

Bail in Socio-Economic Crimes and Criminal Justice in India

By Pradeep Kumar Singh*

Crimes committed by professionals, business men, public servants and organised criminal gangs after well planning by use of modern gadgets in course of performance of their official, professional, business activities in which they have expertise create serious challenge for finance, health and life of members of society and society. In criminal acts committed by professionals, businessmen and public servants, it is very difficult to identify whether sober and civilised activity was committed or criminal act was committed. Economic offenders are only concerned with their personal gain even at the cost of irreparable and serious loss to society which provided socialization and made him a human being, provided status and position, provided respect and reputation, provided stature and means. Money has become marker of power, position, status and reputation and for achieving money persons have no problem even to cause losses to the whole society. In this kind of crime generally evidences are readily not available, and further, fear of abscondance, obstruction in investigation, tampering with evidences appear more probable because of status, position and means of the accused. In such situation need of criminal justice and betterment of society requires special measures to deal with serious problem of socio-economic offences. One such measure is to keep the accused in custody for longer period and for it bail should not be granted in the same manner as granted in case of traditional offences. This paper will deal with and analyse issue relating to grant of bail in case of socio-economic offences.

Keywords: *Accused; Bail, Criminal justice; Economic offences; Investigation; Money laundering; Organised criminal gangs; Prisonisation; Socialisation; Traditional crime.*

Introduction

Crime is universal and ever-present phenomenon; every society in the world is facing crime challenge, only nature, rate and impact may vary. Crime is most serious challenge to human existence and it is not a new phenomenon but from very inception of society, even before the inception of society, crime, criminals and criminality have been affecting the human life, property and liberty.

Opinions are expressed and reasons are given to prove that crime was in existence and it was causing a serious problem even before origin of society, state and manmade law. It is usually speculated that the society was made, state developed and manmade law was formulated only to deal with crime problem.

*PhD., Professor, Faculty of Law, Banaras Hindu University, Varanasi, Uttar Pradesh, India.
E-mail: pradeepsinghk6@gmail.com.

Before manmade law, crime categories were not defined, acts were not declared as crimes but such problematic acts were causing the same or similar problems even before the origin of society as such acts are causing serious impacts in modern era.¹

Crime is universal but at the same time one more fact exists for crime that it is relative thereby crime causes problem in each and every society but at the same time nature, rate, impact and ultimately problem caused vary from one society to another society with time and place ultimately with social structure and social process.

With the change in societal structure, social process, scientific and technological know-how crime is becoming day by day graver, complicated, complex and serious problem for the society. Earlier crimes were mostly committed by an individual or few individuals against another individual or few individuals; only due to closely interwoven society and stronger social solidarity, it was considered that crime was committed against the whole society. In reality previously crimes were committed against individual, only by legal fiction it was taken as committed against the whole society. Where persons are closely related and feel emotions of stronger cooperation, an individual may due to need and necessity, enmity and jealousy may commit some acts to affect particular or few persons but he can never think to commit acts to affect and destroy the whole society or considerable part of the society. In previous society a person who sold milk would have mixed some water in it but he could never think to sell synthetic milk. A person who sold rice would have mixed some other grains or husk but he could never think to sell synthetic or unwholesome rice. A person who constructed bridges, school and buildings would have got some undue profit but he could never construct in such manner as to collapse and cause death of many persons. A thief would have stolen some money or articles but never could think to misappropriate public exchequer. In modern era social structure and social process have changed; scientific knowledge and technological know-how are advancing. Further, individual philosophy, feeling of responsibility towards society and fellow citizenry, life style and concept of life, considerations regarding morality and social norms, and ultimately whole social interactions have changed. In such situation individuals have become much concerned with earn more and more money, gain more and more profits and ultimately with his own enjoyment of physical commodities; social solidarity has become much weaker; society and societal members welfare, wellbeing, and protection have become irrelevant considerations.

Change in society has caused complete change in nature, cause, mode, rate and impact of crime on individual member of the society and society at large. Further, all and every stereotype of crime and criminals have completely changed and it is

¹Georgia Florita, Frank Tannenbaum and Emile Durkheim expressed opinions regarding universal nature of crime that crime is ever present phenomenon. Always and in every society crime creates problem. Only kind, nature, seriousness and rate may vary from one society to another. For crime two things which are contrary to each other are true – 1. Crime is universal; it is found in every society in reference to history and space both. No society is crime free. 2. Crime is relative; nature, seriousness, kind, rate and impact caused for society and societal members vary from one society to another in reference to history and space.

causing greater problem to criminal justice. Previously crimes were committed by un-socialised or mal-socialised or improperly socialised persons for whom all traditional criminologists have been of opinion that they belong to lower class, such criminals were committing crime in unorganised manner without proper planning or completely in un-planned manner by using crude *modus operandi* leaving clues on crime scene, traditional evidences were available particularly eye witnesses, crimes were committed to satisfy need and necessity or enmity or jealousy or lust. To deal such crimes simple and general measures of criminal justice was efficient. Simple investigating agency and its investigation procedure; traditional prosecution and prosecution measures were effective, traditional sentencing and its infliction was sufficient to tackle problem of traditional criminality.

Crimes are now committed by influential persons belonging to upper class in organised manner after well planning by use of modern gadgets in course of performance of their official, professional, business activities in which they have expertise. Criminal acts committed by professionals, businessmen and public servants, it is very difficult to identify whether sober and civilised activity was committed or criminal act was committed. Such criminals have no criminal self-image, further by societal members there is no labelling which affect seriously pursuits to cope with crime and criminality.² Economic offenders are only concerned with their personal gain even at the cost of irreparable and serious loss to society which provided socialization and made him a human being, provided status and position, provided respect and reputation, provided stature and means. In *State of Gujarat v. Mohanlal Jitmalji Porwal*³ the Supreme Court observed:

²For dealing with crime and criminality some very important requisites are creation of deviant categories, violator of deviant category and his violation of deviant category, institutional and non-institutional definition of act as violation of deviant category and such violator as deviant, ultimately violator himself should accept such image and prepared to accept reactions against his violations of deviant categories. When society through its institutional and non-institutional measures accepts act as criminal, then it may use criminal justice system and further, society may react against crime and criminal. When doer of act has self-image as criminal, he himself will identify that he has committed act against values of society, he will ready to receive punishments and make all his attempts to reform himself. In case of modern criminality society usually considers that the professional is expert in his profession and performing his acts efficiently to earn more and get success. Acts committed are usually as professional act, even if taken as wrong only as civil wrong, generally not defined as criminal act. In some circumstances, if, institutions have defined deviant category and deviant, non-institutional definitions are lacking. Criminals of modern criminality does not satisfy stereotypes of criminal as he is well educated, rich person, successful in his professional life, well placed etc. Therefore, society does not consider him as criminal and his acts as criminal acts and usually does not react against modern criminality. Social reputation of such deviant person is not affected as it happens in case of criminal of traditional criminality. is also not affected Criminal of modern criminality never considers that he is criminal, he has no criminal self-image. Always he considers that he is performing his professional acts with more expertise, therefore he is not prepared for receiving reactions of society and he does not prepare to reform his criminal acts causing problem to society and members of society. In tackling crime social reaction, social control and social reputation play crucial roles.

³(1987) 2 SCC 364.

“[...] the entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national; interest [...]”

To gain more and more profit, to become rich quick such criminal even has no problem to cause problem for the whole society, affect safety and security of life of societal members, misappropriation of public exchequer and ultimately affect completely wellbeing of society at large. In the way to accumulate money and to get physical commodities, life, property and well-being of common persons have no value. Criminal acts committed by such persons are creating a serious challenge before criminal justice system; It is difficult to identify whether crime was committed, when it is identified that crime was committed, it is difficult to find out clues and thereby evidences; when evidences are available, nature of evidences is completely different as not possible to be collected by simple investigating, presented by prosecution agency and ultimately to convict and sentence; when sentenced, simple sentence is not effective to deal with such modern criminals and their criminality. A criminal of such modern criminality are respected and influential persons with position, status, standing and means thereby they are always in situation to influence proceeding in investigation and prosecution, tamper with the evidences and pressurise witnesses. Against such influential criminals, societal reactions is usually absent, it further complicate and affect the criminal justice measures to effectively deal with modern criminality.

To differentiate from traditional crimes, to formulate effective policies, to enact effective law, to enforce law by effective enforcement agencies, crimes committed by influential persons given a distinct name ‘socio-economic crimes’. Socio-economic crimes cannot be effectively dealt by the same measures applicable for traditional crimes.

Considerations for Granting Bail are not same for Traditional Crimes and Socio-economic Crimes

During investigation an accused is arrested to ensure his cooperation with investigating agency, availability for effective investigation particularly custodial investigation, safety and security of witnesses and other evidences, availability before the court for participation in trial and infliction of punishment in case of conviction. During investigation a person is arrested and kept in custody with aforesaid objectives and not at as infliction of any punishment therefore when such person gives assurance and further competent authority is satisfied that person is fit and even if he will be released, his behaviour will be proper. When it is shown before the competent authority that the released person will act as per requirement

of criminal justice, there is no need of keeping person as under-trial prisoner, person is immediately granted bail and released. Even before custody of the person he may be directed to be released which is called as Anticipatory bail. In case of traditional crimes evidences are readily available, generally the accused is not an influential person and thereby unable to influence investigation, the accused is not in situation to tamper with and terrorise evidences and witnesses, generally the accused is not in situation to abscond to some other country, therefore in traditional crimes for bail it is well established rule that generally bail should be granted and exceptionally bail may be refused.⁴ At this stage it has not been decided that he has committed crime, he may be innocent person.

Deprivation of liberty of such person may not be appropriate. Further, prison atmosphere causes prisonisation⁵ of person kept in prison; he may be initially innocent and not a criminal but when he comes out after longer incarceration as under-trial prisoner now he may have become hardened criminal. Criminal justice makes presumption that the accused person is innocent till his guilt is proved beyond reasonable doubts, in such situation it will be contrary to keep person behind bar only on the basis of accusation. When a person is kept as under-trial prisoner, he may loss his earnings, he may not hire services of advocate for his protection, he may not be able to collect evidences for his defence; such situations badly affect basic premise of fair trial. When after trial it is proved that the accused was innocent, who will be answerable for his longer period of deprivation of personal liberty. Furthermore, the accused may have committed crime or not, it may be decided after conclusion of trial but if person is kept in prison as under-trial prisoner, it may amount to infliction of punishment on his dependent family members.

Criminal justice has well established premise that after ensuring the accused person's proper behaviour normally bail should be granted; refusal of bail should be only in exceptional situation when it appears that the accused may show improper behaviour and may cause problems for criminal justice dispensing. The law relating to bail has certain premise and underlying philosophy which is crucial for justice administration thereby criminal justice dispensing. For considering bail two things are always balanced - one, requirement of criminal justice which is manifested as social interest, sometimes it is also reflected as police power to restrict liberty of a man who is alleged to have committed crime, and second,

⁴Our legal system is based on concept of fair trial accordingly an accused is treated as innocent till his guilt is proved beyond reasonable doubts, before it such person is treated as an accused person and may be detained in custody only for satisfaction of requirements of criminal justice. The fundamental and established rule is that when person is not a substantial risk for requirements of criminal justice as it usual in traditional crimes (like there is no fear to witnesses and evidences, person co-operates in investigation and trial, available or conviction and punishment), generally bail should be granted. See cases – *State of Rajasthan v. Balchand* AIR 1977 SC 2447, *Gudikanti Narasimhulu v. Public prosecutor* AIR 1978 SC 429, *Babu Singh v. State of Uttar Pradesh* AIR 1978 SC 527, *Hussainara Khatoon v. State of Bihar* AIR 1979 SC 1360.

⁵Prisonisation term is used for learning of prison behaviour; it is similar to socialization. As by socialization norms and values of society are learnt, similarly prison inmate learns prison behaviour. In prison criminogenic forces are more thereby a person kept in prison is prone to drift towards criminality or when he has primary deviance, he is prone to drift towards secondary deviance and ultimately his criminality matures in recidivism.

presumption of innocence in favour of alleged accused which is usually shown as individual interest. But same rule of bail cannot be applied in socio-economic crimes. Socio-economic crimes are completely different criminality in every reference therefore same rule for granting bail cannot be applied. In socio-economic crimes bail cannot be granted in the same way as it is granted in traditional criminal cases.

