

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.139/2022

PETITIONERS : 1. Devendra s/o Govind Goyal,
Aged about 35 years, Occ : Nil

2. Ritesh s/o Govind Goyal,
Aged about 31 years, Occ. Nil.

Both R/o Govind Bhavan, Gokulpeth,
Nagpur.

(Both are presently lodged in Central Prison, Nagpur)

...VERSUS...

RESPONDENTS : 1. State of Maharashtra,
Through Police Station Officer,
Police Station Ambazari, Nagpur.

2. Sureshchandra s/o Maheshchandra
Agrawal,
Aged about 74 years, Occ: Business,
R/o 001, Lily Lifestyle Society,
Wadi, Nagpur.

Mr. Devendra V. Chauhan, Advocate with Mr. G.S. Gour, Advocate for petitioners
Mr. I.J. Damle, APP for respondent no.1
Mr. C.S. Kaptan, Sr. Advocate assisted by Mr. R.S. Kalangiware, Advocate for respondent
no.2

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 23/03/2022

Judgment pronounced on : 12/04/2022

1. Heard Mr. Chauhan, learned Counsel for the petitioner, Mr. Damle, learned Additional Public Prosecutor for the respondent no.1/State and Mr. C. S. Kaptan, learned Senior Counsel for the respondent no.2. Rule. Rule made returnable forthwith.

2. The petition challenges the order passed by the learned Sessions Judge, Nagpur dated 29/10/2021 in Miscellaneous Criminal Application No.2522/2021, whereby the bail granted by the learned Chief Judicial Magistrate, Nagpur to the petitioners on 16/07/2021 has been cancelled and the petitioners have been directed to be arrested and taken into custody in pursuance to the said order dated 29/10/2021.

3. Mr. Chauhan, learned Counsel for the petitioners submits that the petitioners are accused in R.C.C. No.1497/2021 pending before the learned Chief Judicial Magistrate, Nagpur, in which the petitioners are accused of having committed offences under Sections 406, 420, 467, 468, 471 r/w Section 34 of I.P.C. wherein by an order dated 16/07/2021, they were directed to be

released on bail by the learned Chief Judicial Magistrate, Nagpur (pg.322) on the conditions mentioned therein.

3.1. It is submitted that an application under Section 439(2) of Cr.P. C. came to be filed by the respondent no.2 before the learned Sessions Court, for cancellation of bail, in which the Learned Sessions Court by an order dated 29/10/2021 (pg.746) has been pleased to cancel the bail granted to the petitioners, directing them to be taken into custody. He submits that the order dated 29/10/2021 is not based upon the parameters available for cancellation of bail, which require the cancellation to be only upon violation of the terms on which the petitioners were released on bail, but is also on merits, which course of action, according to him, was not permissible in law.

3.2. Reliance, in support of the above contention, is placed on *Bharatbhai Bhimabhai Bharwad Vs. State of Gujarat and others, (2020) 18 SCC 693* (paras 4,8,9) and *Gulabrao Baburao Deokar Vs. State of Maharashtra and others, (2013) 16 SCC 190* (paras 20,21

and 27), which dilate on the difference between challenge to bail and cancellation of bail, according to him.

3.3. It is also contended that Section 439(2) of Cr.P.C. is summary in nature and not an appellate jurisdiction and therefore, the learned Sessions Court could not have decided the application for cancellation of bail, as if it was an appeal. Inviting my attention to paras 26, 39, 51 and 53 of the impugned order, it is submitted that the learned Sessions Court did not have jurisdiction of correction and the impugned order was beyond the pale and ambit of Section 439(2) of Cr.P.C. Reliance is also placed on ***Bhagirathsinh s/o Mahipat Singh Judeja Vs. State of Gujarat, (1984) 1 SCC 284*** (para 7) and ***Ramcharan Vs. State of M.P., (2004) 13 SCC 617*** to contend that while considering an application for cancellation of bail, it was not permissible to decide whether bail should be granted or not and different considerations have to be weighed while dealing with applications for cancellation of bail and grant of bail.

