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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION (MAIN) NO.9 OF 2026

State of Goa
 Through Police Inspector/
 Investigating Officer,
 Anjuna Police Station, Goa.

... Applicant.

Versus

Ajay Gupta
 S/o Ram Swaroop Gupta, aged 55
 R/o 12A, Tatvam Villa, Z Block, Sector-48
 South City-II, Gurugram
 Haryana -122018.

... Respondent.

Ms Swati Kamat Wagh, Additional Public Prosecutor for the Applicant.
 Mr Madhav Khurana, Senior Advocate with Mr. Rohan Desai, Advocate
 for the Respondent.

CORAM:**DR. NEELA GOKHALE, J.****RESERVED ON:****29th July 2026****PRONOUNCED ON:****18th August 2026****JUDGMENT:**

1. By this application, the Applicant-State seeks to quash and set aside the order dated 23rd March 2026, passed by the learned Additional Sessions Judge-I, North Goa, Mapusa, in Bail Application No. 337/2025, in connection with C.R. No. 154 of 2025, dated 7th December 2025, registered with Anjuna Police Station, under which the Respondent was enlarged on bail subject to certain conditions. The charge-sheet No. 12/2026 was filed on 26th February 2026.

2. In brief, the facts of the case are that 'Birch by Romeo Lane', a

restaurant-cum-club (**'the restaurant'**) at Arpora Village, Bardez, Goa, was owned and operated by 'Being GS Hospitality LLP' (**'the firm'**). The Respondent is a partner in the firm, along with Mr Gaurav Luthra and Mr Saurabh Luthra. The restaurant is situated in the middle of a salt pan and comprises a ground floor and a deck floor. The restaurant itself is on the deck floor, while the kitchen is on the ground floor. It commenced operations in February 2024. The restaurant is stated to be bereft of sufficient ventilation, and there was no separate entry and exit. Entry and exit of guests, patrons, staff, etc. was facilitated through a narrow opening. The place was congested.

3. On 6th December, 2025, at about 23.45 hrs, a dance event was in progress at the restaurant. It is alleged that cold pyro fireworks were being let off inside the premises near the DJ console. The roof and the deck floor interiors were made of combustible materials such as wood, plastic, and dry grass; consequently, the roof caught fire, and the flames spread rapidly throughout the restaurant. There was no fire safety or fire-fighting equipment on the premises. There was no emergency exit; there was only one narrow entry and exit; and one door on the ground floor was found locked. Neither the ground floor nor the deck floor had sufficient ventilation. Twenty-two men and three women, comprising guests and staff of the restaurant, were unable to escape and perished. Several others were injured. Two bodies were found on the staircase leading down to the kitchen and twenty-three in the kitchen itself on the ground floor.

4. On 7th December 2025, at 09.36 hrs, on the complaint of Mr Navneet

Goltekar, Police Sub-Inspector, Anjuna Police Station, FIR No.154/2025 was registered at Anjuna Police Station for offences punishable under Sections 105, 125, 125(a), 125(b) and 287 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS'). Sections 338, 336(3), 340(2), 238, 241, 3(7) and 61(2) of the BNS were added during the course of the investigation. The gravamen of the complaint is that the owners, partners, manager, event organiser and managing staff of the establishment organised a fire show in a restaurant with a roof of combustible material, without care and caution, without fire safety equipment and without an emergency exit. The establishment was allegedly operating without requisite permissions and licences of the competent authorities.

5. The investigation further disclosed that the establishment was operating on the strength of forged and manipulated documents. A No Objection Certificate ('NOC'), purportedly issued by the Health Officer, Primary Health Centre, Candolim, bearing the printed digital signature of that officer, was forged and submitted to the Excise Department to obtain the excise licence. A separate FIR No. 154/2025, dated 17th December, 2025, was registered at Mapusa Police Station.

