HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

HON'BLE JUSTICE ANAND PATHAK

Misc. Criminal Case NO. 22615/2020

Smt. Sunita Gandharva

Versus

State of M.P. & Anr.

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Shri H.K.Shukla, learned counsel for the applicant/complainant.

Shri C.P.Singh, learned Panel Lawyer for respondent No. 1/State.

Shri Gaurav Mishra, learned counsel for respondent No. 2/accused.

Shri N.K.Gupta, learned senior counsel assisted by Shri Ravi Gupta as well as Shri Vijay Dutt Sharma, Shri Atul Gupta and Shri Sameer Kumar Shrivastava, learned counsel as Amici Curiae.

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Whether approved for reporting : Yes

Law laid down:-

(i) *High Court can entertain application under Section 439 (2) of Cr.P.C. for cancellation of bail granted in exercise of powers conferred under Section 14-A(2) of Atrocities Act;*

(ii) *High Court granted bail in an appeal under Section 14-A(2) of Atrocities Act can also recall the said order of bail if facts disclose so;*

(iii) *In an offence, where the provisions of*

Atrocities Act and POCSO Act are involved, the procedural law of POCSO Act will apply and in a composite set of offences involving provisions of both the Acts, against an order refusing bail under Section 439 of Cr.P.C. by Special Court, an application under Section 439 Cr.P.C. simpliciter will lie before the High Court;

(iv) *Scope and extent of bail conditions as referred in Section 437 (3) of Cr.P.C. are wide enough to include Community Service and other reformative measures also but conditions ought not be onerous and excessive in nature. Concept delineated;*

(v) *Rule of Ejusdem Generis and Noscitur-A-Sociis discussed and*

(vi) *Decisions of Hon'ble Supreme Court in the matter of* ***Babu Singh & Ors. Vs. State of U.P., AIR 1978 SC 527, Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor, High Court of Andhra Pradeh, AIR 1978 SC 429*** *and* ***Moti Ram and Ors. Vs. State of Madhya Pradesh, AIR 1978 SC 1594*** *in respect of Community Service relied.*

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O R D E R

(Passed on this 8th Day of October, 2020)

The instant applicant under Section 439 (2) of Code of

Criminal Procedure has been preferred by the applicant / complainant (hereinafter shall be referred to as "complainant") for cancellation of bail granted to respondent No. 2/accused (hereinafter shall be referred as "accused"), who was enlarged on bail by this Court vide order dated 26/2/2020 in Criminal Appeal No. 1759/2020. Accused is facing trial for offence under Section 363, 366-A, 376 of IPC and Section 3 (1) (w)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") and Section 3/4 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

2. It is the submission of learned counsel for the complainant that earlier accused kidnapped the minor daughter of complainant, aged 16 years for which complaint was made and FIR was registered vide crime No. 486/2019 on 25/8/2019 for offences referred above. Accused was arrested on 3/9/2019 and after investigation charge-sheet was filed. Thereafter, accused preferred application under section 439 of Cr.P.C. before the trial Court for bail but same was dismissed, therefore, accused as appellant filed criminal appeal vide Cr.A.No. 1759/2020 under Section 14-A (1)(2) of Atrocities Act against the order dated 4/10/2019 passed by trial Court. After due consideration, appeal preferred by accused against the order of trial Court seeking bail, was allowed vide order dated 26/2/2020 and accused was directed to be released on bail on certain conditions including the conditions that accused shall not try to move in the vicinity of

prosecutrix and would not try to contact her in any manner and would not cause harassment, otherwise on the basis of misconduct, his bail application shall be rejected. Another contrition that that accused shall not commit same nature of offence for which he is facing trial. He was also subjected to the condition that he shall not induce or intimidate to any person, who is acquainted with the facts of the case.

3. It appears that after being released on bail (by the effect of order dated 26/2/2020), accused again tried to contact the prosecutrix and therefore, after four months on 30th June, 2020, complainant found her daughter missing, therefore, lodged an FIR against the present accused on 1/7/2020 at same police station Kotwali Bhind for offence under Section 363 of IPC vide crime No. 286/2020. He also made a complainant to the Superintendent of Police, Bhind on 4/7/2020, duly received by the office of Superintendent of Police, Bhind, in which she referred the conduct of accused; whereby, he constantly threatened the family of prosecutrix and exerted pressure for compromise. She specifically referred the fact that frequently, accused attacked the house of present complainant through bricks and stones to intimidate them. She also referred the fact regarding violation of bail conditions.

4. On this complainant, since FIR was registered and case was investigated, therefore, complainant filed this application for cancellation of bail on the ground that bail granted to accused in earlier case be cancelled and accused be confined to jail as he

became a constant threat to the family of prosecutrix including prosecutrix. He abducted the girl to marry her knowing fully well that prosecutrix is minor and himself is facing trial for same nature of offence which he committed earlier, therefore, complainant sought cancellaton of bail. It is further submitted that application for cancellation of bail is maintainable and facts indicate that interference can be made.

5. On the other hand, learned counsel for the accused opposed the prayer by raising the ground of maintainability of application for cancellation of bail. According to him, once the bail is granted under the special statute i.e. Atrocities Act, then there is no provisions under the Atrocities Act empowering the Court to recall the bail granted under Section 14-A(1)(2) of Atrocities Act, therefore, application for cancellation of bail is not maintainable. He relied upon the order dated 9/5/2018 passed by Allahabad High Court in the matter of **Sushil Kumar Vs. State of U.P. & Anr. (Miscellaneous Application No. 1/2018)** as well as order of Bombay High Court in the case of **Amar Singh Vs. State of Maharashtra, 2006 Cr.L.J. 1538.**

6. It is further submitted that accused was enlarged on bail vide order dated 26/2/2020 in which condition of community service was incorporated (at the instance of accused to perform community service) and accused regularly appeared at District Hospital, Bhind from 15th March, 2020 to 17th July, 2020 and he is working as Ambulance Driver of Emergency-108 to address any emergent situation and he is working with sincerity and devotion.

Therefore, clause of community service in bail order has been voluntarily performed by the accused and he reformed himself by this condition of community service and got an occupation also of Driver of Ambulance. He referred identity card, which is placed with the application in this regard, therefore, it is submitted that his case be considered in light of such developments and instant application for cancellation of bail be dismissed. He also denied the allegations being false and baseless.

7. Although, accused cursorily raised the point of imposition of conditions by making submission that conditions beyond Section 437 (3) of Cr.P.C. cannot be imposed and therefore, if the controversy is seen from that perspective then he has not committed any offence after being released on bail.

8. Counsel for respondent/State referred the facts on the basis of case dairy and prayed for appropriate orders. State counsel referred the order dated 11/10/2018 passed in case of **Manjula Vs. State represented by K.R.Puram Police Station passed by Karnataka High Court in Criminal Petition No. 9350/2017** and judgment of Apex Court in the case of **Dr. Subhash Kashinath Mahajan Vs. State of Maharashtra & Anr.,(2018) 6 SCC 454.**

9. Shri N.K.Gupta, learned senior counsel appearing as Amicus Curiae referred the object of Amendment Act of 2018 by which absolute bar has been created over the grant of anticipatory bail. He also referred the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Amendment Act, 2015 which was of wider amplitude in which definition of victim has been incorporated alongwith amendment in Section 14 and incorporation of Section 14-A and Section 15-A of Atrocities Act, 1989. The object and purpose of Amendment Act was to protect the victims from onslaught of discrimination and harassment. Original provision in Atrocities act, 1989 contained the provision of Section 439 of Cr.P.C. for bail but by the Amendment Act,2015, Section 14-A has been incorporated. He referred the Rule 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short "Atrocities Rules"), where, precautionary and preventive measures have been referred, therefore, looking to the aims and objects of Act and Rules as well as Amendment Acts thereunder, it is apparently clear that application for cancellation of bail is very much available to further the cause of justice. Learned senior counsel also referred Section 21 of General Clauses Act to submit that every Court which passes any order has the power and authority to recall it as per exigency, therefore, on this count also, Court which has passed the order can recall or cancel the bail.

