

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XXV of 1990

THE CODE OF CRIMINAL PROCEDURE
(WEST BENGAL AMENDMENT) ACT, 1988.

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the
Calcutta Gazette, Extraordinary, of the 14th January, 1991.]

[14th January, 1991.]

An Act to amend the Code of Criminal Procedure, 1973, in its application to West Bengal.

2 of 1974.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1973, in its application to West Bengal, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Thirty-ninth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (West Bengal Amendment) Act, 1988.

Short title
and
commence-
ment.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

2. The Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act) shall, in its application to West Bengal, be amended for the purpose and in the manner hereinafter provided.

Application
of the Act.

3. For sub-section (1) of section 438 of the principal Act, the following sub-sections shall be substituted:—

Amendmen
of
section 438
of Act 2 of
1974.

"(1)(a) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail:

Provided that the mere fact that a person has applied to the High Court or the Court of Session for a direction

(Section 3.)

under this section shall not, in the absence of any order by that Court, be a bar to the apprehension of such person, or the detention of such person in custody, by an officer in charge of a police station.

- (b) The High Court or the Court of Session, as the case may be, shall dispose of an application for a direction under this sub-section within thirty days of the date of such application:

Provided that where the apprehended accusation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than seven years, no final order shall be made on such application without giving the State not less than seven days' notice to present its case.

- (c) If any person is arrested and detained in custody by an officer in charge of a police station before the disposal of the application of such person for a direction under this sub-section, the release of such person on bail by a Court having jurisdiction, pending such disposal, shall be subject to the provisions of section 437.
- (1A) The provisions of sub-section (1) shall have effect notwithstanding anything to the contrary contained elsewhere in this Act or in any judgement, decree or order of any Court, tribunal or other authority."
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