

**HIGH COURT OF RAJASTHAN****Bench: Hon'ble Mr. Justice Farjand Ali****Date of Pronouncement: 3rd May 2024**

Case No.:

S.B. Criminal Miscellaneous Bail Application No. 1799/2024

S.B. Criminal Miscellaneous Bail Application No. 6836/2022

**PETITIONER(S):****1. SUKHDEV SINGH** .....Petitioner**2. NIRMAL SINGH BHANGU** .....Petitioner**VERSUS****RESPONDENT(S):****STATE OF RAJASTHAN, THROUGH PP** .....Respondent**Legislation:**

Section 439 of the Code of Criminal Procedure (Cr.P.C.)

**Subject:** Applications for bail under Section 439 Cr.P.C. filed by the petitioners who are accused in FIR No. 249/2018, Police Station Jalupura, District Jaipur, for offences under Sections 420, 406, and 120-B of the Indian Penal Code (IPC).

**Headnotes:**

Bail – Criminal Law – Bail Jurisprudence – Petitioners accused of offences under Sections 420, 406, and 120-B IPC, sought bail under Section 439 Cr.P.C. Contended that offences are triable by a Court of Magistrate, no case made out against them, and their incarceration is unwarranted. Argued that

co-accused had already been granted bail and petitioners' cases are not distinguishable.

Grant of Bail – Judicial Discretion – Court reiterated bail jurisprudence, emphasizing discretion vested in Magistrates for offences triable by them. Highlighted that prolonged detention without trial completion infringes on rights and goes against reformatory justice principles. Court found no legal impediment to grant bail to petitioners, given no significant adverse factors against them. [Paras 1-28]

Decision – Bail Granted – Petitions allowed. Petitioners ordered to be enlarged on bail on furnishing personal bonds and sureties as stipulated. Court underscored parity with co-accused and judicial consistency as grounds for decision. [Paras 5-6]

#### **Referred Cases:**

- Dharmendra v. State of Rajasthan, S.B. Criminal Miscellaneous Bail Application No.11530/2023, Order dated 07.10.2023
- Indus Airways Pvt. Ltd. v. Magnum Aviation Pvt. Ltd., 2014 Cr.L.R. (SC) 387
- I.C.D.S. Ltd. v. Beena Shabeer, (2002) 2 SCC 426
- Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr., 2022 LiveLaw (SC) 830
- Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458

#### **Representing Advocates:**

**For Petitioner(s): Mr. Narsi Prasad Sharma, Dr. Abhinav Sharma with Mr. Vikas Kumawat**

**For Respondent(s): Mr. S.S. Mehla, PP**

#### **Order**

**03/05/2024**

1. The jurisdiction of this Court has been invoked by way of filing applications under Section 439 Cr.P.C. at the instance of accused-petitioners. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	249/2018
2.	Concerned Police Station	Jalupura
3.	District	Jaipur
4.	Offences alleged in the FIR	Under Sections 420, 406 and 120-B of the IPC
5.	Offences added, if any	-
6.	Date of passing of impugned order in S.B. Criminal Miscellaneous Bail Application No. 1799/2024	22.01.2024
7.	Date of passing of impugned order in S.B. Criminal Miscellaneous Bail Application No. 6836/2022	26.04.2022

2. It is contended on behalf of the accused-petitioners that the offences alleged are triable by a Court of magistrate. No case for the alleged offences is made out against them and their incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioners and they have been made accused based on conjectures and surmises. Learned counsel for the petitioners further submits that the co-accused Subrato Bhattacharya and Gurmeet Singh have already been enlarged on bail by this Court vide order dated 20.04.2022. He further submits that case of the petitioners is not distinguishable with that of the case of the co-accused Subrato Bhattacharya who has already been enlarged on bail.
3. Contrary to the submissions of learned counsel for the petitioners, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.
4. I have considered the submissions made by both the parties and have perused the material available on record. The offences alleged are triable by a Court of magistrate. This Court has elaborately dealt with the bail jurisprudence pertaining to offences which are triable by a court of Magistrate and has passed a detailed order in **Dharmendra vs. State of Rajasthan**

(S.B. Criminal Miscellaneous Bail Application No.11530/2023) vide order dated 07.10.2023.

