Neutral Citation
2023:CGHC:23411



**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No.1835 of 2023**

1. Aman Kumar Singh, Aged about 54 years, S/o Late Shri Yadu Nath Singh, R/o A-3, Shahapura, Bhopal 462039, Madhya Pradesh, presently at Ahmedabad, Gujrat.

2. Yashmin Singh, Aged about 51 years, W/o Shri Aman Kumar Singh, R/o a-3, Shahapura, Bhopal 462039, Madhya Pradesh.

**---- Petitioners**

***Versus***

State of Chhattisgarh, Through Superintendent of Police, the Economic Offences Wing/Anti-Corruption Bureau Gaurav Path, Opp. Jai Jawan Petrol Pump, Telibandha, Raipur-492001, Chhattisgarh.

**---- Respondent**



*(Cause Title is taken from Case Information System)*

For Petitioners : Mr. Abhishek Sinha, Senior Advocate along with Mr. Vivek Sharma, Advocate

For State : Mr. Amrito Das, Additional Advocate General

**Hon'ble Shri Justice Rakesh Mohan Pandey**

**Order on Board**

**20.09.2023**

1) This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has been filed by the petitioners for modification/deletion of conditions No. 1, 5, 6 and 7 imposed by this Court vide common order dated 31.03.2023 passed in M.Cr.C.(A.) Nos. 328 of 2023 and 329 of 2023.

2) The facts of the present case, are that, earlier, the petitioners had moved separate applications under Section

438 of the Cr.P.C. for the grant of anticipatory bail before this Court and their applications were registered as M.Cr.C. (A.) Nos. 328/2023 and 329/2023 and the same were allowed vide order dated 31.03.2023 with the following conditions:-

> *"1. The applicants shall remain present before the Police Station concerned on 4th day of every month till the trial is over.*
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> *2. The applicants shall cooperate with the investigation agency and make themselves available for interrogation whenever required;*
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> *3. The applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or to any police officer;*
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> *4. The applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;*
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> *5. The applicants shall not leave the territory of India, without prior permission of the court, till trial is over;*
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> *6. The applicants shall, at the time of execution of the bond, furnish their address, Aadhaar Card and mobile number to the investigating officer, and shall not change the (residence) till the final disposal of the case;*
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> *7. The applicants shall surrender their passport, if any, before the investigating officer within a week and, if they do not possess any passport, they shall file an affidavit to that effect before the investigating officer;*
>
> *8. The applicants shall regularly remain present*

*during the trial, and cooperate with the Trial Court to complete the fair trial for the above offences.*

*If breach of any of the above conditions is committed, it would be open for the State to move appropriate application for cancellation of anticipatory bail."*

3) Facts in brief are that a complaint was made against the petitioners on 11.10.2019 in the Office of the Chief Minister of the State making allegations regarding their involvement in corruption and money laundering and it was also alleged that assets held by the petitioners are disproportionate to the their known sources of income. The matter was enquired into and an order was passed for enquiry and preliminary enquiry bearing P.E. No. 35/2019 was registered. After enquiry, FIR was registered against the petitioners on 28.02.2020, thereafter; they preferred W.P.Cr. Nos. 88 of 2020 and 154 of 2020 for quashing the FIR. The interim application moved by petitioner No.1 was allowed by this Court vide order dated 28.02.2020. The Co-Ordinate Bench vide order dated 10.01.2022, allowed both the petitions and quashed the FIR No. 09/2020. The order dated 10.01.2022 passed in W.P.Cr. Nos. 88 of 2020 and 154 of 2020 was challenged before the Hon'ble Supreme Court in SLP Criminal No. 1703-1705 of 2022 and SLP Criminal No. 1769-1770 of 2022 by the State of Chhattisgarh and the complainant. The Hon'ble Supreme Court allowed the

Special Leave Petitions and set aside the order passed by this Court in W.P.Cr. Nos. 88 of 2020 and 154 of 2020. Thereafter, the petitioners moved separate applications for the grant of anticipatory bail before this Court and this Court vide order dated 31.03.2023 passed a common order and allowed the anticipatory bail applications by imposing certain conditions.

