

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.02.2020	21.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 28874 OF 2019

V.Sridharan ..Accused/ Petitioner

- Vs -

1. State, by
Deputy Superintendent of Police
V & AC, Alandur.
2. Special Public Prosecutor
CBI Cases, Chennai. ..Complainant/ Respondents
(R2 impleaded suo motu vide order
of Court dated 25.10.2019)

Criminal Original Petition filed u/s 482 of the Code of Criminal Procedure, to call direct the Special Judge for Cases under the Prevention of Corruption Act - cum - Chief Judicial Magistrate, Thiruvallur, to take the Petition in Crl. M.P. No.9430/2019 dated 22.10.19 on file and to dispose of the same on merit.

For Petitioner : Mr. R.Shanmugasundaram, SC, for
Mr. S.Anbalagan

For Respondents: Mr. K.Srinivasan, Spl. PP (CBI Cases)
for R-2
Mr. Iyyapparaj, APP for R-1

ORDER

A piquant situation has arisen in this case, which has prompted the petitioner to file this petition before this Court.

2. The petition filed before the District and Sessions Court has been returned directing the petitioner to seek the relief of anticipatory bail before the proper forum. Equally, the petition filed before the Special Court to deal with cases under the Prevention of Corruption Act (for short 'PC Act') has been returned as not maintainable before the Chief Judicial Magistrate Court. The petitioner, therefore, left with no other alternative, is constrained to knock the doors of this Court, by preferring the present petition praying this Court for a direction to

the Special Court to deal with cases under the Prevention of Corruption Act to take up the petition filed for anticipatory bail on file and hear the same on merits.

3. The brief facts of the case is that the petitioner is an accused in Crime No.20/2019, which was registered for an u/s 7 of the Prevention of Corruption Act, which is under investigation. The petitioner, apprehending arrest by the respondent, on 15.10.2019, moved an anticipatory bail application u/s 438 Cr.P.C. before the District & Sessions Judge, Thiruvallur. However, the said petition was returned with an endorsement to file it before the proper forum. Subsequent to the said direction, the petitioner preferred another petition on 21.10.19 in CrI. M.P. No.9430/2019, which was listed before the Special Judge-cum-Chief Judicial Magistrate, dealing with Prevention of Corruption Act cases on 22.10.19. However, the said petition was also returned with an endorsement as to how the petition u/s 438 Cr.P.C. is maintainable before the Court of Chief Judicial Magistrate. In view of the above ambiguity raised by the two forums with regard to lack of jurisdiction, left with no other alternative, the petitioner has filed the present petition before this Court for a direction to the Special Judge for cases under the Prevention of Corruption Act-cum-Chief Judicial Magistrate at Thiruvallur to take the abovesaid petition on file and dispose of the same on merit.

4. Mr. Shanmugasundaram, learned senior counsel appearing for the petitioner submits that the petitioner was implicated for the offence u/s 7 of the PC Act and apprehending arrest at the hands of the 1st respondent, the petitioner preferred anticipatory bail petition, initially before the District & Sessions Court, Thiruvallur, in which the petitioner was directed to approach the proper forum. Subsequent to the said direction, the petitioner filed anticipatory bail application before the Special Court constituted u/s 5 of the PC Act.

5. Learned senior counsel for the petitioner submits that Section 5 of the PC Act stipulates that the Special Judge shall be deemed to be a Court of Session and, therefore, for all purposes, the Special Judge is vested with jurisdiction to entertain the petition for anticipatory bail. Learned senior counsel also drew the attention of this Court to Section 3 (2) of the PC Act which prescribes the qualification for appointment of Special Judge, which stipulates that the person, who is appointed as Special Judge should be holding the rank of a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge, as prescribed under the Code of Criminal Procedure.

6. Therefore, it is the submission of the learned senior counsel for the petitioner that the Special Judge, appointed under the PC Act, being an officer in the cadre of Sessions

Judge or an Additional Sessions Judge or an Assistant Sessions Judge, is placed in an equivalent rank as that of the Sessions Judge in-charge of Court of Session and for all purposes, the Special Judge is deemed to be a Court of Session and, therefore, the Special Judge derives power and jurisdiction to entertain the application for anticipatory bail and pass orders. Learned senior counsel placed reliance on the decision of the Full Bench of the Patna High Court on Reference by the Sessions Judge, Patna in Criminal Reference No.1 of 1981 (1991 SCC OnLine Pat 286 :: 1993 CrL. L.J. 2436), wherein by majority, it has been held that the Special Judge is entitled to exercise all the powers of a Sessions Judge as provided under the Criminal Procedure Code in relation to the proceedings under the PC Act so far as they are not inconsistent with the provisions of the PC Act. In fine, the Full Bench has held that the Special Judge is clothed with power to entertain both anticipatory bail as well as regular bail applications made by an accused in respect of allegations made under the PC Act. It is submitted by the learned senior counsel for the petitioner, that though the above decision was brought to the notice of the courts below, however, without adverting to the said decision, the matter has been shuttled from one corner of the court to the other corner of the court, thereby leaving the petitioner's fate hanging by the shred of a thread.

7. It is therefore the submission of the learned senior counsel that the intent and purpose of the PC Act being clear that the Special Judge is a Court of Session for all purposes, the petition for anticipatory bail u/s 438 Cr.P.C., before the Special Judge is very well maintainable.

8. Per contra, Mr. Iyyapparaj, learned Addl. Public Prosecutor appearing for the 1st respondent submits that Section 438 Cr.P.C. precludes all the Courts, other than the Court of Session or the High Court to entertain anticipatory bail application and in the absence of jurisdiction conferred on any other Court, more especially, in this case the Special Court to deal with cases under the Prevention of Corruption Act, the Special Court has acted well within its powers in holding the petition filed before it as not maintainable and, therefore, the remedy for the petitioner lies only before the Court of Session, before which the petitioner has to move for anticipatory bail.

