

CrI OP No.31787 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.31787 of 2024

Y.Babu

... Petitioner/Accused

Versus

The Inspector of Police,
Sulur Police Station,
Coimbatore District.
[Crime No.39 of 2024.]

... Respondent

Prayer: Criminal Original Petition filed under Section 483 of Bharatiya Nyaya Sanhita, 2023, to enlarge the petitioner on bail in Cr.No.39 of 2024 on the file of the respondent police.

For petitioner : Mr.T.Balachandran

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor (CrI.Side)

ORDER

This is the second bail application. The first application was dismissed by Hon'ble Mr. Justice C.V.Karthikeyan.

2. Hitherto, this Court has been following a procedure by which if a bail petition/anticipatory bail petition of an accused was dismissed by a



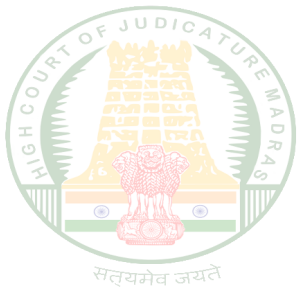
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particular Judge, the successive bail petition/anticipatory bail petition would be listed before the same learned Judge following the directions of the Hon'ble Supreme Court. But since a roster system was followed by this Court, the bail applications of the accused in the same FIR were listed before the roster Judge, even if the bail applications of some of the other accused were dismissed by another Judge earlier.

3. However, in *Sajid v. State of Uttar Pradesh* reported in **2023 SCC On-line SC 1816**, the Hon'ble Supreme Court found that the bail petitions of the persons/accused in the same FIR were listed before different Judges in Allahabad High Court and that the bail petitions of similarly placed accused in the same FIR were decided differently by different learned Judges. Therefore, the Hon'ble Supreme Court directed the Registrar of High Court, Allahabad to place all the bail applications filed by the accused in the same FIR to be listed before the Same Judge.

The relevant portion reads as follows:

“7. We have come across various matters from the High Court of Allahabad, wherein matters arising out of the same FIR are placed before different Judges. This leads to anomalous situation. Inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar.



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8. We find that it will be appropriate that all the matters pertaining to one FIR are listed before the same Judge so that there is consistency in the orders passed.

4. The above order was subsequently reiterated in S.L.P.(CrI).No.15585 of 2023 reported in **2023 SCC Online SC 1714 [Rajpal v. State of Rajasthan]** and a direction was issued to all High Courts. The relevant portion reads as follows:

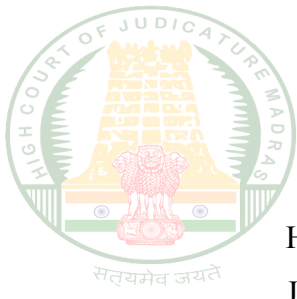
4. A three-Judge Bench of this Court in SLP(Criminal) No. 7203/2023 as per order dated 31.7.2023, took note of such a situation and observed as follows:-

7. We have come across various matters from the High Court of Allahabad, wherein matters arising out of the same FIR are placed before different Judges. This leads to anomalous situation. Inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar.

8. We find that it will be appropriate that all the matters pertaining to one FIR are listed before the same Judge so that there is consistency in the orders passed.

5. After making such observations, this Court issued a direction to the Registrar (Judicial) of this Court to communicate the said order to the Registrar (Judicial) of the High Court of Allahabad.

6. Now, taking note of the fact that such situations are occurring in different High Courts, we are of the view that a further direction is to be issued in that regard. The Registrar (Judicial) of the Registry of this Court is directed to communicate this order to the Registrar (Judicial) of all the



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High Courts and they are directed to place the same before the Chief Justice of the High Court for consideration.

5. Thereafter, this position was reiterated by another Judgement of the Hon'ble Supreme Court in *Kusha Duruka v. State of Odisha* reported in (2024) 4 SCC 432. The relevant portion reads as follows:

21. It is further evident from the order dated 17.01.2023 vide which bail application, BLAPL NO.11709 of 2022 of the co-accused Gangesh Kumar Thakur was allowed by the High Court by Judge 'B'. Learned State Counsel did not point out the factum of pendency of another bail application filed by the co-accused arising out of the same FIR at that stage. The concerned investigating officer must be aware of this fact but had not pointed out the same before the court.

