

B.A. No.28 of 2025

---- Applicant(s)

---- Accused Person

Versus

----Respondent(s)

For Applicant(s) : Mr. Samrat Kar Bhowmik, Sr. Adv,
Mr. Sreekanta Bal, Adv,
Mr. Ezekiel L. Darlong, Adv,
Mr. Riya Roy Chowdhury, Adv.

For Respondent(s) : Mr. Raju Datta, P.P.,
Mr. Rajib Saha, Addl. P.P.,
Mr. Bibhal Nandi Majumder, Spl. P.P.,
Mr. Sankar Lodh, Spl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

28/04/2025

This bail application under Section 439 of Cr.P.C. is filed for releasing the accused in custody namely Shani Saha Roy in connection with Airport PS case No.37 of 2024 under Section 302/120(B) of IPC read with Section 27 of Arms Act and added Section 201/34 of IPC.

Heard Learned Senior Counsel, Mr. S. Kar Bhowmik assisted by Learned Counsel, Mr. Ezekiel L Darlong and also heard Learned Special P.P., Mr. Bibhal Nandi Majumder and Learned Special P.P., Mr. Sankar Lodh appearing on behalf of the State-

respondents along with Learned P.P., Mr. Raju Datta on 25.04.2025 fixing today for order.

On 25.04.2025, at the time of hearing, Learned Senior Counsel, Mr. S. Kar Bhowmik has drawn the attention of this Court that this accused is lodging in custody on and from 09.05.2024 and this is the second bail application of the said accused before the High Court. According to Learned Senior Counsel, in this case, part charge-sheet has already been submitted by the IO with a prayer for filing supplementary charge-sheet and referring the charge-sheet, he drawn the attention of the Court that in this case, on completion of investigation although IO has laid charge-sheet against the accused Raju Barman, Shani Saha Roy under Section 302/120(B)/201/34 of IPC and under Section 27 of Arms Act and also against the accused persons Sandip Kar alias Akash, Rakesh Barman under Section 302/120(B)/34 of IPC and Section 25/27 of IPC and against accused Pradyut Dhar Chowdhury, Birchakra Ghosh, Miss Susmita Sarkar and Smt. Uma Sarkar under Section 302/120B/34 of IPC and Section 27 of Arms Act and prayed before the Court for holding custody trial of the said accused persons. Learned Senior Counsel further drawn the attention of the Court that in the charge-sheet, it is mentioned by the IO that the investigation is continuing for the identification and to establish the role and to complicity of other associates is continuing. The further SFSL reports and other reports in support of the evidence shall be submitted immediately on receipt of the same in supplementary charge-sheet. So, it is clear that the IO is going to file another supplementary charge-sheet against the accused persons and by this time, the said accused shall be in

incarceration without any justified grounds and considering the nature of involvement of the accused with the alleged crime, Learned Senior Counsel urged for releasing the accused on bail in any condition.

It was further submitted that although the IO in this case prayed for holding custody trial of all the accused persons but surprisingly by order dated 07.09.2024 passed in connection with BA No.172 of 2024 and order dated 07.09.2024 in connection with BA No.173 of 2024 accused Miss Susmita Sarkar and Smt. Uma Sarkar granted bail by the Learned Sessions Judge, West Tripura, Agartala as the prosecution did not oppose their bail application. Thus, it appears that the conduct of the prosecution itself is contradictory. It was further submitted by Learned Senior Counsel that in the earlier bail application, the parity was prayed for but at the time of hearing considering the period of detention of the accused in custody, the accused urged for default bail as such on the ground of parity, there was no proper argument on his behalf. Learned Senior Counsel further referred statements of said Susmita Sarkar and Smt. Uma Sarkar recorded by Learned Magistrate under 64(5) of Cr.P.C and referring their statements, he submitted that their involvement were more graver than the involvement of the present accused in custody with the alleged crime. So, on the ground of parity, Learned Senior Counsel urged for releasing the accused on bail in any condition. Thereafter, Learned Senior Counsel referring Annexure-5 i.e. prayer of IO for adding Section 201/34 of IPC against this present accused, submitted that the said offence is bailable in nature and the IO in the charge-sheet could not place any materials against this

accused showing his further detention in custody. So, considering the period of detention of the accused in the custody and also the materials on record, he urged for release of the accused on bail. Learned Senior Counsel also at the time of hearing further referred the citation in Kashmira Singh case and referring the same, he further drawn the attention of the Court that the present accused deserves to be released on bail on the ground of parity.