9. In view of the complex question of law relating to court which is clothed with jurisdiction to grant of anticipatory bail is involved, this Court, suo motu impleaded the Special Public Prosecutor for CBI cases as a party respondent, vide its order dated 25.10.2019. Pursuant to the said impleadment, Mr. K. Srinivasan, learned Special Public Prosecutor appeared before this Court and placed his arguments, in essence concurring with the arguments advanced by the learned Addl. Public Prosecutor and submitted that the Special Court to deal with cases under the PC Act does not have jurisdiction to

entertain any application for anticipatory bail. Learned Special Public Prosecutor placed reliance on the proceedings issued under the seal of the Hon'ble Chief Justice by the Registrar General of this Court, in which the head of the Sessions Unit is vested with the power relating to allocation of cases to the judicial officers under his control. The District Judges, Addl. District Judges, Assistant District Judges and all other judicial officers, are subordinate to the the Principal District & Sessions Judge and that cases are allotted by the head of the District Unit to all the Judges. The only deviation in the above procedure is that, allotment of cases to the Special Judge is on the basis of the PC Act itself, but administratively, the allotment of all the said cases flow from the administrative orders of the head of the District Unit, which is in consonance with the PC Act. The High Court, on the basis of the Government Order, has only designated a particular Judge, in the rank of a District Judge/Chief Judicial Magistrate, as the case may be, as Special Judge to deal with cases under the Prevention of Corruption Act and allotment is made by the head of the District Unit to the concerned Special Judge on the basis of the provisions of the PC Act coupled with the proceedings issued by the High Court. Therefore, it is clear that the Special Judge is subordinate to the Principal District & Sessions Judge, the head of the District Unit, who acts as the Court of Session and, therefore, the Special Judge, not being the Court of Session, as mandated u/s 9 of the Cr.P.C., does not have jurisdiction to take up anticipatory bail application and only the Court of Session or the High Court is vested with jurisdiction to take up anticipatory bail applications, as is envisaged u/s 438 Cr.P.C. Therefore, rightly so, the Special Court has declined to entertain the petition for anticipatory bail and, therefore, no interference is called for with the order passed by the Special Court. The petitioner has to get his grievance redressed either before the Court of Session, viz., the Principal District & Sessions Court or before the High Court by filing appropriate application.

10. It is the vehement contention of the learned senior counsel for the petitioner that the act of the Special Judge is diametrically opposite the decision of the Full Bench of the Patna High Court. It is the categorical submission of the learned senior counsel, that the Special Judge is clothed with powers to entertain an application for anticipatory bail, by drawing the attention of this Court to the view of the majority on the Full Bench.

11. Countering the said submission, learned counsel appearing for the respondents drew the attention of this Court to the view expressed by the dissenting Judge (minority view) on the Bench and submitted that the said view is the one that applies on all fours not only when considered with the intent of the Parliament in enacting the said legislation, but also the relevant Sections of the said enactments vis-a-vis the Code of

Criminal Procedure, which makes it obvious that jurisdiction has been vested only with the Court of Session and the High Court and with no other authority, howsoever equivalent he may be in rank to the said authorities as envisaged u/s 438 Cr.P.C.

12. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also browsed through the various provisions of law adverted to by the learned counsel on either side and also gave an in-depth consideration to the Full Bench decision of the Patna High Court, both the majority view as also the dissenting view, on which much reliance and counter reliance has been placed by the learned senior counsel and the counsel for the petitioner and respondent to canvass their plea.

13. The pivotal issue that arises for consideration in the present case is :-

"Whether jurisdiction/power is vested in the Chief Judicial Magistrate/Assistant District Judge/Addl. District Judge, who act as Special Judge under the PC Act to entertain an anticipatory bail application u/s 438 Cr.P.C."

14. The composite contention of the learned senior counsel appearing for the petitioner, as succinctly stated above, is that the basic qualification for appointment of a person as Special Judge being that the said person should be a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge as codified under the Code of Criminal Procedure and that the said Special Judge is empowered to deal with the offences specified in sub-section (1) of Section 3. Further, sub-section (3) to Section 5 cloth the Special Judge with the power of a Court of Session, in that the Special Judge is deemed to be a Court of Session. Therefore, it is pointedly contended that the Special Judge, being deemed to be a Court of Session, is clothed with the power of the Court of Session insofar as entertaining an application of anticipatory bail is concerned.

15. Before adverting to the facts in issue, as thrust has been laid upon the decision of the Full Bench, the majority view as well as the dissenting view, by the learned counsel for the parties, this Court is entrusted with the task of assimilating the ratio laid down by the learned Judges on the Full Bench vis-a-vis the provisions of law.

16. The Full Bench of the Patna High Court, on a reference to it by the Sessions Judge, Patna, relating to the competency of the Special Judge under the PC Act to entertain an application for anticipatory bail, by a 2:1 majority, held that the Special Judge, appointed under the Prevention of Corruption Act is jurisdictionally empowered to entertain an application for anticipatory bail. In coming to the said view, the majority

on the Full Bench, on an examination of the relevant provisions of law, held as under :-

"22. The question which has been seriously debated at the Bar is as to whether the Special Judge can be deemed to be a court of session in view of sub-section (3) of section 5 of the P.C. Act of 1988, which is extracted here below:-

"(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor."

* * * * *

24. For the sake of convenience, sub-section (3) of section 5 of the P.C. Act of 1988 may be considered in two parts. The first part of this sub-section says that save as provided in sub-section (1) or sub-section (2), the provisions of the Cr. P.C. (2 of 1974) shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge. It is, therefore, clear that except the provisions made under sub-section (1) and sub-section (2) of section 5 of the P.C. Act of 1988, the procedure laid down in the Cr. P.C. shall be applicable to the proceeding before a Special Judge so far they are not inconsistent with this Act. When an Act says that its provisions are to be observed except so far as they are "inconsistent" with another Statute, the inconsistency must be one, which is at variance with the machinery and procedure indicated by the other Statute. Things are said to be inconsistent when they are contrary to each other so that one infers the negation, destruction or falsity of the other (The Law Lexicon, Reprint Edition 1987). There is nothing in the P.C. Act of 1988, which precludes applicability of the procedure laid down under the Code of Criminal Procedure in a proceeding pending before a Special Judge except only those for which specific provision has been made under this Act. For instance, there is no provision in the P.C. Act of 1988 which expressly confers power on the Special Judge either to remand an accused in custody or to grant him bail, yet it has been recognised by the judicial pronouncement.

