



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRM-M-33899-2024

Reserved on: 31.01.2025

Pronounced on: 19.03.2025

RAM CHANDER

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Argued by: Mr. Ravi Sodhi, Advocate (Amicus Curiae), assisted by
Mr. Nilimesh Baruah, Advocate
Mr. M.M.Pandey, Advocate and
Mr. Umesh Pandey, Advocate

Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Svaneel Jaswal, Addl. A.G., Haryana
Mr. P.P.Chahar, Sr. DAG, Haryana
Mr. Saurabh Mago, DAG, Haryana
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana
Ms. Kushaldeep Kaur, Advocate and
Ms. Saanvi Singla, Advocate

Mr. Kanishk Swaroop, Advocate
for respondent No. 2.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

Factual Backdrop of the case/reference.

1. An application bearing No. CRM-34396-2024 became preferred on 23.08.2024 by respondent No.2 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in CRM-M-33899-2024),



which corresponds to the therebys now replaced w.e.f. 01.07.2024, thus Section 482 of the Cr.P.C. The relief claimed therein was for setting aside/staying the operation of the interim order dated 18.07.2024, wherebys, interim bail in petition bearing No. **CRM-M-33899-2024**, was granted, thus to the non-applicant/petitioner, in case arising out of FIR No.257 dated 01.05.2024, registered under Sections 450, 376(2)(n), 376 AB IPC and under Section 6 of the Protection of Children from Sexual Offences Act, 2012, thus, at Police Station Azad Nagar, Hisar.

2. For the sake of convenience, the sequence of events in the said case, are enumerated in the hereinafter extracted table.

Date of Registration of FIR	01.05.2024
Date of filing of bail application/petition under Section 438 Cr.P.C.	15.07.2024
Date of grant of interim bail by this Court	18.07.2024
Date of applicability of the new criminal laws	01.07.2024

3. The learned Single Bench while being seized of the said application formulated the hereinafter extracted questions for consideration.

- 1. Does Section 438(4) Cr.P.C. create an absolute bar with respect to the grant of pre-arrest bail to an accused involved in offences punishable under Sections 376(3), 376 AB, 376 DA and 376 DB IPC?*
- 2. Whether a petition filed under Section 438 Cr.P.C. after 1st July, 2024 i.e. after the enforcement of BNSS*



and repealing Cr.P.C., is maintainable in view of Section 531 of BNSS?

4. On the said extracted substantial questions of law, the Single Bench of this Court rendered theretos, the hereinafter extracted answers.

1. Section 438(4) Cr.P.C. does not create an absolute bar on granting of pre-arrest bail to an accused involved in offences punishable under Sections 376(3), 376AB, 376DA and 376DB IPC. If the concerned Court is of the opinion that a prima facie case is not made out against the accused, it may consider granting pre-arrest bail in such cases.

2. The determining factor relevant for the application of criminal codes when read in the light of Section 531 BNSS would be the date of the incident and the date when criminal law machinery was set in motion i.e. when a complaint is made before the police or the jurisdictional Magistrate.

5. The respective previous apposite procedural as well as substantive laws, become respectively nomenclatured as the Cr.P.C., and the IPC, both whereof became replaced through the corresponding thereto(s) presently enacted legislations, wheretos becomes respectively assigned, thus the respective nomenclatures i.e. the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter for short called as the BNSS) and Bharatiya Nyaya Sanhita, 2023 (hereinafter for short called as the BNS). The said legislations came into force on 01.07.2024. Therefore question No. 2 (supra) became formulated by the learned Single Judge



and the answer thereto, was that, the date of occurrence was the relevant date, thus for setting in motion the criminal machinery either under the previous laws or under the present laws. Resultantly therebys, it appears that the learned Single Bench concluded, that the application filed under Section 438 Cr.P.C., on 15.07.2024, thus was maintainable irrespective of the fact, that at the time of the passing of an order, thus, granting the espoused interim concession of bail to the accused, rather than the procedural law embodied in the present BNSS, thus, had then came into force, wherein, occurred the replacing theretos provisions whereunders an application was to be filed. As such, it was concluded that the application filed under Section 438 Cr.P.C., was maintainable.

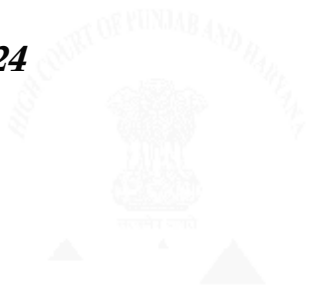
6. However, a similar situation also arose before another Single Bench of this Court, upon, its becoming seized with **CRM-M-31808 of 2024**, titled as **Abhishek Jain Vs. State of U.T., Chandigarh and Another**, qua the maintainability of the petition filed on 03.07.2024 under Section 482 Cr.P.C., seeking therebys the quashing of the FIR No. 71, which became registered on 04.11.2023, embodying therein offences punishable under Sections 406/498 A of the IPC.

