

SECTION – C: LEGAL REASONING

Directions (Q.55-Q.84): Read the comprehension carefully and answer the questions.

Passage (Q.55-Q.60): “Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. There is one exception to this rule—that if the goodwill of a business has been sold, an agreement to refrain from carrying on similar business, if it appears to the Court to be reasonable, would be protected and would be enforced.”

In Supreme Court’s decision of *Superintendence Company of India v. Krishna Murgai*, the Supreme Court while discussing the objective behind Section 27 of the Act analyzed the difference of negative covenant between an employer-employee and a seller-purchaser and stated that a negative covenant between the employer – employee, pertains to performance of personal service which is altogether different in substance from purchase and will have vastly different social and economic implications. The essential line of distinction is that the purchaser is entitled to protect himself against competition on the part of his vendor, while the employer is not entitled to protection against mere competition on the part of his servant. A restrictive covenant ancillary to a contract of employment is likely to affect the employee’s means or procuring a livelihood for himself and his family to a greater degree than that of a seller, who usually receive ample consideration for the sale of the goodwill of his business.

An employment contract generally includes restraint of trade clause to protect the interest of the employer after an employee leaves their organization or business for the following reasons:

- Non-compete clause
- Non-solicitation clause
- Non-recruitment clause
- Confidentiality clause

In *Independent News Service (P) Ltd. v. Sucherita Kukreti*, in the context of Section 27 of the Contract Act, it was held that the right saved thereby to be a facet of Article 21 of the Constitution of India.

Extracted with requisite revisions and edits from ‘For a contract to be enforceable, restraint of trade clause must be reasonable: Post-termination non-compete clauses are permissible in employment contracts under S. 27 of Contract Act? District Court explains’ by Devika Sharma
[athttps://www.sconline.com/blog/post/2022/02/03/for-a-contract-to-be-enforceable-restraint-of-trade-clause-must-be-reasonable/](https://www.sconline.com/blog/post/2022/02/03/for-a-contract-to-be-enforceable-restraint-of-trade-clause-must-be-reasonable/))

55. M sold unlicensed guns for his livelihood. He used to check the details, documents and took other necessary precaution before selling the gun to a person. His mother was worried that such a business might threaten the safety of M. M explained to his mother that he sells the gun after doing a background check. His mother did not listen to him and asked him to sign a contract with her promising that he will stop selling gun. M unwilling signed the contract due to the pressure from his mother. Decide whether the contract is valid:
- (a) No, as the contract restrict M from selling gun and therefore, is void under Section 27.
 - (b) No, as no contract was formed as M did not give free consent and signed contract due to the pressure from her mother and therefore, is void.
 - (c) Yes, as M’s mother just stopped him from selling gun and did not stop him from doing any other trade.
 - (d) Yes, as the trade of M is not lawful.

56. Mehul is an advocate and he was hired by Tarun as his advocate. Tarun was very concerned about his privacy and did not want his information to be leaked. He asks Mehul to sign a contract to act as his advocate and to not work as the advocate of any person in future. Decide the validity of the contract:
- (a) The contract is void.
 - (b) The contract is valid as Tarun is just trying to protect his interest.
 - (c) The contract is void to the extent on restricting Mehul.
 - (d) The contract can be declared void by Mehul.
57. In accordance with above stated passage, decide which statement is true:
- (a) Trade, profession and business cannot be restricted at all.
 - (b) The restriction imposed on trade must be reasonable.
 - (c) Imposition of restriction does not violate any right.
 - (d) The restriction imposed must be reasonable to the parties to contract.
58. John was hired by a multi-national company after his graduation. He signed a contract with the company without going through the contract completely. One of the terms of the contract was that John cannot ever work in the same line of business as his company after he leaves the job. When John learned about the term of the contract, he was furious. He contended that the contract is void as the condition restricted his profession. Decide the validity of the contract:
- (a) John has already signed the contract and will be valid.
 - (b) The contract is void as it restricted the profession of John.
 - (c) The contract is valid as the company as the employer can impose such restriction.
 - (d) The contract is void as the restriction imposed by company is unreasonable.
59. Which of the following is true about restriction imposed by employer on employee:
- (a) Employer cannot restrict his present employees.
 - (b) Restriction must be reasonable.
 - (c) Employer cannot restrict regarding confidential information
 - (d) Employer can impose restriction by a contract after the person has stopped being the employee.
60. Decide which is true about imposition of restriction by employer on employee and seller on purchaser:
- (a) The degree of affect on the interest of parties can be ground to distinguish employer-employee contract from seller-purchaser contract.
 - (b) Competition can be involved as a sole ground of restriction by the employer.
 - (c) The restriction by seller creates a positive right in favor of purchaser.
 - (d) There exists no social and economical implication in restriction imposed by purchaser on seller as he is getting consideration for the goodwill of his business.

