

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1972/2018**
SHRI GAURAV JAIN

..... Petitioner

Through: Mr. Ashwin Vaish, Mr. V. Pandey and
Mr. Kunal Awana, Advs.

versus

STATE

..... Respondent

Through: Inspector Gurmail Singh, EOW.
Mr. Manish Biala and Mr. Devesh Ratan, Advs.
for the complainant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

08.02.2019

The petitioner has deposited an amount of Rs.1.5 crores in compliance of the previous order. He has joined investigations and undertakes to do the same on every occasion when he is called by the IO.

Mr. Ashwin Vaish, the learned counsel for the petitioner, submits that Rs.50,000/- each have been deposited to the Delhi High Court Advocates' Welfare Fund and to the Delhi High Court Staff Welfare Fund. Let receipts of such deposits be filed on record and a copy of the same be supplied to the learned counsel for the respondent.

He relies upon the order of this Court in *Vijay Tata vs. State* passed on 21.11.2013 in CrI. M.C. 4114/2013 as well as on the dicta of the Supreme Court in *Sundeep Kumar Bafna v. State of Maharashtra and another* AIR 2014 SC 1745; which, respectively, held inter alia.

“In the peculiar facts and circumstances of the case, it

is directed that upon petitioner appearing before the trial court on the next date of hearing, petitioner-Vijay Tata be admitted to bail by the trial court upon his furnishing the bail-bond in the sum of Rs.50,000/- with one local surety of the like amount. In the charge-sheets filed, in which petitioner has already settled the subject matter of this FIR with the complainant-party, petitioner shall not be required to furnish multiple sureties and would be permitted by the trial court to furnish cash sureties in the other charge-sheets pertaining to this FIR in which settlement with the complainant-party has been acted upon.”

The Supreme Court held inter alia, as under:

“2. A neat legal nodus of ubiquitous manifestation and gravity has arisen before us. It partakes the character of a general principle of law with significance sans systems and States. The futility of the Appellant’s endeavours to secure anticipatory bail having attained finality, he had once again knocked at the portals of the High Court of Judicature at Bombay, this time around for regular bail under Section 439 of the Code of Criminal Procedure (CrPC), which was declined with the observations that it is the Magistrate whose jurisdiction has necessarily to be invoked and not of the High Court or even the Sessions Judge. The legality of this conclusion is the gravamen of the appeal before us. While declining to grant anticipatory bail to the Appellant, this Court had extended to him transient insulation from arrest for a period of four weeks to enable him to apply for regular bail, even in the face of the rejection of his Special Leave Petition on 28.1.2014. This course was courted by him, in the event again in vain, as the bail application preferred by him under Section 439 CrPC has been dismissed by the High Court in terms of the impugned Order dated 6.2.2014. His supplications to the Bombay High Court were twofold; that the High Court may permit the petitioner to surrender to its jurisdiction and secondly, to

enlarge him on regular bail under Section 439 of the Code, on such terms and conditions as may be deemed fit and proper.

22. In the case in hand, we need not dwell further on this question since the Appellant has filed an application praying, firstly, that he be permitted to surrender to the High Court and secondly, for his plea to be considered for grant of bail by the High Court. We say this because there are no provisions in the CrPC contemplating the committal of a case to the High Court, thereby logically leaving its powers untrammelled. There are no restrictions on the High Court to entertain an application for bail provided always the accused is in custody, and this position obtains as soon as the accused actually surrenders himself to the Court. Reliance on R vs Evans, (2012) 1 WLR 1192, by learned Senior Counsel for the respondents before us is misplaced, since on its careful reading, the facts are totally distinguishable inasmuch as the accused in that case had so engineered events as not to be available in persona in the Court at the time of the consideration of his application for surrender. The Court of Appeal observed that they “do not agree that reporting to the usher amounts to surrender”. The Court in fact supported the view that surrender may also be accomplished by the commencement of any hearing before the Judge, however brief, where the accused person is formally identified and plainly would overtly have subjected himself to the control of the Court. Incontrovertibly, at the material time the Appellant was corporeally present in the Bombay High Court making Evans applicable to the case of the Appellant rather than the case of the respondent. A further singularity of the present case is that the offence has already been committed to Sessions, albeit, the accused/Appellant could not have been brought before the Magistrate. It is beyond cavil “that a Court takes cognizance of an offence and not an offender” as observed in Dilawar Singh vs

Parvinder Singh, (2005) 12 SCC 709, in which Raghubans Dubey vs State of Bihar, AIR 1967 SC 1167, was applied. Therefore, the High Court was not justified in directing the Appellant to appear before the Magistrate.

26. In conclusion, therefore, we are of the opinion that the learned Single Judge erred in law in holding that he was devoid of jurisdiction so far as the application presented to him by the Appellant before us was concerned. Conceptually, he could have declined to accept the prayer to surrender to the Courts' custody, although, we are presently not aware of any reason for this option to be exercised. Once the prayer for surrender is accepted, the Appellant before us would come into the custody of the Court within the contemplation of Section 439 CrPC. The Sessions Court as well as the High Court, both of which exercised concurrent powers under Section 439, would then have to venture to the merits of the matter so as to decide whether the applicant/Appellant had shown sufficient reason or grounds for being enlarged on bail.

27. The impugned Order is, accordingly, set aside. The Learned Single Judge shall consider the Appellant's plea for surrendering to the Court and dependent on that decision, the Learned Single Judge shall, thereafter, consider the Appellant's plea for his being granted bail. The Appellant shall not be arrested for a period of two weeks or till the final disposal of the said application, whichever is later....."

In view of the above, the interim orders shall continue till 13.02.2019 when the petitioner shall surrender before the learned Trial Court, which would enlarge him on bail on his furnishing a personal bond in the sum of Rs.5 lacs with two sureties of the like amount.

The monies deposited by the petitioner shall be kept in such Fixed Deposit Receipts, which may fetch the highest rate of interest.

The petition is disposed off in the above terms.

A copy of this order be given *dasti* to the parties, under the signature of the Court Master.

NAJMI WAZIRI, J

FEBRUARY 08, 2019/acm