



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous II Bail Application No. 7695/2021

Bhanwar Singh @ Bharat Singh S/o Gheesa Singh, Aged About
34 Years, Kamda Ki Nadi (Barachh), Police Station Badnor, Dis.
Bhilwara At Present District Jail Bhilwara

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Vineet Jain

For Respondent(s) : Mr. Laxman Solanki, PP

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

12/07/2021

REPORTABLE

1. This is a second bail application moved by the learned counsel for the petitioner. While the first bail application was pending a period of 60 days was over and he therefore, moved an application under Section 167(2) Cr.P.C. before the learned Additional Sessions Judge on the ground that as the period of 60 days was over and since the offence alleged was punishable with imprisonment for less than ten years he was entitled to be released from detention.

2. The application moved by the petitioner was considered and rejected by the learned Additional Sessions Judge vide his order dated 04.06.2021 and thereafter petitioner has moved the present second bail application under Section 439 Cr.P.C. before this Court.

3. A query was made by this Court to learned counsel for the petitioner to satisfy as to how the bail application under Section



439 Cr.P.C. would lie against an order rejecting application under Section 167(2)(a)(i) of Cr.P.C. as the grounds for granting bail under Section 439 Cr.P.C. would not be relevant for examining an order of Court allowing or rejecting an application under Section 167(2)(a)(i) Cr.P.C.

4. Learned counsel submits that as the provisions of Section 167(2)(a)(i) & (ii) read together would say that if the person is to be released for grounds mentioned under Section 167 Cr.P.C., he has to furnish bail and would be deemed to be released under the provisions of Chapter-XXXIII of Cr.P.C., a bail application under Section 439 Cr.P.C. would be appropriate and maintainable if an application under Section 167(2)(a)(i) Cr.P.C. has been rejected.

5. I have considered the submissions.

6. This Court finds that the powers exercised under Section 439 Cr.P.C. by this Court are co-extensive to these exercised by the learned District & Sessions Judge. At the stage while hearing bail application under Section 439 Cr.P.C., the Court does not examine the legality and veracity of an order passed by the learned Sessions Judge and a different view can be taken without setting aside the order of the learned Sessions Judge while granting bail or rejecting the bail.

7. On the other hand while examining an order passed by the learned Sessions Judge or Magistrate as the case may be allowing or rejecting an application under Section 167(2)(a)(i) Cr.P.C., this Court will have to examine the legality of the view taken by the lower Court. While in the present case, the application under Section 167(2)(a)(i) Cr.P.C. was decided by learned Additional Sessions Judge, there may be several cases where the case might be decided at the level of the Magistrate and therefore, the



revision would lie before the learned District Judge against an order passed by the Magistrate under Section 167(2) Cr.P.C. and the District Judge would not be examining the case under Section 439 Cr.P.C. Similarly, this Court would also be examining the order on merits when an order under Section 167(2)(a)(i) Cr.P.C. is assailed before him. Thus, this Court would be exercising its inherent power/revisional power depending upon the case coming up after revision or directly to the High Court. In view of above, in no circumstance an application under Section 439 Cr.P.C. would be maintainable against an order passed on an application under Section 167(2)(a)(i) Cr.P.C.

8. Keeping in view aforesaid, the present bail application moved by the petitioner is held to be not maintainable and the Registry is directed to convert it as a Criminal Revision Petition and the same be placed before the Court hearing Criminal Revision Petitions.

9. List this case again on 16.07.2021.

(SANJEEV PRAKASH SHARMA),J

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