

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1192 of 2017

ORDER:

The order, dated 17.04.2017, of the learned Special Sessions Judge for SC/ STs(POA) Act Cases, Nalgonda, passed in CrI.MP.No.186 of 2017 in CrI.MP.No.1022 of 2016 in Cr.No.123 of 2016 of Chinthapally Police Station, is assailed by the petitioners-A1 to A7 in this Criminal Revision Case filed under Sections 397 & 401 of the Code of Criminal Procedure, 1973.

1.1 By the said orders, the learned Special Sessions Judge while allowing the petition of the complainant-State directed the police concerned to take custody of the petitioners-A1 to A7 forthwith by observing *inter alia* that it is for the petitioners-A1 to A7 to apply in accordance with the law and obtain orders of bail from the appropriate Court for the offence with which they are charged.

2. I have heard the submissions of *Sri P. Ashok Goud*, learned counsel representing *Sri Dr. N. Uma Shankar*, learned counsel for the petitioners, the learned Public Prosecutor (TG) representing the 1st respondent-State, and *Sri Baskula Athik*, learned counsel for the 2nd respondent-*de facto* complainant. I have perused the material record.

3. The facts, which lie in a narrow compass, are as follows:

On the first information of the 2nd respondent-informant, the Station House Officer, Chinthapally Police Station, registered a case in Crime no.123 of 2016 against the accused for the offence punishable under Section 307 read with 34 IPC. On their arrest, on 30.08.2016, they were remanded to judicial custody by the Judicial Magistrate of First Class, Devarakonda. As per the orders, dated 19.09.2016, of the learned Special Sessions Judge passed in CrI.MP.No.1022 of 2016 in the aforementioned crime, they were enlarged on

bail subject to the condition that they shall appear before the Station House Officer, Chintapally Police Station, on every Sunday between 10:00 AM & 02:00 PM for a period of three months or till the filing of the charge sheet, whichever is earlier. The said condition imposed automatically elapsed, after the expiry of the said period. There are no violations of the said condition or reports of untoward incidents during the said period or subsequent thereto. However, one of the alleged victims of the crime, Dudimetla Yadaiah, died on 17.12.2016 at 01:00 PM at his house allegedly on account of the injuries sustained in the alleged incident. Upon receiving the death intimation, on 17.12.2016, the Station House Officer of the aforesaid police station filed a memo before the Court of the learned Magistrate seeking alteration of Section of law from 307 IPC to 302 IPC. Thereafter, the State represented by the police concerned filed the afore-stated CrI.MP.186 of 2017 for cancellation of bail, which was earlier granted to the accused, and requested to pass an order directing the arrest of the said accused and to commit them to judicial custody, in view of the changed circumstances stated above. The State relied upon the judgment of the Supreme Court in HAMIDA V. RASHID @ RASHEED¹ in support of the said request. The petitioners-accused having filed a detailed counter resisted the said petition of the State *inter alia* stating that the prosecution failed to state the purpose for which the cancellation of bail is being sought and that the investigation is completed and that the custodial investigation was also completed as the accused were in custody from the date of the arrest till they were enlarged on bail and that in the facts and circumstances of the case, the decision relied by the prosecution is not applicable to the facts of the case and that the grounds for cancellation of bail are not available in this case as the accused never misused their liberty or indulged in any criminal activity or interfered with the course of investigation or attempted to tamper the evidence or threaten the witnesses or did anything warranting cancellation of

¹ (2008) 1 SCC 474

bail and that merely because the victim died at his house after the enlargement of the accused on bail and the Section of law is altered from 307 IPC to 302 IPC, the bail need not be cancelled and the bail earlier granted by the Court of Session inures for the benefit of the accused. However, as noted already, the trial Court cancelled the bail and directed arrest of the petitioners-accused observing that it is for them to obtain bail by approaching the Court concerned.

