

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF SEPTEMBER 2022 / 28TH BHADRA, 1944

CRL.A NO. 874 OF 2022

AGAINST THE ORDER IN CRL.MP 778/2022 IN SC NO.265/2018 OF
SPECIAL COURT FOR SC/ST(POA) ACT, MANNARKKAD

APPELLANT/ACCUSED NO.2 AND 5:

1 MARAKKAR
 AGED 37 YEARS
 S/O UNNEEN,
 KILAYIL (H),
 MUKKALI P.O., KALLAMALA,
 PALAKKAD , PIN - 678582

2 RADHAKRISHNAN
 AGED 38 YEARS
 S/O BALAN,
 TAZHUSSERY (H),
 MUKKALI P.O, KALLAMALA,
 PALAKKAD, PIN - 678582

BY ADVS.S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.

RESPONDENTS/STATE/VICTIM:

1 STATE OF KERALA
 REP BY PUBLIC PROSECUTOR
 HIGH COURT OF KERALA,
 ERNAKULAM
 (CRIME NO 87 OF 2018 OF AGALI POLICE STATION,
 PALAKKAD), PIN - 682031

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 2 :-

2 MALLI
AGED 60 YEARS
W/O MALLAN,
CHINDAKI, PAZHAYAOORU,
MUKKALI P.O., KALLAMALA,
PALAKKAD, PIN - 678582

BY ADVS.
R2 BY JEEVESH P.V
C.K.RADHAKRISHNAN (CHALIL)
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.

OTHER PRESENT:

SRI T A SHAJI-DGP,

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2022, ALONG WITH CRL.A.879/2022 AND CONNECTED CASES,
THE COURT ON 19.09.2022 DELIVERED THE FOLLOWING:

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 3 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF SEPTEMBER 2022 / 28TH BHADRA, 1944

CRL.A NO. 879 OF 2022

AGAINST THE ORDER IN CRL.MP 778/2022 IN SC NO.265/2018 OF
SPECIAL COURT FOR SC/ST(POA) ACT, MANNARKKAD

APPELLANT/4TH ACCUSED:

ANEESH
AGED 34 YEARS
SON OF RAJAGOPALAN, KUNNATH HOUSE,
KAKKUPPADI, KALKANDI (P.O), KALLAMALA, PALAKKAD
DISTRICT., PIN - 678582

BY ADV NIREESH MATHEW

RESPONDENT/PETITIONER-STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 MALLI
AGED 60 YEARS
W/O.MALLAN,
CHINDAKI, PAZHAYAOORU, MUKKALI P.O,
KALLAMALA, PALAKKAD DISTRICT., PIN - 678582

BY ADVS.JEEVESH P.V FOR R2
C.K.RADHAKRISHNAN (CHALIL)

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 4 :-

SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.()

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2022, ALONG WITH CRL.A.874/2022 AND CONNECTED CASES,
THE COURT ON 19.09.2022 DELIVERED THE FOLLOWING:

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 5 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF SEPTEMBER 2022 / 28TH BHADRA, 1944

CRL.A NO. 880 OF 2022

AGAINST THE ORDER IN CRL.MP 778/2022 IN SC NO.265/2018 OF

SPECIAL COURT FOR SC/ST(POA) ACT, MANNARKKAD

APPELLANT/ACCUSED NOS.3,6,9 TO 12 AND 16:

- 1 SHAMSUDHEEN
AGED 37 YEARS
S/O MUHAMMED
POTHUVACHOLA (H),
MUKKALI (P.O), PAKKULAM,
PALAKKAD (DIST.), PIN - 678582
- 2 ABOOBACKER @ BACKER
AGED 35 YEARS
S/O MUHAMMED
POTHUVACHOLA (H), PALLIPPADI,
THENKARA P.O, ANAMOOLI
PALAKKAD (DIST.), PIN - 678598
- 3 NAJEEB
AGED 37 YEARS
S/O LATHEEF
VIRUTHIYIL (H)
MUKKALI P.O KALLAMALA
PALAKKAD (DIST.), PIN - 678582
- 4 JAIJUMON
AGED 48 YEARS
S/O AYYAPPANKUTTY
MANNAMPATTA (H),
MUKKALI P.O KALLAMALA
PALAKKAD (DIST.), PIN - 678582

- 5 ABDUL KAREEM
AGED 52 YEARS
S/O THAJUDHEEN
CHOLAYIL (H),
MUKKALI P.O KALLAMALA
PALAKKAD (DIST.), PIN - 678582
- 6 SAJEEV
AGED 34 YEARS
S/O RAVEENDRANATH
PUTHANPURAKKAL (H), KOTTIYURKUNNU,
MUKKALI P.O KALLAMALA
PALAKKAD (DIST.), PIN - 678582
- 7 MUNEER
AGED 37 YEARS
S/O LATHEEF
VIRUTHIYIL (H)
MUKKALI P.O KALLAMALA
PALAKKAD (DIST.), PIN - 678582