The relevant part is being reproduced herein below:-

*“6. It is noticed that all the offences alleged against the petitioner as contained in the charge-sheet are triable by a Court of Magistrate. It is run of the mill for High Courts as well as Hon’ble the Apex Court to grant bail in cases concerning offences that are triable by Magistrate. It is deemed imperative by this Court to enunciate and elaborate upon the theory and reasoning owing to which it is justifiable to grant bail under Section 439 of CrPC in matters involving commission of offences triable by Magistrate.*

*7. The jurisprudence begins right from Section 437 of the Code which is the sole provision in the entirety of criminal statutory literature that provides for grant of bail as Section 439 of CrPC merely preserves and recognizes the special powers of the Session Courts and High Courts to grant bail which leads to the logical inference that the discretion vested in the Magistrates is exclusive. Moreover, there is nothing prescribed in Section 439 that talks about bail jurisprudence/ granting or refusing of a bail plea on any specific ground; it is just recognition of power of the upper Courts.*

*8. Section 437 CrPC talks about the circumstances when bail can be granted in cases where non-bailable offences are alleged to have been committed. It states that when any person who is accused of or suspected of commission of a non-bailable offence is arrested or detained; is brought before the Court of a Magistrate; or appears before the Court of a Magistrate, such person may be released on bail except in two conditions; the first condition being that if reasonable grounds appear for believing that such person has been guilty of committing an offence which is punishable by death or life imprisonment, he shall not be released on bail and the second condition being that if the offence alleged to have been committed by such person is a cognizable offence and if he had been convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more on a previous count or if he had been convicted for commission of a cognizable offence punishable with a term of imprisonment amounting to three years or more but not less than seven years on two or more occasions, such person shall not be released on bail.*

*9. These two conditions are further qualified by the first proviso of the provision of Section 437 which prescribes that persons falling into the orbit of the afore-mentioned two conditions may be released on bail if such persons*

are under the age of sixteen years, women, sick or infirm. Another qualification to the second condition is that any person falling under that ambit may be released on bail by a Court of Magistrate if it is just and proper to do so owing to any special reason. Coming to the second clause of Section 437 of CrPC, it is manifested that the Magistrate may release an accused if there are no reasonable grounds to believe that the accused has committed a non-bailable offence but there are grounds sufficient enough to conduct further inquiry into his guilt.

10. There is yet another discretion vested in the Magistrates through sub-clause (6) of Section 437 of CrPC which empowers them to release any person whose trial has not been concluded within sixty days from the first day fixed for evidence in cases triable by Magistrate provided that such person was in custody for the whole of this period spanning over sixty days.

11. Lastly, sub-clause (7) of Section 437 entitles the Magisterial Courts to release a person who is in custody and is accused of nonbailable offence on bail during the period that his trial is concluded but the judgment has not been delivered and the Court is of the opinion that there are reasonable grounds to believe that the accused is not guilty of any such offence.

12. A combined reading of Section 437(6) and Section 428 of the Code indicates that the legislative intent regarding release of a person pending trial while framing Section 428 of CrPC might have probably been in the minds of the law-framers simply for adjustment of the period that an accused goes through in police/judicial custody.

12. Section 437 is reproduced below for easy reference: **437. When bail may be taken in case of nonbailable offence.—**

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years: Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

*Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:*

*Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:*

*Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this subsection without giving an opportunity of hearing to the Public Prosecutor.*

*(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.*

*(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the condition— (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.*

*(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.*



(5) Any Court which has released a person on bail under subsection (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

13. In the garb of these qualifications and riders contained under Section 437, the Magistrates have been equipped with well defined authorizations to grant bail. If the discretion to grant bail has been so clearly vested in Magisterial Court with specific restraints/curtailments on such power as well as specific exceptions to such restraints/curtailments, then it is writ large that the legislature intended to vest the discretion to grant bail to a person accused of or suspected of commission of a non-bailable offence in the Court of Magistrate. Such widely contoured and meticulously formulated discretion vested in Courts of Magistrate cannot be usurped by any Court just by virtue of being higher in the hierarchy of courts of the nation.

14. Section 29 of CrPC pertains to sentences which a Magistrate can pass and it provides that a Chief Judicial Magistrate may pass any sentence which is authorised by law and entails a term of imprisonment not exceeding a period of seven years; a Magistrate of First Class may pass a sentence which entails a term of imprisonment not exceeding a period of three years; a Magistrate of Second Class may pass a sentence which entails a term of imprisonment not exceeding a period of one year. Section 29 of CrPC is reproduced below for easy reference:

**29. Sentences which Magistrates may pass.**—(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) *The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both. (3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.*

