

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 668 of 2020

Shiv Kumar Chaurasia S/o Ramdayal, Aged About 28 Years R/o Badkapara, Bartikalan, Police Station Basantpur, District Balrampur Chhattisgarh., District : Balrampur, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Chouki Wadraf Nagar, P.S. Basantpur, District Balrampur Chhattisgarh, District : Balrampur, Chhattisgarh

---- Respondent

MCRCA No. 710 of 2020

Neeraj Jagatramka S/o Late Shri Brajbhushan Jagatramka, Aged About 45 Years Occupation Business, R/o House No. 57, Vrindavan Colony, Bhagwanpur, Police Station Kotra Road, Raigarh, Chhattisgarh Phone No. 94252 51057, District : Raigarh, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station A J K Raigarh (City Kotwali, Raigarh) Tehsil And District Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Applicant

MCRCA No. 792 of 2020

Shashank Sharma S/o Late Sunil Sharma Aged About 30 Years R/o Village Partra, Bemetara, Police Station And District Bemetara, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Mahasamund, (Ajak), District Mahasamund, Chhattisgarh

---- Respondent

For Respective Applicants : Shri Pramod Verma, Senior Advocate with
Shri Vivek Shrivastava, Shri R.S. Marhas,
Shri Curtis Collins and Ms. Khushbu Dua,

	Advocates
For State	: Smt. Hamida Siddiqui, Dy.A.G.
Amicus Curiae	: Shri Amit Soni, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

11/06/2021

1. This order shall govern disposal of MCRCA No.668 of 2020 (*Shiv Kumar Chaurasia Vs. State of Chhattisgarh*), MCRCA No.710 of 2020 (*Neeraj Jagatramka Vs. State of Chhattisgarh*) and MCRCA No.792 of 2020 (*Shashank Sharma Vs. State of Chhattisgarh*).
2. MCRCA No.792 of 2020 has been filed by the applicant apprehending his arrest in connection with Crime No.112 of 2020 registered in the Police Station- Mahasamund (AJAK), District- Mahasamund (CG) for alleged commission of offence punishable under Sections 376 (2) (a) (i), 376 (2) (b), 376 (D) & 506 IPC, Sections 3 (2) (va) and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "*the Act of 1989*"). The applicant had moved application for grant of anticipatory bail before the Special Court (constituted under the SC & ST Prevention of Atrocities Act, 1989), Mahasamund, which was, however, rejected vide order dated 11.06.2020. Thereafter, the applicant filed this application seeking to invoke concurrent original jurisdiction of this Court under Section 438 Cr.P.C. praying for grant of anticipatory bail.
3. MCRCA No.710 of 2020 has been filed by the applicant apprehending his arrest in connection with Crime No.261 of 2020 registered in Police Station- AJK Raigarh (City Kotwali, Raigarh) for alleged commission of offence punishable under Sections 186, 294, 353 IPC, Section 3 (1) (r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This applicant had also filed application for grant of anticipatory bail before the Special Court (constituted under the SC & ST Prevention of Atrocities Act, 1989), Raigarh, which was rejected vide order dated 17.4.2020.

Thereafter, the applicant filed this application seeking to invoke concurrent original jurisdiction of this Court under Section 438 Cr.P.C. praying for grant of anticipatory bail.

4. MCRCA No.668 of 2020 has been filed by the applicant apprehending his arrest in connection with Crime No.42 of 2020 registered in the Police Chouki- Wadrafnagar, Police Station -Basantpur, District- Balrampur (CG) for the offence punishable under Sections 186, 294, 353, 506 IPC, Section 3 (1) (r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This applicant has directly approached this Court for grant of anticipatory bail without moving any application for grant of anticipatory bail before the Court of Sessions.
5. When these bail applications came up for consideration before this Court, learned Dy. Advocate General appearing for the State raised a preliminary objection with regard to maintainability of these applications principally on the submission that the applicant in all these cases have wrongly invoked concurrent original jurisdiction of this Court under section 438 Cr.P.C as in view of special provision contained in Section 14-A of the special enactment i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989), the applicant in MCRCA No.668 of 2020 could not directly file application for grant of anticipatory bail before this Court but his remedy is to first approach the Court of Sessions. As far as MCRCA No.710 of 2020 and MCRCA No.792 of 2020 are concerned, submission of the State counsel is that applications for grant of anticipatory bail were filed by the respective applicants before the Special Court which were rejected and, therefore, the remedy is to file an appeal and not to invoke concurrent original jurisdiction of this Court under Section 438 Cr.P.C. as that is impliedly barred in view of special provision contained in Section 14-A of the Act of 1989 providing for remedy of appeal against an order granting or refusing to grant anticipatory bail. Since in the present cases, the bail applications were rejected, the remedy available is to file an appeal and the applicant could not approach this Court directly by moving an application under Section 438 Cr.P.C. seeking to invoke concurrent original jurisdiction.