BY ADVS.
M.REVIKRISHNAN
P.A.REZIYA
THOMAS J.ANAKKALLUNKAL

RESPONDENTS/PETITIONER AND VICTIM:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031
- 2 MALLI
W/O MALLAN
CHINDAKKI, MUKKALI (P. O)
PALAKKAD (DIST.), PIN - 678582
- BY ADVS.
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 7 :-

PROSECUTOR()
SHRI.SAJJU.S., SENIOR G.P.
R2 BY JEEVESH P.V

OTHER PRESENT:

SRI P.VIJAYABHANU, SR.ADV

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2022, ALONG WITH CRL.A.874/2022 AND CONNECTED CASES, THE COURT ON 19.09.2022 DELIVERED THE FOLLOWING:

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 8 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF SEPTEMBER 2022 / 28TH BHADRA, 1944

CRL.A NO. 881 OF 2022

AGAINST THE ORDER IN CRL.MP 778/2022 IN SC NO.265/2018 OF

SPECIAL COURT FOR SC/ST(POA) ACT, MANNARKKAD

APPELLANT/15TH ACCUSED:

BIJU
AGED 41 YEARS
S/O.SIVARAMAN, CHERIVIL HOUSE, MUKKALI P.O,
KALLAMALA, PALAKKAD DISTRICT., PIN - 678582

BY ADV NIREESH MATHEW

RESPONDENTS/PETITIONER-STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031
- 2 MALLI
AGED 60 YEARS
W/O.MALLAN, CHINDAKI, PAZHAYAOORU, MUKKALI P.O,
KALLAMALA, PALAKKAD DISTRICT., PIN - 678582

BY ADVS. R2 BY JEEVESH P.V
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
SRI.T.A.SHAJI, DIRECTOR GENERAL OF PROSECUTION
SHRI.SAJJU.S., SENIOR G.P.

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 9 :-

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2022, ALONG WITH CRL.A.874/2022 AND CONNECTED CASES, THE COURT ON 19.09.2022 DELIVERED THE FOLLOWING:

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 10 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 19TH DAY OF SEPTEMBER 2022 / 28TH BHADRA, 1944

CRL.A NO. 882 OF 2022

**AGAINST THE ORDER IN CRL.MP 778/2022 IN SC NO.265/2018 OF
SPECIAL COURT FOR SC/ST(POA) ACT, MANNARKKAD**

APPELLANT/7TH ACCUSED:

SIDHIQ, AGED 42 YEARS, S/O.SAIDH, PADINJARE PALLA
KURIKKAL HOUSE, MUKKALI P.O, KALLAMALA, PALAKKAD
DISTRICT., PIN - 678582

BY ADV NIREESH MATHEW

RESPONDENTS/PETITIONER-STATE AND DEFACTO COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
- 2 MALLI, AGED 60 YEARS, W/O.MALLAN, CHINDAKI,
PAZHAYAOORU, MUKKALI P.O, KALLAMALA, PALAKKAD
DISTRICT., PIN - 678582

BY ADVS.SRI.T.A.SHAJI, DIRECTOR GENERAL OF
PROSECUTION
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR,
SHRI.SAJJU.S., SENIOR G.P.
R2 BY JEEVESH P.V

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
31.08.2022, ALONG WITH CRL.A.874/2022 AND CONNECTED CASES,
THE COURT ON 19.09.2022 DELIVERED THE FOLLOWING:

“C.R.”

J U D G M E N T

Dated this the 19th day of September, 2022

Can the Court of Session, in the exercise of the power under Section 439 (2) of Cr.P.C, cancel the bail granted by the High Court to an accused consequent on his violating the bail conditions?

Is the Special Court or the Exclusive Special Court specified or constituted under Section 14 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 empowered to cancel the bail granted by the High Court in the exercise of its appellate jurisdiction under Section 14A on the ground of violation of bail conditions invoking Section 439(2) of Cr.P.C?

2. These two important legal questions arise for consideration in the above criminal appeals.

3. The appellants are the accused Nos. 2 to 7, 9 to 12, 15 and 16 in SC No. 265/2018 on the file of the Special Court For SC/ST (POA) Act, Mannarkkad (for short “the Court below”). They along with the accused Nos. 1, 8, 13 and 14 face trial for the

offences punishable under Sections 143, 147, 148, 323, 324, 326, 294(b), 342, 352, 364, 367, 368 and 302 r/w 149 of the Indian Penal Code (for short "IPC") and Sections 3(1) (d), (r) (s) and 3(2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 (for short "SC/ST(PoA) Act").

4. The prosecution allegation is that a mentally challenged tribal youth was tied up and brutally beaten to death by the accused, who caught him from a nearby forest, accusing him of stealing rice from a grocery shop.

