



MONTHLY NEWSLETTER

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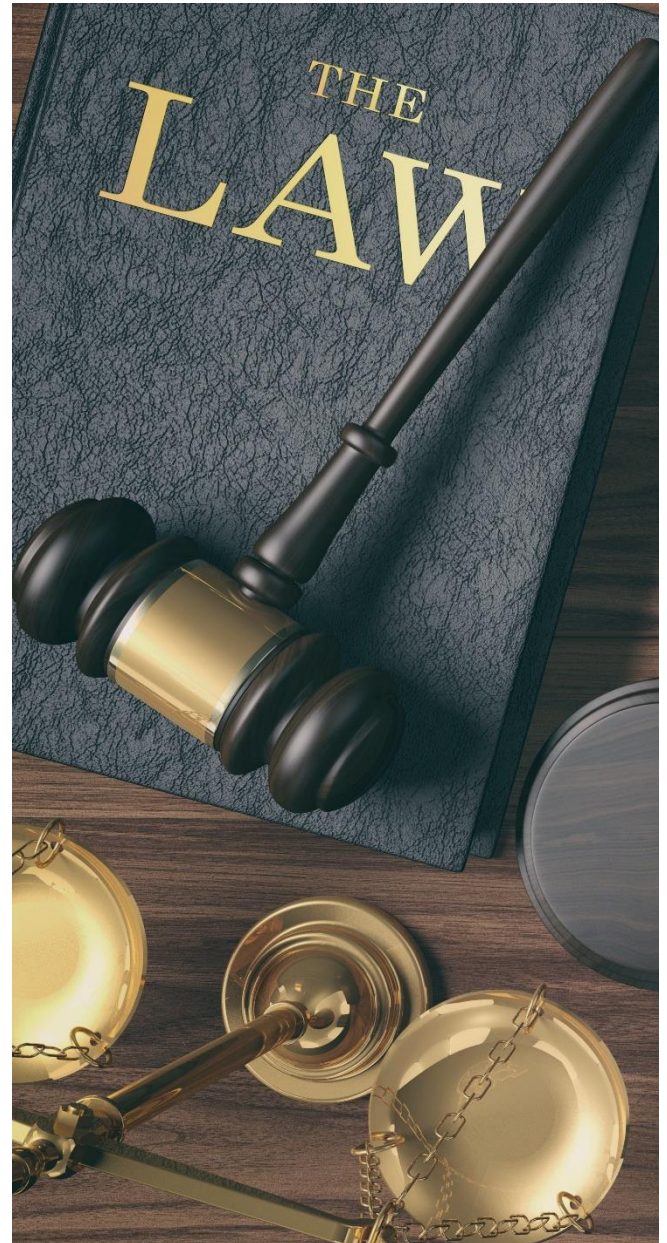
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**SUBSTANTIAL DISCRETION'
OF THE ARBITRATOR TO
DECIDE ON GRANT OF
INTEREST U/SEC 31(7)(A)
ARBITRATION ACT**

Recently, the Hon'ble Supreme Court in **Punjab State Civil Supplies Corporation Limited vs. Ganpati Rice Mills**¹ has opined that an Arbitrator pursuant to Section 31(a)(1) of the Arbitration and Conciliation Act, 1996 *herein referred to as "Act"* has a substantial discretion while awarding rate of interest.

It is worth to mention herein the brief factual matrix surrounding the instant case. As such, the Arbitrator had awarded interest at the rate of 18% per annum from the year 2003 to the date of realization however, the arbitral award was challenged further under Section 34 of the Act. It is noteworthy to mention herein that whilst disposing the said petition, the Learned District Court reduced the rate of Interest to 12%. Under Section 37 of the Act, an appeal was filed in High Court, wherein the court whilst relying on **A.P. State Trading Corporation Ltd. Vs. G.V. Malla Reddy and Company**² reduced the rate of interest to 9% from 18% p.a. granted by the Arbitrator. As such, in A.P State Trading judgement, the court observed that when there

is no specific contract between the parties regarding the rate of interest, the rate of interest must not exceed 9% per annum.