(4) *The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.*

15. *The above-cited provision clearly lays down what sentences can be passed by a Magisterial Court and the intent of the legislature is expressed in definite and unambiguous terms. It is imperative to understand that the insertion of none of the provisions is ever without a purpose; in other words, it is never an aimless insertion. Furthermore, these sentences can be passed by the Magistrates only after reaching a conclusion of guilt in the trial and hearing the accused on the point of sentence. In fact, it is the exclusive prerogative and judicial discretion of the convicting Court to pass an order of sentence after hearing the accused on the point of sentence. The commonality in a slew of judgments passed by Hon'ble the Supreme Court in this regard is that the hearing on the point of sentence needs to be "meaningful, real and effective"<sup>1</sup>. A deeper look into the stipulations of the Code brings this Court to the provisions encompassed in Sections 235 and 255 of CrPC which talk about Judgment of acquittal or conviction in a trial before a Court of Session and in a trial of summons-cases by Magistrates respectively. Section 235 of CrPC reads as follows: **235. Judgment of acquittal or conviction.** -(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.*

(2) *If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.*

16. *Sub-clause (2) of Section 235 clearly states that once the accused has been convicted, he shall be heard on the question of sentence and thereafter, sentence shall be passed. The interpretation of Section 235 clearly brings out that the requirement of hearing the accused after passing the judgment of conviction and before passing the order of sentence is explicit in the statute and cannot be waived off. Hearing the accused has to be an effective hearing as the process of sentencing cannot be considered to be a stage which is subservient to the stage of deciding the guilt of the accused.*



17. *At this stage of determining the term of sentence or fine or both, the rights of the complainant or victim party to partake in the trial and the hearing of sentence requires only the presence and participation of the accused. The hearing as well as the passing of the order of sentence is per se between the convicting court and the accused. Similarly, under Section 255 of CrPC, it is provided that if the magistrate is not choosing to proceed as per Sections 325 or 360 of CrPC, he shall pass sentence concerning the accused according to law if he finds him/her/them guilty. Section 255 of CrPC is reproduced below:*

**255. Acquittal or conviction.** — (1) *If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.*

(2) *Where the Magistrate does not proceed in accordance with the provisions of section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.* (3) *A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.*

18. *It can be inferred from the above discussion that as envisaged under Sections 233 and 255 of CrPC, the Court has to hear the accused only on the point of sentence and the complainant has no locus standi to argue on the point of sentence.*

19. *It is pertinent to mention here that both in the matters of passing of sentence amounting to three years as well as seven years, the provision of Section 360 of Cr.P.C. which empowers the Court to release the accused on probation of good conduct or after admonition applies mutatis mutandis. Besides the provision of Section 360 of CrPC, the application of Sections 3, 4 and 5 of the Probation of Offenders Act, 1958 is also warranted in a case of like nature. There are four types of sentencing; namely, retributive, deterrent, preventive and reformative. Reformative sentencing/reformative justice lies at the base of criminal jurisprudence of our nation which is also the foundation of the edifice of the provisions encompassing the concept of Probation as discussed above. Sub-clause (1) of Section 360 stipulates that when any person who is more than 21 years old is convicted of an offence punishable with fine only or with imprisonment for a term of sentence amounting to seven years or less, then the convicting court, if it so appears to it, can release the*

*offender on probation of good conduct with the imposition of condition of entering into a bond (with or without sureties) instead of imposing any term of imprisonment upon him after due consideration of age, character or antecedents of the offender as well as of the circumstances in which the offence was committed. Furthermore, Section 361, which talks about special reasons that have to be recorded in case a person could have been given benefit under Section 360 or under the provisions of Probation of Offenders Act or a youthful offender is being dealt with but the same has not been done, was intentionally separated from Section 360 which further specifies the expansive extent of the powers of the Courts of Magistrate.*

20. *Additionally, the proviso to sub-clause (5) of Section 360 states that the High Court or Court of Session shall not inflict a greater punishment than what might have been inflicted by the convicting court, thus, the intent of the legislature is very clear and expressed explicitly in the provisions of the Code that the Magistrate has the exclusive discretion and power to pass a sentence in the circumstances specified in the Code and such discretion of sentencing spans over a wide gamut starting from no term at all/probation of good conduct/admonition to a term of imprisonment spanning over 7 years.*

21. *There is not even a single provision in the Code of Criminal Procedure which recognizes the power or grants the power to any Court to allow a part of sentence to be passed to be suffered preconviction and the rest of the sentence to be passed to be suffered post-conviction. The sentence cannot be divided and passed in such a manner that some part of it is suffered before passing of judgment of conviction and the rest is suffered after passing of judgment of conviction. In fact, sentence shall begin from the date of passing of order of sentence when the signature of the judicial officer is appended on the same. It is necessary to state here that Section 428 of CrPC, which provides that the period of detention undergone by the accused is to be set-off against the sentence of imprisonment imposed upon him/her/them, is only for the purpose of preventing the time spent by the accused in custody from going into vain and does not, by any stretch of imagination, forms part of the sentence actually passed after reaching the conclusion of guilt.*

