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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
CRA No. 7453 of 2023**

(KETAN Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Dated : 31-08-2023

Shri Mitesh Jain, learned counsel for the appellant.

Shri Tarun Pagare, learned Public Prosecutor for respondent/State.

The present criminal appeal is filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as **POA Act**) r/w Section 439 of Cr.P.C.

2. Counsel for the State raised preliminary objection regarding maintainability of the appeal with the contention that the 2nd Criminal Appeal under Section 14-A(2) of POA Act once dismissed is not maintainable in view of the judgment passed by Coordinate Bench at Gwalior in *Criminal Appeal No. 1502/2023 (Neeraj Verma vs. State of M.P. & Anr.)*. He referred the para - 6 & 7 of the said judgment which is reproduced as under :-

6. Once an appeal is dismissed, the appellant would have to approach the Special Court or the Exclusive Special Court afresh for an order of bail. While entertaining such a second application, the learned Court below can pass an order granting bail, if it finds a change in circumstance. The constraint of an order passed by the High Court under 438 or 439 barring the inferior Court from entertaining an application for bail in line with judicial propriety, will not apply in the case of a fresh application under the Special Act. Even though the High Court may have dismissed an appeal against the previous order passed by the learned Court below rejecting the application for bail of the accused, a change in circumstance demonstrated by the accused before the learned trial Court does not bar it from entertaining the fresh application.

7. Thus, this Court finds that the High Court cannot entertain an application under section 438 or 439 Cr.P.C. for an offense under the Special Act as that authority has been taken

away from the High Court impliedly by Section 14A (2) of the Special Act which makes the High Court a Court of Appeal which can only examine the correctness of an order passed by the learned Court below under section 438 or 439 for an offence under the Special Act. This Court is also of the opinion as mentioned hereinabove that a second application for grant of bail by the accused before the Special Court or the Exclusive Special Court is maintainable on changed circumstances when demonstrated by the accused and the trial Court shall not be bound by the fact that its previous order of rejection has been approved of by the High Court under its appellate jurisdiction.

3. This Court in the case of *Neeraj* (supra) held that the High Court cannot entertain an application under Section 438 or 439 Cr.P.C. for an offence under the Special Act as that authority has been taken away from the High Court impliedly by Section 14A(2) of the Special Act which makes the High Court a Court of Appeal which can only examine the correctness of an order passed by the learned Court below under Section 438 or 439 for an offence under the Special Act. It is further held that this Court is of the opinion as mentioned hereinabove that a second application for grant of bail by the accused before the Special Court or the Exclusive Special Court is maintainable on changed circumstances when demonstrated by the accused and the trial Court shall not be bound by the fact that its previous order of rejection has been approved of by the High Court under its appellate jurisdiction.

4. It is argued that the applicant had earlier approached this Court by filing a criminal appeal and, therefore, the second criminal appeal though it is titled as First Criminal Appeal cannot be entertained.

5. Per contra, counsel for the applicant submits that in the light of the observations made by this Court in the case of *Neeraj* (supra), the applicant has filed an application before the trial Court on the changed circumstances and the trial Court has rejected the application by the impugned order and the trial Court

has passed a fresh order and, therefore, this Court can examine the validity of the said order and the appeal under Section 14-A(2) of the Act has to be treated as First Criminal Appeal and this Court has to examine the order on merit.

6. In support of their submissions, they referred an order passed by Coordinate Bench at Indore in the case of *Ramu @ Ramlal vs. State of M.P.* (Criminal Appeal No. 4668/2017 decided on 05th December 2017) and also a judgment passed by the Division Bench of Chhatisgarh High Court in Criminal Appeal No. 1957/2022.

7. The POA Act was promulgated which is an Act to prevent the Commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto, but it had no provision of appeal against the order granting or rejecting bail.

8. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 was brought into force with effect from 26-1-2016 by which the extensive amendment was made in the Act. Section 14 of the Act provides for Special Court and Exclusive Special Court with power and jurisdiction to try the offences under the Act and further, power to directly take cognizance of the offence under the Act was introduced. Section 14A was also introduced with effect from 26-1-2016 which provides for appeals from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law. Sub-section (2) of Section 14A further provides that an appeal shall lie to

the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. For the sake of convenience, Section 14A of the Act needs to be noted here which states as under: -

"14A. Appeals.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in subsection (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal."