25. The other part of sub-section (3) of section 5 of the P.C. Act of 1988 says that for the purpose of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a Public Prosecutor. The word "provisions" occurring in this part of the sub-section, obviously, refers to the provisions of the Code of Criminal Procedure.

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28. I would like to refer to sub-section (2) of section 3 of the P.C. Act of 1988 once again which lays down qualification of Special Judge and states that a person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure. A Special Judge is neither a Sessions Judge nor an Additional Sessions Judge nor an Assistant Sessions Judge but a person without having the said qualification cannot be appointed as a Special Judge. Under sub-section (4) of section 5 of the P.C. Act of 1988, a Special Judge shall be deemed to be a Magistrate for certain purposes under the Code of Criminal Procedure as specified in it. He has got exclusive power to take cognizance of the offence and try the offences mentioned in sub-section (1) of section 3 of the P.C. Act of 1988. So, there is unique combination of a Sessions Judge and a Magistrate in a Special Judge under the P.C. Act of 1988.

29. The latter part of sub-section (3) says that for the purpose of the said "provision", meaning thereby the Cr. P.C., the Special Judge shall be deemed to be a Court of Session. When a legal fiction has been created by a deeming clause in a section, the only possible meaning is that though in reality he may not be a Sessions Judge, still the Act requires him to be treated as such. When the legislature wants that the Court of the Special Judge shall be deemed to be a court of session, there is no option but to follow the mandate of the Statute and to regard the Court of the Special Judge as a Court of Session in relation to the proceeding before him under the P.C. Act of 1988.

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32. In the case of A.R. Autulay v. R.S. Nayak (A.I.R. 1984 S.C. 718), one of the questions, which fell for consideration, was as to whether a

Special Judge was empowered to take cognizance of an offence under the P.C. Act of 1947 on a complaint? Their Lordships considered it necessary to decide with precision and accuracy the position of a Special Judge and the Court over which he presides styled as the Court of a Special Judge because unending confusions arose by either assimilating him with a Magistrate or with a Sessions Court. Besides recording a finding on the question raised in the said case, it has also been held thus:

"The Legislature wherever it found the grey area clarified it by making specific provision such as the one in sub-section (2) of section 8 and to leave no one in doubt further provided in sub-section (3) that all the provisions of the Criminal P.C. shall so far as they are not inconsistent with the Act apply to the proceedings before a Special Judge. At the time when the 1952 Act was enacted what was in operation was the Criminal P.C. 1898. It did not envisage any Court of a Special Judge and the legislature never wanted to draw up an exhaustive Code of Procedure for this new Criminal Court, which was being set up. Therefore, it conferred power (taking cognizance of offence), prescribed procedure (trial of warrant cases by a Magistrate indicate authority to tender pardon (section 338) and then after declaring its status as comparable to a Court of Session proceeded to prescribe that all provisions of the Criminal P.C. will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new Court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific question brought before it as court of original criminal jurisdiction, it had to refer to the Criminal P.C. undaunted by any designation claptrap."

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47. As mentioned above, a learned Single Judge of this court expressed doubt regarding the correctness of the law laid down in Baldeo Prasad's case (supra). The question raised in the said case before a Bench of this court was as to whether an application for anticipatory bail under section 438 of the Cr. P.C. by an accused of the offence under section 7 of the Essential Commodities Act (hereinafter referred to as 'the E.C. Act') should be filed before the Special

Court constituted under section 12A of the E.C. Act or before a 'regular court of session'. After taking into consideration different provisions of the E.C. Act and some decisions of the High Courts and Supreme Court, it has been held that an application for anticipatory bail or for regular bail by an accused of an offence under section 7 of the E.C. Act can be entertained only by the Special Judge and not by a regular court of sessions constituted under the Cr. P.C.

48. I do not consider it necessary to enter into an elaborate discussion with regard to the power of the Special Court constituted under the E.C. Act to grant anticipatory bail to an accused of an offence under section 7 of the E.C. Act. However, I would like to refer to only sub-section (1)(d) of section 12AA of the E.C. Act, which provides that save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court. The language of the said provision is so clear that there is no scope for entertaining any doubt in regard to the exclusive power of the Special Court to grant anticipatory bail. This is the consistent view of different High Courts of this country. In this context, reference may be made to the decisions reported in 1985 B.B.C.J. 601, 1985 (Criminal Law Journal 1561 (Madhya Pradesh), 1984 Criminal Law Journal 1819 (Karnataka) and 1986 Criminal Law Journal 561 (Andhra Pradesh). There are a number of other decisions but it is not necessary to catalogue the same.

49. Upon review of the provisions of the relevant law, in my opinion, the inevitable inference would be that the Special Judge is entitled to exercise all the powers of a Session Judge as provided under the Cr. P.C. in relation to the proceeding under the P.C. Act of 1988 so far they are not inconsistent with the provisions of this Act. Consequently, it has to be held that the Special Judge under the P.C. Act of 1988 has got exclusive power to entertain an application for anticipatory bail or regular bail made by an accused on the allegation of having committed any offence under the P.C. Act of 1988. The Reference is answered accordingly."

(Emphasis Supplied)

17. However, the above view was dissented by the third Judge on the Full Bench. For better appreciation, the relevant portion of the dissent expressed by the learned Judge, with

reasons, which has a bearing on deciding the issue involved herein, are quoted hereunder :-

"60. Now from a perusal of the aforementioned provisions of the P.C. Act, which, in my opinion, are relevant for consideration of the point involved, it will appear that a court of Special Judge has been given some such powers and has to discharge some such functions as are exercised or discharged by a judicial magistrate under the Code while he has been given power to pass sentence upto 7 years which no other Magistrate except the Chief Judicial Magistrate can pass. The Special Judge can take cognizance without any accused being committed to his Court so far as the offences under the P.C. Act are concerned. Under the Code no court of Session can normally take cognizance without commitment of a case by a Magistrate. The Special Judge is required to proceed in trial of cases under the P.C. Act by following the procedure of warrant trial as laid down in the Code for a Judicial Magistrate. According to sub-section (4) of section 5, "a Special Judge shall be deemed to be a Magistrate" for the purpose of certain provisions but for other provisions according to sub-section (3) "the Court of Special Judge shall be deemed to be a Court of Session". Under sub-section (6), the Special Judge can exercise even powers of a District judge as conferred upon the latter by the Criminal Law Amendment Ordinance, 1944.