3.4. It is also submitted that though the petitioner no.2, has since filed an application for bail, before the learned Chief Judicial

Magistrate, the same was opposed by the respondents on the strength of the impugned order, though it was stated therein that the observations were limited to the application for cancellation of bail and any further bail application, if filed, be decided in accordance with law, without being influenced by the impugned order, and from the nature of the observations made they would always come, in the way of the petitioners in getting a fair hearing of the bail application as the learned Chief Judicial Magistrate, would dare not go against the findings, as recorded in the impugned order.

3.5. Without prejudice, it is submitted that the factors to be considered while cancelling bail have not been considered by the learned Sessions Court, due which the impugned order stands vitiated, reliance for which, is placed on *Myakala Dharmarajam and others Vs. State of Telangana and another*, (2020) 2 SCC 743 (paras 5,10 and11); *Mahipal Vs. Rajesh Kumar Alias Polia and another* (2020) 2 SCC 118 (paras 19/22); *Kumer Singh Vs. State of Rajasthan and another*, 2021 SCC OnLine SC 511; *Prashant Singh Rajput Vs. State of Madhya Pradesh and another*, 2021 SCC OnLine

*SC 919, Bhoopendra Singh Vs. State of Rajasthan and another, 2021
SCC OnLine SC 1020.*

3.6. It is, therefore, submitted that the impugned order cannot be sustained on both the above counts and therefore is liable to be quashed and set aside.

4. Mr. Damle, learned Additional Public Prosecutor for the respondent no.1 supports the impugned order and submits that if the order granting bail was perverse or without consideration of the material on record, as was in the present case, it was permissible for the learned Sessions Court to cancel the bail.

5. Mr. Kaptan, learned Senior Counsel for the respondent no.2 opposes the petition. He submits that under Section 439(2) of Cr.P.C. it is permissible for the higher Court to cancel the order of bail on violation of the terms of the bail as well as on merits, if it is found that the order granting bail was perverse and on non-consideration of material on record for which proposition, he places reliance on *Gurcharan Singh and others Vs. State (Delhi*

Administration), (1978) 1 SCC 118 (paras 16, 25, 26, 28 and 29); *Puran Vs. Rambilas and another*, (2001) 6 SCC 338 [paras 10 and 13 relying on *Gurcharan Singh* (supra)]; *Abdul Basit Alias Raju and others Vs. Mohd. Abdul Kadir Chaudhary and another*, (2014) 10 SCC 754 [paras 19, 21 and 25 relying on *Gurcharan Singh and Puran* (supra)];

5.1. Further relying on *Prahlad Singh Bhati Vs. NCT, Delhi and another*, (2001) 4 SCC 280 (paras 7 and 8); *Ram Govind Upadhyay Vs. Sudarshan Singh and others*, (2002) 3 SCC 598 (relying on *Prahlad Singh Bhati*); *Subodh Kumar Yadav Vs. State of Bihar and another*, (2009) 14 SCC 638 (para 16) and *Union of India and another Vs. Rajesh Ranjan alias Pappu Yadav*, (2004) 7 SCC 539 (para 8) it is submitted that the order of the learned Chief Judicial Magistrate granting bail (pg. 722) was as cryptic as possible and did not indicate an application of mind to the material on record, for had it been so, bail would not have been granted by him and has rightly been cancelled by the learned Sessions Court.

5.2. Mr. Kaptan, learned Senior Counsel invites my attention to the provisions of Section 437 (1) (i) of Cr.P.C. and contends that the expression ‘if there appear reasonable grounds for believing’, and ‘there are not reasonable grounds for believing that the accused has committed a non-bailable offence’ as occurring in Section 437(2) of Cr. P.C. make it obligatory upon the Court considering an application for bail to give reasons for granting bail, which position is reiterated in Section 437(4) of Cr.P.C.

5.3. Relying on *Mahipal* (supra) [paras 25 to 27] and *State of U.P. through CBI Vs. Amarmani Tripathi (2005) 8 SCC 21* (para 18/22), he submits that the parameters for grant of bail as enunciated therein have not been followed, considering which also, the order of bail by the learned Chief Judicial Magistrate was perverse and was rightly interfered with by the learned Sessions Court. Further taking support from *Bharatbhai Bharwad* (supra) para 9, it is contended that an arbitrary exercise of discretion would always permit the higher Court to entertain a plea for cancellation of bail.