4) Earlier, the petitioners had filed Cr.M.P. No. 794 of 2023 before this Court seeking modification of the conditions of the anticipatory bail order and this Court vide order dated 13.04.2023 dismissed the petition as this Court was not inclined to entertain the petition at that stage and it was also observed that the conditions imposed in the anticipatory bail order are just and reasonable.



5) Mr. Abhishek Sinha, learned Senior Advocate appearing for the petitioners would submit that the present petition has been filed for modification/deletion of conditions No. 1,5,6 and 7 of the order dated 31.03.2023 passed in M.Cr.C.(A.) Nos. 328/2023 and 329/2023 by this Court, on the ground that earlier, there was interim protection granted by this Court in W.P.Cr. Nos. 88 of 2020 and 154 of 2020 and on 10.01.2022 both cases were finally decided in favor of the petitioners thereafter, the Hon’ble Supreme Court, while setting aside the order dated 10.01.2022 granted a

protective umbrella for a period of three weeks vide order dated 01.03.2023, thereafter, anticipatory bail was granted to the petitioners vide order dated 31.03.2023 by this Court. He would further submit that from the year 2020 to 2023 there was liberty granted to the respondent to continue with the investigation but there is no substantial progress in the investigation, and the same has not been completed till date. He would further submit that the petitioners regularly appear before the investigating agency, they are properly cooperating in the investigation and all the relevant documents have already been submitted before the authorities/investigating agency. He would next contend that the petitioners are the residents of India and in past, they have held high offices, therefore, there is no likelihood of the petitioners fleeing or absconding from the administration of justice. The possibility of applicants tampering with the witnesses is also negligible as most of the evidence is in the form of documents.



6) Mr. Sinha would further submit that petitioner No.1 is employed with India’s largest private sector company which requires frequent travel within the country and outside the country, whereas he has to appear on the 4th day of every month before the investigating agency. He would further submit that apart from the 4th day of every month, the

investigating officers summon the petitioners for interrogation on other dates also. He would also submit that petitioner no. 2 is a lady and she has liability of her family and sometimes she wishes to travel along with her husband within the country and outside the country and against both the petitioners there is no substantial material available with the Investigating Agency therefore final report has not been filed yet. Thus, he would pray that the conditions No.1, 5, 6 and 7 enumerated in the order dated 31.03.2023 passed in M.Cr.C.(A.) Nos. 328 of 2023 and 329 of 2023 may be modified or diluted.



7) He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Bharesh Bipinbhai Sheth v. State of Gujarat*** reported in ***(2016) 1 SCC 152,*** the relevant para reads as under:-

> *"25.5. The proper course of action on an application for anticipatory bail ought to be that after evaluating the averments and accusations available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the Public Prosecutor. After hearing the Public Prosecutor the court may either reject the anticipatory bail application or confirm the initial order of granting bail. The court would certainly be entitled to impose conditions for the grant of anticipatory bail. The Public Prosecutor or the complainant would be at liberty to move the same court for cancellation or modifying the conditions of anticipatory bail at any time if liberty granted by the court is misused. The anticipatory bail granted by the court should ordinarily be continued till the trial of the case."*

8) In the matter of ***Usman Bhai Dawoodbai Menon v. State***

***of Gujarat*** reported in ***(1988) 2 SCC 271,*** the Hon'ble Supreme Court held in para 24 as under:-

> *"24.At the conclusion of the hearing on the legal aspect, Shri Poti, learned counsel appearing for the State Governrment contended, on instructions, that an order passed by a Designated Court for grant or refusal of bail is not an 'interlocutory order' within the meaning of s. 19(1) of the Act and therefore an appeal lies. We have considerable doubt and difficulty about the correctness of the proposition. The expression 'interlocutory order' has been used in s. 19(1) in contradistinction to what is known as final order and denotes an order of purely interim or temporary nature. The essential test to distinguish one from the other has been discussed and formulated in several decisions of the Judicial Committee of the Privy Council, Federal Court and this Court. One of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. In V. C. Shukla v. State through C.B.I., [1980] Suppl. SCC 92, Fazal Ali, J. in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles, namely, (i) that a final order has to be interpreted in contra- distinction to an interlocutory order; and (ii) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties. It was observed that these principles apply to civil as well as to criminal cases. In criminal proceedings, the word 'judgment' is intended to indicate the final order in trial terminating in the conviction or acquittal of the accused. Applying these tests, it was held that an order framing a charge against an accused was not a final order but an interlocutory order within the meaning of s. 11(1) of the Special Courts Act, 1979 and therefore not appealable. It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time. It is however contended that the refusal of bail by a Designated Court due to the non-fulfilment of the conditions laid down in s. 20(8) cannot be treated to be a final order for it affects the life or liberty of a citizen guaranteed under Art. 21. While it is true that a person arraigned on a charge of having committed an offence punishable under the Act faces a*