7. Strikingly, since on the date of the crime event taking place, thus then the former adjectival law i.e. IPC being in force, therebys, but naturally with the therein crime event, becoming encapsulated within the ambit of the supra provisions of the IPC, as such, the FIR was registered under the then prevalent supra provisions embodied in the IPC.



8. However, yet on the date of filing of the application under Section 482 Cr.P.C., the replacing thereto Section 528 of the BNSS, thus had come into force. Consequently, the learned Single Bench of this Court concluded that the said application was not maintainable. It appears that the learned Single Bench of this Court, in stating so, grooved the said declaration, on the niche, that since on the date when the said application was filed, thus the applicable theretos provision rather was the one, as becomes embodied under Section 528 of the BNSS, than the one as becomes embodied under Section 482 Cr.P.C. Strikingly therebys besides in view of the repealings of the said procedural law. Moreover reiteratedly also, when on the date of the filing of the application (supra), the provisions of Section 482 Cr.P.C., as became invoked by the accused, thus became repealed and the corresponding thereto provisions, becoming incorporated in the newly enacted/replacing thereto procedural law, thus, nomenclatured as the BNSS. Therefore, the said application was declared to be not maintainable.

9. Before further alluding to the conclusions, as made by another Single Bench of this Court, i.e. the Bench headed by Justice Sumeet Goel, on the supra petition, it is relevant to extract the facts relevant for making a decision thereovers, thus appertaining to whether the conclusions made by the learned Single Bench, upon, being seized with the supra quashing petition, are or are not to be foisted with an aura of validity.



Date of Registration of FIR	04.11.2023
Date of filing of quashing petition under Section 482 Cr.P.C.	03.07.2024
Date of applicability of the new criminal laws	01.07.2024

10. The learned Single Judge, upon being seized with the said quashing petition, made the hereinafter extracted conclusions.

“9. As a sequel to the above-said rumination, the following principles emerge:

I. The Code of Criminal Procedure, 1973 stands repealed w.e.f.01.07.2024. Ergo; no new/fresh appeal or application or revision or petition can be filed under Code of Criminal Procedure, 1973 on or after 01.07.2024.

II. The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation pending before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal document Procedure, 1973. In other words; any appeal/application/revision/petition filed on or after 01.07.2024, is required to be filed/instituted under the provisions of BNSS, 2023.

III. Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of Cr.P.C., 1973 is non-maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed up to 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed up to 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non-maintainable.

IV. Section 531 of BNSS shall apply to "revision","petition" as also "petition of complaint" (ordinarily referred to as complaint before Magistrate)

with the same vigour as it is statutorily mandated to apply to "appeal/application/trial/inquiry or investigation" in terms of Section 531 of BNSS."

Analysis (re facts)

10. *The petition in hand has been preferred on behalf of the accused under Section 482 of Cr.P.C. for quashing of FIR No. 71 dated 04.11.2023 registered under Section 406/498-A of IPC 1860 at Police Station, Sector 17, Women Cell, Chandigarh ; final report under Section 173 of Cr.P.C. and all proceedings emanating therefrom. The petition was initially filed on 03.07.2024 whereupon defect(s) were pointed out by the Registry of this Court and thereafter the petition was refiled on 04.07.2024. The petitioner is seeking for quashing of the FIR, report under Section 173 of Cr.P.C., 1973 as also all proceedings emanating therefrom in view of the provision of Section 482 of Cr.P.C., 1973. The Criminal Procedure Code of 1973 stands repealed w.e.f. 01.07.2024. Therefore, the inevitable conclusion is, that the petition in hand is non-maintainable & hence deserves rejection on this score."*

11. Since the subsequent Single Bench of this Court, upon, becoming seized with **CRM-34395-96-2024 in/and CRM-M-33899-2024**, though apparently dis-concurred with the supra view expressed by the earlier Single Bench, upon becoming seized with **CRM-M-31808-2024 in Abhishek Jain's case (supra)**, therebys, the subsequent Single Bench framed the hereinafter extracted substantial questions of law, thus for answers theretos becoming rendered by a larger Bench, which is the present Bench.

"1. Whether the determining factor relevant for the application of criminal codes, when read in the light of Section 531 BNSS, would be the date of the incident and the date when criminal law machinery was set in motion i.e. when a complaint is made before the police or the jurisdictional Magistrate?"

2. Whether, for all intents and purposes, any petition instituted on or after 1st July 2024 will exclusively be

governed by the provisions of the new codes i.e. Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023?”