¹ C.A. No. 006357 / 2021

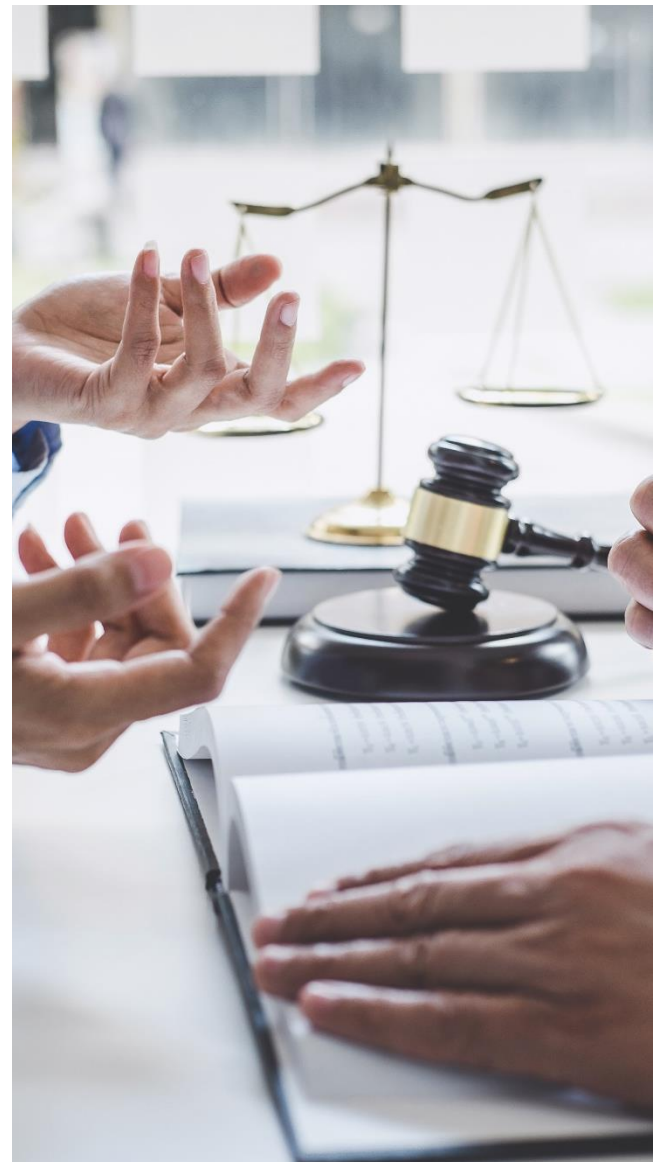
² 2010 AIR SCW 6337

In a categoric attempt to settle the issue, the Hon'ble Supreme Court opined that the judgement relied upon by the High Court was concerned with the Arbitration Act of 1940 whereas the present case is governed by the Arbitration Act 1996, and therefore, the application of the judgment as have been made by the High Court while drawing the conclusion was not appropriate and therefore cannot be relied upon. It is worth submitting herein that Section 31(7) of the Act gives a substantial discretion to the arbitrator to decide upon the rate of Interest. For the sake of convenience, the relevant portion is reproduced hereinunder.

Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the he arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

The Apex Court also quoted that there were no mention of grounds or clauses adduced by the High Court that can justify reduced interest rate. Resultantly, the Apex Court restored the rate of interest granted by the Learned District Court.

It would be relevant to mention herein that recently, the Apex court in ***Garg Builders Vs Bharat Heavy Electricals Limited***³ opined that while the suit is still pending, an arbitrator cannot award any rate of interest to the parties.