6. Replying to these objections with regard to maintainability of these bail applications, learned senior counsel appearing for the respective appellants would submit that though there exists provision under Section 14-A of the Act of 1989 providing for appeal against rejection of bail application, that is only one of the statutory remedy provided to the aggrieved applicant, but there is no provision contained either in the Code of Criminal Procedure or in Section 14-A of the Act of 1989 expressly barring maintainability of application under Section 438 Cr.P.C. before the High Court by invoking its original concurrent jurisdiction in the matter of consideration of prayer for grant of anticipatory bail. He would submit that the provision with regard to grant of bail are remedial provisions. In the absence of there being any express bar, the provision contained in Section 438 Cr.P.C. and Section 14-A of the Act of 1989 have to be read harmoniously without restricting or limiting the choice of remedy available under the law to the applicant. Learned senior counsel advances submission that where an accused is apprehending arrest on account of registration of offence punishable under the Act of 1989, he has remedy to move application for grant of bail before the Court at first instance i.e. the Court of Sessions and in case of rejection, to invoke concurrent original jurisdiction of the High Court under Section 438 Cr.P.C., on its plain reading. The other remedy of the accused is to take recourse to the right of appeal under Section 14-A of the Act of 1989 instead of invoking the concurrent original jurisdiction of the High Court under Section 438 Cr.P.C. He would vehemently contend that in the absence of any express bar, the aggrieved accused has a choice and it is for him to elect which of the two remedies he intends to take recourse to.
7. As far as MCRCA No.668 of 2020 is concerned, learned senior counsel would contend that on application of the same principle, provision contained in Section 438 Cr.P.C. preserves the rights of the accused to either move an application for grant of anticipatory bail before the Court of Sessions or to directly approach this Court under Section 438 Cr.P.C. He submits that where a party elects to directly move an application before this Court, there is no impediment under the law that he should be driven

in all the cases to first apply for grant of anticipatory bail before the Court of Sessions, invite an order of rejection and then only either file an appeal under Section 14-A of the Act of 1989 or invoke concurrent original jurisdiction of the High Court under Section 438 Cr.P.C.

8. Learned Amicus Curiae, requested by this Court to assist, has, however, contended that even though there is no express bar to invoke concurrent original jurisdiction of the High Court under Section 438 Cr.P.C., in case an application for grant of anticipatory bail is rejected by the Special Court, it would create an anomalous situation when there exists a provision of appeal under the law, to allow a party to move this Court directly under Section 438 Cr.P.C. or to apply for grant of anticipatory bail invoking original concurrent jurisdiction under Section 438 Cr.P.C. without challenging rejection order by way of appeal. He submits that the Act of 1989 is a special enactment and after extensive amendment carried out by the Amendment Act of 2015, special provision has been engrafted under Section 14-A of the Act of 1989 which clearly lays down special procedure and remedy in case of rejection of application for grant of bail of an accused who is apprehending arrest in connection with alleged commission of offence punishable under the Act of 1989. It is contended that in both the situations, where application has been directly moved for grant of anticipatory bail before this Court or where application for grant of bail is moved after rejection of application by the Special Court, provision of Section 14-A of the Act of 1989 override the general provision contained in Section 438 Cr.P.C. and the only remedy in such cases is to first move an application for grant of anticipatory bail before the Special Court and in case application is rejected, to file an appeal under Section 14-A of the Act of 1989. In support of his submission, learned Amicus Curiae has placed heavy reliance upon the decisions of the Supreme Court in the case of **State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and Ors.** (2003) 8 SCC 50 and **State of Andhra Pradesh through Inspector General, National Investigation Agency Vs. Mohd. Hussain alias Saleem** (2014) 1 SCC 258 dealing with *pari materia* provision. He has also placed reliance upon various judgments of different High Courts taking similar view on the

principle propounded by the Supreme Court in the aforesaid decisions. He further submits that the *non obstante* clause under Section 14-A of the Act of 1989 overrides general provision with regard to grant of bail under Section 438 Cr.P.C.

9. Section 438 Cr.P.C. contains general provision with regard to grant of anticipatory bail and reads as under:-

"438. Direction for grant of bail to person apprehending arrest- (1) Where any person has reason to believe that he may be arrested on 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely—

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and.
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this Sub-Section or has rejected the application

for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1-A). Where the Court grants an interim order under Sub-Section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court,

(1-B). The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(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 Sub-Section (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)."

