

# LAWBY 26

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### Do Judges ever get arrested? WHAT'S INSIDE?

Inclusive justice: bail granted to HIV-Positive NDPS accused for dignified environment

Should continuous GPS tracking be allowed as a bail condition for high-risk offenders ?

Non delivery of makeup product and mental suffering

The principle of mutuality



# EDITORIAL



P Arun Sugavaneshvar  
Founder

## Do Judges ever get arrested?

Yes, they do. Judges are not above the law; however, they enjoy certain immunities and indispensable privileges for them to discharge their duties.

**Section 15 of the Bharatiya Nyaya Sanhita, 2023** (previously Section 77 of IPC, 1980), provides that any act by a Judge is not an offence when done in good faith and acting judicially in the discharge of any power. **Section 218 of the Bharatiya Nagarik Suraksha Sanhita 2023** (previously Section 197 of the Code of Criminal Procedure, 1973) provides that a Judge, Magistrate or a Judicial Officer who is or was not removable from office unless sanctioned by the Government is accused of any offence while discharging their official duty, then no Court shall take cognizance of the offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013. **Section 3(2) of the Judges (Protection) Act, 1985** provides that despite immunity, the Central Government, State Government, Supreme Court, High Court or any other authority, as notified, may take legal action against Judges.

In the landmark case of *Delhi Judicial Services Association vs State of Gujarat and Others (AIR 1988 SC 1214)*, the Supreme Court laid down guidelines for the arrest of a judicial officer. The most significant among other guidelines was that a judicial officer cannot be arrested without intimating the District Judge or the High Court, as the case may be. A judicial officer cannot be handcuffed, and no statements must be recorded, or medical tests must be done without the presence of their lawyers.

The Supreme Court, in the case of *C.S. Karnan vs. Supreme Court of India (Suo Motu Contempt Petition (c) No.1 of 2017)* came down heavily upon a sitting Justice of the Madras High Court and sentenced him to six months in prison for contempt. Justice C.S. Karnan had levelled several allegations and scathing remarks against his fellow Judges and the Chief Justice of the Madras High Court.

In the case of *Kamini Jaiswal vs Union of India [Writ Petition (Criminal) No.176 of 2017]*, the Supreme Court stated that there can be no question of registering an FIR against sitting Judges of the Supreme Court or High Court without consultation of the Hon'ble Chief Justice of India and if the allegation is against the Chief Justice of India then the decision has to be taken by the Hon'ble President of India as per the procedure prescribed in *K.Veerasami vs Union of India [(1991) 3 SCC 655]*.

Judges are punishable for their offences but only according to the procedure established by law. If there is a Judge who misuses his or her position to commit an offence it is the first and foremost job of the judiciary to act upon it swiftly so as to instil confidence in the machinery of justice.





# LEGAL CRISPS

## Inclusive justice: bail granted to HIV-Positive NDPS accused for dignified environment

-Seethala B

The High Court Of Tripura at Agartala granted Bail to an HIV-positive accused who was arrested in April 2024 under Sections 20(b)(ii)(c), 21(C), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985. In the case of **Archana Das Sarkar & Anr. vs. The State of Tripura (2024 SCC OnLine Tri 455)**, the accused was detained in police custody and while in judicial custody, he was diagnosed with HIV and was sent to hospital for treatment. The Additional Public Prosecutor has submitted to the Court that doctors reported the accused was responding well to the treatment and his condition was stable. Despite this, his bail request was opposed, citing the strict provisions of Section 37 of the NDPS Act. On the other hand, the accused's lawyer produced some bail orders where the Supreme Court granted bail to HIV-positive individuals charged under the NDPS Act.

Taking into account the submissions and the accused's health condition, the Court acknowledged the constraints of **Section 37 of the NDPS Act**. Still, it stated that "he deserves the benefit of granting bail since he is entitled to lead a life with all dignity in an environment that would be congenial to him, and needless to say, it is not possible in jail."

The Court released the accused on bail, furnishing a bail bond of Rs.1,00,000/- with one surety of the same amount to the satisfaction of the Court. However, the Court imposed the following conditions:

- (i) The Accused will not abscond or tamper with the evidence or witnesses.
- (ii) He shall cooperate with the process of investigation as and when necessary by the Investigating Officer.
- (iii) He shall make himself available to the Court as and when will be summoned by the Court during the course of trial.
- (iv) The accused shall not leave the jurisdiction of the Ld. Special Judge, West Tripura without prior permission of the said Court.





# Should continuous GPS tracking be allowed as a bail condition for high-risk offenders ?

-Sowmiya R K

In a significant ruling, the Supreme Court of India has set important precedent regarding bail conditions for accused persons, particularly foreign nationals, in cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The judgement in ***Frank Vitus v. Narcotics Control Bureau (S.L.P. (Crl.) No. 6339-6340 of 2023)***, delivered on July 8, 2024, by a Division Bench comprising Justices Abhay S. Oka and Ujjal Bhuyan, addressed the delicate balance between ensuring the accused's appearance during trial and protecting their constitutional rights.

