

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT APPEAL NOS.1217 & 1219 of 2016

WRIT APPEAL No.1217 OF 2016:

State of Telangana, rep., by its Prl. Secretary, Home Department,
Telangana Secretariat Buildings, Hyderabad and another.
.... Appellants

v.

Malckolm N. Desai and five others.
.... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.11.2016.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

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.... Respondents

! Counsel for Appellants: Govt. Pleader for Home

^ Counsel for respondents: Sri N. Ashwani Kumar

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> HEAD NOTE:

? Citations:

- 1) AIR 1966 SC 1441 = (1966) 3 SCR 344
- 2) (1998) 5 SCC 749
- 3) 1992 Supp (1) SCC 335
- 4) AIR 1958 SC 398
- 5) AIR 1964 SC 477
- 6) AIR 1954 SC 215
- 7) AIR 1951 Cal 193
- 8) AIR 1975 SC 1297 = (1975) 1 SCC 858
- 9) (2011) 1 SCC 694
- 10) (2009) 11 SCC 541
- 11) (2012) 4 SCC 134
- 12) (2014) 12 SCC 23
- 13) (2002) 3 SCC 598
- 14) AIR 2001 SC 2023
- 15) (2014) 16 SCC 508
- 16) (2004) 7 SCC 525
- 17) (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765
- 18) (2011) 15 SCC 799
- 19) (2009) 14 SCC 286
- 20) (2001) 4 SCC 224
- 21) (2005) 3 SCC 143
- 22) (2002) 9 SCC 364
- 23) (2005) 7 SCC 326
- 24) (2012) 5 SCC 690
- 25) (2009) 8 SCC 325
- 26) (2005) 8 SCC 21
- 27) (2001) 4 SCC 280
- 28) (2007) 9 SCC 387
- 29) (2004) 7 SCC 528
- 30) (2009) 1 SCC 678 : (2009) 1 SCC (Cri) 594
- 31) (2014) 3 SCC 321
- 32) (1980) 2 SCC 565

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT APPEAL NOS.1217 & 1219 of 2016

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Both these appeals are preferred, under Clause 15 of the Letters Patent, by the State of Telangana represented by its Principal Secretary, Home Department and the Station House Officer, KPHB Police Station, Cyberabad against the interlocutory orders of bail granted by the learned Single Judge in W.P.Nos.36232 & 36343 of 2016 dated 04.11.2016. Parties shall, hereinafter, be referred to as they are arrayed in the Writ Petitions.

W.P. Nos.36232 and 36343 of 2016 were filed seeking a Writ of Certiorari to quash F.I.R.Nos.166 of 2016 dated 27.02.2016 and F.I.R.No.644 of 2016 dated 11.08.2016 respectively, on the file of the Kukatpally Police Station, Cyberabad, on the ground that they were illegal, arbitrary and in violation of Articles 19(1)(g) and 21 of the Constitution of India. The petitioners also sought a declaration that their business activities did not violate any provisions of the Indian Penal Code as mentioned in the advertisement issued by the investigating authority. Alternatively, they sought permission of this Court to compound the offences in so far as the complaint and the cited witnesses were concerned, and to direct the respondents therein (appellants herein) to grant them a reasonable time of two weeks before taking coercive steps as regards the allegations made in connection with the business carried on by QNET/Vihaan. A further alternative prayer was sought that, all the complaints pending on the file of the CCS Police Station, Hyderabad, Krishna Lanka Police Station, Vijayawada, Kukatpally

Police Station, Cyberabad, Madannapet Police Station, Hyderabad, Nadigudem Police Station, Nalgonda District and KPHB Colony Police Station, Hyderabad, be clubbed together. By the interim orders passed earlier on 27.10.2016, the Learned Single Judge had granted stay of all further proceedings.

On the ground that the XIX Metropolitan Magistrate at Kukatpally, Cyberabad had refused to entertain their applications for grant of bail in view of the interim stay granted by this Court on 27.10.2016, resulting in their detention in prison, the petitioners sought bail in W.P. Nos.36232 and 36343 of 2016. While the learned Government Pleader for Home, appearing on behalf of the appellants, would submit that the order dated 04.11.2016 came to be passed on an oral request made on behalf of the petitioners, even without an application being filed in this regard, Sri D.V. Seetharama Murthy, learned Senior Counsel appearing on behalf of the petitioners, would submit that, while separate applications were filed in this regard, there appeared to be a typographical error in the orders under appeal, and, instead of referring to the W.P.M.Ps, the orders under appeal appear to have been passed in the Writ Petitions.