Economic offences are committed for personal profit and it affects well-being of whole society particularly cause huge loss to public fund. In *Mrs Leena Mahesh v. Republic of India*⁶ was relating to chit fund relating offences in Orissa. Co-accused got bail in the case. Now bail petition was filed by an accused who together with her husband established many companies which were involved in chit fund and by that means misappropriations. The Court refused give bail even though co-accused persons were already on bail. The Orissa High Court observed:

“Therefore, economic offences are considered grave offences as it affects the economy of country as a whole and such offences having deep rooted conspiracy and involving huge loss of public fund are to be viewed seriously. Economic offences are committed with cool calculation and deliberate design solely with eye on personal profit regardless of the consequence to the community. In such type of offences, while granting bail, the Court has to keep in mind, inter alia, the larger interest of public and state. The nature and seriousness of an economic offence and its impact on society are always important considerations in such a case and those aspects must squarely be dealt with by the Court while passing an order on bail application.”

In the case of *State of Bihar v. Amit Kumar*⁷ the Supreme Court observed:

“We are also conscious that if any undeserving candidate allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disintitiled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously.”⁸

State of Bihar v. Amit Kumar case was relating to Bihar Topper Scam. In 2016 Bihar Intermediate School Board Examination from one school many students got place in 10 toppers list. Electronic media interviewed such toppers which revealed that they did not have sufficient knowledge to top the Board Examination; even they could not pass the examination. FIR was lodged and police started investigation. Investigation revealed fraudulent practices prevailing in Bihar Intermediate Examination involving students and management of the Vishnu Rai College. Respondent in this case was Principal of the College. When raid was made in premises belonging to an accused unaccounted larger amount of

⁶<http://Indiakanoon.org/oc/59681/>

⁷AIR 2017 SC 2487.

⁸*Ibid* at 2491.

cash and property was recovered. In addition to it, large number of answer sheets, letter-heads and rubber stamps of several authorities, admit cards, illegal fire arms etc. were found. Bail petition was moved and bail was granted by the High Court. State challenged bail order before the Supreme Court which set aside the order of the High Court. The Supreme Court observed that no doubt 'bail is rule and jail is an exception' is well established rule of our criminal; jurisprudence but there is no straight-jacket formula for consideration of grant of bail to an accused. Granting of bail depends on fact and circumstances of each case. Socio-economic offences need application of different approach in the matter of bail and should be considered seriously.

Status, Position, Standing and Means of the Accused

Offender of socio-economic offence is influential person with status, position, standing and means thereby always probability exists that he may influence investigation and prosecution variously. He is in position to pressurise witness from giving statements and temper with evidences. Socio-economic crimes have serious impact over society at large and for societal interests require that such crime must be tackled at any cost. Therefore ones offender of socio-economic offence is arrested, for the sake of protection of society and effective dispensing of criminal justice he should not be granted bail and he should remain in jail till completion of investigation and prosecution.

In *State of UP v. Amarmani Tripathi*⁹ the Supreme Court directed for consideration of certain circumstances for disposal of bail application

1. Whether there is any *prima facie* or reasonable ground to believe that the accused has committed the offence;
2. Nature and gravity of the charges;
3. Severity of the punishment in event of conviction;
4. Danger of the accused absconding or fleeing, if released on bail;
5. Character, behaviour, means, position and standing of the accused; likelihood of offence being repeated;
6. Reasonable apprehension of the offence being repeated;
7. Reasonable apprehension of the witnesses being tampered with; and
8. Danger, of course, of justice being thwarted by grant of bail.

Amarmani Tripathi was political leader and he was MLA therefore he was in position to influence investigation variously, the Court refused to grant bail and emphasised for consideration means standing and position of the accused means how much the accused is influential should be considered in granting bail. *Amarmani Tripathi* case was relating to murder which is traditional crime but case is relevant for socio-economic offences also as the accused was influential person, (he was political leader) as it happens in case of socio-economic offences. The Court's directions given in this case is relevant for socio-economic offences also.

⁹(2005) 8 SCC 21.

In *Anil Kumar Tulsyani v. State of UP*¹⁰ bail granted by the High Court was cancelled on the ground that the accused had position and standing as advocate in the High Court which may be misused.

An accused in India is considered as innocent but there are certain requirements of criminal justice for the sake of which restrains on liberty of person may be imposed. Personal Liberty of an individual is most crucial and important fundamental right granted in Article 21 of Constitution. Article 21 itself permits deprivation of personal liberty by procedure established by law. Socio-economic crimes create serious challenge for society at large therefore for protection of society a person may be deprived of his personal liberty. Society is always considered more important than individual. For societal protection some individual right even very important fundamental right may be curtailed. In case of *Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through Its Director*¹¹ the Supreme Court observed that Article 21 is of great importance because it enshrines the fundamental right to individual liberty but at the same time a balance has to be struck between the right to individual liberty and the interest of society. While it is true that one of the considerations in deciding whether to grant to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances such as the interest of the society. In granting of bail individual interests are always considered but more important consideration to be given utmost emphasis is interest of society and in particular interest of criminal justice.

In socio-economic crime offender has such influential position which may be utilised and affect the investigation and trial. Generally evidences are not available in socio-economic crime cases, if, available may be prone to be affected by criminal put not behind the bar. Therefore societal interest requires that whenever such offender is identified, should be put in custody and bail should not be granted to him as generally provided in case of traditional crimes. It is well established principle of law that the accused is unfit for bail when there is probability of pressurizing of investigating officer, putting obstruction in investigation, causing fear of tampering of evidences and terrorizing witnesses. In case of socio-economic offender due to his status, position, and standing of the accused probability in aforesaid regards are always evident. Because of that the accused of socio-economic crime is considered as unfit for bail. In *Neeru Yadav v. State of Uttar Pradesh*¹² the Court observed:

“We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim [...] in a civilised society, and a crime disturbs orderliness. [...] It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount

¹⁰2006 (5) SCALE 233.