6. Ms Swati Kamat Wagh, learned Additional Public Prosecutor, appeared for the Applicant-State and Mr Madhav Khurana, learned Senior Advocate, represented the Respondent.

7. The grounds of challenge by the State are as under: -

- i.** The Sessions Court failed to appreciate the enormity and gravity of the offence, in which 25 innocent people lost their lives due to gross criminal negligence, reckless conduct and deliberate violations of statutory safety norms by the Respondent and his partners.
- ii.** The finding that the Respondent is not a flight risk is factually incorrect. The material demonstrates that the Respondent had absconded to Delhi immediately after the incident, met his lawyer and got himself admitted to a hospital, which shows a strong likelihood of evasion of trial.
- iii.** The Sessions Court failed to appreciate that the filing of a charge sheet does not dilute the seriousness of the allegations nor confer any indefeasible right to bail, and erred in treating the charge sheet's volume and the length of the anticipated trial as grounds for release.
- iv.** The Sessions Court failed to appreciate that the material prosecution witnesses are employees and staff of the restaurant run by the Respondent and are therefore susceptible to influence.
- v.** The Sessions Court erroneously observed that the offences do not fall within the category of the most heinous crimes. The offences under Sections 105 and 338 of the BNS carry punishment extending to imprisonment for life and involve culpable acts leading

to mass fatalities.

- vi.** The Sessions Court mechanically applied the principle that bail is the rule without balancing societal interest and the magnitude of the crime.
- vii.** The Sessions Court granted bail without independently evaluating the specific conduct and role of the Respondent, and without appreciating that the Respondent is also accused of forgery, manipulation of trade licences and illegal procurement of permissions in connivance with his partners.
- viii.** The Sessions Court disregarded the prosecution's case that the applicant destroyed his mobile phone, holding the allegation 'vague and unsubstantiated' because the prosecution failed to establish, on a *prima facie* basis, that the device contained any material evidence crucial to the present case. This requires proof of the contents of a destroyed device.
- ix.** That the music and fireworks were being organised at the establishment every Friday and Saturday and that the Respondent and his partners were fully aware of this. The material indicates that the interior designers and architects engaged for construction and design of the premises held regular meetings with the Respondent and his partners and requested the use of fire-safe structures and materials, which the Respondent and his partners

ignored.

x. Ms. Kamat relied on the following decisions:

- a. *Kalyan Chandra Sarkar v. Rajesh Ranjan*¹,
- b. *Mahipal v. Rajesh Kumar*²,
- c. *Deepak Yadav v. State of U.P.*³,
- d. *State of Karnataka v. Sri Darshan*⁴,
- e. *Prasanta Kumar Sarkar v. Ashis Chatterjee*⁵,
- f. *Kushal Singh v. State of Himachal Pradesh*⁶
- g. *Yug Kaushal Pathak v. Senior Inspector of Police*⁷
- h. *Ramesh Bhavan Rathod v. Vishanbhai Harabhai Bambhania*⁸
- i. *Ram Naresh v. State of U.P.*⁹
- j. *Virupakshappa Gouda v. State of Karnataka*¹⁰
- k. *N. Basurangan v. State of Kerala*¹¹

xi. Ms Kamat submitted that the impugned order is perverse and prayed that the order be reversed.

8. Mr Khurana, learned Senior Advocate, appearing for the Respondent, defended the bail order as under:

- i. The Respondent is a sleeping partner holding only a 10% share in the firm; the partners responsible for the firm's operations and

- 1 (2004) 7 SCC 528.
- 2 (2020) 2 SCC 118.
- 3 (2022) 8 SCC 521.
- 4 2025 INSC 979 : 2025 SCC OnLine SC 1702.
- 5 (2010) 14 SCC 496.
- 6 2026 SCC OnLine HP 964.
- 7 2018 SCC OnLine Bom 18093.
- 8 (2017) 5 SCC 609.
- 9 (2024) 1 SCC 443.
- 10 (2017) 5 SCC 406.
- 11 (2022) 6 SCC 609.

management are the co-accused, Mr Saurabh and Mr Gaurav Luthra.