10. Thus, where a person apprehends his arrest, he has remedy of filing application for grant of anticipatory bail either before the Court of Sessions or before the High Court. Even in a case where the application for grant of anticipatory bail is moved before the Court of Sessions at the first instance and the application is rejected, aggrieved accused has remedy of invoking concurrent original jurisdiction of this Court by directly moving an application under Section 438 Cr.P.C. without there being any challenge laid

to the legality and correctness of the order of rejection passed by the Court of first instance.

11. However, provision of the Act of 1989 is a special enactment. An extensive amendment was carried out in the Act of 1989 by the Amendment Act of 2015 (1 of 2016). Amongst various amendments, an important provision Section 14-A was inserted by way of amendment which reads as under:-

"14A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of

admission of the appeal.".

12. Special provision has been carved out in sub-Section (2) of Section 14-A of the Act of 1989 relating to appeal by providing that notwithstanding anything contained in sub-section (3) of Section 378 of Cr.P.C. 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

This provision does not restrict the application either to Section 438 or Section 439 Cr.P.C. Therefore, this provision, on the face of it, is obviously applicable where an application for grant of anticipatory bail is rejected by the special Court or the Exclusive Special Court constituted under the Act of 1989. The provision is peculiar in nature as it expressly provides for remedy of appeal against an order granting or refusing to grant bail which is not there either under Section 438 or Section 378 Cr.P.C. It is relevant to notice that sub-Section (2) of Section 14-A of the Act of 1989 starts with a *non-obstante* clause. Therefore, in the event of inconsistency or conflict, as is well settled legal position, the provision contained in sub-section (2) of Section 14-A of the Act of 1989 shall prevail over general provision relating to grant of anticipatory bail as contained in Section 438 Cr.P.C. In the case of **Salimbhai** (supra), a similar issue with regard to maintainability of application filed directly before the High Court under Section 439 Cr.P.C on the face of *pari materia* provision contained in Section 34 of the Prevention of Terrorism Act, 2002 (POTA) arose for consideration. Section 34 of POTA contain almost similar statutory scheme of grant of bail by providing a remedy of appeal as below:-

"34. Appeal.— (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
Explanation.—For the purposes of this section, "High Court" means a High Court within whose

jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

13. It would be evident from reading of Section 34 of the POTA that sub-section (1) and (4) of Section 34 is *pari materia* Section 14A (1)(2) of the Act of 1989, as amended by Amendment Act of 2015.

14. Interpreting the scope of sub-Section (4) of Section 34 POTA, Hon'ble Supreme Court in the aforesaid decision (*Salimbhai*) observed as under:

"12. Shri Amarendra Sharan, learned senior counsel for the respondents has submitted that the power of the High Court to grant bail under Section

439 Cr.P.C. has not been taken away by POTA and consequently the learned Single Judge had the jurisdiction to grant bail to the respondents in exercise of the power conferred by the aforesaid provision. Learned counsel has laid great emphasis upon Section 49 of POTA, especially Sub-section (5) thereof and has submitted that in view of the language used in this section, the power conferred upon the Court of Sessions and the High Court under Section 439 will remain intact. It has been urged that if the intention of the legislature was to make the provisions of Section 439 of the Code inapplicable in relation to offences under POTA, it would have made a provision similar to Sub-section (5) of Section 49 which expressly excludes the applicability of Section 438 Cr.P.C. We are unable to accept the contention raised by the learned counsel for the respondents. It is well settled principle that the intention of the legislature must be found by reading the Statute as a whole. Every clause of Statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole Statute. It is also the duty of the Court to find out the true intention of the legislature and to ascertain the purpose of Statute and give full meaning to the same. The different provisions in the Statute should not be interpreted in abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express. Section 49 cannot be read in isolation, but must be read keeping in mind the scope of Section 34 whereunder an accused can obtain bail from the

High Court by preferring an appeal against the order of the Special Court refusing bail. In view of this specific provision, it will not be proper to interpret Section 49 in the manner suggested by learned counsel for the respondents. In *A.R. Antulay v. Ramdas Srinivas Nayak & Anr.* 1984 (2) SCC 500, the scope of special Act making provision for creation of a Special Court for dealing with offences thereunder and the application of Code of Criminal Procedure in such circumstances has been considered and it has been held that the procedure in Cr.P.C. gets modified by reason of a special provision in a special enactment.”

