

CRM-M-47945-2024

2024-PHHC-152744



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47945-2024
Reserved on: 14.10.2024
Pronounced on: 29.10.2024

Minku ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. M.S. Rana, Advocate for the petitioner,

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Charanjit Singh Bakshi, Senior Panel Counsel
for respondent No.2-UOI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
252	25.08.2024	Railway Protection Force, Jalandhar, District Jalandhar	143 of Railway Act, 1989

1. The petitioner, apprehending arrest in the FIR/complaint captioned above, has come before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.

2. Per paragraph 9 of the bail application, the accused has the following criminal antecedents:

Sr. No.	Case No.	Dated	Offenses	Police Station
1.	38	01.02.2024	143(1)(a) Railway Act, 1989	Railway Protection Force, Jalandhar

3. Facts of the case are being taken from translated copy of the FIR annexed with the bail petition as Annexure P-1, which reads as follows: -

“At present SI Harvinder Singh ASI Neeraj Kumar, Constable Anil Kumar, returned to office from Kapurthala. It was recorded that I, SI Amrah alongwith other staff are going to nab, the person doing illegal business of reservation of E- tickets of Railway vide DD Entry No. 25 at 12:25 pm. During the raid and from the data received from headquarter Ferozepur the mobile phone No. 62803XXXXX was given which was contacted and questioned. The mobile holder told his name as Aman resident of Bashirpura Jalandhar. He was called at Railway Station Jalandhar City and shown the data received from Prabal. In which enquiry sound 100, made regarding user was user-6280325968, ID-Aman email ID-



a90481483@gmail.Com., who told that the mobile number is mine, but user ID, email ID is not mine. Earlier also SMS of railway ticket booking keep coming on my said mobile number, but I delete them. Today also I received a similar SMS on my phone. When the SMS received on mobile was checked, the message of PNR no 2548700527, train number 19224, date of travel 25.8.24 from JUC-GNC, Class-3A, P-1, B-2, 40 was found. The said person told that the message has come on my phone with regarding booking of railway ticket. I have not booked this railway ticket, nor have I ever booked a railway ticket before. Train number 19224 shown in the said message is about to reach Jalandhar city railway station after some time, so the said person Aman was called again due to less time and instructed to appear at RPF post Jalandhar city. RPF Jalandhar city was informed about the information received as per the SMS. As per his orders, without wasting any time, I boarded train number 19224, coach number B2, seat number 40. The person present on the said seat gave his name and address as Sawaliya Vipul Uttarakhand and during interrogation he stated that I am a resident of the above mentioned place, and am employed in Jalandhar Cantt Army. I have made a Tatkal ticket from JUC to GNC in train number 19224 as per PNR number 2548700527 on 24.8.24 in Jalandhar Cantt area from Minku, father name and address not known, holder of mobile number 86995XXXXX. I have obtained the ticket by paying Rs.300/- more than the ticket price to the person who made the ticket. I have saved the said mobile number in my phone as Jalandhar Ticket Wala, whose statement was recorded in the running train. And the print of the ticket was obtained by making it in the presence of the passenger and RPF staff. The mobile number of the person who made the ticket from the passenger's mobile phone and the QR scanner and UPI ID used for the payment of the ticket were taken by ASI Neeraj Kumar's on his phone. After getting down at Kapurthala railway station, he returned to the RPF post Jalandhar city. In this case, the above mentioned person Aman was called to the RPF post Jalandhar city for questioning again. He showed the SMS received on his mobile about another railway ticket being booked, according to which he received a message of PNR number 2420477355, train number 12904, DOJ 25.8.24, seat number 3,7,2,5. He told that this message came at around 3:07 pm. I have not booked this ticket either. The prints of both the SMS received on Aman's mobile were taken out from the office printer and were taken into custody by the RPF after getting the documents of witnesses made. Statement of Aman was recorded. Aman was instructed that whenever he is called for questioning, he will appear. Full information of the case was given to Inspector in Charge RPF Jalandhar City. On whose orders, based on the statements of passenger Shivalia Vipul, a case was registered against mobile number 8699506069 holder (owner) Minku, father's name and address known, crime number 252/24 under Section 143 Railway Act, dated 25.8.24 at Railway Protection Force Post Jalandhar City for further investigation. The accused Minku will be arrested soon after investigation”.

4. Apprehending arrest, the accused, Minku petitioned for anticipatory bail before the Sessions Court at Jalandhar. However, vide order dated 12 Sep 2024, Ld. Additional Sessions Judge Jalandhar dismissed the bail petition. Feeling aggrieved, the petitioner has invoked the concurrent jurisdiction of the High Court under Section 482 of BNSS, 2023.



