

Rahul Kesharwani Vs State Of Chhattisgarh

Court: Chhattisgarh High Court

Date of Decision: Sept. 20, 2019

Acts Referred: Code Of Criminal Procedure, 1973 " Section 389, 389(1), 437, 438, 439

Indian Penal Code, 1860 " Section 34, 498A

Dowry Prohibition Act, 1961 " Section 3, 4

High Court Of Chhattisgarh Rules, 2007 " Rule 40

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Raza Ali, Gagan Tiwari, Anil Pillai

Judgement

P.R. Ramachandra Menon, CJ

1. "Whether the application for bail of a co-accused, under Section 438 or 439 of the Code of Criminal Procedure, 1973 (for short 'the CrPC') filed for

the first time, has necessarily to be placed before the very same learned judge who had occasion to consider similar application of the other accused

involved in the same crime number, to be in conformity with the principles of 'judicial discipline' and to avoid the possible chance of any 'abuse of the

process', forms the issue to be resolved.

2. The matter came to be listed before this Court, pursuant to the orders passed by the Chief Justice on the administrative side, taking note of the

divergent opinions and orders issued by different learned Single Judges of this Court on the judicial side, necessitating a proper declaration of law in

this regard, which cannot be done on the administrative side.

3. The above application has been filed by one of the co-accused in Crime No. 770 of 2018 registered at the Police Station, City Kotwali, Balodabazar,

in respect of the offences punishable under Section 498-A, Section 34 of the Indian Penal Code, read with Sections 3 and 4 of the Dowry Prohibition

Act, 1961 (wrongly typed as Dowry 'Protection' Act in the cause title). The Applicant states that it is his first bail application before this Court and in

the affidavit filed in support thereof, it has been pointed out that bail application of the other co-accused has already been disposed of by this Court in

MCrC(A) No. 775 of 2019 (Ram Chandra Kesharwani & Others v. State of Chhattisgarh) vide order dated 20.05.2019.

4. The matter was listed by the Registry before a learned Judge of this Court, in terms of the earlier orders passed by other learned Judges on the

judicial side and also with reference to the orders passed by the then Chief Justice on the administrative side, to the effect that when bail application is

filed by a co-accused, arising from the same crime number of the same police station, it has to be listed before the very same learned Judge who had

occasion to consider similar application of other accused. However, the learned Single Judge before whom the matter was listed, passed an order on

14.08.2019 to the effect that, the law declared by the Supreme Court in Shazad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684 and the

subsequent rulings in this regard were having no application in the instant case and that, the declaration in the said judgment was only in respect of

successive bail application"" filed by the same accused, and not in respect of the first application of a co-accused, in turn, directing the Registry to

cause the matter to be listed before the regular Bench after getting leave of the Chief Justice.

5. The Registry has put up a 'note', pointing out the sequence of events. A judicial order was passed by a learned Single Judge of this Court, way back

on 22.11.2017, in MCrC No. 5251/2017, in the following manner: ""It is informed that MCrC Nos. 4646 of 2017 and 4722 of 2017 preferred by the co-

accused persons are listed for hearing before the Coordinate Bench. Additional Registrar (Judicial) is directed to seek appropriate orders from Hon'ble

the Chief Justice on administrative side for analogous hearing of the bail applications arising out of the same crime number.

The matter be placed before the AR(J) today itself.

The Registry states that as per the oral directions of the Chief Justice on 23.11.2017, consequential directions were issued by the Registry on the same

date, to have all the bail applications arising out of same crime number, to be clubbed and listed together before the same Bench for analogous

hearing.

6. Sometime later, another order came to be passed on the judicial side, by a learned Judge of this Court in MCrC No. 5795 of 2017, on 09.04.2018,

which is to the following effect:

Since the case of the co-accused person has been heard by particular Bench, it would be necessary that the case of the other co-accused person be

also listed before the same Bench.

Accordingly, the Additional Registrar (Judicial) is directed to seek necessary instructions and to ensure that the case is listed before the same Bench,

which has heard the case of the co-accused person.

Considering the seniority of the case, let a prompt action be taken by the Additional Registrar (Judicial).

