

**Serial No. 01**  
**Supplementary List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

AB No. 12 of 2024 with  
AB No. 13 of 2024  
AB No. 15 of 2024  
AB No. 16 of 2024  
BA No. 30 of 2024  
BA No. 31 of 2024  
BA No. 32 of 2024  
BA No. 33 of 2024  
BA No. 34 of 2024

Date of Order: 27.08.2024

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Mr. Banmiki Suna @ Lik Suna	v.	State of Meghalaya
Shri. Totha Mangatayaru	v.	State of Meghalaya & Ors.
Shri. Teiberius Kharmyndai	v.	State of Meghalaya & Ors.
Shri. Gopal Krishan Gour	v.	State of Meghalaya
Smti. Merilin Wahlang	v.	State of Meghalaya & Ors.
Shri. Ayub Ali	v.	State of Meghalaya
Smti. Esther Syiem	v.	State of Meghalaya & Anr.
Smti. Injora Sten	v.	State of Meghalaya & Ors.
Shri. Ram Singh	v.	State of Meghalaya & Anr.

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**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

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**Appearance:**

**In AB No. 12 of 2024**

For the Petitioner/Appellant(s) : Mr. S.M. Suna, Adv.  
For the Respondent(s) : Mr. N.D. Chullai, AAG with  
Mr. E.R. Chyne, GA

**Appearance:**

**In AB No. 13 of 2024**

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr. Adv. with  
Ms. B.F. Kharwanlang, Adv.  
For the Respondent(s) : Mr. N. Syngkon, GA  
Mr J.N. Rynjah, GA

**Appearance:**

**In AB No. 15 of 2024**

For the Petitioner/Appellant(s) : Mr. R. Majaw, Adv.  
For the Respondent(s) : Mr. S.A. Sheikh, GA

**Appearance:**

**In AB No. 16 of 2024**

For the Petitioner/Appellant(s) : Mr. S. Dey, Adv.  
For the Respondent(s) : Ms. S. Ain, GA  
Mr. E.R. Chyne, GA

**Appearance:**

**In BA No. 30 of 2024**

For the Petitioner/Appellant(s) : Ms. S. Nongsiej, Adv.  
For the Respondent(s) : Mr. R. Gurung, GA  
Mr. J. Thabah, GA

**Appearance:**

**In BA No. 31 of 2024**

For the Petitioner/Appellant(s) : Mr. M.M. Zaman, Adv.  
Mr. N.J. Dutta, Adv.  
For the Respondent(s) : Ms. S. Shyam, GA

**Appearance:**

**In BA No. 32 of 2024**

For the Petitioner/Appellant(s) : Mr. S.S. Yadav, Adv.  
For the Respondent(s) : Mr. R. Gurung, GA  
Mr. J. Thabah, GA

**Appearance:**

**In BA No. 33 of 2024**

For the Petitioner/Appellant(s) : Mr. L. Syiem, Adv.  
Mr. W. Bynnud, Adv.  
For the Respondent(s) : Mr. K. Khan, P.P  
Mr. S. Sengupta, Addl. P.P

**Appearance:**  
**In BA No. 34 of 2024**

For the Petitioner/Appellant(s) : Mr. B.K. Biswa, Adv.  
For the Respondent(s) : Mr. K. Khan, P.P  
Mr. S. Sengupta, Addl. P.P

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**COMMON ORDER**

1. The Code of Criminal Procedure, 1973 (Cr.P.C) is the procedural law which has held the field since 1861 put in place to facilitate the administration of the Indian Penal Code, 1860 (IPC). It has however undergone a number of amendments and even an extensive overhaul in the year 1973. It outlines the processes for investigation, arrest, prosecution, and bail for various offenses.

2. However, with the advent of the Bharatiya Nagarik Suraksha Sanhita, 2023 centrally notified to come into force with effect from 01.07.2024, the Code of Criminal Procedure, 1973 was eventually replaced.

3. The legal fraternity, while trying to comprehend the applicability of the new law vis-à-vis the existence of proceedings under the old law or code, more particularly in the area of procedural laws in this regard, has approached the competent court of jurisdiction with applications under provisions of the old code and some under the new

code. This spate of confusion arose on account of different interpretations given to the transitional provision, that is, the repeal and saving clause found at Section 531 of the BNSS.

4. It is in this apparent confusion that this Court dealing with a number of similar applications, some with prayer for grant of anticipatory bail and some for regular bail and again, some filed under the provisions of the old code and some under the new code, has called upon the learned counsels appearing for the parties to address this Court on this issue so as to give a quietus to the same as far as this Court is concerned.