- ii. He submitted that the Respondent is a resident of Gurugram who had booked his return tickets before the incident and travelled to Delhi to receive treatment for a pre-existing medical condition. This act cannot be considered to be an act of flight with intent to abscond.
- iii. The Sessions Court enlarged the Respondent on bail since the charge sheet was filed and hence custodial interrogation was not required.
- iv. There is no allegation of influencing any witness; there is no possibility of tampering with evidence.
- v. He further submitted that the Investigating Officer reported no supervening circumstances warranting a breach of the bail order.
- vi. He submitted that interference with an order granting bail is permissible only where there is a serious infirmity, and that no such infirmity is made out.
- vii. That the alleged offences do not fall in the gravest category, such as murder.
- viii. He placed reliance on the following:
 - a. *Sanjay Chandra v. CBI*¹²
 - b. *Manish Sisodia v. CBI*¹³

12 (2012) 1 SCC 40.

13 (2024) 12 SCC 691.

- c. *Sushil Ansal v. State*¹⁴
- d. *Kailash Kumar v. State of Himachal Pradesh*¹⁵
- e. *Bhaigirathsing v. State of Gujarat*¹⁶
- f. *Totaram v. State of Madhya Pradesh*¹⁷
- g. *Arvind Dham v. Directorate of Enforcement*¹⁸
- h. *Ravi Surajmal Bhandari v. State of Maharashtra*¹⁹
- i. *P. Chidambaram v. CBI*²⁰
- j. *Sanjay Jain v. Enforcement Directorate*²¹

ANALYSIS

9. Before delving into the merits of the case, it is necessary to discuss the law governing the reversal of bail. A distinction must be drawn between an application to cancel bail on account of supervening circumstances, such as misuse of the liberty granted, and a challenge to the legality and propriety of the order granting bail. In *Shobha Namdev Sonavane v. Samadhan Bajirao Sonvane and Others*²², the Supreme Court observed:

“20. We make it clear that there is a clear distinction between cancellation of bail on the considerations provided under Section 439(2) CrPC (corresponding Section 483(3) BNSS) and reversal of an order of bail by the superior Court. While cancellation should only be resorted to in cases where the accused misuses the liberty of bail granted to him or tempers with the evidence. On the other hand, the order granting bail can be interfered with by the superior Court considering the nature and gravity of the offences; if the order

14 (2014) 6 SCC 173.

15 2025 SCC OnLine SC 3055.

16 (1984) 1 SCC 284.

17 2023 SCC OnLine SC 1349.

18 2026 SCC OnLine SC 30.

19 B.A. No. 995 of 2018, Bombay High Court.

20 (2020) 13 SCC 337.

21 2024 SCC OnLine Del 1656.

22 2026 SCC OnLine SC 291; 2026 INSC 181.

granting bail ignores the relevant material available on record or that the same is based on extraneous considerations. The present is a case in the second category.

21. This court in the case of **Shabeen Ahmad v. State of Uttar Pradesh & Anr.**²³, relying upon an earlier judgment in the case of **Ajwar v. Waseem**²⁴, observed as follows:

“18. A superficial application of bail parameters not only undermines the gravity of the offence itself but also risks weakening public faith in the judiciary's resolve to combat the menace of dowry deaths. It is this very perception of justice, both within and outside the courtroom, that courts must safeguard, lest we risk normalising a crime that continues to claim numerous innocent lives. These observations regarding grant of bail in grievous crimes were thoroughly dealt with by this Court in Ajwar v. Waseem [Ajwar v. Waseem, (2024) 10 SCC 768 : (2025) 1 SCC (Cri) 320] in the following paras : (SCC pp. 783-84, paras 26-28)

“26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. [Refer : Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525 : 2004 SCC (Cri) 1974]; Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977] ; Masroor v. State of U.P. [Masroor v. State of U.P., (2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] ; Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ; Neeru

23 (2025) 4 SCC 172.