4. At the hearing, learned counsel for the petitioners-accused while reiterating the case of the accused would submit as follows:

The trial Court misconstrued the legal position obtaining and the facts involved in the matter and wrongly applied the ratio in the decision in Hamid's case (supra) though the ratio in the said decision is not applicable to the facts of the case. The trial Court failed to take note of the fact that it cannot be said that 307 IPC is not a non grave offence and that 302 IPC is a grave offence as both the offences are grave offences and are non bailable. Bail was granted earlier before the alteration of Section of law on the completion of investigation and only when the formality of filing the charge sheet remained. The victim allegedly died at his residence on account of the alleged injuries sustained in the incident. However, no post mortem was conducted and no medical certificate and no post mortem report are produced to show the cause of his death. The deceased allegedly sustained injuries in an alleged incident that was said to have taken place on 28.08.2016. The crime was registered on 28.08.2016. The death of the injured person occurred on 17.12.2016, that is, about three months after the enlargement of the accused on bail and about nearly four months after the alleged incident. Even though there are no grounds to cancel the bail and order re-arrest of the accused in relation to the same crime, the trial Court erroneously allowed the petition of the State and directed arrest by erroneously observing that it is for the petitioners-accused

to apply for and obtain bail. The said order is unsustainable under facts and in law.

5. Per contra, learned Public Prosecutor while giving the details of the chronological events would submit that initially the crime was registered for the offence under Section 307 read with 34 IPC and that after the enlargement of the petitioners-accused on bail, a victim of the incident died on account of the injuries sustained in the incident and that with the permission of the learned Magistrate the Section of law was altered from 307 IPC to 302 IPC and that in view of the changed circumstances the bail that was granted earlier does not inure to the benefit of the accused and that, therefore, the prosecution rightly filed the petition for cancellation of bail and that the Court of Session was justified in passing the orders for re-arrest and commitment of the accused to custody and that since the Court of Session having cancelled the bail gave liberty to the accused to obtain fresh bail orders, no prejudice is caused to the accused.

6. I have given detailed and thoughtful consideration to the facts and submissions. The important questions that arise for consideration are –

- (i) Whether the bail that was granted by the Court of Session to the accused earlier, would inure for their benefit even after the alteration of Section of law from 307 IPC to 302 IPC on account of the death of a victim who was said to have sustained injuries in the incident?
- (ii) And, if not so, whether the petitioners are liable to be arrested in the facts and circumstances of the case, on their not securing fresh bail from an appropriate Court of Session?

7. POINTS:

7.1 The undisputed facts are as follows:

On the first information lodged by the informant/ *de facto* complainant/ 2nd respondent, a crime was registered on 28.08.2016. The accused were arrested and were remanded to judicial custody on 30.08.2016. Subsequently, they were enlarged on bail on 19.09.2016. According to the prosecution, D. Yadaiah, the person who sustained injuries in the said incident died at his house, on 17.12.2016, on account of the injuries sustained in the incident. Hence, a memo was filed seeking alteration of Section of law from 307 of the IPC to 302 of IPC. In the said circumstances, the State having filed an application before the Court of Session sought cancellation of bail and an order for re-arrest and commitment of the accused to judicial custody. But the accused contended that they were in custody from the date of their arrest, on 30.08.2016, and till they were enlarged on bail, on 19.09.2016, and that the earlier bail which was granted to them by a Court of Session after completion of investigation and when the formality of filing of the charge sheet alone remained, inures for their benefit and that, therefore, they need not obtain fresh bail orders. They also contend that the impugned orders cancelling the bail orders and directing their arrest are illegal and unsustainable.

7.2 It is apt to now refer to infra the provisions of Sections 436, 437 and 439 of the Code:

436. In what cases bail to be taken.

(1) When any person other than a person accused of a non- bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided: Provided further that nothing in this section shall be deemed to affect the provisions of sub- section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub- section (1), where a person has failed to comply with the conditions of the bail- bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the

Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

437. When bail may be taken in case of non- bailable offence.

(1) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-
(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence: Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm: Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason: Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his ¹ guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail] or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub- section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.