7. It is noted by the Registry that a new roster was put in place w.e.f 20.08.2018. It was directed by the then Chief Justice, as per orders on the

administrative side, that subsequent / pending MCrC / MCrC(A) arising out of the same crime number and same Police Station be listed before the

co-ordinate Bench who had passed the orders earlier, simultaneously ordering for listing of fresh bail matters arising out of the same crime number

under Section 438 and 439 CrPC before the senior Judge holding the Court.

8. Yet another order came to be passed on 06.10.2018 by another learned Judge of this Court in MCrC No. 6211 of 2018, which is as follows :

It appears that because the anticipatory bail application of the present applicant was earlier rejected by this Court, the Registry has listed this regular

bail application before this Court.

As this matter does not arise out of an order passed by this Court in anticipatory bail but regular bail application and also taking into consideration that

regular bail application of co-accused Nanki @ Rajendra Sharma and another was decided in MCrC No. 1839 of 2015 and MCrC No. 2036 of 2015,

this application be listed before appropriate Bench as per Roster.

It was in view of the above orders, that the matters were being listed by the Registry, but since a different view was expressed by a learned Judge of

this Court on 14.08.2019 in the present case, on the judicial side, it became necessary to have the issue resolved by causing it to be considered by a

Division Bench, which made this case to be listed before this Court accordingly. This is the genesis of the case.

9. When the matter came up for consideration before this Court on the last occasion, considering the importance of the issue, we appointed Shri Anil

Pillai as Amicus Curiae to help the Court. We heard Shri Raza Ali, the learned counsel for the Applicant, Shri Gagan Tiwari, the learned Deputy

Government Advocate representing the State and Shri Anil Pillai, the learned Amicus Curiae appointed by this Court, quite elaborately.

10. At the very outset, the learned Counsel for the Applicant fairly submitted that as far as the Applicant was concerned, the matter could be posted

before any Bench as to be identified and allocated by the Registry, or to be decided by this Court. However, to resolve the legal issue raised herein,

submissions were made by the learned counsel with reference to the law laid down by the Apex Court in Shahzad Hasan Khan (supra), adding that

the requirement to have the matter listed before the same Judge is actually intended only in respect of 'successive bail applications' i.e. an application

filed by the very same accused and not in respect of a co-accused. Almost similar submissions were made by the learned counsel representing the

State and the learned Amicus Curiae as well.

11. The learned counsel representing the State submits that the proceedings before this Court in relation to the bail application are governed by Rule

40 of the High Court of Chhattisgarh Rules, 2007 (for short 'the Rules, 2007'). The terminology used therein is with reference to ""subsequent bail

applications"" i.e. bail application preferred by the very same accused; which as such may not be applicable to the first bail application by a co-

accused. The learned counsel also pointed out that the research made by him did not reveal the existence of any such stipulation for causing the first

bail application of one of the accused, to be listed before the very same Judge who had considered the application of a co-accused and hence it

requires to be listed before the Bench having the regular roster. Reference was made to the relevant Rules of some other High Courts as well,

besides placing copies of the verdicts passed by the Apex Court and by different High Courts on the subject.

12. According to the learned Amicus Curiae, the very word used 'subsequent bail application' of an accused as mentioned in Rule 40 of the 2007

Rules denotes the bail application of the very same person. The necessity to have it listed before the very same learned Judge arises only in a case, if

the earlier bail application filed by the very same accused was considered and rejected or dismissed as withdrawn or for such other reasons and it

does not have any sanctity in relation to the first bail application preferred by a co-accused. It is also pointed out that, though the matter may arise

from the same crime number, the role of the different accused may be different and as such, application for bail filed by each of the accused has to be

considered separately, in relation to the role, if any, he has played. Since the first application preferred by any accused is a new one, it need not

necessarily go before the Judge who has considered the bail application of the co-accused earlier. It is also added that, no adjudication takes place

with regard to commission of the offence while considering the bail application. Bail is only an interim arrangement till the disposal of the case, and

hence, there is no impediment in listing the first bail application of the co-accused before the learned Judge who is considering the matter at the

relevant time as per the roster.

13. The learned counsel for the Applicant adds that, all bail applications are to be supported by an 'affidavit' in the prescribed form and particulars of

the application filed by the co-accused and the result would be shown, to the extent the applicant is aware. Even otherwise, the correct position could

be brought to the notice of the learned Judge who is considering the matter on the given date by the prosecutor, who is aware of the facts and figures

till date.