6. Insofar as the plea that under Section 439(2) of Cr. P. C. the learned Sessions Court, which was a Court superior to that of the learned Chief Judicial Magistrate, could not have cancelled the bail granted to the petitioners by considering the case on merits, the question is no longer *res integra*, in view of what has been held in ***Gurcharan Singh*** (supra), which is as under:

“16. Section 439 of the new Code confers special powers on High Court or Court of Session regarding bail. This was also the position under Section 498 CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody.

This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court. ”

7. **Gurcharan Singh** (supra) has been followed in **Puran** [which considers **Bhagirathsinh** (supra)]; and **Abdul Basit** (supra).

Even ***Gulabrao Deokar*** (supra) relied on by Mr. Chauhan learned Counsel for the petitioners in para 27 relying upon ***Puran*** (supra) recognises the position that the higher Court under Section 439(2) of Cr.PC has power to set aside an unjustified, illegal or perverse order granting bail and this is an independent ground for cancellation as against ground of the accused misconducting himself, in the following words :

“27. Thus it could certainly be said that the order passed by the Sessions Judge was an order passed in breach of the mandatory requirement of the proviso to Section 439(1) CrPC. It is also an order ignoring the material on record, and therefore without any justification and perverse. As held by this Court in Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124], the High Court does have the power under Section 439(2) CrPC to set aside an unjustified, illegal or perverse order granting bail. This is an independent ground for cancellation as against ground of the accused misconducting himself.”

8. ***Myakala*** (supra) relied upon by Mr. Chauhan, learned Counsel for the petitioners in para 7 and 8 after noting the factors to be taken into consideration, as stated in ***Kanwar Singh Meena Vs. State of Rajasthan and another, (2012) 12 SCC 180*** and ***Raghubir***

Singh and others Vs. State of Bihar, (1986) 4 SCC 481 for cancellation of bail, in para 9 thereof, holds as under :

“ 9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail [Kanwar Singh Meena v. State of Rajasthan, (2012) 12 SCC 180 : (2013) 4 SCC (Cri) 614] . ”

9. Even, in ***Bharatbhai Bharwad*** (supra) relied upon by Mr. Chauhan, learned Counsel for the petitioners, the Hon’ble Apex Court has noted the fact that the application was filed before the High Court though termed as an application under Section 439 (2) of Cr.PC., however, in fact, it was challenging the order of grant of bail on the round that it was an arbitrary exercise of discretion, in which, it has also been held that an order challenging the grant of bail on the ground that it has been granted illegally, the consideration is whether there was improper or arbitrary exercise of discretion in grant of bail, which would indicate that the challenge

to the order of bail before a higher Court was permissible, which position is also spelt out from ***Subodh Kumar Yadav*** and ***Rajesh Ranjan*** (supra).

10. ***Bhoopendra Singh*** and ***Kumer Singh*** (supra) lay down the conditions, necessary for being considered by a Court while granting bail, whereas ***Prashant Singh Rajput*** (supra) lays down the parameters for cancellation of anticipatory bail. ***Ramcharan*** (supra) holds that different considerations arise while dealing with an application for cancellation of bail and grant of bail.

11. The factors to be considered for grant of bail, have been stated in ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee and another, (2010) 14 SCC 496***, in the following words :

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other

circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688].”

which have been reiterated in ***Mahipal*** (supra), relied upon by Mr. Chauhan, learned Counsel for the petitioners.

12. As recently as in 2022, in ***Manoj Kumar Khokhar Vs. State of Rajasthan and another, Criminal Appeal No.36/2022,***

decided on 11/01/2022, the Hon'ble Apex Court after considering the various judgments on the point, has held that though it is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at an initial stage and the allegations of the offences by the accused would not have been crystallized as such, however, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity of the case of the prosecution; criminal antecedents of the accused and a *prima facie* satisfaction of the Court in support of the charge against the accused, all of which, have to be reflected from the reasonings given in the order granting or rejecting bail, as ultimately the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other and in case the

order granting bail does not satisfy the aforesaid requirements, the higher Court would be justified in interfering. Similar is the dictum, as laid down by the Hon'ble Apex Court in *Centrum Financial Services Limited Vs. State of NCT of Delhi and another; Criminal Appeal No.94/2022, decided on 28/01/2022*.