24 (2024) 10 SCC 768.

Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] ; Anil Kumar Yadav v. State (NCT of Delhi) [Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129 : (2018) 3 SCC (Cri) 425] ; Mahipal v. Rajesh Kumar [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] .]

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.....”

[Emphasis supplied]”

10. The Supreme Court in the case of *Victim ‘X’ v. State of Bihar & Anr.*²⁵, while setting aside the order of granting bail to a person accused of committing grave offences, inter alia, under the SC & ST (Prevention of Atrocities) Act 1989, observed as under:

“24. It is trite that bail once granted should not be cancelled ordinarily, but where the facts are so grave that they shake the conscience of the Court; and where the release of the accused on bail would have an adverse impact on the society, the Courts are not powerless and are expected to exercise jurisdiction conferred by law to cancel such bail orders so as to subserve the ends of justice. The present one is precisely a case of such nature.”

11. The test to be applied was also stated in *Mahipal v. Rajesh Kumar*²⁶:

“16. The considerations that guide the power of an appellate

25 2025 INSC 877

26 (supra at pg. no. 6).

court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified.”

12. In ***Puran vs. Rambilas***²⁷, the Supreme Court held:

“10. ... One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.”

13. Applying the settled principles to the facts of the present case, I now proceed to examine whether the reasons assigned by the Sessions Court for the grant of bail can withstand judicial scrutiny.

14. The learned Sessions Court has assigned the following reasons for granting bail to the Respondent/Accused, as under:

- i. The Sessions Court relied on the principle that ‘bail is the rule and jail is the exception’ to hold that, because the charge sheet has been filed, continued incarceration is not required. The Court relied on

27 (2001) 6 SCC 338.

the Supreme Court's decisions in *Sanjay Chandra*²⁸, *P Chidambaram*²⁹ and other decisions to justify granting bail. The Court held that, in the absence of any material indicating that the Respondent is attempting to influence witnesses not to depose against him, bail cannot be refused.

- ii. Among the alleged offences, only Sections 105 (Part II) and 338 of the BNS are non-bailable. The maximum punishment is imprisonment for ten years or life imprisonment; however, no minimum sentence is prescribed. Therefore, the offences do not fall within the category of the most heinous crimes, such as murder.
- iii. Culpable homicide not amounting to murder, where knowledge rather than intention is attributed under Part II of Section 105, is of a comparatively lesser degree, and the allegations, at the highest, do not attribute any intention to cause death. Hence, the trial Court held that the offence alleged against the Respondent does not fall into the category of heinous offences.
- iv. There are no allegations that the Respondent threatened or influenced witnesses, and evidence is unlikely to be tampered with since it is mainly documentary and secured.
- v. The prosecution has not furnished any compelling justification to

28 (supra at pg. no. 7).

29 (supra at pg. no. 8).

warrant continued detention and has failed to adequately address how the Respondent's right to a speedy trial will be secured.

- vi.** The allegation that the Respondent destroyed his mobile phone is vague and unsubstantiated, as the prosecution has not *prima facie* established that the device contained any material evidence.
- vii.** Considering the prevailing docket explosion, the number of old cases, custody cases, and direction matters, and the voluminous charge sheet, which arraigns 14 accused, the trial is not likely to conclude in the near future.
- viii.** The decisions in *Virupakshappa Gouda*³⁰ and *Sri Darshan*³¹, relied upon by the prosecution, were rendered in cases of the heinous crime of murder and are therefore not applicable to the present case.

15. Admittedly, the charge sheet is on record. The Investigating Officer recorded witness statements. A plain reading of the bail order shows that the allegations and material collected during the investigation were not even taken into account by the trial Court. Bail has been granted simply on the basis that the offence does not fall within the category of heinous offence, that no minimum sentence is prescribed for the said offence, and that, as the charge sheet has been filed, custodial interrogation of the

30 (supra at pg. no. 6)

31 (supra at pg. no. 6)

Respondent is not required.