9. After hearing both the parties, the question arises for consideration that whether the present appeal titled as First Criminal Appeal or Second Criminal Appeal or Third Criminal Appeal or Fourth Criminal Appeal or repeated Criminal are maintainable before this Court under Section 14-A(2) of the Act after approaching the trial Court by filing fresh application with changed circumstances.

10. In the case of *Neeraj* (supra), Coordinate Bench has held that the Second Criminal Appeal is not maintainable before the Court, but Second Application for grant of bail by the accused before the Special Court or the

Exclusive Special Court is maintainable on changed circumstances when demonstrated by the accused and the trial Court shall not be bound by the fact that its previous order of rejection has been approved by the High Court under its appellate jurisdiction. Thus, in the case of *Neeraj*, the Court has clearly granted liberty to the accused to apply afresh before the Special Court with the changed circumstances and the Special Court has to pass fresh order without being influenced by the rejection of the application by the High Court. Admittedly, in the present appeal, the Appellant has filed an application before the Trial Court after approaching this Court and the trial Court has passed fresh order which is sought to be challenged in the present Criminal Appeal. Therefore, the question arises that whether the Appellant can again approach this Court under Section 14-A(2) of the Act or not.

11. Before Chhattisgarh High Court in the case of *Dushyant Pandey vs. State of Chhattisgarh (Criminal Appeal No. 1797 of 2022)*, the following question of law was under consideration :-

‘Firstly, whether if an appeal against an order passed by a Special Court rejecting an application under Section 439 of CrPC, has been decided on merits or otherwise by this Court, the subsequent appeal under any change circumstances is maintainable before this Court?

If yes, whether this Court can entertain an appeal after the period of limitation as provided under the 2nd proviso clause of the Section 14A of the Special Act?’

12. The aforesaid question of law was answered in para-31 as under:-

1. Once an appeal under Section 14A of the POA Act against the order passed by the Special Court rejecting the application under Section 439 of the CrPC is decided on merits or otherwise by this Court, subsequent appeal under change of circumstances would not be directly maintainable under Section 14A of the POA Act before this Court even on change of circumstances and remedy to the accused, if any, is to file an application before the Special Court for grant of

bail.

2. Since the answer to the first stated question is in negative, it would not be expedient to answer the second stated question.

13. Thus, the view taken by this Court in the case of *Neeraj* and by the Chhattisgarh High Court in the case of *Dushyant Pandey* is same that once the appeal under the Act has been dismissed, the Second Criminal Appeal would not be maintainable. However, the remedy is available to the accused is to file an application before the Special Court for grant of bail.

14. Section 14A(2) of the POA Act begins with *non obstante* clause “notwithstanding anything contained in sub-section (3) of section 378”. It would be appropriate to notice the meaning and purport of “*non obstante* clause”.

15. A *non obstante* clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. The meaning of ‘*non obstante* clause’ has been explained in the Advanced Law Lexicon by P. Ramnath Aiyar as follows: -

“Non obstante clause. A clause in a statute which overrides all provisions of the statute. It is usually worded :

‘Notwithstanding anything in ...’ Need not always have effect of cutting down clear terms of enactment. Enacting part when clear can Control nonobstante clause.

A clause used in public and private instruments intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.”

16. A clause beginning with ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force’, is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the *non obstante*

clause. It is equivalent to saying that in spite of the provision or Act mentioned in the *non obstante* clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Thus a *non obstante* clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the *non obstante* clause or to override it in specified circumstances. (See page 364 of Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition 2010.)

17. The nature and object of *non obstante* clause came to be considered by their Lordships of the Supreme Court in the matter of *Union of India and another v. G.M. Kokil and others AIR 1984 SC 1022* in which it has been held that a *non obstante* clause is a legislative device employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment to avoid the operation and effect of all contrary provisions.