³ Civil Appeal No. 6261 of 2021

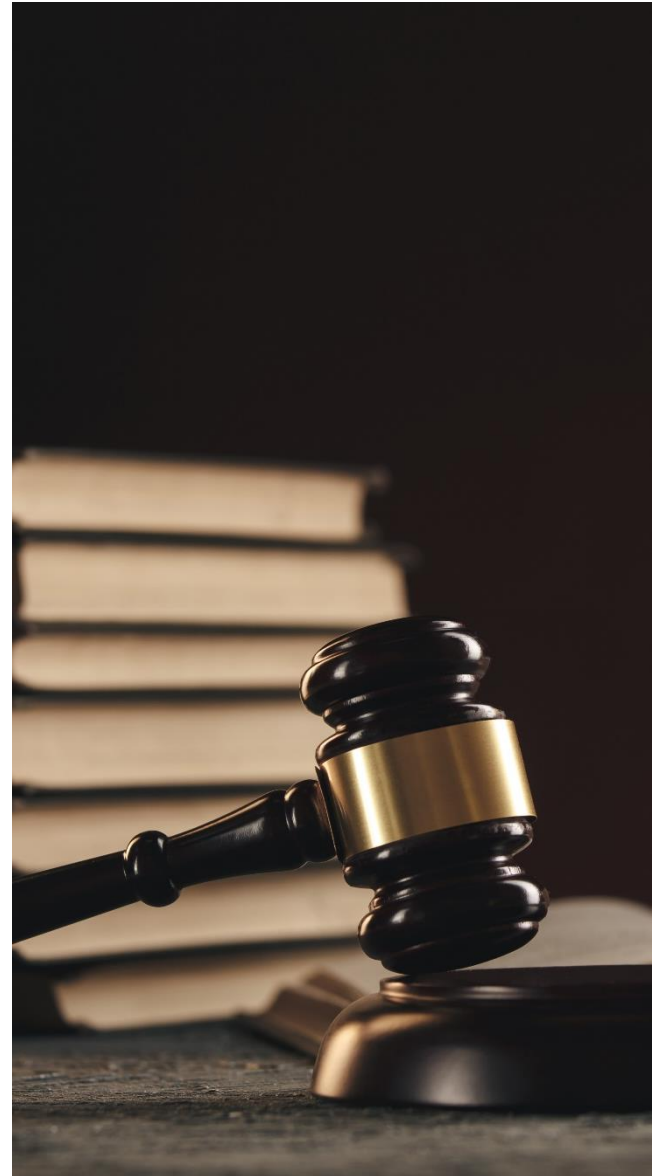
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JURISDICTION OF INDIAN COURTS BEYOND BORDERS IN MATTERS RELATING TO TRADEMARK INFRINGEMENT

Recently, The Delhi High Court in **TATA Sons Pvt. Ltd. v. Hakunamatata Tata Founders & Ors.**⁴, opined that in Internet Trademark Infringement Cases, intention and objective of foreign defendants to target Indian customers and the market must be established. In present case the Court dealt with the case pertaining to infringement case wherein a suit for permanent injunction was filed by TATA Sons Pvt. Ltd. against Hakunmatata Tata Founders to restrict them to use the trademark “TATA”. The main issue in this case was whether the plaintiff can file an injunction suit against the defendant wherein the defendant resides outside the Indian borders.

The jurisdiction to try Trademark Infringement Cases is governed by Trademarks Act and Code of Civil Procedure⁵. It is pertinent to mention herein that the present case falls outside the jurisdiction of both the said Acts. The Delhi High Court opined that the Court can direct the

defendants wherein any infringing activities is taking place within the jurisdiction of the court.



⁴ CS(COMM) 316/2021 & I.A. 8000/2021

⁵ Burger King Corporation vs Techchand Shewakramani & Ors.- CS(COMM) 919/2016 & CC(COMM) 122/2017

It is worth to mention herein the factual matrix surrounding the present case. The defendants deals in crypto currency under the name of \$TATA which is not registered in India. As such, the Plaintiff had filed a suit for permanent injunction against the defendant to restrict them to use “TATA”. The Court whilst deciding the case opined that the present case is beyond the territorial jurisdiction of the Court. Further, the Court opined that the mere fact that the defendants’ crypto currency can be purchased by customers located in India, does not empower the court to exercise jurisdiction over the defendant. It is noteworthy to mention herein that interactivity of the website in prepositions as such is an essential factor however, mere interactivity of the website would not suffice. In this regard it also of relevance that to what extent the website is interactive is also of a pertinent facet in prepositions as such.

In this regard, the Court held that there was no evidence on record that reflects that people in India had accessed the webpage. The Court also noted that accessing of the webpage of the defendant in the suit cannot constitute a ground for the Court to exercise jurisdiction over the defendants. Hence, the Court refrained from issuing directions to the defendants for the reason of being outside its territorial reach.