16. The material on record includes statements of various witnesses recorded by the Police. The statement of electrician Mohammed Ansari indicates that the restaurant had only one rear exit door, which was always kept locked. The soundproof glass was installed at the Respondent's and his partners' instructions, which prevented smoke from escaping. The staff were never trained to handle fire incidents, and there were no fire extinguishers in the restaurant. There was also no emergency exit to the kitchen. M. D. Juvel Ali, Food and Beverage Manager; Rahul Verma, Captain in the restaurant; and other staff also said the same thing. Brian Martins, the Artist in K-Dance events, and Mikhail Bukin stated that there was no fire extinguisher nor any fire safety plan in the restaurant; the sparkler machines were used during the belly dance performances, as per the directions of the Respondent and his partners. Mr Judah D'Souza, musician, also stated that the narrow concrete bridge connecting the deck floor of the restaurant from the west side was blocked during the operation of the restaurant by locking the metal gate. As a result, customers could not exit during the fire. Gavin Lobo, Bhavna Joshi, a tourist from U.P., and the other 49 tourists who gave statements said the same thing. It was repeatedly stated that there were no fire extinguishers in the premises.

17. Shailesh Gawade, Station Fire Officer at the Fire Headquarters, confirmed that the restaurant did not possess a valid NOC from the Fire

Department. Prathamesh Shankardas, Block Development Officer, stated that the appropriate procedure was not followed in obtaining the trade licence and other licences. Dharmendra Govekar, Panchayat Secretary, stated that the structure itself was illegal, as it could not be allotted a house number because it was in the middle of a salt pan. One Pradeep Amonkar stated that co-accused Mr Surendra Khosla, the owner of the premises, prepared a forged letter stating that the vendors had handed over possession of the entire resort to him; that Mr Khosla thereafter raised an illegal structure from which the night club was run. The Respondent and his partners knew this. Mohd Amir Raza, the Carpenter, affirmed that the ceiling was constructed with bamboo-mat-like material as per the design given to them by Mr Ravi and his team, and that he was not directed to install a fire extinguisher or fire safety systems.

18. Most importantly, Akash Sethi, the sound and light provider, stated that water was seeping from the walls and that there were four inches of stagnant water on the floor. Other witnesses have also stated that all this was within the knowledge of the Respondent and his other partners.

19. Dinesh Khera, Manager, stated that he received the authority letter from Respondent's partners via WhatsApp. The present Respondent was also part of this group, and all of them were discussing the modus operandi for procuring the required licences. A stack of forged documents was also found at Mr Khera's hotel premises. Material on record also indicates that the structure was unauthorised, a fact known to the

Respondent and his partners. They operated the restaurant, fully aware of the risks of conducting fire displays inside the restaurant without adequate safety measures. This led to a fire that killed 25 innocent people, as most were unable to exit because of the structure. Many others were injured.

20. It is important to note that the passages from the *Sanjay Chandra*³² case cited by the Sessions Court have relevance, but they cannot be applied in every case for grant of bail. The accused in that case were facing trial for economic offences. The factual matrix is quite different. The nature of the crime and the manner in which it is committed are to be seen.

21. The Sessions Court reasoned that the offences are not among the most heinous because 'no minimum sentence is mandated,' noting that the gravity of a case is indicated by the maximum punishment and the nature of the accusation. Sections 105 and 338 of the BNS carry up to ten years or life imprisonment. The record shows that the Respondent and partners caused a fire at the restaurant due to lack of safety measures and licences, resulting in 25 deaths and injuries. Operating without licences and safety measures, they ignored regulations, leading to the tragedy. The Court's observation is thus invalid.

