. Thus after carefully considering the above decisions of the Apex Court and of this Court and the provisions of Section

531(2)(a) of BNSS 2023 thereby saving the provisions of Cr.P.C. in connection with pending investigation, there is no confusion or even doubt about the fact that provisions of CrPC 1973 would apply with equal force to a pending investigation prior to 01.07.2024. In the present matter, the offences alleged against the Respondents are clearly under the provisions of Indian Penal Code and the FIR was registered even prior to 01.07.2024. The investigation commenced on 14.06.2024 and same was pending as on 01.07.2024 when the provisions of BNSS came into force.

67. It is also necessary to note the specific allegations against Respondent No. 3 which are found in para 12 of the FIR wherein it is claimed that the said Accused persons being the chairman and Financial advisor of CCPL, brought the proposal of establishing a wholly owned subsidiary overseas known as 'Rudra' respectively, having great opportunity in shipping industries and one of the Accused by masterminding the entire operation of 'Rudra' convinced the Board of Director and thereafter, the said 'Rudra' wholly owned subsidiary was incorporated on 31.07.2009 in Europe at the instance of accused

person and thereafter, CCPL consistently infused money and further the Accused person under the false pretext of investment in shipping business advanced unsanctioned and unsecured loans to entirely new entities owned and operated by Accused no. 3 and the loans provided therein were written off thereby causing huge loss to the complainant and CCPL.

68. Thus, it is clear that such offense commenced somewhere in 31.07.2009 by incorporating 'Rudra' as a subsidiary and then transferring money into the said entity from time to time. All the offences alleged against the Accused person had completed and covered under the provisions of IPC and the FIR is registered prior to 01.07.2024. Accordingly, the provisions of Cr.P.C. 1973 shall apply and continue to apply to the investigation carried out by the investigation agency in respect of FIR Nol. 1/2024 registered before the Economic Offences Cell Panaji Goa. Point No. 1 is answered accordingly.

POINT NO.2

69. Point No. 2 would not require any further debate since the provisions of Section 531 of BNSS and the discussion with regard

to the repeal and saving clause would clearly depict that from the date of implementation of BNSS 2023 i.e. 01.07.2024 provisions of Code of Criminal Procedure, 1973 shall be repealed. The saving clause only saves any appeal, application, trial, inquiry or investigation pending as on 01.07.2024. Thus, any application filed as on 01.07.2024 or thereafter shall be governed by the provisions of BNSS 2023 for the simple reason that by that date, the provisions of Cr.P.C. 1973 stands repealed.

70. It is admitted fact that the application for bail were filed by Respondent No.3 only on 06.07.2024 before the learned Sessions Court at South Goa Margao. It is no doubt true that said Respondents/Accused persons earlier preferred bail application before the Sessions Court at North Goa Panaji which they filed on 19.06.2024. However, such bail applications were disposed of as not maintainable or beyond the territorial jurisdiction of the concerned Court by order dated 05.07.2024. The Respondents were granted a period of 72 hours for applying before the concerned Court having jurisdiction. Thus, when the application

filed on 19.06.2024 was disposed of on 05.074.2024, no application was pending before any Court.

71. Admittedly, separate and independent application for bail in anticipation of arrest was filed on 06.07.2024 by the Respondents and therefore as on 06.07.2024, there was no pending application filed prior to 01.07.2024 for the purpose of saving the provisions. It is not the case that the application filed before the Sessions Court at North Goa Panaji was transferred to the Court of competent jurisdiction. The application filed before North Goa Panaji was disposed of on 05.07.2024 on the ground that said Court had no territorial jurisdiction. Thus, once such application is disposed of which was admittedly filed prior to 01.07.2024, second application filed on 06.07.2024 cannot be considered as continuation of the earlier application. The second application filed on 06.07.2024 has to be considered as fresh and separate application.

72. Applying the same analogy while deciding the point no. 1 about the repeal and saving clause under Section 531 of BNSS 2023 it is clear that what is saved is only pending application and

not the applications to be filed subsequent to 01.07.2024, to be governed under the Code of Criminal Procedure 1973.

