

## PART IV

### CRIMINAL JURISDICTON CONSTITUTION OF COURT AND SITTINGS

**969. Jurisdiction to be exercised by a single Judge** – The Ordinary Original Criminal Jurisdiction of the High Court shall be exercised by a single Judge, unless the Chief Justice shall otherwise direct.

**970. Appellate side to hear applications under E.O.C.J.-** Applications for the exercise of the Extraordinary Original Criminal Jurisdiction conferred on this Court by Clauses 24 and 29 of the Letters Patent, and applications under sections 96 an 407 of the Code of Criminal Procedure, shall be heard and disposed of on the Appellate Side.

**Cases transferred to be heard on the Original Side in its Criminal Jurisdiction** – But the cases directed to be tried by the High Court will be tried on the Original Side in the exercise of its Criminal Jurisdiction, according to the provisions of the said Code of Criminal Procedure before such Judge as the Chief Justice shall appoint.

**R. 971. Sitting of criminal sessions.**—The criminal sessions of the High Court shall be held at such time and on such dates as the Chief Justice may direct.

**R. 972. Clerk of the State to issue summonses and processes.**—All summonses, precepts, rules, orders, mandatory processes shall be issued from and returned into the office of the Clerk of the State, and shall be subscribed and sealed by the Clerk of the State. The Sheriff, through his Officers, shall execute them by service in accordance with the provisions of sections 61 to 68 of the Code of Criminal Procedure.

**R. 973. Witnesses residing beyond certain limits not to be summoned.**—No summons shall be issued by the Clerk of the State to compel the attendance as a witness of any person resident and at the time residing beyond the limits of Greater Bombay, Salsette and Karanja, unless the Court so orders.

**R. 974. Service on Consuls and Consular Officers.**—Where subpoenas are required for the attendance of Consuls and Consular Officers, a letter should always take the place of a subpoena to be signed by the Clerk of the state and containing all the particulars required to be stated in subpoena. Such letter

should then be forwarded to the General Administration Department of the Government of Maharashtra, for favour of service by the Department on the Consul and ample time should be allowed so as to secure such service in good time and the attendance thereafter by the witness.

**R. 975. Attendance of witnesses under recognizances and beyond jurisdiction.**—In cases where witnesses resident beyond the local limits of the Ordinary Original Criminal Jurisdiction of the High Court have been bound over by recognizances or summoned to attend and give evidence at the trial of any person committed by any Magistrate in any district to any criminal sessions of the High Court, it shall not be necessary for the Clerk of the State to issue any summons of such witnesses, but the Clerk of the State shall in all such cases, in sufficient time before the day appointed for holding the criminal sessions, send a letter to the Magistrate of the district from which the committal was made, stating the day on which the criminal sessions are to be held, with a list of the witnesses from whom recognizances have been taken and of those to whom summonses have been issued, and requesting the Magistrate to cause the witnesses to be served with notice to attend on the day named in sufficient time to ensure their attendance on that day.

**R. 976. Mode of recording evidence.**—The evidence of each witness, as his examination proceeds, shall be taken down in writing by the Presiding Judge or in his presence and hearing and under his personal direction and superintendence.

**977. Classification of habitual criminal by the presiding Judge** – The Judge presiding at the criminal sessions may (with a view to enable the prison-authorities to separate habitual convicts from others) classify as a habitual criminal any of the following persons convicted before him :-

- (i) any person convicted of an offence whose previous conviction or convictions under Chapter XII, XVI, XVII or XVIII of the Indian Penal Code taken by themselves or with the facts of the present case show that he habitually commits an offence of offences punishable under any or all of those chapters;
- (ii) any person committed to or detained in prison under section 123 (read with section 109 or section 110) of the Code of Criminal Procedure;

- (iii) any person convicted of any of the offences specified in (i) above when it appears from the facts of the case, even although no previous conviction has been proved, that he is by habit a member of a gang of dacoits or of thieves, or a dealer in slaves or in stolen property;
- (iv) any person convicted by a Court or Tribunal acting outside India under general or special authority of an offence which would have tendered him liable to be classified as a habitual criminal if he had been convicted in a Court established in India;

Provided that any person classified as a habitual criminal may apply for a revision of the classification, and the Judge may, either on such application or of his own motion, revise his classification.

Explanation - For the purpose of this rule a conviction shall include an order made under section 118, read with section 110 of the Code of Criminal Procedure.

**978. Action to be taken if the misconduct of the police comes to the notice of the Presiding Judge** – Where any instance of misconduct or abuse of authority by the police comes to the notice of the Judge presiding at the criminal sessions, the Clerk of the State shall inquire of the Judge whether he desires such instance of misconduct or abuse of authority by the police to be reported to Government, and in the event of the Judge so desiring, he shall communicate to Government accordingly.

#### APPLICATION FOR BAIL

**979. Bail application to whom to be made** – Applications for bail in respect of persons to be tried by the High Court shall be made to the Judge appointed to try the case but in the absence of such Judge, such applications may be made to the Judge in Chambers.

**980. Application for bail of prisoner committed to Sessions** – When a person is to be tried by the High Court, application may be made on his behalf that he may be bailed on giving 48 hours' written notice to the Public Prosecutor. Such notice shall contain the names, residence and description of the persons whom he proposes as his sureties. The application shall be supported by an affidavit stating when, by whom, for what offence and under what circumstances

the prisoner was committed and where he is detained in custody and the grounds for the application. A copy of such affidavit shall be served upon the Public Prosecutor with the said notice. The Public Prosecutor may file affidavits in opposition to the application and may appear to oppose the making of an order that the prisoner be admitted to bail.

**981. Clerk of the State to write to Magistrate to produce depositions –** On the hearing of such application the Court may direct the Clerk of the State to write a letter directing the Magistrate by whom such prisoner has been committed to produce the depositions taken before him in the case, unless such depositions shall have previously been forwarded to the office of the Clerk of the State.

**982. On Public Prosecutor consenting order on shorter notice –** The application mentioned in rule 980 may be made on any shorter notice than 48 hours if the Public Prosecutor consents thereto or waives his right to 48 hours notice, but in every case the written notice and affidavit mentioned in the said rule must be served on the Public Prosecutor before the application is made.

**983. Amount of bail and number of sureties –** If the order be that the prisoner shall be released on bail, the Court shall direct to what amount such bail shall be taken and with how many sureties, and unless the Court approves of the names proposed as bail or shall otherwise direct, the Clerk of the State or his Deputy in his absence shall after examination, approve the same if he is satisfied of their sufficiency.

**984. Prisoner may be released on entering recognizances -** Unless the Court shall otherwise order the recognizances of the sureties and of the prisoners shall be entered into before the Clerk of the State or his Deputy in his absence, and the Clerk of the State or his Deputy is authorised to direct by letter the Jailer, in whose custody the prisoner is, to bring up the prisoner before the Clerk of the State or his Deputy to enter into his recognizances, and on the prisoner being so brought up, the Clerk of the State or his Deputy may, on recognizances being entered into according to the Judge's order, direct that the prisoner shall be released.