¹¹AIR 2007 SC 451.

¹²AIR 2015 SC 3703.

value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be nuisance to the collective. He cannot be terror to the society;”¹³

Socio-economic criminals are economically sound and belong to elite class. Furthermore, they commit crime to get more and more money. They are in possession of large amount of proceed of crime. When a person has money earned by honesty and labour, they think again in in spending the money but when money is obtained by corrupt means, such person may not have any problem spending. A criminal of economic offences has larger amount of proceed of crime, he may use it and affect the investigation and win over witnesses. In *Himanshu Chandravadan Desai v. State of Gujrat*¹⁴ the appellant –accused was one of directors of a Bank and together with other directors and managing director of Bank siphoned off crores and crores rupees fund of the Bank by bogus loans and fictitious letters of credit in the name of their friends, relatives, associates and name-lender companies either without any securities or with wholly inadequate security. The Court of Session and the High Court rejected bail and then the appellant-accused moved the Supreme Court. The accused was remaining in custody for longer period since his surrender on 24.10.2002. The Supreme Court decided that having regard to huge amounts involved in the systematic fraud, there is danger of the appellants absconding, if released on bail, or attempting to tamper with the evidences by pressurizing witnesses. The Supreme Court refused to grant bail. In socio-economic offences always the court considers monetary position of the accused and amount involved in criminal case. More the accused is economically sound and more the amount involved in criminal case; it cause more the chance of affecting the requirements of criminal justice, more the accused is unfit for bail, thereby, more the chance of refusal to grant bail.

In *Sudhir V. State of Maharashtra*¹⁵ the accused were engineers in Rural Water Supply Department of Zilla Parishad, Jalagaon. They were executing work of supply of drinking water to some villages in Jalgaon Maharashtra. They committed corruption and misappropriated the fund. On paper toilets and barbed fencing were constructed. Amount was released in the name of a contractor, who was non-existent. Hereby whole fund was misappropriated. On the direction commissioner matter was enquired by Dy. Commissioner and he found substance in allegation. FIR was lodged under IPC and Prevention of Corruption Act. Anticipatory bail was granted to the accused by Additional Session Judge. State filed appeal before the High Court which set aside order of anticipatory bail. Now the accused filed appeal before the Supreme Court against the order of the High Court. The Supreme Court differentiated this case from other cases that in this case there were serious allegations of corruptions and misappropriation of funds. This case cannot be equated with simple cases in which anticipatory bail is granted. In *Gurubux Singh Sibia v. State of Punjab Case* (AIR 1980 SC 1632) The Court expressed opinion that even in case of economic offences and corruption cases when allegations are mala fide, anticipatory bail may be granted. But in this case

¹³*Ibid* at 3707.

¹⁴AIR 2006 SC 170.

¹⁵AIR 2015 SC 3665.

there was no mala fide as Commissioner and Dy. Commissioner acted on fact; enquiry was made and on the basis of fact disclosed, FIR was lodged. In corruption cases with serious conspiracies the Supreme Court expressed its disapproval for grant of anticipatory bail. The Supreme Court considering gravity of offence of misappropriation of funds released for rural development opined that the custodial investigation is necessary; if, anticipatory bail direction is passed, it will be affected. Therefore the Court dismissed appeal and upheld order passed by the High Court.

A Person accused of socio-economic crime is richer further in possession of larger proceed of crime; therefore he may not have any hesitation in spending it for influencing the course of criminal justice. In such case even he has been found as fit for bail, it would be appropriate to take larger security for release on bail. Normally in case of traditional offences when the accused is fit for bail normally lesser security is taken for release on bail as in section 440 (1) CrPC direction is given that amount of bond shall not be excessive.¹⁶ But lesser security amount for release on bail in socio-economic offences is not considered sufficient to compel for proper behaviour during released situation. In *Bharat Stars Services Pvt. Ltd. V. Harsh Dev Thakur*¹⁷ the Supreme Court decided that Rs. 50 Lakhs security amount was not sufficient and ordered to give further amount of Rs. 75 Lakhs. This case was involving embezzlement to the tune of Rs. 2.78 Crores. The accused respondent along with his family members committed offence of embezzlement. All co-accused absconded and were not available. The Court framed charge against the accused by segregating the co-accused. The accused was in custody since 10th November 2017 thereby remaining custody for longer period. Investigation was complete, available properties of the accused and co-accused was attached and further, documents relating to case were attached. Case was mainly depending on documents. Hereby, there was no fear to affect the case. The High Court granted bail and directed to deposit Rs. 50 Lakhs. The Supreme Court considered that it was case of embezzlement of more than 2.75 Crores and in such a case more stringent conditions should be imposed. The Supreme Court directed for additional security of Rs. 75 Lakhs thereby security of Rs. 1.25 Crores (Rs. 50 Lakhs + Rs. 75 Lakhs) was taken. Further conditions were imposed to deposit passport with trial court and present once in every week before jurisdictional police station.

Accused are Prone to Flee from Justice Particularly to abscond to some Foreign Land

Accused persons of economic offences are richer persons and further, larger proceed of crime is involved, therefore there is greater probability of the accused to abscond to some other country and thereby flee from course of justice. Recently in many cases such incidents are happening. In case of accused of socio-economic

¹⁶Section 440 (1) CrPC provides: The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.”

¹⁷AIR 2019 SC 718.

offences to secure availability of the accused for effective enforcement of criminal justice, it is needed that immediately the accused be brought under custody. Main measure for taking into custody is arrest of the person but for that availability of sufficient evidences giving reason to belief of involvement of the accused in crime commission is required. In socio-economic offences it is very difficult to identify whether offence was committed; even when it is identified, it is very difficult to get clues; and even when clues are available, it is difficult to identify and collect evidences. Therefore, in very initial stage of socio-economic crime law enforcement agencies are not in situation to arrest the offender. Furthermore, the accused has status, position and respect in the society which makes his arrest more difficult. To enable effective investigation for socio-economic offences preventive detention Acts are enacted permitting preventive detentions. The accused before his arrest and detention flee to some other country; or attempt to get anticipatory bail or after coming in custody get bail; and attempt to flee to some other country. In *Amarmani Tripathi case* Court emphasised on this aspect that the court should consider danger of the accused absconding and fleeing, if released on bail. In *Bhadresh Bipinbhai Sheth v. State of Gujarat*¹⁸ The Supreme Court expressed opinion about exercise of power to grant anticipatory bail and observed that the discretion vested with the court under section 438 Criminal Procedure Code (CrPC) should be exercised with caution and prudence. Grant or refusal of anticipatory bail should necessarily depend on the fact and circumstances of each case. In this regard the Court directed to consider impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people, reasonable apprehension of tampering of the witness, possibility of applicant to repeat crime, and possibility to flee from justice.

The Supreme Court decided *P. Chidambaram v. Directorate of Enforcement*¹⁹ case on 5 September 2019 and observed that economic offences stand as a different class as they affect the economic fabric of the society. Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. In this case allegation was against the former Union Finance Minister and his son for corruption, money laundering and giving illegal benefit to a media house. There were alleged irregularities in Foreign Investment Promotion Board (FIPB) clearance given to the INX media for receiving foreign investment to the tune of Rs. 305 crores against approved inflow of Rs. 4.62 Crores. CBI and ED lodged FIR. Appellant filed petition before the Delhi High Court requesting for grant of anticipatory bail. The High Court refused to grant anticipatory bail in both the cases. Appellant filed appeal before the Supreme Court but before hearing he was arrested by CBI for case under investigation before it thereby appeal petition relating to case under investigation by CBI became in-fructuous in light of *Gurubaksh Singh Sibbia v. State of Punjab* (AIR 1980 SC 1632) judgment as anticipatory bail is available only before arrest. In appeal grant of anticipatory bail was considered for case under investigation by ED. The Court refused to give anticipatory bail to the appellant on the ground that in complicated cases investigating agency should have freedom to investigate the

¹⁸AIR 2015 SC 3099.

¹⁹<https://indiankanoon.org/doc/90251163/2/24/2020>

case. The Court opined that anticipatory bail may hamper investigation. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also materials which might have been concealed. Ordinarily, arrest is part of the process of the investigation intended to secure several purposes particularly for custodial investigation. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. The Supreme Court observed that in money laundering cases anticipatory bail may affect the effective investigation:

“In case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime... Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation[...].”

While P. Chidambaram was in custody he moved regular bail petition but it was dismissed by the High Court. Before the High Court on three grounds – ‘Flight risk’, tampering with evidences and influencing witnesses – CBI requested for refusal to grant bail. The High Court considered and found that there was no flight risk as some measures are available like surrender of passport, issuance of look-out notice and such other directions may be used. The High Court observed that there was no fear of tampering of evidences as in this case documents are in custody of the prosecuting agency, Government of India and the Court. But the High Court accepted third ground, influencing the witnesses, that the investigation was in an advance stage and the possibility of the appellant influencing the witnesses cannot be ruled out. High Court refused to grant bail.

Against the decision of the High Court the appellant filed appeal petition before the Supreme Court and it was entertained as case *P. Chidambaram v. Central Bureau of Investigation*²⁰. The Supreme Court accepted the view of the High Court that flight risk may be secured by issuing certain directions like surrender of passport and issuance of look-out notice. The Supreme Court also accepted that in this case all documents are with prosecution, government and court therefore there is no fear of tampering with evidences. The Supreme Court did not accept view of the High Court regarding influencing of witnesses. The Supreme Court set aside order of the High Court and directed for grant of regular bail. The Supreme Court observed that the appellant is not a ‘flight risk’. The appellant is in custody for about two months. The co-accused was already granted bail. The appellant was 74years and was suffering from age related health problems. On many occasions remand was granted but never it was informed that

²⁰<https://indiankanoon.org/oc/182852774/2/24/2020>

appellant was influencing witnesses. Charge-sheet has already been filed. On these grounds bail was granted. The Court expressed opinion that flight risk should be considered in economic offences but only on this basis fitness for bail cannot be decided; every case should be considered on its own fact and circumstances. The Court in this case did not accept that there was flight risk and opined that some measures, like – surrender of passport and look-out notice, were sufficient to deal with flight risk. The Court observed:

“There is no hard and fast rule regarding grant or refusal to grant of bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that “flight risk” of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merit of his own case. Hence, in our view, such consideration including as to “flight risk” is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.”

In socio-economic offences proceed of crimes are larger and further, offenders are economically sound, therefore, in releasing them on bail probability of abscondance not within country but beyond country is more probable. Usually socio-economic offenders abscond to some other country and after that it becomes difficult to bring them back and complete the criminal proceeding against them. In such situation it would be better when economic offender is arrested, bail should be granted only after due consideration of his ‘flight risk’. Further, his monetary sound condition particularly proceed of crime obtained not by his honest working but by deceiving others causes more prone situation for influencing witnesses and other evidences. Furthermore, status and position of offender provides opportunity to influence investigation and prosecution. In such situations an accused kept in custody should not be granted bail particularly before completion of investigation.

Case is *Prima Facie* Established

It is well established premise in law relating to bail that when case is *prima facie* established, generally bail is not granted. When case is *prima facie* established, the accused also gets impression that after trial he may be convicted and sentenced, therefore, the accused becomes prone for interfering with course of criminal justice system like he may attempt to abscond, influence investigation, tamper with evidences and terrorise witnesses.

Such circumstances itself suggest that the accused is not fit for bail. Provisions in Criminal Procedure Code (CrPC) and other Penal Acts direct the Courts for considering *prima facie* situation of case. Further, the Supreme Court

has given directions to calculate prima facie satisfaction regarding crime commission. At this stage evidences are not considered on merit but availability and nature of evidences are only considered. Section 437 (1) (i) CrPC prescribes that when offence is punishable by death penalty or life imprisonment and case is prima facie established, the accused is not released on bail. Section 437 (2) CrPC provides that when case is not prima facie established and for further proceeding need of further inquiry is felt; bail shall be granted. Fourth proviso to Sec 437 (1) CrPC suggest the same thing by providing that in case of serious offences, the Court can take decision about bail only after hearing the public Prosecutor. Hearing public prosecutor indicates for need of considering prima facie situation of the case. These provisions contained in Section 437 CrPC directs that when matter of bail is under consideration releasing authority should consider prima facie situation of case and when case is prima facie established, bail has to be denied and when case is not prima facie established, bail may be granted. Same considerations are applicable for grant of bail by superior courts u/s 439 CrPC, although not given explicitly in the provisions contained in the section 439 CrPC. In *Ram Govind Upadhyay v. Sudarshan Singh*²¹ the Supreme Court observed that grant of bail is discretionary power exercise but requires exercise of power in judicious manner and not as matter of course. The Court directed to consider various things including prima facie satisfaction of the court in support of charge. For this purpose there is no need to consider the entire evidences establishing guilt of accused beyond reasonable doubt; only prima facie satisfaction is sufficient.

Whenever case is prima facie established, the accused fear that ultimately with disposal of case he may be convicted and punished therefore always he is considered prone for acting against requirement of criminal justice. In such situation it would not be prudent to release person from custody. In socio-economic crimes generally clues and evidences are not available to law enforcement agencies particularly evidences proving *mens rea* are not available as it may be in traditional crimes. Further, an accused is influential person and thereby in situation to affect the evidences and course of criminal justice. Furthermore, this sort of crime is committed because of greed, avarice and rapaciousness; the accused never satisfies with money and want to have more and more money therefore as and when opportunity becomes available accused is prone to commit crime again. At the same time socio-economic crimes are serious challenge for wellbeing of whole society, any compromise cannot be made.

Normally for traditional offences presumption is for innocence of the accused and further burden of proof lies on prosecution. In Special Penal Acts dealing with socio-economic offences presumption clauses are given and provisions are provided for sifting of burden of proof. In socio-economic offences when prohibited act is proved, presumption is made regarding *mens rea* thereby about commission of crime and in such case naturally burden of proof for *mens rea* will not be of prosecution but sifts on the accused. Further, in some Special Penal Act specific provision for sifting of burden of proof also provided. Sections 4 and 5 CrPC clearly provide that when special procedure is provided in Special Penal Act that shall be applicable, general procedure shall be applicable only when special

²¹(2002) 3 SCC 598.

procedure is not provided.²² When accusation is made for commission of socio-economic crime and some materials are available regarding *actus reus* then presumption is made regarding crime commission. Hereby case is prima facie established and in such situation normally bail is rejected. Further, for socio-economic offences preventive detention laws are also enacted to keep the offender in custody for longer period for collection of evidences, to protect evidence, prevent repeat of crime and ultimately effective investigation.

Section 8-A of Dowry Prohibition Act 1961 imposes burden of proof on person who is alleged for taking or abetting the taking of dowry or demanding dowry; Section 4 of Drugs and Cosmetics Act 1940 provides for presumption about substances as poisonous substances. In Section 34 of Drugs and cosmetics Act 1940, Section 9 of Drugs and Magic Remedies (Objectionable Advertisement) Act 1954, Section 10 of Essential Commodities Act 1955, Section 42 of Foreign Exchange Management Act 1999, Section 7 of Indecent Representation of Women (Prohibition) Act 1986, Section 70 of Prevention of Money Laundering Act 2002, Section 56 of Black Money (undisclosed Foreign Income and Assets) Act 2015, Section 62 of Benami Transactions (prohibition) Amendment Act 2016 presumption clauses are provided when offence is committed by company it is presumed as also committed by in charge of company, director, manager and secretary of company. In Section 10 - C Essential Commodities Act 1955 presumption of culpable mental state is provided according to which the court shall presume mental state of the accused for those offences under the Act for which mental state is required but it will be rebuttable presumption. In Section 13 presumption about issued order is given and Section 14 of Essential Commodities Act sifts burden of proof on the accused. In Section 39 of Foreign Exchange Management Act 1999 prescribes presumption regarding genuineness of document, signature on document and contents of document. In Section 54 of Black Money (undisclosed Foreign Income and Assets) Act 2015 makes presumption regarding culpable mental state of the accused; it is rebuttable presumption as in provision accused is permitted to take defence that he was not having such mental state therefore mental state shall be presumed but then after the accused will be provided opportunity to give his own evidences to show that he did not have such mental state. Section 20 of prevention of corruption Act 1988 provides that when public servant has taken any undue advantage from any person then it shall be presumed that he took undue advantage as motive or reward under section 7 of the Act and his presumption is rebuttable presumption. Whenever in criminal case presumption is made, with proving of prohibited act prima facie establishes role in crime commission. Further, thereby burden of proof sifts, now there is no necessity to prove the presumed fact by prosecution but requires

²²Section 4(2) CrPC provides: "All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." Section 5 CrPC provides: "Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force."

disproving by the accused. In some Acts burden of proof is expressly provided. In such cases with allegation case is prima facie established therefore bail is normally not provided. Generally provision relating to bail is not given in special penal statutes. In such situation according to section 4 (2) CrPC bail is granted to the accused under provisions of Criminal Procedure Code which has well established rule that in prima facie established case normally bail should not be granted. Due to presumption and burden of proof clauses in Economic Offences criminal case is prima facie established therefore normally bail is rejected.