14. In the judgment rendered by the Apex Court in Shahzad Hasan Khan (supra), the learned Judges observed that there was a conscious attempt on

the part of the accused to abuse the process by filing 'successive applications' for anticipatory bail before the High Court. Despite the dismissal of his

anticipatory bail application by the High Court on an earlier occasion and inspite of dismissal of the Special Leave Petition (Criminal) directing the

Applicant/accused to surrender and apply for regular bail, the accused therein preferred another application (within a few days), which, when came to

be listed before the very same learned Judge, was got dismissed as withdrawn. Later, referring to the bail granted to a co-accused, the accused

preferred a further application for anticipatory bail and got it listed before another learned Judge, who granted the bail, which was sought to be

cancelled by the complainant by approaching the Apex Court. The observations made by the Apex Court in paragraph 5 of the order is relevant,

which is extracted below:

5.Longstanding convention and judicial discipline required that respondent's bail application should have been placed before Justice Kamleshwar

Nath who had passed earlier orders, who was available as Vacation Judge. The convention that subsequent bail application should be placed before

the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court in as much as an impression is not

created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive

applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different

judges there would be conflicting orders and a litigant would be pestering every judge till he gets an order to his liking resulting in the creditability of the

court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matter

must be placed before the same judge, if he is available for orders.....

15. The course pursued by the learned Judge of the High Court to have granted the bail with reference to 'liberty' of the citizens was also deprecated,

for having proceeded on a wrong tangent, with the following observations:

6.No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and

his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the

court. Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the

victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that

parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding

the facts of the case.

16. Deprecating the course pursued by the learned Judge of the High Court with reference to the salutary principles for granting bail as dealt with in

paragraph 7, the order passed by the High Court was set aside, directing the accused concerned to be taken into custody forthwith and to have the

trial expedited in accordance with law. The discussion clearly shows that, it was a case of filing of "repeated / successive bail applications" by the very

same accused and is not an authority to conclude that the 'first bail application' of one of the accused requires to be placed before the very same

Judge who considered the bail application of a co-accused. This is more evident from the words used: "....If successive bail applications on the same

subject are permitted to be disposed of by different Judges, there would be conflicting orders and a litigant would be pestering every Judge till 'he' gets

an order to 'his' liking.....". This is with reference to the course pursued by 'a litigant' who would be pressuring every Judge till 'he' gets an order as to

'his' liking' which clearly shows that, it is in the context of repeated applications being filed by the very same person and not with reference to the

application filed by a co-accused for the first time.

17. A Division Bench of the Madhya Pradesh High Court (Gwalior Bench) observed that there was some conflict, insofar as another Division Bench

of the said Court (Principal Bench, Jabalpur) had passed a verdict in *State of Madhya Pradesh v. Chandrahas* {(1991) MPLJ 779}, deviating from the

law declared by the Apex Court in *Shazad Hasan Khan* (supra) on the question of disposal of 'successive bail application' by the same Judge or the

Bench, as the case may be, which question came to be referred to a Full Bench. Though the referring Bench did not make a reference precisely in the

form of a 'question' to be resolved by the Full Bench, the matter was analysed in detail and it was finalized as per the judgment reported in *Narayan*

Prasad v. State of Madhya Pradesh {(1993) MPLJ 1}. The principles laid down by the Apex Court in *Shazad Hasan Khan* (supra) were highlighted

and it was held that the verdict passed by the Division Bench in *Chandrahas* (supra), neither militated against nor was in conflict with the law declared

by the Apex Court in *Shazad Hasan Khan* (supra). It was also held that the subsequent bail application should be heard and decided by the particular

Bench which heard the matter earlier, if the said Bench was available and the reference was answered accordingly.