10. Learned senior counsel referred Section 482 of Cr.P.C. also to invite the attention of this Court over the extraordinary jurisdiction vested in the High Court to check the abuse of process of law and to further the cause of justice.

11. Shri Vijay Dutt Sharma, learned counsel appearing as Amicus Curiae relied upon history of bail, 36th Law Commission

of India report of December, 1967 and amended Cr.P.C. of 1973 as well as amendment caused in Cr.P.C. in 2005, with its aims and objects to submit that any other interpretation would lead to miscarriage of justice. He also addressed on the expression **"any other conditions"** as contained in Section 437 (3) of Cr.P.C. by taking this Court to the concept of bail and 36th report of Law Commission of India and judgments rendered by Apex Court in the case of **Babu Singh & Ors. Vs. State of U.P., AIR 1978 SC 527, Gudikanti Narasimhulu and Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh, AIR 1978 SC 429, Moti Ram and Ors. Vs. State of Madhya Pradesh, AIR 1978 SC 1594, and Gurbaksh Singh Sibbia, etc vs. State of Punjab, AIR 1980 SC 1632** and submits that Court is competent to impose any other conditions in the interest of justice, especially, if the conditions are not onerous. According to him, unless the condition is excessive (monetarily) or onerous, Court can impose any conditions. He also resorted to Rules of Language in Interpretation of Statutes through Rule of Ejusdem Generis and Noscitur-A-Sociis. According to him, Court can impose any condition in the interest of justice especially for Community Service..

12. Shri Sameer Kumar Shrivastava, learned counsel appearing as Amicus Curiae also addressed on the question of maintainability of the application by referring legislative intent vis-a-vis application for cancellation of bail and submits that aims and objects of Amendment Act, 2015 (Atrocities Act) is speedy

and effective justice to the members of vulnerable sections of the society as referred in the Atrocities Act. He relied upon **Full Bench decision of Allahabad High Court in Re: Provision of Section 14-A, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Criminal Writ and Public Interest Litigation No. 8/2018)** and submits that legislative intent is very clear in respect of Atrocities Act and it is to be construed that remedy under Section 439 (2) of Cr.P.C. is available to the complainant, otherwise, whole purpose of the Act would be defeated. He also referred various Rules of Construction in respect of submissions.

13. Shri Shrivastava also raised a point involved in the case in hand that in a case where offence under the provisions of Atrocities Act as well as POCSO Act are involved then the procedural law of POCSO Act will apply and Atrocities Act would give way to the POCSO Act because POCSO Act is subsequent in time and Section 42-A of POCSO Act clearly oust the jurisdiction of any other Act and such section makes the provision of POCSO Act with overriding effect over other Acts. Therefore, looking to its subsequent promulgation and the overriding effect as reflected through Section 42-A of POCSO Act, the provisions of POCSO Act would apply and therefore, instant matter shall be tried by the special designated Judge under the POCSO Act and not special designated Judge under the Atrocities Act. He relied upon judgment of Division Bench of Madras High Court **In RE: Registrar (Judicial), High Court of**

Madras , reported in 2017 Cr.L.J. 4519 (Madras High Court) as well as judgment of Hyderabad (erstwhile Andhra Pradesh High Court) in the case of **State of Andhra Pradesh Vs. Mandili Yadagiri, 2016 Cr.L.J. 1415** to submit that Special Judge, POCSO Act will try the case and therefore, any order passed by Special Judge of POCSO Act in a bail order shall be challenged by the accused by way of Section 439 of Cr.P.C. before the High Court being concurrent jurisdiction and High Court may pass an order of bail under Section 439 of Cr.P.C. on facts and circumstances of the case. Therefore, Section 439 (2) Cr.P.C. shall automatically be available to the complainant, in case situation arises so. Therefore, on this count also, procedural law of POCSO Act will apply and application under Section 439 (2) of Cr.P.C. would be maintainable.

14. Shri Atul Gupta, learned counsel appearing as Amicus Curiae also addressed the Court almost on similar lines.

15. Shri V.D.Sharma and Shri S.K.Shrivastava, filed their synopses in support of their submissions.

16. Heard learned counsel for the parties as well as all Amici Curiae through Video Conferencing and perused the case diary / documents appended thereto.

17. Instant case is by way of an application for cancellation of bail at the instance of complainant and the main objection to the said application is maintainability itself. Beside that question of interplay of Atrocities Act and POCSO Act and extent of bail conditions as per Section 437 (3) Cr.P.C. are involved. Therefore,

according to this Court Five Questions are involved in this case, viz.:-

> ***(i)*** *Whether, High Court can entertain an application under Section 439(2) of Cr.P.C. for cancellation of bail granted in exercise of powers conferred under Section 14-A(2) of Atrocities Act ?;*
>
> ***(ii)*** *Whether, the Court granting bail in an appeal under Section 14-A (2) of Atrocities Act can be recalled/cancelled as the order granting bail does not attain finality ?;*
>
> ***(iii)*** *Whether, in an offence where the provisions of Atrocities Act and POCSO Act are involved, the procedural law of POCSO Act will apply or the provisions of Atrocities Act ?;*
>
> ***(iv)*** *Whether, in a composite offence involving of provisions of POCSO Act and Atrocities Act, an order refusing bail under Section 439 Cr.P.C. will be appealable as per Section 14-A (2) of Atrocities Act or an application under Section 439 Cr.P.C. simpliciter will lie before the High Court ?; and*
>
> ***(v)*** *What is the scope and extent of bail conditions as referred in Section 437 (3) of Cr.P.C. ?*

REGARDING QUESTIONS NO. (i) AND (ii):-

> ***(i)*** *Whether, High Court can entertain an application under Section 439(2) of Cr.P.C. for cancellation of bail granted in exercise of powers*

conferred under Section 14-A(2) of Atrocities Act ?;

(ii) *Whether, the Court granting bail in an appeal under Section 14-A (2) of Atrocities Act can be recalled/cancelled as the order granting bail does not attain finality ?;*

18. In the case in hand, initially an application was filed under Section 439 of Cr.P.C. by accused before the trial Court seeking regular bail and dismissal thereafter, preferred appeal under Section 14-A of Atrocities Act before this Court. Insertion of Section 14-A of the Atrocities Act is the effect of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 by which sweeping amendments have been made in original Atrocities Act of 1989 making it more effective, victim oriented and special mechanism of Special Courts and speedy trial. By virtue of such amendments, which came into being in year 2016, concurrent jurisdiction of this Court to grant regular bail under Section 439 of Cr.P.C. has been taken away and in place of concurrent jurisdiction, an appellate jurisdiction has been conferred by way of an appeal under Section 14-A (2) of Atrocities Act. Although, provisions of appeal has been made but it still emanates from an order of refusal of bail by Special Court under Section 439 of Cr.P.C. Original statutory source of Section 439 is still intact. Only difference is replacement of concurrent jurisdiction with appellate jurisdiction.