12. Resultantly under the orders of the Hon'ble the Chief Justice, the instant larger Bench has been constituted, thus, for rendering an answer to the hereinabove formulated substantial questions of law.

13. Initially, for rendering an answer to the supra extracted substantial questions of law, Section 4 and Section 531 of the BNSS need to be extracted hereinafter.

4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws.

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the 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.

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) xxxxx

(c) xxxxx

(3) xxxxx.

14. Moreover, initially for the reasons to be assigned hereinafter, the relief claimed in the petition filed under Section 528 of the BNSS, thus appertaining to the setting aside and staying the operation of the interim order dated 18.07.2024, whereby, relief of interim protection was granted to the non-applicant accused, but was not required to be assigned to the applicant concerned.

15. Emphatically, the said interim protection was granted on an application cast under Section 438 of the Cr.P.C. The said application was filed post the coming into force of the BNSS, but the penal occurrence in respect whereof, relief of interim protection became espoused but occurred on 01.05.2024, (date of registration of FIR) i.e. prior to the coming into force of the newly enacted substantive law i.e. BNS. Resultantly therebys, it appears that the Single Bench of this Court, through an order drawn on 09.09.2024, had formulated those substantial questions of law which are re-extracted hereinafter, and, also had rendered theretos the above extracted answers, which are re-extracted hereinafter.



Substantial question of law.

1. Does Section 438(4) Cr.P.C. create an absolute bar with respect to the grant of pre-arrest bail to an accused involved in offences punishable under Sections 376(3), 376 AB, 376 DA and 376 DB IPC?

2. Whether a petition filed under Section 438 Cr.P.C. after 1st July, 2024 i.e. after the enforcement of BNSS and repealing Cr.P.C., is maintainable in view of Section 531 of BNSS?

Answers to the afore.

1. Section 438(4) Cr.P.C. does not create an absolute bar on granting of pre-arrest bail to an accused involved in offences punishable under Sections 376(3), 376AB, 376DA and 376DB IPC. If the concerned Court is of the opinion that a prima facie case is not made out against the accused, it may consider granting pre-arrest bail in such cases.

2. The determining factor relevant for the application of criminal codes when read in the light of Section 531 BNSS would be the date of the incident and the date when criminal law machinery was set in motion i.e. when a complaint is made before the police or the jurisdictional Magistrate.

16. Contrarily, in petition bearing No.CRM-M-31808 of 2024, as became cast under Section 482 Cr.P.C., relief was claimed both for the quashing of the apposite FIR and for the quashing of the consequent thereto proceedings launched in respect of offences embodied under Section 406/498 A IPC. Even the said application was filed, post the coming into force of the BNSS, inasmuch as, the said petition was filed on 03.07.2024, wherebys, the learned Single Bench of this Court made the hereinabove extracted conclusions which are re-extracted hereinafter.

17. Conspicuously, yet the offences embodied in the FIR (supra), occurred prior to the coming into force of the now enacted BNS, which repealed the apposite former substantive law i.e. the IPC.



Moreover, the said FIR thus was registered under the now repealed IPC, rather through the corresponding thereto present legislation nomenclatured as BNS, thus becoming brought on the statute book on 01.07.2024. Tritely, on 03.07.2024 an application under Section 482 Cr.P.C., became filed.

“9. As a sequel to the above-said rumination, the following principles emerge:

I. The Code of Criminal Procedure, 1973 stands repealed w.e.f.01.07.2024. Ergo; no new/fresh appeal or application or revision or petition can be filed under Code of Criminal Procedure, 1973 on or after 01.07.2024.

II. The provisions of Section 4 and Section 531 of BNSS, 2023 are mandatory in nature as a result whereof any appeal/application/revision/petition/trial/inquiry or investigation pending before 01.07.2024 are required to be disposed of, continued, held or made (as the case may be) in accordance with the provisions of Code of Criminal Procedure, 1973. In other words; any appeal/application/revision/petition filed on or after 01.07.2024, is required to be filed/instituted under the provisions of BNSS, 2023.

III. Any appeal/application/revision/petition filed on or after 01.07.2024 under the provisions of Cr.P.C., 1973 is non-maintainable & hence would deserve dismissal/rejection on this score alone. However, any appeal/application/revision/petition filed up to 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify; in case any appeal/application/revision/petition is filed up to 30.06.2024 but there is defect (Registry objections, as referred to in common parlance) and such defect is cured/removed on or after 01.07.2024, such appeal/application/revision/petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and, therefore, would be non-maintainable.