22. In our opinion, to avoid any confusion in future it would be appropriate to mandatorily mention in the application(s) filed for grant of bail:

22.1. Details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided.

22.2. Details of any bail application(s) filed by the petitioner, which is pending either in any court, below the court in question or the higher court, and if none is pending, a clear statement to that effect has to be made.

22.2.1. This court has already directed vide order passed in Pradhani Jani's case (supra) that all bail applications filed by the different accused in the same FIR should be listed before the same Judge except in cases where the Judge has superannuated or has been transferred or otherwise incapacitated to hear the matter. The system needs to be followed meticulously to avoid any discrepancies in the orders.

22.2.2 In case it is mentioned on the top of the bail application or



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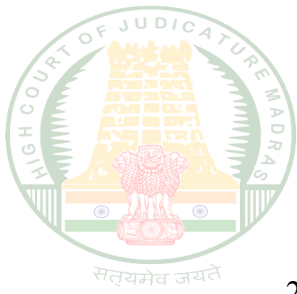
any other place which is clearly visible, that the application for bail is either first, second or third and so on, so that it is convenient for the court to appreciate the arguments in that light. If this fact is mentioned in the order, it will enable the next higher court to appreciate the arguments in that light.

22.3. The registry of the court should also annex a report generated from the system about decided or pending bail application(s) in the crime case in question. The same system needs to be followed even in the case of private complaints as all cases filed in the trial courts are assigned specific numbers (CNR No.), even if no FIR number is there.

22.4. It should be the duty of the Investigating Officer/any officer assisting the State Counsel in court to apprise him of the order(s), if any, passed by the court with reference to different bail applications or other proceedings in the same crime case. And the counsel appearing for the parties have to conduct themselves truly like officers of the Court.

[emphasis supplied]

6. Since the directions issued by the Hon'ble Supreme Court in *Sajid's case* [cited supra] and *Rajpal's case* [cited supra], were creating problems in some High Courts where the roster system is followed, the Hon'ble Supreme Court in *Shekhar Prasad Mahto @ Shekhar Kushwaha v. The Registrar General, Jharkhand High Court* [WP(CrI) No.55/2025 dated 07.02.2025] had issued certain clarifications. In the said order, the Hon'ble Supreme Court held that where the roster system is followed in many High Courts, the applications filed by the accused in the same FIR would have to be placed only before the roster Judge, the relevant observations read as follows:



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“4. The three judges-Bench of this Court in SLP(CrI) No. 7203 of 2023 has observed thus:

“7. We have come across various matters from the High Court of Allahabad, wherein matters arising out of the same FIR are placed before different Judges. This leads to anomalous situation. Inasmuch as some of the learned Judges grant bail and some other Judges refuse to grant bail, even when the role attributed to the applicants is almost similar.”

5. The said observations have been reiterated by a twoJudge Bench of this Court in SLP(CrI.) No. 15585 of 2023 titled as “Rajpal Vs. State of Rajasthan”.

6. What this Court meant in passing the order dated 31.07.2023 was that when the bail matters are assigned to different Benches and when those bail applications arise out of the same FIR and if such application are heard by different Benches, it leads to an anomalous situation, inasmuch as some of the benches grant bail whereas some of them take a different view.

7. However, it is to be noted that in many High Courts, the roster system is followed.

8. After a particular period, the assignment of the learned 3 Judges change. It is also quite possible that the learned Single Judge, who was earlier taking up the assignment of bail matters may in the subsequent roster be a part of the Division bench.

9. We are, therefore, of the view that if the aforesaid direction is followed universally, it may lead to disruption of benches inasmuch as the learned judge who had initially heard the bail application of one of the accused, may have become a part of some Division Bench when a bail application arising out of the same FIR is filed by another accused.