On the other hand, Learned Special P.P., Mr. S. Lodh appearing on behalf of the State-respondent along with Learned Senior Counsel, Mr. B. N. Majumder drawn the attention of the Court that although it was submitted by Learned Senior Counsel appearing on behalf of the accused in custody that on the last date, he could not argue for releasing the accused on bail in parity but factually he rests upon his submission on the ground of parity and this Court after detailed hearing of argument of both the sides rejected the bail application and at this stage, no new grounds have been projected by the accused in custody in support of his bail application and furthermore, this case was a sensational case and since the rest two accused persons being women were granted bail by the Learned Sessions Judge, West Tripura in this case but considering the involvement of the present accused with the alleged crime there is no scope to enlarge him on bail. Moreover, from the chain of circumstances, according to Learned Special P.P., it is clear that just at the time of commission of offence he was present to the PO and participated in the commission of offence. So, if at this stage he is enlarged on bail then there is every chance of hampering the trial of the case. So, for proper adjudication of this case, Learned Special Public

Prosecutors strenuously opposed the bail application of the present accused.

I have heard detailed argument of both the sides at length. In the case at hand, this case was registered on the basis of a *Suo Moto* complaint laid by one Mr. SI Srikanta Guha of Airport PS on 01.05.2024 alleging inter alia that on 30.04.2024 at around 2025 hours he received one telephonic information that a person was shot at Salbagan Bazaar at Hatipara under Airport PS and consequently upon the information he along with staffs rushed to the spot and found one body lying by the side of road with bullet wounds. Immediately with the help of local people the body was shifted to ILS Hospital wherein the attending Doctors declared him as dead. From the local inquiry, it came to his knowledge that at about 2010 hours miscreants shot upon Durga Prasanna Deb @ Viki while he was sitting in a vehicle bearing No.TR-06-A-0745 and the same was parked at Salbagan Bazaar Hati Para in front of one medicine shop of Shri Bikash Das of Shalbagan BSF Para and immediately after receipt of bullet injury he fell down on the road from the vehicle and the miscreants fled away. After that, some kin relatives of the deceased arrived at Hospital where he could know from them that one Raju Barman, Rakesh Barman, Debabrata Barman, Biman Das, Pradyut Dhar Chowdhury and some others made conspiracy and were involved in the commission of murder of said Durga Prasanna Deb alias Viki and on the basis of the *Suo Moto* complaint, Airport PS case No.37 of 2024 under Section 302/120(B) of IPC and Section 27 of Arms Act was registered and in course of investigation this accused person was arrested and produced before the Court under arrest

on 09.05.2024 and since then he is lodging in custody and after completion of investigation, on 27.07.2024 the IO has laid charge-sheet against the present accused along with others before the Court to conduct trial of the case keeping the accused persons in judicial custody for the interest of prosecution. But it is on record that by this time, two women accused person were released on bail as per order of Learned Sessions Judge, West Tripura, Agartala, as already stated. Since the IO laid charge-sheet within time against all the accused persons so the question of default bail does not arise.

In course of hearing of argument, Learned Senior Counsel, Mr. S. Kar Bhowmik in the earlier bail application relied upon one citation of Hon'ble Supreme Court in **Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in **2018 SCC OnLine SC 757** wherein in para Nos.10 and 11, Hon'ble the Apex Court observed as under:

"10. In Kashmira Singh v. State of Madhya Pradesh(1952)1 SCC 275, this Court relied upon the decision of the Privy Council in Bhuboni Sahu v. R: 1949 SCC OnLine PC 12 and laid down as under:

8. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in Bhuboni Sahu v. R.