*prospect of prolonged incarceration in view of the provision contained in s. 20(8) which places limitations on the power of a Designated Court to grant bail, but that by itself is not decisive of the question as to whether an order of this nature is not an interlocutory order. The Court must interpret the words 'not being an interlocutory order' used in s. 19(1) in their natural sense in furtherance of the object and purpose of the Act to exclude any interference with the proceedings before a Designated Court at an intermediate stage. There is no finality attached to an order of a Designated Court granting or refusing bail. Such an application for bail can always be renewed from time to time. That being so, the contention advanced on behalf of the State Government that the impugned orders passed by the Designated Courts refusing to grant bail were not interlocutory orders and therefore appealable under s. 19(1) of the Act, cannot be accepted. ”*

9) In the matter of ***Amar Nath v. State of Haryana*** **[(1977) 4 SCC 137]** in para-6 the Hon’ble Supreme Court held thus:-



*“6. Let us now proceed to interpret the provisions of s. 397 against the historical background of these facts. Sub- section (2) of s. 397 of the 1973 Code may be extracted thus :*
*"The powers of revision conferred by Sub- section (1) shall not be exercised in relation to any interlocutory order passed ;in any appeal, inquiry, trial or other proceeding."*

*The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of s. 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to, us that the term "interlocutory order" in s. 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as*

> *to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in s. 397 of the, 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under s. 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be. outside the purview of the revisional jurisdiction of the High Court.***"***

10) With regard to the conditions of bail, he relied on the matter of ***Parvez Noordin Lokhandwalla v. State of Maharashtra and another*** reported in ***(2020) 10 SCC 77,*** where it has been held by the Hon'ble Supreme Court that the conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions.



11) The Hon'ble Supreme Court recently in ***Aparna Bhat and Ors v. State of Madhya Pradesh and Anr [(2021) Criminal Appeal No. 329/2021]*** had an occasion to consider the conditions imposed by the Madhya Pradesh High Court while granting bail under Section 439 of the Cr.P.C. directing the accused to visit the house of the complainant with rakhi thread and a box of sweet requesting the complainant to tie the rakhi and also bend with the promise to protect her to the best of his ability for all times to come. In that case, the accused was facing a trial for offences punishable under Sections 452, 354A, 323 and 506 of the IPC. The Hon'ble Supreme Court set aside the

said conditions, expunged them from the record and issued slew of directions.

12) With regard to the delay in investigation, he has placed reliance on ***Amitbhai Anil Chandra Shah v. Central Bureau of Investigation and another [(2014) 2 SCC 151]***, wherein it was held thus:

> *"58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in- charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code."*



13) In the matter of ***Jagdish Arora and another v. Union of India through Senior Intelligence Officer*** passed in MCRC No. 4923 of 2022 on 31.03.2022 wherein the High Court of Madhya Pradesh invoked its inherent powers under Section 482 of the Cr.P.C. for the modification of conditions enumerated in the bail order and made the following observation, which reads as follows:-

> *"8.1 It is also settled that grant of bail is a rule whereas its denial is an exception. Once bail is granted subject to certain conditions by the High Court u/S.439(1)(a) of Cr.P.C. as is the case herein, the power to modify or delete the conditions subject to which bail is granted, is also inherently vested with the High Court.*
>
> *8.2 The power of amending or deleting any condition, subject to which bail order u/S.439(1)(a) of Cr.P.C. is granted, is however not expressly provided in Cr.P.C. Thus, the only course available for seeking and granting modification/ deletion of such a condition is by invoking the inherent powers of this Court u/S.482 of*