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5. Because the sentence prescribed for the offense of S. 143 is up to three years of imprisonment, and the Railways Act, 1989, does not explicitly declare the offense as 'Cognizable' and 'Bailable,' the following proposition of law protrudes: **Is an offense punishable under S. 143 of the Railways Act, 1989, Cognizable and/or Non-Bailable?**

6. In *Om Prakash v. Union of India* (2011) 14 SCC 1, the Hon'ble Supreme Court of India dealt with a somewhat similar proposition, but the difference was that in the Central Excise Act, all offenses were non-cognizable. As such, the said judicial pronouncement might not apply to the Railways Act. The relevant portions of the judgment read as follows:

[1]. Two sets of matters have been heard together, one relating to the provisions of the Customs Act, 1962, and the other involving the provisions of the Central Excise Act, 1944, since the issue in both sets of matters is the same. The common question in these two sets of matters is that since all offences under the Central Excise Act, 1944 and the Customs Act, 1962, are non-cognizable, are such offences bailable?

[46]. In the circumstances, we are inclined to agree with Mr. Rohatgi that in view of the provisions of Sections 9 and 9A read with Section 20 of the 1944 Act, offences under the Central Excise Act, 1944, besides being non-cognizable, are also bailable, though not on the logic that all non-cognizable offences are bailable, but in view of the aforesaid provisions of the 1944 Act, which indicate that offences under the said Act are bailable in nature.

7. It shall be appropriate to refer to the pronouncements by different High Courts on the proposition involved.

8. In *Munna Kumar v. State through NCT Delhi*, 2005 (83) DRJ 92

[1]. The offence alleged against the petitioner is one under Section 143 of the Railways Act, 1989. The learned counsel for the petitioner points out that in view of Section 180D of the said Act which has been introduced in the statute book by Act 51 of 2003 w.e.f. 01.07.2004, the said offence would be bailable. Section 180D of the said Act reads as under:-

"180D. Inquiry how to be made against arrested person.--(1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), when investigating a cognizable case:

Provided that--



(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised may direct, to appear, if and when so required, before the Magistrate having jurisdiction."

[2]. The proviso to sub-Section 2 clearly indicates that the authorised officer may admit the accused person to bail to appear before a Magistrate having jurisdiction in the case or he may forward him in custody to such Magistrate. A plain reading of these provisions would indicate that the offence under Section 143 would not be non-bailable. In this view of the matter, the learned counsel for the State submits that this application would not be maintainable. He has also further verified that the petitioner has joined investigation and has cooperated with the investigating agencies.

In this view of the matter, since the offence itself would be bailable, this application is disposed of.

9. In Nishant Kumar Jaiswal @ Nishan Kumar v. The State of Jharkhand, A. B. A. No. 3374 of 2016, Jharkhand High Court observed,

From perusal of the provisions of Section 143, it is evident that for the alleged offence, the maximum punishment is up to three years or fine which may extend to Rs.10,000/- or both and also for forfeiting the tickets.

Chapter XV of the Railways Act, 1989, which deals with penalties and offences and starts from Section 137 and ends from Section 182, nowhere it provides that the offences are non-bailable.

In view of the above law, prima-facie, the submission of learned Sr. counsel is to be upheld. This anticipatory bail application is thus, not maintainable.

Accordingly, this anticipatory bail application is disposed of directing the petitioner to appear before the Court of the Railway Judicial Magistrate, Ranchi. On his appearance, he shall be released on bail keeping in view that the alleged Section is bailable, on furnishing sufficient bail-bond to the satisfaction of the Court concerned.

10. In Aditya Singh v. Union of India, 2017 SCC OnLine Chh 918, Chhattisgarh High Court observed as follows,



[15]. At this juncture, if we refer to section 436 of Cr.P.C., it mandates that a person when is arrested for other than non bailable offence and the officer is prepared to grant bail while in custody, such person shall be released on bail. Meaning thereby the police officer has been authorised to release a person if he is arrested for a non bailable offence. Likewise in similar circumstances, if the proviso to section 180-D of the Act are examined, the legislature has authorised the officer to release the person arrested, therefore, the intention of the Legislature can be very well inferred that the offence of like nature is bailable when it is considered with the punishment prescribed u/s 143 (2) of the Railways Act. Therefore, under the facts and circumstances of the present case, I have no hesitation to hold that the offence committed u/s 143(2) is bailable offence and I am in agreement with the proposition as has been held in 2005 (83) DRJ 92 - Munna kumar v. State through NCT of Delhi (supra) that the offence u/s 143 of the Railways Act is a bailable offence.