..... It does not indeed come within the definition of" 'evidence' contained in section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by crossexamination." Their Lordships also point out that it is "obviously evidence of a very weak type.....

It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in "support of other evidence." In view of these remarks, it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the judge refuses to believe him except in so far as he is corroborated ?

9. In our opinion, the matter was put succinctly by Sir 'Lawrence Jenkins in Emperor v. Lalit Mohan Chuckerbutty:ILR(1911)38 Cal 559 where he said that such a confession can only be used to "lend assurance to other evidence against a coaccused "or, to put it in another way, as Reilly J. did in In re Periyaswami Moopan in Re 1930 SCC OnLine Mad 86

"the provision goes no further than this-where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession de- scribed in section 30 may be thrown into the scale as an additional reason for believing that evidence."

10. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

11. The law laid down in Kashmira Singh (supra) was approved by a Constitution Bench of this Court in Hari Charan Kurmi v. State of Bihar(1964) 6 SCR 623 wherein it was observed:

"12. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other

evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerbutty*: ILR (1911) 38 Cal 559 a confession can only be used to "lend assurance to other evidence against a co-accused." In *re Periyaswami Moopan Reilly, J.*, observed that the provision of Section 30 goes not further than this:

"where there is evidence against the coaccused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence"

In *Bhuboni Sahu v. R*: (1949) SCC OnLine PC 12 the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that:

"a confession of a co-accused is obviously evidence of a very weak type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence".

It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to

the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh*: (1952) 1 SCC 275 where the decision of the Privy Council in *Bhuboni Sahu case*: (1949) SCC OnLine PC 12 case has been cited with approval.”

Relying upon the aforesaid citation, Learned Senior Counsel had drawn the attention of the Court that confession of the co-accused is very weak piece of evidence. So, on the basis of that, there is no scope to detain the accused in judicial custody.

Learned Special P.P. in course of hearing in the earlier bail application relied upon few citations and drawn the attention of the Court that considering the materials on record and nature of evidence collected by the IO during investigation against this accused and showing his direct participation in the crime at this stage, there is no scope to release him on bail for fair trial of this case.

Learned Special P.P. also relied upon the judgment of Hon’ble Supreme Court in **Mahadev Meena vs. Praveen Rathore and another** reported in **(2021) 17 SCC 788** wherein in para No.19, Hon’ble the Apex Court observed as under:

“19. In *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana*: (2021) 6 SCC 230, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity. This Court observed: (SCC p. 246, para 26)

“26. ... The High Court: *Vishanbhai Hirabhai Makwana v. State of Gujarat*: (2020) SCC OnLine Guj 2987, *Dinesh Karshan Akhiyani v. State of Gujarat*, (2021) SCC OnLine Guj 784, *Vanraj Karsha Akhiyani v. State of Gujarat*: (2021) SCC OnLine Guj 783, *Pravinbhai Hirabhai Koli v. State of Gujarat*: (2020) SCC OnLine Guj 2986, *Khetabhai Parbatbhai Makwana v. State of Gujarat*: (2020) SCC OnLine Guj 2988, *Siddhrajsinh Bhagubha Vaghela v. State of Gujarat*: (2020) SCC OnLine Guj 2985 has evidently

misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

Thereafter, Learned Special P.P. also relied upon another citation of Hon'ble Supreme Court of India reported in **AIR 2023 SC (Supp) 1851** in **Ritu Chhabaria v. Union of India and Ors.** wherein in para Nos.23 and 24, Hon'ble the Apex Court further observed as under:

"23. It is also to be noted that as per the scheme of Cr.P.C., an investigation of a cognizable case commences with the recording of an FIR under Section 154 Cr.P.C. If a person is arrested and the investigation of the case cannot be completed within 24 hours, he has to be produced before the magistrate to seek his remand under Section 167(2) of the Cr.P.C. during continued investigation. There is a statutory time frame then prescribed for remand of the accused for the purposes of investigation, however, the same cannot extend beyond 90 days, as provided under Section 167(2)(a)(i) in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days, as provided under Section 167(2)(a)(ii), where the investigation relates to any other offence. The relevant section further provides that on expiry of the period of 90 days or 60 days, as the case may be, the accused has a right to be released on default bail in case he is prepared to and furnishes bail.