61. Thus, it would appear that the Court of Special Judge is such a Court which is for certain purposes exercising powers and discharging the function of a Judicial Magistrate, but in some other respect, it is exercising even power of the District Judge. Obviously a court of Special Judge created by a separate enactment cannot squarely fall in any of the categories of Courts contemplated by section 6 of the Code. This Code contemplates (vide section 6) four classes of criminal courts, namely, (i) Courts of Sessions, (ii) Judicial Magistrate of First Class (Metropolitan Magistrate), (iii) Judicial Magistrate of Second Class, and (iv) Executive Magistrate."

62. In the context of the similar provisions as contained in the Criminal Law (Amendment) Act, 1952 as are contained in the P.C. Act, the Supreme Court in the case of the State of Tamil Nadu v. Krishnaswami Naidu reported in AIR 1979 Supreme Court 1255 observed as follows:

"The Special Judge in the Criminal Law (Amendment) Act is thus for some purposes

deemed to be a Sessions Judge and for some other purposes shall be deemed to be a Magistrate and some powers exercised by the Magistrate are conferred on him. It is necessary to note that Special Judge is empowered to take cognizance without the accused being committed and in trying the accused persons he is required to follow the procedure for trial of warrant cases by a Magistrate. Under Section 8(3) except as regards the provisions in sub-sections (1) and (2) the provisions of Code of Criminal Procedure is made applicable in so far as they are not inconsistent with the Criminal Law (Amendment) Act."

63. Again in the case of A.R. Antulay v. R.S. Nayak reported in AIR 1984 Supreme Court 718, the Supreme Court after referring to the various provisions of the Criminal Law (Amendment) Act, 1952 and relevant provisions of the Code concluded that the Court of Special Judge cannot be put in any class of Criminal Court as mentioned in Section 6 of the Code. The Supreme Court made the following observations in this connection:

"The entire argument inviting us to specifically decide whether a Court of Special Judge for a certain purpose is a court or Magistrate or a court of Session resolves round a mistaken belief that a Special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Session. Such an approach would strangle the functioning of the Court and must be eschewed. Shorn of all embellishment the Court of Special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a court of Session. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied."

64. Since provision of section 8 of the Criminal Law Amendment Act, 1952 and corresponding provisions of section 5 of the P.C. Act appear to be similar, it cannot be

gainsaid that the aforesaid observation of the Supreme Court apply to the provisions of the P.C. Act, which were referred at the bar during the hearing of the reference. In view of the observation of the Apex Court of the land it will not be proper to put the Court of Special Judge in the category of the Court of Session for all purposes. It is also obvious that the Special Judge has no appellate or revisional jurisdiction at all, while the court of Sessions certainly has in several cases. So because of the "deeming" provisions in section 5(3) of the P.C. Act or sections 8(3) of the Criminal Law Amendment Act (both of which lay down that "the Special Judge shall be deemed to be a court of Session",) it cannot be held that the Special Judge can be equated with the court of Session for the purpose of exercising all the powers including the power which section 438 of the Code confers on the Court of Session." To be sure by section 27 of the P.C. Act which corresponds to section 9 of the Criminal Law Amendment Act it is the High Court which can exercise power of revision and/or appeal against an order or judgment of a Special Judge and by necessary implication the court of Session cannot exercise any such power of revision or appeal as has been conferred by the Code.

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66. It is to be noted that the power of granting anticipatory bail under section 438 of the Code is conferred only upon the High Court and the Court of Session. The Court of Session as mentioned in section 438 of the Code is a Court of Session presided over by the Sessions Judge. Even a Court presided over by an Assistant Sessions Judge is a Court of Session, but obviously the power conferred on the Court of Session by section 438 of the Code relating to grant of bail to the person who apprehends arrest is not contemplated to be exercised by a Court of Session presided over by an Assistant Session Judge. Under section 6 of the Code, a Court of Session is one of the categories of Court. Under sub-section (3) the High Court may appoint Addl. Sessions Judge and Assistant Sessions Judge to exercise jurisdiction in a court of Session. So it appears that in actual operation of the provisions of the Code the Court of Session may be the Court of Session presided over by the Sessions Judge, or a court of Session presided over by the Addl. Session Judge or a court of Session presided over by the

Assistant Sessions Judge. All the three shall be Courts of Session, but so far as the provisions of section 438 of the Code is concerned, only the Court of Session presided over by the Sessions Judge, in my opinion, can be moved for granting bail before arrest of an accused who feels reasonable apprehension about being arrested on accusation of non-bailable offence.

67. Secondly it may be noticed in this connection that the Supreme Court has in several cases observed that the power conferred by the provisions of section 438 is an extraordinary power, vide AIR 1977 Supreme Court 366 (Balchand Jain v. State of Madhya Pradesh) and AIR 1980 Supreme Court 1672 (Gurubux Sibbia v. State of Punjab). In my opinion, none of the provisions of P.C. Act appears to indicate that any extraordinary power of granting bail as contemplated by section 438 of the Code was intended to be conferred on the Special Judge. In my humble opinion conferring of extraordinary power cannot be presumed only because it was provided that the Court of Special Judge shall be deemed to be a Court of Session. To be sure, in view of this deeming provisions and by legal fiction created by this provision, the Special Judge has to be deemed to be a Court of Session presided over by the Sessions Judge which alone has been conferred by the Code the power to grant anticipatory bail.

68. The provisions of sub-section (3) of section 5 laying down that all the provisions of the Code in so far as they are not inconsistent with the Act shall apply to the proceedings before the Special Judge, in my opinion, can mean only such provisions as are necessary for disposal of matters which under P.C. Act are to be placed before the Court of the Special Judge relating to offences under P.C. Act such as remanding the accused if produced before it, taking cognizance of offence on a police report or a complaint, examining the accused after close of the evidence under section 317 of the Code, granting of regular bail (not anticipatory bail) etc.

