

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF NOVEMBER, 2023

CRIMINAL APPEAL No. 13238 of 2023

BETWEEN:-

**SALIM KHAN S/O SHRI KHALIL KHAN, AGED
ABOUT 40 YEARS, OCCUPATION: LABOR R/O
MAINA ROAD SUSNER DISTT. SHAJAPUR (MADHYA
PRADESH)**

.....APPELLANT

**(SHRI MAKBOOL AHMAD MANSOORI, LEARNED COUNSEL FOR THE AP-
PELLANT)**

AND

**THE STATE OF MADHYA PRADESH STATION
1. HOUSE OFFICER THROUGH POLICE STATION
SUSNER DISTT. SHAJAPUR (MADHYA PRADESH)
ASHOK S/O GANGARAM, AGED ABOUT 27
YEARS, OCCUPATION: LABORER RO VILLAGE
2. KIKHEDI DISTRICT - SHAJAPUR MP (MADHYA
PRADESH)**

.....RESPONDENTS

**(MS. HARSHLATA SONI, PANEL LAWYER APPEARING ON BEHALF OF
ADVOCATE GENERAL.
SHRI KHILADI LAL GANGORE, LEARNED COUNSEL FOR THE
RESPONDENT [OBJ].**

.....

*This appeal coming on for admission this day, the court passed the
following:*

ORDER

1] Appellant has preferred this appeal under Section 14-A (2) of the

SC/ST (PA) Act, 1989, feeling aggrieved by the order dated 01/04/2023, rendered by Special Judge (SC/ST), Shajapur, in SC ATR No.47/2023, whereby the prayer for bail has been rejected.

2] Appellant is arrested in connection with crime No.414/2022, registered at Police Station-Susner, Shajapur, (MP), in connection with offence punishable under Sections 307, 325, 294, 506, 34 and 302 of IPC, Sections 3(1)(r), 3(1)(s),3(2)(V-a) and 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC& ST Act). The appellant is in custody since 18.12.2022.

3] A preliminary objection has been raised by the counsel appearing for the respondent No.2, submitting that the second Criminal appeal against the same order passed by the trial court is not maintainable, as the appellant had already preferred the earlier Criminal Appeal No. 5712/2023, which was also filed against the same order dated 01.04.2023 rejecting the bail of the appellant by the trial court.

4] In rebuttal, Shri Maqbool Ahmed Mansoori, counsel for the appellant has drawn attention of this Court to the decision rendered by the co-ordinate Bench of this Court at Indore in Criminal Appeal No.4668/2017 dated 5.17.2017 in the case of ***Ramu @ Ramlal vs. State of Madhya Pradesh*** reported in *I.L.R. (2018) M.P. 163* wherein, the Court has rejected the contention of the State that the second criminal appeal is not maintainable against the same order of rejection, and it is held that a fresh appeal is maintainable after rejection of the first Criminal Appeal under Section 14-A (2) of the SC & ST Act, 1989.

5] Counsel for the appellant has also drawn attention of this Court to the subsequent decision rendered by the co-ordinate Bench of this Court at Indore in the case of ***Ketan vs. State of Madhya Pradesh*** {Criminal Appeal No.7453/2023 dated 31.8.2023} wherein, this Court has held that before filing a second criminal appeal, the appellant is required to submit a fresh application for bail before the trial court and the second criminal appeal against the earlier order of rejection of bail is not maintainable. Shri Mansoori has also submitted that although in the aforesaid case, the earlier decision rendered in the case of ***Ramu @ Ramlal*** (supra) has been referred to, but it has not been discussed and there is no other reference of this order passed in the case of ***Ramu @ Ramlal*** (supra).

6] Shri Mansoori has also submitted that although again in a subsequent decision rendered by a coordinate bench of this Court at the Gwalior Bench in the case of ***Neeraj vs. State of Madhya Pradesh*** {Cri. Appeal No.1502/2023 dated 05.4.2023}, it has been held that the second criminal appeal would not be maintainable but in that case, even the reference of the decision rendered in the case of ***Ramu @ Ramlal*** (supra) has not been made.