73. BNSS 2023 is admittedly a procedural law mostly governing the inquiries, investigation, bail, trial, appeals etc. As far as application of bail is concerned, it is a procedure to be followed under a specific Act or Code. Since the provisions of Section 438 of the Code of Criminal Procedure and that of Section 482 of BNSS are *pari materia*, the provisions of repeal would clearly apply to the matter in hand and accordingly, applications filed by Respondent/Accused persons on 06.07.2024 shall govern under the provisions of 482 of BNSS and not under Sections 438 of Cr.P.C.

74. The applications filed by Respondents before the learned Sessions Court at South Goa Margao, would clearly go to show that the same is filed under Section 438 of the Code of Criminal Procedure 1973 or Section 482 of BNSS 2023 which is the title itself. Accordingly, it has to be accepted that the application filed on 06.07.2024 must be considered as an application under Section 482 of BNSS. The answer to point no.2 would be

therefore as held above that such application must be considered as filed under Section 482 of BNSS 2023.

POINT NO.3

75. Point No.3 involves the aspect of power to grant ad interim bail pending main application. Since while deciding point no. 2 it has been observed that the applications filed on 06.07.2024 shall be governed under the provisions of 482 of BNSS 2023, it has to be considered whether the Court while dealing under the provisions of Section 482 of BNSS is having power to grant ad interim bail. Mr. Merchant strongly contended that such power cannot be read into the provisions of Section 482 when it is not found therein. He would submit that the legislature with specific intent avoided to grant such a power to the Court with an object and purpose that the investigation must be concluded with a great speed and it is a fact that if such ad interim bail is granted, the investigating agency is unable to investigate the matter properly and the Accused persons would get an opportunity to destroy material evidence

76. However, the object and reasons of BNSS is to streamline the procedure for arrest, investigation, trial of evidence by fast and efficient justice system for good governance. It is also provided that for the use of technical and forensic sciences in the investigation of crime and furnishing and lodging of information, service of summons etc., through electronic communication as well to provide specific time lines for time bound investigation, trial and pronouncement of judgments. Similarly, it is the object that incase of punishment which is seven years or more, the victim shall be given an opportunity of being heard before withdrawal of cases by the government. A summary trial has to be examined through electronic means through Video conferencing etc., and the Magisterial system has also to be streamlined. However, the objects and reasons of enacting BNSS 2023 has to be looked into along with fundamental rights of a person enshrined under Article 21 of the Constitution of India with regard to his right and liberty. When the question of arrest and grant of bail is required to be

addressed, the provisions of Article of 21 of the Constitution of India are required to be kept in mind.

77. As rightly pointed out by Mr. Bhobe that the provisions of Section 438(prior to amendment of 2005) and Section 482 of BNSS are *pari materia*.

78. In the case of **Dr. Sameer (supra)** learned Single Judge of this Court (Coram: Manish Pitale, J.) has clearly observed in para 23 that the Law Commission of India has specifically referred to the concurrent jurisdiction of the Sessions Court and the High Court in the context of exercise of original jurisdiction under Section 438of Cr.P.C. and after taking into consideration the said aspect, it was found that such an amendment, making presence of the Accused obligatory is antithetical to the right of Accused to anticipatory bail. The Law Commission of India has also recommended that it is conscious of the fact that the State amendment of Maharashtra incorporating Sub Section (4) to Section 438 of Cr.P.C. has already come into effect from the year 1993 and yet a clear opinion is expressed that such an amendment is an antithesis to the right of anticipatory bail. A

recommendation in para no. 7.1 of the Law Commission of India in its 203rd Report submitted in December 2007 recommended that sub Section (1) (b) identically worded to Sub-Section 4 of Section 438 of Maharashtra amendment to CR.P.C must be omitted. It is perhaps for this reason that such amendment (2005 amendment) never found its way in Section 438 of Cr.P.C. as applicable to other parts of the country.

79. It is thus clear that the amendment of 2005 in Cr.P.C. and more specifically inserting clause (1) to (4) in Section 438 was not given effect to, till date. Thus, the original Section 438(1) reads thus:-

> *When any person has reason to believe that he may be arrested on an 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: and that the Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail."*

80. The provisions of Section 482 of BNSS and more particularly, sub-Section (1) is *pari materia* with the provisions of Section 438(1) as quoted above.

