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**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on : 24/07/2018****Order Delivered on : 10/08/2018****M.Cr.C. No. 2882 of 2018**

1. R.T. Ram Chandran, S/o late R.G. Thagrajan, aged about 70 years, R/o 12/18, Ispat Nagar, Risali, Bhilai Nagar, Police Station Newai, Bhilai, District Durg, Chhattisgarh.
2. S. Swaminathan, S/o. Late M. Subramanyam Iyer, aged about 54 years, R/o Nehru Nagar (East) 12-A/7, Bhilai, Tahsil and District Durg, Chhattisgarh.

**---- Applicants****Versus**

1. State Of Chhattisgarh Through Police Station Bhilai Nagar, District-Durg, Chhattisgarh.
2. G. Raviraja, S/o. Late K.G. Achari, aged about 45 years, R/o Plot No. 143, Maitri Kunj, Risali, Bhilai, Police Station Newai, Tahsil & District Durg, Chhattisgarh.

**---- Respondents**


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|--------------------------|---|--------------------------------------------------------|
| For the Applicants       | : | Shri Manoj Paranjpe and Shri P.R. Patankar, Advocates. |
| For the Respondent/State | : | Shri Anupam Dubey, Dy. G.A.                            |
| For the Objector         | : | Shri Devershi Thakur, Advocate.                        |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****CAV ORDER**

Heard.

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicants who have been arrested in connection with Complaint Case No.2302 of 2017, registered at Police Station – Bhilai Nagar, District – Durg, Chhattisgarh for the offence punishable under Sections 417, 468/ 34 of the Indian Penal Code.

2. Learned counsel for the applicants submit that applicant No.1 – R.T. Ram Chandran is President and applicant No. 2 – S. Swaminathan is Secretary of Shankara Education Society, Bhilai. Respondent No.2 – G. Raviraja was awarded annual maintenance contract of the computers of the society in the year 2006. The said contract was terminated in the year 2011. Respondent No.2 raised a dispute before the Registrar of Firms and Society, Chhattisgarh regarding the constitution of elected body of the society which has been disposed of vide order dated 28.3.2013. Aggrieved by the said order, and the directions issued therein, applicant No.2 preferred an appeal before the Appellate Authority which has been disposed of vide order dated 16.1.2014 (Annexure-A/7).

3. It is submitted by counsel for the applicants that respondent No.2 filed Writ Petition (C) No. 428 of 2014 (Annexure-A/5) before this Court against Shankara Education Society, Bhilai addressing his grievances in which no interim order has been passed in favour of the petitioner i.e. respondent No.2. Subsequent to that, respondent No.2 has filed a criminal complaint before the concerned Court making various false allegations against the applicants. The police report in the complaint case mentions that there is a dispute and the Registrar Society & Firms has the authority to take cognizance and resolve the same. Even then, the concerned Court has taken cognizance for trial against the applicants for the offences under Sections 417, 468 of the IPC because of which, the applicants are apprehending arrest in this case as the offence under Section 468 of the IPC is non-bailable in nature.

4. The applicants have filed Cr.M.P. No. 1039 of 2017 before this Court in which order dated 11.8.2017 Annexure -A/8 has been passed granting interim relief to the applicants, that no coercive steps shall be taken against them till the next date of hearing, which is still continuing. Earlier the applicants had also made an application under Section 438 of the Cr.P.C. in M.Cr.C.(A) No. 398 of 2017 and the same has been disposed of on 21.8.2017 as withdrawn by the applicants' side. Subsequent to that, the applicants moved an application under Section 437 before the trial Court which has been rejected by order dated 23.8.2017. The applicants had given appearance before the Court, praying for bail, but they were not arrested and placed in detention, on account of the protective order of this Court.

5. It is further submitted by counsel for the applicants that on the date of arguments i.e. 24.7.2018 the applicants were present before this Court, which may be deemed as custody because the applicants have submitted themselves before this Court. Reliance has been placed on the judgment of Supreme Court in the case of **Niranjan Singh and Another vs. Prabhakar Rajaram Kharote and Others** reported in **(1980) 2 SCC 559** in which it was held that a person shall be deemed to be in judicial custody when he surrenders before the Court and submits to its directions. It is submitted that in the judgment of this Court in the case of **Pramod Kumar Mehta and Another vs. State of Chhattisgarh** reported in **2007(1) C.G.L.J. 470**, it has been held by the Division Bench of this Court that when a person appears before the Court that is also custody, as he is in subjection to the lawful authority of the Court and during the existence of protective order in favour of the applicants, it may be considered that they are under deemed custody.

Hence, it is prayed that the applicants be granted regular bail.