Be that as it may the learned Single Judge, in the orders under appeal, was of the opinion that the stay granted earlier, preventing the authorities concerned from proceeding with the investigation or any further proceedings in connection with the said crimes, did not mean that it precluded the Magistrate from releasing the accused; and the said order (dated 27.10.2016) was granted only to protect the petitioners' rights. The learned Single Judge, thereafter, directed the XIX Metropolitan Magistrate to

release the petitioners in Crime Nos.166 and 644 of 2016 if any application was made for bail. The Magistrate was directed to obtain personal bonds for a sum of Rs.1,00,000/- with one surety from each of the accused for their release, and also to impose the condition that they should appear before the police concerned daily between 10:00 am and 5:00 pm. The learned Judge clarified that, if there was any remand by the Mumbai Police and if there was any requirement by the Court in Mumbai, the stay order granted earlier would not stand in the way of the Magistrate to transit the petitioners for further remand.

Subsequently, by order in W.P.M.P. No.47152 of 2016 in W.P. No.36232 of 2016 and in W.P.M.P. No.47154 of 2016 in W.P. No.36343 of 2016 both dated 07.11.2016, the earlier orders dated 04.11.2016, passed in W.P. Nos.36232 and 36343 of 2016, were corrected as “XIX Metropolitan Magistrate at Kukatpally, Miyapur, Cyberabad, Ranga Reddy District” instead of “IX Metropolitan Magistrate, Kukatpally”.

Learned Government Pleader for Home would contend that the learned Single Judge ought not to have mechanically granted bail in proceedings under Article 226 of the Constitution of India, more so when the application for grant of bail was pending before the XIX Metropolitan Magistrate, Kukatpally; the Learned Single Judge failed to notice that, against the final judgment and order of the Bombay High Court, in ABA No.327 of 2016 dated 06.05.2016, the petitioners had filed Special Leave to Appeal (Crl). Nos. 4760 of 2016; the Supreme Court, in its order dated 21.09.2016, had held that, as the investigation had not yet been completed, no interference with the impugned order of the High Court was

merited; while dismissing the SLP, the Supreme Court had directed the petitioners to surrender before the appropriate Court within a period of one week from the date of the order and, if so advised, seek bail; even though the Supreme Court did not grant bail, and had directed the petitioners to approach the appropriate Court, the Learned Single Judge, by the orders under appeal, had directed the Magistrate to grant bail, instead of directing the petitioners to approach the Magistrate; in certiorari proceedings, that too at the interlocutory stage, this Court would not substitute its views for that of the Magistrate or take upon itself the task of adjudicating the bail applications pending before the Magistrate; and, at best, the Learned Single Judge could have clarified that the earlier order of stay did not preclude the Magistrate from considering the application for grant of bail.

On the other hand, both Sri D.V. Seetharama Murthy and Sri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the petitioners, would submit that this Court is empowered to grant bail in proceedings under Article 226 of the Constitution of India; consequently, exercise of power by the learned Single Judge to grant bail cannot be said to be without jurisdiction; the petitioners had perforce to seek clarification from the Learned Single Judge, as their application for bail was not being entertained by the Learned XIX Metropolitan Magistrate on the ground that the interim orders dated 27.10.2016 precluded him from doing so; it is in such circumstances, that the petitioners had requested the learned Single Judge to grant bail; the orders under appeal were passed by the learned Single Judge only to give effect to the earlier interim orders passed on 27.10.2016 granting stay of

all further proceedings; as the interim orders dated 27.10.2016 required the appellants-respondents not to arrest the petitioners, the orders under appeal were passed to give effect to these orders; the right to liberty guaranteed under Article 21 of the Constitution of India was sought to be protected by the orders under appeal; the learned Single Judge did not directly grant bail, but had merely directed the XIX Metropolitan Magistrate to release the petitioners, if any application was made for grant of bail; exercise of discretion by the learned Single Judge, to direct the Magistrate to grant bail did not necessitate interference in an intra-Court appeal; the orders under appeal cannot be said either to suffer from non-application of mind or as being arbitrary and illegal; the petitioners have since been released on bail, and are now in Mumbai; and setting aside the orders under appeal would not only amount to cancellation of bail, but would also result in the petitioners being needlessly arrested again and detained. Learned Senior Counsel would rely on **State of Bihar v. Rambalak Singh**¹ and **Pepsi Foods Ltd. v. Special Judicial Magistrate**².