5. Accordingly, all such similar applications have been bunched together to be heard collectively and for which a common order is deemed appropriate to be passed.

6. Mr. S.M. Suna learned counsel for the petitioner in AB No. 12 of 2024 has contended that in view of the provision of Sub-Section 2, clause (a) of Section 531 of the BNSS which is the saving clause, since the present application was filed relating to a case where investigation was initiated prior to 01.07.2024 and is still continuing, therefore the proper provision for preferring the instant application for grant of anticipatory bail should be under the provisions of the old code, that is, the Cr.P.C. 1973.

7. To support his contention, the learned counsel has referred to the case of Deepu and 4 Ors. v. State of U.P. & 3 Ors., Nuetral Citation No. - 2024:AHC:126843-DB, para 8, 10 & 15 and also to the case of

Krishan Joshi v. State of Rajasthan, order dated 09.07.2024 in S.B. Criminal Misc(Pet.) No. 4285/2024, para 6, 6.3, 6.4 & 7.

8. Mr. K. Paul, learned Sr. counsel appearing for the petitioner in AB No. 13 of 2024 has a contra view to that proposed by Mr. S.M. Suna when it is submitted that the provision of Section 531(2)(a) of the BNSS is very clear as to the manner in which proceedings are to be conducted under the old code and under the new code as far as trial, appeal, revision or application is concerned.

9. It is the contention of the learned Sr. counsel that the language of Section 531(2)(a) is unambiguous where following the provision of sub-Section (1) of the same wherein it is stated that the Code of Criminal Procedure, 1973 is repealed. What follows is a saving clause found at clause (a) of sub-Section (2) of the said Section 531 which saves only pending appeal/application/trial and investigation which have commenced prior to 01.07.2024 but have not yet been concluded as on that date. Such proceedings can continue to be conducted under the old code, that is the Cr.P.C, 1973, however, initiation of fresh proceedings as regard appeal, application or trial and investigation must be made under the provision of the new Code, that is, the BNSS 2023.

10. In support of his contention, the learned Sr. counsel has referred to the following authorities:

- i. Deepu and 4 Ors. v. State of U.P. & 3 Ors., Nuetral Citation No. - 2024:AHC:126843-DB, para 16(iv) and 17;

- ii. Chowgule and Company Pvt. Ltd. v. Public Prosecutor State of Goa & Ors., order dated 02.08.2024 in Criminal Writ Petition No. 618 of 2024 (f), High Court of Bombay at Goa, para 73;
- iii. XXXX v. State of U.P. Chandigarh & Anr., order dated 11.07.2024 in CRM-M-31808-2024, High Court of Punjab & Haryana, para 9;
- iv. Abdul Khader v. State of Kerela, order dated 15.07.2024 in Crl.A No. 1186 of 2024, High Court of Kerala, para 17 and 18;
- v. Prince v. State of Government of NCT of Delhi & Ors, order dated 12.07.2024 in BAIL APPLN. No. 2399/2024, High Court of Delhi, para 4 and 5.

11. Mr. S. Dey, learned counsel for the petitioner in AB No. 16 of 2024 has in essence also endorsed the submission of Mr. K. Paul, learned Sr. counsel and has also cited the same authorities relied upon by Mr. Paul. It is the submission of Mr. Dey that on an overall interpretation of the provision of Section 531 (2) (a) BNSS any bail application filed after 01.07.2024 should be made so under the relevant provision of the BNSS.

12. Mr. N.D. Chullai, learned AAG appearing for the State respondent in a candid manner has submitted that relevant authorities cited by the parties wherein is found the opinion and decision of other High Courts while dealing with the issue of the implication of Section

531(2)(a) BNSS, 2023, what is apparent is that a number of High Courts have come to the conclusion that the interpretation on the plain language found in the said provision would only lead one to conclude that on the dividing line as on 01.07.2024, any appeal, application, trial, enquiry or investigation pending that is relating to proceedings prior to 01.07.2024, the relevant provisions of the old code, that is, the Cr.P.C 1973 will be applicable. However, any such application (the learned AAG confining himself only to the issue of bail applications), filed after 01.07.2024 would invariably have to be preferred under the relevant provision of the BNSS, 2023.

13. The learned AAG has also relied on almost the same decision referred to by the respective parties herein above, such authorities being the case of Krishan Joshi (supra), XXXX v. State of U.P Chandigarh & Anr. (supra), Abdul Khader (supra) and the case of Prince (supra).