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

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

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

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

439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing a person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

7.3 It is also apposite to refer to the legal position obtaining.

(i) In *HAMIDA V. RASHID @ RASHEED* (1st supra) which was also relied upon by the prosecution before the trial Court, the facts are as under: -'The Chief Judicial Magistrate initially granted bail to the respondents-accused therein for the offences punishable under Sections 324, 352 & 506 IPC. Subsequently, the offence has been converted to one punishable under Section 304 IPC. By the order impugned before the Supreme Court it was ordered that they would continue to remain on bail even after the offence has been converted to one punishable under Section 304 IPC if they furnished requisite personal bonds and sureties before the court concerned.' In the said factual back drop, the Supreme Court, having considered the legal position, held as under:

"In the case in hand, the accused respondents could apply for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under Section 482 Cr.P.C. in order to circumvent the procedure whereunder they would have been required to surrender as the bail application could be entertained and heard only if the accused were in custody. It is important to note that no order adverse to the accused respondents had been passed by any Court nor there was any miscarriage of justice or any illegality. In such circumstances, the High Court committed manifest error of law in entertaining a petition under Section 482 Cr.P.C. and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. The effect of the order passed by the High Court is that the accused after getting bail in an offence under Section 324, 352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any Court examining the case on merits, as it stood after conversion of the offence. The

procedure laid down for grant of bail under Section 439 Cr.P.C., though available to the accused respondents, having not been availed of, the exercise of power by the High Court under Section 482 Cr.P.C. is clearly illegal and the impugned order passed by it has to be set aside.”

It is also to be noted that in the above case charge under Section 302/ 34 IPC was framed against the accused by the trial Court and that by subsequent orders that were passed by the High Court, the accused were ordered to remain on bail for the offence under Section 302 IPC on furnishing fresh sureties and bail bonds only on the ground that they were on bail for the offence under Section 304 IPC. Be it noted that in the cited decision the original sections are 324, 352 & 506 IPC. The offence under Section 324 IPC is cognizable, non-bailable and non-compoundable and triable by any Magistrate; the punishment is imprisonment of either description for a term which may extend to three years, or fine, or both. The offence under Section 352 IPC is non cognizable, bailable, compoundable and triable by any Magistrate; the punishment is imprisonment for three years, or fine of Rs.500/- or both. The offence under Section 506 IPC covered by Para I is non-cognizable, bailable, compoundable by the person intimidated and triable by any Magistrate and the punishment is imprisonment for two years. The offence covered by Para II is non-cognizable, bailable, non-compoundable and triable by a Magistrate of First Class and the punishment is imprisonment for seven years, or fine, or both. In the cited decision, the altered section of law is Section 304 IPC. The offence under Section 304 IPC covered by Para I is cognizable, non-bailable, non-compoundable and triable by a Court of Session and the punishment is imprisonment for life, or imprisonment for 10 years and fine. Whereas the other offence covered by Para II is cognizable, non-bailable, non-compoundable and is triable by a Court of Session and the punishment is imprisonment for 10 years, or fine, or both. Thus, all the earlier offences are not punishable with either life imprisonment or death whereas the offence under Section 304 IPC, that is, the offence under the altered Section of law is punishable with

imprisonment for life. Further, in the above case, the accused were earlier enlarged on bail, on the very day they were arrested and they were never in judicial custody during investigation or at any time thereafter.

(ii) MEHBOOB DAWOOD SHAIKH V. STATE OF MAHARASHTRA² is relied upon by the accused for highlighting the grounds for cancellation of bail, wherein it was observed as follows:

‘As stated in Raghubir Singh v. State of Bihar [(1986) 4 SCC 481] the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.’

At the outset it is to be noted that in the instant matter, cancellation of bail is not being sought under the normal circumstances but is being sought for the reason that after the accused are granted bail for the offence under Section 307 IPC the victim allegedly succumbed to the injuries sustained in the incident and that the Section of law is altered to 302 IPC and, therefore, the bail earlier granted does not inure for their benefit and that the accused have to obtain fresh bail but they did not apply for fresh bail though they could have done so.