The Court examined two contentious bail conditions imposed by the Delhi High Court: requiring the accused to share their live location via Google Maps with the investigating officer, and obtaining an assurance from the Nigerian High Commission regarding the accused's appearance.

Regarding the live location condition, the Court held that it violates the right to privacy under Article 21 of the Constitution. Justice Oka, authoring the judgement, emphasized that "the object of the bail condition cannot be to keep a constant vigil on the movements of the accused enlarged on bail. The investigating agency cannot be permitted to continuously peep into the private life of the accused enlarged on bail, by imposing arbitrary conditions since that will violate the right of privacy of the accused, as guaranteed by Article 21."

On the condition of obtaining an Embassy certificate, the Court clarified that while it may be imposed in certain cases, it should not be a universal requirement for foreign nationals accused under the NDPS Act. The judgement states that "when the Embassy/High Commission does not grant such a certificate within a reasonable time, the accused, who is otherwise held entitled to bail, cannot be denied bail on the ground that such a condition, which is impossible for the accused to comply with, has not been complied with."

The Court's ruling reinforces the principles laid down in *Kunal Kumar Tiwari v. State of Bihar* [(2018) 16 SCC 74] that bail conditions must not be arbitrary or extend beyond the ends of justice. This judgement significantly impacts the rights of accused persons, especially foreign nationals, in NDPS cases. It underscores the need for Courts to balance the interests of justice with the constitutional rights of the accused when imposing bail conditions, ensuring that such conditions do not infringe upon fundamental rights or become impossible to fulfil.





# CASE CHRONICLE

## Non delivery of makeup product and mental suffering

-Nithyaparvathy R G

In *Diksha Negi vs Nykaa E-Retail Pvt. Ltd and Anr.* (CC/474/2023), the Complainant became intrigued by Nykaa's discounts and placed an order, for which an invoice of Rs. 2823.24/- was generated. The Complainant paid for this order via Internet banking. After placing the order, the Complainant reached Nykaa's assistance centre to inquire about its status. Nykaa answered that it had passed her request for immediate shipment to the appropriate team and urged her to check the status via the mobile application. Despite this, the Complainant discovered that her order's status was not updated, and the product failed to arrive.

Despite the Complainant's efforts to resolve the issue, including contacting Nykaa's assistance centre and waiting for a status update, the order remained undelivered. Feeling aggrieved by Nykaa's delayed reaction, the complainant filed a consumer complaint against Nykaa with the District Consumer Disputes Redressal Commission-I, U.T. Chandigarh. In response, Nykaa asserted that a complete refund of Rs. 2824.21/- was transferred to the Complainant's account. It contended that because the return had been handled, there was no cause of action against them. It also asserted that it operated as an intermediary and should not be held responsible for service faults.

The Commission found that Nykaa had neither delivered the products nor returned the payment despite a nearly month-long delay. Only after the Complainant issued a legal notification did Nykaa reimburse the money. The Commission determined that Nykaa neglected to update the status of the Complainant's order or deliver the products, keeping her waiting for roughly a month. The bench determined that Nykaa had unreasonably detained the Complainant's money. The refund was only handled after the Complainant was compelled to hire an advocate to serve a legal notice. As a result, the District Commission found Nykaa accountable for deficiency in service.

As a result, the District Commission ordered Nykaa to pay the Complainant Rs. 4000/- as aggregate compensation for the mental suffering, harassment, and litigation costs.





# BEYOND THE OBVIOUS

## The principle of mutuality

*-Sri Sai Kamalini M S*

The principle of mutuality is based on the idea that no one can make a profit from themselves. In other words, people cannot enter into a trade or business with themselves. There is a constant question of whether profit from certain funds will be affected by the principle of mutuality.

A triple test must be applied to a transaction to determine whether it falls under the principle of mutuality. It is as follows:

- There must be an identity between the contributors and recipients of the common fund.
- The contributors cannot derive profits from their contributions.
- The association acts as an instrument and obeys its members' mandate.

Income earned by the various mutual associations, such as clubs, societies, and cooperative funds, is generally exempt from income tax, as the surplus is not considered taxable profit but rather a return to the contributors. However, this principle is applicable to the interest earned by these associations from bank deposits, as there is an introduction of a third party, such as the banks and affects the required privity of mutuality.

To sum up, the principle of mutuality is a cornerstone of Indian tax law. It exempts certain mutual income streams from taxation, provided the association maintains the required identity between contributors and participants. This means that any surplus or income earned by a mutual concern—such as social clubs or cooperative societies—is exempt from income tax.



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# MEET THE TEAM



Nithyaparvathy R G

Junior Legal Consultant



Seethala B

Junior Legal Consultant



Sowmiya R K

Junior Legal Consultant



Sri Sai Kamalini M S

Junior Legal Consultant

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