

READY RECKONER

BNSS 2023

PLEA BARGAINING (CHAPTER XXIII)

Plea bargaining is a process in which a defendant (accused) in a criminal case agrees to plead guilty to a lesser charge or to a reduced sentence in exchange for some concession from the prosecutor or the court. For example, if Mr. X was accused of an offence for which the minimum punishment was say 6 years so in such cases the court can reduce the offence to 3 years i.e.: half of such minimum punishment. The notion of plea bargaining was first introduced in India in 2006.

Application of chapter

289 BNSS. (1) This Chapter shall apply in respect of an accused against whom—

(a) the report has been forwarded by the officer in charge of the police station under section 193 of BNSS (173 CrPC) alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 223 of BNSS (200 CrPC), issued the process under section 227 of BNSS (204 CrPC),

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

Description:

Section 289 BNSS – corresponds to section 265 A of CrPC. According to this section, plea bargaining can be made once a report under Section 193 of the BNSS is made or a magistrate has taken cognizance of an offence. It is not allowed for offences punishable with a death penalty, life imprisonment, or imprisonment term exceeding seven years.

Application for plea bargaining

290 BNSS. (1) A person accused of an offence may file an application for plea bargaining **within a period of thirty days from the date of framing of charge** in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time, **not exceeding sixty days**, to the Public Prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this **Sanhita(Code)** from the stage such application has been filed under sub-section (1).

Description:

Section 290 BNSS– corresponds to section 265B of CrPC. It provides for filing of application of plea bargaining in the court by the accused and the examination by the court whether the application has been filed voluntarily or involuntarily. It further provides to issue notice to the public prosecutor or the complainant on the date fixed by the Court in this regard and in camera proceedings.

Time-limit for filing application for plea bargaining

Section 290 of BNSS fixes a time limit for filing of application of plea bargaining by the accused. Such application must be filed within a period of thirty days from the date of framing of charge in the Court. There was no such time-limit in existing provisions of section 265B of Cr.PC. This time limit can impact the effectiveness of plea bargaining by limiting the opportunity for seeking a reduced sentence.

Time-limit for reaching a mutually satisfactory disposition

Section 265B did not provide any limit on the time the Court may allow for the Public Prosecutor/Complainant and accused to work out a mutually satisfactory disposition. Section 290 of BNSS provides that Court will allow time not exceeding 60 days for the Public Prosecutor/Complainant and accused to work out a mutually satisfactory disposition.

Guidelines for mutually satisfactory disposition

291. In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 290 BNSS, the Court shall follow the following procedure, namely:—

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case,

the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, may participate in such meeting with his advocate, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused so desires, he may participate in such meeting with his advocate engaged in the case.

Description:

Section 291BNSS- Corresponds to Section 265C of CrPC.

Report of mutually satisfactory disposition to be submitted before Court.

292 BNSS. Where in a meeting under section 291of BNSS, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Sanhita from the stage the application under sub-section (1) of section 290 BNSS has been filed in such case.

Description:

Section 292 BNSS- Corresponds with Section 265D of CrPC.

Disposal of Case

293 BNSS. Where a satisfactory disposition of the case has been worked out under section 292 of BNSS, the Court shall dispose of the case in the following manner, namely:—

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 292 and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 401 of BNSS (360 CrPC) or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 401 of BNSS (360 CrPC) or the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment, and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-fourth of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable for such offence and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-sixth of the punishment provided or extendable, for such offence

Description:

Section 265E of Cr.PC contained provisions as to how Court will dispose of the case where a mutually satisfactory disposition of the case has been worked out by Public Prosecutor/Complainant and accused.

Section 293 of BNSS makes changes to these provisions to require the Court to show leniency towards first-time offenders who opt for plea bargaining. This will also help in reducing congestion in prisons to some extent.

The lenient and rehabilitative approach in plea bargaining cases involving first-time offenders, where minimum punishment is prescribed, the Court may impose a sentence equal to one-fourth of the minimum punishment—marking a departure from the existing norm of one-half of the punishment. Further, in cases where the punishment is extendable and no minimum punishment is prescribed, a first-time offender may receive a sentence equivalent to one-sixth of the prescribed punishment, decreasing the quantum of punishment from the previous one-fourth standard. This provision underscores a commitment to a more progressive and individualized approach to sentencing, especially for the first-time offenders.

Section 293(a) of BNSS provides for the awarding of compensation to the victim by the Court in accordance with the disposition under Section 292 BNSS and hear the parties on quantum of punishment, releasing the accused on probation of good conduct or after admonition under Section 401 for dealing with the accused under the Probation of Offenders Act, 1958 and follow the procedure specified for imposing the punishment on the accused.

Section 293(b) of BNSS provides for the release of the accused on probation.

Section 293(c) of BNSS provides that after hearing the parties under clause (b), if the Court finds that minimum punishment has been provide under the law for the offence committed by the accused, it may sentence thee accused to half of such minimum punishment, and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-fourth of such minimum punishment.

Section 293(d) of BNSS provides that in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence and where the accused is a first-time offender and has not been convicted of any offence in the past, it may sentence the accused to one-sixth of the punishment provided or extendable, as the case may be, for such offence.

Judgement of Court

294 BNSS. The Court shall deliver its judgment in terms of section 293 of BNSS in the open Court and the same shall be signed by the presiding officer of the Court.

Description:

Section 294 BNSS- Corresponds with Section 265F of CrPC wherein the Court shall deliver its judgement in the open Court and the same shall be signed by the presiding officer of the Court.

Finality of judgment

295 BNSS. The judgment delivered by the Court under this section shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

Description:

Section 295 BNSS- Corresponds with Section 265G of CrPC. The judgment delivered by the Court under this Section shall be final and no appeal can be made against such judgment in any Court except the SLP under Article 136 and Writ Petition under Articles 226 and 227 of the Constitution.

Power of Court in plea bargaining

296 BNSS. A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial

of offences and other matters relating to the disposal of a case in such Court under this **Sanhita (Code)**.

Description:

Section 296 BNSS- Corresponds with Section 265H of CrPC. Under this Section a Court shall have all the powers vested in respect of bail, trial of offences and other matters related to the disposal of a case.

Period of detention undergone by accused to be set off against sentence of imprisonment

297 BNSS. The provisions of section **468 of BNSS(428 CrPC)** shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this **Sanhita (Code)**.

Description:

Section 297 BNSS- Corresponds with Section 265I of CrPC. It relates to setting off the period of detention undergone by the accused against the sentence of imprisonment.

Savings

298 BNSS. The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this **Sanhita(Code)** and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation.—For the purposes of this Chapter, the expression "Public Prosecutor" has the meaning assigned to it under clause (v) of section 2 and includes an Assistant Public Prosecutor appointed under section **19 of BNSS(25 CrPC)**

Description:

Section 298 BNSS- Corresponds with Section 265J of CrPC.

Statement of accused not be used

299 BNSS. Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 290 of BNSS(265B CrPC) shall not be used for any other purpose except for the purpose of this Chapter.

Description:

Section 299 BNSS- Corresponds with Section 265K of CrPC. It provides that the statement of facts stated by an accused in the application for plea bargaining cannot be used for any other purpose except for purpose of this chapter.

Non-application of Chapter

300 BNSS. Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015(2000) (2 of 2016)(56 of 2000).

Description:

Section 300 BNSS- Corresponds with Section 265L of CrPC. This Chapter is not applicable to any juvenile or child as defined under Section 2 of JJ Act, 2015 (2 of 2016).