6. Learned counsel for the State submits that the present application filed under Section 439 of the Cr.P.C. by the applicants is misconceived for the reason that there is no protective umbrella in favour of the applicants. The concept of protective umbrella came up for consideration in the case of **Salauddin Abdulsamad Shaikh vs. State of Maharashtra** reported (1996) 1 SCC 667. According to which, anticipatory bail is granted to the accused persons for a limited period and during the continuation of that period the accused persons had liberty to file an application before the concerned Court for grant of regular bail. There is no such direction in Pramod Kumar Mehta's case (supra) that a protective order under Section 482 of the Cr.P.C. can be regarded as protective umbrella as considered in Salauddin Abdulsamad Shaikh's case (supra). Hence, the application is not maintainable.

7. Learned counsel for respondent No.2 opposes the submissions made by counsel for the applicants and submits that the application under Section 439 of the Cr.P.C. filed by the applicants is not maintainable as the applicants are not in custody. A definition of custody in Niranjana Singh's case (supra) has been distinguished by Hon'ble Supreme Court in the case of **D.K. Ganesh Babu vs. P.T. Manokaran and Others** reported in (2007) 4 SCC 434, in which it has been held that while dealing under Section 438 of the Cr.P.C., the Court shall not pass any order restraining arrest. In Pramod Kumar Mehta's case (supra), the Division Bench of this Court has distinguished on the point of custody as defined in Niranjana Singh's case (supra) which specifically says that the protective umbrella exists only under Section

438 of the Cr.P.C. in view of the principle laid down in Salauddin Abdulsamad Shaikh's case (supra). Reliance has been placed in the case of D.K. Ganesh Babu's case (supra) and **Sunita Devi vs. State of Bihar and Another** reported in **(2005) 1 SCC 608**, in which it has been held that unless a person is in custody his application for bail under Section 439 of the Cr.P.C. is not maintainable. Reliance has also been placed on the judgment of the Supreme Court in the case of **State of Telangana vs. Habib Abdullah Jeelani and Ors.** reported in **2017(1) G.L.H. 534** in which Hon'ble Supreme Court has condemned granting interim protection from arrest under the provisions under Section 482 of the Cr.P.C. as well as under Article 226 of the Constitution of India. Hence, it is prayed that the application be rejected.

8. In reply, learned counsel for the applicants submit that the applicants have appeared before this Court and submitted themselves to the jurisdiction and directions of this Court. Hence, this satisfies the requirement under Section 437(1) of the Cr.P.C. which specifically mentions that when a person appears before a Court, he shall be deemed in custody and this also covers Section 439 of the Cr.P.C. according to the interpretation made in Niranjana Singh's case (supra). Subsequently, the protective order existing in favour of the applicants also shows that they are under the control and directions of the High Court because of which, they may be deemed in custody. Hence, the application is maintainable.

9. Heard counsel for both the parties and perused the case diary.

10. Complaint has been brought by respondent No.2 against the

applicants alleging that the applicants are engaged in getting elected as office bearers of the Society in a wrongful manner and are illegally and unauthorizedly conducting the business of the said society. The Court below has taken cognizance against the applicants for the trial in the offences under Sections 417 and 468 of the IPC and notices have been issued for their appearance before the said Court. Hence, this case.

11. The questions that arise for determination are as follows:

- (1) Whether the applicants shall be deemed in custody in accordance with the custody defined in Niranjana Singh's case?
- (2) Whether the appearance of the applicants before this Court at the time of hearing of this case can be regarded as custody for the purposes of Section 439 of the Cr.P.C.?
- (3) Whether the protective order in favour of the applicants can be considered as protective umbrella for the purposes of deciding the application under Section 439 of the Cr.P.C.?

12. In Niranjana Singh's case (supra), the Supreme Court has held in paragraph 7 as follows:

'7. When is a person in custody, within the meaning of Section 439 Cr.P.C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the

physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.'

13. In Pramod Kumar Mehta's case (supra), the Division Bench of this Court has held in paragraph 23 is as follows:

'23. The crucial question is when is a person in custody within the meaning of Section 439 of the Criminal Procedure Code? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the Court having been remanded by judicial order, or having offered himself to the Court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the Court or is in the physical hold of an officer with coercive power is in custody for the purpose of [Section 439](#). The Court further held that he can be in custody not merely when the police arrests him, produced him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions.'

14. Thus, it is a clear pronouncement without making any differentiation of provisions under Sections 437 and 439 of the Cr.P.C. because in Section 437 of Cr.P.C. it is provided that when a person appears before the Court, in that case the Court shall have jurisdiction to consider for granting regular bail to him, but Sub-section (1) of this provision clearly specifies that the Court where the accused persons appear should not be the High Court or Court of Sessions.