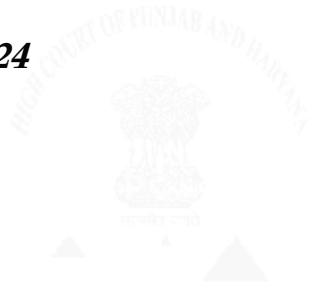
IV. Section 531 of BNSS shall apply to "revision", "petition" as also "petition of complaint" (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply

to "appeal/application/trial/inquiry or investigation" in terms of Section 531 of BNSS."

Analysis (re facts)

10. *The petition in hand has been preferred on behalf of the accused under Section 482 of Cr.P.C. for quashing of FIR No. 71 dated 04.11.2023 registered under Section 406/498-A of IPC 1860 at Police Station, Sector 17, Women Cell, Chandigarh ; final report under Section 173 of Cr.P.C. and all proceedings emanating therefrom. The petition was initially filed on 03.07.2024 whereupon defect(s) were pointed out by the Registry of this Court and thereafter the petition was refiled on 04.07.2024. The petitioner is seeking for quashing of the FIR, report under Section 173 of Cr.P.C., 1973 as also all proceedings emanating therefrom in view of the provision of Section 482 of Cr.P.C., 1973. The Criminal Procedure Code of 1973 stands repealed w.e.f. 01.07.2024. Therefore, the inevitable conclusion is, that the petition in hand is non-maintainable & hence deserves rejection on this score."*

18. Therefore, the point of dissent which has emerged inter-se the learned Single Benches of this Court, is strikingly confined, to the maintainability of petition(s) cast, under the former procedural law(s) i.e. Cr.P.C., besides appertains, to qua with in both the petition(s), rather the offences becoming embodied, thus under the former substantive penal law(s), inasmuch as, respectively under Sections 450, 376 (2)(n), 376 AB IPC (in CRM-M-33899-2024) and under Sections 406/498A IPC (in CRM-M-31808 of 2024), qua whether therebys the remedial provisions which are to be recoured, are the ones embodied in the former Cr.P.C., or in the now replaced theretos BNSS. The further area of dissent is also banked upon, whether the registration of FIRs, under the appositely replaced penal laws, inasmuch as, the IPC, thus automatically preserving a remedy vis-a-vis the accused, but under the corresponding thereto former procedural laws, inasmuch as, under the Cr.P.C., and/or, whether the remedy thus to be agitated was to be in



terms of the corresponding theretos replaced procedural provisions, as become engrafted in the present procedural law i.e. BNSS.

19. The further issue which arises for circumspect consideration and but for obvious adjudication, relates to whether the ambit/gamut of the savings clause, provisions whereof become extracted hereinabove and becomes re-extracted hereinafter, is wide enough or the swathe of the apposite savings provisions extends, to irrespective of the supra application(s) becoming filed, thus post the coming into force of the procedural laws, whether thereby the provisions of clause (a) of Sub Section (2) of the Repeal and Savings clause, as embodied in Section 531 of the BNSS, becomes well attracted vis-a-vis the supra application(s), especially when thereys, prima facie, thus only subjudice applications as on 01.07.2024, were required to be decided in terms of the former procedural law i.e. the Cr.P.C.

20. Moreover, whether irrespective of the fact that the said applications were filed post the coming into force of the respectively enacted present substantive and procedural laws, whether they were to be decided under the former procedural law i.e. the Cr.P.C., or under the replacing thereto procedural law i.e. the BNSS.

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) xxxx

For the reasons to be assigned hereinafter, this Court concurs with the prima facie conclusions drawn by the subsequent learned Single Bench which became seized with CRM-34396-2024 and obviously dis-concurs with the prima facie conclusions as became drawn by the former learned Single Bench of this Court which became seized with CRM-M-31808 of 2024.

21. The answer to the above conundrum is to be borrowed from the mandate, as occurs in Sub Section (2) of the supra extracted repeal and savings clause, to which Section 531 has been assigned. The said savings clause opens with an non obstante clause, whereby but obviously it saves the application of the Cr.P.C. However, the statutory restriction as imposed against the operationalization of the present procedural law i.e. the legislation, now nomenclatured as the BNSS, is but limited to the extent, that any appeal, application, trial, inquiry or investigation pending, becoming saved from application theretos of the present procedural laws i.e. BNSS. Resultantly, *prima facie* therebys, such appeals, applications, trial, inquiry or investigation, as are pending on the coming into force of the BNSS i.e. 01.07.2024, thus respectively are permitted to be continued, held or made as the case may be, thus in accordance with the provisions of the Cr.P.C.

22. The said non obstante clause thus restricts, but in the said spoken manner thus, the operation of the present procedural law, which



came into force on 01.07.2024, whereby, became repealed the earlier thereto procedural law nomenclatured as Cr.P.C., besides also obviously saves certain specific delineated therein proceedings rather from application theretos of the present BNSS. However, the expanse besides import of the '**savings**' vis-a-vis, the specified therein proceedings as drawn under the then prevailing respective procedural and adjectival laws, respectively earlier christened as the Cr.P.C., and the IPC and both whereof now become re-baptized as the BNSS and the BNS, but also naturally requires an incisive analyses thereof.