7] Shri Mansoori has also drawn attention of this Court to the decision rendered by the Division Bench of the Chhattisgarh High Court in the case of ***Dushyant Pandey vs. State of Chhattisgarh*** {Criminal Appeal No.1797/2022 dated 12.4.2023} in that case also, the Chhattisgarh High Court has held that a second criminal appeal would not be maintainable against an earlier order of rejection against which, an earlier criminal appeal has also been filed in the High Court.

8] Counsel for the appellant has further drawn attention of this Court to the Full Bench Judgement of this Court in the case of *Jabalpur Bus Operators Association vs. State of Madhya Pradesh and others* reported in 2003 (1) M.P.L.J. 513, para 9 to submit that if the earlier decision is not discussed and dealt with in the subsequent decision by the other co-ordinate bench of the High Court, it is the earlier decision that would prevail.

9] Heard the learned counsel for the parties and perused the record.

10] It is found that on two occasions, viz., *Ketan (supra)* and *Neeraj (supra)*, this Court has held that the second appeal would not be maintainable under Section 14-A (2) of the SC & ST Act of 1989, but, without referring to the earlier decisions rendered by this Court in the case of *Ram @ Ramlal (supra)*..

11] In the case of *Ketan (supra)* although reference has been made of *Ramu @ Ramlal (supra)* but, it has not been discussed, and similarly in the case of *Neeraj (supra)*, it has not even been referred to and apparently there is no discussion about the aforesaid case.

12] In such circumstances, this Court is not only bound by the order passed by the earlier decision rendered by the co-ordinate Bench of this Court in the case *Ramu @ Ramlal (supra)*, but is also of the same opinion that a second criminal appeal under Section 14-A (2) of the SC & ST Act, 1989 is not required to be filed, if the earlier criminal appeal has already been rejected by the High Court. In the considered opinion of this court, so far as the provisions of bail under Sections 438 or 439 of the Cr.P.C. are concerned, technically, even they do not bar filing of a fresh application for bail before the trial court, after the High Court

has dismissed a similar application against the previous order passed by the trial/district court rejecting the application for grant of bail to the accused, but entertaining such repeat applications is considered as judicial impropriety, and now it is trite that no second bail application lies before the trial/District Court when it has already been rejected by the High Court, regardless of any change in the circumstances.

13] This court is of the considered opinion that a similar analogy is also required to be adopted in case of an Appeal arising out of an order of rejection of bail application under the Special Act, as in both the situations, the underlying principle is the same, *i.e.*, the judicial discipline and propriety, which cannot be changed merely because the provision of law has changed. At the same time, it can also not be lost sight of the that most of the criminals belong to the lower strata of the society, and to ask them to file a fresh application for bail under the Special Act would be to force them to suffer extra monetary burden for no justifiable reasons, as the fate of their application is already a forgone conclusion.

14] It is an old saying that '*the procedure is the handmaid of justice and not its mistress*', and so far as S.14(A) of the Special Act is concerned, indeed it is a substantive provision conferring a right of Appeal to the accused, but at the same time, it is also procedural in nature so far as it relates to the appeal against an order of bail is concerned, and should be treated like that only, as in the case of Cr.P.C. as has also been held by this court in the case of *Ramu@Ramlal* (supra).

15] In such circumstances, the decision rendered by the co-ordinate

Bench of this Court in the case of *Ramu @ Ramlal* (supra) would prevail over decisions rendered by the co-ordinate benches of this court in the cases viz., *Ketan (supra)* and *Neeraj (supra)*. It is, thus held that an accused is not required to file a fresh application for grant of bail after dismissal of his first Criminal Appeal by the High Court.

16] So far as the decision rendered by the Chhattisgarh High Court in the case of *Dushyant Pandey (supra)* is concerned, with due respect, this Court does not agree with the said proposition also for the reasons assigned hereinabove.

17] So far as the merits of the case are concerned, after arguing for some time, the learned counsel for the appellant seeks to withdraw this appeal.

18] Be that as it may, this Court appreciates the efforts rendered by the counsel for the appellant Shri Maqbool Ahmed Mansoori in bringing all the relevant decisions touching the issue involved.

19] Accordingly, the present Criminal stands disposed of, and is dismissed as withdrawn.

(SUBODH ABHYANKAR)

JUDGE