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Advocates & Solicitors

ALLAHABAD HIGH COURT HOLDS ANTICIPATORY BAIL MAINTAINABLE UNDER BNSS EVEN IN NDPS CASES

"SUDHIR @ SUDHIR KUMAR CHAURASIA V. STATE OF U.P. & ORS."

Hon'ble Allahabad High Court in ***Sudhir @ Sudhir Kumar Chaurasia v. State of U.P. & Ors.***[1] held that with the enactment of the Bharatiya Nagarik Suraksha Sanhita (BNSS), the restriction under Section 438(6) CrPC (as amended by the UP Amendment Act, 2018), which barred anticipatory bail in NDPS Act cases, no longer remains applicable. Hon'ble Court observed that Section 531(2)(b) of the BNSS pertains solely to procedural aspects such as notifications, appointments, jurisdictional definitions, and orders under the old Code, which are to be treated as having effect under the BNSS. However, this provision cannot be interpreted as a saving clause to continue substantive restrictions—such as those concerning the maintainability of legal remedies like anticipatory bail—under the repealed CrPC provisions. Upon examining the differences between Section 438 of the CrPC and Section 482 of the BNSS, the Court noted that the legislature consciously omitted the bar on anticipatory bail, thereby indicating a clear legislative intent to remove such restrictions.

Hon'ble Court further relied on the principle that, in cases of ambiguity in penal statutes, interpretations favouring the rights of the accused must prevail. Accordingly, Hon'ble Court held that anticipatory bail under Section 482 BNSS is maintainable even in cases involving offences under the NDPS Act, as the restrictive provision under the UP Amendment Act, 2018, no longer survives post-enactment of the BNSS.

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[1] CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 447 of 2025
[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

Court No. - 13 **Neutral Citation No. - 2025:AHC-LKO:34988**

A.F.R.

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S 438 CR.P.C. No. - 447 of 2025

Applicant :- Sudhir @ Sudhir Kumar Chaurasia
Opposite Party :- State Of U.P. Thru. The Prin. Secy. Ministry Of Home And 3 Others
Counsel for Applicant :- Pradeep Kumar,Adarsh Tripathi,Prabhat Kumar Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Manish Mathur,J.

1. Heard Mr. Prabhat Kumar Mishra learned counsel for applicant and Dr. V.K. Singh learned Government Advocate assisted by Mr. Nikhil Singh learned Additional Government Advocate on behalf of State. For better appreciation of controversy this Court has also heard Mr. S.K.Singh, Mr. Atul Verma, Mr. Gaurav Mehrotra, Mr. Nadeem Murtza and Mr. Dilip Kumar Pandey, Advocates as learned Amicus Curiae.

2. First Anticipatory bail application has been filed with regard to Section 22(c) of the NDPS Act 1985 registered in Police Station Kotwali, District Barabanki.

3. Earlier with regard to same case crime number, anticipatory bail had been granted to the applicant under Sections 420, 467, 468 and 471 IPC in anticipatory bail application No. 1713 of 2024. The present anticipatory bail application has been filed with regard to added Section 22(c) of the NDPS Act.

4. At the very outset, learned counsel for State has raised a preliminary objection regarding maintainability of anticipatory bail application in view of the fact that it pertains to NDPS Act and therefore is not maintainable in terms of Section 438(6) Cr.P.C. It is submitted that earlier the provisions of Section 438 Cr.P.C. pertaining to anticipatory bail were omitted for the State of U.P. by means of U.P. Act No.16 of 1976 and were re-incorporated by means of U.P. Act No. 4 of 2019. It is submitted

that the aforesaid provisions of anticipatory bail were subject to embargo under Section 438(6) which clearly indicated that provisions of anticipatory bail would not be applicable in case of NDPS Act. It is submitted that although Cr.P.C. has subsequently been repealed by the Bhartiya Nagrik Suraksha Sanhita 2023, the provisions incorporated by means of amendment in Section 438 Cr.P.C. would continue in the same terms in view of Section 531(2)(b) of BNSS. Learned counsel has also adverted to provisions of Sections 6, 6-A, 8 and 24 of the General Clauses Act 1897 to substantiate his submission that in case where a Central Act has been amended by State legislature by means of an enactment and has subsequently been granted assent by the President of India, the State enactment would continue to govern the field in terms of Article 254(2) of the Constitution of India and in such a situation the Repeal of Central Act would be immaterial. Learned counsel has specifically emphasized upon Section 6-A of General Clauses Act to substantiate his pleading that since different intention appears, the Repeal of Central Act would not affect the continuance of amendment of Central Act which was made by the state enactment in the year 2019. Learned counsel has also placed reliance on Section 2(p) BNSS 2023 to submit that the definition of 'notification' under Section 2(p) BNSS would be a notification published in the official gazette which is in turn defined in Section 3(39) of the General Clauses Act. It is therefore submitted that the term of 'notification' as appearing in Section 531(2)(b) BNSS would construe a saving clause of the amendment made in the year 2019 by the state amendment in Section 438 Cr.P.C.