23. The said '**savings**' is made with a profound legislative wisdom. The profundity of the legislative wisdom, is to be gauged from the word '**pending**' which exists at the end of the statutory phrases, which exist prior thereto, inasmuch as, “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” In consequence, only those appeals, applications, trials, inquiry or investigations which were pending, thus on the coming into force of the respective adjectival and procedural laws, do prima facie, earmarkedly



become saved from application theretos vis-a-vis the presently enacted supra respective adjectival and procedural laws.

24. Tellingly, both the adjectival and the procedural laws are to be holding a common area of functionality or they are complementary to each other wherebys, both are to be harmoniously aligned, so that, therebys, both become made effectively functional rather than both being dis-joined from each other, wherebys, each become rendered distorted.

25. **Strikingly or more pointedly, since the factum of pendency thereof, but is obviously gaugeable from the factum, that the said were pending before the coming into force of the BNSS, wherebys, vis-a-vis, such pending appeals, applications, trial, enquiry or investigation(s), as become embarked into vis-a-vis the offences embodied in the former penal law named as IPC, thus the application thereons of the apposite theretos procedural mechanism(s) but also becoming concomitantly saved. The said apposite recourseable procedural mechanism(s) appertaining to such pending application, trial, inquiry or investigation, is specifically stated in the savings clause, to become governed by the former Cr.P.C. i.e. the previous procedural law, which has now been replaced by the BNSS, which came into force on 01.07.2024.**

26. Now since each of the stated therein appeals', applications', trial, enquiry or subjudice investigations, which though remained un-concluded, but reiteratedly became launched before the



cut off date i.e. 01.07.2024, when the new criminal laws (supra) became enacted, but are permitted to be continued. However, if/when on the date of the commission of the apposite punishable offence, rather the former adjectival law or the substantive law i.e. the IPC was in force, therebys, if the apposite offence was committed prior to the coming into force of the present penal law i.e. BNS, wherebys, when thus naturally the registration of the FIR, was to be but made under the relevant provisions of the former IPC.

27. **In consequence, since in the instant context, the sheet anchor or the plank for the registration of the relevant FIR, respectively under the former IPC, or under the now enacted BNS, but was the date of commission of the offence. In essence, if the penal offence became committed prior to the coming into force of the BNS and/or became committed when the IPC was in force, thereupon, the apposite FIR, but was required to be registered under the former IPC, besides also required registration under the former IPC, than under the replacing thereto penal law i.e. BNS. In other words, if the offence was committed prior to the coming into force of the newly enacted penal laws, thereupon, the FIR was to be registered under the former IPC and not under the present BNS.**

28. **However, if the investigations launched vis-a-vis an offence embodied under the former IPC, in respect whereof, the FIR was registered before the cut off date, rather had not concluded upto the date of the coming into force of the new penal**



laws i.e. on 01.07.2024, yet again the niche, thus for determining whether the former incomplete investigations, thus could be continued under the corresponding thereto procedural law i.e. the Cr.P.C., or under the replacing thereto present procedural legislation i.e. the BNSS, but is the word pending, which as stated supra occurs at the end of the prior thereto statutory coinages “if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending”.

29. In other words, the word 'pending' which occurs at the end of the prior thereto statutory coinages (supra), becomes the lynchpin for ultimately concluding, whether the pending investigations were to be furthered under the former Cr.P.C., or under the replacing thereto procedural law i.e. BNSS. Since the word pending is the lynchpin, and, whereafters, it has been envisaged that the said pending appeal, application, trial, inquiry or investigation, are to become amenable to the clout of the subsequent thereto statutory coinages, inasmuch as, “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, as if this Sanhita had not come into force”. Resultantly when therebys the said are statutorily permitted to be continued under the provisions of the former procedural law i.e. Cr.P.C. Therefore, even



if, the investigations are subjudice in respect of an offence registered under the former IPC, thereupon, when the applicable thereto relevant procedural law, when but is the former Cr.P.C. In sequel, when there is continuity of operation of the Cr.P.C., vis-a-vis investigations' which become launched in respect of an offence embodied in the former IPC. Therefore, the further sequitur thereof, but is that, the cut off date appertaining to the date of coming into force of the respective substantive and procedural laws i.e. 01.07.2024, but naturally in the instant context, thus assumes no relevance. Contrarily, the date of commission of offence and the date of registration of the FIR, thus before coming into force of the newly enacted legislations, rather assumes relevance and importance.