5. All the accused were arrested on 24/2/2018 and they were remanded to judicial custody. The bail applications filed by them at the Court below during crime stage were rejected as per the order dated 3/04/2018. The accused challenged the orders rejecting the bail in appeal at this Court invoking Section 14A of the SC/ST(PoA) Act. In the meanwhile, the final report was filed on 22/5/2018. The appeal was allowed on 30/5/2018 granting bail to all the accused on conditions. The condition No.'c' which is relevant here reads thus:

"The accused shall not have any contact with the witnesses directly or over telephone or otherwise till the whole trial process is over, and they shall not make any attempt to

influence or threaten the witnesses in any manner.”

6. The trial of the case commenced on 28/4/2022. Altogether 16 witnesses were examined on the side of the prosecution as PW1 to PW16. Out of them, only 2 supported the prosecution. The remaining 14 turned hostile. According to the prosecution, those witnesses were won over by the accused. It is alleged that those witnesses and the appellants were in constant contact with each other over phone. Alleging that the said act of the appellants amounts to violation of condition ‘c’ in the bail order, the prosecution approached the Court below to cancel their bail invoking Section 439(2) of Cr.P.C. The Court below after hearing both sides cancelled the bail granted to the appellants as per the order dated 20/8/2022. These appeals have been filed challenging the said order.

7. I have heard Sri.P.Vijayabhanu, the learned Senior Counsel appearing for the accused Nos.3, 6, 9 to 12 and 16, Sri.S.Rajeev, the learned counsel for the accused Nos.2 and 5, Sri.Nireesh Mathew, the learned counsel for the accused Nos.4, 7 and 15, Sri.P.V.Jeevesh, the learned counsel for the defacto complainant and Sri.T.A.Shaji, the learned Director General of

Prosecution.

8. Assailing the impugned order, Sri. Vijayabhanu, the learned Senior Counsel for the accused Nos.3, 6, 9 to 12 and 16 and Sri. S. Rajeev, the learned counsel for the accused Nos.2 and 5, strenuously argued that the Court below has no jurisdiction to cancel the bail granted by the High Court invoking Section 439(2) of Cr.P.C, especially when the bail was granted by the High Court in exercise of the appellate jurisdiction under Section 14A of the SC/ST(PoA) Act. Sri.Nireesh Mathew, the learned counsel for the accused Nos.4, 7 and 15, endorsed the said argument. Per contra, the learned Director General for Prosecution Sri. T.A.Shaji submitted that Section 439(2) of Cr.P.C gives concurrent jurisdiction to the High Court as well as the Sessions Court to direct that an accused released on bail under Chapter XXXIII of Cr.P.C be arrested and committed to custody and as such the Court of Session is empowered to cancel the bail granted by the High Court on violation of the bail conditions. The learned Director General of Prosecution further submitted that the appellants were released on bail under Chapter XXXIII of Cr.P.C pursuant to the bail granted by the High Court in the

exercise of the appellate jurisdiction under Section 14A of the SC/ST(PoA) Act and hence the Court below was well within its power to invoke Section 439(2) of Cr.P.C. In fact, by passing the impugned order, the Court below was only giving effect to and implementing the conditions imposed by this Court while granting bail, added the learned Director General of Prosecution. Sri.P.V.Jeevesh, the learned counsel for the defacto complainant submitted that neither Section 14A of the SC/ST(PoA) Act nor Section 493(2) of Cr.P.C interdicts the power of the Special Court/Court of Session to cancel the bail granted by the High Court in violation of bail conditions.

9. Section 439(2) of Cr.P.C confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The said provision empowers the Court concerned to cancel the bail though the phrase 'cancel the bail' is not mentioned in it. A plain reading of the said provision indicates that the provision does not mandatorily provide that the Court before directing the arrest of such accused, who has already been granted bail, must necessarily cancel his earlier bail. Cancelling

the bail granted to an accused and directing him to be arrested and taken into custody can be one course of action, which can be adopted while exercising power under Section 439(2), but there may be cases where without cancelling the bail granted to an accused, on relevant consideration, the Court can direct the accused to be arrested and committed to custody. Discretion has been given to the Court to pass such orders to direct for such person to be arrested and committed to custody which direction may be with an order for cancellation of earlier bail.

10. An application for cancellation of bail under Section 439(2) of Cr.P.C is generally examined on the anvil of the existence of supervening circumstances or violation of the conditions of bail. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, then also the superior court can cancel the bail invoking Section 439(2). While the ground for cancellation of bail in the former case would relate to post-bail incidents, indicating misuse of liberty, in the latter case, the challenge would be the very legality of the order passed. Thus,

the power of cancellation of bail on violation of conditions of bail is conferred concurrently on the Sessions Court and the High Court. There is no dispute that the High Court has the power to cancel the bail granted by the Court of Session on violation of bail conditions. The dispute is regarding the power of the Court of Session under Section 439(2) of Cr.P.C to cancel the bail granted by the High Court on the ground of violation of conditions of bail.

