

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

CRIMINAL APPEAL No. 1502 OF 2023

BETWEEN: -

NEERAJ S/O SHRI RAMPRASAD VERMA,

.....APPELLNAT

(BY MS. AYUSHI VYAS - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH POLICE STATION GOHAD,
DISTRICT BHIND (MADHYA PRADESH).**
- 2. ASHOK S/O SHRI GANGARAM JATAV,
AGED 21 YEARS, PRESENT R/O PURANA
GHANSHYAMPURA, WARD NO. 1,
GOHAD, POLICE STATION GOHAD,
DISTRICT BHIND (MADEHYA
PRADESH)**

.....RESPONDENTS

***(SHRI RAVINDRA SINGH KUSHWAH – DEPUTY ADVOCATE GENERAL
FOR RESPONDENT NO. 1/STATE AND SHRI RAHUL BANSAL –
ADVOCATE FOR RESPONDENT NO. 2/COMPLAINANT)***

Reserved on : 08/02/2023
Pronounced on : 05/04/2023

This appeal having been heard and reserved for orders, coming on for pronouncement this day, *this Court passed* the following:

ORDER

The present appeal has been filed by the appellant which is actually an application for bail. The order passed by the learned Court below dismissing his application for grant of bail is dated 20/10/2020. The appellant was asked by this Court as to how he could prefer an appeal against the order dated 20/10/2020, when he has already challenged the validity of the said order in a previous appeal being criminal appeal number 4677/ 2021.

2. Learning counsel for the appellant submitted that it is settled law that there *res judicata* does not apply while deciding a subsequent application for bail irrespective of the result of the previous application. In this regard, the learned counsel for the appellant has placed before this Court copy of a judgment of the Hon'ble High Court of Chhattisgarh in Criminal Appeal No. 1104/2021 by which the Hon'ble High Court of Chhattisgarh had an opportunity to deal with a similar situation in the case of *Neeraj Jagatramka Vs. State of Chhattisgarh*. In that case also, the Registry had taken an objection with regard to the maintainability of the criminal appeal as the order against which the appellant had approached the High Court stood exhausted by a previous order of the High Court in Criminal Appeal No. 642/2021 which was disposed of by the High Court vide order dated 11/08/2021.
3. While deciding the said question, the Hon'ble High Court of Chhattisgarh proceeded on the basis that *res judicata* is inapplicable

to bail orders and cases relating to exercise of jurisdiction under Section 438 and 439 Cr.P.C. It relied upon the judgments of the Supreme Court also to arrive at such a conclusion. However, the issue that was not examined by the Hon'ble High Court of Chhattisgarh was whether the High Court, while examining an appeal under Section 14 (2) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 (hereinafter, for the sake of brevity, is being referred to as the "Special Act"), was exercising jurisdiction under Section 438 and 439 of the Cr.P.C as a Court of concurrent jurisdiction examining an original application for bail / anticipatory bail or, whether, it was acting as an appellate Court looking into the correctness of the order passed by the learned Court below allowing or denying bail to the accused. It is also to be examined whether, the High Court has authority to entertain an application under section 438 or 439 directly, for an offence under the Special Act.

4. Section 20 of the Special Act provides that the Act shall have an overriding effect over all other laws which are inconsistent with the Special Act. Section 14A of the Special Act deals with appeals. Sub-section (1) of Section 14 (A) ousts the jurisdiction of the Cr.P.C. with regard to appeals arising from a judgment, sentence or order, not being an interlocutory order, passed by a Special Court or an Exclusive Special Court to the High Court, both on facts and on law.
5. Subsection 2 of Section 14 (A) provides that an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. A purposive interpretation of the said provision reveals that in the scheme of the Special Act, it is

only the Special Court or the Exclusive Special Court, which has the authority to entertain an application under section 438 and 439 of the Cr.P.C. Either of the parties, who are dissatisfied by the order passed by the aforementioned Courts, can approach the High Court under Sub-section 2 of Section 14A of the Special Act. The High Court, when it examines the order passed by the lower Court, is acting in an appellate capacity under section 14A of the Special Act which is different from its concurrent jurisdiction under Section 438 or 439 of the Cr.P.C. While entertaining an application for bail under Section 438 or 439 Cr.P.C., the High Court, which has concurrent jurisdiction along with the Court of Sessions and can examine first hand whether, on the basis of the allegations against an accused, he is entitled for the benefit of bail or anticipatory bail. However, while acting as a court of appeal under section 14A(2), the High Court is not acting as a Court of original jurisdiction but, it is performing the function of an appellate Court where all that it has to examine is the correctness of the order passed by the learned Court below under Section 438 or 439 Cr.P.C. If the High Court approves of the order passed by the learned Court below then it dismisses the appeal upholding the impugned order. However, if the High Court is of the opinion that the order granting or rejecting bail to the accused by the learned Court below is not in order, then it allows the appeal and sets aside the impugned order. Once an appeal has been decided under 14A the order that was challenged in the said appeal ceases to exist. Therefore, a second appeal against the original order granting or rejecting bail passed by the Special Court or the Exclusive Special Court, is not maintainable.

6. Once an appeal is dismissed, the appellant would have to approach the Special Court or the Exclusive Special Court afresh for an order of bail. While entertaining such a second application, the learned Court below can pass an order granting bail, if it finds a change in circumstance. The constraint of an order passed by the High Court under 438 or 439 barring the inferior Court from entertaining an application for bail in line with judicial propriety, will not apply in the case of a fresh application under the Special Act. Even though the High Court may have dismissed an appeal against the previous order passed by the learned Court below rejecting the application for bail of the accused, a change in circumstance demonstrated by the accused before the learned trial Court does not bar it from entertaining the fresh application.
7. Thus, this Court finds that the High Court cannot entertain an application under section 438 or 439 Cr.P.C. for an offence under the Special Act as that authority has been taken away from the High Court impliedly by Section 14A (2) of the Special Act which makes the High Court a Court of Appeal which can only examine the correctness of an order passed by the learned Court below under section 438 or 439 for an offence under the Special Act. This Court is also of the opinion as mentioned hereinabove that a second application for grant of bail by the accused before the Special Court or the Exclusive Special Court is maintainable on changed circumstances when demonstrated by the accused and the trial Court shall not be bound by the fact that its previous order of rejection has been approved of by the High Court under its appellate jurisdiction.
8. Therefore, this appeal is rejected on the ground that the order against

which the appeal is preferred was already considered by this Court in Criminal Appeal No. 4677/2021 vide order dated 20/09/2021 by which this Court dismissed the said appeal. However, the appellant is given the liberty to approach the learned trial Court afresh under Section 439 Cr.P.C. and the learned trial Court shall have the liberty of deciding that application afresh on facts, subject to a change of circumstance from its previous order dated 20/10/2020.

9. With the above, the appeal is finally disposed of.

(Atul Sreedharan)
Judge