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The black buck is listed as Schedule 1 species in India's Wildlife Protection Act 1972 - highlighting its critical conservation status © Pixabay

By Malini Shankar,

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22nd April every year is being marked as World Earth Day for the past two decades or so. Some would argue that it is another day for cynical lip service to causes like the Environment. The ground reality hardly ever changes despite the unparalleled reach and impact of electronic media that wires the entire world today.

Indian actor Salman Khan was convicted on 4th April 2018 for hunting and killing two black bucks back in 1998. But he secured bail barely 48 hours after conviction on 6th April 2018.

Conservationists fear that it sets a very bad precedent as it is a manifestation of the lack of political will for execution of the stringent provisions of the Wildlife Protection Act 1972. Besides, it brazenly defeats the purpose of punishing those guilty of wildlife crimes like hunting, poaching and smuggling wildlife derivatives.

When Media Moguls like film actors set the wrong precedent by getting away with convictions in wildlife crime what does the society infer? Media leaders have to set examples of respect for law and lives of vulnerable sections of society instead of buying their way out of punishment.

That the judge of the sessions court who convicted Salman was among the 87 judges who were transferred that very day spoke volumes for lack of political will in a government which is run by Far Right political party whose primary constituency includes tradesmen and women.

There are many stringent laws in India like MCOCA - among others - with no bail provisions; but to invoke these, the political class has to display political will to realise the import of the law in letter and spirit.

In an email interview to Digital Discourse Foundation DCP Crime in the Crime Branch in Delhi Dr. Joy Tirkey who was instrumental in the arrest of wildlife trader Sansar Chand said "Non Bailable Warrants and Bail after

conviction are two separate issues”.

Non Bailable Warrants are issued by the Courts to compel the presence of a person in Court. It does not mean that the person arrested under a non bailable warrant is not entitled to bail. It simply means that the person so arrested would be enlarged on bail only by the Court and not by the police who arrest such person.

Whereas, bail after conviction by Court may be given in the following circumstances.

1. If the accused was already on bail during trial and has filed an appeal against conviction before a higher court.
2. If the convicted person has not absconded during trial.
3. If the case is not of a heinous nature and the maximum sentence imposed is of 5 years or less and the appeal process is likely to be pending for a long time.

Now the requirements for invoking MCOCA:

(i) **Continuing unlawful activity** - It means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such, syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence;

(ii) **Organised crime means** any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any person or promoting insurgency;

(iii) **Organised crime syndicate** means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime.

So essentially we have to see 3 things before invoking MCOCA.

1. Whether the accused has 2 or more charge sheets filed against him in the court in the last 10 years. Beyond last 10 years is not considered.
2. Whether the cases under which these 2 charge sheets were filed were of offences that are punishable with imprisonment of 3 years or more.
3. Whether the competent Court has actually taken cognizance of these 2 charge sheets filed before it.

So in cases registered under the Wildlife Protection Act 1972, we can invoke MCOCA only if the following conditions are fulfilled.

1. Two charge sheets have been filed in Court against the accused in the last 10 years. Anything beyond the time limit of 10 years is not considered.
2. The punishment of offence committed under the sections invoked of the Wildlife Protection Act 1972 must be of 3 years or more.
3. The competent Court must have taken cognizance of the charge sheets that were filed before it.

“The case involving Sansar Chand (notorious wildlife smuggler who was responsible for decimating scores of India’s Royal Bengal Tigers) was a real challenge before us as there was no direct evidence against him. We invoked the provisions of of Section 30 of the Indian Evidence Act to use the extra judicial confession of the courier (from whose possession the panther skin was seized) . We got a special prosecutor appointed for the case. Each and every detail revealed in the courier’s confession was probed into and corroborative circumstantial evidence was collected and presented before the court. Necessary forensic evidence was obtained through expert examination , of the seized skin, at Wildlife Institute Dehradun. The synergy of focussed investigation, compliance of legal procedures, piecing the circumstantial evidence backed up by services of special prosecutor nailed the case against Sansar Chand. The judgement pronounced by the trial court was so speaking , detailed and legally sound that it withstood the legal scrutiny right upto Supreme

Court which upheld the conviction of Sansar Chand” says Hemanth Priyadarshi, IPS who successfully booked a case against Sansar Chand and got him sentenced. Sansar Chand was serving a prison term when he died of cancer in 2014.

Media must not conduct a parallel trial, in the interest of fair play and justice, true. But wildlife lack human / constitutional rights and voting rights. Who then will argue in case of voiceless vote-less wildlife?

Consider the appalling media reactions to Salman Khan’s conviction in early April 2018. Electronic and Online Media went to town citing the amount of money riding (meaning invested) on the actor pending productions. It was a ad day for the Indian Media which spared no thought for the life of a precious endangered wild animal, although it paid the ultimate price for the blood lust of a black moneyed spoilt brat. It was the most opportune moment to teach a lesson to wildlife criminals and to send a strong signal to anyone who harboured thoughts of hunting and poaching. I don’t recall many media reports which could quantify the loss of two endangered Schedule One listed species to blood sport of the rich and famous.