In Prevention of Money Laundering Act (PMLA) 2002 special provision is given u/s 45 directing consideration of some aspects in granting bail to person accused under PMLA. PMLA is a special statute and further section 45 PMLA starts with non-obstante clause thereby it is clear that provisions contained in section 45 PMLA shall prevail over general provisions of Criminal Procedure Code in case of conflict between them. Section 4 (2) and 5 of Criminal Procedure Code prescribe that in case of special penal statute special procedure provided in that Act shall prevail over procedure given in Criminal Procedure Code. Further, similar provisions are given in section 65 and 71 of Prevention of Money Laundering Act. Section 65 prescribes that provisions of CrPC shall apply so far as they are not inconsistent with the provisions of PMLA and section 71 prescribes that provisions of the PMLA shall have overriding effect notwithstanding anything contained in any other law for the time being in force. PMLA has overriding effect and the provisions of CrPC may apply only when they are not inconsistent with PMLA. Therefore in granting bail section 45 of PMLA prevails over provisions of bail contained in Criminal Procedure Code. Section 439 of CrPC shall be applicable only with due compliance of section 45 PMLA. Section 45 of Prevention of Money Laundering Act requires satisfaction of three conditions for grant of bail to any accused person alleged for offence punishable under PMLA

1. Prosecutor must be given an opportunity to oppose the application for bail;
2. The Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence; and
3. He is not likely to commit any offence while on bail.²³

²³Section 45 (1) PMLA 2002 Provides: “Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

- (i) The Public Prosecutor has been given an opportunity to oppose the application of such release; and
- (ii) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable ground for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail; provided that a person who is under the age of sixteen years or is a woman or is sick or infirm or accused either on his own or along with other co-accused of money-laundering a sum less than one crore rupees, may be released on bail, if special court so directs...”

Section 45 (2) PMLA Provides: “The limitation on granting of bail specified in sub-section (1) is in addition to the limitation under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for time being in force on granting bail.” After *Nikesh Tarachand Shah case* Section 45 (1) PMLA is applicable for offence punishable in PMLA. In *P. Chidambaram v. Directorate of Enforcement* the Court observed that for section 45 there are prior and post *Nikesh Tarachand Shah* situations.

It is clear from provisions that bail considering the court before disposal of bail petition should be satisfied regarding prima facie situation of the case and further, regarding probability of repetition of crime. For this purpose public prosecutor is given opportunity of hearing. When case is prima facie established or there is probability of repetition of crime, bail is denied.

*Gautam Kundu v. Manoj Kumar, Assitant Director, Eastern Region Directorate of Enforcement (Prevention of Money Laundering Act) Govt. of India*²⁴ case was relating to Rose Valley Chit Fund case. Appellant was chairman of Rose Valley Real Estate Construction Ltd. The accused floated many companies, allured investments and subsequently drained off money to associated companies. He was accused of commission of offences under section 3 and 4 of PMLA and section 24 of SEBI Act. Section 24 SEBI Act is schedule offence under Paragraph 11 of the Schedule of PMLA. In this case the High Court granted Temporary Bail (Provisional Bail) for 2 weeks for performance of rituals for his deceased father. Within due time the accused surrendered before Court and then after moved the Calcutta High Court for grant of regular bail u/s 439 CrPC. The High Court rejected the bail petition. The accused filed appeal before the Supreme Court. The Supreme Court decided that PMLA has special provision for bail and whenever bail is considered u/s 439 CrPC, it is necessary that requirement of section 45 PMLA must be satisfied. The Supreme Court observed that at this stage it is not expected to establish guilt of the accused beyond reasonable doubt through evidences but some propositions should be considered that

1. Economic Offences cause huge loss to public fund which affect the economy of country as a whole and thereby posing serious threat to the financial health of country; and
2. Allegations may not ultimately be established, but the burden of proof that the monies were not proceeds of crime and were not therefore tainted money sifted on the accused persons under section 24 of the PMLA 2002. In case of economic offences there is always probability to repeat crime. The Supreme Court upheld decision of High Court.

Previously bail related provisions provided in section 45 PMLA was applicable for offences punishable by more than three years punishment under Part – A of Schedule of PMLA. Section 45 (1) was providing before 2018 that – “Notwithstanding anything contained in the Code of Criminal Procedure , 1973, no person accused of an offence punishable for a term of imprisonment of more than

Previously bail provision u/s 45 PMLA was applicable for offences punishable by more than three years imprisonment mentioned under Part – A of schedule and then twin conditions were given. In Nikesh Tarachand case the Supreme Court declared twin conditions as unconstitutional on the basis of discrimination. In 2018 amendment was made through Finance Act 2018 which made section 45 applicable for all the offences under PMLA. This amendment removed effect of Nikeh Tarachand Shah case decision by rectifying the ground for applicability of provision relating to bail. Amendment 2018 enabled the court to release person on bail when money laundering is of less than one crore rupees which in addition to categories already provided – child below sixteen years, woman, sick and infirm.

²⁴AIR 2016 SC 106.

three years under Part – A of the Schedule shall be released on bail...” and then in two clauses conditions were imposed. According to which release on bail was generally difficult when offence was punishable by more than 3 years imprisonment under Part – A of PMLA. It means for offences punishable under PMLA twin conditions mentioned in section 45 were not applicable while these conditions were applicable on proceed of crime obtained by commission offences punishable under some other Acts mentioned in Part – A of PMLA. It was making differential situation that for offences under PMLA for granting bail provisions of Criminal Procedure were applicable while for offences punishable under some other Act mentioned in Part – A of Schedule of PMLA section 45 of Act was applicable. In *Nikesh Tarachand Shah v. Union of India*²⁵ the Supreme Court decided that twin conditions imposed under section 45 (1) (ii) PMLA

1. Reasonable ground for believing that the accused is guilty
2. The accused is likely to commit any offence, are unconstitutional as these violate Articles 14 and 21 of Constitution.

When a person is charged for offence punishable under PMLA simply his case may be dealt u/s 439 while if for same proceed of crime, charge is for offence under Part – A of schedule of PMLA, then primarily section 45 PMLA will be applicable and twin conditions will become applicable. The Court decided that such classification is arbitrary and further it violates Article 21. The Court decision in *Nikesh Tarachand Shah Case* clears that if Section 45 would have provided applicability for offences under PMLA instead of offences punishable for a term of imprisonment of more than three years under Part-A of the Schedule of PMLA, it would not be unconstitutional. In 2018 through amendment provision, which was inserted through Finance Act 2018, section 45 has been made applicable for all offences punishable under PMLA. Now section 45 PMLA does not make differentiation between offences under Part – A of schedule and other offences under the Act. When offence is under PMLA then section 45 shall be applicable and it will prevail over section 439 of Criminal Procedure Code. Amendment 2018 enables the court to release person on bail when money laundering is of less than one crore rupees which is in addition to one category already provided – category of accused that he is child below sixteen years, woman, sick or infirm person. There are two categories of cases in which bail may be granted one on the basis of extent of proceed of crime and other by nature of the accused. By extent of proceed of crime differentiation is made between money laundering of lesser amount that is less than one crore and of more amount that is one crore or more. This condition provides more stringent situation for refusal of bail in cases of smuggling, drug peddling, terrorism, black money and other acts affecting financial wellbeing of country. When proceed of crime is less than one crore bail may be granted but where proceed of crime is of one crore or more bail shall be refused on proving of twin condition provided in section 45 of PMLA. By Finance Act 2019 one explanation has been added to clarify that all the offences under PMLA are cognizable and non-bailable notwithstanding anything to the contrary