18. Similar matter came up for consideration before another Full Bench of the Madhya Pradesh High Court in Santosh v. State of Madhya Pradesh

{2000 (1) MPLJ 354}. The question referred was ""Whether the second or successive bail applications in a pending appeal or bail application under

Section 389 or 437/439, Criminal Procedure Code, should be considered by the Bench which has considered the first bail application unless the Court

which decided the first application is not available for a sufficient duration, such as when the Court is in vacation"". The reason for reference was that

the referring Division Bench observed in the context of an earlier decision of a Division Bench (Indore Bench) in Gopal v. State of Madhya Pradesh

{1999 (2) Vidhi Bhaswar 22} that, it appeared to be in conflict with the ratio of the Full Bench decision of the Court in Narayan Prasad (supra) and

the decision of the Apex Court in Shazad Hasan Khan (supra). After elaborate discussion, the principles were reiterated and the verdict of the

Division Bench in Gopal (supra) was overruled, clearly holding that the ""second or successive"" bail applications in pending appeal or bail application

should be considered by the Bench which has considered the first bail application, unless the Bench which decided the earlier application is not

available for a sufficient duration.

19. A similar issue came up for consideration before the Full Bench of the Jharkhand High Court as well, in Lurdhi Marandi & Others v. State of

Jharkhand {2015 SCC OnLine Jhar 276}. Division Bench of the Jharkhand High Court, though did not precisely put the controversy in the form of a

question, it was formulated by the Full Bench in the following manner:

3. The Division Bench, making a reference, has not precisely put the controversy in the form of a question to be resolved by the Full Bench.

However, the following two questions have arisen calling for the answer from this Bench:

(a) When a first application for bail preferred in a pending appeal under Section 389(1) of the Code has been considered by a Bench and faced

rejection, should the successive and subsequent applications, except in exceptional circumstances, be also placed before the same Bench or be listed

before the Bench that has been given the roster by the Chief Justice to deal with such matters?

(b) If the first application for bail has been preferred under Section 389(1) of the Code and has been rejected by a Bench and if one of the members is

available, whether the successive and subsequent application should be listed before a Bench of which he is a member or should it go before a

Regular Bench as per roster assigned by the Chief Justice?

20. Referring to the law declared by the Apex Court in Shazad Hasan Khan (supra), the Bench referred to the verdict passed by the Apex Court in

State of Maharashtra v. Captain Buddhikota Subha Rao {(1989) Supp 2 SCC 605}, which also reiterated the principle that in a given context, the

proper course was to direct the matter be placed before the same learned Judge who disposed of the earlier bail application. Further reference was

made to the verdict passed by the Apex Court in Harjeet Singh alias Seeta v. State of Punjab & Another {(2002) 1 SCC 649}, where it was held that

application for cancellation of the bail should be placed before the same Judge who has granted the bail earlier. Thereafter, the Bench adverted to the

law declared by the Supreme Court in M. Jagan Mohan Rao v. P.V. Mohan Rao & Another {(2010) 15 SCC 491}, whereby it was held that where

the earlier bail application was rejected, the subsequent bail application must be placed before the same Judge, even though the roster has changed

and the Judge concerned is not regularly hearing the bail applications anymore, adding that the only exception is if that Judge is not available. Further

reference was made to the subsequent ruling rendered by the Supreme Court in Jagmohan Bahl & Another v. State (NCT of Delhi) & Another

{(2014) 16 SCC 501}, where it was held that the Judge who has declined to entertain the prayer for grant of bail, if available, should hear the 'second

bail application' or the 'successive bail applications' in consonance with the principles of judicial decorum, discipline and propriety, lest there should be

any chance for 'forum shopping'. The reference was answered by the Bench as contained in paragraph 26 of the judgment, which is reproduced

below:

26. We, accordingly, answer the aforesaid two questions formulated by us in paragraph 3 as under:-

(a) When a first application is preferred under Section 389(1) of the Code for suspension of substantive sentence by the accused/convict and

considered by a Division Bench and faced rejection, the second application or for that matter successive application(s) for the same relief shall be

heard by the same Division Bench, who has rejected the earlier bail application and not before the Bench which has been given the roster to deal with

such matters.

(b) After the first application for suspension of sentence preferred under Section 389 (1) of the Code has been rejected by a Bench and if one of the

Members of the Bench is available, the subsequent bail application shall be listed before a Bench of which he is a Member and it should not go before

the regular Bench as per the roster. It is only in exceptional circumstances, such bail application(s) shall go before the regular Bench as per roster.

However, the situation would be different in cases of applications under Section 389(1) of the Code to be dealt by Single Bench after once being

rejected. If the same Bench is available, undoubtedly, it shall be heard by the same Bench and in the event of the Bench being not available on

account of transfer, retirement, etc. or for any other exceptional circumstance, the said application shall be put before the regular Single Bench, as per

roster.