5. Learned counsel has placed reliance on following case laws:-

State of Punjab versus Harnek Singh (2002) 3 SCC 481; Vinay Kumar Pandey versus State of U.P. and others, decided by Division Bench of this Court in Criminal Misc. Writ Petition No. 13827 of 2024; Jitendra Pratap Singh versus State of U.P. a Division Bench of this Court in Criminal Misc. Anticipatory Bail Application No. 144 of 2024.

6. Learned counsel appearing for applicant and learned Amicus Curiae have refuted submissions advanced by learned counsel for State with submission that it is in fact proviso to Article 254(2) of the Constitution of India which would govern the field and not provisions of the General Clauses Act which have been relied upon by learned Government Advocate. It is submitted that in the present case, it is Section 6 of the General Clauses Act which would be applicable.

7. It has been further submitted that Section 531(2)(b) does not indicate any saving clause pertaining to legislative power of the State Government and indicates only administrative orders which do not come within realm of enactment in terms of Article 246 of the Constitution of India and therefore repeal of the Central Act would in fact mean to be a repeal which obliterates the entire Act including any State amendment made therein which would also include the State enactment incorporated in Section 438 by the State enactment in the year 2019. Learned counsel has also placed reliance on following judgments:-

State of U.P. versus Hirendra Pal Singh (2011) 5 SCC 305; State of Punjab versus Mohar Singh (1954) 2 SCC 483; Manphul Singh Sharma versus Ahmadi Begum, (1994) 5 SCC 456; Gajraj Singh and others versus State Transport Appellate Tribunal and Others (1997) 1 SCC 650; Zaver Bhai Amaidas versus State of Bombay (1954) 2 SCC 345;Naeem Bano alias Gaindo versus Mohd Rahees & another, special leave petition (c) No. 16460 of 2023

8. Upon consideration of submissions advanced by learned counsel for parties the following questions arise for consideration:-

(i) Whether the provisions of Section 531(2)(b) BNSS can be considered to be a clause saving provisions of U.P. Act No.4 of 2019 ?.

(ii) Whether the re-enactment of Section 438 Cr.P.C. as 482 BNSS as incorporated by means of U.P. Act No.4 of 2019 would be saved in terms of Sections 6, 6-A, 8 and 24 of General Clauses Act ?

Question No.1

9. With regard to aforesaid aspect, provisions of Section 531(2)(b) BNSS are required to be examined and are as follows:-

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

10. A perusal of aforesaid provision indicates the repeal and savings clause to the effect that all notifications published etc. defining jurisdictions, sentences passed which were enforced immediately before commencement of the Sanhita would be deemed to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of the Sanhita.

11. It is relevant that learned Government Advocate has placed specific reliance on the word 'notification published' to submit that U.P. Act No.4 of 2019 was in the nature of a notification in terms of Section 2(p) BNSS and therefore would be saved in terms of Section 531(2)(b) BNSS. It is further submitted that since the aforesaid Act was published in the official gazetted in terms of Section 3(39) of the General Clauses Act, the said provision would specifically apply.

12. It is however a relevant factor that U.P. Act No.4 of 2019 was promulgated under Article 246 of the Constitution of India but does not indicate any specific date from which it would come into effect. For the said purpose, it would be relevant to advert to Section 5 of the General Clauses Act which is as follows:-

"5. Coming into operation of enactments-

.[(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,-

(a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and

(b) in the case of an Act of Parliament, of the President.][* * * *]

(3) Unless the contrary is expressed, a [3][Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement."

13. In terms of aforesaid, the said U.P. Act No.4 of 2019 came into effect from the date it received assent from the President of India and not from the date it was notified in the official gazette. In the considered opinion of this Court, there is substantial difference in an enactment by State Legislature in terms of Article 246 of Constitution of India and a notification which would require to be effective from the date it is notified in the official gazette. The primary difference being that an enactment in terms of Section 5 of General Clauses Act would come into effect from the date it received assent either from the President of India or Governor of State respectively with its notification in the official gazette being immaterial unless specifically indicated. It is only in case of specific orders issued by the Central or State Government in terms of powers conferred by any statute which would come within the term of a notification, which would be effective only from the date it is notified in the official gazette, and would thus come within realm of administrative order or at best, subordinate legislation.

14. In such circumstances, this Court is unable to appreciate the submission of learned Government Advocate that U.P. Act No. 4 of 2019 would come within definition of notification and would therefore be saved.

15. The aforesaid aspect is more so in view of Section 3(19) of the General Clauses Act which defines an enactment to include a regulation and is therefore quite distinct from a notification which has clearly not been made a part of 'enactment'. The difference between a legislation and a notification would be quite apparent from a perusal of Article 246 of Constitution of India whereunder powers have been conferred for making laws in terms of 7th Schedule to the Constitution. By no stretch of imagination can it be said that the laws promulgated in terms of Article

246 of the Constitution of India would come within purview of a notification and not an enactment.