11. As stated already, the power vested in the Court of Session and the High Court to cancel the bail under Section 439 (2) of Cr.P.C is concurrent. There is nothing in Section 439(2) to suggest that the Court of Session has no power to commit a person released on bail by the High Court to custody. A comparison of the power of the High Court and the Court of Session to cancel bail under the old Criminal Procedure Code (1898) and the present Criminal Procedure Code (1973) would make it clear that under Section 439(2) of the new Code, the High Court is empowered to commit a person released on bail by the Court of Session to custody and the Court of Session also is empowered to commit a person released on bail by the High Court to custody, if it thinks appropriate to do so.

12. The Apex Court in ***Gurcharan Singh v. State (Delhi Administration)*** (AIR 1978 SC 179), compared the power of the High Court and the Court of Session to cancel bail under Section 498(2) of the 1898 Code and Section 439(2) of the 1973 Code and observed that the restriction under the old Code that the same court (either the High Court or the Court of Session) which granted bail alone could cancel the bail, has been lifted under Section 439(2) of the 1973 Code. The relevant passage of the judgment dealing with said aspect reads thus:

"16... Similarly under S.439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, S.498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under S.498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under S.439(2). Under S.439(2) of the new Code a High Court may commit a person released on bail under

Chapter XXXIII by any Court including the Court of Session to custody if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S.439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis - a - vis the High Court."

(Emphasis supplied)

It is thus clear from the above-quoted observation of the Apex Court that a Court of Session is empowered to cancel a bail granted by the High Court if new circumstances (like violation of conditions) arise during the progress of the trial after an accused has been admitted to bail by the High Court. A Single Bench of this Court in ***Mahesh v. State of Kerala*** (2010(4) KLT 921) after

referring to the difference in the phraseology of Sections 437 and 439 of Cr. P.C held that if any condition in the bail order passed by a superior court is violated by the accused, it is not necessary for the Magistrate to address such superior court to cancel the bail and that the Magistrate himself can independently proceed against the accused even if there is no request to cancel the bail.

13. The power vested in the Court of Session and the High Court under Section 439(2) of Cr. P.C could be invoked either by the State or the victim. The said power could also be exercised by the Court *suo motu*. If the contention of the appellants that the Court of Session has no jurisdiction to cancel the bail granted by the High Court on violating the bail condition is accepted, the Court of Session will not be able to exercise *suo motu* the statutory power under Section 439(2). It is not the law that if a serious violation of the bail conditions which sabotages the trial is noticed, the trial court is powerless, and it must refer the parties to the superior court which granted the bail for remedy. If any non-compliance with the bail conditions imposed by the superior court results in the trial being frustrated, it is for the trial court to take measures to correct it. The Court of Session cannot be a

mute spectator of the flagrant violation of the conditions of bail imposed by the High Court subverting the judicial process. It certainly has the duty and responsibility to ensure that the violation of the conditions does not interfere with the fair trial.

14. As stated already, if the order granting bail by the Court of Session is vitiated by the arbitrary and wrong exercise of discretion by it, the bail can be cancelled only by the High Court invoking Section 439(2) of Cr.P.C. In such a case, challenge would, normally, be the very legality of the order passed itself. A court of Session cannot go into the legality of the order passed by the High Court nor can it interfere with the order passed by the High Court on merits. But, in a case where the cancellation is sought on the ground of violation of the bail conditions, there is absolutely no challenge on the merits of the order. In fact, in such cases, by exercising the jurisdiction under Section 439(2) of Cr.P.C, the Court of Session is only implementing the conditions imposed by the High Court. It is not in any way interfering with or modifying the order passed by the High Court. For all these reasons, I hold that the Court of Session is empowered to cancel the bail granted by the High Court to an accused and commit him

to custody consequent on his violating the bail conditions invoking the power under Section 439 (2) of Cr. P.C.

15. The learned Counsel for the appellants next argued that even if it is admitted that the Court of Session is empowered to cancel the bail granted by the High Court to an accused consequent on his violating the bail conditions invoking the power under Section 439(2) of Cr. P.C, such power cannot be extended to the Special Court or Exclusive Special Court constituted under Section 14 of the SC/ST(PoA) Act. As the Special Court is not a High Court or Court of Session, it cannot exercise the power conferred on the High Court or the Court of Session under S.439(2) of Cr. P.C, it is argued. Though the argument appears to be attractive at the first blush, it cannot be accepted for more than one reasons.

16. The SC/ ST(PoA) Act has been enacted by the Parliament to effectuate a salutary public purpose of achieving the fulfilment of constitutional rights of the Scheduled Castes and Scheduled Tribes. Section 14 provides for the establishment of a Special Court for dealing with the cases involving offences against Scheduled Castes and Scheduled Tribes. The term

“Special Court” is defined under Section 2(d). Certain amendments were brought in the Act, vide Amendment Act, 2015, which came into force, with effect from 26/01/2016. The Amendment Act allowed the establishment of an Exclusive Special Court for the trial of offences under the Act. The term “Exclusive Special Court” has been defined under Section 2(b)(d) of the Amended Act. Section 14 of the Act prior to its amendment reads thus:

"14. For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act."