*Cr.P.C. to ensure the ends of justice.*

*8.3 Section 482 of Cr.P.C. saves inherent powers of this Court to be exercised inter alia to secure the ends of justice. The ends of justice can only be secured when in absence of any express provision this Court is not prevented from deleting/modifying any of the conditions subject to which an order of bail u/S.439(1)(a) of Cr.P.C. is passed. If such inherent powers are otherwise not available to this Court u/S.482 of Cr.P.C., then object of insertion of Section 482 of Cr.P.C. would stand defeated and this Court would be rendered a toothless tiger.*

*9. The Legislature while enacting the Code of Criminal Procedure could never have approved a situation where this superior Court is handicapped to exercise its inherent powers to modify/delete a condition imposed u/S.439(1)(a) of Cr.P.C. despite existence of compelling circumstances merely because of absence of enabling provision in the Cr.P.C.*



*9.1 The object behind bestowing inherent powers in this Court is to do complete justice and to prevent miscarriage of justice. The inherent powers are saved with this Court to be exercised in such circumstances where cause for doing complete justice or preventing failure of justice exists, but there is no express provision in Cr.P.C. As such Constitutional Courts are saved with such inherent powers to do complete justice without being inhibited or disabled by absence of enabling provision."*

14) Mr. Sinha lastly submits that the Courts certainly are entitled to impose conditions for the grant of bail, further, the liberty to move before the concerned court for modification of conditions is available to the petitioners. He would further submit that the order granting bail/anticipatory bail is an interlocutory order and it does not decide the final rights as such Section 362 of the Cr.P.C. would not attract. His next contention is that the orders made on applications are neither a judgment nor final order, it is merely interlocutory order in nature, and therefore, he would submit that

conditions of the deposit of passport can be relaxed as the deposit of passport for long would amount to unreasonable restriction on the liberty of movement of the accused.

15) On the other hand, Mr Amrito Das, the learned Additional Advocate General representing the respondent/State, opposes the submission made by learned counsel for the petitioners. He contends that the instant petition under Section 482 of the Cr.P.C. is misconceived. Mr. Das argues that a conjoint petition has been filed to seek a modification of the order passed by this Court on 31.03.2023 in two separate anticipatory bail applications [(M.Cr.C.(A.) Nos. 328 of 2023 and 329 of 2023], rendering the petition not maintainable. He submits that the previously filed Cr.M.P. No. 794 of 2023 was dismissed at the motion stage by this Court vide order dated 13.04.2023. In that order, the conditions imposed while granting anticipatory bail were held to be in accordance with the judgment passed by the Hon'ble Supreme Court in the matter of *Sushila Agrawal v. State (NCT of Delhi)* reported in *(2020) 5 SCC 1*, thus, the present petition lacks merit. Mr Das also emphasizes that the conditions imposed are just and proper for ensuring the smooth investigation of the case against the petitioners. He further points out that the petitioners have sought this instant modification which is not provided for under the

Code, except to the extent permissible under Section 362 of the Cr.P.C. Mr. Das reiterates that this Court can modify, alter, or review its earlier order only within the provisions of Section 362 of the Cr.PC. Section 362 of the Cr.PC is a specific provision that prohibits the Courts from altering or correcting its own judgment or order, except for correcting typographical or arithmetic errors. This section elucidates that once the judgment or order is disposed of and signed, the Court becomes *functus officio*. Thus, he would pray that the petition may be dismissed.



16) He has placed reliance on the judgments passed by the Hon'ble Supreme Court in the matters of ***Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee and another*** reported in ***(1990) 2 SCC 437***, ***Smt. Sooraj Devi v. Pyare Lal and another*** reported in ***1981 Cri LJ 296; Arun Shankar Shukla v. State of UP and another*** reported in ***1999 6 SCC 146; Hari Singh Mann v. Harbhajan Singh Bajwa (2001 CRI LJ 128); Sunil Kumar v. State of Haryana ( 2012) 5 SCC 398,*** and the judgment of High Court of Allahabad passed in ***Application U/s 482 No. 6022 of 2022*** on ***02.11.2022*** in the matter of ***Aparna Purohit v. State of Uttar Pradesh***, and one more judgment of High Court Karnatka passed in the matter of ***Imran Khan and another v. The State of Karnataka, Forest Department***

reported in ***2017 SCC OnLine Kar 2309***.