69. Thirdly any proceeding before the court of a Special Judge can be deemed to be pending before the Special Judge only after first information report about commission of offence punishable under P.C. Act is sent by the police before the Court or when a complaint is lodged before that Court and not before that. But so far as the prayer for anticipatory bail as

contemplated by section 438 of the Code is concerned, such prayer can be made even before a first information report is lodged or before the first information report which has been lodged is sent to the Court of Special Judge: unless the first information report is received by the Special Judge, no proceeding can be said to be pending before the Court of Special Judge and it cannot have any jurisdiction to pass any order. So a Special Judge cannot have competence to consider a petition filed under section 438 of the Code which petition can be filed even before lodging of the F.I.R., though such petition may relate to offences under any provision of the P.C. Act.

* * * * *

80. In the light of discussions made and the reasons indicated above, I am of the considered opinion that the Special Judge appointed under the provision of the P.C. Act has no jurisdiction to entertain and dispose of the anticipatory bail petition in relation to the offence punishable under the P.C. Act and the Court of Session (the Sessions Judge) has legal competence to consider any application for grant of anticipatory bail in relation to any offence including any offence punishable under any of the provisions of the Act. I would, therefore, decide the point of reference accordingly."

(Emphasis Supplied)

18. This Court, in all earnestness, has taken into consideration the very many reasons attributed by the Hon'ble Judges constituting the majority on the Bench and the reasons for the dissent of the Hon'ble Judge on the Bench. Trite it is that this Court, as a general rule and as a matter of judicial discipline, is bound to follow the majority view expressed, but, however, in view of the critical question involved relating to the authority, who enjoys jurisdiction to deal with anticipatory bail applications under the PC Act, this Court considers it necessary to dissect the provisions of law in relation to the decision of the Full Bench of the Patna High Court to satisfy itself as to the correctness or otherwise of the proposition of law laid down by the Full Bench of the Patna High Court.

19. Before embarking upon analysing the Full Bench decision of the Patna High Court and the various facets of the provisions of law expostulated by the Hon'ble Judges on the Bench for arriving at the said view vis-a-vis the applicability of the view to the case on hand, this Court deems it essential to refer to the various provisions of law which have a bearing on the issue involved in this petition.

20. The intent of the Parliament in enacting the Prevention of Corruption Act is for eradication of corruption. When the words of a statute are wide and clear, then a restrictive meaning cannot be given to them. Equally, a purposive interpretation should be put on the relevant provisions of law so as to fulfill the intention of the Legislature and eschew an interpretation which defeats the object of the Act. Parliament is presumed to intend that in construing an Act, the Court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, should aim to further every aspect of the legislative purpose. A construction which promotes the remedy Parliament has provided to cure a particular mischief is the hallmark of purposive construction.

21. In the backdrop of the above intent of the Parliament in enacting the PC Act, came into being G.O. Ms. No.692, Home (Courts II) Department, dated 2.8.2010, whereby Addl. City Civil & Sessions Judge/Addl. District & Sessions Judge, have been appointed as Special Judges to try cases under the Prevention of Corruption Act and the areas to which their jurisdiction extends have also been codified in the said Government Order. Further, the Government Order also reveals that cases assigned to them shall be dealt with by the Principal Special Judges. Likewise, the judicial officers, who have been empowered to deal with cases arising out of the Special Police Establishment have also been notified by the Registry of this Court. In essence, what is evident from the said Government Order and the notification arising from the said Government Order is that jurisdiction has been conferred on the judicial officers, in the cadre of Addl. District Judges/Asst. Sessions Judges/Chief Judicial Magistrates, to deal with cases arising under the PC Act and that they are directed to try the cases assigned to them in accordance with the provisions of the PC Act.

22. Section 438 Cr.P.C. is the provision of law, which provides for anticipatory bail, which reads as under :-

"438. Direction for grant of bail to person apprehending arrest.

(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section ; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court ;

(iv) such other condition as may be imposed under subsection (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

23. Sections 9 and 10 Cr.P.C. enumerates the Court of Session and the Subordination of Assistant Session Judges. For better clarity, the relevant provisions of law are quoted hereunder :-

"9. Court of Session. (1) The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial

Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

10. Subordination of Assistant Sessions Judges. (1) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

(2) The Sessions Judge may, from time to time, make rules consistent with this Code, as to the distribution of business among such Assistant Sessions Judges.

(3) The Sessions Judge may also make provision for the disposal of any urgent application, in the event of his absence or inability to act, by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, and every such Judge or Magistrate shall be deemed to have jurisdiction to deal with any such application."

24. The relevant sections of the PC Act that provides for the power of appointment of Special Judges, the cases triable by the Special Judges and the Procedure and powers of the Special Judges are provided for in Sections 3 to 5 of the PC Act. Section 3 of the PC Act provides the power to appoint Special Judges and for better clarity, the same is extracted hereunder :-

"3. Power to appoint special Judges.-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

(a) any offence punishable under this Act; and
(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an

Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974)."

25. The jurisdiction of the Special Judges to deal with cases under the PC Act is provided u/s 4 and sub-sections (1) and (3) therein provides the nature of cases that are to be tried by the Special Judges. For better clarity, the said provision of law is extracted hereunder :-

"4. Cases triable by special Judges.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

* * * * *

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

(Emphasis

Supplied)

26. The procedure and power of the Special Judge under the PC Act is provided for in Section 5 and for better appreciation, the said provision of law is extracted hereinbelow :-

"5. Procedure and powers of special Judge.-(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act,

apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in subsection (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944)."

(Emphasis Supplied)

27. Section 438 Cr.P.C. provides for anticipatory bail, which, as extracted above, reveals that apprehending arrest on the accusation of having committed a non-bailable offence, any person may approach the High Court or the Court of Session for a direction for his release on bail, in the event of such arrest on certain conditions, which have been codified therein. The wording of the said provision is manifestly clear, in that the High Court or the Court of Session alone is vested with power to take up cases pertaining to anticipatory bail.

28. Any person, who apprehends arrest relating to any non-bailable offence, may move the High Court or the Court of Session for anticipatory bail, in the event of arrest. It is not a purposive interpretation, but a visible analogy that there being no FIR registered against the said person for the commission of any crime and being in the investigative stage, in judicial parlance, it is pre-cognizance stage, as only on FIR being registered and charge sheet being laid, cognizance is taken by the Magistrate, technically there is no case/charge as against the said person. Therefore, even when the criminal machinery is in the process of investigation and no accusation, in effect, has been made against the person, the person could come before the High Court or the Court of Session u/s 438 Cr.P.C., seeking anticipatory bail.