13. It would thus be a trite position of law that under Section 439(2) of Cr. P.C. the higher Court would have the power to cancel the bail if it records a satisfaction as to the existence of parameters, as laid down in that regard in *Gurcharan Singh ; Puran ; Abdul Basit ; Gulabrao Deokar* and *Myakala* (supra).

14. That takes me to the consideration as to whether the learned Sessions Court was justified in cancelling the bail granted to the petitioners. What is material to be noted is that the order granting bail by the learned Chief Judicial Magistrate has been passed after filing of the charge-sheet and takes note of the Covid-19 directions of the Hon'ble Supreme Court too.

15. For the sake of ready reference, the order dated 16/07/2021 passed by the learned Chief Judicial Magistrate granting bail is quoted as under :

“1] This is an application for bail of accused after filing the charge sheet. Firstly, accused have filed application for bail at the time of investigation of the crime. The said application is rejected on 02.03.2021 by my Learned Predecessor.

2] Perused the application and say. Heard learned counsel Shri D.M. Dixit appearing for both accused and learned A.P.P Smt. V.C. Chawariya appearing for the state. Similarly heard learned counsel Shri R.S. Kalangiwale, who is assisting the prosecution. From the record it appears that, accused are in jail since 05.02.2021. Further record also discloses that, there is a business transaction between accused and complainant. Further record discloses that, accused are resided within the jurisdiction of the said Court. Further considering Covid-19 direction of Hon’ble Supreme Court and in the interest of justice I pass following order.

Order

i] Accused No.1 Devendra Govind Goyal and accused No.2 Ritesh Govind Goyal are released on executing their P.R. bond in the sum of Rs.1,00,000/- (Rs. One Lakh) each with like amount one solvent surety each or like amount cash security each on condition that accused No.1 and 2 shall not cause any disturbance in the

investigation and shall not tamper or hamper with the evidence of the prosecution.”

16. Section 437 of Cr.P.C. deals with the power of the Court to grant bail and is reproduced hereunder:

“437. When bail may be taken in case of non-bailable offence.— [(1) *When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—*

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:]

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [the accused shall, subject to the provisions of section 446-A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence

under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), [the Court shall impose the conditions,—

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such 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 or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a Court releasing any person on bail under sub-section (1) or sub-section (2), shall record in writing his or its [reasons or special reasons] for so doing.

(5) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on

bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time, after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.”

17. A perusal of Section 437 of Cr.P.C. would indicate that a Court considering an application for grant of bail while deciding the same is required to give reasons either for granting or rejecting the application. This dictate is spelt out from the language of Section 437(1) (i), second proviso to Section 437 (ii), (2) and (4) of Cr.P.C., which specifically enjoins upon the Court to record reasons while deciding the application for bail. Thus, there is a statutory mandate and duty cast upon the Court to give reasons for granting or rejecting the application for bail. That apart, even otherwise, it is the duty and obligation of any Court to record reasons for its order, as sans reason, the application of mind would not be spelt out and the party would not be aware as to the reasons, which weighed with the

Court to either grant or refuse bail. In ***Mahipal*** (supra) the necessity to record reasons has been expressed in the following manner :

“24. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. In the present case, the assessment by the High Court is essentially contained in a single para which reads : (Rajesh Kumar case [Rajesh Kumar v. State of Rajasthan, 2019 SCC OnLine Raj 5197] , SCC OnLine Raj para 4)

“4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail.”

25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the

heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.

26. In *Kalyan Chandra Sarkar v. Rajesh Ranjan* [*Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 : 2004 SCC (Cri) 1977], a two-Judge Bench of this Court was required to assess the correctness of a decision [*Rajesh Ranjan v. State of Bihar*, Criminal Misc. No. 28179 of 2002, order dated 23-5-2003 (Pat)] of a High Court enlarging the accused on bail. Santosh Hegde, J. speaking for the Court, discussed the law on the grant of bail in non-bailable offences and held : (SCC p. 535, para 11)

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of

such reasons would suffer from non-application of mind.”

(emphasis supplied)

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted.”

