

E Lectures.

9th Semester (Code of Criminal Procedure)

Unit -IV :-

SECTION 106. Security for keeping the peace on conviction.

(1) When a Court of Session or Court of a Magistrate of the first class convicts a person of any of the offences specified in sub- section (2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

(2) The offences referred to in sub- section (1) are-

(a) any offence punishable under Chapter VIII of the Indian Penal Code (45 of 1860), other than an offence punishable under section 153A or section 153B or section 154 thereof;

(b) any offence which consists of, or includes, assault or using criminal force or committing mischief;

(c) any offence of criminal intimidation;

(d) any other offence which caused, or was intended or known to be likely to cause, a breach of the peace.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) an order under this section may also be made by an appellate court or by a court when exercising its powers of revision .

(Note:- the chapter contemplates two kinds of securities ie security for keeping peace on conviction and in other cases and secondly security for good behavior. Security for keeping peace under section 106 can be required when a person is convicted of certain offences involving a breach of peace and the court is of the opinion that it is necessary to require such person to execute a bond for keeping the peace. The order requiring security is passed at the time of passing sentence following the conviction and no further proceedings are necessary before demanding security. proceedings under section. The section is aimed at persons whose past conduct has proved dangerous to the public and is intended to secure public tranquility and peace. Further it refers only to parties convicted of certain offences and cannot be applied to cases where there is only a possible apprehension of future breach of peace. Security cannot be demanded when there is no conviction however if there are strong

grounds for apprehension of a future breach of the peace, the EXECUTIVE magistrate must act under section 107 or apply to the officer having authority to proceed under that section.)

SECTION 107. Security for keeping the peace in other cases.

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, [with or without sureties,] for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit. (2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.

(Note:- the object of this section is prevention not punishment of offences. It is not intended to punish persons for anything that they have done in the past but to prevent them from doing in future something that might occasion a breach of peace. This provision is a measure for the protection of the society. The magistrate should on the receipt of credible information issue an order under section 111 calling upon the person informed against to show cause. A legal and valid preliminary order under section 111 is *sine qua non* for initiating the proceedings under section 107 and taking action under 107 before making preliminary order under 111 is a serious defect. Thus the requirements of the section are a) there must be information that a person is likely to commit a breach of peace or disturb the public tranquility or do a wrongful act which may probably cause a breach of peace or disturb the public tranquility, b) the magistrate, if he is of opinion that there is sufficient ground for requiring the person against whom the information is laid to show cause why he should not be ordered to execute a security bond for keeping the peace, should issue notice to him and c) in calling upon the person to show cause the magistrate must proceed 'in manner hereinafter provided' and this means that he must issue notice in accordance with the requirements of section 111.)

SECTION . 108. Security for good behavior from persons disseminating seditious matters.

(1) When [an Executive Magistrate] receives information that there is within his local jurisdiction any person who, within or without such jurisdiction,- (i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,- (a) any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 295A of the Indian Penal Code (45 of 1860), or (b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amount to criminal intimidation or defamation under the India Penal Code (45 of 1860), (ii) makes, produces, publishes or keeps for sale, imports, export conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in section 292 of the Indian Penal Code and the Magistrate is of opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.

(2) No proceedings shall be taken under this section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed and published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the State Government in this behalf.

(Note:- to take action under this section, it should be proved that, if not prevented, the accused would continue to act in the way in which he has done. It may fairly be assumed that a person who habitually does something is likely to continue to do so, but then the habitual nature of his activities must be clearly proved.)

SECTION 109. Security for good behavior from suspected persons.

When [an Executive Magistrate] receives information that there is within his local jurisdiction a person taking precaution to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may in the manner hereinafter provided,

require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the Magistrate thinks fit.

(Note:- this is a preventive section intended to frustrate the designs of criminally minded persons before they are carried out. It is concerned only with the future conduct of the person proceeded against. The preventive action is taken because it is apprehended the person proceeded against is likely to commit some cognizable offences in future. The section is one of restrictive liberty and must be applied only where strictly applicable. Especially in view of the fundamental rights guaranteed under article 19 of the constitution. This section deals with a person who takes precaution to conceal his presence within the local limits of the magistrate's jurisdiction and there is reason to believe that he does so to commit a cognizable offence. The words 'the magistrate may' shows that it is in the discretion of the magistrate to proceed or not to proceed against a person but in exercising his discretion care should be taken to see that the stringent provisions of the section are not abused.)

SECTION 110. Security for good behavior from habitual offenders.

When [an Executive Magistrate.] receives information that there is within his local jurisdiction a person who- (a) is by habit a robber, house-breaker, thief, or forger, or, (b) is by habit a receiver of stolen property knowing the same to have been stolen, or (c) habitually protects or harbors thieves, or aids in the concealment or disposal of stolen property, or (d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489A, section 489B, section 489C or section 489D of that Code, or (e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, (f) habitually commits, or attempts to commit, or abets the commission of- (i) any offence under one or more of the following. Acts, namely : - (a) the Drugs and Cosmetics Act, 1940 (23 of 1940); [(b) the Foreign Exchange Regulation Act, 1973] (46 of 1973); (c) the Employees' Provident Funds [and Family Pension Fund] Act, 1952; -- of 1952. (d)the Prevention of Food Adulteration Act, 1954 (37 of 1954); (e)the Essential Commodities Act, 1955 (10 of 1955); (f)the Untouchability (Offences) Act, 1955 (22 of 1955); (g)the Customs Act, 1962 or (52 of 1962); (ii) any offence punishable under any other law providing for the prevention

of hoarding or profiteering or of adulteration of food or drugs or of corruption, or (g) is so desperate and dangerous as to render his being at large without security hazardous to the community, such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behavior for such period, not exceeding three years, as the Magistrate thinks fit.

(Note:- this section contemplates the keeping under control the persons who are habitual criminals and who would take their habits with them wherever they go. It intends to deal with ex-convicts or habitual criminals and dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of the penal law and the normal fear of condign punishment for crime are not sufficient deterrents for them or adequate safeguards for the public.)

SECTION 111. Order to be made.

When a Magistrate acting under section 107, section 108, section 109 or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

SECTION 112. Procedure in respect of person present in Court.

If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him

SECTION 113. Summons or warrant in case of person not so present.

If such person is not present in Court, the Magistrate shall issue in a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court : Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or

information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

SECTION 114. Copy of order to accompany summons or warrant.

Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

SECTION 115. Power to dispense with personal attendance.

The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behavior and may permit him to appear by a pleader.

SECTION. 116. Inquiry as to truth of information.

(1) When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. (2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases. (3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behavior until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded: Provided that- (a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining

good behaviour; (b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111. (4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise. (5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just. (6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs : Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention. (7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.

SECTION . 117. Order to give security.

If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly: 860 Provided that- (a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111 ; (b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive; (c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

SECTION. 118. Discharge of person informed against.

If, on an inquiry under section 116, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made, should execute a bond, the

Magistrate shall make an entry on the record to that effect, and if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

SECTION . 119. Commencement of period for which security is required.

(1) If any person, in respect of whom an order requiring security is made under section 106 or section 117, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence. (2) In other cases such period shall commence on the date of such order unless the Magistrate, for sufficient reason, fixes a later date.

SECTION 120. Contents of bond.

The bond to be executed by any such person shall bind him to keep the peace or to be of good behavior, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

. SECTION 121. Power to reject sureties.

(1) A Magistrate may refuse to accept any surety offered, or may reject any surety previously accepted by him or his predecessor under this Chapter on the ground that such surety is an unfit person for the purposes of the bond : Provided that, before so refusing to accept or rejecting any such surety, he shall either himself hold an inquiry on oath into the fitness of the surety, or cause such inquiry to be held and a report to be made thereon by a Magistrate subordinate to him. (2) Such Magistrate shall, before holding the inquiry, give reasonable notice to the surety and to the person by whom the surety was offered and shall, in making the inquiry, record the substance of the evidence adduced before him. (3) If the Magistrate is satisfied, after considering the evidence so adduced either before him or before a Magistrate deputed under sub section (1), and the report of such Magistrate (if any), that the surety is an unfit person for the purposes of the bond, he shall make an order refusing to accept or rejecting, as the case may be, such surety and recording his reasons for so doing : Provided that, before making an order rejecting any surety who has previously been accepted, the Magistrate shall issue his summons or warrant, as he thinks fit, and cause the person for whom the surety is bound to appear or to be brought before him.

SECTION 122. Imprisonment in default of security.

(1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for Which such security is to be given commences, the shall, except in the case

next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period -he gives the security to the Court or Magistrate who made the order requiring it. (b) If any person after having executed a bond without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor- in--office may, after recording the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law. (2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such Court. 862 (3) Such Court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit : Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years. (4) If security has been required in the course of the same proceeding 'from two or more persons in respect of any one of whom the proceedings are referred to the Sessions Judge under sub-section (2), such reference shall also include the case of any other of such persons who has been ordered to give security, and the provisions of sub-sections (2) and (3) shall, in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security. (5) A Sessions Judge may in his discretion transfer any proceedings laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings. (6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate. (7) Imprisonment for failure to give security for keeping the peace shall be simple. (8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple, and, where the

proceedings have been taken under section 109 or section 110, be rigorous or simple as the Court or Magistrate in each case directs.

SECTION 123. Power to release persons imprisoned for failing to give security.

(1) Whenever [the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged (2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or, where the order was made by any other Court, the [District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case], may make an order reducing the amount of the security or the number of sureties or the time for which security has been required. (3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts : Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired. (4) The State Government may prescribe the conditions upon which a conditional discharge may be made. (5) If any condition upon which any person has been discharged is, in the opinion of the 1*[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same. (6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the 1*[District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case]. (7) such person gives security in accordance with the terms of the original order for the unexpired, portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the 1 [District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] may remand such person to

prison to undergo such unexpired portion. (8) A person remanded to prison under sub-section (7) shall, Subject to the provisions of section 122, be released at any time on giving security in accordance with the terms of the original order for the portion aforesaid to the Court or Magistrate by whom such order was made, or to its or his successor. (9) The High Court or Court of Session may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by and the 1 [District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case] may make such cancellation where such bond was executed under his order or under the order of: any other Court in his district. (10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the Court making such order to cancel the bond and on such application being made, the Court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it.

SECTION . 124. Security for unexpired period of bond.

(1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or Court, the Magistrate or Court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. (2) Every such order shall, for the purposes of section 120 to 123 (both inclusive), be deemed to be an order made under section 106 or section 117, as the case may be.

151. Arrest to prevent the commission of cognizable offences. 151. Arrest to prevent the commission of cognizable offences. (1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. (2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest

unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.

(Note: the object of the section is to prevent the commission of an offence which a person designs or intends to commit. The section authorizes a police officer to arrest if he has knowledge that the person sought to be arrested entertained a design to commit a cognizable offence. It must also further appear to the police officer that the commission of the offence could not be otherwise prevented. The discretion is vested solely in the police officer and that discretion cannot be questioned or canvassed in a proceeding under article 226 of the constitution. But it has been held that where no emergency is shown to have existed, an attempt to arrest on part of a police officer is strictly not justifiable by law. thus it would be an abuse of the power vested in the police officer if he arrests a person without knowledge of any design to commit a cognizable offence.)