22. *While passing a sentence, just the facts specific to the case are not considered rather the facts surrounding the offender are also considered. Presumption of guilt and presumption of innocence are two different phenomenon and presumption of guilt never drives the convicting court as per the criminal jurisprudence prevalent in our nation; right from the initiation of a criminal proceeding until the guilt is proved, the accused shall be*

*presumed to be innocent. While entertaining a bail plea of an accused, it is evident that his/her/their case is pending and the trial is ongoing, thus, presumption of innocence is there to support him. There are certain provisions pertaining to presumption in the Indian Evidence Act, 1872 such as Sections 111A, 113A, 113B, 114, 114A etc. and in some special statutes also, there are provisions regarding presumption that can be drawn but nowhere in the Evidence Act or any other penal statutes, the doctrine of presumption of guilt has been advocated. All the presumption clauses referred above come into the picture when the prosecution has succeeded in discharging the burden laid upon it regarding establishment of the basic features of the case, thus, the initial burden always lies on the prosecution and only after discharge of the initial burden, the theory of reverse burden comes into play. Simply put, the theory of reverse burden or the reverse onus theory means that once the fundamental facts/features/truth of a case has/have been established which is substantial enough to move the burden from the prosecution to the defence, then the burden of proof shifts and lies on the defence/accused to disprove the allegations leveled against him/her/them or to prove his/her/their innocence. Having said this, suffice it is to say that while considering a bail plea under Section 439 of CrPC which relates to a bail pending trial, there is always a presumption of innocence in favour of the accused. While taking into account consideration of presumption of innocence, Court cannot lose sight of the other parameters that are to be considered while entertaining a bail plea which have been laid down and reiterated innumerable times by Hon'ble the Supreme Court in plethora of cases like nature and gravity of offences and availability of material in support thereof; whether there are prima facie or reasonable grounds to believe that the accused has committed the offence; severity of punishment in case of finding of guilt of the accused; possibility of abscondance of accused if released in bail; possibility of hampering of or tampering with the evidence if released on bail; character, conduct and social status of the accused; antecedents of the accused; if the accused is an influential person who may be able to impact the smooth process of trial if released on bail; possibility of the prosecution witnesses being influenced; likelihood of repetition of offence or peril of infraction of justice if bail is granted.*

23. *There are multiple factors to be taken into account before passing an order of sentence like nature of the offence, the extenuating/mitigating and aggravating circumstances, previous criminal antecedents, age of the person who committed the offence, educational background of the accused,*

*information pertaining to employment of the accused, mental & emotional state of the offender, life of the offender at home & family, "society and social adjustment, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence."*<sup>2</sup>

24. *At this juncture, it would be worthwhile to mention that almost in all penal statutes where an offence is triable by Magistrate, convicting court has been given an absolute discretion. For instance, for commission of offence of cheating and dishonestly inducing delivery of property, Section 420 of IPC prescribes that such a person "shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"; for commission of offence under Section 386 of CrPC, such a person "shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine"; for commission of offence of extortion, Section 384 prescribes that such a person "shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both". The discretionary bracket given to a convicting court makes it abundantly clear that post conviction and hearing on the point of sentence, the court of law may pass minimum sentence which may be for a shortest term of 'till rising of the court' or by imposition of fine only and this is an absolute discretion vested in the convicting court. Before reaching on this stage, even the trial judge cannot speculate that what kind of punishment would be inflicted upon the accused whom he is trying and this is due to two reasons, namely that the guilt of the accused had not been proved till that moment in time and that maybe for administrative exigency or for any other reason, he may not preside to hear the accused on the point of sentence and he may not even remain the convicting judge. Of course, the order of sentence can be challenged in appeal or revision along with conviction but this stage has not come on the day when the bail application of the accused pending trial is heard meaning thereby when even the order of sentence has not been passed or has not been challenged, whether any order affecting the sentence can be passed or not and whether doing so during trial would be unreasonable and premature. To my mind, keeping a person detained during trial in a case exclusively triable by court of magistrate would necessarily mean elongating the period*

*of sentence whilst even at this stage, conviction has not been made leave aside the point of sentence. Thus, keeping an accused of the offence of above nature for a longer period during investigation and trial would mean enhancement of the period of sentence before actually passing the order of sentence.*