When both W.P. Nos.36232 and 36343 of 2016 came up for admission on 27.10.2016, the learned Single Judge, while ordering notice before admission, directed the matters to be posted on 04.11.2016 and held that, till then, there shall be interim stay of all further proceedings. The interim prayer sought for, in both the aforesaid Writ petitions, was to stay all further proceedings including arrest of the petitioners in F.I.R. Nos.166 and 644 of 2016 on the file of the Kukatpally Police Station, Cyberabad and the Transit Warrant. As a result of the interim orders passed on

¹ AIR 1966 SC 1441 = (1966) 3 SCR 344

² (1998) 5 SCC 749

27.10.2016, the appellants-respondents were precluded from effecting arrest of the petitioners in relation to the aforesaid F.I.Rs. The fact, however, remains that the petitioners were arrested earlier even prior to the interim orders being passed, and they had therefore submitted applications, before the Learned XIX Metropolitan Magistrate, for grant of bail.

In examining whether a Writ Petition under Article 226 is maintainable for quashing an FIR or a charge sheet, and whether the High Court can grant bail during the pendency of such proceedings, it must be borne in mind that, while the High Court can exercise its power of judicial review in criminal matters also, the extraordinary jurisdiction under Article 226 of the Constitution, the power of judicial superintendence under Article 227 thereof, and the inherent powers under Section 482 CrPC, should be exercised in order to prevent abuse of the process of Court or to otherwise secure the ends of justice, (**Pepsi Foods Ltd.²; State of Haryana v. Bhajan Lal³**), or to ensure cleanliness and purity of the stream of administration of justice. (**Pepsi Foods Ltd.²**).

The provisions of Articles 226 and 227 of the Constitution, and Section 482 Cr.P.C, are devised to advance justice and not to thwart it. While the powers conferred by the aforesaid provisions have no limits, greater the power greater the care and caution which the High Court must exercise. (**Pepsi Foods Ltd.²**). While the power of judicial review under Article 226 may extend to quashing the impugned order if it suffers from an error apparent on the face of the record, the power of superintendence under

³ 1992 Supp (1) SCC 335

Article 227 is limited to ensuring that the subordinate court/tribunal functions within the limits of its authority. (**Pepsi Foods Ltd.**²; **Nagendra Nath Bora v. Commr. of Hills Division**⁴).

The nomenclature, under which a petition is filed, does not preclude the High Court from exercising its jurisdiction which it, otherwise, possesses unless there is a special procedure prescribed which is mandatory. (**Pepsi Foods Ltd.**²). A petition, though filed in the High Court under Articles 226, can be treated as a petition under Article 227 of the Constitution. If it finds that its jurisdiction under Article 226 could not have been invoked, the High Court can treat the petition as one under Article 227 of the Constitution or under Section 482 CrPC. (**Pepsi Foods Ltd.**²).

In both the writ petitions, (against the interim orders in which the present appeals are preferred), the petitioners have sought a Writ of Certiorari under Article 226 of the Constitution. A Writ of Certiorari is issued to correct errors of jurisdiction such as in cases where orders are passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a Writ of Certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by such a Writ, but not an error of fact however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings. (**Syed Yakoob v. K.S. Radhakrishnan**⁵).