Passage (Q.61-Q.66): Commission noted that as per the Supreme Court decision in *DrMukhtiar Chand v. State of Punjab*, Ayurveda, Siddha, Unani and Homeopathy practitioners can prescribe allopathic medicines only in those states where they are authorized to do so by a general or specific order made by the State Government concerned.

Further, the Coram expressed that, Few State Governments have authorized AYUSH doctor(s) it by some special order(s) to prescribe medicines of allopath, but in our view, that does not authorize the doctor to deviate from the standard of care which results into wrong diagnosis and prescribe wrong medicines.

Coram relied on the Supreme Court's decision in *PoonamVerma v. Ashwin Patel*, wherein it was held that "the doctor must not only be qualified, but he must also be registered with the appropriate Medical Council in order

to practice as a doctor. A homoeopath would not have knowledge about allopathic medicines and its drug actions, so administration of allopathic treatment by a homoeopath would be proof enough to establish negligence". Coram noted the 4 points on which the OP 2 failed:

- Failure to correctly diagnose the condition as SJ syndrome but treated the patient for Measles.
- The dose of steroid 4mg Dexamethasone was inadequate for the patient; the dosage should be calculated as per kg of body weight.
- For treatment of SJ syndrome the appropriate drugs of choice would be Cyclosporine with Methylprednisolone and the dosage to be per kg body weight of the patient.
- There was a delay and wrong referral of the patient to the physician instead of a skin specialist.

Therefore, the patient deserved enhanced just and reasonable compensation.

(Extracted with requisite revisions and edits from 'Minor treated for "Measles" instead of "Stevens-Johnson Syndrome" due to wrong diagnosis and leading to medical negligence: Read detailed report on NCDRC's decision' by Devika Sharma at <https://www.sconline.com/blog/post/2022/01/28/medical-negligence-6/>)

61. Alok is a 27 years old man. He has certain medical condition due to which he is unable to perform his daily activities. He consults Mahesh who is an expert in ayurvedic medicine. Mahesh prescribed him certain ayurvedic medicines. He further said that if Alok does not get relief from the medicine, he should take some antibiotic to relieve his pain. Mahesh suggested the names of the antibiotics to Alok orally and told him that he should once talk to his doctor once before taking the medicine. Decide whether act of Mahesh is correct:
- (a) No, as he acted negligently.
 - (b) Yes, as Mahesh just wanted to relieve the pain of Alok and acted in good faith.
 - (c) No, as he should not prescribe antibiotic to Alok.
 - (d) Yes, as he just made a suggestion did not prescribe the antibiotic to Alok.
62. In the last question, if Mahesh wrote on a slip prescribing certain ayurvedic medicine and an antibiotic. Mahesh prescribed it in good faith without any intent to cause him harm and to the best of his knowledge. Decide whether the act of Mahesh is correct in accordance to the general tone of the passage considering his State has not allowed the same:
- (a) Yes, as Mahesh acted in good faith.
 - (b) No, as Mahesh is not authorized to prescribe antibiotic.
 - (c) Yes, Mahesh acted as per his knowledge and to benefit Alok.
 - (d) No, as Mahesh should have gotten consent of Alok.
63. In accordance with the above passage, decide which statement is correct in regard to medical negligence:
- (a) It can be only punished by imprisonment.
 - (b) Medical negligence will not occur when state government authorizes any ayurveda practitioner.
 - (c) Medical negligence may occur even after authorization from state government to the practitioner.
 - (d) It won't occur when practitioner has knowledge.
64. A is a very bright student and wanted to become a doctor. He got admitted into the medical school. One day while he was on his way to college he saw that a person fainted and to make the person recover he administered a medicine to him. Later on the patient suffered from side effects due to the medicine and he sued A for medical negligence. Decide whether the patient would succeed:
- (a) Yes, as A is not a registered doctor.
 - (b) No, as A administered him medicine to save him.
 - (c) No, as A did not prescribe medicine to the patient.
 - (d) No, as A acted best to his ability.

65. Mukund is a homeopathy practitioner in state of V. The state published a general order allowing homeopathy practitioner in the state to prescribe allopathic medicine to their patients. Mukund never studied about allopathic medicine and did not have knowledge about it. He prescribed allopathic medicine to one of his patients. The patient suffered after consuming the medicine and sued Mukund for medical negligence. Decide whether the patient would succeed:
- (a) Yes, as Mukund is a homeopathy practitioner.
 - (b) Yes, as Mukund had no knowledge about allopathic medicine.
 - (c) No, as state government authorized Mukund to prescribe allopathic medicine.
 - (d) No, as the patient consumed the medicine with his choice.
66. In the last question, if Mukund is of 29 years old and government order authorized the practitioner above 30 years. Mukund was aggrieved by the order of government and challenged it. Whether government make such an order:
- (a) No, as government cannot just allow limited people.
 - (b) Yes, as government can do anything they wish.
 - (c) No, as government cannot authorize a homeopathy practitioner to do something they have not studied.
 - (d) Yes, as the government can make specific order.

Passage (Q.67-Q.71): Ms. Tanu Bedi, Counsel for appellant had vehemently argued that the defense counsel was not given any opportunity to cross-examine the victim in the trial court and thus, the testimony of the victim could not be relied on for convicting the accused-appellant. In reply the learned Counsel stated that they "had slept over their right to do so" as they did not submit any questionnaire at the time of examination of the victim, nor did they make an application for cross-examination. They did not even raise any objection and argument regarding the same during the trial either.

After scrutinizing the submissions made, the Court had to look into question: Whether the testimony of a child be the sole reason for the conviction of the accused-appellant? The Court then proceeded to peruse S.33 of POCSO Act, noting the legislature's wisdom of providing a special, specific procedure for recording the evidence of child witnesses and clarified that "*in cases of sexual assault against Children, the first and most important piece of evidence is always the statement of the child victim Themselves.*"

Referring to the apex court's judgments in Sanjay Kumar Valmiki v. State which held that if the trial court is satisfied that the child witness before it is unlikely to be tutored and has deposed of their own will and volition, then the evidence given by such child witness should be treated with the same regard as that of any other witness as given in Sec 118, the High Court averred that there is no embargo on child testimony in S.118 of Evidence Act, that talks about 'who may testify' and the duty is cast on the courts regarding allowing or disallowing such evidence on the grounds that child does not understand the questions put to him or to provide rational answers to such questions and if the answers to these questions are in negative then there is no justification to disregard such testimony. Thus, the court stated that the Child witness's testimony was substantial and enough under S.118 of the Evidence Act.

(Source : No Embargo In Treating Testimony Of A Child Witness As The Sole Basis For Conviction: Punjab And Haryana High Court, livelaw)

67. Ramu is a ten-year-old boy who is unable to speak. Every morning, he goes with his mother to get water from a nearby well. When they both went to the well one day, they encountered an impediment in the form of a large tree that had fallen owing to severe rain. She told Ramu to stay put until she returns. Ramu eventually heard his mother's screams from the other end, but due to the tree blocking his view, he couldn't see what was going on. Though he heard his uncle Chetan's voice, he couldn't be sure because he couldn't see his face. Raju was summoned by the court since he was the only witness present at the scene. Ramu heard everyone saying that Chetan might have killed his mother. Chetan killed Ramu's mother, according to Ramu's testimony. Is the court likely to accept Ramu's statement under section 118 of the Evidence Act?
- (a) The court will not allow Ramu's testimony as he can't speak.
 - (b) The court will not allow Ramu's testimony as the statement was tutored due to his tender age.
 - (c) The court will allow the testimony of Ramu as he testifies in her testimony Chetan's criminal liability.
 - (d) The court will allow Ramu's testimony as he heard Chetan's voice at the crime scene.
68. In the same circumstances as above, what procedure will the court employ to extract Ramu's testimony?
- (a) Direct and to-the-point questions are preferred.
 - (b) The question should be phrased in a way that the child witness can understand.
 - (c) The questions must be put forth in form of yes or no.
 - (d) When obtaining the evidence of a child witness, the court must ensure that the statement made by the child is made of their own free will and volition.
69. Which of the following statements correctly depicts the essential of section 118 of the IEA?
- (a) The testimony of child witness should always be supported by corroborative evidence.
 - (b) The testimony of a witness should be untutored and of free will.
 - (c) The testimony of child witness should be tutored and of free will.
 - (d) The testimony given by a major, sound mind is admissible in addition to Child witness's testimony is substantial and enough under S.118 of the Evidence Act.
70. Which of the following is not true, based on your understanding on the subject of child witness as discussed in the above passage:
- I. In the case of rape or assault, a juvenile witness can also be subjected to cross examination by the defence lawyer, and is not limited to judicial testimony.
 - II. In situations involving criminal offences against children, the first and most essential piece of evidence is always the child victim's own statement.
 - III. The courts are tasked with allowing or disallowing such evidence on the basis that the child does not understand or provide rational answers to the questions posed to him, and that if the responses to these questions are negative, there is reason to reject such testimony.
 - IV. Upon court's satisfaction, the testimony of a child witness can be considered substantial and sufficient under S.118 of the Evidence Act.
- (a) II & III
 - (b) I & III
 - (c) II & IV
 - (d) ONLY III
71. Chandini a 6th class student file a complaint against his sports teacher for sexual assault as he used to touch her inappropriately on several occasion. She in her testimony stated "I know what is good touch and bad touch". Court was very impressed by the statement of Chandini as she had been raised well by her parents and has knowledge of good and bad touch. Based on this testimony of Chandini the court convicted the teacher under POCSO Act without taking any other substantial evidence on record. Can the statement provided by Chandini stands acceptable under section 118 of IEA?
- (a) Yes, it should be allowed because chandini's testimony is not tutored and given of her own free will.
 - (b) It is unacceptable because a court cannot convict an accused based solely on the testimony of a minor witness.

- (c) It is acceptable because the statement of the child victim has to always be the first and most essential piece of evidence in situations of sexual abuse against children and used to determine guilt.
- (d) It is not acceptable because, because child testimony is not always reliable, the court should have reviewed substantial evidence before convicting the accused.

Direction(Q.72-Q.76): Read the given passage carefully and answer the questions given below:

The Karnataka High Court dismissed writ petitions brought by Flipkart and Amazon collectively contesting the Competition Commission of India order made under Section 26 (1) of the Competition Act, 2002. This case dealt with the notion of res judicata and its applicability to CCI rulings.