19. From perusal of opening words of Sub-section (2) of

Section 14-A of the Atrocities Act makes it clear that only the operation of Section 378(3) of Cr.P.C. is specifically ousted and rest of the provisions are intact and understandably so because by incorporation of Section 14-A(2), bar of **"Leave to Appeal"** as provided in Section 378(3) of Cr.P.C. is removed so that appeal can be filed on facts and law as a statutory and substantive right without conferring any discretion to the Court for grant of leave. Therefore, unless the exclusion is specific qua Section 439 Cr.P.C., same can never be inferred.

20. For appreciating the controversy meaningfully, the legislative intent and aims and objects of Principal Act of 1989 and thereafter Amendment Act of 2015 as well as Amendment Act of 2018 deserve consideration. Aims and objects of Principal Act, 1989 read as under:-

> *"An act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto."*

21. With the years of experience, it was found that due to some vagueness in the definitions and some procedural inertia, the purpose of Act lacked fulfillment, therefore, to make it more victim oriented, the Amendment Act was introduced. Learned Amicus Curiae Shri Shrivastava referred the letter dated

18/2/2016 of Government of India, Ministry of Tribal Affairs, referred to all Chief Secretaries of State Government, relevant contents of which is reproduced therein to sum up the legislative intent:-

> *"As you are aware that the Article 17 of the Constitution of India abolished 'untouchability', forbade its practice in any form and made enforcement of any disability arising out of untouchability as on offence punishable in accordance with law. An Act of Parliament namely the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) {PoA} act, 1989, to give effect tot he provisions of Article 17 of the Constitution was enacted for preventing atrocities against embers of Scheduled Tribes, to provide for Special Courts for the trial of such offences as well as relief and rehabilitation of the victims of atrocities. The PoA Act extends to the whole of India except Jammu and Kashmir, and responsibility for its implementation rests with State Governments.*
>
> *2. The complaints/allegation of atrocities despite, provisions of the enabling Act against the members of Scheduled Tribes (STs) in matter of concern. The Act has accordingly been strengthened to make the relevant provisions of*

the Act more effective. Based on the consultation process with all the stakeholders, amendments in the PoA Act were proposed to broadly cover five areas namely (i) Amendments to Chapter II (Offences of Atrocities) to include new definitions, new offences, to re-phrase existing sections and expand the scope of presumptions, (ii) Institutional Strengthening, (iii) Appeal (a new section), (iv) Establishing Rights of Victims and Witnesses (a new chapter) and (v) strengthening preventive measures. The objective of these amendments in the PoA Act is to deliver members of STs, a greater justice as well as be an enhanced deterrent to the offenders. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 ((No.1 of 2016) has been notified in the Gazette of India Extraordinary on 01.01.2016. In view of its sub-section (2) of section (1), the Central Government has appointed 26.01.2016 as the date of enforcement of the Amendment Act, notified in the Gazette of India, Extraordinary, on 18.01.2016. The copies of the gazette notifications issued in this regard are appended.

3. You are requested to apprise your concerned offices/agencies for information and action

accordingly."

22. With the legislative intent reiterated in the letter, no iota of doubt exists that intention of the Amendment Act was for Speedy Trial and Protection of Victims' Rights. By way of Section 2 (ec) Victim has been defined and beside Section 14-A, Section 15-A, **"Rights of victim and witnesses"** was introduced to take care of them for the first time. Definition of Victim includes-relatives, legal guardian and legal heirs and this definition is much wider than the definition of Victim provided in Section 2 (wa) of Cr.P.C. which includes guardian or legal heir, not the relatives. Similarly, Section 15A of Atrocities Act provides extensive mechanism for protection of Victims/Witnesses. Even victim has given chance to appear before the Court at the time of hearing of bail application. Right of the Court to cancel or revoke the bail is one of the measures by which protection of Victims/Witnesses can be ensured. Same is to be interpreted in such a manner for which it was enacted and not in a manner in which it is being tried to be interpreted by the accused.

23. Now as referred above, this Court exercises the appellate power of substantive provision of Section 439 of Cr.P.C. by way of appellate jurisdiction and since accused takes the benefit of bail under Section 439 of Cr.P.C. before the trial Court/Special Court and on its refusal resorts to appeal then after getting bail by way of an order in an appeal, he is estopped from submission about non-application of Section 439(2) of Cr.P.C.

24. Recent decision of **Full Bench of High Court of**

Allahabad In Re: Provisions of Section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015 (referred supra) pondered over the different provisions of Atrocities Act and concluded that the Atrocities Act is a special enactment. Legislative Intent and Aims and Objects of Atrocities Act have been discussed in detail. Full Bench found the aims and objects behind inserting the chapter of appeal was speedy justice and expeditious trial. Same aspect has been taken care of by the Division Bench of Patna High Court in the case of **Bishveshwar Mishra & Anr. Vs. State of Bihar (Criminal Miscellaneous No. 25276/2016).** Both these judgments discussed aims and objects of Amendment Act.

25. Even second proviso to the substituted Section 14-A (1) confers power upon the Special Court to take cognizance of the offence under the Act directly creating an exception to the general rule under Section 193 of Cr.P.C.; wherein, Magistrate takes the cognizance and thereafter commits the case to the Sessions Court. By passing the mandate of Section 193 of Cr.P.C. by way of creating an exception through insertion of proviso itself indicates the legislative intent and therefore, the victim orientation of the legislature would be undermined if narrow interpretation is given by removing the provision of Section 439 (2) of Cr.P.C. from construction of the amended provisions.

26. Hon'ble Apex Court in the case of **Puran Vs. Rambilas and Ors., (2001) 6 SCC 338** held that High Court being superior Court has inherent powers to cancel the bail and any

interpretation which restricts the powers or nullifying Section 439 (2) of Cr.P.C. cannot be given. As referred, **Mischief Rule (Rule in Heydon's case)**, has been given stamp of approval by a Constitution Bench of Hon'ble Apex Court in the case of **Bengal Immunity Co. Ltd., Vs. State of Bihar and Ors., AIR 1955 SC 661**. As per the said judgment while deciding true interpretation of all statutes, be it Penal, Beneficial, Restrictive or Enlarging a common Law, four things are required to be considered, which are as follows:-

> *"**(i)** What was the common law before making of the Act;*
>
> ***(ii)**What was the mischief and defect for which the common law did not provide;*
>
> ***(iii)**What remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth; and*
>
> ***(iv)**The true reason of the remedy."*

Judgment further mandates that office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro privato commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico'.

27. By applying the above test, following conclusions can safely be derived:-

1. Prior to coming into Amendment Act, 2015, High Court was having concurrent jurisdiction under Section 439 of Cr.P.C. for deciding the bail;
2. Speedy trial and protection of rights and interest of victim was the defect for which the amendment was brought in ;
3. Legislature provided a time bound schedule for trial and for the purpose of filing bail application as well as mechanism for deterrent has been added by way of Amendment Act, 2018 by making stringent provisions regarding arrest of a person accused of any such offence under the Atrocities Act and making the provision of anticipatory bail as nugatory; and
4. The true reason of the remedy was to provide speedy justice to the victims and provisions to act as deterrent to the miscreants."