3 SUPREME COURT HAS CONSTITUTED AN INDEPENDENT EXPERT COMMITTEE ON PEGASUS SNOOPING ROW

The Hon'ble Supreme Court vide its order dated 27.10.2021⁶, has constituted a five-member independent expert committee to enquire, investigate and submit a report on the issue of snooping by the State through the Pegasus Spyware on mobiles and devices of some specific high-value individuals. The Hon'ble Court has found compelling circumstances to constitute the committee in order to determine the truth and get to the bottom of the issue.

As such, the decision has floated to this level only after numerous Writ Petitions were filed by some journalists, activists, etc. thereby alleging that the State has obtained Pegasus Spyware from NSO an Israeli-based company for snooping, accessing their stored data, eavesdropping on their conversation, and intercepting their information. As such, the same is a violation of the Right to Privacy under Article 21 and Right to Freedom of Speech including free press under Article 19 of the Constitution of India.

Further, the NSO has categorically announced that it has provided its services only to the governments and the agencies controlled by the governments. Even after Apex Court has given multiple occasions to Union Government to clear its stand, however, it has refused to file a detailed affidavit as to whether it has used the software for surveillance of individuals; consequently, the Court was compelled to constitute the committee. The Court has drawn an adverse inference against the State and has turned down the request of the State to constitute a committee as the same amounts to inherent bias.

It is noteworthy to mention that Hon'ble Court has diverted from its previous instances whereby on numerous occasions, the inquiry and judicial scrutiny has been dropped in preliminary stages on the grounds of National Security. The Apex Court has made its stand clear that the State cannot take shelter of National Security without proving and pleading the facts whenever the allegations affecting the public at large are involved. The Court has observed that if in any case, the State has used the Pegasus Software, then it is bound to prove and establish that the information obtained through the same is to be kept confidential and the public disclosure would be serious

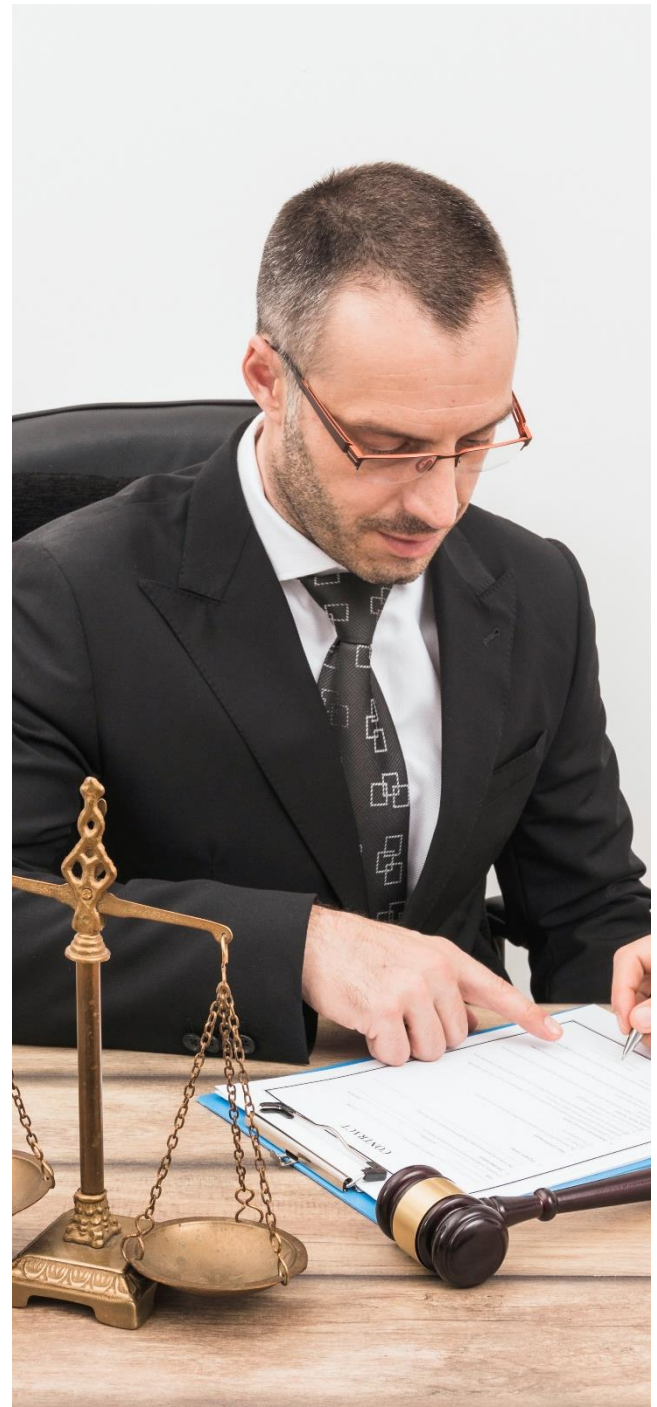
⁶ Manohar Lal Sharma vs. Union of India & Ors., Writ Petition (Crl.) No. 314 of 2021.