81. Thus, as rightly pointed out by Mr. Bhobe, the observations of the Constitutional Bench of the Apex Court in the case of ***Gurbaksh(supra)*** shall apply with full force to Section 482 of BNSS.

82. The contentions of Mr. Merchant that the observation in the case of ***Gurbaksh Singh(supra)*** are under the powers of the Apex Court under Article 142 and the same is case specific and that it shall apply only for the final disposal of the Anticipatory bail, cannot be accepted.

83. The issue involved before the Court as clearly spelt out in para one itself wherein it has been observed that personal liberty and investigation powers of the Police are required to be balanced as a society has vital stake in both these interests. The task which the Supreme Court considered in the said appeals is how best to balance these interest while determining the scope of Section 438 of Cr.P.C. 1973. Thus the interpretation of

Section 438 of Cr.P.C. was discussed, deliberated and decided by the Constitutional Bench and accordingly it is the law laid down by the Apex Court which is binding on all Courts in India under Article 141 of Constitution of India.

84. While dealing with the above Aspect, Section 438 (unamended) as quoted in para 2, as already observed that such provision is *pari materia* with Section 482(1) of BNSS, the observations of the Apex Court in the said decision will apply with full force to Section 482 of BNSS.

85. The Apex Court observed in para 12 that by any known canon of construction, words of width and amplitude ought not generally to be cut down so as to raid into the language of the statute restraints and conditions which the legislature itself did not think it proper or necessary to impose. This is essentially true when the statutory provision which falls for consideration is designed to secure a valuable right like the right to personal freedom and involves the application of a presumption as salutary and deep grained in our criminal jurisprudence as the presumption of innocence. Though the right to apply for

anticipatory bail was conferred for the first time by Section 438, while enacting that provision the legislature was not writing on a clean slate in the sense of taking an unprecedented step, insofar as the right to apply for bail is concerned.

86. Further the Apex Court observed thus:-

> *"The provisions of Sections 437 and 439 furnished a the legislature to copy while enacting Section 438. If it has not done so and has departed from a pattern which could easily be adopted with the necessary modifications, it would be wrong to refuse to give to the departure its full effect by assuming that it was not intended to serve any particular or specific purpose. The departure, in our opinion, was made advisedly and purposefully: Advisedly, at least in part, because of the 41st Report of the Law Commission which, while pointing out the necessity of introducing a provision in the Code enabling the High Court and the Court of Session to grant anticipatory bail, said in paragraph 39.9 that it had "considered carefully the question of laying down in the statute certain conditions under which alone*

anticipatory bail could be granted" but had come to the conclusion that the question of granting such bail should be left "to the discretion of the court" and ought not to be fettered by the statutory provision itself, since the discretion was being conferred upon superior courts which were expected to exercise it judicially. The legislature conferred a wide discretion on the High Court and the Court of Session to grant anticipatory bail because it evidently felt, firstly, that it would be difficult to enumerate the conditions under which anticipatory bail should or should not be granted and secondly, because the intention was to allow the higher courts in the echelon a somewhat free hand in the grant of relief in the nature of anticipatory bail. That is why, departing from the terms of Sections 437 and 439, Section 438(1) uses the language that the High Court or the Court of Session "may, if it thinks fit" direct that the applicant be released on bail. Sub-section (2) of Section 438 is a further and clearer manifestation of the same legislative intent to confer a wide discretionary power to grant anticipatory bail. It provides that the High

Court or the Court of Session, while issuing a direction for the grant of anticipatory bail, "may include such conditions in such directions in the light of the facts of the particular case, as it may think fit", including the conditions which are set out in clauses (i) to (iv) of sub-section (2). The proof of legislative intent can best be found in the language which the legislature uses. Ambiguities can undoubtedly be resolved by resort to extraneous aids but words, as wide and explicit as have been used in Section 438, must be given their full effect, especially when to refuse to do so will result in undue impairment of the freedom of the individual and the presumption of innocence. It has to be borne in mind that anticipatory bail is sought when there is a mere apprehension of arrest on the accusation that the applicant has committed a non-bailable offence. A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, insofar as one may, and to give full play to the presumption that he is innocent. In fact, the

stage at which anticipatory bail is generally sought brings about its striking dissimilarity with the situation in which a person who is arrested for the commission of a non-bailable offence asks for bail. In the latter situation, adequate data is available to the court, or can be called for by it, in the light of which it can grant or refuse relief and while granting it, modify it by the imposition of all or any of the conditions mentioned in Section 437.