(iii) In PRAHLAD SINGH BHATI V. N.C.T.DELHI³, the facts are as follows:

On 18.3.1999 the respondent No.2/acused is alleged to have brought the deceased to her parental house. There he poured kerosene oil and burnt her alive in the presence of her parents. As no case was registered against the accused, the appellant approached higher

² (2004) 2 SCC 362

³ AIR 2001 SC 1444

authorities including the Prime Minister of India, Home Minister of India and Commissioner of Police, Delhi with the result that Deputy Commissioner of Police (South District) directed the registration of case under Sections 306 and 498A IPC. After registration of the case on 3.6.1999, the investigating officer recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure. The accused-respondent moved an application for grant of anticipatory bail in terms of Section 438 of the Code. As the bail application was not seriously opposed by the Investigating Agency, the Additional Sessions Judge, New Delhi granted interim bail on 16.6.1999. Application for cancellation of the anticipatory bail was dismissed. However, while dismissing such an application, on 13.9.1999, the Additional Sessions Judge observed that if on facts a case under Section 302 is made out against the accused, State shall be at liberty to arrest him. On 1.7.2000, charge-sheet was filed against the accused under Sections 302, 406 and 498A IPC. The accused was directed to appear before the Metropolitan Magistrate, New Delhi, on 8.8.2000. As he did not appear on that date in that Court, non-bailable warrants were issued against him for 22nd August, 2000. In the meanwhile the respondent filed a criminal miscellaneous application under Section 482 of the Code in the High Court without impleading the appellant as a party. The High Court kept the order, dated 8.8.2000, of the Magistrate in abeyance till 22nd August, 2000. In his petition filed in the High Court, the accused suppressed the fact that a charge-sheet under Section 302 has been filed against him. Notice to the appellant was issued on 17th August, 2000; but, in the meantime the respondent moved an application under Section 438 of the Code for anticipatory bail before the Additional Sessions Judge, Delhi, for which no order was passed and direction was issued to the accused to first appear before the Magistrate on 22nd August, 2000 and pray for bail in accordance with law. When he appeared before the Magistrate, he was admitted on bail even in a case under Section 302 IPC.

Thus the facts of the above cited case disclose that the accused was granted anticipatory bail for a lesser offence and insisted for regular bail even though he was subsequently found to be involved in a case of murder. The accused was earlier granted bail for the offences punishable under Sections 498-A, 306 & 406 IPC. The offence under Section 498-A IPC is cognizable, non-bailable,

non-compoundable and triable by a Magistrate of First Class; the punishment is imprisonment for a term which may extend to three years and fine. The offence under Section 306 IPC is cognizable, non-bailable, non-compoundable and triable by a Court of Session; the punishment is imprisonment for a term which may extend to ten years and fine. The offence under Section 406 IPC is cognizable, non-bailable, compoundable and triable by a Magistrate of First Class; the punishment is imprisonment of either description for a term which may extend to three years, or fine, or both. The Supreme Court held that with the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. In the cited decision, the accused secured bail for the offences punishable under Sections 498-A IPC, 306 IPC & 406 IPC, and none of them is punishable with imprisonment for life.

7.4 Reverting to the facts of the instant case, it is necessary to refer to the penal provisions involved in the present case.

Section 307 IPC:

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Section 302 IPC:

302. Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

The offence under Section 307 IPC is cognizable, non-bailable and triable by a Court of Session. In the case on hand since it is alleged that hurt is caused to the victim, the accused shall be liable to imprisonment for life, in the event

the prosecution successfully establishes the guilt of the accused for the said offence. The offence under Section 302 IPC is cognizable, non-bailable and triable by a Court of Session; the punishment is death or imprisonment for life and fine. In the case on hand, according to the case of the prosecution, the victims received bleeding injuries on their heads and that the mother and sister who came across between the assaulters and the victims to rescue them were also beaten and that one of the victims died on account of the injuries sustained in the incident though no medical certificate or post mortem certificate is produced before the Court. Therefore, the offence punishable under Section 307 IPC for which the bail was granted is also punishable with imprisonment for life. Under the altered Section of law, viz., 302 IPC, the punishment is death or imprisonment for life. Further, the earlier bail order was granted by a Court of Session and not by a Magistrate as the offence under Section 307 IPC is also triable by a Court of Session.