(Emphasis supplied)

Section 2 (d) defines the term “Special Court” thus:

"2(d) — "Special Court" means a Court of Session specified as a Special Court in section 14".

(Emphasis supplied)

It is clear from Sections 14 and 2(1)(d) that for the trial of offences under the Act, a particular Court of Session in each district is sought to be specified as a Special Court. Evidently, the

legislature wanted the Special Court to be a Court of Session. The substituted provision of Section 14 after the amendment read thus:

"14. Special Court and Exclusive Special Court. -

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be

necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet"

Section 2 (bd) defines the term "Exclusive Special Court" thus:

2(bd) — "Exclusive Special Court" means the Exclusive Special Court established under sub-section (1) of Section 14 exclusively to try the offences under this Act"

From the aforesaid provisions, it is apparent that the Special Court and the Exclusive Special Court, specified or established under the SC/ST Act, is a court of original jurisdiction having the status of and invested with the powers of the Court of Session. That apart, Part-II of the first schedule of Cr.P.C prescribes that only a Court of Session is authorized to try the offence under laws other than IPC that are punishable with either death, imprisonment for life or imprisonment for a term more than 7 years; whereas a Magistrate of the First Class is empowered to try an offence if it is punishable with imprisonment for a term more than three years, but less than 7 years and an offence punishable with imprisonment for a term of less than three years or with fine

only may be tried by any Magistrate. Certain offences under subsection (2) of Section 3 of the SC/ST(PoA) Act prescribe punishment for death and certain offences prescribe the punishment of imprisonment for life. In view of Part II of the first schedule of Cr.P.C, such offences can be tried only by a Court of Session. Thus, there remains no doubt that the Special Court and the Exclusive Special Court, under Section 14 of the SC/ST(PoA) Act is essentially a Court of Session.

17. It is settled that only the Courts constituted under Section 14 of the SC/ST (PoA) Act can have jurisdiction to entertain an application for bail and the power of the Court of Session and of the High Court in its original criminal jurisdiction to entertain an application under Sections 438 or 439 of Cr. P.C had been impliedly taken away by Section 14A of the said Act [See **Ajan G.Krishnan v. State of Kerala**, 2017 (1) KLT 488 & **K. M Baheer v Rajani K.T.** 2022 LiveLaw (Ker) 472]. There is no specific provision in the SC/ST(PoA) Act empowering the Special Court or the Exclusive Special Court to grant bail. The source of the power of the Special Court to grant bail is not traceable to Section 14 or 14 A. Chapter XXXIII of Cr. P.C is still preserved as

otherwise the Special Court or the Exclusive Special Court would have no power to grant bail. The power of the Special Court or Exclusive Special Court to grant bail is relatable to Section 439 or 437 of Cr.P.C. Going by Section 4(2) of Cr. P.C., the provisions in Chapter XXXIII regarding bail would be applicable in the absence of any contrary provision in the Special Act. Thus, when the Special Court or Exclusive Special Court grants bail to an accused, he is released on bail under Chapter XXXIII of Cr.P.C. As stated already, the Court of Session has power under Section 439(2) to cancel the bail granted under Chapter XXXIII. I have found that the Special Court or Exclusive Special Court constituted under Section 14 is essentially a Court of Session. Thus, the Special Court or Exclusive Special Court can very well invoke the power under Section 439(2) of Cr. P.C

18. There is no provision in the SC/ST(PoA) Act which empowers the Special Court or the Exclusive Special Court to cancel the bail or to arrest and commit to custody an accused who has been released on bail. A conjoint reading of Section 4(2) and Section 5 of Cr.P.C would show that all offences, whether under the IPC or under any other law, have to be investigated,

inquired into, tried and otherwise dealt with according to the provisions of the Code, unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, in which case the enactment will prevail over those of Cr.P.C. It means that if the other enactment contains any provision which is contrary to the provisions of Cr.P.C, such other provision will apply in place of the particular provision of Cr.P.C. If there is no such contrary provision in other laws, then provisions of Cr.P.C would apply to the matters covered thereby. This proposition has been emphasised by a Constitution Bench of the Apex Court in **A. R. Antulay v. Ramdas Srinivas Nayak & Anr.** [(1984) 2 SCC 500]. Paragraph 16 of the said judgment reads thus:

"S.4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealt with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal

Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by Criminal Courts of various designations".