21. A similar issue popped up before the Division Bench of Uttarakhand High Court in *Hemu Pant @ Hemu Kalu & Another v. State of Uttarakhand*

{2015 SCC OnLine Utt 2734} and considering the importance of the matter, a question was formulated and referred to be answered by the Full

Bench in the following terms:

Whether, the second/subsequent bail application which is filed subsequently in pending criminal appeal, should be considered by the same Bench

which has rejected the earlier bail application(s) or by a regular Bench?

The facts and events with regard to filing of repeated bail applications were taken note of and after referring to the various judgments rendered by the

Apex Court and also by different High Courts, full agreement was expressed by the Full Bench with the view expressed by the Full Benches of the

Madhya Pradesh High Court, Jharkhand High Court and the Allahabad High Court; to the effect that 'subsequent bail application' shall be listed before

the very same Bench, if it is available. The answer to the question referred is contained in paragraph 17, which is to the following effect.

17. That subsequent bail application or application seeking suspension of sentence shall be placed and heard by the Bench, which has earlier rejected

the previous bail application or application seeking suspension of sentence. However, if Roster is changed and subsequent bail application is moved,

Registry shall list the subsequent application before the same Bench, which has rejected the previous application after obtaining appropriate general or

express orders of the Hon'ble the Chief Justice to constitute previous Bench. However, if subsequent bail / suspension of sentence application is

placed before the another Bench, as per Roster, such Bench shall direct the Registry to obtain the orders of Hon'ble the Chief Justice to place the

subsequent bail application or application for suspension of sentence before the same Bench, which has earlier rejected the bail application whereupon

Hon'ble the Chief Justice, the master of Roster, ordinarily, shall issue the direction to place the subsequent application before the Bench, which has

earlier rejected the previous bail / suspension of sentence application. If one of the Members of the previous Bench, which has rejected earlier bail

application / suspension of sentence, is not available due to retirement or transfer, then subsequent bail application or application for suspension of

sentence, shall be placed before the Bench of which one of the Member shall be the Member of the previous Bench, which has rejected the earlier

bail application or application for suspension of sentence. However, Hon'ble the Chief Justice may assign the subsequent bail / suspension of sentence

application to another Bench, as he deems fit, by specific order. Reasons assigning the subsequent bail / suspension of sentence application to another

Bench need not to be disclosed by Hon'ble the Chief Justice.

22. Quite recently, the issue came up for consideration before the Apex Court again and the abuse of the process sought to be pursued by

unscrupulous litigants was deprecated in the decision reported in Gati Limited v. T Nagarajan Piramiaejee & Another {2019 LawSuit (SC) 1252 : 2019

(2) CriCC 797 : 2019 (2) ApexCJ 389}. The appeal was filed questioning the order passed by the Madurai Bench of the Madras High Court granting

anticipatory bail in favour of the first respondent therein. Despite the rejection of the application for anticipatory bail by the High Court, which was

confirmed by the Apex Court as per the order passed on 17.05.2018, a further application for anticipatory bail was filed by the accused concerned on

31.05.2018 i.e. within 13 days, without any change in circumstances, which was considered and anticipatory bail was granted by another learned

Judge of the High Court. The Apex Court observed that the High Court had neither applied its mind to the merits of the matter, nor had assigned any

valid reason or shown any change in circumstances, since the rejection of the first application for anticipatory bail. That apart, it was also noted that

the first application for anticipatory bail was rejected by a particular Judge; whereas the second application for anticipatory bail was heard by another

learned Judge, though the Judge who heard the first application was available. It was accordingly, that reference was made to the law declared by the

Apex Court in Shahzad Hasan Khan (supra), Captain Buddhikota Subha Rao (supra), Vikramjit Singh v. State of Madhya Pradesh {(1992) Supp 3

SCC 62}, M. Jagan Mohan Rao (supra) and Jagmohan Bahl (supra) and it was observed that the well settled principles of law enunciated in the above

decisions to cause the 'second bail application' for anticipatory bail to be heard by the same judge, if available, was virtually thrown to wind in the said

case, which hence was condemned. The anticipatory bail granted to the accused was set aside, directing the accused to surrender before the trial

Court, with liberty to seek for regular bail.