The doctrine of Res Judicata has been defined in Section 11 of the Civil Procedure Code. It means the matter is already judged which is that no court will have the power to try any fresh suit or issues which has been already settled in the former suit between the same parties. Also, the court will not try the suits and issue between those parties under whom the same parties are litigating under the same title and matter are already been judged and decided by the competent court. When the court finds any suits or issues which has been already decided by the court and there is no appeal pending before in any court, the court has the power to dispose of the case by granting a decree of Res Judicata. This doctrine is based on the premises that if the matter is already decided by the competent court, then no one has rights to reopen it with the subsequent suit unless new facts are discovered. It also enacts the conclusiveness of the judgments as to the points decided, in every subsequent suit between the same parties. The doctrine of Res Judicata is applied by the court where issues directly and substantially involved between the same parties in the former and present suit, are same. For e.g., it may be that in former suit only part of the property was involved whereas in present or subsequent suit whole property of the parties is involved. Then court will grant a decree of Res Judicata.

Source: [Amazon V. CCI: Analysis Of Whether Res Judicata Stays Applicable On Orders Passed By CCI \(livelaw.in\)](https://www.livelaw.in/articles/114441)

- 72. M was a sub-inspector and was dismissed from the service of D.I.G. he challenged the order of dismissal by filing a writ petition in the High Court. He said that he did not get a reasonable opportunity of being heard before the passing of the order. However, the argument was negated and the petition was dismissed. He again filed a petition on the ground that he was appointed by the I.G.P. and he had no power to dismiss him from service. The defendant argued that the suit was barred by constructive res judicata. Based on your understanding of the passage and the given facts, decide whether the defendant will succeed in his argument or not.
 - (a) The defendant will succeed as the plea was well within the knowledge of the plaintiff and M could have taken this argument in his earlier suit.
 - (b) The defendant will not succeed as the contention made was different from the one in the earlier suit.
 - (c) The defendant will succeed as the plea was baseless and had no constructive reasoning to it.
 - (d) The defendant will not succeed as the plea was filed in a different petition all together.
- 73. Ramesh was the plaintiff who was injured while driving a vehicle on a public highway in the Darby region. Due to a transit company that was occupying the street, the steering wheel of the machine operating was pulled by the driver's hand. This resulted in injury to the complainant. A suit was filed against the street railway in the Court to recover damages. It was proved that negligence was there on the part of both the parties also known as contributory negligence. The judgment was passed in favour of the defendant. Later action was again brought against the same defendant based on the same cause of action and against the same transit company. The judgment in the first proceeding was brought to the attention of the court. The plaintiff admitted that he was the same person who was the plaintiff in the action brought earlier in court. Decide:
 - (a) The court will decide in favour of the defendant because of the judgment of previous case.
 - (b) The court will dismiss the suit on the grounds of the doctrine of res-judicata.
 - (c) The court will administer the suit and critically hear all the parties before coming to a conclusion.
 - (d) The court will decide in the favour of the plaintiff because it was a contributory negligence.

74. Ram filed a civil suit, a contention regarding the arbitration of the Court was taken by Vir. The objection was sustained and the plaint was returned to the plaintiff for the presentation. The Revenue Court was incompetent when Ram approached the Revenue Court so he returned the petition. Once again Ram filed a suit in the Civil Court. Vir contended that the suit was barred by the doctrine of res judicata. Will Vir's contention succeed?
- (a) No, Vir's contention will not succeed because the plaint was returned in the first instance where the suit was filed.
 - (b) No, Vir's contention will not succeed because of the simple reason that Ram approached the different courts.
 - (c) No, Vir's contention will not succeed because the same suit was taken to revenue court.
 - (d) None of the above.
75. A suit was filed in the Court so that certain temples are called public temples. A similar suit was dismissed by the Court two years ago and the plaintiff contended that it was negligence on the part of the plaintiffs (of the previous suit) and therefore the doctrine of res judicata cannot be applied. Decide:
- (a) The suit shall be administered because of different litigating parties.
 - (b) The suit shall be disposed off due to the applicability of doctrine of res-judicata.
 - (c) The facts are insufficient to decide.
 - (d) The suit shall be decided similar to that of previous suit.
76. Amit challenged the validity of an order of assessment under Article 226. The petition was dismissed on the basis of merits. The Supreme Court also dismissed the appeal that was made against the order on the basis of merits. Amit again filed another writ petition in the same High Court against the same order of assessment. This time the petition was dismissed by the High Court. The Supreme Court held that the petition was barred by the principle of res judicata. Which of the essentials of the principle of res-judicata are fulfilled here?
- (a) Barred by the Supreme Court of India.
 - (b) Dismissal of petition.
 - (c) Both option A and B are correct regarding the said principle.
 - (d) None of the above are correct regarding the said principle.