28. Therefore, any interpretation which restricts the right of victim to approach the High Court in case the bail condition is violated would be against the very spirit of the Amendment Act and this may lead to an anomalous position where the whole purpose of Amendment Act would be defeated and therefore, said interpretation cannot be accepted as suggested by counsel for the accused. Hon'ble Apex Court in the case of **M/s. New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, AIR 1963 SC 1207** (in para 8) has laid stress over rule of harmonious construction by observing as under:-

"8.....It is recognised rule of interpretation of

statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its powers invalid.....”

Emphasis supplied

Therefore, this Court persuades itself to prefer the interpretation/construction which advances the remedy and suppress the mischief as the legislature envisaged. All provisions can only be reconciled if doctrine of harmonious construction is resorted to.

29. Even otherwise, if the language used is capable of bearing more than one Construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. **(See: Principles of Statutory Interpretation by Justice G.P.Singh, Tenth Edition. Chapter II, Synopsis 4)**.

30. Considering the aims and objects as well as legislative intent, the judgments relied upon by the accused, in the humble opinion of this Court cannot be relied upon in favour of accused; otherwise, it would cause miscarriage of justice.

31. Victim cannot be rendered remediless, even if the accused gets bail under Section 439 of Cr.P.C. and keeps on interfering in the investigation / trial and intimidating the victim or the witnesses. **Secondary Victimization** of complainant/victim (a term used by Hon'ble Supreme Court in the case of **Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. State of Karnataka and Ors., (2019) 2 SCC 752)** cannot be allowed to continue. It is further observed by Their Lordships that "today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both". Therefore, bail conditions in Atrocities Act deserve to be complied with by the accused more stringently because of reasons discussed above.

32. Court has power to recall an order which has been passed by it earlier. Power to issue or pass order includes its recalling.

33. Therefore, in the considered opinion of this Court, an application for cancellation of bail under Section 439 of Cr.P.C. at the instance of complainant /aggrieved party is maintainable before the High Court which passed the order and order granting bail in an appeal can be recalled, of course in a fit case for recalling and that has to be seen as per the merits of the case.

Therefore, the application for cancellation of bail under Section 439 (2) of Cr.P.C. preferred by the present applicant as complainant is maintainable against respondent No. 2-accused.

REGARDING QUESTIONS NO. (iii) AND (iv):-

> ***(iii)*** *Whether, in an offence where the provisions of Atrocities Act and POCSO Act are involved, the procedural law of POCSO Act will apply or the provisions of Atrocities Act ?;*
>
> ***(iv)*** *Whether, in a composite offence involving of provisions of POCSO Act and Atrocities Act, an order refusing bail under Section 439 Cr.P.C. will be appealable as per Section 14-A (2) of Atrocities Act or an application under Section 439 Cr.P.C. simpliciter will lie before the High Court ?*

34. One peculiar fact in this case surfaced regarding composition of imputations whereby accused is facing allegations of offence under Section 3/4 of POCSO Act also because prosecutrix is minor and she is a member of Scheduled Caste Community, therefore, imputation of Atrocities Act are also included, beside provisions of Indian Penal Code. Therefore, this question is repeatedly coming up before Special Courts regarding their authority and jurisdiction because both the Acts; namely Atrocities Act and POCSO Act are special Acts and interestingly both contain somewhat non-obstante clause regarding applicability of various provisions of other laws.

35. Under both the Acts, Special Courts are constituted for the

purpose of taking cognizance and conduct in trial etc. However, with the Amendment Act of 2015 in Atrocities Act with insertion of Section 14-A(2), remedy to file an appeal is provided if the bail is rejected under Section 439 of Cr.P.C. by the Special Court, but no such appeal has been provided in POCSO Act in case of refusal or grant of bail. Therefore, reconciliation of procedure prescribed in both the acts deserve consideration especially for guidance to Special Courts regarding cognizance and trial etc.

36. Section 2 (1) (l) of POCSO Act defines **"Special Court"**, means a court designated as such under Section 28. Section 28 discusses **Designation of Special Courts**. Similarly Section 31 deals with **Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court**; whereas, Section 33 deals with **Procedure and Powers of Special Court**.

37. Section 42-A provides for **Act not in derogation of any other law**, and therefore, this provision deserves to be reproduced for ready reference:-

> ***"42 Alternate punishment.--...***
>
> ***42-A. Act not in derogation of any other law.-*** *The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."*

38. So far as, relevant provisions of Atrocities Act,1989 are

concerned, **Section 2 (bd) defines "Exclusive Special Court"** and **Section 2 (d) defines "Special Court"** means a Court of Session specified as a Special Court in Section 14. Similarly, **Section 14 deals with Special Court and Exclusive Special Court** and **Section 14-A deals with Appeals**. Provision of Appeal has already been dealt with in detail in preceding paragraphs.

39. Section 20 of Atrocities Act is a provision which is relevant for reproduction for ready reference:-

> *"**Section 20.Act to override other laws.-** Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."*

40. Conflict of jurisdiction between two Special Acts operating in the same field, both carrying non-obstante clause is always perplexing for the Courts to decide. Therefore, Aims and Objects and the Purpose of the enactments that operate in the same field are one of the first and foremost principles to be applied for application of statutes. On this touchstone, looking to the legislative intent, statement of objects and reasons, different other provisions contained in the respective enactments and the language of provisions providing overriding effect indicate that POCSO Act would get precedence over Atrocities Act.

41. Perusal of provisions of Section 42-A of the POCSO Act reveals that it permits the Special Courts established under the said Act, to implement the provisions of other enactments also, insofar as they are not inconsistent with provisions of POCSO Act and in case of any inconsistency, the provisions of POCSO Act are given overriding effect over the provisions of such other enactments to the extent of inconsistency. It needs to be kept in mind that said provision (Section 42-A of POCSO Act) has been inserted in the POCSO Act w.e.f. 3/2/2013 by amendment and Atrocities Act underwent amendment in year 2018 but still Section 20 does not carry any such analogous provision that may enable the Special Court under the said Act to extend safeguards and provide benefit, that are being contemplated under the provisions of the POCSO Act. Provisions of POCSO Act are in addition and not in derogation of the provisions of any law including Atrocities Act. Therefore, POCSO Act is all encompassing in nature, whereas, Section 20 of Atrocities Act limits the interplay of other statutes.

42. Beside that, statement of objects and reasons of POCSO Act and Atrocities Act are to be seen, wherein, although both the statutes are dedicated to serve the interest of a special class of citizens but the legislative priority or preference appears to be in favour of the child because, if, Chapters V,VI, VIII and IX of POCSO Act and its different provisions are seen in tandem then it reveals that legislature intended to give delicate and protected treatment to the victim under the POCSO Act and special care of

children as victims of crime have been designed to go through the process of investigation and trial of the accused. It applies irrespective of social or economic background of a child, therefore, welfare of children transcending all barriers of caste and creed and because of its all pervasive nature, POCSO Act is having overriding effect over the Atrocities Act.

43. It is to be remembered that POCSO Act has much wider scope so far as victims are concerned because POCSO Act is an act to protect Children from sexual offences, sexual harassment and pornography and provide for establishment of special Court for trial of such offences and for matters connected therewith or incidental thereto, therefore, ambit and scope of POCSO Act appears to be much wider than the Atrocities Act. Even otherwise, Child being considered the father of man is a biological evolution / phenomenon; whereas, Caste has a social/customary connotation.

44. One more facet of the controversy deserves attention is Section 28 (2) of the POCSO Act by which Special Court under the POCSO Act has been bestowed with the authority to try an accused for an offence other than the offence referred to in sub-section (1) of Section 28. Meaning thereby that Special Court, POCSO Act can try for offence under other enactments also with which the accused may under the Cr.P.C. be charged; whereas, no such analogous provision for such inclusion exists in Atrocities Act, therefore, on this Count also, legislative intent and rule of harmonious construction weigh in favour of POCSO Act.

45. Section 31 of the POCSO Act can also be profitably referred in this regard:-

> *"**31. Application of code of Criminal Procedure, 1973 to proceedings before a Special Court.-** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor."*

Perusal of above provision, makes it clear that provisions of the Code of Criminal Procedure have been made applicable to all the proceedings before the Special Court including bail and bonds and in later part of the same provision deeming fiction has been created whereby a Special Court for the purpose of all its proceedings shall be deemed to be a Court of Sessions. Therefore, Section 439 of Cr.P.C. is impliedly included by such provision and therefore, against the order of Special Court (POCSO Act), application under Section 439 of Cr.P.C. for bail shall be maintainable instead of appeal under Section 14-A (2) of the Atrocities Act.

46. Another principle for guidance in relation to non-obstante clause in two legislations would be the settled principle that both

statutes have to be harmoniously construed as far as possible. Taking the cue from such principle, if both the Acts are taken into consideration where Special Protection, Remedies and Speedy Trial have been contemplated, it appears that POCSO Act is designed to a wider range of victims than the Atrocities Act. Since the procedure has been specifically provided, children of whatever background including the background from Scheduled Castes or Scheduled Tribes, process of investigation and trial of the accused meanders through different specifically enacted provisions while taking into consideration the delicate mind of a child victim, his probable subjugation to secondary victimization and procedural safeguards appear to be extensively incorporated in the POCSO Act, but not in Atrocities Act.

47. In fact, a Special Court under the Atrocities Act does not have the kind of infrastructure, procedure, staff and training as contemplated in different provisions of the POCSO Act, specially Section 33 to 38 of the POCSO Act, therefore, on this count also, harmonious construction and reconciliation between the two enactments would be achieved when POCSO Act given precedence over the Atrocities Act in case a Child suffers and when he belongs to a Scheduled Caste or Scheduled Tribe Community.

48. This Court may profitably refer to the judgment of Apex Court in the case of **Sarwan Singh and Anr. Vs. Kasturi Lal, AIR 1977 SC 265. Para 20 and 21** of the said judgment, read as under:-

"20. Speaking generally, the object and purpose of a legislation assume greater relevance if the language of the law is obscure and ambiguous. But, it must be stated that we have referred to the object of the provisions newly introduced into the Delhi Rent Act in 1975 nor for seeking light from it for resolving in ambiguity, for there is none, but for a different purpose altogether. When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one before us, arose in Shri Ram Narain Vs. The Simla Banking & Industrial Co. Ltd., AIR 1949 SC 614, the competing statutes being the Banking Companies Act, 1949 as amended by Act 52 of 1953,and the Displaced persons (Debts Adjustment) Act, 1951. Section 45A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act 1951 contained such a non-obstante clause, providing that certain provisions

would have effect "not- withstanding anything inconsistent therewith contained in any other law for the time being in force ....." This Court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing: "It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein. "(p. 615). As indicated by us the special and specific purpose which motivated the enactment of Section 14-A and Chapter IIIA of the Delhi Rent Act would be wholly frustrated if the provisions of the Slum Clearance Act requiring permission of the competent authority were to prevail over them. Therefore, the newly introduced provisions of the Delhi Rent Act must hold the field and be given full effect despite anything to the contrary contained in the Slum Clearance Act.

21. For resolving such inter se conflicts, one other test may also be applied through the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of

the law. That test is that the later enactment must prevail over the earlier one. Section 14A and Chapter IIIA having been enacted with effect from December 1, 1975 are later enactments in reference to Section 19 of the Slum Clearance Act which, in its present form, was placed on the statute book with effect from February 28, 1965 and in reference to s. 39 of the same Act, which came into force in 1956 when the Act itself was passed. The legislature gave overriding effect to Section 14A and Chapter IIIA with the knowledge that Sections 19 and 39 of the Slum Clearance Act contained non- obstante clauses of equal efficacy. Therefore the later enactment must prevail over the former. The same test was mentioned with approval by this Court in Shri Ram Narain's case (Supra) at page 615."

49. Apex Court in the case of **Union of India, represented by the Secretary, Ministry of Home Affairs and Ors. Vs. Ranjeet Kumar Saha and Another, (2019) 7 SCC 505** given guidance as under:-

"18. The courts, as a rule, lean against implying repeal unless the two provisions are so plainly repugnant to each other than they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. If

the objects of the two statutory provisions are different and the language of each statue is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in pari materia although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict."

50. To reach conclusion, relevant discussions made earlier by different High Courts can also be profitably referred.

51. **In RE: Registrar (Judicial) High Court of Madras as report in 2017 Cr.L.J. 4519** it has been held in para 56 as under:-

"56. If the act of the accused is an offence under the POCSO Act and also an offence under the SC and ST Act, the Special Court under the POCSO Act alone shall have jurisdiction to exercise all the powers including the power to remand the accused under Section 167 of the Code, to take cognizance

of the offence either on a police report or on a private complaint and to try the offender. The said Special Court shall have jurisdiction to grant all the relief's to the victim for which the victim is entitled to under the SC and ST Act."

52. Similarly, Hyderabad High Court in the case of **State of Andhra Pradesh Vs. Mandili Yadagiri, 2016 Cr.L.J, 1415** has held while taking into consideration Section 42-A of the POCSO Act and applying the test of chronology that POCSO Act being beneficial to all and later in point of time vis-a-vis Atrocities Act, therefore, provisions of POCSO Act has to be followed for trying cases where the accused is charged under both the enactments.

53. The Patna High Court in the case of **Guddu Kumar Yadav Vs. State of Bihar in Criminal Miscellaneous Case No. 52792/2019** after consideration held that in case of order of grant or refusal of bail to an accused booked under both the provisions of POCSO Act as well as Atrocities Act will be tried by Special Judge, POCSO Act and no appeal would lie against the order of grant or refusal of bail under Section 14-A (2) of Atrocities Act. Bail in terms of Section 439 of Cr.P.C. will be maintainable.

54. Same view has been taken by Allahabad High Court in the case of **Rinku Vs. State of Uttar Pradesh, Criminal Miscellaneous Bail Application No. 33075/2018**.

55. So far as, application under Section 439 of Cr.P.C. or an appeal under Section 14-A of Atrocities Act are concerned, it is also worthwhile to mention that an appeal essentially a creature

of statute and is a statutory right of an affected party. It contemplates appellate jurisdiction empowered by law to hear appeal from the Court of first instance while taking into consideration specific orders from which appeal emanates. There is no such statutory mechanism provided in the provisions of Atrocities Act including Section 14-A (2) of the Atrocities Act to include a bail plea by way of appeal from any order passed by Special Court under the POCSO Act.

56. Conclusively, regarding questions No. (iii) and (iv), it can safely be concluded that when an accused is being tried by Atrocities Act as well as POCSO Act simultaneously, then Special Court under POCSO Act shall have the jurisdiction and if any bail application of accused is allowed or rejected under Section 439 of Cr.P.C. by that Special Court then appeal shall not lie under Section 14-A (2) of Atrocities Act. Only an application under Section 439 of Cr.P.C. for bail shall lie.

REGARDING QUESTION NO. (v):-

(v) *What is the scope and extent of bail conditions as referred in Section 437 (3) of Cr.P.C. ?*

57. The power to impose other conditions derive strength from Statute, Common Law traditions and Precedential Guidance. Although bail has not been defined in Cr.P.C. but usually, bail is a kind of asset or property given before the Court as a security for consideration of relief from being arrested or to avoid being jailed, as an identification that accused or suspect will be present on the day of hearing or trial and where he fails to appear before

the court on the given date then his property may be seized and bail bonds may be forfeited. A long journey has been travelled from the concept of "Wergeld" meaning man price or man payment to present day system meandering through Magnacarta (year 1215 AD), Statute of Westminster (1275 AD) to Medieveal System of Jamanat/ Muchalka. Law has been travelled extensively just to ensure Justice as well as Right to access Justice. In Code of Criminal Procedure, 1973 although word bail has not been defined but all offences classified into bailable and non-bailable offences.

58. Before adverting to the question formulated above, it would be apposite to refer relevant provisions of Section 437 (3), 438 (2) and Section 439 (1) of Cr.P.C. which may throw some light, if seen in juxtaposition:-

> ***"437. When bail may be taken in case of non-bailable offence.-***
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(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 abetment 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.

Section 438. Direction for grant of bail to person apprehending arrest.-

(1) *xxx xxx xxx*

(2) When the High Court or the Court of Session makes a direction under subsection (1), ***it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks 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.

Section 439. Special powers of High Court or Court of Session regarding bail.-*(1) A High Court or Court of Session may direct—*

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-Section (3) of section 437, ***may impose any condition which it considers necessary for the purposes mentioned in that Sub-Section;***

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;

Provided *that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.*

Provided further *that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376 AB or section 376 DA or section 376 DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.*

1A. The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376 AB or section 376 DA or section 376 DB of the Indian Penal Code."

59. Initially, in Cr.P.C. only condition contemplated was to

ensure the "appearance of accused before the Court for trial." Thereafter, with the Amendment Act in 1973, conditions as exist in present day Section 437 (3) (a & b) were incorporated but as condition No. (c) of Section 437 (3) the condition incorporated was, with the expression "**otherwise in the interest of justice".** Now, after Amendment Act of 2005, Section 437(3) was recast which is reproduced above and now it has wider connotation. Law Commission of India was constantly trying to persuade the legislature for reconsideration and enlargement of the scope of conditions of Bail, which is evident from the **Law Commission of India 36th Report of December, 1967, 41st Report of September, 1969, 203rd Report of December, 2007** as it recommended for insertion of conditions from time to time and in year 2006 vide Amendment Act of 2005, present day statutory expression in Section 437 (3) of Cr.P.C. came into being which is already reproduced above. Therefore, legislative intent appears to widen the scope of bail conditions.

60. Recently, in **Law Commission Report No. 268 of May, 2017, in Chapter XI (Recommendations), Recommendation No. C (Conditions that may be imposed in Bail)** elaborately deals with this issue and recommended eleven conditions (Same are not exhaustive, but inclusive) in Para 11.13 of Recommendations. According to Law Commission, the Court should consider the unique circumstances of each accused person and develop a method to ensure that bail conditions are effective.

61. Here expression incorporated after Section 437 (3) (C)

purportedly as appendage is worth consideration, wherein word **"and"** has been used as disjunctively to differentiate **conditions No. (a),(b) and (c) of Section 437 (3)** from expression **"such other conditions as Courts considers necessary in the interest of justice"**. Sub-section (3) commands the Court to impose conditions as enumerated in Clause (a), (b) and (c) by incorporating the word **"shall"** but after conditions (a), (b) and (c), word **"and"** has been used, it means that conditions which are other than (a), (b) and (c) can also be imposed and those conditions would be enabling or directory because of the word **"may"** (immediately after the word **'and'**). Interplay of words **"and"** and **"may"** also indicates that those conditions would be distinct from conditions No. (a), (b) and (c). Words **"in the interest of justice"** make the ambit of protection very wide and expression **" such other conditions as it considers necessary"** confers a discretion (although not unfettered discretion) to the Court. When permissive words are employed by the Legislature to confer a power on a Court to be exercised in the circumstances pointed out by the statute, it becomes the duty of the Court to exercise that power on proof of those circumstances. **(See: Principles of Statutory Interpretation by Justice G.P.Singh, Tenth Edition, Chapter V, Synopsis 6, page 429)**.

62. The word **"or"** is normally disjunctive whereas **"and"** is normally conjunctive but at times they are read as *Vice Versa* to give effect to the manifest intention of the legislature as disclosed from the context. Here the legislative intent appears to be of

extending discretion to the Courts to impose such other conditions as it considers necessary in the interest of justice and necessity stems from facts situation of the case including the nature of allegations, criminal antecedents of accused, his willingness to do some good for society by doing some reparative work or to reform himself and other related circumstances.

63. Section 438 (2) of Cr.P.C. incorporates word **"Include"** by using expression **"it may include such conditions as it may thinks fit in the light of facts of the particular case"** and word **"Include"** enlarges the meaning of words or phrases occurring in the body of the statute. Therefore, word **"Include"** is inclusive and not exhaustive in nature. In Section 438 (2) of Cr.P.C. also sufficient discretion continues for imposition of conditions. Section 439 (1) of Cr.P.C. also runs in same spirit by incorporating the expression **"may impose any condition which Court considers necessary"**. Section 438 and Section 439 of Cr.P.C. fall back upon Section 437 (3) of Cr.P.C. also for imposition of conditions beside referring other conditions to release the accused on bail.

64. Words **"Conditions"** and even **Justice (or for that matter, "in the interest of justice")** as incorporated in Section 437 (3) of Cr.P.C., if tested on the anvil of rule of Ejusdem Generis and Noscitur-A-Sociis then on the basis of said rules of construction it appears that when Legislature has intended to widen the discretion then certainly the aforementioned rules of construction Ejusdem Generis and Noscitur-A-Sociis cannot be invoked to

limit, restrict or oust the said jurisdiction of Courts for imposing any other conditions in the interest of justice while interpreting the statute. Both these doctrines cannot limit or otherwise restrict the Court from passing any order in the interest of justice/ for securing the ends of justice and to do complete justice. We cannot forget that Justice is the first promise we made to ourselves as reflected in Preamble of our Constitution. Here open ended terminology of **"Justice"** and **"such other conditions"** cannot be interpreted with the doctrine of Ejusdem Generis and its genus concept Noscitur-A-Sociis. The decision of Hon'ble Apex Court in the case of **State of Bombay and Ors. Vs. Hospital, Mazdoor Sabha, AIR 1960 SC 610** can be profitably referred to reach home. Relevant extract is reproduced as under:-

> *"(9)It is, however, contended that, in construing the definition, we must adopt the rule of construction noscitur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207) :*
>
> *"Associated words take their meaning from one another under the doctrine of noscitur a sociis, the*

philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it;Such doctrine is broader than the maxim Ejusdem Generis.'' In fact the latter maxim "is only an illustration or specific application of the broader maxim noscitur a sociis." The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear, that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of

the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."

(Emphasis supplied)

65. Beside different recommendations which are reflected in different Law Commission Reports and statutory provisions, the common law tradition / precedential guidance can also be taken into consideration, wherein, through different pronouncements, Hon'ble Supreme Court tried to explain the concept of imposition of conditions like Community Service, creative pursuits and reformatory steps for under trial and mostly to be performed by them. One of the earliest instances in this regard may be traced in the judgment of Hon'ble Supreme Court in the case of **Hazarilal Gupta Vs. Rameshwaar Prasad, AIR 1972 SC 484** although it was confined to discussion regarding imposition of conditions. Thereafter, series of judgments of Hon'ble Supreme Court by Hon'ble Shri Justice V.R.Krishnaiyer, J. as Lordship then was, in the case of **Gudikanti Narasimhulu (supra), Babu Singh (supra) and Moti Ram (supra)** explained the thought. Guidance of his Lordship in his inimitable style was path breaking and Ford making for Social Engineering. Para 12 of judgment rendered in the case of **Gudikanti Narsimhulu (supra)** is reproduced as under:-

"12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an

anti-criminal direction. Public Justice is central to the whole scheme of bail law. Fleeting justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even, through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offence while on judicially sanctioned 'free enterprise' should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our constitution."

Perusal of these judgments indicates that beside Community Service, Meditative Drill, Study Classes, the guidance had been given in respect of Innovation of other resources also and this expression further gives discretion to the Courts to innovate new methods of Community Service and other reformatory modes as a part of Pre Trial Reforms. Apex Court found these conditions as part of holistic jurisdiction and humanistic orientation invoked by judicial discretion co related to the values of out Constitution.

66. And rightly so, because Justice is the first promise (Liberty, Equality and Fraternity come later in order) made by the People of India while giving Constitution to themselves as reflected in Preamble of the Constitution and thereafter reverberated in Article 38, 39-A and Article 142 of the Constitution. Therefore, Justice as one of the legitimate expectations of citizenry guides the Rule of Law and Administration of Justice.

67. Constitution Bench decision of Hon'ble Supreme Court in the case of **Gurbaksh Singh Sibbia (supra)** also gives sufficient discretion to the Courts while granting bail. Para 13 & 14 of the aforesaid decision read as under:-

> *"13.....the amplitude of judicial discretion which is given to the High Court and the Court of Session, to impose such conditions as they may think fit while granting anticipatory bail, should not be cut down, by reading into the statute conditions which are not to be found therein, like those evolved by the High Court or canvassed by the learned Additional Solicitor General. Our answer, clearly and emphatically, is in the negative. The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such*

conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.

14. *Generalisations on matters which rest on discretion and the attempt to discover formulae of universal application when facts are bound to differ from case to case frustrate the very purpose of conferring discretion. No two cases are alike on facts and therefore, Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There is no risk involved in entrusting a wide discretion to the Court of Session and the High Court in granting anticipatory bail because, firstly these are higher courts manned by experienced persons, secondly their orders are not final but are open to appellate or revisional scrutiny and above all because, discretion has always to be exercised by courts judicially and not according to whim, caprice or fancy. On the other hand, there is a risk in foreclosing categories of cases in which anticipatory bail may be allowed because life throws up unforeseen possibilities and offers*

new challenges. Judicial discretion has to be free enough to be able to take these possibilities in its stride and to meet these challenges.

(Emphasis supplied)

68. Flip side also exists; wherein, Hon'ble Apex Court has cautioned not to impose onerous, excessive or freakish conditions as reflected in judgment of Apex Court in the case of **Munish Bhasin and Ors. Vs. State (Government of NCT of Delhi) and Anr., (2009) 4 SCC 45 and Sumit Mehta Vs. State (NCT of Delhi), (2013) 15 SCC 570**. Therefore, it is equally true that Court ought to avoid those conditions which may render the bail as ineffective or which may entail submission of Fixed Deposit receipt for security or a condition which may be the subject matter of some other legal proceedings, like the conditions in the case of **Munish Bhasin (supra) and Sumit Mehta (supra)**. Such conditions may change the tenor and texture of bail conditions as contemplated by Section 437(3), 438(2) and 439 (1) of Cr.P.C. These onerous conditions may render the bail ineffective and cause prejudice to accused, especially if accused is from weaker section of the society or poor litigant.

69. Section 437 (3) and other two related provisions of Section 438 (2) and 439 (1) give scope of Community Service as a bail condition and Community Service has both; the social and the cognitive benefits and it can serve not only as an alternative to Post Trial but also to Pre Trial reforms and in fact inclusion of Community Service as Post Inquiry measure in the Section 18 (1)

(c) (2) of the Juvenile Justice (Protection & Care of Children) Act, 2015 indicates the importance of this concept. **The 42nd Report of the Law Commission of India of June, 1971** for Revision of Indian Penal Code incorporated some discussion in this regard and thereafter an amendment bill was introduced in the Parliament but left out due to the proclamation of Emergency. Later on, **Law Commission in its 156th Report of August, 1997** stretched upon the need and scope of implementing the punishment of Community Service in the Indian Penal System. Even **Justice Malimath Committee in year 2002** also recommended community service as a mode of punishment.

70. Crime is one of the potent threats to the concept of Justice (beside State excesses) wherein, mostly; a citizen inflicts offence over his fellow citizen (victim), possibly to derive Psyhic gain or Monetary gain or Sadistic pleasure. Most of the time, response of the society (or even the State) revolves mainly around procedural or juridical aspect of the Justice rather than giving stress over the substantive aspect which at times takes a back seat. This starts the chain reaction of Secondary Victimization of the victim. Law at times being procedural and juridical, takes guidance from common law tradition, statute and precedential guidance but Justice is all pervasive and encompasses posterity also into it ambit. Therefore, Justice postulates more reformation centres / correction centres than prisons and remand homes in future. Community service, plantation, creative pursuits and guiding the accused for reparative techniques as pre-trial reforms can be the

answer.

71. Action by the offenders affects the individual as well as community and therefore, the concept of punishment has evolved from Preventive to Deterrent to culminate into Reparative or Reformative theory. The emphasis of Community Service is not on punishment nor on rehabilitation at times, rather, it is on accountability. Anatomy of Crime and Violence can be addressed by rekindling innately ingrained human attributes of Compassion, Mercy, Love and Service.

72. Hon'ble Supreme Court in the case of **Mallikaarjun Kodagali (supra)** has delved upon the right of victim while considering Section 3(wa) and Section 372 of Cr.P.C. and detailed out the secondary victimization of victim and mandated that rights of accused out weigh the rights of victim and need exists for re-balancing. Community service is a way out for regaining such re-balance because if the accused after release on bail is asked to do some community service by way of environmental protection work like plantation of sapling or serving in a hospital or doing such related work for environment or society or doing something for nation then he is within the bounds of the criminal justice system (within jurisdiction of Court for submission of compliance report, etc.) and is not at large to extend threat to the victim or tampering with the evidence.