repercussions on the national security. The Court has further observed the Court cannot be a mute spectator and it is bound to act as a watchdog to protect individual rights affecting the nation at large. The Court further noted that even though in of the matters related to National Security, the power of the Court is limited; the State cannot get away by making claims of National Security and escape from judicial scrutiny, especially when the allegation has a chilling effect on the fundamental right under 19 and 21 of the entire citizenry.

The Apex Court has made clear that it has no interest in entering into

political rhetoric; however, whenever there are violations of the Fundamental Rights of individuals, the Court will not hesitate in passing the necessary orders.

The Court has once again reiterated that the State is governed by Rule of Law and that officeholders have to be transparent and accountable when exercising public functions. Therefore, through the system of checks and balances, the Apex Court upholds the democratic principles. The order passed by the Hon'ble Apex Court is historic and watershed in the history of our country.

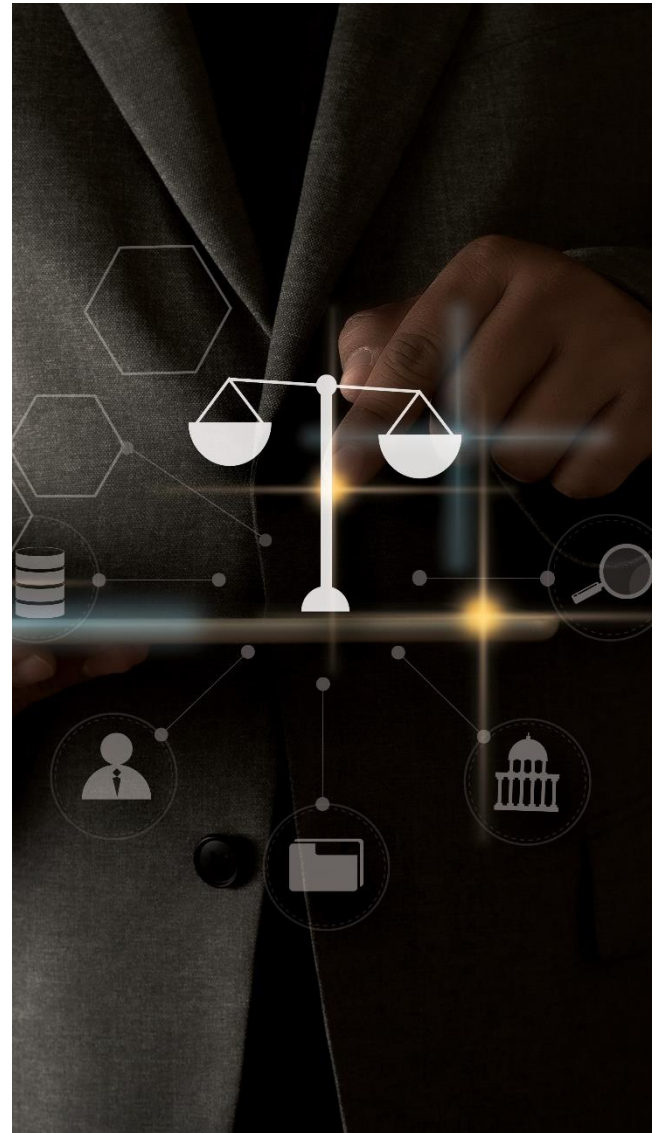


4 ANTICIPATORY BAIL: WHEN ACCUSED ALREADY IN CUSTODY

The term 'bail' is defined as 'set at liberty a person arrested or imprisoned, on security being taken for his appearance'⁷. Simply said, bail is nothing but release from restraint, more specifically, releasing an individual from either Police Custody or Judicial Custody, who was previously arrested by the concerned agency. Such arrests affect freedom of movement of an individual, and an order granting bail to that individual gives back that freedom on condition that he will appear before the concerned Court to face the trial. The power to grant bail can be exercised by the Magistrate's Court⁸, the Court of Sessions⁹ and the High Court¹⁰ under the Code of Criminal Procedure, 1973 **"hereinafter referred to be as CrPC"**. Therefore, such relief can only be sought after the individual has been arrested.

Recently the Hon'ble Rajasthan High Court in **Sunil Kallani Vs. State of Rajasthan**¹¹ categorically opined with regards to "whether an anticipatory bail application would be maintainable by an accused who is already arrested and is in judicial custody in relation to another FIR registered against him"¹². The Court

after a detail examination whilst holding that such application is not maintainable, observed that "the purpose of preventive arrest by a direction of the court on an application under Section 438 Cr.P.C. would be an order in vacuum.