17) In the matter of ***Simrikhia*** (supra), the Hon'ble Supreme Court has held in para 5 and 6 as under:-

> *"5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except ccto correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.*
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> *6. In Superintendent & Remembrancer of Legal Affairs v. Mohan Singh' this Court held that Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, therefore, not concluded by this decision."*



18) In the matter of ***Sooraj Devi*** (supra), the Hon'ble Supreme Court in para 4 and 5 held as under:-

> *"4.The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated Ist September, 1970. Section 362 of the Code of Criminal Procedure declares :*
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> *"Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error".*
>
> *It is apparent that what the appellant seeks by the*

*application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated Ist September, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated Ist September, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error". A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa and Another.*



*5.The appellant points out that he invoked the inherent power of the High Court saved by s. 482 of the Code and that notwithstanding the prohibition imposed by s. 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. Sankatha Singh v. State of U.P. It is true that the prohibition in s. 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in section 362 and, therefore, the attempt to invoke that power can be of no avail. ”*

19) In the matter of ***Hari Singh Mann*** *(supra),* the Hon’ble Supreme Court in para 9 and 10 held as under***:-***

*“9.There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. This Court in State of Orissa v. Ram Chander Agarwala [AIR 1979 SC 87] held:*

*"Before concluding we will very briefly refer to cases*

*of this Court cited by counsel on both sides, 1958 SCR 1226: (AIR 1958 SC 376) relates to the power of the High Court to cancel bail. The High Court took the view that under S.561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in 72 Ind App 120: (AIR 1945 PC 94) (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under S.561A. In Sankatha Singh v. State of U.P. (1962) Supp (2) SCR 871: (AIR 1962 SC 1208) this Court held that S.369 read with S.424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of S.367 of the Code, may be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and re-hear the appeal observing that "Sec.369 read with S.424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in Supdt. and Remembrancer of Legal Affairs W.B. v. Mohan Singh, AIR 1975 SC 1002 by Mr.Patel, learned counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following Chopra's case (AIR 1955 SC 633) (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The*

*provisions of S.561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the* Code."

*10.Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."*



20) In the matter of ***Sunil Kumar (supra),*** the Hon'ble Supreme Court held in para 7 and 8 as under:-

*"7. The High Court dealt with various propositions of law while dealing with the averments raised on his behalf including the application of the provisions of Section 362 Cr.P.C. which puts a complete embargo on the criminal court to reconsider any case after delivery of the judgment as the court becomes functus officio.*

*8. This Court in a recent judgment in State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc., AIR 2012 SC 364 dealt with the issue considering a very large number of earlier judgments of this Court including Vishnu Agarwal v. State of U.P. & Anr., AIR 2011 SC 1232 and came to the conclusion:*

*"Thus, the law on the issue can be summarised to the*

*effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law."*

21) In the matter of ***Aparna Purohit*** (supra), wherein the High Court of Allahabad observed thus:-

*"31.Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction onto itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the Petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside."*



*Perusal of the law relied on by Ld. senior Counsel i.e. 'Jagdish Arora and another vs. Union of India (supra)' would reveal that one of the condition of the bail order passed by a co-ordinate Bench was challenged by filing an application under Section 482 Cr.P.C., seeking modification of the final order and the same was considered by a Division Bench of the Madhya Pradesh High Court, which is of the view that there is no express provision for deletion or amendment of any condition of the bail order and the only course available is of filing application under Section 482 Cr.P.C. and also that the ends of justice can only be secured in absence of any express provision by invoking the inherent powers provided under Section 482 Cr.P.C.for modification of the condition of bail order and, thus, proceeded to modify one of the condition imposed by the co-ordinate Bench, while enlarging the accused on bail. The law laid down by the Hon'ble Madhya Pradesh High Court, does not appear to be in consonance with the legal principles enunciated by the Hon'ble Supreme Court in the reports mentioned herein-before and in the considered opinion of this Court, the applicant could not take any benefit of the same. A three-Judge Bench of Hon'ble Supreme Court in Madhu Limaye v. The State of Maharashtra MANU/SC/0103/1977 : (1977) 4 SCC 551, dealt with the invocation of inherent power Under Section 482 for quashing interlocutory order and noticed the principles in*