22. The Sessions Court's finding that the Respondent does not pose a flight risk is contrary to the record set out. Admittedly, the Respondent fled from Goa on 7th December 2025, immediately on the day after twenty-five people

32 (supra at pg. no. 7).

died in his establishment due to the fire and on the very day the FIR was registered; he kept his mobile phone switched off; he communicated through his driver's phone (statement of the driver is on record); and that he thereafter got himself admitted to a hospital in Gurugram, from which he was discharged the following morning upon the duty doctor certifying his fitness. Not one of these circumstances is adverted to in the reasons assigned by the Sessions Court. The Sessions Court treated a Look Out Circular already in force as a source of reassurance. It is, on the contrary, a measure of the apprehension that the authorities had found necessary to act upon - a finding recorded by the Court which cannot be sustained.

23. The Sessions Court's finding on the possibility of influencing witnesses is without substance. The absence of allegations during a period of continuous incarceration establishes nothing. It was necessary to consider that many of the 306 cited witnesses are staff, employees, managers, accountants, and suppliers of the Respondent's own establishment. The charge sheet also indicates that the Respondent has gone to the extent of furnishing a police verification/clearance for the purpose of procuring certain licences. A letter from the Delhi Police to the concerned Goa Police reveals that the Delhi Police have never conducted any verification of the Respondent. Hence, even the said certificate is suspect. Considering the Respondent's ability to misrepresent his own police verification, where none exists, is sufficient to believe in his ability to tamper with evidence. Moreover, there is a separate FIR against the Respondent alleging forgery of an NOC from the Health Department; these

allegations go directly to the propensity to tamper. The Sessions Court has ignored the same while releasing the Respondent on bail.

24. The Supreme Court in ***Centrum Financial Services***³³ held as under:

"27. In Prasanta Kumar Sarkar v. Ashis Chatterjee, while cancelling the bail and quashing and setting aside the order passed by the High Court granting the bail to the accused it is observed in paras 9 to 12 as under: (SCC pp. 499-500)

'9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi³⁴ (SCC p. 31, para 18), Prahlad Singh Bhati v. State (NCT of Delhi)³⁵, and Ram Govind Upadhyay v. Sudarshan Singh³⁶.]

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to

33 (2022) 13 SCC 286.

34 (2005) 8 SCC 21.

35 (2001) 4 SCC 280.

36 (2002) 3 SCC 598.

be illegal. In Masroor^[37], a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows: (SCC p. 290, para 13)

‘13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.’

25. I am constrained to observe that in the instant case, the Sessions Court has completely lost sight of the basic principles enumerated above, while dealing with the application for grant of bail.

26. The Sessions Court has erred in holding that the investigating agency is not aware of the contents of the Respondent’s mobile phone; hence, the Respondent destroying his own mobile phone is of no consequence. The Sessions Court ought to have weighed this conduct of the Respondent as his propensity to destroy evidence instead of placing this undue burden on the prosecution, a burden it cannot discharge. Requiring the prosecution to prove the contents of a device that has been destroyed is an impossible task; this impossibility is the consequence of the very act complained of.

27. Another justification for the grant of bail is the prevailing docket explosion, the number of old cases, custody cases, direction matters and the nature of the proceedings. However, a Court's docket status is not one of the considerations that govern the grant of bail. It has no bearing on the accused, the offence, or the evidence against him. A principle of this kind, if accepted,

37 Masroor v. State of U.P., (2009) 14 SCC 286.

would entitle every accused on the file of that Court to be enlarged on bail irrespective of the charges, turning the Court's procedural limitations into a vested right in a person accused of serious crimes. Such a consideration is fundamentally irrelevant. It is true that delay in trial violates a fundamental right of the accused person, but delay in trial by itself is not the sole consideration for grant of bail.

28. In *Sri Darshan*³⁸, the Supreme Court held as under:

“20.4. Filing of charge sheet or lengthy list of witnesses does not justify grant of bail.

20.4.1. It is well settled that the mere filing of a charge-sheet does not confer an indefeasible right to bail. Likewise, the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during investigation, or the likelihood of tampering with witnesses.