²⁵<https://indian.kanoon.org/doc/117859307/2.26.2020>.

contained in the Code of Criminal Procedure. Thereby investigating agency is empowered, in case of any offence punishable under the PMLA, to arrest without warrant as per provision given in section 19 and then bail shall be decided as per provision given under section 45 of PMLA and thereby providing opportunity of hearing to public prosecutor is mandatory and when on this hearing the court has reasonable ground of believing that the accused has committed offence under the Act or there is fear of repeat of crime, the Court shall not grant bail.

In Section 37 of Narcotic drugs and Psychotropic Substances Act (NDPS Act) 1985 similar provision as given in Section 45 of PMLA is provided. Under section 37 of NDPS Act, when a person is accused of an offence under Section 19²⁶ or 24²⁷ or 27 – A²⁸ and also offences involving commercial quantity²⁹, it is provided that he shall not be released on bail unless Public Prosecutor has been given an opportunity of hearing; on such hearing the court is satisfied that there is reasonable ground for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. These limitations are in addition to those prescribed under the CrPC or any other law for time being in force on the grant of bail. In Section 45 of PMLA permission is given that the court may give bail to younger person below 16 years age, woman sick or infirm person but such relaxation is not prescribed in Section 37 of NDPS Act. Section 19, 24, 27-A and commercial quantity are relating to drug peddling. Drug peddling is most serious offence which affect the youth of the society and further offenders are prone for repeat of crime which is not simple crime but most disastrous one. In *Satpal Singh v. State of Punjab*³⁰ the Supreme Court observed that offences under NDPS Act are of serious nature about which law makers were conscious and consciously put stringent restrictions on discretion available to the court while considering application for release on bail. The Court reminded police and prosecutor that they need to show due diligence and vigilance while dealing with the cases under the NDPS Act. In this case three brothers were alleged for commission of offences under NDPS Act. Two co-accused persons were granted

²⁶Section 19 NDPS Act prescribes punishment when licensed cultivator commits embezzlement or otherwise illegally disposes opium produced. This offence is punishable with minimum ten years and maximum twenty years rigorous imprisonment. Fine is also mandatory- minimum 1 lakh rupees and maximum 2 lakh rupees. The Court may impose fine more than 2 lakh rupees for reason to be recorded.

²⁷Section 12 NDPS Act puts prohibition on obtaining narcotic drugs and psychotropic substances outside country or supply it outside country except with the previous authorization and conditions by the Government. This provision attempts to illicit drugs dealing in other country. It is responsibility of country that not only drug peddling should be dealt in our country but also to see that citizen are not engaged in such act in other country. Violation of prohibition u/s 12 is declared as offence u/s 24 punishable with minimum ten years and maximum twenty years rigorous imprisonment. Fine is also mandatory- minimum 1 lakh rupees and maximum 2 lakh rupees. The Court may impose fine more than 2 lakh rupees for reason to be recorded.

²⁸Section 27-A NDPS Act prescribe punishment for financing illicit traffic and harbouring offenders. Punishment prescribed is same as provided in Section 19 and 24 of NDPS Act.

²⁹Section 2 (vii) NDPS Act defines commercial quantity according to which illicit substance quantity is greater than the quantity specified by the Central Government by notification in Official Gazette. When a person has commercial quantity, it is indicative that he is not drug addict but he is drug peddler.

³⁰AIR 2018 SC 2011.

bail. Now another accused filed petition for grant of anticipatory bail. The Supreme Court opined that in NDPS Act section 37 is mandatory provision and prevail over general provisions of bail under CrPC. the quantity of contraband recovered was commercial and in such situation regular or anticipatory bail without reference to Section 37 of NDPS Act cannot be given. The Court set aside all the bail orders and directed the accused persons to surrender before the trial court with liberty to move petition for regular bail.

Socio-economic offences are serious problem for wellbeing of society and societal members. To tackle problem in these cases presumption clauses are provided thereby case is presumed as prima facie established. Further, in some special Act specific provisions are contained to direct the courts to consider prima facie situation in the case in the disposal of bail application. When case is prima facie established bail is not granted.

Concluding Remarks

Socio-economic crimes affect the health, life, development and economic wellbeing of whole society and members of society. Socio-economic criminal is a person with respectability, status, position, and means. His modus operandi of commission of crime is completely different; he commits crime in organised and planned manner with deep conspiracies. Socio-economic criminal in crime commission uses modern know-how and modern gadgets. Socio-economic crimes, socio-economic criminal and its impacts are completely different from traditional crimes. To tackle socio-economic criminal activity there is need to change the traditional concepts of criminal justice and one such concept needed to be changed is –‘bail is rule and jail is exception’. In socio-economic offences for effective investigation, avoiding obstruction in investigation and pressure on investigating officer, protection of witnesses and evidences, and prevention of repeat of crime it is better that the accused should remain in jail as under-trial prisoner till disposal of case or at least till prosecution has adduced its evidences. Liberty of person is crucial and fundamental; there should not be unnecessary interference with it. Without proper liberty a civilised society cannot exist. Therefore, to make balance between these two contrary things further there should provision for effective but speedier investigation and trial in socio-economic offences and for this purpose specialised expert investigating and prosecuting bodies should be established. Investigating agencies should have modern gadgets, labs, technicians and training to effectively and speedily deal with socio-economic crime. Socio-economic crimes should be dealt differently from traditional crimes. In traditional crimes bail granting may be normal course but in socio-economic bail can only be given exceptionally. Protection of society is more important than some problem and suffering to an individual.

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