1. www.firstpost.com/india/salman-khan-blackbuck-poaching-case-live-updates-judge-reserves-bail-plea-hearing-for-saturday-asks-actors-lawyers-to-produce-previous-case-records-4420239.html
2. <https://economictimes.indiatimes.com/magazines/panache/1998-2016-a-timeline-of-the-blackbuck-killing-case/articleshow/53377957.cms>
3. <http://www.thehindu.com/news/national/other-states/black-buck-poaching-case-live-updates/article23440232.ece> <http://indianexpress.com/article/entertainment/bollywood/blackbuck-poaching-case-bollywood-reactions-live-updates-5123996/>
4. <https://thewire.in/film/salman-khan-blackbuck-case>
5. <https://www.hindustantimes.com/india-news/blackbuck-poaching-verdict-today-salman-khan-could-face-up-to-6-years-in-jail-all-you-need-to-know/story-sOSzLI2JeqhecPHnGF9FrI.html>
6. <https://www.outlookindia.com/website/story/salman-khan-blackbuck-poaching-case-1998-jodhpur-court-to-pronounce-verdict-toda/310535>

NDTV’s Rajasthan bureau Chief Harsha Kumari Singh made it a point to stress that black bucks are Schedule one species as they are the prey base of carnivores like tigers, leopards and lions which are pyramid species indicative of the health of the ecosystem.

Trade publications can justify quantifying the loss to film producers but certainly not mainstream national media. When mainstream media succumbs to starry eyed sympathy for the bully of Bollywood it bespeaks misplaced perspectives of national interest.

Speaking to Digital Discourse Foundation Bhargav says “More worrisome than the granting of bail is the abhorrent reaction of some famous Bollywood stars and public personalities not to mention his fans openly celebrating his release on bail. Where is our society headed?”

“This is not the first time that Bollywood has closed ranks to back a convicted actor. And this certainly will not be the last either. It is time for them to introspect on their – “we are above the law”- attitude” says Praveen Bhargav Wildlife First, Former Member – National Board for Wildlife speaking to Digital Discourse Foundation.

There are precedents in Bollywood itself.

- Mansur Ali Khan Pataudi a former cricketer married to a Bollywood lead actress of yester years – Sharmilla Tagore and father of Bollywood actors Saif Ali Khan Pataudi and Soha Ali Khan Pataudi, was caught with cadavours of deer back in June 2005. Pataudi was convicted posthumously in 2015 four years after his demise.

- Sanjay Dutt earned notoriety not only for hunting a deer but for illegally entering a forest guest house in Dandeli Tiger Reserve in 1991 to cook the deer that he killed in blood sport one night in Dandeli. It was only two years later that he was caught for smuggling arms when the Mumbai Riots were being investigated.

- Salman Khan himself was booked for drunken driving which killed a pavement dweller. Actor Salman Khan was indeed convicted in in 2016 in the hit and run case but his sentence was suspended.

Wildlife crime has to be made non bailable because the blood sport has already taken a toll on India's endangered wildlife. What is the point of bail if convictions are suspended many prosecutors have asked in Independent India.

Bail provisions are only an eyewash to a fair trial. In the case of wildlife crime the very purpose of conservation is defeated if wildlife crime is not punished. "This only shows how a person with strong PR machinery can influence certain sections of the media to project what s(he) wants. I was surprised that not one news story countered this specious 'money riding on him' charade by highlighting the plight of thousands of families whose only bread winner - a ordinary daily wagger - gets convicted or incarcerated as an under-trial with no legal assistance even to bail?" questions a sceptical Praveen Bhargav.

Salman Khan has gotten away with two nights of jail sentence on the three occasions he was convicted. "No, he has not gotten away with his crime. He has been convicted albeit after twenty long years.

Notwithstanding the bravado, he will indeed be a very worried man now. It is vitally important for the prosecution to now ensure that his appeal is disposed of in the shortest possible time by not allowing his defence lawyers to delay the process. In my view this case is headed for multiple appeals right up to the last legal option in our system which is a Curative petition" adds Bhargav.

When a person gets away with crime he or she will only repeat it and will remain a threat to society at large; the long arm of the law is made a mockery of. Thus bail is self-defeating in law enforcement and criminal jurisprudence despite human rights and democratic tenets.

So what more can be done?

"We do have a strong law [Wildlife Protection Act] to curb illegal hunting. The problem is with respect to implementation. A huge effort is required in training forest officials on investigation and provisions of the Code of Criminal Procedure.

Even as the battle to prosecute such offences continues in various court rooms, the most important challenge is to prevent hunting to the best extent possible. For this, the only mantra is 'eternal vigilance'.

- I. A thorough crime review of all pending wildlife offence cases must be carried out by Chief Wildlife Wardens of States and high priority cases identified for investigation;
- II. ii. A competent Special Investigation Team (SIT) comprising Authorized Officers to take up and complete investigations of at-least identified high priority cases and file Complaints before the Magistrate must be established;
- III. iii. Competent public prosecutors to be identified and deputed to the Forest department to exclusively handle such identified cases
- IV. iv. Establishment of a special fast track court / designated court at an appropriate location close to a large wildlife landscape to clear the huge backlog of cases" adds Bhargav.

What is the point of bail after conviction that too in a wildlife crime? Who speaks for the persecuted yet innocent wildlife which paid the ultimate price for the blood soaked fantasies of some black-moneyed brats in Bollywood where astronomical wages are the *raison de^etre* for crimes against humanity and environment.

It takes political will to invoke some very stringent laws that far sighted few from the political class have legislated in India. It can be undone by corrupt and unscrupulous political chicanery.

The National Forest Policy 2018 is being drafted. There is a need to appoint honorary tree wardens, honorary wildlife wardens, honorary waste wardens, honorary environment wardens, honorary traffic wardens and honorary energy wardens in National Green Tribunal to mitigate environmental crime in the interest of environmental justice. There is also a need for a Special Investigation Team in every state forest department to investigate and robustly prosecute wildlife crimes.



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