30. However, in the instant case, though excepting investigations to be launched and concluded under the Cr.P.C., thus there was no subjudice trial or enquiry, in respect of offences which became embodied in the former adjectival laws i.e. IPC. Furthermore, though such pending appeals', trials, enquires or investigations, but are permitted to be continued, through succor becoming taken from the relevant provisions of the Cr.P.C. Trietly, the said conclusion becomes completely underscored, from the interpretation supra made by this Court qua the supra extracted savings clause (a) as carried in sub section (2) of Section 531 of the BNSS.



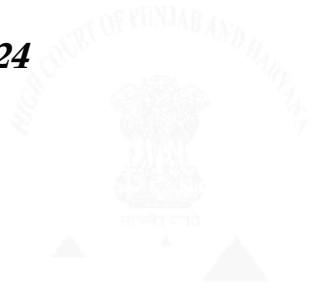
31. Nonetheless, in the instant case, yet the conundrum which is to be settled appertains to :

I) whether the applications' cast under the former procedural law i.e. Cr.P.C., which has been replaced by the present legislation namely BNSS, are to be construed to be, if not yet pending before the coming into force of the BNSS ;

II) especially when they became filed post the coming into force of the BNSS ;

III) Whether therebys, yet on applying the principle of *ejusdem generis* or bearing in mind the profound legislative wisdom, in the engraftings of the savings clause, whereby, subjudice appeals, trials, enquiries or investigations under the Cr.P.C., become saved, from application thereovers, of the now in force procedural law i.e BNSS, whether further irrespective of the cut off date (supra), whether the expanse of the savings clause but also is to be expanded, thus, to also cover applications', which though are not pending on the coming into force of the BNSS, but are filed after the cut off date (supra), yet in respect of an offence registered before the cut off date, thus under the former penal law i.e. IPC.

32. The principle of *ejusdem generis*, has been well explained in a judgment rendered by the Apex Court, in case titled as **Nirma Industries Ltd. and Another Vs. Securities & Exchange Board of India**, to which **Civil Appeal No. 6082 of 2008** becomes assigned. The



relevant paragraphs as occur in the said judgment become extracted hereinafter.

43. The term “ejusdem generis” has been defined in Black’s Law Dictionary, 9th Edn. as follows :

“A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.”

44. The meaning of the expression ejusdem generis was considered by this Court on a number of occasions and has been reiterated in Maharashtra University of Health Sciences and Ors. Vs. Satchikitsa Prasarak Mandal & Ors. The principle is defined thus :

“The Latin expression “ejusdem generis” which means “of the same kind or nature” is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises “from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context”. It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119].”

45. Earlier also a Constitution Bench of this Court in Kavalappara Kottarathil Kochuni vs. State of Madras construed the principle of ejusdem generis wherein it was observed as follows :

“ The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary.”



46. Again this Court in another Constitution Bench decision in the case of *Amar Chandra Chakraborty Vs. Collector of Excise* observed as follows :

“... The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent.”

33. The principle of *ejusdem generis*, but is a tool employed for making purposeful interpretations, besides for gathering the legislative wisdom of the Parliament. Now, on employing the said tool of interpretation, thus for gathering the legislative wisdom, of the Parliament, in making the savings clause (supra), thereupon, when all the coinages occurring therein, inasmuch as, “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;” thus end with the word pending. In sequel, the rule of *ejusdem generis* is to be applied to the collectively used phrases i.e. appeal, application, trial, inquiry or investigation pending, all of which are saved from application thereovers of the newly enacted criminal law i.e. BNSS, whereupons, de hors qua the said phrases' may be being of a minimal dis-similar genre, but when they become sparked from the registration



of FIRs before the cut off date, but under the former IPC, now replaced by the BNS i.e. the present substantive law. Therefore, and moreover, when qua all the words, there is a requirement of collective application theretos of the rule of *ejusdem generis*, but on the prima dona plank, thus but contextually hinged on the date of the registration of the penal occurrence. Consequently, on fully employing the rule of *ejusdem generis* to all the therein inter relatable statutory coinages, but begets a striking inference, that though the savings clause (supra) ensures the continuity of appeal, application, trial, inquiry or investigations pending. Nonetheless, if to the coinage **pending** which occurs at the end of the statutory coinages, inasmuch as, 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; thus a restrictive signification become imparted to the extent, that it covers only subjudice applications', or stricto sensu it only covers the applications' pending before the coming into force of the BNSS, and, that it does not apply to applications' which become filed post the coming into force of the BNSS. Resultantly therebys, the vitals or the fine rubric collectively governing all the said inter connected phrases,



wheretos, thus the rule of *ejusdem generis* is to be employed, when naturally contextually becomes entrenched in the date of the commission of offence in respect whereof, the FIR was lodged before the cut off date, rather would become relegated into the oblivion, whereby, the legislative wisdom in the enactment of the savings clause but would be the ill-catastrophe.

