ABC 2025 (II) 640 Raj
ACQUITTAL & BAIL CASES

HIGH COURT OF RAJASTHAN

(JaipurBench**)**

(Anil Kumar Upman,J.)

Criminal Appeal No. 8249/2025

Decided On 27 August 2025

MEETU PAREEK & ANOTHER ***- Petitioners(s).***

Versus

STATE OF RAJASTHAN ***- Respondent(s).***

Law Covered:- ***(A) Bharatiya Nagarik Suraksha Sanhita, 2023 – Ss. 480, 483 – Bail in Bailable Offences – Personal Liberty under Article 21 – Mechanical Disposal by Lower Courts – Petitioners accused of bailable offences - Lower courts dismissed bail applications mechanically without mentioning non-bailable S.309(2) BNS - Violation of natural right to liberty - Held, bail in bailable offences is right, not discretion - Courts must apply mind - Explanations from judicial officers unsatisfactory - Bail granted - Regret for unlawful detention expressed - Directions to DGP and Registrar. (Paras 1-18)***

(B) Constitution of India – Article 21 – Personal Liberty – Scope of – Expression 'personal liberty' widest amplitude - Freedom from physical restraint - Includes right to live with dignity - Not mere animal existence - Deprivation only by just, fair, reasonable procedure - Arrest power to be exercised judiciously - Not routine - Justification required. (Paras 3-12)

Facts:- *Petitioners filed bail application u/s 480 BNSS for bailable offences, denied by Magistrate and ADJ mechanically. High Court granted bail, criticized lower courts for violating Art.21 liberty, sought explanations, regretted 43-day detention, directed DGP to act against IO, Registrar to inform Guardian Judge.*

Law of relief:- ***Bail in bailable offences is right, not discretion.***

Counsel:-

For Petitioners: *Mr. Rajesh Maharshi, Mr. Devanshu Saini.*

For Respondent**(s):** *Mr. N.S. Dhakar, PP, Mr. Tapesh Agarwal, PP.*

Cases Referred:-

1. *Maneka Gandhi Vs. Union of India: AIR 1978 SC 597 (Para 4)*

2. Moti Ram vs State of MP: (1978) 4 SCC 47 (Para 11)

a

JUDGMENT

Anil Kumar Upman, J.: -

1. While granting bail to the petitioners, explanation was sought by this Court from the concerned Judicial Magistrate who extended
b police or judicial remand of the petitioners and dismissed the bail application filed by them under Section 480 BNSS, although the accused-petitioners before him/her are accused of bailable offences. Learned ADJ was also directed to place his explanation before this court who further dismissed the bail application filed by the
c petitioners under Section 439 Cr.P.C.

2. In pursuance of directions issued by this Court, the explanation has been submitted by the concerned judicial officers. This Court is not satisfied with the explanation as it has made an attempt in showing
d that the ingredients of Section 309(2) BNS were also present on the record, which being a non-bailable offence, led to the dismissal of the bail pleas. But a careful perusal of the clarification/explanation as well as bail rejection orders passed under sections 480 and 483 BNSS make it clear that Section 309(2) has not been mentioned anywhere in the bail rejecting orders and it is also evident that the bail petitions filed by the
e petitioners were disposed of in a mechanical manner.

3. Personal liberty is a priceless treasure for a human being. It is essentially a natural right. No one would like to lose their liberty. People from centuries have fought for liberty, for absence of liberty
f causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society.

4. The expression 'Personal Liberty' in Article 21 of the Constitution is of the widest amplitude and it covers a variety of rights which go to constitute personal liberty of a person and some of
g them have been raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution. 'Personal Liberty' under Article 21 of the Constitution primarily means freedom from physical restraint of person by incarceration or
h otherwise. The concept of "right to life and personal liberty" guaranteed under Article 21 of the Constitution includes the "right to live with dignity" and it does not mean mere animal like existence of life. After the Hon'ble Supreme Court's decision rendered in the case of "Maneka Gandhi Vs. Union of India: AIR 1978 SC 597", Article 21 of the Constitution now protects the right of life and personal liberty of

citizen not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law provided that the procedure is just, fair and reasonable.

5. With anguish and pain, this Court observes here that the learned Magistrate as well as learned Additional District & Sessions Judge failed to exercise their discretion in right perspective and in a very casual manner, decided the bail applications, placed before them. In bailable offenses, bail is considered a matter of right, not discretion. If the accused is ready and willing to provide the necessary bail bonds or security, the police or court cannot refuse to grant bail.