⁷Wharton's Law Lexicon.

⁸ Section 437, CrPC

⁹ Section 439, CrPC

¹⁰*Supra*.

¹¹S.B. Criminal Misc. Bail Application No. 9155/2019

The Court also noted that if a person is already in custody with the police, an anticipatory bail application under Section 438 Cr.P.C. would not lie and would be nothing but travesty of justice in allowing anticipatory bail to such an accused who is already in custody”.

The Court further observed that the provisions of grant of anticipatory bail are essentially to prevent the concerned person from litigation initiated with the object of injuring and humiliating the applicant by having him so arrested and for a person who stands already arrested, such a factor does not remain available.

In my humble opinion the judgement appears to have rendered a plausible interpretation of law and is in consonance with the intent of the legislature. The urge for freedom is natural to every individual, which has been accepted by the Parliament, fostering the respect for personal liberty and accord to a fundamental tenet of criminal jurisprudence i.e. everyone is presumed to be innocent until proven guilty. The old code did not provide for such provision wherein any individual can move an application for anticipatory bail. The predominant position was that the courts did not have such power to grant a bail on the basis of apprehension. However, realizing the importance of personal liberty enjoyed by the people under the Constitution of India, the legislature made provision i.e. Section 438 allowing bail to the people apprehending their arrest under the new Code i.e. CrPC, 1973.

As such, section 438 of CrPC, empowers the Court of Session & the High Court to grant bail to any individual apprehending his or her arrest. However, the language of the Section 438



nowhere describe the expression 'anticipatory bail', it is merely a convenient mode of saying 'bail in anticipation of an arrest'. The Hon'ble Supreme Court observed "Anticipatory bail is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely."¹³

In light of the aforesaid, it can be safely gathered

at this juncture that the stone of the Anticipatory Bail is premised on the element of 'apprehension'. As such, the person who is already in the custody cannot be assumed to have moved an application premised on apprehension of arrest. Henceforth, the precondition of filing an application seeking anticipatory bail i.e. "reason to believe that he may be arrested" do not exist as the person was already in the custody.



¹³ Gurbaksh Singh Sibba Vs. The State of Punjab
AIR 1980 SC 1632.