34. In other words, if the innate legislative wisdom in making the said savings clause, becomes firmly contextually grooved in the niche, inasmuch as, the date of commission of the offence, besides the registration of the FIR taking place before the cut off date. Consequently, if so, even if the word pending though occurs, post the phrases “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, as if this Sanhita had not come into force”, whereby, *prima facie*, at the time of coming into force of the present legislation i.e. BNSS, all pending applications, but may be continued, to be decided in terms of the former procedural legislation namely the Cr.P.C. However, reiteratedly in making the said interpretation, whereby, applications filed post the coming into force of the BNSS and enclosing therein the prime factum qua



the reliefs espoused therein becoming sparked from offences registered under the former adjectival law i.e. IPC, rather would become foreclosed from becoming filed through recourse being made to the relevant provisions of the former Cr.P.C., besides would defeat the rule of *ejusdem generis*, which however, is to be collectively applied to all the supra phrases, which are both inter related to each other besides are insegregable.

35. The reason for stating so emanates from the factum, that when the said rule is to be employed to almost similar phrases as are the extant apposite statutory phrases i.e. 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, as if this Sanhita had not come into force". Resultantly, if appeal, application, trial, inquiry or investigation launched in respect of offences well registered under the former IPC, thus are permitted to be continued, besides also the subjudice applications, on the cut off date are also permitted to be continued, yet, if applications filed post the coming into force are not permitted to be continued, thus upon making inapplicable theretos rather the earlier procedural law i.e. Cr.P.C., but merely on the ground, that they are filed post the coming into force of the replaced thereto procedural law i.e.



BNSS, but would be antithetical to appeals, trial, inquiries or investigations launched under the former IPC, rather being permitted to be continued under the Cr.P.C., despite when qua all the supra almost similar phrases, the rule of *ejusdem generis*, hence necessarily is to be employed. In sequel, as but a natural corollary thereto, thus the commonality of applications' to all supra, is the said norm but dehors qua the applications' pending at the time of coming in force of the present BNS, or theirs being filed after the coming into force of the present procedural law i.e. the BNSS. The supra apposite segregation would erode the legislative wisdom besides would erode the play of the rule of *ejusdem generis*, which is to be employed to all collectively used almost similar phrases but arising from a common thereto FIR.

36. The reason for stating so, also becomes candidly sparked from the factum, that if the savings clause saves those appeals, trials, inquiries, or investigations which are pending, or become launched before coming into force of the newly enacted criminal laws, thereby, the interim protections or the bestowment of a leverage to the accused, to annul the said launched proceedings, through the filing of an application under the previous procedural law i.e. under Section 482 Cr.P.C., but also naturally becomes saved, as such interim protections against arrest, coercive action or reliefs for the quashing of the FIR registered under the former IPC, thus ex facie are ancillary or subsidiary to the supra saved appeals, trials, applications, inquiries or investigations.



37. In other words, when interim reliefs claimed through interim applications, thus filed in the supra saved appeals, trials, applications, inquiries or investigations, are only a genus of the larger species, inasmuch as, of the saved appeals, trials, applications, inquiries or investigations. Therefore, but as a consequent corollary, the effect of the supra saved from applications of the present procedural laws, is that, therebys too, through employing the rule of *ejusdem generis*, thus the interim applications filed during the pendency of investigations launched into FIR registered under the former IPC, applications whereofs may be either in the nature of espousals being made for indulgence of pre-arrest bail or for enlargement of regular bail besides for quashing of the FIRs lodged under the former IPC, but are all maintainable under the former Cr.P.C.

38. To further augment the above inference, if pending appeals, trials, inquiries, or investigations, emanating from offences registered under the former IPC, thus are saved from applications thereovers of the present respective adjectival and procedural laws, respectively nomenclatured as the BNS and the BNSS, therebys, but obviously, if discharge applications' are thus permissible to be filed before the criminal Court of competent jurisdiction, vis-a-vis, a charge sheet filed under the former Cr.P.C., besides when also become, but saved the provisions of Section 319 Cr.P.C. Moreover, when also becomes saved the provisions cast under Section 389 of the Cr.P.C.,



wherebys the convicted/accused, can seek suspension of the execution of the awardings of the apposite sentences, vis-a-vis a trial commenced upon offences punishable under the former IPC. Consequently, if during pendency of investigations, the accused intends to claim relief against his becoming subjected to coercive action, therebys, the remedy to restrain the police against subjecting the accused concerned from coercive action in respect of an FIR registered under the former IPC, but automatically, also becomes saved from application theretos, of the present BNSS. If the said interpretation is not employed, therebys too, the savings of subjudice trials, or appeals through the supra repealing provisions, would but be also not well purposing the legislative wisdom, thus in the engraftment of the savings clause (supra).