18. Similarly, in the matter of *State of Bihar and others v. Bihar M.S.E.S.K.K. Mahasangh and others AIR 2005 SC 1605*, the effect of *non obstante* clause has been explained by their Lordships of the Supreme Court in paragraph 47 of the report as under: -

“47. Normally the use of phrase by the Legislature in a statutory provision like 'notwithstanding anything to the contrary contained in this Act' is equivalent to saying that the Act shall be no impediment to the measure (See Law Lexicon words 'notwithstanding anything in this Act to the contrary'). Use of such expression is another way of saying that the provision in which the *non obstante* clause occurs usually would prevail over other provisions in the Act. Thus, *non obstante* clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as

clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the *non obstante* clause is attached. (See Bipathumma and others vs. Mariam Bibi; (1966(1) Mysore Law Journal page 162 and at page 165.”

19. Thus, it is quite vivid that a *non obstante* clause is a legislative device which is employed by the competent Legislature to give overriding effect in case of any conflict or inconsistency over the provisions of the same Act or other Acts. The purpose of *non obstante* clause is to provide the way for full operation of enacting provision without any impediment of obstruction of any provisions of the same Act or any other Act. The main object is to provide full operation of the Act.

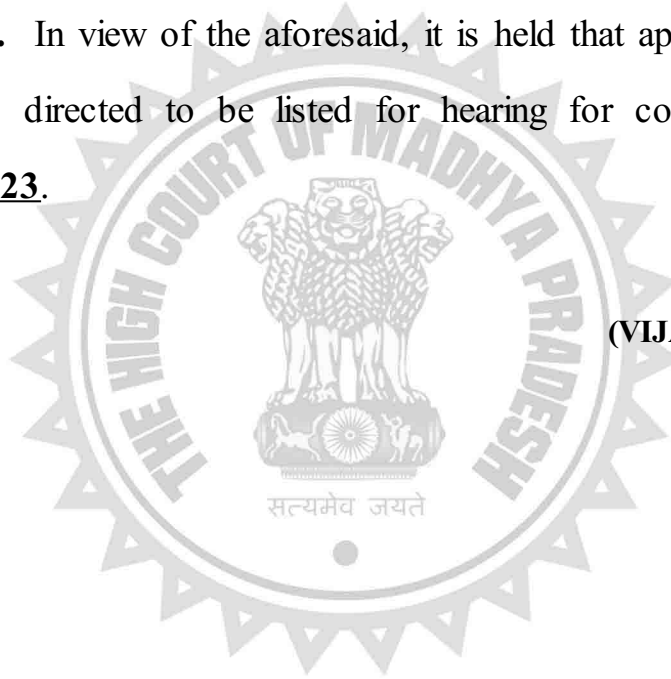
20. Admittedly, in the present case, the appellant has applied before the Special Court by filing application with changed circumstances for grant of bail and the said application has been dismissed by the impugned order. From reading the entire provisions of Section 14-A of the Act and as herein-above discussed, the provision is with *non obstante* clause and being a special Act has overriding effect on the provisions under the other law. It has been provided under Sub-Section (2) of Section 14-A that an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. There is no bar by the legislature under Section 14-A to challenge the fresh order by filing an appeal under Sub-Section (2).

21. Considering the provisions of Section 14-A(2) of the Act that Criminal Appeal is maintainable against an order of the Special Court or the Exclusive Special Court granting or refusing bail, it is an apparent that after rejection or withdrawal of Criminal Appeal before this Court and approaching the Special Court for grant of bail with the changed circumstances, the order

passed by the trial Court is fresh order on merit and, therefore, the same can be challenged under Section 14-A(2) by filing an appeal. Thus, an appeal under Section 14-A(2) of the Act is maintainable against a fresh order passed by the Special Court rejecting the subsequent application for grant of bail irrespective of the fact whether the appeals are mentioned as second, third or fourth. The mere mentioning of Criminal Appeal as second, third or fourth would not change the right of the applicant to challenge the fresh order. The same has to be treated to be first Criminal Appeal and the impugned order can be examined on its own merit.

22. In view of the aforesaid, it is held that appeal is maintainable. The appeal is directed to be listed for hearing for consideration on merit on **05.09.2023.**

soumya



(VIJAY KUMAR SHUKLA)
JUDGE