> *relation to the exercise of the inherent power of the High Court in para No. 9 and held that barring some exceptions the same should not be exercised as against the express bar of law engrafted in any other provision of the Code.*
>
> *Thus in the background of proposition of law and reasons mentioned herein before I do not find any merit in the application filed by the applicant and the same is dismissed as such. ”*

22) In the matter of ***Imran Khan*** (supra)**,** the High Court of Karnataka in para-9 has held as under:-

> *“9. The Learned Counsel has not brought any other provision under Cr.PC under which, this Court can modify, alter or review its earlier order except the provision under Section 362 of Cr.PC. Therefore, what is not granted under this particular provision cannot be done or invented by the Court in order to pass such order. Section 362 of Cr.PC is a specific provision which prohibits the Courts from altering or correcting its own Judgment or order except for correcting the typographical error. When specific provision prohibits the Court from doing certain acts, it cannot be circumvented by the and of any other provision under Cr.PC or by interpreting the provision in any other manner, as the said provision is very much clear. The said section clearly elucidates once the Judgment or order is disposed of and signed, the Court becomes functus officio.”*



23) I have heard the submissions made by learned counsel for the parties at length, considered their rival submissions made herein above as also the judgments passed by the Hon’ble Supreme Court and various High Courts and the provision contained in Section 362 of Cr.P.C. and perused the documents with utmost circumspection.

24) The petitioners have made a prayer for modification or deletion of conditions no. 1, 5, 6 and 7 which say that the petitioners shall remain present before the Police Station concerned on the 4th day of every month till the completion

of the trial; the petitioners shall not leave the Country without leave of the Court; in clause 7 the petitioners have sought permission with regard to change of address as they are residing in a rented house and lastly that the petitioners shall surrender their passports. Petitioner no. 1 is employed with one of the Country's largest conglomerates, which requires his frequent movement in connection with his job within the country and outside the country. Petitioner No. 2 is a lady, who wishes to join her family and also wants to visit outside the country along with her husband.



25) It would be advantageous to go through the provisions of Section 362 of Cr.P.C. It reads as under:-

> ***362. Court not to alter judgement****. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.*

26) From a bare perusal of Section 362 of the Cr.P.C. it is quite vivid that no court has the power to alter or review the judgment or order disposing of a case finally after signing it except to correct clerical or arithmetical errors. Ingredients of this section are (i) the Court has finally disposed of a case; (ii) the Court has signed the judgment/order; (iii) such judgment or order cannot be altered or reviewed; and (iv) only clerical or arithmetical errors can be corrected.

27) The Hon'ble Supreme Court in the matters of ***Amarnarth***

(supra) and ***Usman Bhai*** (supra) has categorically held that granting or refusing of bail applications, summoning witnesses, adjourning cases, passing orders for bail, calling for reports etc. are interlocutory orders. Though some of the High Courts have held that the grant or refusal of a bail application is the final order, in those cases the above-stated judgments of the Hon'ble Supreme Court were not taken into consideration.

28) Further "conditions" alone are neither judgments nor orders disposing of the case in the eyes of law. The final order in bail application is its refusal or grant. Conditions are imposed to bind an accused so he or she may cooperate in the smooth disposal of criminal case/s pending against him/ her. Section 362 of Cr.P.C. prohibits review or alteration of final judgment or order but the conditions are neither judgment nor final order disposing of a case therefore in the opinion of this Court conditions of bail order can be modified. For example, if an accused is not capable of furnishing bail and bonds as directed by the Court then the same Court modifies the order. Another example is if an application for a grant of regular bail is rejected on merits and the accused moves repeat application on the ground of delay in trial, the same Court grants bail. Thus the practice of modification of bail orders is not alien to criminal

jurisprudence and the same has been prevalent for a long.

29) Now dealing with the judgments cited by learned counsel for the respondent.

