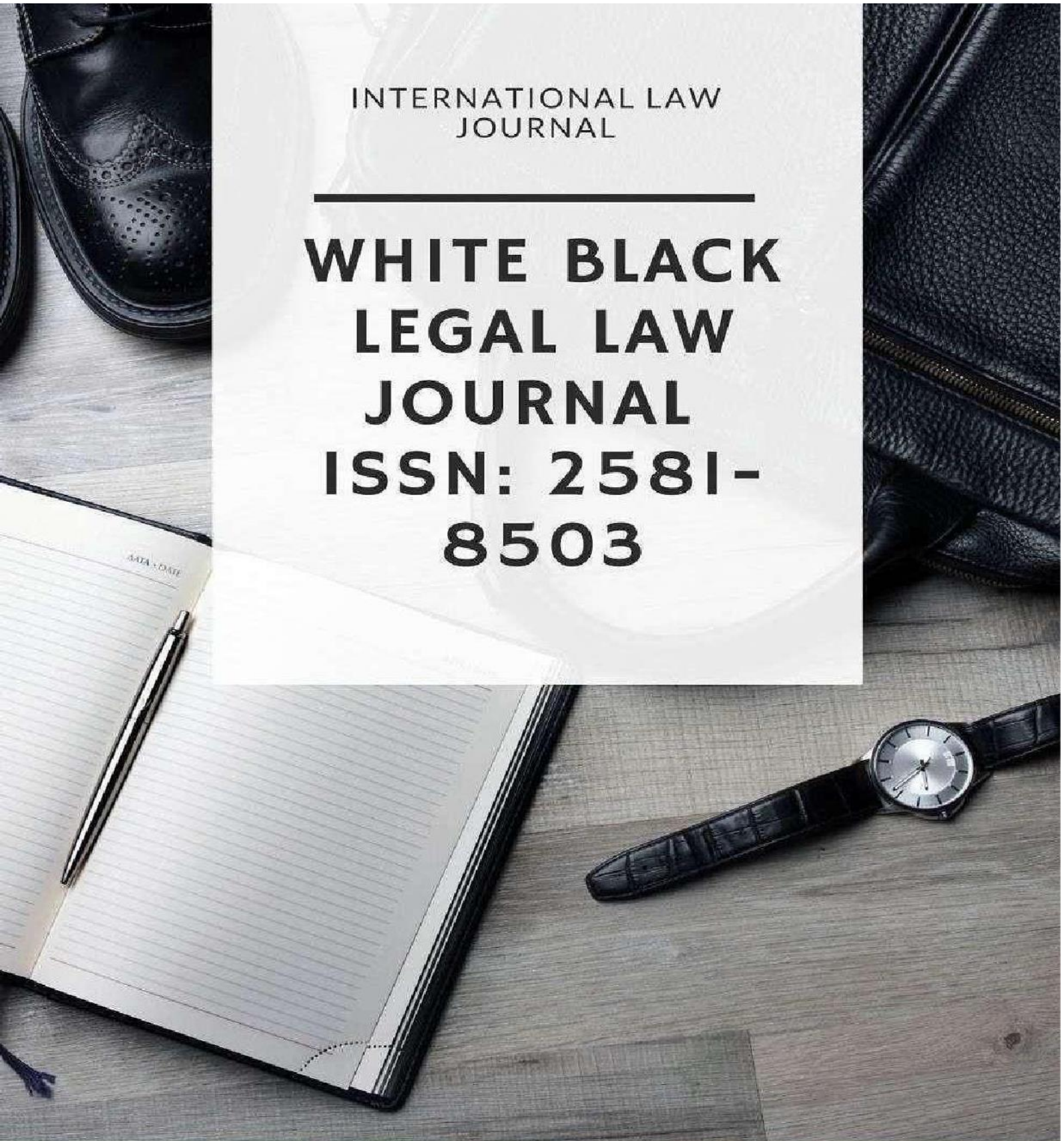




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THE ANATOMY OF MURDER DRESSED AS LAW

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A Case Commentary on Prakash Kadam v. Ramprasad Vishwanath Gupta