24. This right of statutory bail, however, is extinguished, if the charge sheet is filed within the stipulated period. The question of resorting to a supplementary chargesheet under Section 173(8) of the Cr.P.C. only arises after the main chargesheet has been filed, and as such, a supplementary chargesheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to insue that the right of default bail is scuttled."

Thereafter, he also relied upon another citation in **Atulbhai Bithalbai v. State of Gujarat** reported in **AIR 2023 SC 2352** wherein in para No.12, Hon'ble the Apex Court observed as under:

"12. Insofar as parity is concerned, we need only reproduce the apt observations from **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli)**, (2021) 6 SCC 230: AIR (2021) SC 2011, of which we take note:

"26....Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

[Emphasis supplied]

Further, he relied upon another citation of Hon'ble the Apex Court in **Ramesh Bhavan Rathod v. Bishanbhai Hirabhai Marwana (Koli) and Another** reported in **(2021) 6 SCC 230** wherein in para Nos.23 and 26, Hon'ble the Apex Court observed as under:

"23. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in **Ram Govind Upadhyay v. Sudharshan Singh**:(2002) 3 SCC 598 the nature of the crime was recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

This Court further laid down the standard for overturning an order granting bail in the following terms: (Ram Govind Upadhyay case: Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598

"3. Grant of bail though being a discretionary order-- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."

26. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21.12.2020: Prayinbhai Hirabhai Koli v. State of Gujarat:(2020) SCC OnLine Guj 2986, Khetabhai Parbhatbhai Makwana v. State of Gujarat: 2020 SCC OnLine Guj 2988, the High Court granted bail to Pravin Koli (A10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhrajsinh Bhagubha Vaghela (A-13) to whom bail was granted on 22-10-2020:Siddhrajsinh Bhagubha Vaghela v. State of Gujarat(2020) SCC OnLine Guj 2985 on the ground (as the High Court recorded) that he was "assigned similar role of armed with stick (sic)". Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhrajsinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another accused who was granted bail was armed with a similar

weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law."

In **Peng Yongxin v. State of West Bengal** reported in **2024 SCC OnLine Cal 6424** wherein in para Nos.16, 17, 18 and 22, Hon'ble the Calcutta High Court observed as under:

"16. In passing the impugned order on 20th September 2023 the judgment of Hon'ble Apex Court of Ritu Chhabaria was placed; on the observation of the fact that the Central Government has preferred a review petition against the judgment of Ritu Chhabaria, the Learned Magistrate do not consider the prayer of bail of the present petitioner.

17. On perusing the charge sheet/final report along with the CD, it appears that during the course of investigation the police have collected several documents and materials; on the basis of which the charge sheet has been submitted against the present petitioner stating the present petitioner to be a Chinese citizen who tried to enter into the territory of India with a fake Nepali passport. The Chinese identity card of the petitioners was verified by the investigating agency.

18. Supplementary charge sheet contained the report the Director, Finger Print Bureau, Delhi Police. After completion of investigation the police have submitted charge sheet u/s 168/471 read with Section 14A/14B of Foreigners Act. It is the submission of the present petitioner that the Nepali passport seized by the investigating agency is yet to be verified. Thus, the charge sheet cannot be termed as a complete charge sheet.

22. The instant Criminal Revision has been filed by the petitioner against the impugned order dated 16.09.2023 passed by the Learned Chief Judicial Magistrate Siliguri, wherein the Learned Magistrate had taken cognizance of the offence on the basis of the charge sheet submitted by the police and refused to grant default bail. I find no illegality or irregularity in the impugned order passed by the Learned Magistrate. The Learned Magistrate has correctly taken cognizance of the offence on the strength of the charge sheet, and as the charge sheet has been submitted has correctly refused the prayer for default bail.

The proposition of law as referred by the Learned Advocate for the petitioner in Ritu Chhabaria and Thamisharasi are not applicable in this case due to factual difference rather Hon'ble Supreme Court in Judgebir Singh has decided the issue which is squarely applicable in this case."