30) In the matter of ***Simrikhia*** (supra), the order passed by the High Court on an application filed under Section 482 of the Cr.P.C. was challenged, wherein the order of cognizance taken by the Magistrate was challenged by the respondents before the High Court, and in that scenario, the Hon'ble Supreme Court held that when an order/judgment has been signed by the Court, such Court cannot alter or review the same, whereas in the present case, there is no such situation.



31) In the matter of ***Smt. Sooraj Devi*** (supra), an application moved by Smt. Sooraj Devi for clarification of an earlier order in a criminal proceeding was dismissed by the High Court of Allahabad, and the same was challenged before the Hon'ble Supreme Court, wherein it was held that clerical or arithmetic errors occasioned by an accidental slip or omission by the Court can be rectified under Section 362 of the Cr.P.C.; thus, the facts of the present case are entirely different from the facts of this case.

32) In the matter of ***Arun Shankar Shukla*** (supra), the power of the High Court under Section 482 of the Cr.P.C. has been dealt with. The Hon'ble Supreme Court held that where

there is no express provision empowering the High Court to achieve the said object, powers given under Section 482 of the Cr.P.C. may be exercised.

33) In the matter of ***Hari Singh Mann*** (supra), the petitioner had filed a petition under Section 482 of the Cr.P.C. before the High Court of Punjab and Haryana for the registration of FIR and investigation, the petition was disposed of holding that no case for the direct registration of FIR is made out and a preliminary inquiry is required. After the disposal of the petition, another miscellaneous petition was filed with a prayer that the JMFC had already taken cognizance, and that he did not want to prosecute his allegations with the SSP. The Hon'ble Supreme Court set aside the orders passed by the High Court holding the orders without jurisdiction, as there is no provision under Section 362 of the Cr.P.C. to alter or review the judgment or the final orders. In the case of *Hari Singh Mann* (supra), the impugned order was not an order granting or rejecting bail.



34) In the matter of ***Sunil Kumar*** (supra), the petitioner of that case was convicted by the trial Court, and his appeal was also dismissed by the High Court. Thereafter, an application for modification of the said judgment was moved before the High Court for giving the benefit of the provision of Section 360 of the Cr.P.C., the said application was also dismissed.

In that scenario, the Hon'ble Supreme Court held that once the judgment or order is passed and signed, the Court becomes functus officio, and thereafter it cannot be considered and modified after the dismissal of the appeal by the High Court; thus, it was observed that the application filed before the High Court for modification was rightly dismissed. In the present case, the petition is not against the conviction; therefore, the facts of the present case are entirely different from the above discussed matter.

35) In the matter of ***Aparna Purohit*** (supra), various judgments of the Hon'ble Supreme Court have been taken into consideration while holding that the alteration/review of the order is not permissible, it is also held that the order granting bail is a final order; therefore, the provisions of Section 362 of the Cr.P.C. would apply. However, in the matter of *Aparna Purohit* (supra), the judgments passed by the Hon'ble Supreme Court in the matter of *Amarnath* (supra) and *Usman Bhai Dawoodbhai Menon* (supra) have not been taken into consideration, wherein it is categorically held that the grant or refusal of a bail application, order summoning the witnesses, adjournment of the cases are interlocutory orders. When the order granting or refusing bail is an interlocutory order, the petition under Section 482 Cr.P.C. for modification of conditions of bail order would be permissible,

and the provisions of Section 362 of the Cr.P.C. would not attract.

36) Now dealing with the objection raised by the learned counsel for the respondent regarding a joint petition filed by two petitioners when two separate bail applications were preferred by them. In this regard, it would be worthy to mention here that both the petitioners are accused in FIR No. 9/2020. Two bail applications were preferred by them for the grant of anticipatory bail and both applications were allowed by a common order. Earlier also joint petition i.e. Cr.M.P. No. 794/2023 was filed by them. The conditions imposed upon them are the same, and there is no bar under the Cr.P.C. in preferring a joint petition against one crime number therefore in the opinion of this Court, the petition is maintainable.