87. Finally, the Apex Court in para 42 observed thus:-

42. There was some discussion before us on certain minor modalities regarding the passing of bail orders under Section 438(1). Can an order of bail be passed under the section without notice to the Public Prosecutor? It can be. But notice should issue to the Public Prosecutor or the Government Advocate forthwith and the question of bail should be re-examined in the light of the respective contentions of the parties. The ad interim order too must conform to the requirements of the section and suitable conditions should be imposed on the

> *applicant even at that stage. Should the operation of an order passed under Section 438(1) be limited in point of time? Not necessarily. The court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of an FIR in respect of the matter covered by the order. The applicant may in such cases he directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonably short period after the filing of the FIR as aforesaid. But this need not be followed as an invariable rule. The normal rule should be not to limit the operation of the order in relation to a period of time.*

88. Thus, there is absolutely no need of further discussion in respect of the power of the Session Court or of this Court with regard to grant of ad interim relief pending application for bail in anticipation of arrest. Such power clearly exists as inherent power under the provision of grant of bail. However, it is also clear that even while granting ad interim relief, there has to be a subjective satisfaction of the Court and such ad interim relief should be on certain conditions and not blanket. It is required to

be considered on the premise of Article 21 of the Constitution of India which is clearly traceable with an intent to protect life and liberty of a person and more particularly to avoid unnecessary arrest as well as to avoid any harassment in the hands of investigating agency.

89. The decision in the case of ***Sakeri Vasu (supra)*** which also deals with the powers of the Court to monitor investigation directed by it under Section 156 of Cr.P.C., provide that when the Court is having power to direct registration of FIR, it also got inherent powers to monitor such investigation.

90. In the case of the grant of bail. However, it is also clear that even while granting Ad interim relief, there has to be a subjective satisfaction

91. In the case of ***Shail Kumari Devi (supra)*** the Apex Court was dealing with the provisions of Section 125 of the Cr.P.C. observed that when the Magistrate is having power to grant maintenance, implied in it power to grant interim maintenance. The reasons of such power is also discussed by the Apex Court that if such interim maintenance is not granted, the

wife would not be able to sustain till the main order is passed, without any financial aid. Such observations apply with full force to the matter in hand. If in a deserving case, ad interim relief is not granted and in the meantime the arrest is effected, certainly the application would become infructuous and the Accused will have to resort to regular bail procedure. Thus, though such power exists, the same has to be used by exercising the discretion on case to case basis.

92. In the case of **Bhadresh (supra)** the Apex Court discussed in detail the principles and guidelines regarding grant of Anticipatory Bail under Section 438 of Cr.P.C which shall apply with equal force to the provisions of Section 482 of BNSS since both these provisions are *pari materia*.

93. Having given anxious consideration to all the above aspects it is clear that while considering an application under Section 482 of BNSS, the Court is having inherent power to grant ad interim bail in deserving cases and by exercising its discretion on case to case basis.

94. Both applications filed and pending before the learned Sessions Judge, South Goa, Margao, shall be required to be considered under the provisions of Section 482 of BNSS 2023. After considering the above discussion, points no. 1, 2 and 3 are therefore answered as under:

(A)The investigation in the present FIR No 1/2024 filed before the Economic Offences Cell shall continue under the provision of Cr.P.C. 1973.

(B)Answer No. 2- Bail application filed on 06.07.2024 by the Respondent/Accused will have to be considered as application under Section 482 of BNSS 2023.

(C)Answer No. 3- The Court while dealing with application under Section 482 of BNSS 2023 is having power to grant or refuse ad interim bail pending disposal of the main application.

95. With the able assistance of the learned counsel and the learned Public prosecutor, above points are answered, accordingly.

96. Rule is made absolute in above terms

BHARAT P. DESHPANDE, J.