15. Making the aforesaid observations and noting an incongruous situation, it was held by the Supreme Court in para-15 of its judgment (*Salimbhai*) as below:-

“15. In the present case, the respondents did not choose to apply for bail before the Special Court for offences under POTA and consequently there was no order of refusal of bail for offences under the said Act. The learned Single Judge exercising powers under Section 439 read with Section 482 Cr.P.C. granted them bail. The order of the High Court is clearly without jurisdiction as under the scheme of the Act the accused can only file an appeal against an order of refusal of bail passed by the Special Court before a Division Bench of the High Court and, therefore, the order under challenge cannot be sustained and has to be set aside. Even on merits, the order of the High Court is far from satisfactory. Though it is a very long order running into 87 paragraphs but the factual aspects of the case have been considered only in one paragraph and that too

in a very general way.”

16.It is thus discernible as proposition of law that if a person whose anticipatory bail application has been rejected by the Special Court, he will have two remedies and he can avail any of them as at his sweet will. He may move an application for grant of bail before the High Court under Section 438 Cr.P.C. directly in the original or concurrent jurisdiction which may be heard and he may also prefer an appeal under sub-section (2) of Section 14-A of the Act of 1989 as amended. Thus, if both the remedies are allowed to exist, in the manner that a Court can exercise both appellate and original jurisdiction in respect of the same matter, it would definitely lead to an incongruous situation. Noting the aforesaid incongruity, the Supreme Court in the aforesaid decision held that the accused against whom an offence has been registered under the Special Act has to first approach and invoke the jurisdiction of the Special Court and in case he is aggrieved by an order of rejection, he has a right of appeal. Similarly, in the present case also, on the face of provision contained in Section 14 A (2) of the Act of 1989, if a person against whom offence punishable under the Act of 1989 has been registered, with or without registration of offence punishable under IPC, is apprehending arrest, his remedy would be to first apply for grant of anticipatory bail before the Special Court. In case his application is rejected, he will have a right of appeal under Section 14 A (2) of the Act of 1989 . In other words he cannot directly move an application before this Court seeking anticipatory bail without first approaching Special Court seeking to invoke its jurisdiction under Section 438 Cr.P.C.

17.In yet another decision in the case of **State of Andhra Pradesh** through **Inspector General** (supra), similar issue arose for consideration on the face of similar provision relating to appeal as contained in Section 21 of the National Investigation Agency Act, 2008 (NIA Act). Section 21 therein provides for an appeal as below:-

“**21 Appeals.** -(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an

interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

18. It is vividly clear from reading of Section 21 of NIA Act that clause (1) and (4) of the NIA Act are *pari materia* Section 14 A (1)(2) of the Act of 1989 as amended vide Amendment Act of 2015. In that case also, the Hon'ble Supreme Court discussed and interpreted the provision contained in Section 21 of the NIA Act, as below:-

"27. The order passed by this Court on 2.8.2013 in *State of A.P. v. Mohd. Hussain* is, therefore, clarified as follows:-

27.1. Firstly, an appeal from an order of the Special Court under NIA Act, refusing or granting bail shall lie only to a bench of two Judges of the High Court.

27.2. And, secondly as far as prayer (b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as The Unlawful Activities (Prevention) Act, 1967, such offences are triable only by Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

27.3. Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a bench of two Judges of the High Court."

19. In view of aforesaid two decisions of Hon'ble Supreme Court, dealing with similar contingency providing for appeal against an order granting or refusing to grant bail, it is quite clear that application for grant of anticipatory bail by a person apprehending his arrest in connection with offences punishable under the Act of 1989, with or without registration of offence under IPC, cannot directly move application for grant of anticipatory bail before this Court by invoking Section 438 Cr.P.C. as the general provision with regard to invocation of concurrent jurisdiction of the High Court under Section 438 Cr.P.C. stand impliedly excluded by the statutory scheme engrafted in Section 14A of the Act of 1989 as amended by Amendment Act of 2015. The remedy for such a person is to first invoke the jurisdiction of Special Court constituted under Special Act i.e. The Act of 1989 seeking anticipatory bail under Section 438 Cr.P.C. Secondly where such application is rejected by the Special Court, again it is not open for the

aggrieved accused to invoke concurrent original jurisdiction of this Court under Section 438 Cr.PC. But his only remedy is to prefer an appeal as has been expressly provided to him under Section 14 A (2) of the Act of 1989 as amended by Amendment Act of 2015.

20. Since the issue raised in these cases are squarely covered and no longer res integra in view of aforesaid two authoritative pronouncements of the Supreme Court in the aforesaid decision dealing with *pari materia* provision contained in two other special enactment, it is not necessary for this Court to refer to many judgments which have been cited at the bar by learned Amicus Curiae where various High Court have taken similar view.

21. In the result, all the anticipatory bail applications are rejected as not maintainable, however, with liberty to the applicants to take recourse to remedy as may be available to them under the law.

22. Before parting with the case, this Court places on record its appreciation for the valuable assistance rendered by learned Amicus Curiae.

Sd/-
(Manindra Mohan Shrivastava)
Judge