18. The order of the learned Chief Judicial Magistrate, has to be construed in light of the principles as enunciated in above judicial pronouncements, considering which, it would be apparent that it falls woefully short of what is required to be done. It merely notes that application for grant of bail has been filed after the filing of the charge-sheet and also notes that an earlier bail application was rejected by his predecessor on 02/03/2021, considering which, there was all the more reason, for him to record clear and specific reasons for granting bail. On the contrary, the order dated 16/07/2021, after stating that he had heard the respective learned Counsels, merely considers that (a) the accused were in jail since

05/02/2021; (b) there was a business transaction between the accused and complainant; (c) accused are residing within jurisdiction of the Court and (d) Covid-19 directions of the Hon'ble Apex Court, and proceeds to grant bail.

19. There is absolutely no reasoning whatsoever, reflected from a perusal of the order dated 16/07/2021, as to what factors weighed with the learned Chief Judicial Magistrate, in granting bail to the accused petitioners, specifically when the petitioners were charged with the offences punishable under Sections 406, 420, 467, 468, 471 read with Section 34 of I.P.C., on the allegations that :

(i) the accused had defrauded the complainant, to the tune of 49,00,000/- ;

(ii) there were criminal antecedents of the accused inasmuch as similar offences were also registered against Devendra/petitioner no.1, with Police station at Jabalpur and two at Nagpur one at Nandanvan Police Station vide Crime No.648/2019 and one at Tahsil Police Station, Nagpur vide Crime No.126/2021 ;

(iii) Sandeep Narayan Mishra, the witness was threatened by one Govind Goyal (father of the petitioners) that he should meet him

first and state to the police as would be directed, for which N.C. Report No.99/2021 was lodged with Police Station Ganeshpeth on 18/02/2021;

(iv) Manish Malpani, a friend of the petitioners, had called-up a main witness and had threatened him from deposing against the petitioners for which N.C. Report No.499/2021 dated 26/06/2021 was lodged;

(v) The remittance licence, claimed to have been issued to the petitioners/accused by the Reserve Bank of India, was a forged document, as the RBI, upon a query in that regard, had replied that no such remittance licence was issued ;

(vi) the earlier bail application filed by the petitioners, was rejected by a detailed order dated 02/03/2021, all of which material was available in the Charge Sheet.

20. As held in ***Mahipal*** (supra) where an earlier application for bail has been rejected, there is a higher burden on the Appellate Court to furnish specific reasons as to why bail should be granted, which proposition would equally be applicable to the bail application

filed before the learned Chief Judicial Magistrate. The order dated 16/7/2021, however, is totally silent upon any reasonings.

21. The argument that the learned Sessions Court, acted as if it has appellate jurisdiction, is without any merits, as for the purpose of considering the plea that the order granting bail, was perverse and did not consider material on record, it was necessary for it to have gone into the material available in the charge-sheet so as to test the veracity of the plea raised before it, and there is nothing wrong if having so found, the learned Sessions Court has discussed about the same, in the impugned order recording reasons for its findings as to perversity, otherwise the same too, would have become open to criticism on the ground of lack of reasonings.

22. No doubt that in *Myakala* (supra) though the order of the learned Sessions Court is not reproduced, however, considering the argument that the learned Sessions Court did not consider the material availing on record and the criminal antecedents of the accused, it was held that though the Sessions Court did not discuss the material on record in detail, but there were indications that the

entire material was perused before grant of bail, which is not the case here. It further observes that the allegations that the accused therein were threatening witnesses were vague, whereas in the instant matter two N.C. reports have been lodged with the Ganeshpeth Police Station regarding the threats given to the witnesses, which was a material factor to have been considered for the purpose of grant of bail and therefore, on facts, ***Myakala*** (supra) is of no assistance to the arguments put forth by Mr. Chauhan learned Counsel for the petitioners.

23. The contention that the learned Chief Judicial Magistrate would be influenced by the order of the learned Sessions Judge cancelling bail and would not grant bail in spite of observations to the contrary in the order of the learned Sessions Court, do not set well, as such observations are made day in and day out in a number of cases and all such cases which are there before the First Court are decided on merit.

24. In view of the above discussion, I do not see any merit in the criminal writ petition and the same is dismissed. Rule stands discharged. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)

After pronouncement of the judgment, Mr. Chauhan, learned Counsel for the petitioners, makes a request that the learned Chief Judicial Magistrate be directed to decide the bail application expeditiously.

The other side has no objection to the same, considering which, the learned Chief Judicial Magistrate is requested to decide the bail application within a period of two weeks from today.

(AVINASH G. GHAROTE, J.)