MANU/SC/0616/2011

I. ABSTRACT

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”¹

While the Constitution of India guarantees us of the right to life and liberty the mere imbalance of power and prevalence of oppression exploits those who are weaker or less privileged. Prakash Kadam v. Ramprasad Vishwanath Gupta becomes a reminder of our gruesome reality. A grave case wherein the accused were police personnel who had allegedly functioned as ‘contract killers’. They presented a manipulated version of the events in which they claimed to have shot the victim in a “police encounter”. Their claim had been later found to be false during the investigation. This case gyrates around the cancellation of bail that had been granted to the officers accused of contract killing. This article is concerned with the following questions that are lifted according to the state of affairs, If those entrusted with enforcing law can be hired as contract killers, what remains of the rule of law? , When the accused themselves hold positions of authority, can witnesses ever truly feel safe?, If bail is granted without considering the potential intimidation of witnesses, does justice begin to weaken before trial even starts?

II. PROTECTORS BECOMING PREDATORS

“Who will guard the Praetorian guards?” this phrase emanates from the Latin line **“Quis custodiet Ipsos custodes?”**, this phrase was coined by Roman poet and satirist Juvenal in his poetic work “Satires”, particularly in Satire VI. ²The phrase attributed to the Praetorian guards, the aristocratic soldiers responsible for protecting the Roman emperor. In ancient Rome, the Praetorian guards were supposed to be the protectors of the state and the emperor. However, over the course of time, they became formidable and often unscrupulous. At some instances they resorted to politics, assassinated emperors to install their own ruler.³ This phrase was devised while discussing a broader philosophical and political point: when those entrusted with

power become corrupt, who has the authority or ability to hold them accountable?

We witness a constitutional dilemma as the fundamental of this case. The police officers who were trusted with the duty of protecting the society, are themselves accused of unlawful killings, here the judiciary becomes responsible for restoring accountability. The Supreme Court's decision in this case represents a modern answer to Juvenal's ancient question – "Who will guard the praetorian guards?" The Court's arbitration contemplates a persisting legal concern, that is the need to regulate the positions of power when "the protector becomes the predator"

III. FACTS OF THE CASE

The case arises out of the alleged custodial abduction and fake encounter killing of Ramnarayan Gupta alias Lakhanbhaiya on 11-11-2006 in Mumbai. Gupta and his associate, Anil Bheda, were allegedly picked up near Trisha Collections at Vashi by a group of 4-5 men who appeared to be policemen. According to the prosecution, they were forcibly bundled into a Qualis vehicle and later separated; Gupta was transferred to an Innova, while both men were taken to D.N. Nagar Police Station at different times.⁴

Gupta's brother, a practising advocate, immediately sent telegrams and complaints to senior police authorities, warning that Gupta might be eliminated in a false encounter. The same evening, television channels reported Gupta's "encounter death." A FIR (CR No. 302/2006) was lodged by PI Pradip Suryavanshi (Accused 9) claiming that Gupta had been killed in an encounter at Nana-Nani Park after he allegedly fired at the police.⁵

A magisterial enquiry under Section 176(1-A) CrPC later revealed that the encounter was fabricated. It was found that Gupta was abducted, kept in police custody, shot dead at a location other than the claimed encounter site, and that a false FIR was lodged to cover up the killing. The enquiry confirmed that Gupta was under the control of the police at all times.⁶

Following a High Court-ordered reinvestigation by a Special Investigation Team (SIT), 19 accused were charge-sheeted, including several police officers such as PI Pradip Sharma (Accused 1), PI Suryavanshi (Accused 9), API Sartape, PSI Harpude, PSI Patade, Constable Pandurang Kokam, and others. The prosecution alleged a conspiracy between police officers and a private person, Janardan Bhangre (Accused 14), who had personal hostility with Gupta and had allegedly hired the officers to kill him.⁷

The Sessions Court granted bail to several accused. The Bombay High Court cancelled the bail, citing the seriousness of the offence, the involvement of policemen acting as contract killers,

tampering concerns, and strong prima facie material.⁸ The accused appealed to the Supreme Court. The Supreme Court upheld the High Court's cancellation of bail, characterizing the incident as a severe breakdown of the rule of law, and warning that fake encounter killings by police must be treated as "rarest of rare" cases deserving the death penalty if proved at trial.⁹

IV. ISSUES AND ARGUMENTS

Granting of bail without adequate consideration of the facts is not once in a blue moon scenario but something that has been a topic at merit for revaluation of the decisions made by courts. In the moment of such disarray the primary question before the Supreme Court was whether the high court of Bombay was justified in cancelling the bail granted to the accused police officers, who were alleged to have part taken in a fake encounter killing. Now with this there arose two specific legal conundrums:

1. Are the considerations governing the cancellation of bail different from those applicable to the grant of bail, and to what extent such principles apply in exceptional cases involving grave offences; and
2. Whether the gravity of the offence and the prima facie material against the accused policemen justified cancellation of bail, notwithstanding the absence of evidence showing misuse of their liberty.