Passage(Q.77-Q.80): Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry" or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

Kumar Ohri, J., while discussing the scope of Section 311 of the Criminal Procedure Code, 1973 with regard to recalling and cross-examining the witness expressed that, it is the duty of every Court to ensure that fair and proper opportunities are granted to the accused for just decision of the case.

A petition was filed under Section 482 of the Criminal Procedure Code on behalf of the petitioner seeking setting aside the orders of the lower court whereby the opportunity of the petitioner to cross-examine the witness (PW-1) was closed and an application filed under Section 311 CrPC seeking recall of the said witness was dismissed. (SOURCE : Fair trial is the hallmark of criminal procedure, it entails not only rights of victims but also interest of accused: Delhi HC, livelaw)

77. Choose an alternative which best describes the context of the passage:
- Power under section 311 must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved.*
 - The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.
 - The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way.
 - Adducing of evidence by the accused in support of his defense is not a valuable right and allowing the same will be against the interest of justice.
- (a) I, II & III (b) I & II (c) II & IV (d) Only I
78. Chandu filed a petition in HC under section 311 of Crpc alleging that he was denied presenting an alibi for his defense an application filed under Section 311 CrPC seeking recall of the said witness was dismissed by the lower court. Decide
- The lower court's order should be overturned since it was made in the accused's best interests.
 - Lower court's order will be upheld as interest of accused do not have find any place in bear reading of section 311.
 - The lower court's order will be upheld as if the accused's discretion was an act of arbitrariness.
 - The lower court's judgment should be reversed on the grounds that it was necessary to examine such a witness, or to recall him for further examination, in order to arrive at a just decision in the case.
79. *In the light of passage given, choose a correct option:*
- Section 311 of the Code of Criminal Procedure, 1973 is confined to Court witnesses.
 - Section 311 of the Code of Criminal Procedure, 1973 does not apply to defense witnesses.
 - Section 311 of the Code of Criminal Procedure, 1973 cannot be exercised after the accused had closed his defense.
 - Section 311 of the Code of Criminal Procedure, 1973 does include “accused” as witness
80. The accused had been tried for the offence of attempt to murder under section 307 of IPC. It was the case of the prosecution that accused was at home with his wife and mother-in-law when an altercation occurred. It was alleged that Suraj returned intoxicated, went to the kitchen, grabbed the axe, and whacked the mother-in-law and wife, causing grievous injury to the mother-in-law and simple injury to the wife. The prosecution failed to offer testimony from the two witnesses who drove the two to the hospital, which would have been crucial in reaching a fair decision in the case. The prosecution filed a motion under section 311 of the CrPC asking the court to summon the two witnesses after the trial was completed. Decide
- The plea will be dismissed as section 311 can be invoked at any stage of the trial but not after it completion.
 - The plea will be entertained as it is in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.
 - The plea will be entertained as the court has such power even suo motu if no such application has been filed by either of the parties if it satisfied that such testimonies are essential to arrive at a just decision of the case.
 - It will be the discretion of the court and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings.

Passage(Q.81-Q.84): Subramanian Prasad, J., while explaining the facts of application for bail, cancellation of bail and rejection of an application for bail, made an observation that, “Personal liberty is one of the cherished constitutional freedoms. Once granted to an accused pending completion of the Trial, it must only be retracted in the face of grave and exacerbating circumstances.”

When can a Court seize the liberty of an accused under trial?