25. *After pondering over the legal provisions made in the code of Criminal Procedure, the law enunciated by Hon'ble the Supreme Court through plethora of judicial pronouncements and upon deliberation of bail jurisprudence, it is understood that the only thing which a court of law is to ascertain while entertaining a bail plea is whether the accused should be allowed to come to the court to attend the judicial proceeding from his home and he may be allowed to remain with his family and within the society on the specific condition that on the stipulated date of the hearing of the case, he will willfully attend the court proceeding or he is such a person that even in the pending trial, he should be detained, should not be allowed to visit his family and should be lodged at a specified place of detention so that on the day of hearing, he may be brought to the court from the jail. In other words, it is to be decided whether he may be allowed to eat, sleep and live with his family like a man ordinarily does or he may be allowed to eat, sleep and live in the jail. It all boils down to this that whether the Court wishes to allow the accused to come to the court to attend the proceedings from his home upon furnishing his bonds and surety of independent person(s) or the court thinks that he cannot be allowed to roam free and therefore, he should be detained so that he may be brought before the court on the day fixed for the hearing. This Court is of the considered view that this is the only thing which is to be thought over and to be ascertained while entertaining a bail plea. It is a judicially noticeable fact in the present era that due to high volume of pending cases, culmination of trial takes considerable time and in my view, keeping the accused behind the bars during the pendency of the case would serve no purpose except in exceptional circumstances.*

26. *The entire gamut of bail jurisprudence revolves around the conduct of the accused. Release of a person having bad conduct or a history of bad conduct may be a peril to the society. It is his conduct which brings into the mind of a judicial officer to make an idea that if the accused is released on bail, he may commit the offence again/ repeat the offence again and as such, the same will not be in societal interest. Here, it is to be made clear that such kind of speculation should not be made on vague and bald pleas and aspersions rather there must be some solid material to reach on the above*



*conclusion which means that the speculation should not be vague but should be well-founded.*

27. *The Sessions Judge or this Court is not permitted by the law to usurp the discretion vested in the Court of Magistrate to pass an order of sentence. The discretionary bracket/spectrum of passing an order of term of imprisonment amounting to one day or the maximum shall always lie with the convicting Magistrate. It is apropos to state that until an order or judgment is actually passed and attains finality, it does not become assailable which forces this Court to wonder that when something has not become eligible for challenge before the Court, how can the Court assume/ speculate/ form an idea as to what term of sentence or imposition of punishment will the Magistrate pass. And, if such an assumption/speculation/idea cannot be formed, then where from the higher courts get authority that enables them to not grant bail to an accused facing allegations regarding commission of offences triable by Magistrate. How do the courts decide what sentence a Magistrate may pass, more so when the spectrum of discretion vested in the Magistrate ranges from fine and imprisonment till rising of the court to imprisonment for a period of seven years. This Court is of the considered view that long detention of an accused of the cases triable by magistrate during trial would necessarily result in elongation of sentence and by doing so, the upper courts are actually snatching away the discretion exclusively vested in the magistrate.*

28. *This Court is of the considered view that in the cases which are exclusively triable by a Court of Magistrate, the Court of Sessions and this Court should adopt a liberal approach until it is shown that if released on bail, the offender/accused petitioner will surely flee from justice and will not be readily available for trial or would otherwise hamper the course of trial. The main object of keeping a person behind the bars pending trial is nothing more but to ensure a smooth, unhindered, fair and speedy trial and that he may be present to receive the sentence as may be passed. No such apprehension has been shown in this legal aspect of the matter and as such, there is no legal impediment to release the accused on bail in view of the discussion made herein above. Apart from this, the investigation of the case is completed and charge sheet has been filed as mentioned in the bail application, thus, any possibility of hindrance in investigation is ruled out and of course, it is not known as to how much time the trial would take in reaching at a legitimate conclusion, thus, taking into consideration the totality of facts and*



*circumstances and the deliberation made in the preceding paragraphs of this order, I deem it appropriate to release the petitioner on bail.*

5. In view of the above and considering the facts that there is high probability that the trial may take long time to conclude and the charge-sheet has been filed as well as the Coaccused Subrato Bhattacharya and Gurmeet Singh have already been enlarged on bail vide order dated 20.04.2022 and the case of the petitioners is on better footing than to the case of the co-accused, thus, on the ground of parity and to maintain consistency in judicial orders, it is deemed suitable to grant the benefit of bail to the petitioners in the present matter.
6. Accordingly, the instant bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused petitioners as named in the cause title shall be enlarged on bail provided each of them furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for their appearance before the court concerned on all the dates of hearing as and when called upon to do so.

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