19. In short, the provisions of Cr.P.C would apply in a situation where a special enactment did not make any provision for investigation, inquiry, or trial independently or was silent on those aspects. Thus, in the absence of a specific provision in the SC/ST(PoA) Act for cancellation of bail, Section 439(2) of Cr.P.C could be applied to cancel the bail or to arrest and commit to custody an accused who has been released on bail by the Special Court or the Exclusive Special Court under the exercise of its original jurisdiction or by the High Court under the exercise of its appellate jurisdiction. I have already found that the Court of Session is empowered to cancel the bail granted by the High Court to an accused and commit him to custody consequent on his violating the bail conditions invoking the power under Section 439 (2) of Cr. P.C. The same must apply by analogy to the Special Court or the Exclusive Special Court as well, they being essentially a Court of Session. For all these reasons, it can safely be concluded that the Special Court or the Exclusive Special

Court specified or constituted under Section 14 of the SC/ST(PoA) Act is empowered to cancel the bail granted by the High Court in the exercise of its appellate jurisdiction under Section 14A on proof of violation of bail conditions invoking Section 439(2) of Cr.P.C.

20. Coming to the merits, cancellation of bail has been sought by the prosecution on the ground that the appellants contacted the prosecution witnesses many a time over phone violating condition No.'c'. It is alleged that most of the witnesses turned hostile as they were won over by the appellants. The Court below after hearing both sides and on appreciation of materials before it found that there are materials on record to show that the appellants have contacted the witnesses over phone several times violating the bail conditions and thereby misused the liberty.

21. The learned counsel for the appellants submitted that the appellants never interfered in the trial or influenced any witnesses but have fully cooperated with the trial till date. It is further submitted that the witnesses in the case have turned hostile not because the appellants have influenced them, but

only for the reason that they were planted and concocted witnesses by the prosecution. The learned Counsel also submitted that no complaint was made by any of the witnesses against the appellants regarding threat or coercion from their part and for the sole reason that the appellants happened to have telephonic conversation with the witnesses cannot be taken as a ground as such to cancel the bail. The court below without proper application of mind or considering the objection raised by the appellants in the objection statement cancelled the bail in a mechanical manner, submitted the Counsel.

22. It is true that the power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection. But, the power, though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses [***State (Delhi Admn) v. Sanjay Gandhi*** (1978) 2 SCC 411]. When an accused to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with evidence or witnesses or threatens witnesses or indulges in

similar activities which would frustrate the fair trial, bail granted can certainly be cancelled. The Apex Court in **Sanjay Gandhi** (supra) considered what precisely is the nature of the burden which rests on the prosecution in an application for cancellation of bail. It was held that it is not necessary for the prosecution to prove by a mathematical certainty or even beyond a reasonable doubt that the witnesses have turned hostile because they were won over by the accused. It was also held that the prosecution can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. In **Gurcharan Singh** (supra), while confirming the order of the High Court cancelling the bail of the accused, the Apex Court observed that the only question which the Court had to consider at that stage was whether "there was prima facie case made out, as alleged, on the statements of the witnesses and on other materials", that "there was a likelihood of the appellants tampering with the prosecution witnesses".

23. The condition No.'c' in the bail order clearly stipulates that the accused shall not have any contact with the witnesses

directly or over telephone or otherwise till the whole trial process is over and they shall not make any attempt to influence or threaten the witnesses in any manner. The said condition has been imposed to ensure free and fair trial. The prosecution relied on Ext.P1 series, call data details between the appellants and the prosecution witnesses, and Ext.P3 series, certified copy of the re-verification customer application forms of the phone numbers found in Ext. P1 issued by the service providers, to substantiate its plea that bail condition No. 'c' has been violated. Ext.P3 would show that the respective mobile numbers stated in Ext.P1 call list are subscribed by the accused themselves. Moreover, the appellants have no case that those mobile numbers do not belong to them. Ext.P1 series would show that accused No.2 has made 11 calls to CWs14, 15, 16, 18, 19 and 32 for the period from January, 2022 to June, 2022, the accused No.3 made 100 calls to CWs12, 14, 15, 31, 32 and 42 from 12th November, 2021 to 28th April, 2022, the accused No.4 made 5 calls to CWs10 and 42 from December, 2021 to June, 2022, the accused No.5 made 8 calls to CWs18 and 19 from May, 2022 to June, 2022, the accused No.6 made 62 calls to CWs10, 14 and 31 from October, 2021 to

July, 2022, the accused No.7 received 5 calls from CW10 and CW14 from October, 2021 to May, 2022, the accused No.9 made 25 calls to CWs10, 31, 32, 34 and 35 from October, 2021 to May, 2022, the accused No.10 received 3 calls from CW15 and CW18 from November 2021 to February 2022, the accused No.12 made 61 calls to CWs10, 14, 31, 32, 34, and 35 from October, 2021 to July, 2022, the accused No.15 made 74 calls to CW11 and 14 from October, 2021 to March, 2022 and the accused No.16 made 60 calls to CW10, 31, 32 and 35 from October, 2021 to July, 2022. .