23. We made an extensive survey to the judicial precedents as above, to ascertain whether any compelling or persuasive factor is pointed out to have

the bail application of a co-accused to be listed before the very same learned Judge, if available, who had heard and passed orders in the bail

application of another accused involved in the same crime number. No such stipulation has been brought to our notice. The settled law is only to the

effect that 'successive' or 'subsequent bail application' filed by an accused shall be caused to be listed before the same Judge who considered and

decided the first application for bail, if the said learned Judge is available. This is to preserve the purity of the system and build confidence in the

Institution, lest there should not be any threat to the judicial discipline or any instance of 'forum shopping/Bench hunting' by any unscrupulous litigant.

We also find that there is no law or any binding precedent to the effect that, if anticipatory bail application under Section 438 CrPC was rejected by a

particular Bench, the application for regular bail application under section 439 CrPC or an application to suspend the sentence in a pending appeal

should be placed before the very same learned Judge(s) who rejected the application for anticipatory bail at an earlier point of time.

24. Coming to the rules governing the field as far as this Court is concerned, Rule 40 of the Rules 2007 is relevant and hence, it is extracted below:

40. "An application for modification, clarification, restoration or review of an order, or a subsequent bail application under Section 438 / 439 of the

Code of Criminal Procedure, shall be listed before the same Coram:

Provided that if the same Coram is not available on account of retirement or for any other reason for a period of three months, and (1) if the matter

relates to a Larger Bench then the same shall be listed before an equivalent Larger Bench of which one of the members was a member of the earlier

Bench;

(2) if none of the members of the earlier Bench is available then the application shall be listed before an equivalent regular Bench;

(3) in case of a Single Bench, the matter shall be listed before regular Single Bench;

(4) in case a Single Bench where the matter relates to a subsequent bail application under Section 438/439 of the Code of Criminal Procedure, the

same shall be listed before the regular Single Bench.

25. The terminology used in the provision clearly shows that the necessity to list the bail application under Section 439/439 CrPC before the same

coram is in respect of the 'subsequent bail applications', which presupposes filing of an earlier bail application. This cannot but be with reference to the

'same accused' and not a co-accused. The scope of the provision can be ascertained from the course to be followed in respect of other instances

mentioned there as well i.e. in respect of application for modification, clarification, restoration or review of an order; which circumstances presuppose

existence of an order already passed, that is sought to be modified/clarified/restored or reviewed and hence it has necessarily to be placed before the

very same coram. The bail application under Section 438/439 CrPC filed by a co-accused, for the first time, is an original proceeding, as far as he is

concerned.

26. As mentioned already, there may be several accused in a given Crime and their roles may also be different with regard to the commission of the

offence involved. This being the position, whether to grant bail or not to a particular accused, in the given Crime involving several accused, depends

upon the role stated as played by him, as put forth by the investigating agency. Hence, the mere fact that the application for bail of one of the accused

has already been rejected, by itself, is not a ground to reject the bail application of a co-accused, if his role is limited or not made out, which may

enable him to secure bail. The connection of a particular accused to the Crime has to be independently weighed in the given facts and circumstances,

and if the bail application of the co-accused is preferred for the first time, it becomes an independent analysis, which could be done by the learned

Judge who is currently dealing with the roster. As it stands so, it does not require to be sent to the particular Judge who had decided the bail

application of a co-accused in the same Crime.

27. The net result as to the outcome of the above discussion makes us to formulate the law and declare as follows:

(i) The 'successive/subsequent' bail application by the same accused either under Section 438 or 439 CrPC shall be placed before the very same

learned Judge who decided similar application earlier.

(ii) Rejection of the anticipatory bail of an accused by a learned Judge will not make it obligatory to have the application for regular bail filed by the

said accused under Section 439 CrPC to be listed before the very same learned Judge and it could be posted before the Judge who is dealing with

such matters, as per the roster.

(iii) The bail application preferred by one of the accused, either under Section 438 or 439 CrPC, need not be insisted to be posted before the very same

Judge who decided the bail application of a co-accused arising out of the same crime number, of the same police station and it could be posted before

the learned Judge who is dealing with such matters, as per the roster.

28. The Registry shall give effect to the above directions forthwith. The Registry is further directed to place the above case i.e. MCrC (A) No. 1078

of 2019 before the learned Single Judge who is dealing with the matter, as per the roster.