29. Section 3 (2) of the PC Act prescribes the qualification of a person for appointment as Special Judge, which provides that the person should be a Sessions Judge or an

Additional Sessions Judge or an Assistant Sessions Judge and Section 4 (1) of the PC Act prescribes that the Special Judge shall deal with offences as specified in sub-section (1) of Section 3 of PC Act. Therefore, the intent of the Parliament is crystal clear in this aspect that no person, below the rank of a Sessions Judge/Addl. Sessions Judge/Assistant Sessions Judge should be appointed as Special Judge to deal with cases under the PC Act. The intention of the Parliament in the above aspect has a definite purpose, which will be discussed below.

30. Section 9 Cr.P.C. speaks about the establishment of a Court of Session in every Sessions division, which shall be presided over by a Judge, to be appointed by the High Court. Sub-section (3) to Section 9 Cr.P.C. further provides that the High Court, may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session. However, Section 10 Cr.P.C. speaks about the subordination of Assistant Sessions Judges, who shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction. Further Section 10 (2) Cr.P.C. also provides the Sessions Judge to make rules in relation to distribution of business among such Assistant/Additional Sessions Judges.

31. From a careful reading of the above provisions, viz., Sections 9 and 10 Cr.P.C., what flows is that the head of the Sessions unit is the Sessions Judge, who is appointed by the High Court and in addition to the said Sessions Judge, who shall be in-charge of the Sessions Division, the High Court may also appoint Additional Sessions Judges and Assistant Sessions Judge to exercise jurisdiction in a Court of Session and that the said Additional/Assistant Sessions Judges would be subordinate to the Sessions Judge. From the above provisions of law, it is manifestly clear that it is within the power of the High Court to also appoint Additional/Assistant Sessions Judges, who shall exercise jurisdiction, but it will be to the exclusion of the Sessions Judge, who is the head of the Sessions Division. There can be no second thought on the said provisions as no ambiguity exists even on a plain reading of the said provisions.

32. However, the issue put before the Court is that Section 3 of the PC Act prescribes that the person appointed as Special Judge should be in the cadre of Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. In this backdrop, it is stoutly contended that the Special Judge, though being a totally excluded entity insofar as the Criminal Justice System is concerned, where four types of criminal courts are contemplated, viz., (i) Court of Sessions, (ii) Judicial Magistrate of First Class (Metropolitan Magistrate), (iii) Judicial Magistrate of Second Class and (iv) Executive Magistrate, the Special Judge would be an included entity falling under the Court of Sessions in view of the language and terminology used while specifying the powers of the Special Judge, as found in Section 5 (3) of the PC Act, which is to the

effect that for the purpose of the provisions, which would mean, the Criminal Procedure Code, the court of the Special Judge shall be deemed to be a Court of Session and, therefore, the Special Judge could very well exercise the power u/s 438 Cr.P.C., as it is a Court of Session for all practical purposes.

33. The above argument, in foresight, though, looks not only attractive, but equally acceptable, but rather, in hindsight, the said argument is not only fallacious, but accepting the said argument would make the provision of Section 438 Cr.P.C. otiose and it would also be contradiction to Sections 9 and 10 Cr.P.C.

34. No doubt, as per Section 3 (2) of the PC Act, the person, who can be appointed as Special Judge should be a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge. Section 9 (3) of Cr.P.C. vests upon the High Court power to appoint Additional Sessions Judges and Assistant Sessions Judge to exercise jurisdiction in a Court of Session. The wording used in Section 9 (3) Cr.P.C. is that the "the High Court may also appoint". Therefore, it clearly reveals that over and above the Judge, who would be in the cadre of Sessions Judge, being appointed by the High Court to head the Sessions Division, the High Court may also appoint Addl. Sessions Judges and Assistant Sessions Judge to exercise jurisdiction in a Court of Session, subordinate to the Sessions Judge as mandated u/s 10 Cr.P.C. Therefore, the hierarchy is very clear that the Sessions Judge is the head of the Sessions Division, being appointed by the High Court and, the High Court, in exercise of its power u/s 9 (3) Cr.P.C., may appoint any number of Addl./Assistant Sessions Judges to exercise jurisdiction in a Court of Session. This categorically reveals that the Addl./Asst. Sessions Judges, appointed in exercise of power u/s 9 (3) Cr.P.C. are subordinate to the Sessions Judge appointed u/s 9 (2) Cr.P.C. Therefore, there is a marked difference between the appointment of a Sessions Judge to head the Sessions Division and the appointment of Addl./Assistant Sessions Judge to exercise jurisdiction in a Court of Session.

35. A perusal of the provisions of the PC Act, more especially, Section 5, which lays down the procedure and powers of the Special Judge, it clearly reveals that the Special Judge, while in the first phase of the justice delivery system, performs the functions of the Judicial Magistrate, while in the later part, the Special Judge performs the functions of the Sessions Judge. To put it more clearly, in the first phase of the justice delivery system, the Special Judge acts as a Magistrate by taking cognizance of the case without any accused being committed to his court. Once cognizance is taken and the accused is committed to trial by the Special Judge by discharging the functions of the Magistrate, the Special Judge adorns the role of a Sessions Judge in conducting trial as laid down in the Code. In essence, according to sub-section (4) of

Section 5, the Special Judge is deemed to be a Magistrate for the purpose of certain provisions, but for other provisions, according to sub-section (3), the Court of Special Judge shall be deemed to be a Court of Session. The literal meaning of the above could be inferred as that the role of a Special Judge is a double edged sword, which cuts both ways, viz., taking cognizance and committing the case and, thereafter, conducting trial of the case. Therefore, the Special Judge is a mixture of Magistrate and Sessions Judge in one mould and one cannot exist without the other and both are intricately connected. However, it is necessary to point out here that as per the Criminal Procedure Code, the Court of Session, manned by the Sessions Judge, at no point of time, adorns the role of the Magistrate by taking cognizance of the case and committing the person to trial.