⁴ AIR 1958 SC 398

⁵ AIR 1964 SC 477

Section 482 CrPC or Article 227 of the Constitution may be resorted to for correcting grave errors committed by the subordinate courts, (**Pepsi Foods Ltd.**²), or to have the proceedings quashed when the complaint/charge sheet does not make out any case against the petitioners, and yet they are called upon to undergo the agony of a criminal trial. (**Pepsi Foods Ltd.**²). The power of superintendence under Article 227 should be exercised most sparingly, and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. (**Pepsi Foods Ltd.**²; **Waryam Singh v. Amarnath**⁶; **Dalmia Jain Airways Ltd. v. Sukumar Mukherjee**⁷). The High Court should not, while exercising jurisdiction under Article 227, interfere with findings of fact recorded by the subordinate court or tribunal. It would not correct mere errors of fact, after examining the evidence on record or reappreciating it. The jurisdiction under Article 227 cannot be exercised as a cloak of an appeal in disguise. It does not lie for rehearing the issues raised in the proceedings. (**Pepsi Foods Ltd.**²; **Bathutmal Raichand Oswal v. Laxmibai R. Tarta**⁸).

Conferment of jurisdiction upon a Court implies the conferment of the power to do all such acts, or to employ such means, as are essential to its execution. If, on proof of certain conditions or grounds, it is open to the High Court to set aside the order, it would also have jurisdiction to make an interim order giving the relief which it would be entitled to give at the end of the proceedings. If the High Court has jurisdiction to give the main

⁶ AIR 1954 SC 215

⁷ AIR 1951 Cal 193

⁸ AIR 1975 SC 1297 = (1975) 1 SCC 858

relief, on principle and in theory, it can also give interim relief pending final disposal of the Writ Petition. **(Rambalak Singh¹)**. Releasing a person on bail is an interim relief which can be granted in Writ proceedings in aid of or auxiliary to the main relief **(Rambalak Singh¹)** of quashing the charge sheet.

While the High Court, in the exercise of its extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India or under Article 227 thereof or Section 482 Cr.P.C may quash an FIR or a charge sheet in exceptional circumstances where the facts of the case so warrant, and as an interim measure to grant bail also, exercise of such power cannot be resorted to as a matter of course and for the mere asking. The manner of exercise of jurisdiction by the Learned Single Judge, in granting bail to the petitioners, is put in issue in these appeals. Before examining the contentions urged in this regard, it is necessary to consider whether, as contended by the Learned Senior Counsel appearing on behalf of the petitioners, the liberty of an individual is so sacrosanct that the High Court should, invariably and as a matter of course, grant bail.

Liberty, a priceless treasure, is no doubt the bedrock on which the fundamental right under Article 21 of Part III of the Constitution is founded. The liberty of an individual is, however, not absolute. Society, in its collective wisdom and through the process of law, can withdraw the liberty it has sanctioned to an individual when he becomes a danger to societal order. Society has a vital interest in grant or refusal of bail as every criminal offence is an offence against the State. The order granting or refusing bail must reflect the right balance between conflicting

interests, namely, sanctity of individual liberty and the interests of society. The law of bails dovetails two conflicting interests, namely, the requirements of shielding society from the hazards of those committing crimes, and the potentiality of repeating the same crimes while on bail, on the one hand, and absolute adherence to the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty, and the sanctity of individual liberty, on the other. (**Siddharam Satlingappa Mhetre v. State of Maharashtra**⁹).

The limitations to the jurisdiction of the High Court to grant final relief inevitably introduce a corresponding limitation on the power of the High Court to grant interim relief, including the grant of bail. (**Rambalak Singh**¹). The distinction between existence of jurisdiction to grant bail, and its proper exercise, must be borne in mind. Improper exercise of jurisdiction must be avoided by Courts while dealing with applications for bail. (**Rambalak Singh**¹). There are certain inexorable considerations which are relevant to proceedings of this character, which have relevance to the object which is intended to be served by orders validly passed, and which circumscribe the exercise of the jurisdiction of the High Court to pass interim orders granting bail. (**Rambalak Singh**¹). In examining the question, whether or not interim relief in the form of bail should be granted, the Court should take into account the objects which the impugned orders intend to achieve, (**Rambalak Singh**¹), and the scope of interference therewith.