14. Ms. S. Ain, learned GA appearing for the State respondent in A.B No. 16 of 2024 has also practically endorsed the submission made by the learned AAG and has referred to the same decision relied upon by the learned AAG.

15. Per contra, Mr. N. Syngkon, learned GA appearing for the State respondent in AB No. 13 of 2024 has proffered a contrary view to the one presented by the learned counsels as indicated above by maintaining that a reading of Section 4 of the BNSS, 2023 would show that the procedure to be adopted under the BNSS, 2023 would be applicable for trial of offences under the Bharatiya Nyaya Sanhita, 2023. Likewise, the

corresponding Section 4 in the Code of Criminal Procedure, 1973 also provides for trial of offences under the Indian Penal Code and other laws to be made under the provision of the Cr.P.C, 1973. This would mean that all offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried and otherwise dealt with in accordance with the provision of BNSS, 2023. Nowhere under the BNSS is mentioned that offences under the Indian Penal Code will be dealt with, investigated, inquired into and tried as per the provision of the BNSS since it is never the intention of the law maker in this regard.

16. The learned GA has further submitted that on this premise the repeal and saving clause as found in Section 531 (2)(a) of the BNSS 2023 provides for application of the provision of the Cr.P.C 1973 for disposal of any trial, inquiry or investigation which have been initiated prior to 01.07.2024 but are yet to be concluded or disposed of.

17. Another limb of argument advanced by the learned GA is that with reference to the provision of Section 484 of the Cr.P.C, 1973, a similar repeal and saving clause was provided at the time when the then old Code of 1898 was repealed and the code of 1973 came into force. This provision is para materia with the provision of Section 531 of the BNSS, 2023. However, the only difference is that in the said Section 484, a proviso was inserted under Section 2(a) thereof which reads as follows:

“...Provided that every inquiry under Chapter XVII of the Old Code, which is pending at the commencement of this Code, shall be dealt with and disposed of in accordance with the provisions of this Code.”



According to the learned GA, this proviso would mean that a distinction is made inasmuch as for every inquiry under Chapter XVIII of the Old Code, that is the Cr.P.C., 1898 which are pending on the commencement of the Code of 1973, the new Code will apply and for all other matters pending on the commencement of the Code of 1973, the procedure under the old Code will apply. This is absent in Section 531 of the BNSS, 2023, which will only mean that the legislature had no intention to apply the procedure of the new Code (BNSS) to pending cases prior to coming into force of the said BNSS, 2023.

18. Yet another contention raised by the learned GA is that the aspect of practical difficulty of implementation of the new code, BNSS to pending cases that has to be considered in that, under the old system, the cases then have been registered under the provisions of the Indian Penal Code (IPC) which comes in a set interrelated and interdependent to the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. Similarly, with the advent of the new regime, the BNSS is also interdependent and interrelated to the BNS and BSA which are akin to the then IPC and Evidence Act, however, if for instance, an offence under IPC is registered, such offence will have reference to the Cr.P.C. or the Indian Evidence Act but will have no reference to the BNSS or the BSA as such, it cannot be said that cases related to offences under the IPC which have been registered prior to 01.07.2024, such proceedings be continued under the new code, that is, BNSS. Therefore, the procedure under the new code cannot be made applicable to pending trial, inquiry, application and investigation for cases initiated under the old code, such

cases not being disposed of with the advent of the new code.

19. This Court has given considerable weightage to the contention and submission raised by the parties herein, particularly with respect to the correct interpretation of the applicability of Section 531 (2)(a) BNSS to proceedings initiated prior to and pending as on 01.07.2024 and also to similar proceedings initiated post 01.07.2024.

20. Before proceeding further, it would be but proper to go through the relevant provision of Section 531(2)(a) which reads as follows:

**“531. Repeal and savings.–**

(2) Notwithstanding such repeal–

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the old Code), as if this Sanhita had not come into force;”

21. It need not be reminded that the BNSS came into force w.e.f. 01.07.2024 vide relevant notification dated 23.02.2024. Till such date of applicability of the BNSS the criminal procedural law followed in this country is the Code of Criminal Procedure, 1973 (as amended from time to time). By virtue of Section 531(1) of the BNSS the Cr.P.C 1973 was repealed. In effect, practically all procedures prescribed under the Cr.P.C have been done away with. However, it is also to be noted that the procedural law prescribed under the Cr.P.C also applies to offences laid down under the various provisions of the Indian Penal Code, 1860 which

is a substantive law. The enabling provision in this regard is Section 4 of the Cr.P.C which provides for trial of offences under the Indian Penal Code and other laws.