36. Criminal Justice Delivery System has been codified under the Code of Criminal Procedure, with many tiers of judicial authorities exercising and discharging different functions. The Criminal Procedure Code is a concise enactment dovetailing in detail the functions and duties of the various judicial officers in the said hierarchical system. Obviously, during the enactment of the Code, neither a Special Court, nor a Special Judge was envisaged. However, the changing times and the different dimensions of criminality prompted constitution of special courts.

37. The Statement of Objects and Reasons behind the enactment of the Prevention of Corruption Act reveals that the intention of the Parliament was to amend the laws with a view to making them more effective and for speedy dispensation of justice. The normal course of the filing of FIR before the Magistrate Court, taking cognizance upon the same and, thereafter, committing the accused to trial before the superior forum, had its in-built bottlenecks in speedy disposal of cases and dispensation of justice. Therefore, in its wisdom, the Parliament thought it prudent to establish Special Courts, manned by Special Judges, who were clothed with the power of Magistrate in the initial phase and the power of Sessions Judge in the subsequent phase to deal with cases of corruption for the case to reach its logical conclusion within a minimal time. However, the procedure, as contemplated in the Criminal Procedure Code was never given a go-by, but in a single tier, a single judicial officer was given the power of cognizance, committal and trial, rather than a twin tier system. This is only with the intention of easing the justice delivery process at a faster pace.

38. In State of T.N. - Vs - Krishnaswami Naidu (AIR 1979 SC 1255), the Hon'ble Apex Court has held that "the Special Judge under the Criminal Law (Amendment) Act, for some purposes, is deemed to be a Sessions Judge and for some other purposes, is deemed to be a Magistrate. The Special Judge is empowered to

take cognizance without the accused being committed. However, in the later part of the justice delivery system, the Special Judge wears the cloak of the Sessions Judge while conducting trial." Therefore, it will not be proper to put the court of the Special Judge in the category of the Court of Sessions outright for all purposes.

39. Under the Code of Criminal Procedure, the Sessions Judge is not empowered to take cognizance of the case and committing the accused. Rather, the Sessions Judge only enjoys appellate and revisional jurisdiction, which is not enjoyed by the Special Judge. Therefore, for all purposes, it cannot be gainsaid that the Special Judge can be equated with the Court of Session for the purpose of exercising all the powers, including the power u/s 438 Cr.P.C. relating to anticipatory bail.

40. Section 9 (3) Cr.P.C., which has been discussed above, vests power upon the High Court to also appoint Addl./Assistant Sessions Judges to exercise jurisdiction of a Court of Session. However, though the Addl./Assistant Sessions Judges could be vested with power to exercise jurisdiction of a Court of Session, however, Section 10 Cr.P.C. subordinates those Addl./Assistant Sessions Judges under the control of the Sessions Judge, who is the head of the Sessions Division. Section 10 (3) Cr.P.C. vests power only upon the Sessions Judge, who is in-charge of the Sessions Division from making rules relating to distribution of business among the Addl./Assistant Sessions Judges under his control. Therefore, the subordination of the Addl./Assistant Sessions Judges, though they exercise jurisdiction in a Court of Session, puts them in a class apart from the Sessions Judge heading the Sessions Division.

41. The act of the Special Judge under the PC Act comes into play only on the filing of a FIR by the investigation agency, based on which, exercising the powers of Magistrate, the Special Judge is empowered to take cognizance of the case. At the particular point of time, the Special Judge functions only as a Magistrate and the Special Judge does not get the power of the Sessions Judge to be deemed to be a Court of Session for the purpose of entertaining a petition u/s 438 Cr.P.C.

42. A petition u/s 438 Cr.P.C. is pre-cognizance stage, where investigation is only under progress and it is only an apprehension of the individual, which prompts him to move before the Court of Sessions for bail in anticipation. First of all, the Special Judge does not come into play at the pre-cognizance stage and at best, on filing of FIR, the Special Judge acquires the power only of a Magistrate to take cognizance of the matter. Therefore, pre-cognizance, the Special Judge, could in no way be said to be acting as a Sessions Judge to get the power for entertaining a petition u/s 438 Cr.P.C. On a careful reading of the provisions of law as found in the PC Act, by no means, could the provisions of the PC Act be deemed to imply that the

extraordinary power of granting bail, as contemplated u/s 438 Cr.P.C. is conferred on the Special Judge. The extra-ordinary power cannot be presumed to have been conferred on the Special Judge, even when it is deemed to be a Court of Session. The deeming provision, created by legal fiction, could at best be deemed to construe the Special Judge to be a Court of Session for the purpose of conducting trial and not for the purpose of entertaining a petition u/s 438 Cr.P.C., which is a stage pre-cognizance.

43. Further, sub-section (3) of Section 5 of the PC Act contemplates that the provisions of the Criminal Procedure Code, insofar as they are not inconsistent with the Act, shall apply to the proceedings before the Special Judge. True it is that such a contemplation has been made under the said provision. But it could only mean that the provisions as are necessary for the disposal of the matters, which fall under the PC Act that are to be placed before the Special Judge alone would be covered by the said provision and merely by deeming fiction, it cannot be held that whatever power that has been contemplated u/s 438 Cr.P.C., which has been vested on the Court of Session would stand transposed to the Special Judge, merely because sub-section (3) to Section 5 of the PC Act deems the proceedings before a Special Judge for the purpose of the provisions to be construed as proceedings before a Court of Session.

44. Further, insofar as any proceeding under the PC Act, the Special Judge comes into play only on the filing of the FIR about the commission of offence punishable under the PC Act is placed before the Court either by the law enforcing agency or if a complaint is lodged before the Court and not before. However, for the purposes of a petition u/s 438 Cr.P.C., the said petition can be filed on mere apprehension and there is no necessity for a FIR to be in existence or cognizance to be taken by the Court. In the absence of any proceeding, the Special Judge under the PC Act has no power to act and the Special Judge does not derive any jurisdiction to pass an order. Therefore, for all intent and purpose, the Special Judge cannot have competence to consider a petition filed u/s 438 Cr.P.C., prior to the filing of the FIR relating to an offence under the PC Act.