16. Distinction between an enactment and a notification can also be examined from the aspect that all enactments may require to be notified but all notifications do not come within purview of an enactment. The said concept can be readily explained in the manner that an enactment is referable to constitutional power exercised under Article 246 of the Constitution of India with subordinate legislation being any rule or regulation issued or notified in terms of power conferred by such statute. The scope of such an enactment or subordinate legislation is directly referable either to the Constitution of India or to the enactment under which such power is derived whereas a notification by its very nature can be issued by any authority, not necessarily being a Parliament or Legislature, to fill any void which is not covered either by an enactment or subordinate legislation. Such an order which can be passed by administrative authorities in exercise of executive power do not require any imprimatur of Parliament or Legislature.

17. The concept is also explained by Supreme Court in the case of **State of Tamil Nadu versus P. Krishnamurti and others (2006) 4 SCC 517** in the following manner:-

*"**23.** In Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720] this Court differentiated between legislative acts and non-legislative acts thus: (SCC pp. 735-36, para 7)*

"The distinction between the two has usually been expressed as 'one between the general and the particular'. 'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said: 'Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class' while, 'an adjudication, on the other hand, applies to specific individuals or situations'. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of

particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts."

18. It is thus evident that notifications can be issued even by administrative authorities in exercise of their executive power whereas enactments can be promulgated only in terms of powers conferred by the Constitution of India.

19. In view thereof, in the considered opinion of this Court, since Section 531 BNSS not indicating any terminology pertaining to legislative enactments, the provisions of Section 531(2)(b) BNSS can not be termed to be a saving clause with regard to U.P. Act No.4 of 2019.

20. It is also a relevant fact that for the purposes of proper examination of provisions of Section 531 BNSS, the provision in its entirety is required to be examined and not a few sentences incorporated therein. In terms of principles of interpretation of statute, the aspect of the principle 'ejusdem generis' has particular application along with the principle of 'noscitur a sociis' which has been explained by Supreme Court in the case of **Maharashtra University of Health Sciences versus Satchikitsa Prasarak Mandal (2010) 3 SCC 786** in the following terms:-

*" **27.** 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].

***28.** This ejusdem generis principle is a facet of the principle of noscitur a sociis. The Latin maxim noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word "sociis" means "society". Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation.*

Their colour and their contents are to be derived from their context. (See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover [1957 AC 436 : (1957) 2 WLR 1 : (1957) 1 All ER 49 (HL)] , AC at p. 461.)"

21. Upon applicability of aforesaid judgment in the present facts and circumstances, it is a relevant fact that general words in a section of enactment can not be read in isolation but their contents are required to be defined from their context.

22. In the present case the provisions of Section 531(2)(b) BNSS clearly refers to notifications or proclamations issued whereby powers were conferred, local jurisdictions were defined, sentences were passed and orders of appointments were made under the Code. Evidently Section 531(2)(b) pertains only to procedural aspect which were indicated under Cr.P.C. and were required to be deemed to be made under corresponding provisions of the Sanhita. The said provision can not be construed to be a saving clause for continuation of specific prohibition with regard to maintainability of legal remedies available to an accused before the courts of law since the said aspect would not come within any of the terms in the general context indicated under Section 531(2) (b) BNSS.

23. With regard to the aspect of notification viz-a-viz legislative eneactment, learned Government advocate has placed reliance on the judgment in the case of **State of Punjab versus Harnek Singh (2002) 3 SCC 481**.

24. However a bare perusal of the aforesaid judgment will make it evident that the same is inapplicable in present facts and circumstances since in the said case, dispute pertained to notification issued by the State Government in exercise of powers conferred upon it under section 5(A) of the Prevention of Corporation Act 1947. It is therefore evident that the aspect engaging attention of Supreme Court actually pertained to power conferred upon the State Government under legislative enactment and not to the enactment itself.

25. Similarly in the case of **Vinay Kumar Pandey versus State of U.P. and others, decided by Division Bench of this Court in Criminal Misc. Writ Petition No. 13827 of 2024**, the aspect again was power exericsed by the State Government under Section 10 of the Criminal Law (Amendmnent) Act 1932. Evidently the aforesaid case also does not lay down any proposition of law that a notification issued under legislative enactment itself can be deemed to be a legislative enactment.

26. The case of **Jitendra Pratap Singh versus State of U.P. a Division Bench of this Court in Criminal Misc. Anticipatory Bail Application No. 144 of 2024** has merely enunciated the law that when a words of statute are clear and unambiguous, courts must give effect to the legislative intent and literal interpretation. Obviously the aforesaid proposition of law is required to be followed in the circumstances indicated therein but again is not a law for the proposition that a notification issued by the State exercising statutory powers itself can be considered to be at par with statute.