22. With the BNSS replacing the Cr.P.C invariably there would arise certain complications in course of the transitional period, wherein all trials, inquiries and proceedings etc. which are pending as on 01.07.2024 would deemed to have been concluded or lapsed. The legislature has however taken care of this aspect by insertion of what is generally known as the saving clause. This is meant to ensure that such transition is smoothly processed and litigants and all involved would not be unnecessarily disturbed by such transition.

23. In spite of such saving clause, there has arisen some differences of opinion and interpretation of the relevant provision of the BNSS vis-à-vis the Cr.P.C, particularly in respect of the provision under Section 531 (2)(a). Regard being made to the many decisions of the various High Courts on the subject, some of which have been cited by the parties herein, suffice it to say that in the opinion of this Court the controversy to be clarified is the word “pending” found in Section 531 (2)(a) BNSS which refers to pendency of appeal, application, trial, inquiry or investigation as on 01.07.2024.

24. In the case of Prince (supra) the Hon’ble Delhi High Court dealing with an application for grant of anticipatory bail under the present circumstances, the Court at para 4 and 5 has held as follows:

“4. Though the present petition has been filed under the

provisions of the Code of Criminal Procedure 1973 ('Cr.P.C.'), in the opinion of this court, on a plain reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), proceedings are to be "... ..disposed of, continued, held or made... .." in accordance with the Cr.P.C. only in cases where such proceedings, viz. "... ..any appeal, application, trial, inquiry or investigation... ..", was pending immediately before the date on which the BNSS came into force, i.e. 01.07.2024.

5. In the circumstances, since the present petition has been filed after 01.07.2024, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 482 read with 528 of the BNSS"

25. In the case of XXXX v. State of U.T. Chandigarh (supra) the Hon'ble High Court of Punjab and Haryana also dealing with the provision of Section 531 BNSS at para 9 has observed as follows:

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

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

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

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

IV. Section 531 of BNSS shall apply to “*revision*”, “*petition*” as also “*petition of complaint*” (ordinarily referred to as complaint before Magistrate) with the same vigour as it is statutorily mandated to apply to “*appeal/application/trial/inquiry or investigation*” in terms of Section 531 of BNSS.”

26. Similarly, a division bench of the Hon’ble High Court of Allahabad in the case of Deepu (supra) has also observed as follows at para 16 (iv):

“16. On the basis of above analysis, this Court is also summarizing the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentions as below:

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.”

27. Finally, in the case of Chowgule Company Pvt. Ltd. (supra) the Hon’ble Bombay High Court dealing with the issue of grant of

anticipatory bail has inter alia posed a query at Point No. 2 as “Whether bail application filed by the respondent No. 3 on 06.07.2024 would be governed by the provisions of Section 438 of Cr.P.C or by Section 482 of BNSS 2023”. After consideration of the argument of the parties therein and on discussion of the same with reference to related authorities the Court at para 73 of the judgment has come to the following conclusion:

“73. BNSS 2023 is admittedly a procedural law mostly governing the inquiries, investigation, bail, trial, appeals etc. As far as application of bail is concerned, it is a procedure to be followed under a specific Act or Code. Since the provisions of Section 438 of the Code of Criminal Procedure and that of Section 482 of BNSS are pari Materia, the provisions of repeal would clearly apply to the matter in hand and accordingly, applications filed by Respondent/Accused persons on 06.07.2024 shall govern under the provisions of 482 of BNSS and not under Sections 438 of Cr.P.C.”

28. Since this Court is dealing with the issue of bail and anticipatory bail, the authorities cited hereinabove at para 24, 25, 26 and 27 are found to be acceptable and in line with what this Court would understand as far as the subject matter in issue is concerned.

29. Accordingly, where procedural law is concerned post 01.07.2024, any application, be it bail or otherwise, would have to be preferred under the related provisions of the BNSS, 2023 where no such

applications are pending as on 01.07.2024.

30. In view of the observations made hereinabove, this Court finds that the contention raised by Mr. N. Syngkon, learned GA cannot be sustained.

31. However, while allowing the parties to prefer their respective application under the BNSS, this Court would allow conversion of any application filed under the provisions of the Cr.P.C into that of the BNSS. The respective parties are however, directed to make necessary correction in the cause title or the body of the application as the case maybe.

**Judge**

Meghalaya  
27.08.2024  
"Tipilynti-PS"