While directing the Magistrate to grant bail on certain conditions by the orders under appeal, the Learned Single Judge

⁹ (2011) 1 SCC 694

has not assigned any reasons for doing so. While the power of grant or refusal of bail is no doubt discretionary, and would depend on the facts and circumstances of each case, (**Siddharam Satlingappa Mhetre**⁹), the Court granting bail should exercise its discretion in a judicious and cautious manner, and not as a matter of course. (**State of Maharashtra v. Dhanendra Shriram Bhurle**¹⁰; **Dipak Shubhashchandra Mehta v. CBI**¹¹; **Sanghian Pandian Rajkumar v. CBI**¹²; **Ram Govind Upadhyay v. Sudarshan Singh**¹³; **Puran v. Rambilas**¹⁴; **Neeru Yadav v. State of U.P.**,¹⁵; **Chaman Lal v. State of U.P.**¹⁶; **Prasanta Kumar Sarkar v. Ashis Chatterjee**¹⁷). The exercise of discretionary jurisdiction to grant bail cannot be arbitrary, capricious and injudicious. (**Neeru Yadav**¹⁵; **Ram Govind Upadhyay**¹³).

Either in directing the Magistrate to grant bail, or in granting bail itself in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India and Section 482 Cr.P.C, the High Court is not absolved of its obligation of assigning reasons therefor. The High Court should record reasons for coming to the conclusion that it is one of the extraordinary cases in which power of the Court, under Article 226 of the Constitution of India, should be invoked to grant bail. (**Ajab Singh Bhati v. Raj Singh Bhati**¹⁸). Though, at the stage of granting bail an elaborate examination of the evidence, and detailed reasons touching upon the merit of the case which may prejudice the accused, should be avoided, there is

¹⁰ (2009) 11 SCC 541

¹¹ (2012) 4 SCC 134

¹² (2014) 12 SCC 23

¹³ (2002) 3 SCC 598

¹⁴ AIR 2001 SC 2023

¹⁵ (2014) 16 SCC 508

¹⁶ (2004) 7 SCC 525

¹⁷ (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765

¹⁸ (2011) 15 SCC 799

nonetheless a need to indicate, in such an order, reasons for, *prima facie*, concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. (**Prasanta Kumar Sarkar**¹⁷; **Masroor v. State of U.P.**¹⁹; **State of Maharashtra v. Ritesh**²⁰; **Panchanan Mishra v. Digambar Mishra**²¹; **Vijay Kumar v. Narendra**²²; and **Anwari Begum v. Sher Mohammad**²³). 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 justice being thwarted by grant of bail. (**Prasanta Kumar Sarkar**¹⁷; **Rashmi Rekha Thatoi v. State of Orissa**²⁴; **Savithri Agarwal v. State of Maharashtra**²⁵; **State of U.P. v. Amarmani Tripathi**²⁶; **Prahlad Singh Bhati v. NCT of Delhi**²⁷ and **Ram Govind Upadhyay**¹³).

Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing the merits or demerits of the case. (**Dhanendra Shriram Bhurle**¹⁰;

¹⁹ (2009) 14 SCC 286

²⁰ (2001) 4 SCC 224

²¹ (2005) 3 SCC 143

²² (2002) 9 SCC 364

²³ (2005) 7 SCC 326

²⁴ (2012) 5 SCC 690

²⁵ (2009) 8 SCC 325

²⁶ (2005) 8 SCC 21

²⁷ (2001) 4 SCC 280

Afzal Khan v. State of Gujarat²⁸). While it is not expected to examine the guilt of the accused beyond reasonable doubt, there ought always to be a prima facie satisfaction of the Court in this regard. (**Neeru Yadav**¹⁵; **Ram Govind Upadhyay**¹³; **Prahlad Singh Bhati**²⁷). Any order, de hors such reasons, would be held to suffer from non-application of mind. (**Dhanendra Shriram Bhurle**¹⁰; **Ram Govind Upadhyay**¹³; **Puran**¹⁴ and **Kalyan Chandra Sarkar v. Rajesh Ranjan**²⁹).

Not only should reasons be given while granting bail, orders granting bail should not be passed mechanically without considering the pros and cons of the matter. (**Brij Nandan Jaiswal v. Munna**³⁰). If the High Court does not advert to the relevant considerations and mechanically grants bail, the said order would be held to suffer from the vice of non-application of mind, rendering it illegal (**Prasanta Kumar Sarkar**¹⁷). No reasons are assigned by the learned Single Judge for granting bail to the petitioners.