Stating that a Court must tread with the utmost circumspection, and only after an in-depth examination of the situation and new emergent facts and on finding supervening circumstances and overwhelming evidence that the accused has been abusing the liberty granted to him by the Court, Bench explained when a Court can exercise its jurisdiction in seizing the liberty of an accused under trial.

Supreme Court in the decisions of Delhi Admn. V. Sanjay Gandhi, (1978) 2 SCC 411 and Dolat Ram v. State of Haryana, (1995) 1 SCC 349, expounded the position in law vis a vis cancellation of bail.

The power conferred under Section 439(2) [cancellation of bail] CrPC has to be exercised in a discreet fashion, without dwelling on the merits of whether bail should have been granted or not and only upon viewing the subsequent conduct of an accused. The power is coupled with the reserve and caution, akin to the usage of the High Court’s inherent powers given under Section 482 CrPC.

Application for Cancellation of Bail and Grant of bail are different from each other, Bench added that High Court will not exercise its jurisdiction to interfere with an order of bail granted by Special Judge if there is no serious infirmity in it.

In the present matter, Court found the order of the ASJ to be well reasoned requiring no interference. Lastly, the Court dismissed the petition noting that Court has not made any observation on the nature/manner of investigation, and if an application challenging the nature/manner of investigation is filed by the complainant, the Trial Court is requested to consider the same. [Charu Soneja v. State (NCT of Delhi), 2022 SCC OnLine Del 5, decided on 3-1-2022]

(Source: Cancellation of Bail v. Rejection of Bail: Delhi HC explains when a Court can seize liberty of an accused undertrial, SCCONLINE BLOGPOST)

81. Complainant filed a case against her husband, mother-in-law, and brother-in-law for non-bailable offences under Sections 354, 354A, 354B, 406, 498A, 506, 509, and 34 IPC. Respondents filed an anticipatory bail plea under Section 438 CrPC, anticipating arrest. Can the respondents be granted bail?
- (a) No, the respondents cannot be given bail because they committed a non-bailable offence.
 - (b) They can seek anticipatory bail since personal liberty is one of the most treasured constitutional liberties.
 - (c) No, it can only be given after a thorough investigation and after completion of inquiry by the trial court.
 - (d) Yes, as accused can be granted bail pending completion of the Trial.
82. Continuing the similar facts as above, suppose in an appeal under section 439 of CrPC, Judge found on the grievance of the complainant, that the matter had not been investigated fairly or that the investigating agencies acted in connivance with the accused and submitted the report in favor of accused. Decide
- (a) The court can cancel the bail at any time on finding that the accused had been abusing the liberty granted to him by the Court.
 - (b) The court has the authority to seize an accused’s liberty while he is on trial if there is overwhelming evidence that the accused has abused the liberty granted to him by the Court.
 - (c) The court cannot seize the liberty of an accused under trial once granted.
 - (d) If there are no exacerbating circumstances, the court cannot revoke the personal liberty.

83. Pick a statement that offers an anomaly of the passage's context:
- I. In an event of considering an application for cancellation of bail of an accused under Section 439(2) CrPC, it has to be done by the HC by not only dwelling on the merits of whether bail should have been granted or not but also upon viewing the subsequent conduct of an accused.
 - II. only In the event of grave and exacerbating circumstances, the court may revoke the liberty granted to an accused undertrial.
 - III. The court lacks jurisdiction under Section 439(2) CrPC to interfere with a Special Judge's bail order if there is a substantial flaw in it.
 - IV. The power granted by Section 439(2) CrPC must be used discreetly.
- (a) II & IV (b) I & IV (c) III & II (d) I & III
84. Assertion: in an application filed under section 439 (2) of CrPC, Court found the order of the ASJ to be well reasoned requiring no interference and hence uphold the decision of ASJ.
Reason: The Court will exercise its jurisdiction to interfere with an order of bail granted by Special Judge if there is serious infirmity in it.
- (a) Both A and R are true and R is correct explanation of A.
 - (b) Both A and R are true but R is not correct explanation of A
 - (c) A is true but R is false.
 - (d) A is false but R is true.