Furtherance to this a moral constitutional issue linked to Article 21 of the Constitution reinforces the judgement:

- How should a criminal justice system respond when the personnels of the state whose duty is to uphold the law, appear to have operated as criminals?

The counsel for the accused policemen argued that the parameters for cancellation of bail are narrower than those for granting it. Unless there is misuse of freedom, interference with witnesses, or likelihood of absconding, bail once granted ought not to be disturbed. They also relied upon judicial precedents. In this regard, they attempted to rely on the judicial principles where the supreme court emphasized the importance of proper judicial reasoning before curtailing liberty. Reliance was placed on precedents such as *Bhagirathsinh v. State of Gujarat* (1984 1 SCC 284), *Dolat Ram v. State of Haryana* (1995 1 SCC 349), and *Ramcharan v. State of M.P.* (2004 13 SCC 617).¹⁰ They relied on these precedents to argue that personal liberty is a fundamental value in criminal jurisprudence and contended that intervention must be based on clear legal justification rather than suspicion or public pressure.¹¹ They held that convictions cannot be sustained where evidence suffers from inconsistencies or lack of cooperation,¹² the

grounds for granting bail and grounds for cancelling bail are fundamentally different.¹³

The prosecution and complainant maintained that the gravity of the offence and overwhelming prima facie evidence that the accused had acted as contract killers in uniform justified cancellation of bail. They asserted that the sessions judge had ignored the vital consideration of witness security, which is endangered when policemen accused of custodial murder remain free.

V. THE JUDGEMENT

Justice Markandey Katju (for the Bench with Justice Gyan Sudha Misra) delivered a characteristically forthright and significant opinion. The court held that no absolute rule differentiates between the grounds for grant and cancellation of bail; both depend on the facts of each case. Courts must consider not only the likelihood of misuse but also the gravity and nature of the offence, the position of the accused, and the existence of a prima facie case that renders continued liberty inconsistent with justice. The case, involving policemen accused of a fake encounter, was extraordinary in its seriousness. Their conduct, if proved, represented a total betrayal of their oath to uphold the law. The Sessions Court miscalculated in overlooking the potential threat to witnesses and public order inherent in granting bail to armed officers accused of contract killing. The High Court rightly cancelled bail, having correctly appreciated that guardians of law becoming “predators” strike at the foundation of the rule of law. The court dismissed the appeals and used the occasion to articulate broader warnings regarding fake encounters, police accountability, and the looming danger of lawlessness.

VI. RATIO DECIDENDI

- **Cancellation of bail:** The court clarifies that the test for cancellation is not limited to the post bail conduct of the accused. The gravity of the offence and the societal impact of releasing a person accused of heinous crimes can independently justify cancellation.
- **Accountability of police officers:** When the guardians of law execute crimes, they commit a graver breach than ordinary offender thus their punishment, if convicted, must be harsher.

Kautilya, an ancient philosopher says that “if danda be not employed it gives rise to the condition of Matsyanyaya” that is, in the absence of a king (arajaka) or when there is no fear of punishment, the conditions of Matsyanyaya follows.¹⁴

- **Fake encounters and capital punishment:** The court declared that fake encounter just

translated to “cold blooded murder” and if any person proven of this at trial, should attract the death penalty under the “rarest of rare” category.

VII. OBITER DICTA

At the beginning of the judgement, Mark Antony’s speech in Shakespeare’s Julius Caesar¹⁵ has been quoted. According to the judge it is a glimpse of the situation which will prevail if state of lawlessness comes into existence. Justice Katju’s observations transcended the immediate bail issue and formed moral and philosophical commentary on the rule of law. He invoked that policemen cannot escape criminal liability by claiming that they were merely following orders from the superiors when participating in the fake encounters, this resonates Nuremberg Principle, where the nazi officials accused of war crimes justified it with “orders are orders”.¹⁶ The court condemned fake “encounters” and recognized them as nothing but “cold blooded, brutal murders by persons who are supposed to uphold the law”. the court used literary work conjointly with legal principles. The invocation of a lawless state or matsyanyaya, a state of affairs where the big fish devours the smaller one had also been mentioned in the judgement.¹⁷

