Neutral Citation No. - 2024:AHC-LKO:58171

AFR
Reserved

Case :- CRIMINAL MISC. BAIL APPLICATION No.8192 of 2024

Applicant :- Chandra Raj @ Chandra
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Lko.
Counsel for Applicant :- Prashant Shukla,Mahendra Singh Chaodhary
Counsel for Opposite Party :- G.A.

AND

Case :- CRIMINAL MISC. BAIL APPLICATION No.8751 of 2024

Applicant :- Isha and Shanti
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko
Counsel for Applicant :- Anuj Dayal,Reshu Sharma
Counsel for Opposite Party :- G.A.,Abhinav Srivastava

Hon'ble Pankaj Bhatia,J.

1. Heard Sri Prashant Shukla and Sri Prateek Tiwari, learned counsel appearing on behalf of the applicant Chandra Raj @ Chandra and Sri Vivek Gupta holding brief of Sri Arshad Siddiqui, learned Counsel for the complainant. Sri Anuj Dayal, learned Counsel appearing on behalf of the accused applicants Isha and Shanti as well as Sri Abhinav Srivastava, learned Counsel for the complainant. Sri Nikhil Singh, learned AGA-I for the State in both the cases.

2. As common issues and objections have been raised in the abovesaid bail applications, I intend to decide both the applications by means of this common order.

3. For the sake of brevity, the facts in brief as emerge from Bail Application No.8192 of 2024 are that an FIR No. 300 of 2024, under Sections 328, 376-D, 506 IPC read with Section 3(2)(v)

of SC/ST Act at Police Station Bachhrawan, District Raebareli was lodged against all the accused named in the FIR including the applicant. Subsequently, a charge-sheet was filed, in which, the applicant was charged for an offence under Sections 328, 376D, 506 IPC only and was not charged under Section 3(2)(v) of SC/ST Act. The applicant, Chandra Raj preferred a bail application, which came to be dismissed by the Special Court constituted under the provisions of The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (In short "SC/ST Act") vide order dated 05.06.2024, against which, the present bail application before this Court under Section 439 of Cr.P.C. has been filed. In Bail Application No.8751 of 2024, the FIR No.233 of 2024, under Sections 147, 148, 149, 323, 307, 302, 504, 506, 34 IPC at Police Station Raunahi, District Ayodhya. Subsequently, it appears that sections of SC/ST Act was also added, however, as against the applicants, Isha and Shanti only charges under IPC was framed and not under SC/ST Act. The applicants filed a bail applications before the Special Court seeking bail under the sections of IPC, which came to be rejected vide orders dated 25.07.2024 and 19.07.2024 by the same Special Court, against which, the Bail Application No.8751 of 2024 has been filed under Section 439 of Cr.P.C. seeking enlargement on bail.

4. While arguing the bail applications filed under Sections 439 of the Code of Criminal Procedure (In short "Cr.P.C.") read with Section 483 of The Bharatiya Nyaya Suraksha Sanhita, 2023, it is argued by the Counsel for the applicants that on the facts of the case, the applicants have not been charged under the SC/ST Act and have been charged only for the offences under India Penal Code (IPC), as such, the bail application can be heard and decided by this Court.

5. A preliminary objection was raised by the Counsel for the informant and the learned A.G.A. that in terms of the mandate of Section 14-A(2) of the SC/ST Act, the present bail application is not maintainable under Section 439 of Cr.P.C. and the applicants, if so desire, can avail the specific remedy of appeal prescribed under Section 14-A(2) of the said Act. The said preliminary objections are advanced in both the cases by the learned Counsel for the complainants and learned A.G.A.

6. Sri Prashant Shukla, learned counsel appearing on behalf of the applicant, Chandra Raj @ Chandra argues that in view of the specific judgment on this point in case of ***Pramod vs State of U.P. (Criminal Misc. Bail Application No.2447 of 2024)***, this exact objections were considered by a co-ordinate Bench of this Court and the bail application was held to be maintainable under Section 439 of Cr.P.C. mainly on the ground that in the criminal cases, in which the accused are not charge-sheeted under SC/ST Act are liable to be processed under the provisions of Cr.P.C. even if the offences are being tried by the Special Court established under the SC/ST Act and the Court proceeded to decide the bail application, vide order dated 01.03.2024. In the light of the said, it is proposed to be argued that the bail application is maintainable under Section 439 of Cr.P.C.

7. He further argues that while enacting the SC/ST Act, there is no specific bar to the invocation of Section 439 of Cr.P.C., and no bar under Section 18 to apply for bail is provided when the offences under SC/ST Act are *prima facie* not made out as held by the Hon'ble Supreme Court in the case of ***Prathvi Raj Chauhan vs Union of India and others; (2020) 4 SCC 727.*** Person not implicated under the SC/ST Act should not be made

to suffer all the stringent provisions of the Act only because of the joint trial. There is no specific provision under the SC/ST Act for joint trial or the application of Cr.P.C. as contained in all other acts. He draws my attention to Section 14 of the SC/ST Act, which prescribed for constitution of Special Courts. He also draws my attention to similar enactment, wherein, Special Court has been prescribed to be constituted, namely, The Prevention of Corruption Act, 1988 (In short "PC Act"), The Prevention of Money Laundering Act, 2002 (In short "PML Act") and The Narcotic Drugs and Psychotropic Substances, Act, 1985.

8. Sri Prashant Shukla argues that in the said enactments, there is a specific enactment enabling the Special Courts constituted under the said Acts to hear the offences under IPC apart from the offences under the said Acts as prescribed under Section 43(2) of the PML Act and Section 4 (3) of the PC Act. He argues that while enacting the SC/ST Act, specific provisions such as those contained in sub-Section (2) of Section 43 of the PML Act and sub-Section (3) of Section 4 of PC Act are missing and as such, the Special Court would not have the jurisdiction to try the offences not arising under the SC/ST Act as such, the restrictions placed by means of Section 14-A(2) of SC/ST Act would also not be applicable and the applicant is at liberty to avail the remedy of bail conferred upon the higher court by virtue of Section 439 of Cr.P.C. He places reliance on the following judgments:

> "(i). *Prathvi Raj Chauhan vs Union of India and others; (2020) 4 SCC 727;*
>
> *(ii). Gyanendra Maurya vs Union of India through Secy Ministry Social Justice and Empowerment and others; 2023 SCC OnLine All 46;*

(iii). Teja vs State of U.P. (Criminal Appeal No.3603 of 2019) along with other criminal appeal, decided on 27.09.2019;

(iv). Pramod Yadav vs State of M.P. and others; 2021 SCC OnLine MP 3394;

(v). Sunita Gandharva (Smt.) vs State of M.P. and another; I.L.R. [2020] M.P. 2691;

(vi). Pramod vs State of U.P. (Criminal Misc. Bail Application No.2447 of 2024), decided on 01.03.2024; and

(vii) Ami Chand vs State of Himachal Pradesh; 2020 SCC OnLine HP 1840."

9. Sri Anuj Dayal, learned Counsel appearing on behalf of the applicants, Isha and Shanti mainly adopts the arguments as advanced by Sri Prashant Shukla and states that the Special Court can only try the offences, which are prescribed as offence under the said Special Act and nothing beyond that.

10. On the other hand, Sri Vivek Gupta, learned Counsel appearing on behalf of the complainant of Bail Application No.8192 of 2024 argues that Section 14-A(2), is an enactment which is at variance with the Cr.P.C. and it provides for an appellate forum against any order passed by the Special Court. He argues that in the present case admittedly the bail application filed by the applicant was rejected by the Special Court constituted under Section 14 of the SC/ST Act and once an appellate remedy is prescribed, the normal recourse which is available under Section 439 of Cr.P.C., cannot be resorted to. My attention was also drawn on the Full Bench decision of this Court in the case of ***Ghulam Rasool Khan and others vs State of U.P. and others; 2022 (8) ADJ 691***, wherein specific question "*whether keeping in view the judgment of Rohit (supra), an aggrieved*

person will have two remedies available of preferring an appeal under the provisions of Section 14-A of the Act, 1989 as well as a bail application under the provisions of Section 439 of the Cr.P.C.?", was considered and was answered by the Full Bench holding that only an appeal would lie.

11. Considering the submissions made at the Bar and considering the defence of language used in the statute of the SC/ST Act and the other statutes such as PC Act, PML Act etc. wherein there are similar provisions, it is noteworthy to note the said sections. Section 14 of SC/ST Act reads as under:

> *"**14. Special Court and Exclusive Special Court**.--(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:*
>
> *Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:*
>
> *Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.*
>
> *(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.*
>
> *(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the*

same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet."

12. Section 43 of the PML Act reads as under:

*"**43**. **Special Courts**.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.*

Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

13. Section 4 of the PC Act also reads as under:

*"**4. Cases triable by special Judges. -** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.*

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by

such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

[(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.] [Substituted by Act No. 16 of 2018, dated 26.7.2018.]"

14. At this instance, although not cited by any of the Counsel, it is essential to note a similar provisions for constitution of Special Courts under Section 30-B of The Mines and Minerals (Development and regulation) Act, 1957 (hereinafter referred to as "the MMDR Act"), which is as under:

*"[**30B. Constitution of Special Courts**.—(1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*

(2) A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge.

(4) Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order."

15. On a plain reading of the statutory provisions prescribed for constituting the Special Courts, for the furtherance of aims and objects of the special enactment, it is to be noticed that the language used in Section 14 of the SC/ST Act is similar to the language used for constitution of Special Courts under Section 30-B of the MMDR Act. Although, it has not been argued by both the Counsel, it is also essential to notice the mandate of Sections 220 and 223 of the Cr.P.C., which are quoted below:

*"**220. Trial for more than one offence**.—(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.*

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be

charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

***223. What persons may be charged jointly.**—The following persons may be charged and tried together, namely:—*

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the

> *possession of which has been transferred by one offence;*
>
> *(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:*
>
> *Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate [or Court of Session] may, if such persons by an application in writing, so desire, and if he (or it) is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.*

16. Section 30B of MMDR Act, which is *pari materia* to the provisions of Section 14 of the SC/ST Act, came up for interpretation before the Hon'ble Supreme Court in the case of ***Pradeep S. Wodeyar vs State of Karnataka; (2021) 19 SCC 62***, wherein, a similar argument was raised with regard to the power of Special Court to try for the offences under IPC. It was specifically argued in para 59, which is as under:

> *"**59.** The appellant had raised a contention that even if the Special Judge had the power to take cognizance of the offence, he could only have taken cognizance of offences under the MMDR Act and could not have taken cognizance (and conduct trial) of the offences under the provisions of IPC. For this purpose, the counsel for the appellant referred to Section 30-B(1) of the MMDR Act which states that the State Government may for providing speedy trial of offences under Section 4(1) or Section 4(1-A) of the MMDR Act constitute Special Courts. Section 30-B(1) reads as follows:*

> *"**30-B. Constitution of Special Courts**.—(1) The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of Section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification."*

17. In furtherance of the aforesaid submissions before the Hon'ble Supreme Court attention was drawn to the provisions Section 4(3) of the PC Act, Section 14(1) of NI Act and Section 28(2) of POCSO Act and it was argued that in the said enactments, there existed specific provisions for trying the offences under IPC also, no such provisions was prescribed under Section 30-B of the MMDR Act. The submission recorded by the Hon'ble Supreme Court in para 61 of the said judgment *Pradeep S. Wodeyar (supra)* reads as under:

> *"**61**. It is contended by the appellant that the Special Court established under a statute can try offences under IPC (or any offence other than the offences under the statute) only if expressly provided. To buttress this argument, Section 4(3) of the PC Act, Section 14(1) of the NIA Act, and Section 28(2) of the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act") were referred to. All the three provisions expressly provide the Special Court with the power to try offences other than those offences specified in the Act. Section 4(3) of the PC Act reads as follows:*
>
> > *"**4. (3)** When trying any case, a Special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."*
> >
> > *(emphasis supplied)*
>
> *Section 14 of the NIA Act read as follows:*
>
> > *"**14. Powers of Special Courts with respect to other offences**.—(1) When trying any offence, a Special*

> *Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.*
> *(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law." (emphasis supplied)*
> *Section 28(2) of the POCSO Act provides the following:*
> *"**28. (2)** While trying an offence under this Act, a Special Court shall also try an offence other than the offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial."*
>
> *(emphasis supplied)"*

18. The Hon'ble Supreme Court extensively dealt with the said submissions and also considered the mandate of Section 220 of Cr.P.C., which was specifically not an offence under the MMDR Act like in the present case and decided the issue as under:

> "***C.4.2. Joint trial and implied repeal***
>
> ***69.*** *The general rule of construction is that there is a presumption against a repeal by implication because the legislature has full knowledge of the existing law on the subject-matter while enacting a law. When a repealing provision is not specifically mentioned in the subsequent statute, there is a presumption that the intention of the legislature was not to repeal the provision. The burden to prove that the subsequent enactment has impliedly repealed the provision of an earlier enactment is on the party asserting the argument. This presumption against implied repeal*

is rebutted if the provision(s) of the subsequent Act are so inconsistent and repugnant with the provision(s) of the earlier statute that the two provisions cannot "stand together". [Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257 : 2001 SCC (Cri) 1447; Justice G.P. Singh, Principles of Statutory Interpretation (14th Edn. LexisNexis 2016) 737-738] Therefore, the test to be applied for the construction of implied repeal is as follows :

Whether the subsequent statute (or provision in the subsequent statute) is inconsistent and repugnant with the earlier statute (or provision in the earlier statute) such that both the statutes (or provisions) cannot stand together. [Also see, State of Orissa v. M.A. Tulloch & Company, 1963 SCC OnLine SC 18 : AIR 1964 SC 1284; Syndicate Bank v. Prabha D. Naik, (2001) 4 SCC 713; State of M.P. v. Kedia Leather & Liquor Ltd., (2003) 7 SCC 389 : 2003 SCC (Cri) 1642; Lal Shah Baba Dargah Trust v. Magnum Developers, (2015) 17 SCC 65 : (2017) 5 SCC (Civ) 412;] The test when applied in the context of this case is whether Section 30-B of the MMDR Act is inconsistent and repugnant to Section 220CrPC that both the provisions cannot go hand in hand.

***72.** One of the contentions raised by the counsel for the appellant in Harshad S. Mehta case [Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257 : 2001 SCC (Cri) 1447] was that similar earlier enactments have expressly granted the power to grant pardon to the Special Court constituted under the Act and that when the legislature has deliberately omitted the inclusion of the provision, it would mean that the power was not intended to be granted. The counsel contended that the Special Court under the Act consists of a Judge of the High Court, while Section 306 for the purpose of the provision only enumerates categories of Magistrates. The Bench observed that an express provision needs to be made in the subsequent specific statute only when wider powers or no powers are intended to be given :*

(Harshad S. Mehta case [Harshad S. Mehta v. State of Maharashtra, (2001) 8 SCC 257 : 2001 SCC (Cri) 1447] , SCC p. 276, para 38)

"38. It is understandable that if powers wider than the one contemplated by the Code are intended to be conferred, a provision to that effect will have to be made. It does not follow therefrom that in an altogether different statute, if no special provision is made, an inference can be drawn that even where the powers under the Code and not wide powers were intended to be conferred, save and except where it is so stated specifically, the effect of omission would be that the Special Court will not have even similar powers as are exercised by the ordinary criminal courts under the Code."

75. *The Judicial Magistrate First Class is invested with the authority to try offences under Sections 409 and 420IPC. On the other hand, the Sessions Judge is appointed as a Special Judge for the purposes of the MMDR Act. If the offences under the MMDR Act and IPC are tried together by the Special Judge, there arises no anomaly, for it is not a case where a Judge placed lower in the hierarchy has been artificially vested with the power to try the offences under both the MMDR Act and the Code. Additionally, if the offences are tried separately by different fora though they arise out of the same transaction, there would be a multiplicity of proceedings and wastage of judicial time, and may result in contradictory judgments. It is a settled principle of law that a construction that permits hardship, inconvenience, injustice, absurdity and anomaly must be avoided. Section 30-B of the MMDR Act and Section 220 CrPC can be harmoniously construed and such a construction furthers justice. Therefore, Section 30-B cannot be held to impliedly repeal the application of Section 220CrPC to the proceedings before the Special Court."*

19. As the *pari materia* provisions contained in Section 30-B of the MMDR Act along with other provisions contained in the said Act has already been interpreted by the Hon'ble Supreme Court in the said case *Pradeep S. Wodeyar (supra)* and the conclusions to that effect are recorded in para 108 to the following effect:

> "***D. The conclusion***
>
> ***108.1.*** *The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209CrPC. The order of the Special Judge dated 30-12-2015 taking cognizance is therefore irregular.*
>
> ***108.2.*** *The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465CrPC.*
>
> ***108.3.*** *The decision in Gangula Ashok [Gangula Ashok v. State of A.P., (2000) 2 SCC 504 : 2000 SCC (Cri) 488] was distinguished in Rattiram [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2)CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2)CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others.*

***108.4**. In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated.*

***108.5.** It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no "failure of justice" under Section 465CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465CrPC.*

108.6. The Special Court has the power to take cognizance of offences under the MMDR Act and conduct a joint trial with other offences if permissible under Section 220CrPC. There is no express provision in the MMDR Act which indicates that Section 220CrPC does not apply to proceedings under the MMDR Act.

***108.7.** Section 30-B of the MMDR Act does not impliedly repeal Section 220CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings.*

***108.8.** Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material.*

***108.9.** A combined reading of the Notifications dated 29-5-2014 and 21-1-2014 indicate that the Sub-Inspector of Lokayukta is an authorised person for the*

> *purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22CrPC.*
>
> ***108.10**. The question of whether A-1 was in charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a prima facie case against A-1, which is sufficient to arraign him as an accused at this stage."*

20. There appears no reason for this Court to take a view as canvassed by Sri Prashant Shukla and Sri Anuj Dayal, learned Advocates, as such, on the foundation of the interpretation of the Hon'ble Supreme Court in the case of *Pradeep S. Wodeyar (supra),* I have no hesitation in holding that the Sessions Court/ Special Courts constituted under the SC/ST Act is duly and well empowered to consider the offences against the accused even under IPC. Once the Special Court constituted under the Act is empowered to take cognizance and to try offences together, all the rigors of the SC/ST Act would apply and keeping in view the Full Bench decision of this Court in the case of *Ghulam Rasool Khan (supra)*, an appeal would be maintainable against an order rejecting the bail application by the Special Court, thus, the present bail applications filed under Sections 439 of Cr.P.C. deserve to be rejected.

21. Accordingly, both the bail applications are hereby ***rejected*** giving liberty to the applicants to file an appeal under Section 14-A (2) of the SC/ST Act, if so advised.

22. I am not dealing with the judgments cited by the learned Counsel in view of the specific interpretation of the Hon'ble Supreme court in the case of *Pradeep S. Wodeyar (supra)* interpreting a *pari materia* provisions which aspect was neither raised nor considered in any of the referred judgments as such the bail applications are rejected with the liberty recorded above.

23. Office is directed to provide certified copies of the bail rejection orders and the first information reports on moving appropriate applications by the Counsel for the applicants.

Order Date: 28.08.2024
akverma **(Pankaj Bhatia,J)**