37) Now dealing with the last objection of the counsel for respondent with regard to the maintainability of this petition as earlier Cr.M.P. No. 794/2023 was dismissed on the ground that the conditions are just and proper and the same have been imposed according to the judgment of Hon'ble Supreme Court rendered in case of *Sushila Agrawal v. State (NCT of Delhi)* reported in *(2020) 5 SCC 1*. But the learned Counsel for the respondent has lost sight of the phrase "at this stage" used in the order passed in Cr.M.P. no. 794/2023

dated 13.04.2023. The earlier petition was filed for modification after two weeks of the order dated 31.03.2023 therefore the same was dismissed at that stage but the investigation cannot be permitted to continue for an indefinite period and for that period harsh conditions cannot be continued.

38) The petitioners seek deletion of conditions which restrict travelling abroad on the ground that the petitioner No. 1 has joined the Company which requires frequent visits within the country and outside the country. It is not in dispute that travelling abroad is one of the concomitants of the right to liberty enshrined under Article 21 of the Constitution of India subject to compliance with relevant laws which regulate such travel.



39) The undisputed facts are as under:-

(i) On 25.02.2020 FIR NO. 09/2020 was registered against the petitioners;

(ii) On 28.02.2020 interim protection was granted in favor of the petitioner No. 1 in W.P.Cr. No. 88/2020 but the investigation was not stayed;

(iii) On 10.01.2022 W.P.Cr. Nos. 88/2020 and 154/2020 were allowed by the Coordinate Bench of this Court and the FIR was quashed;

(iv) On 01.03.2023 the Hon’ble Supreme Court allowed the

SLPs preferred by the State Of Chhattisgarh and the complainant and set aside the order passed by the High Court and granted three weeks to the petitioners to approach the competent Court;

(v) On 31.03.2023 the anticipatory bail applications preferred by petitioners were allowed.

(vi) On 13.04.2023 Cr.M.P. preferred by the petitioners was dismissed at that stage.

40) From above above-stated facts, it is quite vivid that an investigation has been pending against the petitioners since 25.02.2020 even while granting interim protection by the Coordinate Bench, the investigation was not stayed and the FIR was quashed on 10.01.2022 meaning thereby two years was available to the Investigating Agency prior to the quashament of FIR for completion of the investigation. Thereafter, the petitioners were granted anticipatory bail on 31.03.2023 and this petition for modification was filed on 07.08.2023 and this period was also available to the Investigating Agency to complete the Investigation. Learned Counsel for the respondent, at this point, would fairly submit that the investigation would take more time.

41) From the above discussion, it is apparent that despite sufficient time investigation has not been completed; the conditions cannot be permitted to continue for an indefinite

period; the conditions of the bail order can be modified in a petition filed under Section 482 of Cr.P.C. and Section 362 of Cr.P.C. would not attract; joint petition for modification may be filed if the FIR arises from one crime number and a common order has been passed; travelling abroad or free movement is one of the rights enshrined under Article 21 of the Constitution of India; the petitioner No. 1 has to move abroad for his livelihood; petitioner no 2 is a lady and both are staying at Ahmedabad in a rented house and they are facing ordeal since January 2020.



42) Therefore, this Court by invoking its powers under Section 482 of the Cr.P.C., is inclined to modify conditions No. 1, 5, 6 and 7 as under:-

(i) Condition No. 1 which requires the presence of both the petitioners before the police station concerned on the 4th of every month till the trial is over is hereby diluted but the petitioners shall cooperate with the investigating agency;

(ii) Condition No. 5 of the bail order which says that the petitioners shall not leave the territory of India without the leave of the Court is modified to the extent that petitioners shall file a written undertaking before the Trial Court disclosing the date of departure and return of foreign trip and shall inform the Trial Court after return either in person or through their counsel;

(iii) Condition No. 6 is modified up to the extent that petitioners would be at liberty to change their residential address but they shall inform their changed residential address to the Investigating Agency, whereas the rest of the conditions of condition no. 6 shall remain intact; and

(iv) Condition No. 7 whereby petitioners were directed to surrender their passports is hereby diluted. The Investigating Agency is directed to return the passports of the petitioners after retaining their Xerox copies.

43) A copy of this order be sent to the Investigating Agency and the Trial Court for information and compliance.



Sd/-

**(Rakesh Mohan Pandey)**
**Judge**

Nadim