20.4.6. In the present case, the High Court failed to engage with the incriminating material collected during investigation, despite the seriousness of the offence under Section 302 IPC and the allegation of conspiracy. The mere filing of the charge-sheet, the existence of a long list of witnesses, or the possibility of delay in trial, cannot, by themselves, constitute valid reasons to dilute the gravity of the offence or to disregard the case put forth by the prosecution. As repeatedly held by this Court, such factors are not standalone grounds for the grant of bail in heinous offences involving murder. The reasoning adopted by the High Court to justify the grant of bail is, therefore, contrary to settled legal principles.”

29. A plain reading of the impugned order reveals absence of consideration on the enormity of the offence, on the fact that twenty-five persons were burnt to death, on the public safety dimension of an allegedly unlicensed club operating in the middle of a salt pan without emergency exits and without an

38 (supra at pg. no. 6)

NOC from the fire department, on the impact of the release upon public confidence in the administration of criminal justice. The Sessions Court observed that the adjudication of bail 'cannot be swayed by emotions, sentiments, or sympathetic considerations arising from the tragedy'. That is unexceptionable as a statement of judicial discipline. It has been, however, used to exclude the gravity of the offence and its societal impact from consideration altogether, rather than to weigh them dispassionately. The direction of the Supreme Court in *Ajwar v. Waseem*³⁹ is that these matters be weighed, not disregarded as sentiment.

30. Finally, even on its own conclusion, the conditions imposed by the Sessions Court do not answer the apprehensions it acknowledged. In the case of a Respondent resident in Gurugram with no fixed place of stay in Goa, there is no direction of periodic attendance before the Investigating Officer; no restraint upon entering the vicinity of the establishment; no direction to request the trial Court's permission to travel within India.

31. The test is whether there was an improper or arbitrary exercise of discretion; whether the order is perverse, illegal or unjustified; whether relevant material was ignored and extraneous material acted upon. Applying that test, the impugned order proceeds upon an extraneous consideration made operative on its face; treats the scale of the crime and the length of the anticipated trial as reasons for release; reverses the burden upon the filing of the charge sheet; records a finding on flight risk contrary to the material

39 (supra at pg. no. 9).

before it; decides the gravest question in the case at the bail stage in the Respondent's favour while declining to examine it at the prosecution's instance; and is silent from beginning to end on the gravity of the offence, its societal impact and the interests of the victims. Considering the overwhelming circumstances, I am of the view that the order suffers from serious infirmity and is susceptible to interference by this Court.

32. In view of the aforesaid discussion, the impugned order dated 23rd March 2026 passed by the learned Additional Sessions Judge-I, North Goa, Mapusa is quashed and set aside.

33. The Respondent shall surrender before the Sessions Court within a period of two weeks from the date of uploading this order. The application is allowed.

34. It is made clear that the observations made in the present order are prima facie and confined to the correctness of the impugned Order and shall not affect the trial.

35. It is made clear that after the surrender, the Respondent is at liberty to move an appropriate application for bail before the trial Court afresh and the trial Court may consider it on its own merits and in accordance with law and after taking into consideration the relevant material collected during the course of investigation which is part of the charge sheet.

(DR. NEELA GOKHALE, J.)

36. After the Judgment and Order was pronounced, Mr Shreyansh Chopra, learned counsel for the Respondent, sought a stay of this Judgment and Order for a period of two weeks from today. However, considering the findings in the present Judgment and Order and since I have already permitted and granted liberty to the Respondent to make a fresh bail application before the Trial Court, I am not inclined to stay the present Judgment and Order. The prayer is declined.

37. If a fresh bail application is made before the Trial Court, the same be heard and decided expeditiously and preferably within two weeks from the date on which the bail application is made.

(DR. NEELA GOKHALE, J.)

Andreza ereira  Digitally signed by Andreza ereira
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