

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CRL.M.C. 1482/2020 & CRL.M.As. 6684/2020, 6685/2020**

JITENDER alias JONY Petitioner

Through: Mr. Aditya Aggarwal and Mr. Ankit
Mutreja, Advocates.

versus

STATE Respondent

Through: Ms. Rajni Gupta, APP with Mr.
Pawan Kumar, Jail Superintendent
and Mr. Rakesh Sharma, Assistant
Superintendent, Central Jail.**CORAM:****JUSTICE PRATHIBA M. SINGH****ORDER**% **28.05.2020**

1. This hearing has been held through video conferencing.
2. Court has heard the counsel for the parties as also the Superintendent of the Central Jail. Mr. Aggarwal, ld. counsel appearing for the Petitioner, raises a legal issue arising out of the judgment of the Supreme Court in *Abdul Basit v. Abdul Kadir Choudhary, (2014) 10 SCC 754*, that the Sessions Court does not have the power to recall/review its order granting bail under Section 362 Cr.P.C. Hence, his submission is that even if the initial bail order was given wrongly, the same could not have been recalled by the impugned order dated 12th May, 2020. Ld. Counsel submits that this view has also been taken by the Chhattisgarh High Court in *Savita Khande & Ors. v. State of Chhattisgarh & Ors., 2015 (4) CGLJ 122*, which has been upheld by the Supreme Court in *Savita Khande & Anr. v. State of Chhattisgarh & Anr., [SLP (Crl.) 3149/2020, decided on 19th February,*

2016].

3. The Superintendent, Tihar Jail, submits that after noticing an error in the initial bail order dated 13th April, 2020 it was brought to the notice of the Sessions Court that Section 326A of the Indian Penal Code, 1860 (*hereinafter*, “IPC”) had inadvertently not been mentioned in the application for bail filed by the DSLSA as the said provision was not mentioned in the custody warrants and was added later at the timing of framing of charges. Section 326A IPC provides for a higher punishment and hence the Petitioner would not qualify for bail as per the Minutes of Meeting of the High Powered Committee (*hereinafter*, “HPC”). Accordingly, the Sessions Court had rightly recalled the earlier order granting bail. Ms. Gupta, Id. APP, also submits that the Petitioner has enjoyed the bail as per the original order and hence his bail ought not to be extended.

4. The initial bail for 45 days was granted to the Petitioner vide order dated 13th April 2020 on the basis of the directions contained in the decision of the HPC dated 7th April, 2020. The same was then recalled on 12th May 2020. The 45-day bail period, which was initially granted to the Petitioner, has been enjoyed by the Petitioner and is expiring today.

5. Mr. Aggarwal submits that his client is entitled to an extension of the above bail period in view of the Minutes of Meeting of the High Powered Committee dated 18th May, 2020 and that he wishes to withdraw the present petition and approach the Trial Court for seeking bail in terms of the HPC’s Minutes.

6. In view of the above submission and keeping the question of law open, the petition is dismissed as withdrawn with liberty to the Petitioner to approach the Trial Court for extension of bail, in accordance with law,

including the Minutes of Meeting of the High Powered Committee dated 18th May, 2020, if applicable to the Petitioner.

7. The petition is, accordingly, dismissed as withdrawn, with liberty as prayed for. All pending applications also stand disposed of.

PRATHIBA M. SINGH, J.

MAY 28, 2020

dk/T