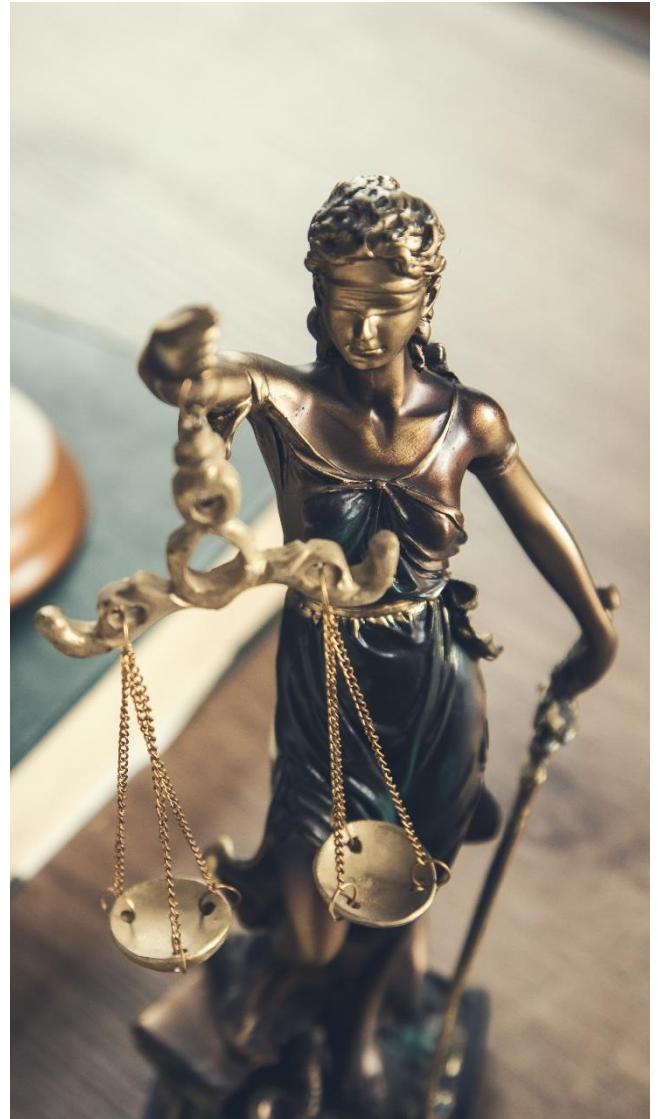
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LEGAL NEWS AND
UPDATES

- No preparative action shall be taken against the companies involved in providing online gaming, Advocate General assures Karnataka High Court.
- The Hon'ble Supreme Court has set aside an order passed by the Kerala High court in the case relating to alleged Maoist leader Roopesh. The SC held that a revision petition against an order passed by a Special Court under the National Investigation Agency can lie only before a division bench of a High Court.
- Before the Supreme Court's judgement indicating that there is no blanket ban on the usage of firecrackers, licenced firecracker sellers have approached the Delhi High Court requesting permission to sell green firecrackers on the occasion of Diwali in the national capital. The Supreme Court clarified that only firecrackers containing barium salts were prohibited.
- The Himachal Pradesh High Court ruled that a party's death certificate cannot be classified as 'Third Party Information' under Section 11 of the Right to Information Act because it only pertains to the deceased.
- The Punjab and Haryana High Court granted default bail to an NDPS accused under Section 167(2) of the CrPC, notwithstanding the fact that the police had submitted the challan in the case against him without the FSL (Forensic Science Laboratory) report.
- The Telangana High Court Upheld Section 15 of the Telangana Advocates' Welfare Fund Act, 1987, which prohibits advocates beyond the age of 35 from seeking for benefits from the Welfare Fund.
- The bail application submitted by Avantha Group Promoter Gautam Thapar in connection with the Yes Bank loan fraud case was denied by Special Judge Sanjeev Aggarwal of the Delhi Court. The Court ordered Thapar to be held in judicial custody.
- Apex Court ruled that compromise between accused and complainant cannot be sole basis for reduction in accused punishment.
- The Delhi High Court on Friday dismissed Future Group's request for an ad interim stay on an order issued by a Singapore-based Arbitration Tribunal, refusing to interfere with the Emergency Award

preventing the company from proceeding with the Reliance acquisition.

- The Kerala High Court is set to examine if a mechanism can be designed including insurance companies or the Insurance Regulatory and Development Authority (IRDA) to meet the immediate treatment costs of accident victims.
- In a defamation complaint brought by Popular Front of India over a news report involving Assam's Darrang fire incident recently, Delhi Court issued summons to Republic Media, Arnab Goswami, the channel's top editor, and News Broadcasters Standards Association.
- The Madras High Court on Friday levied costs of Rs 25 lakhs on a film production studio after finding that it had unnecessarily drawn out an appeal by misleading the Court with "false promises" to repay the sum owed by it.





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