6. Every arrest has a victim and an accused. Every arrest is also a relief and a pain. It is a critical part of the justice system. All arrests have to be justified and be based on evidence and pave the way for justice. It is to be scrutinized closely by all supervisory authorities accountable including judiciary. Arrest/detention has so many psychological impacts on the personality of the accused or on the person who has been detained particularly when such arrest or detention has been made in absence of proper evidence. Such person faces emotional and psychological trauma, damage to reputation and future opportunities as well as financial burden.

7. Day first when an accused is brought before the Magistrate by the police, it is mandatory for the learned trial magistrate to consider the entire documents submitted along with the case dairy and the evidence adduced in support of complaint in order to find out prima facie case against the accused to send him in police or judicial custody as the case may be. Initiation of the criminal proceedings is not mere formality for the learned magistrates and when accused is brought before them then learned magistrate is not to act as a mouth piece or as a post office for the prosecution. It is expected from the learned magistrate to examine the material produced by the investigation agency and to examine case against the accused prepared by the police. It is true that at that stage, meticulous examination of evidence is not required but for limited purpose of grant of police or judicial custody, the learned magistrates are at least, required to apply judicial mind as initiation of criminal prosecution is a very serious issue because criminal action against a party means they have to deal with police, court hearings, loss of reputation and a variety of other kinds of pressure.

8. The power of arrest allows police to apprehend individuals suspected of committing crimes, typically without a warrant for serious "cognizable" offenses and under specific conditions for "non-cognizable" offenses or to prevent further crimes. The use of this power is governed by legal provisions like Section 35 of BNSS, emphasizing necessity for investigation or preventing evidence tampering, with guidelines from human rights bodies advising to use it sparingly and avoid unnecessary force, especially in bailable offenses or when less intrusive means are available.

9. The power of arrest is distinct from its use, with the former being the legal authority to apprehend someone and the latter referring to the justification, necessity, and proper procedure in applying that power. Police officers possess the power to arrest under specific laws but must exercise it reasonably, not routinely, after a reasonable belief of complicity and the necessity to make the arrest. The use of the power must be justified and not a mere formality, as arrests can cause significant harm to a person's reputation and self-esteem.

10. The existence of the power doesn't automatically justify its use. An arrest can only be made if there's a reasonable satisfaction of the complaint's genuineness and a reasonable belief in the person's complicity, along with the necessity of the arrest to prevent further offenses, tampering with evidence, or influencing witnesses.

11. In light of "Moti Ram vs State of MP: (1978) 4 SCC 47", the distinction between the power of arrest and its use is critical, emphasizing that the power granted by law must be exercised judiciously and with a sense of responsibility, not as a tool of harassment or oppression. The case highlighted that while police possess the power to arrest, this power is not absolute and should not be used as a routine tool, but rather as a measure of last resort, demanding strict adherence to the principles of justice and individual liberty.

12. Perusal of the record would establish some undisputed facts such as the arrest of the petitioners was made on 16.06.2025 under ballable offences as indicated from their arrest memos dated 16.06.2025 and as per factual report/ case diary produced by the investigation agency before the learned magistrate as well as learned ADJ, only ballable offences were found to be made out against the petitioners. Another undisputed fact is this that bail application was filed before this court on 27.06.2025 and same was decided (allowed)

on 28.07.2025 and as such petitioners had to remain in custody for 43 days despite the fact that alleged offenses committed by the petitioners are bailable in nature. In such a situation, to some extent this Court is also responsible for the detention of the applicants in a case of bailable nature as bail application filed by the petitioners could not be taken up on priority due to heavy pendency of bail applications before this court.

13. In these facts and circumstances, I am of considered opinion that learned Magistrate as well as learned Additional District & Sessions Judge has adopted casual approach in deciding bail application filed by the petitioners under Sections 480 and 483 BNSS respectively.

14. As a judge of a Constitutional Court, I have no hesitation in saying that in this case, whether it is the investigating officer or the advocate appearing for the accused petitioners and public prosecutors for State in the trial Court or the judicial officers involved in the judicial proceedings, everyone has failed to discharge their responsibility/duty properly.

15. In a case of bailable nature, the accused petitioner had to remain in police and judicial custody for about 43 days, for which the court expresses regret.

16. Office is directed to send a copy of this order to DGP. The DGP is further directed to seek clarification/explanation from the concerned investigating officer for making arrest of the petitioners in a case of bailable nature and take further action accordingly.

17. Registrar (Judicial) Rajasthan High Court Bench Jaipur is directed to bring the matter to the notice of the concerned Hon'ble Guardian Judge.

18. Petitioners are free to take legal recourse, if they feel that their fundamental rights have been infringed in this case.

***Result*:-** Bail granted to the petitioners.