24. Absolutely no valid explanation has been offered by accused No.2 and 5 for the calls made by them to the witnesses in their objection statement. The explanation offered by accused No.3 in the objection statement is that he is the union leader of autorickshaw drivers, and the union is having a pool leader who is entrusted with the duty of regulating turn of autorickshaws, and the said number was used by the pool leader for the said purpose. The accused No.4 stated that he is running E-Seva Kendra at Agali from 9/7/2021 onwards and the alleged number through which the conversation was made is his office number

which is being handled by his managing staff and all the calls except one call are incoming calls. The accused No.6 stated that he is a taxi driver and many of the witnesses are also drivers in the neighbouring taxi stands and it is quite common that drivers of different stands contact each other for arranging trips in the ordinary course of their business. The accused No.7 stated that he is a driver cum owner of a goods autorickshaw, and parties of the locality generally contact him over telephone for the purpose of transporting goods and materials regularly for the last many years. The accused Nos.9, 12 and 16 offered explanation that they are conducting business in the locality, and they might have contacted several drivers for transporting goods during ordinary course of business and most of the witnesses they allegedly contacted are drivers. The accused No.15 took up the contention that he is a driver cum businessmen in the locality and a social person too and he is having cordial and good relationship with the people in the locality and in these circumstances, he contacted so many persons over telephone and directly.

25. The learned counsel for the accused No.7 Sri.Nireesh Mathew vehemently argued that all the alleged calls between the

accused No.7 and CW10 and CW14 were incoming calls and not even a single call was made from the phone of the accused No.7 to any witnesses and therefore it cannot be said that he has violated the condition No.'c'. It is true that all the five calls were incoming calls. But for the simple reason that the calls were incoming calls, it cannot be said that there is no violation of condition No.'c'. What is prohibited is contact between the accused with the witnesses. Even witnesses contacting the accused would also amount to violation of condition No.'c'. One of the calls of the total five calls made on 26th November 2021 runs to 312 seconds. There is no explanation on the part of accused No.7 why a call of such a long duration was made by CW14 to him. It is also pertinent to note that the accused No.6 made 14 calls to CW14 and accused No.3 made 63 calls to CW14. The counsel for the accused No.10 submitted that only three calls are mentioned in Ext.P1 series against the name of accused No.10 and all of them were incoming calls and hence he cannot be found fault with for receiving incoming calls. However, absolutely no explanation has been given by the accused No.10 either in the counter statement filed before the court below or in the appeal

memorandum for what purpose CWs10 and 14 made calls to him.

26. The explanation offered by accused Nos.2 to 7, 9, 10, 12, 15 and 16 is vague in nature and not convincing. There is nothing on record to substantiate the same. There is overwhelming evidence to show that they have contacted the witnesses over phone on several occasions violating the bail conditions and thereby misused the privilege of bail granted to them. Most of the witnesses contacted by the accused turned hostile during trial. The fact that the witnesses did not make any complaint is no ground to disbelieve the prosecution version that they were influenced and won over by the accused. The deceased was a mentally challenged tribal youth. Most of the witnesses are also hailing from tribal hamlets. They are socially, educationally and economically backward people. During the trial, it has come to the notice of the court below that most of the witnesses including those whose statements under Section 164 of Cr.P.C were recorded refused to support the prosecution by resiling from their previous statement. This is a case where the prosecution moved before the Witness Protection Standing

Committee, Palakkad constituted under Witness Protection Scheme, 2018 seeking protection for the witnesses. The profile of 13 witnesses were furnished by the Investigating Officer along with the details of the threat perception. It was reported that many of the witnesses belong to Scheduled Caste/Scheduled Tribe and Other Backward Communities, and they are afraid that they would be victimised by way of discrimination and also would be subjected to social boycott. After interacting with the witnesses in detail, the Committee arrived at a conclusion that the threat perception as reported by the investigating officer is true and genuine and accordingly a witness protection order was passed. The Witness Protection Cell of the District Police Office was directed to ensure that witnesses and the accused do not come face to face prior to or during the trial of the case. There was also a direction to monitor the e-mails and telephone calls to the witnesses. Accordingly, the telephone calls between the accused and the witnesses were monitored and most of the accused were found in contact with all the major witnesses over phone on many occasions. The call records were collected and produced before the Court. It was also noticed that the mother of

the deceased was threatened, and a crime was registered thereof. The Court below observing the demeanour of the accused, the witnesses and taking into consideration all these circumstances formed an opinion that the witnesses turned hostile because they were won over by the accused and the witnesses gave false evidence to the Court contrary to their previous statements. Taking in to account all these circumstances and by applying the test of balance of probabilities, it is evident that the accused Nos. 2 to 7, 9, 10, 12, 15 and 16 have misused the privilege of bail granted to them and won over the witnesses. In these circumstances, the court below was absolutely justified in cancelling their bail. However, I am of the view that there is no sufficient evidence against the accused No. 11 to cancel his bail. There are no materials to show that he contacted any of the witnesses through phone or directly. In the application for cancellation of bail, there is no specific allegation that accused No.11 has contacted any of the prosecution witnesses. In Ext.P1 series also, there is nothing to show that he contacted any of the witnesses over phone. There is also no evidence to show that any of the witnesses contacted him to his phone. The only allegation

Crl.Appeal Nos.874,879,880,881 & 882/2022

-: 40 :-

against him is that on 23.06.2002, one Mr.Muhammed Saleem, his brother's son transferred a sum of ₹1,000/- to the account of a friend of CW13. There is nothing on record to suggest that the said monetary transaction was made on behalf of accused No.11 or with his knowledge. There is no other piece of evidence also to show that he in any way tampered with the witnesses or influenced them. Hence, the cancellation of bail of the accused No.11 cannot be sustained.