27. The aforesaid question therefore is answered negatively against the State.

Question No.2

28. With regard to aforesaid question, it would be necessary to advert to Section 438 Cr.P.C. as included by U.P. Act No.4 of 2019 and 482 BNSS 2023 which are as follows:-

Section 438 Cr.P.C.	Section 482 BNSS, 2023
"**438. Direction for grant bail to person apprehending arrest.**- *[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely-*	**"482. Direction for grant of bail to person apprehending arrest.-** *(1)When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.* *(2)When the High Court or the Court of*

(i)the nature and gravity of the accusation; *(ii)the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;* *(iii)the possibility of the applicant to flee from justice; and* *(iv)where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,* *either reject the application forthwith or issue an interim order for the grant of anticipatory bail:* *Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.* *(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate herein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit, arid if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely-* *(1) that the applicant shall make himself available for interrogation by a police officer as and when required;* *(ii) that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer,* *(iii) that the applicant shall not leave India without the previous permission of*	*Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-* *(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;* *(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;* *(iii) a condition that the person shall not leave India without the previous permission of the Court;* *(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.* *(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).* *(4)Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under section 65 and sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023."*

the Court;and *(iv) such other conditions as may be imposed under sub-section (3) of Section 437, as if the bail were granted under that section.* *Explanation. The final order made on an application for direction under sub-section (1); shall not be construed as an interlocutory order for the purpose of this Code.* *(3) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.* *(4) On the date indicated in the interim order under sub-section (2), the Court shall hear Puplic Prosecutor and the applicant and after due consideration of their contentions, it may confirm, modify or cancel the interim order.* *(5) The High Court or the Court of Session, as the case may be, shall finally dispose of an application for grant of anticipatory bail under sub-section (1), within thirty days of the date of application;* *(6) Provisions of this section shall not be applicable,-* *(a) to the offences arising out of,-* *(i) the Unlawful Activities (Prevention) Act, 1967;* *(ii) the Narcotic Drugs and Psychotropic Substances Act, 1985;* *(iii) the Official Secret Act, 1923;* *(iv) the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.*	

(b) in the offences, in which death sentence can be awarded. *(7) If an application under this section has been made by any person to the High Court, no application by the same person shall be entertained by the Court of Session." [Vide U.P. Act No.4 of 2019, S. 2 (Received the assent of the President on 1-6-2019 and published in the U.P. Gazette, Extra., Part I, Section (Ka), dated 6.6.2019).]*	

29. It is a relevant fact that provision of anticipatory bail was omitted for the State of U.P. by Act No.16 of 1976 and has thereafter been reincorporated by means of U.P. Act No. 4 of 2019.

30. The aforesaid State amendment came into effect once it received the assent of President of India but subsequently, the entire Cr.P.C. was repealed with advent of BNSS 2023 with effect from Ist July, 2024.

31. At the very outset, difference in provisions of Section 438 as applicable in the State of U.P. with that of Section 482 BNSS will require consideration.

32. From a bare perusal thereof, it is evident that there is considerable difference in the provisions of anticipatory bail as were applicable in State of U.P. prior to the advent of BNSS and subsequent thereto. The primary difference in both the provisions apart from the prohibitions indicated in Section 438(6) Cr.P.C. is that the factors indicated for grant of anticipatory bail under Section 438(1) Cr.P.C. are conspicuously absent under Section 482 BNSS. The proviso to Section 438(1) Cr.P.C. is also missing while provisions of Section 438(3) and (4) also do not find any place under newly incorporated Section 482 BNSS.

33. It is therefore evident that substantial change has been made under Section 482 BNSS pertaining to grant of anticipatory bail after the advent of BNSS 2023.

34. With regard to aforesaid repeal of Cr.P.C. and incorporation of new provision for anticipatory bail, learned Government Advocate has placed specific reliance upon Sections 6, 6A, 8 and 24 of the General Clauses Act which are as follows:-

"6. Effect of repeal.-

Where this Act, or any [3][Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect;or

(b)affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c)affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d)affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e)affect any investigation, legal proceeding or remedy in respect of any such right, privilege, mobligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6A Repeal of Act making textual amendment in Act or Regulation.- *Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.*

8. Construction of references to repealed enactments.-

[2][(1)] Where this Act, or any [2][Central Act] or *Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-*enacted.

[3][(2)] *[4][Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then references in any [Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]*

24. Continuation of orders, etc., issued under enactments repealed and re-enacted.- *Where any [3][Central Act] or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any [4][appointment, notification] order, scheme, rule, form or bye-law [4][made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have*

been [4][made or] issued under the provisions so re-enacted, unless and until it is superseded by any [4][appointment notification,] order, scheme, rule, form or bye-law, [4][made or] issued under the provisions so re-enacted [5][and when any [3][Central Act] or Regulation, which, by a notification under section 5 or 5A of the [6] Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].