73. In some cases, accused may not tamper with witness/evidence directly and overtly but his constant presence and appearance before victim may cause embarrassment and

harassment to the victim specially in cases of offence under Section 354 (and its different variables) and even like Section 376 of IPC, where victim may have to face the glare of accused constantly/regularly without being intimidated by him. Community service gives a chance at times to melt the ego of an accused who is facing trial of those offences which gave psychic gains or peevish pleasure to the accused while committing such crime. Some times to purge his misdeeds and to come out of the guilt (if the individual has been falsely implicated) community service can play important role. Through this effort, accused can again be assimilated into mainstream of society and would be accepted peacefully.

74. An example can be aptly referred, wherein, this Court in Criminal Appeal No. 7795/2018, pending before Gwalior Bench of Madhya Pradesh High Court, granted suspension of sentence to accused convicted by trial Court mainly under Section 307 of IPC (beside other provisions) vide order dated 15th May, 2019 and directed to serve in nearby Govt. Rural Hospital for a day or two in a week. Accused on his own volition offered his services, in which he was directed to submit report about his experience. He referred in his compliance report a very peculiar problem faced in remote areas in State of Madhya Pradesh; wherein, language / dialect problem between doctor and patients of Govt. Hospitals/ Community Health Centres makes the diagnosis of ailment difficult, but he performed the duty of interpreter (between doctor and rural patient) because he knew the local

dialect of village residents as well as main stream language (Hindi/Khadi Boli). After realizing the problem (a big one for village people) as reflected in his compliance report, this Court after calling/soliciting views of different stakeholders like National Health Mission and State Government, directed vide order dated 17th October, 2019 to Principal Secretary of Health and Family Welfare Department, Govt. of Madhya Pradesh to devise some mechanism including the employment of Aanganwadi Workers (who are supposed to be natives of village Panchayat in which they serve) to solve language barrier between doctor and patient, which has otherwise serious ramification over common public. This small looking problem could surface through compliance report of Accused, who was directed by the Court to share his experiences also in his report.

75. Many accused after getting bail undertook to plant some saplings and now they have not only planted saplings but started the drive for others to follow. Thousands of saplings planted by accused as bail condition (voluntarily) resulted into the Germination of Thought. Therefore, as referred, innately ingrained attribute of Love, Compassion, Mercy and Service can be rekindled through this concept of community service as part of pre and post trial reforms. This thought in fact is in alignment with Fundamental Duties also, as enshrined under Article 51A of Constitution.

76. This goes with a word of caution again. Bail conditions cannot be excessive, freakish and onerous and it does not amount

to buying the bail. When a case is made out for bail and when if the accused volunteers on his own volition and he himself intends to perform community service; then only this condition can be of some help. Even compliance of orders also deserves attention which can be regulated through development of Computer Applications (one such App. developed by M.P.High Court with MAP-IT deptt. of State Government) and roping in of Para Legal Volunteers from District Legal Services Authority. Nowadays, roles of State and District Legal Services Authority are much wider and includes many such welfare measures.

77. One suggestion also moves around regarding harnessing the potential of accused persons for betterment of Society/State while giving them some training of disaster/relief operations so that their reformation and rehabilitation may start from the stage of trial and their assimilation in society would not wait for long period, after recording of acquittal in trial or appeal. It is the domain of the legislature to think over it, if possible, for formulating a scheme as part of pre and post trial reforms for harnessing the energy of such big and sizable section of the society in India. Hopefully, policy makers / stakeholders would think over it one day.

78. Therefore, considering the discussion made above,this Court considers it fit to impose **"any other conditions in the interest of justice"** as per Section 437 (3) of Cr.P.C. over accused/offender by way of community service and other related reformatory measures and same can be **"Innovated"** also but

same must be as per capacity and willingness of offenders/ accused, that too voluntarily. Similarly, as discussed above, onerous and excessive conditions cannot be imposed so as to render the bail ineffective.

79. Even in the present case accused got one chance to come back to main stream because of one condition enumerated in his bail order to perform community service (as per his own volition) alongwith other conditions as per Section 437 (3) of Cr.P.C. Apparently, by his efforts, he became driver of Ambulance in Emergency Service, 108. This was an attempt to engage him in creative pursuits to make him a part of pre trial reforms and he responded well also, but pumping of adrenaline and perhaps (may or may not be true) mutual emotional proximity with prosecutrix persuaded him to allegedly commit same nature of offence again, which otherwise, he was restricted to do so.

80. If, facts of the case are seen in detail then it appears that accused, who was facing trial for offence referred in earlier paragraphs, was enlarged on bail vide order dated 26/2/2020 and Condition No. 4 was specific that he shall not commit same nature of offence and he was also directed not to extend any threat or allurement or intimidation to any person acquainted with the case. After being enlarged on bail, it is alleged that he again eloped with the same girl and compelled the father of victim girl to lodge an FIR vide crime No. 286/2020 before the same Police Station i.e. City Kotwali District Bhind for offence under Section 363 of IPC. Investigation is going on and Charge-sheet is yet to

be filed. Statement under Section 161 and 164 of Cr.P.C. of victim indicates that she left her maternal home on her own volition and she went to Delhi to meet her brother and thereafter, she returned back. From the case diary, it appears that family members of victim were not ready to keep her with them at their residence, therefore, she was taken to One Stop Centre (under Child Welfare Committee). It appears that she is still living at One Stop Centre.

81. One more peculiar fact surfaced in the case is that victim/prosecutrix mentioned the fact that his father & mother were separated earlier, wherein, father remarried and she is living with her mother. Therefore, apparently her parents did not accept her in their respective households. Even after filing of charge-sheet, early trial would be a bleak possibility. Looking to the challenging period of COVID-19 pandemic, relegating the accused to jail would not serve the cause of justice, especially when prosecutrix herself is not living with her parents and living at One Stop Centre and her statements are not implicative. Beside that, accused is trying to come out of his stigmatic past by complying other bail conditions and performing community service as reformatory measure.

82. In the considered opinion of this Court, looking to the case diary and statement of victim, no case for cancellation of bail, at this stage, is made out. Needless to say that applicant/complainant as well as prosecutrix shall always be at liberty to renew the prayer for cancellation of bail, if any

embarrassment or prejudice is caused by the accused to the prosecutrix or her family members in future. Even otherwise, Accused shall not be a source of harassment/ embarrassment to complainant party.

83. Since this Court has decided the question of jurisdiction in the case where ingredients of offence under Atrocities Act and POCSO Act are involved and Special Judge, under POCSO Act has to take precedence instead of Special Judge under Atrocities Act, therefore, Office is directed to place this matter before Hon'ble Acting Chief Justice of this Court for issuance of necessary guidance and for circulation of this order amongst District and Sessions Judges for information and compliance.

84. Before parting with the case, this Court acknowledges the valuable assistance given by learned Amici Curiae Senior Advocate Shri N.K.Gupta, assisted by Shri Ravi Gupta as well as Shri Vijay Dutta Sharma, Shri Atul Gupta and Shri Sameer Kumar Shrivastava with their erudition and expression. Their efforts are worth appreciation.

85. Case/Application stands disposed of in above terms.

(Anand Pathak)
Judge

jps/-