11. In Rakesh Kumar v. The State of Bihar, decided on 03 Jul 2020, Criminal Miscellaneous No.70279 of 2019, Patna High Court observed,

Admittedly, the maximum punishment for the offence under Section 143 of the Railway Act is up to three years. It has not been defined in Railway Act as to whether the offence punishable under Section 143 of the Railway Act is bailable or non-bailable. According to second schedule of Code of Criminal Procedure, the offences, which are punishable up to three years, are bailable in nature. Therefore, in the aforesaid circumstance in my view, Section 143 of Railway Act is bailable in nature.

Therefore, in the aforesaid circumstance, this anticipatory bail is not maintainable and accordingly, this anticipatory bail stands dismissed being not maintainable.

12. On the contrary, in Alal Uddin v. Union of India, GAHC010215172022, Bail-2790-2022, decided on 01 Nov 2022, Gauhati High Court observed,

[9]. It may be pointed out that the Act nowhere states whether the offence under Section 143 of the Act is bailable or non-bailable. Here, a reference may be made to Section 41 CrP.C which authorizes any police officer to arrest any person even without a warrant, if such a person sought to be arrested has been concerned in commission of any cognizable offence. Section 5 Cr.P.C provides that when a Special law creates an offence, it may also create a special jurisdictional power conferred or procedure prescribed for dealing with them and such special procedure shall not be invalid for being inconsistent with the procedure prescribed in Cr.P.C. The definition of 'bailable offence' given in Section 2(a) CrP.C. means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and 'non-bailable offence' means any other offence. Unlike an absolute and indefeasible right to bail, if the accused is prepared to take bail, the Court or the police officer has no discretion, but to release him on bail either on his personal bond or with security under Section 436 Cr.P.C. Section 179 of the Act provides an exception to it which is extracted hereinbelow- ...

[10]. A perusal of the above Section 179(4) mandates that any person so arrested for commission of the offences enumerated therein "shall be produced before the nearest Magistrate" indicating thereby, inter-alia, the offence under Section 143 of the



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aforesaid Act a non-bailable one as the right to bail of the accused and the power of the police officer to release him on bail either on personal bond or with security has been taken away by the legislature. The aforesaid mandate of the legislature is further clarified by the Standing Order No. 95, dated 16.11.2009, issued by the Government of India, Ministry of Railways (Railway Board) stating, inter-alia, that “....., all offences except Section 143 and 160 are bailable”. Therefore, it is apparent that the offence under Section 143 of the Act is a non-bailable offence.

13. It would be appropriate to refer to Ss. 143 and 179 of the Railways Act, 1989, which read as follows:

S. 143. Penalty for unauthorised carrying on of business of procuring and supplying of railway tickets.—

(1) If any person, not being a railway servant or an agent authorised in this behalf,—

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.

(2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.

S. 179. Arrest for offences under certain sections.—

(1) If any person commits any offence mentioned in sections 150 to 152, he may be arrested without warrant or other written authority by any railway servant or police officer not below the rank of a head constable.

(2) If any person commits any offence mentioned in sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorised by a notified order of the Central Government.

(3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.



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(4) Any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

14. S. 179 of the Railways Act empowers an officer authorized by a notified order of the Central Government to arrest a person accused of committing an offense punishable under Sections 137 to 139, 141 to 147, 153 to 157, 159 to 167, and 172 to 176 of the Railways Act, without a warrant or other written authority.

15. Simply because an accused can be arrested does not make the offense non-bailable. The difference is that when an offense is bailable, the accused must be released on bail after furnishing the applicable bail bonds.

16. It shall also be relevant to extract the definitions of ‘Bailable Offense’ and ‘Non-Bailable Offense’ from the BNSS, 2023, which read as follows:

2(c) "bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence; [Corresponds to CrPC S. 2(a)]

17. Thus, per S. 2(c) of BNSS, 2023, only those offenses would fall in the category of ‘bailable offenses’ which are mentioned in the First Schedule of BNSS, 2023 or have been specially declared as ‘bailable offenses’ under any Special Statute; and all the remaining offenses are deemed to be ‘non-bailable. This was also the position in the old CrPC, 1973. The legislative intention under the new code, i.e., BNSS, 2023, which is the new avatar of CrPC, 1973, remains the same, and all the offenses shall be ‘non-bailable’ unless shown and specified as ‘bailable.’ The offense under Section 143 of the Railways Act is neither shown as bailable under the First Schedule of BNSS nor explicitly mentioned as bailable under the Railways Act, which is a Special Act.