45. Section 5 (6) of the PC Act, provides the Special Judge to try offences punishable under this Act by exercising powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944. However, it should be noted here that under the Criminal Law (Amendment) Ordinance, 1944, the District Judge has jurisdiction to issue an ad-interim order of attachment of money or other property procured by commission of an offence mentioned in the Schedule of the Ordinance, which also includes an offence punishable u/s 5 of the PC Act. In view of the enactment of the PC Act, the said power has been conferred on the Special Judge. But, mere conferring of power on the Special Judge cannot be said to confer the entire

jurisdiction vested in the Court of Session u/s 9 Cr.P.C. on the Special Judge under the PC Act. In A.R.Antulay's case (supra), it has been held by the Apex Court that the Court of Special Judge cannot be put in any class of Criminal Court as mentioned in Section 6. As discussed above, the Court of Special Judge could neither be brought under the ambit of a Magistrate Court or a Sessions Court. The above view has been the touchstone of the decision of the Apex Court in A.R.Antulay's case (supra). That being the case, it cannot be said that the Court of Special Judge could be deemed to be a Court of Session for the purpose of entertaining an application u/s 438 Cr.P.C.

46. One other crucial fact that stares at the face of this Court is the Schedule I appended to the Code of Criminal Procedure. While the first part of Schedule I deals with the classification of offences under the Indian Penal Code, second part of Schedule I deals with offences against any other laws. In the present case, applicability of first part of Schedule I does not arise, but the second part of Schedule I is applicable. A careful perusal of the second part of Schedule I reveals that insofar as offences punishable with death, imprisonment for life or imprisonment for more than seven years, which is a cognizable and non-bailable offence, the Court, which is empowered to try those cases is the Court of Session. The maximum punishment which the Special Judge could impose under the PC Act is ten years. Further, Section 4 (3) of the PC Act empowers the Special Judge to try cases relating to other offences, in case of the accused being charged under the provisions of the Indian Penal Code along with the trial of the case under the PC Act.

47. No doubt, the Special Judge, after committal of the case, once it is ripe for trial, even in cases of other offences which are clubbed along with the offences under the PC Act, is empowered to try the same. However, prior to committal, the Special Judge, acting only as a Magistrate, can try offences in which punishment can be awarded only between three years and seven years. The Special Judge, at that point, acts only as a Magistrate and not as a Sessions Judge. That being the case, the provision of Section 438 Cr.P.C., being a pre-cognizance stage and no case being on file, the role of the Special Judge, even as a Magistrate does not come into play and to articulate that at that point, the Special Judge would acquire the power of a Court of Session to deal with an application u/s 438 Cr.P.C., would not only be a tall ask, but acceding to the said submission and holding so would be nothing but putting the cart before the horse and would only lead to negating the wisdom and intent of the Parliament.

48. In the above backdrop of the provisions of law, holding the Special Court to be a Court of Session, would not only lead to confusion and chaos in the justice delivery system, but would also defeat the intent and purpose of the constitution of Special Court under the PC Act. The intent of the Parliament

is not to confer the extra-ordinary power on the Special Judge, but to confer the power of the Court of Session only to the limited extent of trying the cases arising under the PC Act, consequent upon taking cognizance and committal.

49. In the absence of any specific provision under the PC Act conferring power on the Special Judge to entertain anticipatory bail applications and equally in the absence of any prohibition u/s 438 Cr.P.C., prohibiting the Court of Session to deal with anticipatory bail application, on the enactment of the PC Act, the intent of the Parliament being clear and specific in allowing the Special Court to do only certain things in certain phases by conferring certain powers, enlarging the power, which has not been intended and extended by the Parliament would be nothing but usurping the power of the Parliament, which power is not vested in this Court either under the Code or under the Constitution.

50. With due respect to the finding of the majority view of the Full Bench of Patna High Court in the Reference case (supra), this Court is unable to accept the said view as expressing the correct position of law, on the basis of the provisions of law, as is existing on date. The majority view of the Full Bench, in my considered opinion, is predicated upon an analogy drawn with reference to the provisions of the Essential Commodities Act vis a vis the provisions of the PC Act. The provisions of the Essential Commodities Act could in no way could be termed to be in line with the provisions of the PC Act. However, misconstruing the provisions to be in parallel lines, the majority view has erroneously rendered a finding that the analogy adopted under the Essential Commodities Act, would, in all force, be applicable to the PC Act. This Court, with great respect to the learned Judges on the Bench, is unable to accept the said view expressed therein. This Court, holistically, is in agreement with the minority view expressed by the learned Judge on the Full Bench, who has given his dissent holding that the Special Judge is not vested with jurisdiction to take on board the application filed u/s 438 Cr.P.C. The findings recorded in the dissent traverse in line with the findings recorded by this Court above.

51. In view of the findings recorded above, this Court has no hesitation in holding that the Special Judge appointed under the provision of PC Act has no jurisdiction to entertain an application u/s 438 Cr.P.C. for anticipatory bail in relation to an offence punishable under the PC Act and the Court of Session (Sessions Judge, who is the head of the Sessions Division) alone is vested with jurisdiction and conferred with power to consider any application for grant of anticipatory bail in relation to any offence punishable under the PC Act.

52. For the reasons articulated aforesaid, this Court is unable to accept the contentions advanced on behalf of the

petitioner and, accordingly, the petition fails and the same is dismissed. The petitioner is permitted to move before the court of competent jurisdiction, viz., the Court of Session, viz., the Sessions Judge, who is the head of the Sessions Division, for anticipatory bail. Consequently, Crl. M.P. No.15449/2019 is closed.

53. The Registrar (Judicial) is directed to place a copy of this order before the Hon'ble Chief Justice for circulating the above order to all the subordinate courts/officers under the control of the High Court to be followed henceforth.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

GLN

To

1. The Special Judge-cum- Chief Judicial Magistrate to deal with cases under the PC Act Thiruvallur.
2. The Special Public Prosecutor CBI Cases Chennai.
3. The Deputy Superintendent of Police V & AC, Alandur.
4. The Registrar (Judicial) High Court, Chennai.
5. The Sub Assistant Registrar C=(Crl.Side) High Court, Chennai.
6. The Section Officer (F) Section High Court, Madras-104 (Note - Direction issued in Para 53 of the order)

CRL. O.P. NO. 28874 OF 2019

PP (CO)
GMY (20/03/2020)