35. A perusal of the aforesaid sections makes it evident that apart from Section 6 of the General Clauses Act, none of the other sections would be applicable in such circumstances as the present one. Section 6-A of the Act would be applicable only in case where any Central Act or Regulation repeals an enactment by which the text of any earlier Central Act or Regulation was amended. It is therefore evident that Section 6-A would be applicable only in those cases where earlier Central Act is kept intact and the subsequent Central Act or Regulation amends only the amendment made in the earlier Central Act. The aforesaid section would have been applicable only in case the State enactment was repealed while keeping provisions of Cr.P.C. as enacted by Parliament intact.

36. Similarly Section 8 of the General Clauses Act which appear to be pari materia with Section 531(2)(b) BNSS would be applicable only for the purposes of references to repealed enactments and does not by any stretch of imagination be applicable for the purposes of saving the State enactment as in the present case.

37. Section 24 of the General Clauses Act by its very nature also would not be applicable since it pertains only to those aspects where any appointment, notification, order, scheme, rule, form or bye law made or issued under repealed Act is not inconsistent with the provisions of enactment and would continue in force. The aforesaid Section is therefore inapplicable in cases of re-enactment of statute which may be inconsistent with the earlier enactment.

38. In the present case as has been observed herein above, there is considerable difference in provisions of anticipatory bail as were amended

by the U.P. Act No.4 of 2019 and the re-enacted provisions of anticipatory bail under Section 482 BNSS.

39. In fact in such circumstances as the present one, it is Section 6 of the General Clauses Act which would have applicability particularly in case different intention has been made apparent in the re-enacted provisions after repeal of the earlier provision. The intention therefore to continue the earlier provisions even after repeal have to be specifically indicated. Section 6(b) of the General Clauses Act clearly pertains to repeal not affecting the **previous operation** of any enactment so repealed or anything duly done or suffered thereunder.

40. The natural corollary of the said provision would be that for continued operation of any enactment or any provision of such enactment so repealed would require specific intention in the repealing enactment. Section 6(d) and (e) of General Clauses Act also indicates that for a legal proceeding or remedy to continue even after repeal, a different intention in the subsequent enactment is required. It is also relevant that under Section 6(e) of the General Clauses Act, only the investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment is indicated. It naturally follows that any embargo upon any legal proceeding or remedy imposed by the Amending Act would require specific intention indicated in the subsequent enactment for its continuation. The said aspect has been dealt with by Supreme Court in the case of **State of U.P. versus Hirendra Pal Singh (2011) 5 SCC 305** in the following manner:-

*" **22.** It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly i.e. pro tanto repeal (vide Dagi Ram Pindi Lall v. Trilok Chand Jain [(1992) 2 SCC 13 : AIR 1992 SC 990] ; Gajraj Singh v. STAT [(1997) 1 SCC 650 : AIR 1997 SC 412] ; Property Owners' Assn. v. State of Maharashtra [(2001) 4 SCC 455 : AIR 2001 SC 1668] and Mohan Raj v. Dimbeswari Saikia [(2007) 15 SCC 115 : (2010) 2 SCC (Cri) 782 : AIR 2007 SC 232])."*

41. The aspect of a specific intention expressed in the subsequent enactment to keep alive provisions of repealed enactment in terms of section 6 has been dealt with by Supreme Court in the case of **State of Punjab versus Mohar Singh (1954) 2 SCC 483** in following manner:-

*"**12.** The High Court, in support of the view that it took, placed great reliance upon certain observations of Sulaiman, C.J. in Danmal Parshotam Dass v. Babu Ram Chhote Lal [Danmal Parshotam Dass v. Babu Ram Chhote Lal, 1935 SCC OnLine All 328 : AIR 1936 All 3] . The question raised in that case was whether a suit by an unregistered firm against a third party, after coming into force of Section 69 of the Partnership Act, would be barred by that section in spite of the saving clause contained in Section 74(b) of the Act. The Chief Justice felt some doubts on the point and was inclined to hold that Section 74(b) would operate to save the suit although the right sought to be enforced by it had accrued prior to the commencement of the Act; but eventually he agreed with his colleague and held that Section 69 would bar the suit. While discussing the provision of Section 74(2) of the Partnership Act, in course of his judgment, the learned Chief Justice referred by way of analogy to Section 6(e) of the General Clauses Act and observed as follows (at p. 7):*

"It seems that Section 6(e) would apply to those cases only where a previous law has been simply repealed and there is no fresh legislation to take its place. Where an old law has been merely repealed, then the repeal would not affect any previous right acquired nor would it even affect a suit instituted subsequently in respect of a right, previously so acquired. But where there is a new law which not only repeals the old law, but is substituted in place of the old law, Section 6(e) of the General Clauses Act is not applicable, and we would have to fall back on the provisions of the new Act itself."