18. To understand the significance of the powers to arrest without warrants, it is relevant to refer to the term “cognizable offence”. The term “cognizable offence” is not defined under the Railways Act and, thus, is referred to from BNSS, 2023, where it reads as follows:

2 (g) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant; [CrPC S. 2(c)]

2 (o) "non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant; [CrPC S. 2(l)]

19. Section 179 of Railways Act has created two classes conferring powers to arrest upon two distinct sets of officials. The first set falls under S. 179(1), conferring powers upon the Railway servants and Police Officials (not below the rank of a Head Constable)



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to arrest for the commission of offenses under Sections 150 to 152. The second set deals with offenses mentioned under S. 179(2) vide which the powers to arrest for offenses under sections 137 to 139, 141 to 147, 153 to 157, 159 to 167, and 172 to 176 have been bestowed upon the officers authorized by a notified order of the Central Government. Since the Special Act explicitly confers the powers to arrest, the offenses under Sections 137 to 139, 141 to 147, 150 to 157, 159 to 167, and 172 to 176. Thus, all the offences mentioned under Section 179 (1) & (2) are cognizable.

20. Under Section 179 of the Railways Act, the powers have been distributed by carving out two categories: First, of the Railway Servants and the Police Officers under 179(1), and the second of the officers authorized by a notified order of the Central Government under 179(2). Thus, when the offenses relate to the violation of Sections 150 to 152, the officers authorized by a notification order of the Central Government have no power to arrest without a warrant, and the power to arrest without a warrant lies with any railway servant(s) and with police officers of the rank of Head Constable and above. However, when the violation pertains to the offenses under sections 137 to 139, 141 to 147, 153 to 157, 159 to 167, and 172 to 176, the Police have no power to arrest without a warrant, and the Railway's Servants have no power to arrest; and it is only the officers authorized by a notification order of the Central Government, who have the powers to arrest without a warrant. However, under S. 179 (3), both the classes, i.e., the railway servant/the police officer and the officer authorized, can call to their aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be, which means even a person from the other category/class.

21. The rationale for creating such distinct classes might have been for dealing with criminal offenses, for which the Central Government can notify the competent and suitable officers as the authorized persons, who are readily available, better informed, equipped, and trained to remove nuisance and maintain order and safety in the trains and stations and the other officers. Since the term 'Officer' has also not been defined, the Railways Act, 1989 does not restrict the authorization as officers only to those who are Government servants because the term 'Officers' neither falls in the exclusive domain of the Government nor excludes non-government officers, or restrict the term 'Officers' to Government officials alone.

22. Since the Railways Act, 1989 is silent about the offense punishable under section 143 is bailable or non-bailable, the relevant provision that applies in such situations is Schedule I Part-II of BNSS, 2023, which is ditto the same as was in CrPC, 1973, and deals with the classification of offenses, and it reads as follows:

Part II.—CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or	Bailable	By what
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	non-cognizable.	or non- bailable.	court triable.
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable.	Non-bailable.	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Cognizable.	Non-bailable.	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable.	Bailable.	Any Magistrate.

23. In Reserve Bank of India v. Peerless General Finance Investment Co. Ltd, (1987) 1 SCC 424, Hon’ble Supreme Court holds,

[33]. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.....”

24. Since S. 143 prescribes a sentence that can extend up to three years, it would fall in the middle row of the table captioned above, which will make the offense cognizable and non-bailable.

25. Even if an offense is non-bailable, to arrest or not to arrest is the discretion of the Investigator(s), and it is not necessary for the investigator(s) to mandatorily arrest unless the statute directs that such an accused committing a particular offense must be arrested.

26. S. 180-D of the Railways Act, 1989 (Act 51 of 2003, w.e.f. 1-7-2004) reads as follows:



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180-D. Inquiry how to be made against arrested person.—

(1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), when investigating a cognizable case:

Provided that—

(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised may direct, to appear, if and when so required, before the Magistrate having jurisdiction.

27. Proviso (a) to S.180-D of the Railways Act empowers an officer authorized as notified by the Central Government under S. 179(2), that if such an officer believes that there is sufficient evidence or reasonable ground of suspicion against the accused person, the accused shall either be released on bail asking to appear before the concerned Magistrate having jurisdiction in the case or produce the accused in custody before such Magistrate. However, proviso (b) to S. 180-D also empowers an authorized officer to form an opinion that if the evidence is insufficient or the ground is not reasonable, then the suspect shall be released on furnishing bonds, with or without sureties, directing to appear before the concerned Magistrate when summoned. Thus, S. 180-D contemplates two situations- First, when there is sufficient evidence to proceed, in which case the arresting officer shall either release the accused on bail or produce the accused in custody before the concerned Judicial Magistrate, and -Second, when the evidence is insufficient, the accused is not to be arrested but directing the suspect to fill up bonds, undertaking to appear before the concerned Magistrate as and when summoned. Thus, in both situations, the arresting officer cannot deny bail.