10. We, therefore, clarify that if in a particular High Court, the bail applications are assigned to different single Judge/Bench, in that event, all the applications arising out of same FIR should be placed before one learned Judge.

11. This would ensure that there is a consistency in the views taken



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by the learned judge in different bail applications arising out of the same FIR.

12. However, if on account of change of the roster, the learned judge who was earlier dealing with the bail matters is not taking up the bail matters, the aforesaid directions would not be applicable.

13. Further, we expect that in order to maintain consistency in the views taken by the Court, the learned judge, who will hear the subsequent applications filed for bail, may give due weightage to the views taken by the earlier judge, who had dealt with the bail applications arising out of the same FIR.” *[emphasis supplied]*

7. The above extract is self-explanatory. From the portions marked in the above extract, it would be clear that the clarification is only with regard to the listing of bail applications filed by the accused in the same FIR. Further, the clarification is only with regard to the orders passed in *Sajid's* case [cited supra] and *Rajpal's* case [cited supra]. Those two orders of the Hon'ble Supreme Court dealt with a situation where the bail petition of 'A' accused was placed before a particular judge and 'B' accused arising out of the same FIR and who had a similar role, was placed before another Judge and two conflicting views were taken. However, the directions that if a bail application is dismissed by a Judge, the second bail application should be listed before the same Judge, were not modified or altered. Therefore, this Court is of the view that the clarifications of the Hon'ble Supreme Court cannot be understood as one



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intended to clarify the well-settled directions issued by the Hon'ble

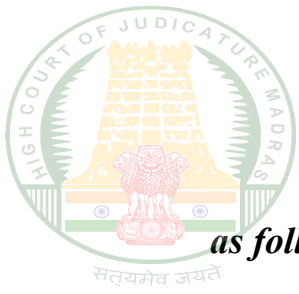
Supreme Court with regard to the disposal of successive bail petitions.

8. However, pursuant to the clarification by the Hon'ble Supreme Court in *Shekhar Prasad Mahto's case* [cited supra], two learned Judges of this Court Hon'ble Mr.Justice P.Dhanabal and Hon'ble Mr.Justice A.D.Jagadish Chandira who had dismissed the bail applications of a particular accused and the second bail petition was filed and pending consideration before them, had directed the Registry to list those petitions before the roster Judge concerned.

9. The Hon'ble Mr.Justice A.D.Jagadish Chandira has referred CrI.O.P.No.3105 of 2025 dt. 19.02.2025 and batch of matters and observed as follows:

“In view of the decision rendered by the Hon'ble Apex Court in *Shekhar Prasad Mahto @ Shekhar Kushwaha vs. The Registrar General, Jharkhand High Court & another in Writ Petition (Criminal) No.55 of 2025 dated 07.02.2025*, the Registry is directed to list this matter before the regular Court dealing with the bail and anticipatory bail matters on 21.02.2025.”

10. The Hon'ble Supreme Court in *M/s.Gati Limited v. T.Nagarajan Piramiajee in Criminal Appeal No.870 of 2019* has held



as follows:

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“5. Another aspect of the matter deserves to be noted. The first application for anticipatory bail was rejected by a certain learned Judge, but the second application for anticipatory bail was heard by another learned Judge, though the Judge who had heard the first application was available. This Court in the case of [Shahzad Hasan Khan v. Ishtiaq Hasan Khan](#), (1987) 2 SCC 684, in a similar matter concerning filing of successive applications for anticipatory bail, made the following observations:

“5. ...The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the creditability of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders...”

In [State of Maharashtra v. Captain Buddhikota Subha Rao](#), 1989 Supp (2) SCC 605, this Court placing reliance upon [Shahzad Hasan Khan](#) (supra) observed:

“7. ...In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would



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be conducive to judicial discipline and would also save the Court's time as a Judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency...”