While both Sri D.V. Sitarama Murthy and Sri S. Niranjan Reddy, learned Senior Counsel, would seek to justify the order granting bail on merits, it would be wholly inappropriate for us, in an intra-Court appeal under Clause 15 of the Letters Patent, to supplement, nay substitute the orders under appeal by giving reasons in support of such orders. In the absence of any reasons being assigned for grant of bail, we are not in a position to ascertain whether the relevant factors, which should have been taken into consideration while dealing with applications for bail,

²⁸ (2007) 9 SCC 387

²⁹ (2004) 7 SCC 528

³⁰ (2009) 1 SCC 678 : (2009) 1 SCC (Cri) 594

have been taken into consideration, and whether the orders granting bail are founded on relevant considerations. While dealing with cases where bail is granted without assigning any reasons whatsoever, the appellate Court would only examine the legality of the order passed by the Learned Single Judge, (**Neeru Yadav**¹⁵), and not delve into the merits of the case. In such circumstances, the appellate court has no option but to set aside such orders.

It must also be borne in mind that the power to grant bail is left by the legislature to the discretion of the Magistrate, to be exercised on a consideration of the totality of the facts and circumstances of a given case. Exercise of discretion by the Magistrate must be judicious, informed by tradition, methodised by analogy, disciplined by system and subordinated to the primordial necessity of order in social life. (**Vikas v. State of Rajasthan**³¹). Section 437 Cr.P.C. confers power on the Magistrate to grant bail. In the present case, the petitioners have invoked the jurisdiction of the Magistrate seeking their release on bail. Where applications, for grant of bail, are pending before the Magistrate the High Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would, ordinarily, not take upon itself the task of examining whether or not bail should be granted, and would permit the Magistrate to exercise the discretion conferred on him by the Statute. Ends of justice will be better served by trusting Courts to act objectively, and in consonance with the principles governing the grant of bail, than by divesting them of their discretion which the legislature has conferred upon them, (**Siddharam Satlingappa Mhetre**⁹;

³¹ (2014) 3 SCC 321

Gurbaksh Singh Sibbia v. State of Punjab³²), or for the High Court to take upon itself the task of exercising powers which the Legislature has entrusted to the authority specified in the Statute i.e., the Magistrate.

The jurisdiction of this Court was invoked by the petitioners, in pending Writ Petitions, complaining that the Magistrate suffered from the mistaken notion that the interim orders passed by the High Court earlier on 27.10.2016 precluded him from entertaining the applications for grant of bail. We find considerable force in the submission of the learned Government Pleader for Home that, instead of directing the Magistrate to grant bail, the learned Single Judge should have clarified that the Magistrate was entitled to exercise discretion to grant bail, notwithstanding the interim orders passed by this Court on 27.10.2016, and ought to have directed him to exercise his discretion in accordance with law. Instead of doing so, the Learned Single Judge took upon himself the task of exercising discretion to direct the Magistrate to grant bail imposing the conditions specified in the orders under appeal. While this Court may have been justified in disabusing the Magistrate of his misconception, after clarifying that the earlier interim order dated 27.10.2016 did not prevent him from entertaining the application for grant of bail and in exercising his discretion in accordance with law, exercise of discretion by the learned Single Judge to direct the Magistrate to grant bail, in the facts and circumstances of the present case, was not warranted.

The submission of Sri S. Niranjan Reddy, Learned Senior Counsel, that setting aside the orders passed by the Learned

³² (1980) 2 SCC 565

Single Judge, granting bail to the petitioners, would amount to cancellation of bail, is only to be noted to be rejected. While the petitioners may have been set at large by the learned Magistrate, consequent upon his being directed by the learned Single Judge to grant bail, the order now passed by us setting aside the orders of the learned Single Judge does not amount to cancellation of bail. The concept of setting aside an unjustified order is 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. (**Dhanendra Shriram Bhurle**¹⁰; and **Puran**¹⁴).

The orders under appeal are set aside and the applications for bail filed by the petitioners before the XIX Metropolitan Magistrate are restored to file. Consequent thereto, the learned Magistrate, before whom the petitioners had filed applications seeking bail, shall examine the applications on its merits, exercise the discretion vested in him by the provisions of the Cr.P.C., and pass reasoned orders afresh, and in accordance with law. The Writ Appeals are allowed. However, in the circumstances, without costs. The miscellaneous petitions, if any pending, shall also stand disposed of.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

Date: 15.11.2016

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