15. Section 439 of the Cr.P.C. does not specify about the appearance of the accused before that Court. It simply says that any person accused of offences and in custody may be released on bail. In Niranjana Singh's case (supra) Hon'ble Supreme Court has not made any difference between the two sections and according to that decision, the appearance of the accused persons before the Court of Sessions shall also be deemed as custody which has been mentioned in paragraphs 8 and 9 of the judgment of Hon'ble Supreme Court in Niranjana Singh's case (supra):

'8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move

the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439 Cr.P.C. We might have taken a serious view of such a course, indifferent to mandatory provisions by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below.'

16. The Division Bench of this Court in Pramod Kumar Mehta's case (supra) has followed the view laid down in Niranjana Singh's case (supra). In D.K. Ganesh Babu's case (supra), the Hon'ble Supreme Court has not distinguished from what was held in Niranjana Singh's case (supra). Similarly, in Sunita Devi's case (supra), it has been held that in view of the decision in Niranjana Singh's case (supra) there cannot be any doubt that unless a person in custody, application under Section 439 of the Cr.P.C. would not be maintainable which shows affirmation of the view laid down by the Supreme Court in Niranjana Singh's case (supra). Hence, after due consideration, on all the submissions and case laws cited, the surrender of the applicant

before a Court or his appearance before a Court for praying for grant of bail can be deemed as custody and in that case the application under Section 439 of the Cr.P.C. shall be considered as maintainable. This answers question Nos.1 & 2.

17. The question of protective umbrella existing in favour of the applicants is to be considered and answered. It was held in Salauddin Abdulsamad Shaikh's case (supra) that while granting anticipatory bail under the provisions of Section 438 of the Cr.P.C. a Court of Sessions or High Court granting such bail shall not bypass the jurisdiction of the regular Court to deal with the matter on the basis of the evidence present before it, as usually the anticipatory bail is granted at the stage when investigation is not complete. This view of the Supreme Court has given the concept of protective umbrella against arrest. It has been discussed in Pramod Kumar Mehta's case (supra) decided by the Division Bench of this Court, that a bail application filed under Section 439 of the Cr.P.C. within protective umbrella period is maintainable even in case during the pendency of the said application, the protective period has expired.

18. According to the facts of this case, it is clear and not disputed that there is no order in favour of the applicants under Section 438 of the Cr.P.C., for a limited period and directing them to approach the regular criminal Court to seek grant of regular bail under the provisions of Sections 437 and 439 of the Cr.P.C. The order that is in favour of the applicants in W.P.(C) No. 428 of 2014 has been passed under Section 482 of the Cr.P.C. only to this extent that no coercive steps shall be taken against them. The same cannot be regarded as a protective umbrella in view of the decision of the Supreme

Court in Salauddin Abdulsamad Shaikh's case (supra) and decision of this Court in Pramod Kumar Mehta's case (supra) and the genesis of the order passed under Sections 438 and 439 of the Cr.P.C. is totally different from that of order that is passed under Section 482 of the Cr.P.C. in favour of the applicants.

19. In **Hema Mishra vs. State of Uttar Pradesh and Ors.**, reported in **(2014) 4 SCC 453**, the Supreme Court has held in paragraph 22 is as follows:

'22. I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge-sheet, whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in **State of Orissa v. Madan Gopal Rungta** reported in **AIR 1952 SC 12**, while dealing with the scope of [Article 226](#) of the Constitution, held as follows :-

"6. ... Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application. The directions had been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and ... that was not within the scope of [Article 226](#). An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of

mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under [Article 226](#) of the Constitution. ... the language of [Article 226](#) does not permit such an action.”

20. Similarly, the order granting protection from arrest in this case cannot be deemed as an order of anticipatory bail and such order cannot bypass the statutory requirements for ensuring the appearance of the accused persons before the investigating authority of trial Court under the provisions of Sections 437, 438 and 439 of the Cr.P.C. Hence, for these reasons, I am of this view that though there is order restraining the applicants from arrest in the petition under Section 482 of the Cr.P.C. but without any liberty being granted to the applicants to approach this Court for grant of anticipatory or regular bail, it cannot be said that this order has the effect of protective umbrella in favour of the applicants. Hence, the finding on this point in question No.3 is given accordingly.

21. After due consideration on all the material on record and the allegations against the applicants that have been made in the complaint case, I am of the view that the applicants deserve to be granted regular bail. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed.

22. It is directed that the applicants shall be released on bail on appearing before the concerned Court and on each of them furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for their appearance as and when directed. In case any default is committed by the applicant/s in appearing before the concerned trial Court, this order granting bail shall stand cancelled automatically.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge