REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 689 OF 2014
[Arising out of SLP (Crl.)No.1348 of 2014]

SUNDEEP KUMAR BAFNA ....APPELLANT

vs

STATE OF MAHARASHTRA & ANR. …..RESPONDENT(S)

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J U D G M E N T

VIKRAMAJIT SEN,J.

1. Leave granted.

2. A neat legal nodus of ubiquitous manifestation and gravity has arisen before us. It partakes the character of a general principle of law with significance sans systems and States. The futility of the Appellant's endeavours to secure anticipatory bail having attained finality, he had once again knocked at the portals of the High Court of Judicature at Bombay, this time around for regular bail under Section 439 of the Code of Criminal

Procedure (CrPC), which was declined with the observations that it is the Magistrate whose jurisdiction has necessarily to be invoked and not of the High Court or even the Sessions Judge. The legality of this conclusion is the gravemen of the appeal before us. While declining to grant anticipatory bail to the Appellant, this Court had extended to him transient insulation from arrest for a period of four weeks to enable him to apply for regular bail, even in the face of the rejection of his Special Leave Petition on 28.1.2014. This course was courted by him, in the event again in vain, as the bail application preferred by him under Section 439 CrPC has been dismissed by the High Court in terms of the impugned Order dated 6.2.2014. His supplications to the Bombay High Court were twofold; that the High Court may permit the petitioner to surrender to its jurisdiction and secondly, to enlarge him on regular bail under Section 439 of the Code, on such terms and conditions as may be deemed fit and proper.

3. In the impugned Judgment, the learned Single Judge has opined that when the Appellant's plea to surrender before the Court is accepted and he is assumed to be in its custody, the police would be deprived of getting his custody, which is not contemplated by law, and thus, the Appellant "is required to be arrested or otherwise he has to surrender before the Court which can send him to remand either to the police custody or to the

Magisterial custody and this can only be done under Section 167 of CrPC by the Magistrate and that order cannot be passed at the High Court level." Learned Senior Counsel for the Appellant have fervidly assailed the legal correctness of this opinion. It is contended that the Magistrate is not empowered to grant bail to the Appellant, since he can be punished with imprisonment for life, as statutorily stipulated in Section 437(1) CrPC; CR No.290 of 2013 stands registered with P.S. Mahim for offences punishable under Sections 288, 304, 308, 336, 388 read with 34 and Section 120-B of IPC. Learned Senior Counsel further contends that since the matter stands committed to Sessions, the Magistrate is denuded of all powers in respect of the said matter, for the reason that law envisages the commitment of a case and not of an individual accused.

4. While accepting the Preliminary Objection, the dialectic articulated in the impugned order is that law postulates that a person seeking regular bail must perforce languish in the custody of the concerned Magistrate under Section 167 CrPC. The Petitioner had not responded to the notices/summons issued by the concerned Magistrate leading to the issuance of non-bailable warrants against him, and when even these steps proved ineffectual in bringing him before the Court, measures were set in motion for declaring him as a proclaimed offender under Section 82 CrPC. Since this was not

the position obtaining in the case, i.e. it was assumed by the High Court that the Petitioner was not in custody, the application for bail under Section 439 of CrPC was held to be not maintainable. This conclusion was reached even though the petitioner was present in Court and had pleaded in writing that he be permitted to surrender to the jurisdiction of the High Court. We shall abjure from narrating in minute detail the factual matrix of the case as it is not essential to do so for deciding the issues that have arisen in the present Appeal.

Relevant Provisions in the CrPC Pertaining to Regular Bail:

5. The pandect providing for bail is Chapter XXXIII comprises Sections 436 to 450 of the CrPC, of which Sections 437 and 439 are currently critical. Suffice it to state that Section 438 which deals with directions for grant of bail to persons apprehending arrest does not mandate either the presence of the applicant in Court or for his being in custody. Section 437, *inter alia*, provides that if any person accused of, or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or if such person appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail in certain circumstances.

6. For facility of reference, Sections 437 and 439, both covering the

grant of regular bail in non-bailable offences are reproduced hereunder. Section 438 has been ignored because it is the composite provision dealing only with the grant of anticipatory bail.

> "**437**. **When bail may be taken in case of non- bailable offence**.- (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but –
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> (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
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> (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:
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> Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:
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> Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:
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> Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:
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> Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.
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> (2) If it appears to such officer or Court at any stage of the

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

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or 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.

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

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

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

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

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 the opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

7. Article 21 of the Constitution states that no person shall be deprived of his life or personal liberty except according to procedure established by law. We are immediately reminded of three sentences from the Constitution Bench decision in P.S.R. Sadhanantham vs Arunachalam (1980) 3 SCC 141, which we appreciate as poetry in prose - "Article 21**,** in its sublime brevity, guards human liberty by insisting on the prescription of procedure

established by law, not fiat as *sine qua non* for deprivation of personal freedom. And those procedures so established must be fair, not fanciful, nor formal nor flimsy, as laid down in Maneka Gandhi case. So, it is axiomatic that our Constitutional jurisprudence mandates the State not to deprive a person of his personal liberty without adherence to fair procedure laid down by law". Therefore, it seems to us that constriction or curtailment of personal liberty cannot be justified by a conjectural dialectic. The only restriction allowed as a general principle of law common to all legal systems is the period of 24 hours post-arrest on the expiry of which an accused must mandatorily be produced in a Court so that his remand or bail can be judicially considered.

8. Some poignant particulars of Section 437 CrPC may be pinpointed. First, whilst Section 497(1) of the old Code alluded to an accused being "brought before a Court", the present provision postulates the accused being "brought before a Court other than the High Court or a Court of Session" in respect of the commission of any non-bailable offence. As observed in **Gurcharan Singh** vs State (1978) 1 SCC 118, there is no provision in the CrPC dealing with the production of an accused before the Court of Session or the High Court. But it must also be immediately noted that no provision categorically prohibits the production of an accused before either of these

Courts. The Legislature could have easily enunciated, by use of exclusionary or exclusive terminology, that the superior Courts of Sessions and High Court are bereft of this jurisdiction or if they were so empowered under the Old Code now stood denuded thereof. Our understanding is in conformity with **Gurcharan Singh**, as perforce it must. The scheme of the CrPC plainly provides that bail will not be extended to a person accused of the commission of a non-bailable offence punishable with death or imprisonment for life, unless it is apparent to such a Court that it is incredible or beyond the realm of reasonable doubt that the accused is guilty. The enquiry of the Magistrate placed in this position would be akin to what is envisaged in State of Haryana vs Bhajan Lal, 1992 (Supp)1 SCC 335, that is, the alleged complicity of the accused should, on the factual matrix then presented or prevailing, lead to the overwhelming, incontrovertible and clear conclusion of his innocence. The CrPC severely curtails the powers of the Magistrate while leaving that of the Court of Session and the High Court untouched and unfettered. It appears to us that this is the only logical conclusion that can be arrived at on a conjoint consideration of Sections 437 and 439 of the CrPC. Obviously, in order to complete the picture so far as concerns the powers and limitations thereto of the Court of Session and the High Court, Section 439 would have to be carefully considered. And when

this is done, it will at once be evident that the CrPC has placed an embargo against granting relief to an accused, (couched by us in the negative), if he is not in custody. It seems to us that any persisting ambivalence or doubt stands dispelled by the proviso to this Section, which mandates only that the Public Prosecutor should be put on notice. We have not found any provision in the CrPC or elsewhere, nor have any been brought to our ken, curtailing the power of either of the superior Courts to entertain and decide pleas for bail. Furthermore, it is incongruent that in the face of the Magistrate being virtually disempowered to grant bail in the event of detention or arrest without warrant of any person accused of or suspected of the commission of any non-bailable offence punishable by death or imprisonment for life, no Court is enabled to extend him succour. Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim, viz. 'where there is a right there is a remedy'. The universal right of personal liberty emblazened by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to this pandect comprising Sections 437 to 439, and, therefore, predicates on the well established

principles of interpretation of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Some salient features of these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Session Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conundrum of 'Committal of cases to the Court of Session' because of a possible hiatus created by the CrPC.

Meaning of Custody:

9. Unfortunately, the terms 'custody', 'detention' or 'arrest' have not been defined in the CrPC, and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance. The Oxford Dictionary (online) defines custody as imprisonment, detention, confinement, incarceration, internment, captivity; remand, duress, and durance. The Cambridge Dictionary (online) explains 'custody' as the state of being kept in prison, especially while waiting to go to court for trial. Longman Dictionary (online) defines 'custody' as 'when someone is kept in prison until they go to court, because the police think they have committed a crime'. Chambers Dictionary (online) clarifies that custody is 'the condition of being held by the police; arrest or imprisonment; to take someone into custody to arrest them'. Chambers' Thesaurus supplies several synonyms, such as detention, confinement, imprisonment, captivity, arrest, formal incarceration. The Collins Cobuild English Dictionary for Advance Learners states in terms of that someone who is in custody or has been taken into custody or has been arrested and is being kept in prison until they get tried in a court or if someone is being held in a particular type of custody, they are being kept in a place that is similar to a prison. The Shorter Oxford English Dictionary postulates the presence of confinement,

imprisonment, durance and this feature is totally absent in the factual matrix before us. The Corpus Juris Secundum under the topic of 'Escape & Related Offenses; Rescue' adumbrates that 'Custody, within the meaning of statutes defining the crime, consists of the detention or restraint of a person against his or her will, or of the exercise of control over another to confine the other person within certain physical limits or a restriction of ability or freedom of movement.' This is how 'Custody' is dealt with in Black's Law Dictionary, (9th ed. 2009):-

> "**Custody**- The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.
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> The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Term "custody" within statute requiring that petitioner be "in custody" to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. U. S. ex rel. Wirtz v. Sheehan, D.C.Wis, 319 F.Supp. 146, 147. Accordingly, persons on probation or released on own recognizance have been held to be "in custody" for purposes of habeas corpus proceedings."

10. A perusal of the dictionaries thus discloses that the concept that is created is the controlling of a person's liberty in the course of a criminal investigation, or curtailing in a substantial or significant manner a person's

freedom of action. Our attention has been drawn, in the course of Rejoinder arguments to the judgment of the Full Bench of the High Court of Madras in **Roshan Beevi** vs Joint Secretary 1984(15) ELT 289 (Mad), as also to the decision of the Court in Directorate of Enforcement vs **Deepak Mahajan** (1994) 3 SCC 440; in view of the composition of both the Benches, reference to the former is otiose. Had we been called upon to peruse **Deepak Mahajan** earlier, we may not have considered it necessary to undertake a study of several Dictionaries, since it is a convenient and comprehensive compendium on the meaning of arrest, detention and custody.

11. Courts in Australia, Canada, U.K. and U.S. have predicated in great measure, their decisions on paragraph 99 from Vol. II Halsbury's Laws of England (4th Edition) which states that – "Arrest consists of the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer". The US Supreme Court has been called upon to explicate the concept of custody on a number of occasions, where, coincidentally, the plea that was proffered was the failure of the police to administer the **Miranda** caution, i.e. of apprising the detainee of his Constitutional rights. In

Miranda vs Arizona 384 US 436 (1966), custodial interrogation has been said to mean "questioning initiated by law enforcement officers after a person has been taken into custody or *otherwise deprived of his freedom of action in any significant way*". In Minnesota vs Murphy 465 US 420 (1984), it was opined by the U.S. Supreme Court that since "no formal arrest or restraint on freedom of movement of the degree associated with formal arrest" had transpired, the Miranda doctrine had not become operative. In R. vs Whitfield 1969 CareswellOnt 138, the Supreme Court of Canada was called upon to decide whether the police officer, who directed the accused therein to stop the car and while seizing him by the shirt said "you are under arrest:", could be said to have been "custodially arrested" when the accused managed to sped away. The plurality of the Supreme Court declined to draw any distinction between an arrest amounting to custody and a mere or bare arrest and held that the accused was not arrested and thus could not have been guilty of "escaping from lawful custody". More recently, the Supreme Court of Canada has clarified in R. vs Suberu [2009] S.C.J.No.33 that detention transpired only upon the interaction having the consequence of a significant deprivation of liberty. Further, in Berkemer vs McCarty 468 U.S. 420 (1984), a roadside questioning of a motorist detained pursuant to a routine traffic stop was not seen as analogous to custodial interrogation

requiring adherence to **Miranda** rules.

12. It appears to us from the above analysis that custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. In **Roshan Beevi**, the Full Bench of the High Court of Madras, speaking through S. Ratnavel Pandian J, held that the terms 'custody' and 'arrest' are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. This thesis is reiterated by Pandian J in **Deepak Mahajan** by deriving support from **Niranjan Singh** vs Prabhakar Rajaram Kharote (1980) 2 SCC 559. The following passages from **Deepak Mahajan** are worthy of extraction:-

> "**48.** Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the ar-

> rest of a person is a condition precedent for taking him into judicial custody thereof. **To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender**. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi.
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> **49.** While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in *Niranjan Singh* v. *Prabhakar Rajaram Kharote* observed that: (SCC p. 563, para 9)
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> "He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. **He can be stated to be in judicial custody when he surrenders before the court and submits to its directions**." (**emphasis added**)

If the third sentence of para 48 is discordant to **Niranjan Singh**, the view of the coordinate Bench of earlier vintage must prevail, and this discipline demands and constrains us also to adhere to **Niranjan Singh**; ergo, we reiterate that a person is in custody no sooner he surrenders before the police or before the appropriate Court. This enunciation of the law is also available in three decisions in which Arijit Pasayat J spoke for the 2-Judge Benches, namely (a) Nirmal Jeet Kaur vs State of M.P. (2004) 7 SCC 558 and (b) Sunita Devi vs State of Bihar (2005) 1 SCC 608, and (c) Adri Dharan Das vs State of West Bengal, (2005) 4 SCC 303, where the Co-

equal Bench has opined that since an accused has to be present in Court on the moving of a bail petition under Section 437, his physical appearance before the Magistrate tantamounts to surrender. The view of **Niranjan Singh** (see extracted para 49 infra) has been followed in State of Haryana vs **Dinesh Kumar** (2008) 3 SCC 222. We can only fervently hope that member of Bar will desist from citing several cases when all that is required for their purposes is to draw attention to the precedent that holds the field, which in the case in hand, we reiterate is **Niranjan Singh**.

Rule of Precedent & *Per Incuriam*:

13. The Constitution Bench in Union of India vs **Raghubir Singh**, 1989 (2) SCC 754, has come to the conclusion extracted below:

> **"27**. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such

> authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. …"

14. This ratio of **Raghubir Singh** was applied once again by the Constitution Bench in **Chandra Prakash** v. State of U.P.: AIR 2002 SC 1652. We think it instructive to extract the paragraph 22 from **Chandra Prakash** in order to underscore that there is a consistent and constant judicial opinion, spanning across decades, on this aspect of jurisprudence:

> "Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in Parija's case (supra). In that case, a Bench of two learned Judges doubted the correctness of the decision a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, the five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench found fault with the reference made by the two-Judge Bench based on the doctrine of binding precedent."

15. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become

a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its *ratio* with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta.* It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*.

Validation of *Ratio* in Niranjan Singh:

16. We must now discuss in detail the decision of a Two-Judge Bench in **Rashmi Rekha** Thatoi vs State of Orissa, (2012) 5 SCC 690, for the reason that in the impugned Order the Single Judge of the High Court has proclaimed, which word we used intentionally, that **Niranjan Singh** is *per incuriam.* The 'chronology of cases' mentioned in **Rashmi Rekha** elucidates that there is only one judgment anterior to **Niranjan Singh,** namely, Balchand Jain vs State of M.P. (1976) 4 SCC 572, which along with the Constitution Bench decision in Gurbaksh Singh **Sibbia**, intrinsically

concerned itself only with anticipatory bail. It is necessary to give a salutary clarion caution to all Courts, including High Courts, to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be *per incuriam*. In the present case, in the impugned Order the learned Single Judge appears to have blindly followed the incorrect and certainly misleading editorial note in the Supreme Court Reports without taking the trouble of conscientiously apprising himself of the context in which **Rashmi Rekha** appears to hold **Niranjan Singh** *per incuriam*, and equally importantly, to which previous judgment. An earlier judgment cannot possibly be seen as *per incuriam* a later judgment as the latter if numerically stronger only then it would overrule the former. **Rashmi Rekha** dealt with anticipatory bail under Section 438 and only tangentially with Sections 437 and 439 of the CrPC, and while deliberations and observations found in this clutch of cases may not be circumscribed by the term *obiter dicta*, it must concede to any judgment directly on point. In the factual matrix before us, **Niranjan Singh** is the precedent of relevance and not Gurbaksh Singh **Sibbia** or any other decision where the scope and sweep of anticipatory bail was at the fulcrum of the conundrum.

17. Recently, in **Dinesh Kumar**, this conundrum came to be considered again. This Court adhered to the **Niranjan Singh** dicta (as it was bound to

do), viz. that a person can be stated to be in judicial custody when he surrendered before the Court and submits to its directions. We further regretfully observe that the impugned Judgment is repugnant to the analysis carried out by two coordinate Benches of the High Court of Bombay itself, which were duly cited on behalf of the Appellant. The first one is reported as Balkrishna Dhondu Rani vs Manik Motiram Jagtap 2005 (Supp.) Bom C.R.(Cri) 270 which applied **Niranjan Singh**; the second is by a different Single Bench, which correctly applied the first. In the common law system, the purpose of precedents is to impart predictability to law, regrettably the judicial indiscipline displayed in the impugned Judgment, defeats it. If the learned Single Judge who had authored the impugned Judgment irrepressibly held divergent opinion and found it unpalatable, all that he could have done was to draft a reference to the Hon'ble Chief Justice for the purpose of constituting a larger Bench; whether or not to accede to this request remains within the discretion of the Chief Justice. However, in the case in hand, this avenue could also not have been traversed since **Niranjan Singh** binds not only Co-equal Benches of the Supreme Court but certainly every Bench of any High Court of India. Far from being *per incuriam*, **Niranjan Singh** has metamorphosed into the structure of *stare decisis*, owing to it having endured over two score years of consideration, leading to the position that

even Larger Benches of this Court should hesitate to remodel its ratio.

18. It will also be germane to briefly cogitate on the fasciculous captioned "Section 438 of the Code of Civil Procedure, as amended by the Code of Criminal Procedure (Amendment) Act, 2005 of the 203rd Report of the Law Commission. Although, the Law Commission was principally focused on the parameters of anticipatory bail, it had reflected on **Niranjan Singh,** and, thereafter, observed in paragraph 6.3.23 that "where a person appears before the Court in compliance with any Court's order and surrenders himself to the Court's directions or control, he may be granted regular bail, since he is already under restraint. The provisions relating to the anticipatory bail may not be attracted in such a case". An amendment was proposed to the provisions vide CrPC (Amendment) Act, 2005 making the presence of the applicant seeking anticipatory bail obligatory at the time of final hearing of the application for enlargement on bail. The said amendment has not been notified yet and kept in abeyance because of two reasons. Firstly, the amendment led to widespread agitation by the lawyers fraternity since it would virtually enable the police to immediately arrest an accused in the event the Court declined to enlarge the accused on bail. Secondly, in the perception of the Law Commission, it would defeat the very purpose of the anticipatory bail. The conclusion of the Law Commission, in almost

identical words to those extracted above are that: "when the applicant appears in the Court in compliance of the Court's order and is subjected to the Court's directions, he may be viewed as in Court's custody and this may render the relief of anticipatory bail infructuous". Accordingly, the Law Commission has recommended omission of sub-section (1-B) of Section 438 CrPC.

19. The Appellant had relied on **Niranjan Singh** vs Prabhakar Rajaram Kharote (1980) 2 SCC 559, before the High Court as well as before us. A perusal of the impugned Order discloses that the learned Single Judge was of the mistaken opinion that **Niranjan Singh** was *per incuriam*, possibly because of an editorial error in the reporting of the later judgment in **Rashmi Rekha** Thatoi vs State of Orissa (2012) 5 SCC 690. In the latter decision the curial assault was to the refusal to grant of anticipatory bail under Section 438(1) CrPC, yet nevertheless enabling him to surrender before the Sub Divisional Magistrate and thereupon to be released on bail. In the appeal in hand this issue is not in focus; the kernel of the conundrum before us is the meaning to be ascribed to the concept of custody in Section 439 CrPC, and a careful scrutiny of **Rashmi Rekha** will disclose that it does not even purport to or tangentially intend to declare **Niranjan Singh** as *per incuriam*. Any remaining doubt would be dispelled on a perusal of Ranjit

Singh vs State of M.P, where our esteemed Brother Dipak Misra has clarified that **Rashmi Rekha** concerned itself only with anticipatory bail. The impugned Order had therefore to remain in complete consonance with **Niranjan Singh.** It needs to be clarified that paragraph 14 of Sunita Devi vs State of Bihar (2005) 1 SCC 608, extracts verbatim paragraph 7 of **Niranjan Singh**, without mentioning so. The annals of the litigation in **Niranjan Singh** are that pursuant to a private complaint under Section 202 CrPC, the concerned Magistrate issued non-bailable warrants in respect of the accused, and subsequently while refusing bail to them had neglected to contemporaneously cause them to be taken into custody. In that interregnum or hiatus, the accused moved the Sessions Court which granted them bail albeit on certain terms which the High Court did not interfere therewith. This Court, speaking through Krishna Iyer J elucidated the law in these paragraphs:

> **"6.** Here the respondents were accused of offences but were not in *custody*, argues the petitioner so no bail, since this basic condition of being in jail is not fulfilled. This submission has been rightly rejected by the courts below. We agree that, in one view, an outlaw cannot ask for the benefit of law and he who flees justice cannot claim justice. But here the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of the court to be enlarged. We agree that no person accused of an offence can move the court for bail under Section 439 CrPC unless he is in custody.

7. When is a person in *custody*, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in *custody* for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. **He can be stated to be in judicial custody when he surrenders before the court and submits to its directions**. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439 CrPC. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy **but for the fact that in the present case the accused made up for it by surrender before the Sessions Court**. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances

> and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but, sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below." (**Emphasis added by us**)

It should not need belabouring that High Courts must be most careful and circumspect in concluding that a decision of a superior Court is *per incuriam*. And here, palpably without taking the trouble of referring to and reading the precedents alluded to, casually accepting to be correct a careless and incorrect editorial note, the Single Judge has done exactly so. All the cases considered in **Rashmi Rekha** including the decision of the Constitution Bench in Gurbaksh Singh **Sibbia** vs State of Punjab (1980) 2 SCC 565, concentrated on the contours and circumference of anticipatory bail, i.e. Section 438. We may reiterate that the Appellant's prayer for anticipatory bail had already been declined by this Court, which is why he had no alternative but to apply for regular bail. Before we move on we shall reproduce the following part of paragraph 19 of **Sibbia** as it has topicality:-

> "19 … Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in

> pursuance of information supplied by a person released on bail by invoking the principles stated by this Court in State of U.P. v. Deoman Upadhyaya to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency."

20. In this analysis, the opinion in the impugned Judgment incorrectly concludes that the High Court is bereft or devoid of power to jurisdiction upon a petition which firstly pleads surrender and, thereafter, prays for bail. The High Court could have perfunctorily taken the Appellant into its custody and then proceeded with the perusal of the prayer for bail; in the event of its coming to the conclusion that sufficient grounds had not been disclosed for enlargement on bail, necessary orders for judicial or police custody could have been ordained. A Judge is expected to perform his onerous calling impervious of any public pressure that may be brought to bear on him.

The Conundrum of Cognizance, Committal & Bail

21. We have already noted in para 8 the creation by the CrPC of a hiatus

between the cognizance of an offence by the Magistrate and the committal by him of that offence to the Court of Session. Section 190 contemplates the cognizance of an offence by a Magistrate in any of the following four circumstances: (i) upon receiving a complaint of facts; or (ii) upon a police report of such facts; or (iii) upon information received from any person other than a police officer, or (iv) upon the Magistrate's own knowledge. Thereafter, Section 193 proscribes the Court of Session from taking cognizance of any offence, as a Court of original jurisdiction, unless the case has been committed to it by a Magistrate; its Appellate jurisdiction is left untouched. Chapter XVI makes it amply clear that a substantial period may inevitably intervene between a Magistrate taking cognizance of an offence triable by Sessions and its committal to the Court of Session. Section 204 casts the duty on a Magistrate to issue process; Section 205 empowers him to dispense with personal attendance of accused; Section 206 permits Special summons in cases of petty offence; Sections 207 and 208 obligate the Magistrate to furnish to the accused, free of cost, copies of sundry documents mentioned therein; and, thereafter, under Section 209 to commit the case to Sessions. What is to happen to the accused in this interregnum; can his liberty be jeopardized! The only permissible restriction to personal freedom, as a universal legal norm, is the arrest or detention of

an accused for a reasonable period of 24 hours. Thereafter, the accused would be entitled to seek before a Court his enlargement on bail. In connection with serious offences, Section 167 CrPC contemplates that an accused may be incarcerated, either in police or judicial custody, for a maximum of 90 days if the Charge Sheet has not been filed. An accused can and very often does remain bereft of his personal liberty for as long as three months and law must enable him to seek enlargement on bail in this period. Since severe restrictions have been placed on the powers of a Magistrate to grant bail, in the case of an offence punishable by death or for imprisonment for life, an accused should be in a position to move the Courts meaningfully empowered to grant him succour. It is inevitable that the personal freedom of an individual would be curtailed even before he can invoke the appellate jurisdiction of Sessions Judge. The Constitution therefore requires that a pragmatic, positive and facilitative interpretation be given to the CrPC especially with regard to the exercise of its original jurisdiction by the Sessions Court. We are unable to locate any provision in the CrPC which prohibits an accused from moving the Court of Session for such a relief except, theoretically, Section 193 which also only prohibits it from taking cognizance of an offence as a Court of original jurisdiction. This embargo does not prohibit the Court of Session from adjudicating upon

a plea for bail. It appears to us that till the committal of case to the Court of Session, Section 439 can be invoked for the purpose of pleading for bail. If administrative difficulties are encountered, such as, where there are several Additional Session Judges, they can be overcome by enabling the accused to move the Sessions Judge, or by further empowering the Additional Sessions Judge hearing other Bail Applications whether post committal or as the Appellate Court, to also entertain Bail Applications at the pre-committal stage. Since the Magistrate is completely barred from granting bail to a person accused even of an offence punishable by death or imprisonment for life, a superior Court such as Court of Session, should not be incapacitated from considering a bail application especially keeping in perspective that its powers are comparatively unfettered under Section 439 of the CrPC.

22. In the case in hand, we need not dwell further on this question since the Appellant has filed an application praying, firstly, that he be permitted to surrender to the High Court and secondly, for his plea to be considered for grant of bail by the High Court. We say this because there are no provisions in the CrPC contemplating the committal of a case to the High Court, thereby logically leaving its powers untrammelled. There are no restrictions on the High Court to entertain an application for bail provided always the accused is in custody, and this position obtains as soon as the

accused actually surrenders himself to the Court. Reliance on R vs **Evans**, (2012) 1 WLR 1192, by learned Senior Counsel for the respondents before us is misplaced, since on its careful reading, the facts are totally distinguishable inasmuch as the accused in that case had so engineered events as not to be available *in persona* in the Court at the time of the consideration of his application for surrender. The Court of Appeal observed that they "do not agree that reporting to the usher amounts to surrender". The Court in fact supported the view that surrender may also be accomplished by the commencement of any hearing before the Judge, however brief, where the accused person is formally identified and plainly would overtly have subjected himself to the control of the Court. Incontrovertibly, at the material time the Appellant was corporeally present in the Bombay High Court making **Evans** applicable to the case of the Appellant rather than the case of the respondent. A further singularity of the present case is that the offence has already been committed to Sessions, albeit, the accused/Appellant could not have been brought before the Magistrate. It is beyond cavil "that a Court takes cognizance of an offence and not an offender" as observed in Dilawar Singh vs Parvinder Singh, (2005) 12 SCC 709, in which Raghubans Dubey vs State of Bihar, AIR 1967 SC 1167, was applied. Therefore, the High Court was not justified in

directing the Appellant to appear before the Magistrate.

23. On behalf of the State, the submission is that the prosecution should be afforded a free and fair opportunity of subjecting the accused to custody for interrogation as provided under Section 167 CrPC. This power rests with the Magistrate and not with the High Court, which is the Court of Revision and Appeal; therefore, the High Court under Section 482 CrPC can only correct or rectify an order passed without jurisdiction by a subordinate Court. Learned State counsel submits that the High Court in exercise of powers under Section 482 can convert the nature of custody from police custody to judicial custody and vice versa, but cannot pass an Order of first remanding to custody. Therefore, the only avenue open to the accused is to appear before the Magistrate who is empowered under Section 167 CrPC. Thereupon, the Magistrate can order for police custody or judicial custody or enlarge him on bail. On behalf of the State, it is contended that if accused persons are permitted to surrender to the High Court, it is capable of having, if not a disastrous, certainly a deleterious effect on investigations and shall open up the flood gates for accused persons to make strategies by keeping themselves away from the investigating agencies for months on end. The argument continues that in this manner absconding accused in several sensitive cases, affecting the security of the nation or the economy of the

country, would take advantage of such an interpretation of law and get away from the clutches of the investigating officer. We are not impressed by the arguments articulated by learned Senior Counsel for the Complainant or informant because it is axiomatic that any infraction or inroad to the freedom of an individual is possible only by some clear unequivocal and unambiguous procedure known to law.

Role of Public Prosecutor and Private Counsel in Prosecution

24. The concern of the Three Judge Bench in **Thakur Ram** vs State of Bihar AIR 1966 SC 911, principally was whether the case before them should have been committed to Sessions, as also whether this plea could be countenanced at the stage when only the Judgment was awaited and any such interference would effectuate subjecting the accused to face trial virtually *de novo*. The observations that where "a case has proceeded on a police report a private party has really no *locus standi*, since the aggrieved party is the State", are strictly senso *obiter dicta* but it did presage the view that was to be taken by this Court later. In **Bhagwant Singh** vs Commissioner of Police, (1985) 2 SCC 537, another Three Judge Bench formulated the question which required its answer that "whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of the First Information Report, the police

submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceeding without issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased". Sections 154, 156, 157, 173 and 190 of the CrPC were duly considered threadbare, before opining thus:-

> "4. ….when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process…..
>
> xxxxxxxxxx
>
> "5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal Procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report……"

Thereafter, in **Shiv Kumar** vs Hukam Chand (1999) 7 SCC 467, the

question that was posed before another Three Judge Bench was whether an aggrieved has a right to engage its own counsel to conduct the prosecution despite the presence of the Public Prosecutor. This Court duly noted that the role of the Public Prosecutor was upholding the law and putting together a sound prosecution; and that the presence of a private lawyer would inexorably undermine the fairness and impartiality which must be the hallmark, attribute and distinction of every proper prosecution. In that case the advocate appointed by the aggrieved party ventured to conduct the cross-examination of the witness which was allowed by the Trial Court but was reversed in Revision by the High Court, and the High Court permitted only the submission of Written Argument after the closure of evidence. Upholding the view of the High Court, this Court went on to observe that before the Magistrate any person (except a police officer below the rank of Inspector) could conduct the prosecution, but that this laxity is impermissible in Sessions by virtue of Section 225 of the CrPC, which pointedly states that the prosecution shall be conducted by a Public Prosecutor. We, respectfully, agree with the observations that – "A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting

prosecution must be couched in fairness not only to the Court and to the investigating agencies but to the accused as well. …….. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor." In **J.K. International** vs State (2001) 3 SCC 462, the Appellant had filed a complaint alleging offences under Sections 420, 406 and 120-B IPC in respect of which a Charge Sheet was duly filed. The Appellant preferred a petition in the High Court for quashing the FIR in which proceeding the complainant's request for being heard was rejected by the High Court. **Thakur Ram** and **Bhagwant Singh** were cited and analysed. It was reiterated by this Court that it is the Public Prosecutor who is in the management of the prosecution the Court should look askance at frequent interjection and interference by a private person. However, if the proceedings are likely to be quashed, then the complainant should be heard at that stage, rather than compelling him to assail the quashment by taking recourse to an appeal. Sections 225, 301 and 302 were also adverted to and, thereafter, it was opined that a private person is not altogether eclipsed from the scenario, as he remains a person who will be prejudiced by an order culminating in the dismissal of the prosecution.

The Three Judge Bench observed that upon the Magistrate becoming prescient that a prosecution is likely to end in its dismissal, it would be salutary to allow a hearing to the Complainant at the earliest; and, in the case of a Sessions trial, by permitting the filing of Written Arguments.

25. The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to

the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the Accused is to be granted bail is a matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Mr. Gopal Subramanium, Senior Advocate and have perused detailed Written Submissions since we are alive to impact that our opinion would have on a multitude of criminal trials.

26. In conclusion, therefore, we are of the opinion that the learned Single Judge erred in law in holding that he was devoid of jurisdiction so far as the application presented to him by the Appellant before us was concerned. Conceptually, he could have declined to accept the prayer to surrender to the Courts' custody, although, we are presently not aware of any reason for this option to be exercised. Once the prayer for surrender is accepted, the Appellant before us would come into the custody of the Court within the contemplation of Section 439 CrPC. The Sessions Court as well as the High Court, both of which exercised concurrent powers under Section 439, would then have to venture to the merits of the matter so as to decide

whether the applicant/Appellant had shown sufficient reason or grounds for being enlarged on bail.

27. The impugned Order is, accordingly, set aside. The Learned Single Judge shall consider the Appellant's plea for surrendering to the Court and dependent on that decision, the Learned Single Judge shall, thereafter, consider the Appellant's plea for his being granted bail. The Appellant shall not be arrested for a period of two weeks or till the final disposal of the said application, whichever is later. We expect that the learned Single Judge shall remain impervious to any pressure that may be brought to bear upon him either from the public or from the media as this is the fundamental and onerous duty cast on every Judge.

28. The appeal is allowed in the above terms.

.....J.
[K.S.RADHAKRISHNAN]

.....J.
[**VIKRAMAJIT SEN**]

New Delhi;
March 27, 2014.