These observations could not undoubtedly rank higher than mere "obiter dictum" for they were not at all necessary for purposes of the case, though undoubtedly they are entitled to great respect. In agreement with this dictum of Sulaiman, C.J., the High Court of Punjab, in its judgment in the present case, has observed that where there is a simple repeal and the legislature has either not given its thought to the matter of prosecuting old offenders, or a provision dealing with that question has been inadvertently omitted, Section 6 of the General Clauses Act will undoubtedly be attracted.

***13.** But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the legislature did not deem it fit to keep alive the liability incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention."*

42. The aforesaid judgment would therefore be a proposition of law to the effect that in case of repeal of an enactment, consequences laid down in Section 6 of the General Clauses Act will follow, unless a different

intention appears. In case the new legislation manifests an intention incompatible with or contrary to the provisions of earlier section, such incompatibility would have to be ascertained in order to indicate the saving clause. The said judgment has thereafter been followed with approval in the case of **Manphul Singh Sharma versus Ahmadi Begum, (1994) 5 SCC 456**.

43. In the case of **Gajraj Singh and others versus State Transport Appellate Tribunal and Others (1997) 1 SCC 650**, Hon'ble Supreme Court has also reiterated the said aspect with regard to Section 6 of General Clauses Act in the following manner:-

*"**24.** When there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repealing Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act. Therefore, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.*

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31. In Cardinal Rules of Legal Interpretation (3rd Edn.) by Randall, A.E., 1924, it is stated at pp. 531-32 thus:

"Their lordships … conceive that, in dealing with a statute which professes merely to repeal a former statute of limited operation, and to re-enact its provisions in an amended form, they are not necessarily to presume an intention to extend the operation of those provisions to classes of persons not previously subject to them, unless the contrary is shown; but that they are to determine on a fair construction of the whole statute, considered with reference to the surrounding circumstances, whether such an intention existed. Brown v. McLachlan [(1872) LR 4 PC 543 : 42 LJ PC 18] PC at p. 550 : LJPC at p. 23, Sir W. Colville, delivering the judgment of the Judicial Committee.

'Where you have a repeal, and you have also a saving clause, you have to consider whether the substituted enactment contains anything incompatible with the previously existing enactment. The question is, Aye or No, is there incompatibility between the two? And in those cases the Judges, in holding that there was a saving clause large enough to annul the repeal, said that you must see whether the true effect was to substitute something incompatible with the enactment in the Act repealed; and that if you found something in the repealing Act incompatible with the general enactments in the repealed Act, then you must treat the jurisdiction under the repealed Act as pro tanto wiped out. That is settled by the cases of Busfield, In re [(1886) 32 Ch D 123 : 55 LJ Ch 467] and Hume v. Somerton [(1890) 25 QBD 239 : 59 LJQB 420] .' R., In re [(1906) 1 Ch 730 : 75 LJ Ch 421] , Ch at p. 736 : LJ Ch at p. 423, Collins, M.R."

44. The aspect of applicability of Section 6 of the General Clauses Act is also required to be examined with regard to applicability of proviso to Article 254(2) of the Constitution of India which is as follows:-

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States-

(1) *If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*

(2) *Where a law made by the Legislature of a State [***] with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

45. The said proviso to Article 254(2) is also indicative of the fact that even in case a State Act made subsequent to the Central Act receives assent from the President and in terms thereof prevails in that State, the Parliament would be within its legislative competence to enact a subsequent law adding to, amending, verying or repealing the law so made by State Legislature. The aforesaid aspect has been dealt by Supreme Court in the case of **Zaver Bhai Amaidas versus State of Bombay (1954) 2 SCC 345** in the following manner:-

*"**15.** Bavdekar, J., who came to the contrary conclusion observed, and quite correctly, that to establish repugnancy under Section 107(2) of the Government of India Act, it was not necessary that one legislation should say "do" what the other legislation says "don't", and that repugnancy might result when both the legislations covered the same field. But he took the view that the question of enhanced penalty under Act 36 of 1947 was a matter different from that of punishment under the Essential Supplies (Temporary Powers) Act, and as there was legislation in respect of enhanced penalty only when the offence was possession of foodstuffs, in excess of twice the prescribed quantity, the subject-matter of Act 36 of 1947 remained untouched by Act 52 of 1950 in respect of other matters. In other words, he considered that the question of enhanced punishment under Act 36 of 1947 was a matter different from that of mere punishment under the Essential Supplies (Temporary Powers) Act and its amendments; and in this, with respect, he fell into an error. The question of punishment for contravention of orders under the Essential Supplies (Temporary Powers) Act both under Act 36 of 1947 and under Act 52 of 1950 constitutes a single*

subject-matter and cannot be split up in the manner suggested by the learned Judge. On this principle rests the rule of construction relating to statutes that:

"when the punishment or penalty is altered in degree but not in kind, the later provision would be considered as superseding the earlier one".
(*Maxwell on Interpretation of Statutes*, 10th Edn., pp. 187 and 188). "It is a well-settled rule of construction", observed Goddard, J. in *Smith* v. *Benabo* [*Smith* v. *Benabo*, (1937) 1 KB 518 (DC)] .
"that if a later statute again describes an offence created by a previous one, and imposes a different punishment, or varies the procedure, the earlier statute is repealed by the later statute : see *Michell* v. *Brown* [*Michell* v. *Brown*, (1858) 1 El & El 267 at p. 274 : 120 ER 909] , per Lord Campbell". (KB p. 525)

16. *It is true, as already pointed out, that on a question under Article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that Section 2 of Bombay Act 36 of 1947 cannot prevail as against Section 7 of Essential Supplies (Temporary Powers) Act 24 of 1946 as amended by Act 52 of 1950."*

46. The same aspect has recently again been considered in the case of **Naeem Bano alias Gaindo versus Mohd Rahees & another, special leave petition (c) No. 16460 of 2023** in the following manner:-

" 9.1 Further, in Gauri Shankar Gaur vs. State of UP, [1993] Supp.1 SCR 667, this Court held as follows:

"An exception has been engrafted to this rule by Cl.2 thereof, namely, if the state law has been reserved for consideration and the President gives assent to a State Law, it will prevail, notwithstanding it repugnance to a earlier law made by the Union, though both laws are dealing with concurrent subject occupying the same field but operate in a collision course. The assent obtained from the President of the State Act which is inconsistent with the Union Law prevails in that State and overrides the provisions of the Union Law in its application to that State only. However, if the Parliament, in exercising its power under proviso to Art. 254(2) makes a law adding, amending or repealing the union law, predominance secured by the State law by the assent of the President is taken away and the repugnant State law though it became valid by virtue of President's assent, would be void either directly of by its repugnance with respect to the same matter." [emphasis supplied]

9.2 The judgment of this Court in Innoventive Industries Ltd. vs. ICICI Bank, [2017] 8 SCR 33 examined the case law on 9 Article 254 and summarised the position of law. As regards the case at hand, the following points are relevant:

50. The case law referred to above, therefore, yields the following propositions:

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vi) Repugnancy may be direct in the sense that there is inconsistency in the actual terms of the competing statutes and there is, therefore, a direct conflict between two or more provisions of the competing statutes. In this sense, the inconsistency must be clear and direct and be of such a nature as to bring the two Acts or parts thereof into

direct collision with each other, reaching a situation where it is impossible to obey the one without disobeying the other. This happens when two enactments produce different legal results when applied to the same facts.

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viii) A conflict may arise when Parliamentary law and State law seek to exercise their powers over the same subject matter. This need not be in the form of a direct conflict, where one says "do" and the other says "don't". Laws under this head are repugnant even if the rule of conduct prescribed by both laws is identical. The test that has been applied in such cases is based on the principle on which the rule of implied repeal rests, namely, that if the subject matter of the State legislation or part thereof is identical with that of the Parliamentary legislation, so that they cannot both stand together, then the State legislation will be said to be repugnant to the Parliamentary legislation. However, if the State legislation or part thereof deals not with the matters which formed the subject matter of Parliamentary legislation but with other and distinct matters though of a cognate and allied nature, there is no repugnancy.

ix) Repugnant legislation by the State is void only to the extent of the repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

x) The only exception to the above is when it is found that a State legislation is repugnant to Parliamentary legislation or an existing law if the case falls within Article 254(2), and Presidential assent is received for State legislation, in which case State legislation prevails over Parliamentary legislation or an existing law within that State. Here again, the State law must give way to any subsequent Parliamentary law which adds to, amends, varies or repeals the law made by the legislature of the State, by virtue of the operation of Article 254(2) proviso." (underlining by us)"

47. Upon applicability of aforesaid judgments, it is evident that by virtue of Section 6 of the General Clauses Act, a different intention to continue the repealed provisions is required to be specifically stated in the subsequent enactment, failing which, the provisions of proviso to Article 254(2) would be applicable whereby in case of any repugnance or difference with subsequent enactment, the law made by Parliament would prevail.

48. Upon applicability of aforesaid judgments, it is thus evident as has been observed herein above that there is no specific intention indicated in the subsequent enactment of BNSS 2023 to continue with the State amendment made by means of Act No.4 of 2019 and even in terms of proviso to Article 254(2) of the Constitution of Idia, there being a considerable difference in the provisions of anticipatory bail between Act No.4 of 2019 and Section 482 BNSS 2023, in the considered opinion of

this court, it is the provisions of re-enacted Section 482 BNSS 2023, which shall prevail.

49. From perusal of differences in provisions of anticipatory bail incorporated vide Act No. 4 of 2019 and Section 482 BNSS 2023, it is evident that Parliament made a conscious decision to do away with the prohibitions indicated in Section 438(6) Cr.P.C. particularly since it would be deemed that Parliament was aware of provisions incorporated vide Act No.4 of 2019 by virtue of deeming fiction and therefore the re-enacted provisions can be said to have been deliberately obliterated by Parliament while enacting Section 482 BNSS 2023.