28. It shall be apt to extract S. 478(1) BNSS, 2023, which reads as follows:

478. (1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail bond from such person, discharge him on his executing a bond for his appearance as hereinafter provided.



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Explanation.—Where a person is unable to give bail bond within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 135 or section 492.

(2) Notwithstanding anything in sub-section (1), where a person has failed to comply with the conditions of the bond or bail bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond or bail bond to pay the penalty thereof under section 491.

29. However, subsequent to the amendment introducing S. 180-D, the Ministry of Railways issued a standing order, which restricted the scope of proviso (a) to S. 180-D by clarifying that offenses under the Railways Act are bailable except under Sections 143 and 160.

30. It shall be appropriate to refer to the GOI, Ministry of Railways, Standing Order No. 95¹ (16th November 2009), the relevant portion of which reads as follows:

Clause 4. Under the provisions of S. 436 CrPC to be read with S. 180-A to G of the Railways Act, all offences except S. 143 and 160 are bailable.

31. Thus, as per the standing order No. 95, the offenses under Ss. 143 and 160 are not bailable. However, a standing order cannot interpret any statute or rule to explain or interpret what the legislature chose not to explain or explicitly mention.

32. In *Commissioner of Central Excise, Bolpur v. M/s Ratan Melting & Wire Industries*, Civil Appeal No. 4022 of 1999, decided on 14-Oct-2008, Constitutional Bench of Hon'ble Supreme Court holds,

[6]. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

33. In *State of Maharashtra v. Jaganath Achyut Karandikar*, MANU/SC/0550/1989,

¹ https://rpf.indianrailways.gov.in/RPF/PDF/Standing_Order_95.pdf



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[AIR 1989 SC 1133], Hon'ble Supreme Court holds,

The Government could not have restricted the operation of the statutory rules by issuing the executive instruction. The executive instruction may supplement but not supplant the statutory rules.

34. The outcome of the above discussions leads to the following analysis:

35. S. 179(1) of the Railways Act impliedly specifies that the offenses under Sections 150 to 152 will be treated as 'Cognizable' only when arrest without a warrant is made by a Railway Servant or a Police Officer of the rank of a Head Constable and above. Whereas, under S. 179(2), the offenses under Sections 137 to 139, 141 to 147, 150 to 157, 159 to 167, and 172 to 176 of the Railways Act will be treated as 'Cognizable' only when arrest without a warrant is made by an officer authorized by a notification order of the Central Government. Given the above, an offense punishable under S. 143 of the Railways Act, 1989, is 'Cognizable.'

36. Although the Railways Act, 1989 does not explicitly declare the offense under section 143 as 'Bailable' and despite the standing order No. 95 not declaring the offenses under Ss. 143 and 160 as bailable; and irrespective that when the sentence under Section 143 which extends up to three years, would make it fall in the middle row of the classification of offenses described in Part-II of BNSS, 2023, the offence under S. 143 is 'Bailable' because the power to arrest have been given only to the officers authorized by a notified order of the Central Government, and per proviso (a) to S. 180-D, when such authorized officer is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he has to release the accused on bail.

37. If any Police Officer wants to arrest any person accused of any offense committed under Sections 137 to 139, 141 to 147, 150 to 157, 159 to 167, and 172 to 176 of the Railways Act, it is always permissible for a police officer to seek warrants of arrest from the concerned Judicial Magistrate.

38. The answer to the proposition is that an offense punishable under S. 143 of the Railways Act, 1989, is Cognizable and Bailable.

39. A perusal of the FIR states that the Police want to arrest the petitioner. Given the reasons mentioned above, a Police officer can arrest an accused committed under S. 143 of the Railways Act only after obtaining a warrant of arrest from the concerned Magistrate.

40. Resultantly, the Ld. Additional Sessions Judge could not have dismissed the anticipatory bail on merits for an offense under S. 143 of the Railways Act, 1989.

41. Given the above, in the event of an arrest, the concerned officer is directed to



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release the petitioner on bail on furnishing bond in terms of the GOI, Ministry of Railways, Standing Order No 95 (16th November 2009) or under S. 478(1) BNSS, 2023, whichever is applicable.

42. A certified copy of this order would not be needed, and the downloaded copy of this order from the official web page of this Court shall suffice. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

43. Petition allowed.

(ANOOP CHITKARA)
JUDGE

29.10.2024
Jyoti Sharma/Anju

Whether speaking/reasoned: Yes
Whether reportable: YES.