39. Resultantly only through the employment of the rule of *ejusdem generis*, the legislative wisdom in the engraftment of the savings clause, thus is to be fathomed. Since the said fathoming has been undertaken hereinabove. Resultantly the derivative therefrom, but, is that, the applications filed post the coming into force of the present procedural laws, but in respect of offences punishable besides registered under the former IPC, do also become saved, from application theretos of the present BNSS.

40. Now, illustratively, in case the CPC is amended and through the apposite savings clause, the pending suits or pending first or second appeals as arise therefroms, are saved from application thereovers, of the replacing theretos apposite procedural laws. Though,



the said savings clause may be with an almost synonymous heretos savings clause, which though may not openly express the amenability of filing of interlocutory applications, within the purview of the statutory provisions, as may occur in the may be replaced CPC, yet the omission of any openly expressed speakings, thereby thus not saving the filing of interlocutory applications, relating to impleadment of parties, relating to applications of the principle of *res subjudice*, relating to applicability of the doctrine of *lis pendens*, relating to the filing of application for substitution, thus would also automatically beget the ill consequence of such applications being not amenable to be filed. In the said situation also illustratively, the Union Parliament but cannot be said to not save the filing of the said interlocutory applications, despite its expressly saving the applications thereovers vis-a-vis pending suits, first appeals or second appeals.

41. The said lack of open expression therein and also the instant said lack of open expressions in the present savings clause, whereby, thus applications' filed post the coming into force of the BNSS, become omitted to be explicitly saved from application thereovers of the former Cr.P.C., but yet the lack of supra plain speakings, rather do get underwhelmed in the makings of the supra inferences, thus raised on the trite plank qua for applying the relevant procedural law, hence contextually the date of the commission of the offence, and, the registration of the FIR before the cut off date, rather comprising the canon of apposite applicabilities, besides with this



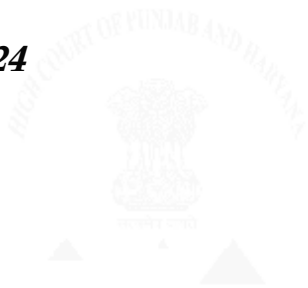
Court employing vis-a-vis to all the statutory phrases, as occur in the savings clause (supra), thus the rule of ejusdem generis, whereby the supra conclusion is but the only inevitable conclusion.

42. In aftermath, the supra answer is rendered to the supra reference, whereby, this Court agrees with the observations made by the subsequent Single Bench of this Court, while being seized of CRM-34396-2024, and disagrees with the observations made by the former Single Bench of this Court, while being seized of CRM-M-31808 of 2024.

43. List the case, as per roster for deciding the same on merits.

Summarization of Principles.

i) If the investigations are subjudice in respect of an offence registered under the IPC, thereupon, the relevant procedural law, which is to be applied theretos, but is the former Cr.P.C. In sequel, when there is continuity of operation of the Cr.P.C., vis-a-vis investigations' which become launched in respect of an offence embodied in the former IPC. Therefore, the further sequitur thereof, but is that, the cut off date vis-a-vis the date of coming into force of the respective substantive and procedural laws i.e. 01.07.2024, but naturally assuming no relevance. **Contrarily, contextually, the date of commission of offence or the date of registration of the FIR, thus assuming relevance and importance, rather for all the relevant purposes including continuity of appeals, inquiries, trials,**



investigations and also vis-a-vis the continuity of applications claiming interim reliefs dehors such applications being filed post the coming into force of the BNSS.

ii) Therefore, the subjudice appeals, trials, enquiries or investigations under the Cr.P.C., become saved, from application thereovers, of the now in force procedural law i.e BNSS. Moreover, irrespective of the cut off date (supra), the width of the savings clause is to be expanded, to also cover applications, which though are not pending after the coming into force of the BNSS, but are filed after the cut off date (supra), yet in respect of an offence registered under the former penal law i.e. IPC.

44. This Court appreciates the profound wisdom and enriched legal assistance provided by Mr. Ravi Sodhi, Advocate (Amicus Curiae), Mr. Ankur Mittal, Additional, Advocate General, Haryana, Mr. Maninder Singh, Sr. DAG, Punjab and Mr. Sangam Garg (Law Researcher) attached with this Court.

45. The Registry of this Court is directed to circulate the copy of this judgment to all the Judicial Officers in the States of Punjab, Haryana and U.T., Chandigarh, as well as to the Judicial Academy, Chandigarh.

(SURESHWAR THAKUR)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

19.03.2025

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No