In the light of the above findings, the cancellation of bail of the accused No.11 vide the impugned order is hereby set aside. Crl.Appeal No.880/2022 is allowed in part to that extent. The cancellation of bail of the accused Nos.2 to 7, 9, 10, 12, 15 and 16 is hereby confirmed. Crl.Appeal Nos.874/2022, 879/2022, 881/2022 and 882/2022 are accordingly dismissed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

Crl.Appeal Nos.874,879,880,881 & 882/2022

-: 41 :-

APPENDIX OF CRL.A 874/2022

APPELLANTS ANNEXURES

Annexure-I A COPY OF THE ORDER IN CRL APPEAL NO
519/2018 DATED 30.05.2018

APPENDIX OF CRL.A 879/2022

APPELLANT'S ANNEXURES

- Annexure1 TRUE PHOTOCOPY OF THE COMMON ORDER DATED 30.05.2018 IN CRL.APEAL NO.550/2018 PASSED BY THIS HON'BLE COURT.
- Annexure2 FREE COPY OF THE ORDER DATED 20.08.2022 IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 PASSED BY THE COURT OF THE JUDGE SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure3 A TRUE PHOTOCOPY OF THE COUNTER STATEMENT FILED BY THE APPELLANT IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE JUDGE SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure4 A TRUE PHOTOCOPY OF THE AFFIDAVIT FILED BY THE APPELLANT IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE JUDGE SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure5 TRUE COPY OF THE RELEVANT EXTRACTS OF THE TELEPHONIC CONVERSATIONS WITH CW-10 AND CW-42 BY THE APPELLANT.

Cr1.Appeal Nos.874,879,880,881 & 882/2022

-: 43 :-

APPENDIX OF CRL.A 880/2022

APPELLANTS ANNEXURES

Annexure1 TRUE COPY OF THE JUDGMENT DATED 30/ 05/
2018 IN CRL.A NO. 519/ 2018 OF THIS
HON'BLE COURT

Annexure2 TRUE COPY OF THE E-COURT PROCEEDINGS
DATED 20/ 08/ 2022

APPENDIX OF CRL.A 881/2022

APPELLANTS ANNEXURES

- Annexure1 TRUE PHOTOCOPY OF THE COMMON ORDER DATED 30.05.2018 IN CRL.APPEAL NO.570/2018 PASSED BY THIS HON'BLE COURT.
- Annexure2 FREE COPY OF THE ORDER DATED 20.08.2022 IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 PASSED BY THE SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure3 TRUE PHOTOCOPY OF THE COUNTER STATEMENT FILED ON BEHALF OF THE APPELLANT DATED 16.08.2022 IN CRIMINAL M.P.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE SC/ST SPECIAL COURT (POA), MANNARKKAD.
- Annexure4 TRUE PHOTOCOPY OF THE AFFIDAVIT FILED BY THE APPELLANT/ACCUSED NO.15 DATED 16.08.2022 IN CRIMINAL M.P.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE SC/ST SPECIAL COURT (POA), MANNARKKAD.
- Annexure5 TRUE COPY OF THE RELEVANT EXTRACTS OF THE TELEPHONIC CONVERSATIONS BETWEEN THE APPELLANT AND CWS-11, 14, 31, 32 AND 35

APPENDIX OF CRL.A 882/2022

APPELLANT'S ANNEXURES

- Annexure1 TRUE PHOTOCOPY OF THE ORDER DATED 30.05.2018 IN CRL.APPEAL NO.550/2018 PASSED BY THIS HON'BLE COURT.
- Annexure2 FREE COPY OF THE ORDER DATED 20.08.2022 IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 PASSED BY THE COURT OF THE JUDGE, SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure3 TRUE PHOTOCOPY OF THE COUNTER STATEMENT FILED BY THE APPELLANT IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE JUDGE, SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure4 TRUE PHOTOCOPY OF THE AFFIDAVIT FILED BY THE APPELLANT IN CRL.MP.NO.778/2022 IN SC.NO.265/2018 BEFORE THE COURT OF THE JUDGE, SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD.
- Annexure 5 TRUE COPY OF THE RELEVANT EXTRACTS OF THE TELEPHONIC CONVERSATIONS WITH CWS-10 & 14 BY THE APPELLANT.