50. Another aspect pertaining to same is the concept that in case of any ambiguity in the construction of penal statute, favourable interpretation towards protecting the right of accused are required. The said aspect has been dealt with by Hon'ble Supreme Court in the case of **M. Ravindran versus Directorate of Revenue Intelligence (2021) 2 SCC 485** in the following manner:-

*" **17.9.** Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused."*

51. The aforesaid aspect has also been considered in the case of **Tolaram Relumal and another versus State of Bombay (1954) 1 SCC 961** in the following manner:-

*" **8.** The question that needs our determination in such a situation is whether Section 18(1) makes punishable receipt of money at a moment of time when the lease had not come into existence, and when there was a possibility that the contemplated lease might never come into existence. It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent for the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in London & North Eastern Railway Co. v. Berriman [London & North Eastern Railway Co. v. Berriman, 1946 AC 278 at p. 295 (HL)] : (AC p. 295)*

"… Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language."

52. In view of discussion made herein above, it is quite evident that provisions of Section 482 BNSS 2023 would prevail over amendment made by Act No.4 of 2019.

53. The question No.2 accordingly is also answered negatively against the State.

54. In a recent judgment in the case of Raman Sahni versus State of U.P., Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 1710 of 2024 Coordinate Bench of this Court has also held that in terms of Section 482 BNSS, anticipatory bail would be maintainable in cases where NDPS Act is imputed.

55. In view thereof, it is held that an anticipatory bail application would be maintainable in cases where sections of the NDPS Act have been made applicable in an F.I.R.

56. On merits of issue, it is evident that as per contents of F.I.R./recovery certificate, the incident is said to have taken place on 8th May, 2024 when a police team acting on the basis of information supplied apprehended a pickup van bearing registration No. U.P. 32 JN 9524 with the occupant namely Raj Kumar alias Sonu who is said to have disclosed the name of applicant as owner of the vehicle. Recovery of cartons of mixed cough syrup with Codeine is said to have been made. It is also stated that the applicant upon being contacted indicated that the aforesaid products belonged to one Amandeep son of Gurmeet Singh and were being transported by applicant's vehicle.

57. It is submitted that applicant has been falsely implicated in allegations levelled against him which would be evident from the fact that the applicant has neither been apprehended from the spot nor is there any recovery from him. It is submitted that vehicle in fact belonged to his mother Smt. Kamla Devi and was requisitioned by the applicant for

purposes of transportation of bottles of cough syrup which has been seized. It is submitted that aforesaid aspects are evident from the F.I.R. itself. He has also adverted to Rule 52-A of the Rules framed under the Act of 1985 to submit that Methyl Morphine commonly known as Codeine alongwith dilution and compounded with one or more ingredients is required not to exceed 100 Mg. of the drug per unit. It is therefore submitted that since as yet F.S.L. report is not made available, there can not be any assumption that the volume of Codeine seized is more than the commercial or prescribed limit.

58. Learned A.G.A. has opposed bail application but admits that F.S.L. report has not yet been obtained. It is also submitted that charge sheet as yet has not been filed.

59. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, prima facie subject to evidence led in trial, it appears that earlier charge sheet had been filed against the applicant on sections excluding Section 22(c) of the NDPS Act 1985 which has been imposed much subsequently. The aforesaid aspect would require to be considered by trial court alongwith the aspect as to whether the volume of Codeine seized is more than the prescribed limit in terms of rules framed under the Act of 1985, which at present may not be ascertainable due to lack of F.S.L report.

60. Considering aforesaid circumstances, the aspects of Section 37 of NDPS Act are found in favour of the applicant.

61. Thus in view of law laid down by Hon'ble Supreme Court in **Sushila Aggarwal Vs. State (NCT of Delhi)**-(2020) 5 SCC 1, it would be appropriate to grant anticipatory bail to applicant under Section 438 Cr.P.C./482 BNSS.

62. In view of the above, it is provided that in the event of arrest, the applicant- Sudhir @ Sudhir Kumar Chaurasia shall be released on anticipatory bail in the aforesaid Case Crime number on his furnishing a personal bond with two sureties each in the like amount to the satisfaction

of the arresting officer/investigating officer/S.H.O. concerned with the following conditions:-

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

(ii) that the applicant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence;

(iii) that the applicant shall not leave India without the previous permission of the court;

(iv) that in case charge-sheet is submitted the applicant shall not tamper with the evidence during the trial;

(v) that the applicant shall not pressurize/ intimidate the prosecution witness;

(vi) that the applicant shall appear before the trial court on each date fixed unless personal presence is exempted;

(vii) that in case of breach of any of the above conditions, benefit of this order would not be available to applicant.

The application stands allowed.

Order Date :-30.5.2025
prabhat