At the risk of repetition, we would like to quote similar observations made by this Court on subsequent occasions. In the case of [Vikramjit Singh v. State of Madhya Pradesh](#), 1992 Supp (3) SCC 62, this Court observed:

“3. ...Otherwise a party aggrieved by an order passed by one bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary...”

To the same effect, this Court observed in [M. Jagan Mohan Rao v. P.V. Mohan Rao](#), (2010) 15 SCC 491:

“3. In view of the principle laid down by this Court, since the learned Judge who had refused bail in the first instance was available, the matter should have been placed before him. This Court has indicated that such cases of successive bail applications should be placed before the same Judge who had refused bail in the first instance, unless that Judge is not available...”

In [Jagmohan Bahl and Another v. State \(NCT of Delhi\) and Another](#), (2014) 16 SCC 501 too, this Court has observed along the same lines:

“15. ...when the Sixth Additional Sessions Judge had declined to grant the bail application, the next Fourth Additional Sessions Judge should have been well advised to place the matter



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before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the Judge concerned that such an application was rejected earlier by a different Judge and he was available. In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forumshopping, which is decryable in law.”

6. In the matter on hand, it is clear that the well settled principle of law enunciated in the decisions cited supra has not been followed, inasmuch as the second application for anticipatory bail was heard by a different Judge in spite of the availability of the Judge who had disposed of the first application.”

[emphasis supplied]

11. The above Judgement would clearly show that the view of the Hon'ble Supreme Court since 1989 is that successive bail applications of the same accused have to be placed only before the learned Judge who had decided the earlier bail applications. Further, a learned Judge of this Court in *Manikandan v. State of Tamilnadu (Crl.OP.(MD) No.20932 of 2024* dated 06.01.2025 had held that the second application for bail must be placed before the same learned Judge by relying upon the



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Judgement of Hon'ble Supreme Court in *Shahzad Hasan Khan v.*

WEB COPY *Ishtiaq Hasan Khan* reported in (1987) 2 SCC 684 and the *M/s.Gati Limited's* case, extracted supra.

12. In view of the judgement of the Hon'ble Supreme Court, this Court is in respectful disagreement with the view taken by the Hon'ble Mr.Justice P. Dhanabal and Hon'ble Mr.Justice A.D.Jagadish Chandira. However, judicial discipline demands that the issue be referred to the larger Bench. Hence, this Court is referring the following question for determination by a larger Bench.

“Whether the clarification issued by the Hon'ble Supreme Court in *Shekhar Prasad Mahto @ Shekhar Kushwaha v. The Registrar General, Jharkhand High Court [WP(Crl.) No.55 of 2025, decided on 07.02.2025]*, is only with regard to the listing of the applications filed by the accused in the same FIR or is also with regard to the listing of successive bail applications of an accused before the roster Judge, even if the Judge who dealt with the earlier application for bail/anticipatory bail is available?”

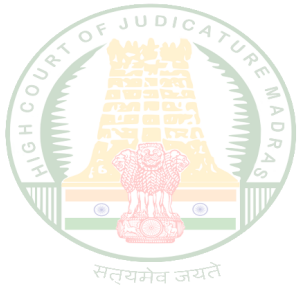
13. The Registry may place this order before the Hon'ble The Chief Justice for getting appropriate orders to list it before a Larger Bench. The Registry may also expedite the process considering the fact that the



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petitions relate to bail/anticipatory bail.

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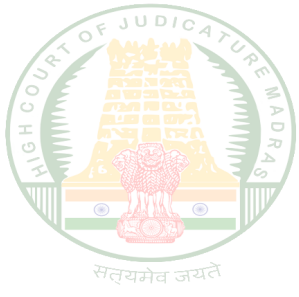


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WEB COPY 14. In view of the importance of the issue, this Court sought the assistance of Mr.E.Raj Thilak, the learned Additional Public Prosecutor. This Court records its appreciation for the valuable assistance rendered by Mr.E.Raj Thilak, the learned Additional Public Prosecutor, in the matter.

21.02.2025

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SUNDER MOHAN, J.

ars/vv

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