Literature and Law

A curse shall light upon the limbs of men; Domestic fury and fierce civil strife Shall cumber all the parts of Italy;

Blood and destruction shall be so in use And dreadful objects so familiar

That mothers shall but smile when they behold Their infants quarter'd with the hands of war; All pity choked with custom of fell deeds: And Caesar's spirit, ranging for revenge, With Ate by his side come hot from hell, Shall in these confines with a monarch's voice Cry 'Havoc,' and let slip the dogs of war;

That this foul deed shall smell above the earth With carrion men, groaning for burial.

- (Shakespeare: Julius Caesar Act 3 Scene 1)¹⁸

The judgement represents a compelling instance of the intersection between law and literature. The reference to Shakespeare’s Julius Caesar Act 3 Scene 1, particularly Mark Antony’s renowned speech in which Antony is saying that a terrible curse will fall on people, there will be anger within the country and civil war among the Romans. Violence and killing will become common. This is an exaggerated imagery, he means that war will become so brutal and frequent that people will become numb to horrific events. People will lose compassion because they will

get used to cruel acts. This speech mirrors the court's warning against the collapse of legal order. Law at times extensively relies on literary work and classical literature. There is a close kinship between law and literature.¹⁹ The literary instances are often those in which a legal matter comes to fore.²⁰ Reliance on classical Indian texts such as Mahabharata and Shatapatha Brahmana which describes Matsyanyaya is seen in *Prakash kadam v. Ramprasad Vishwanath Gupta*.²¹ Through this the court demonstrate that the principle of the rule of law is not merely a constitutional mandate but a timeless concern mentioned across various literatures.

VIII. ANALYSIS AND SIGNIFICANCE

The decision in *Prakash kadam v. Ramprasad Vishwanath Gupta* is a landmark judgement where the supreme court sent a strong message against fake encounters and misuse of authority by police officers.

It has significance on multiple planes:

1. ***Doctrinal clarity on bail jurisprudence:***

By rejecting a separation between the tests for granting and cancellation bail, the Court re-emphasised discretion anchored in context, gravity, and public interest.

2. ***Moral/Legal message:***

It is a constitutional lesson, the moment enforcers of law turn executioners, the State's legitimacy collapses. By invoking *Shakespeare* and *Dharmashastra*, Justice Katju infused jurisprudence and civilisational depth.

3. ***Precedential Impact:***

Later decisions on police accountability, judicial oversight of encounters, and bail cancellation drew strength from this reasoning.²²

IX. CONCLUSION

In *Prakash kadam v. Ramprasad Vishwanath Gupta*, Justice Katju's judgment uses the tools of legal reasoning and the language of civilisational literature to say something that every person in India not merely every lawyer already knows to be true. A police officer who accepts payment to shoot a man in a staged encounter is not a police officer. He is a murderer with a badge. **"The powerful exact what they can, and the weak grant what they must, but justice exists precisely to make that equation false."**²³ This quote from the Mytilenean Debate in History of Peloponnesian War, captures the tendency of power to dominate in the absence of restraint. However, the very purpose of law, as both Diodotus and the Court implicitly

recognize, is to disrupt this natural imbalance.

“Quis custodiet ipsos custodes?” Juvenal asked. The Supreme Court of India answered: **“Nos custodiemus.”** We will.

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¹ INDIA CONST. art.21

² Varol, Ozan, *The Democratic Coup d'État* (New York, 2017; online edn, Oxford Academic, 24 Aug. 2017),
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³ Footnote-2

⁴ Prakash Kadam v. Ramprasad Vishwanath Gupta MANU/SC/0616/2011.

⁵ Footnote-4

⁶ Footnote-4

⁷ Footnote-4

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, s. 483

⁹ Footnote-4

¹⁰ Footnote-5

¹¹ Bhagirathsinh v. State of Gujarat (1984 1 SCC 284)

¹² Ramcharan v. State of M.P. (2004 13 SCC 617)

¹³ Dolat Ram v. State of Haryana (1995 1 SCC 349)

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¹⁹ Shakuntala Bharvani, *LAW AND LITERATURE*. (10th ed. 2025).

²⁰ Footnote-19

²¹ Footnote-4

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