Thereafter, Learned Special P.P. also relied upon another citation reported in **AIR 2015 SC 1002** in **Narendra Kumar Amin v. C.B.I. and others**, wherein in para Nos.3, 10 and 14, Hon'ble Apex Court observed as under:

"3. The appellant/accused was arrested on 4.4.2013 for an offence which had taken place on 15.6.2004, which is popularly known as the fake encounter death of Ishrat Jahan. The offence alleged against the appellant was punishable with life imprisonment or death and what is popularly called Default Bail becomes the indefeasible right on the expiry of 90 days in the event of non-filing of police report by then. On 3.7.2013 the first respondent viz. CBI filed what they called the charge-sheet which is alleged by the appellant as a misnomer because it does not comply with the statutory requirement of police report under Section 173(2) and 173(5) of Cr.P.C.

10. Section 173(2) of Cr.P.C. enumerates the information that must be detailed in the police report forwarded to the Magistrate by the Investigating Officer. This includes:

- a) the names of the parties;
- b) the nature of the information;
- c) the names of the persons who appear to be acquainted with the circumstances of the case;
- d) whether any offence appears to have been committed and, if so, by whom;
- e) whether the accused has been arrested;
- f) whether he has been released on his bond and if so, whether with or without sureties;
- g) Whether he has been forwarded in custody under section 170.

14. With reference to the aforesaid rival legal contentions we have examined the impugned order to find out the correctness of the findings and reasons recorded keeping in view the statutory provisions under Section 173 (2) and (5) read with Section 2(r) of Cr.P.C. and with reference to the judgments on which both the learned senior counsel placed reliance upon. In our considered view, it is an undisputed fact that the charge-sheet was filed on 3.7.2013 that is 90th day. Section 2 (r) of Cr.P.C. defines the expression "police report" as a report forwarded by a police officer to a magistrate under Section 173(2) of Cr.P.C. the particulars to be furnished in the police report which are extracted as above are complied with in the instant case. Therefore, filing of the police report as required under Section 173(2) is within 90 days in the instant case."

And finally, he relied upon another citation of the Supreme Court of India in **Directorate of Enforcement vs.**

Manpreet Sing Talwar in case No.**SLP(Crl.)/5724/2023**

wherein in para No.1, Hon'ble the Supreme Court observed as under:

"1. In continuation of the interim order of this Court dated 1 May 2023, we clarify that the order shall not preclude any trial court or, as the case may be, High Court from considering an application for the grant of default bail under Section 167 of the Code of Criminal Procedure 1973 independent of and without relying on the judgment dated 26 April 2023 in Writ Petition (Criminal) No 60 of 2023."

Referring those citations, Learned Special P.P. in the earlier bail application prayed before the Court that the present accused in custody does not come under the purview of parity and urged for rejection of bail application.

I have also discussed the aforesaid citations in the earlier bail application and also perused the same as reiterated by the Learned Counsel of both the sides. After hearing both the sides and also after perusal of the record of the Learned Trial Court below, it appears that earlier the IO prayed for supplementary charge-sheet. Thereafter by this time the IO has submitted supplementary charge-sheet in this case and the case is now posted for accused copy and on the approach of Learned Senior Counsel, Learned Trial Court has ordered for furnishing all the relevant prosecution papers to the said accused.

However, considering the materials on record and the statements of witnesses so far collected by IO during investigation of this case, it appears that the presence of the accused in the alleged PO and his participation cannot be ruled out. So, having regard to the materials on record, at this stage, I find no scope to consider the bail application of the accused in view of the

provision provided under Section 439 of Cr.P.C. Accordingly, the bail application filed on behalf of the accused stands rejected.

Send down the LCR along with a copy of this order.

Also, return back the Case Diary to IO through Learned Special P.P. along with a copy of this order.

Since the rest six accused persons are lodging in custody so the Learned Trial Court shall make all endeavour to dispose of the case giving top priority keeping it in mind that the accused persons are lodging in custody.

With this observation, this bail application stands disposed of.

JUDGE



सत्यमेव जयते