7.5 On a careful consideration of the provisions of law and the legal position obtaining, this Court is of the opinion that the following illustrations can be envisioned for the purposes of further elucidating the legal position which this Court notices or envisages:

Illustration (i):

The accused was initially charged for the offence punishable under Section 324 IPC, which is punishable with imprisonment of either description for a term which may extend to 3 years or fine or with both. He obtained bail for the said offence, which is triable by a Magistrate. Subsequently the investigation revealed that the offence is punishable under Section 325 IPC where under the accused shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine. In such a situation where both the offences are triable by a Magistrate, the Magistrate will be within his jurisdiction in asking the accused to furnish fresh bonds for the newly added section of 325 IPC on the premise that the accused would continue to remain on bail earlier granted for the offence punishable under Section 324 IPC.

Illustration (ii):

The accused was enlarged on bail by the learned Magistrate for an offence punishable under Section 324 IPC. However, after investigation the final report is filed stating that the offence committed is punishable under 328 IPC. For the said offence 'causing hurt by means of poison etcetera with intent to commit offence' the accused shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Further, the said offence is triable by the Court of Session and not by a Magistrate. As the offence under the newly added section is triable by a Court of Session, the Magistrate will not have jurisdiction to ask the accused to remain on bail earlier obtained and furnish fresh bail bonds for the newly added section. Hence, in such a case the accused is required to obtain fresh bail from a Court of Session and he cannot continue to remain on bail earlier granted by the learned Magistrate for the offence punishable under section 324 IPC.

Illustration (iii):

The Court of Session granted bail to the accused for the offence punishable under Section 307 IPC, which is punishable with imprisonment for life and which is triable by a Court of Session. After investigation the section of law was altered to section 302. Under the said newly added Section of law, the accused shall be punished with death or imprisonment for life and shall also be liable to fine. The said offence is also triable by the Court of Session. Since, the earlier bail is granted by a Court of Session for the offence punishable with imprisonment for life and as under the newly added section, the accused shall be punishable with death or imprisonment for life and the Court of Session is competent to grant bail for the said offence also, the bail earlier granted by the Court of Session for the offence under Section 307 IPC would inure to the benefit of the accused. Hence, the accused can continue to remain on bail earlier granted and it would be sufficient if the accused appears before the Court of Session concerned and furnishes fresh bonds for the newly added section.

In the case on hand, the date of commission of the alleged offence is 28.08.2016. The accused were arrested and remanded to judicial custody on 30.08.2016. They remained in custody for about twenty days, that is, till they were enlarged on bail, on 19.09.2016, by virtue of the orders of the Court of

Session. Thus, the accused were in custody during the course of investigation for about 20 days. Further, they were enlarged on bail subject to condition that they shall appear before the Station House Officer, Chintapally Police Station, every Sunday between 10:00 AM and 02:00 PM for three months or till filing of the charge sheet, whichever is earlier and the said condition which was duly complied with had elapsed after the expiry of the said period. The accused did not violate any conditions of bail and there are no reports of any untoward incidents at any time after the alleged incident or after the enlargement of the accused on bail. The victim died, on 17.12.2016 at 01:00 PM, at his house allegedly on account of the injuries sustained in the incident, that is, about nearly three months after the enlargement of the petitioners-accused on bail and about four months after the incident. As a result, the Section of law is altered from 307 IPC to 302 IPC. Even for the offence under Section 302 IPC, the punishment is death or life imprisonment; and, the Court of Session is competent to grant bail; and, the offence is also triable by the Court of Session.

8. On the above analysis and for all the aforesaid reasons, this Court finds that the petitioners-accused in the instant case can continue to remain on bail earlier granted to them by the Court of Session for the offence punishable under section 307 IPC despite the alteration of section of law to 302 IPC and it would be sufficient if they and their sureties appear before the Court of Session concerned and furnish fresh bonds for the newly added section.

9. In the result, the Criminal Revision Case is allowed in part and the impugned order is set aside. As the petitioners-accused could remain on bail earlier granted to them, the petitioners-accused are directed to appear, along with their sureties, within two (02) weeks from the date of receipt of a copy of this order, before the Court of Session, which granted earlier bail orders, and execute fresh bonds for the altered and newly added section. However, on

failure of the petitioners-accused to comply with the aforesaid direction, the revision case shall stand dismissed and the impugned orders of the Court below shall stand revived.

As a sequel, the pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

13.07.2017

Note: Issue CC by 19.07.2017

(B/o)

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