

Rajasthan High Court

Bhim Saini @ Bhimraj Saini S/O ... vs State Of Rajasthan on 10 June, 2022

Bench: Farjand Ali

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No.3255/2022
Bhim Saini @ Bhimraj Saini S/o Trilok Chand Saini, Aged 43
years, R/o In front of Honda Showroom near Laxmi Dharam
Kanta, bye pass Bundi. At present residing Veer Sanwermal
Colony, Police Station Mahaveer Nagar, Kota, Raj.
(At present confined in District Jail, Bundi)

----Petitioner

Versus

State of Rajasthan

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No.4091/2022
Shubham @ Golu Son of late Shri Pratap Singh Bhadana, R/o
House No.1022, R K Puram, Kota, Police Station R K Puram Kota
City, District Kota, (Raj.)
(At present confined in District Jail, Bundi)

----- Petitioner

Versus

State of Rajasthan

-----Respondent

For Petitioner(s) : Mr. A.K. Gupta, Sr. Counsel with
Mr. Aniket Sharma, Mr. Anil Upman

For Respondent(s) : Mr. Ghanshyam Singh, GA/AAG,
Mr. Mangal Singh Saini, PP
Mr. R.P. Vijay
Mr. Digvijay Singh, C.I. SHO
Taleda, Bundi

HON'BLE MR. JUSTICE FARJAND ALI
Order

Date of Pronouncement : 10/06/2022

Date of Reserve : 26/05/2022

Reportable

BY THE COURT :

The present bail application(s) have been preferred on behalf of the accused petitioner(s) Bhim Saini @ Bhimraj Saini and (2 of 21) [CRLMB3255/2022] Shubham @Golu, who are in judicial custody in connection with F.I.R. No.340/2021 registered at Police Station, Taleda District Bundi, for the offences punishable under Sections 302, 201, 120- B and 364 of I.P.C.

Both bail applications have been moved separately bearing bail applications No. as 3255/2022 and 4091/2022 respectively. Since, both the matters have germinated from the same F.I.R. and were tagged together therefore, it is deemed appropriate to decide the application(s) filed herewith, through a common order with the consent of the parties.

Bereft of the elaborated details, the facts necessary for the adjudication of the bail application(s) are that, on 23.09.2021 at about 18.15 hours the aforesaid FIR came to be registered at the instance of the complainant named Ramdev who is the father of the deceased Azad @ Pawan. The complainant stated that he is a resident of bundi, from last one and a half years his son started living in kota. On 22.09.2021, dead body of his son was observed in "Barda of Jakhmund". It was apprehended by the complainant that some unknown persons after committing murder of his son, tied his dead body by Solid iron Chains(Janjheers) and drown it in the water of Jakhmund ka Barda. The Complainant, upon being informed had reached Bundi Hospital where the dead body of his son was kept in Morgue. He well identified his body and pointed out that some unknown accused persons had murdered his son.

(3 of 21) [CRLMB3255/2022] At the outset, learned counsel for the petitioner(s) opens his arguments and submits that the petitioners have not been named in the FIR and falsely been implicated in the matter. It was further argued by the learned counsels for the parties, that there is no eye witness to the incident and more so at the time of the alleged incident the petitioners were not even present at the place of occurrence.

It was submitted by the learned counsel for the petitioners that the case of the complainant is squarely hinged upon the circumstantial evidence. More so, the available material on record also does not suggest the role and guilt of the petitioner for the said alleged incident.

Shri Arvind Gupta, learned senior counsel with Mr. Aniket Sharma and Mr. Anil Upman argued that merely on the statements of the co -accused in the interrogation note and call record with the accused persons, the accused petitioners have falsely been roped in the present matter, and as a matter of fact the chargesheet in the matter had already been filed before the court concerned which also suggest no role of the Petitioners in the case in hand; more so no purpose would be served by keeping the accused in the judicial custody in such a bleak chance of securing conviction against the accused petitioners; therefore, the accused petitioners should be given the benefit of bail and be enlarged on bail.

In Juxtaposition, Shri Ghanshyam Singh learned GA Cum AAG upon the direction of this court, had put in his appearance in (4 of 21) [CRLMB3255/2022] the matter on behalf of the State, who had strongly opposed the bail application while imploring the attention of this court towards strong circumstantial events connecting the accused petitioners in the present matter.

Learned AAG at the very outset, placed heavy reliance over the motive of all the accused persons for committing murder of the deceased. As the accused petitioner Bhima and his family members were not pleased with the marriage of his sister Jiya with the deceased Azad @ Pawan, and for the reason, he along with the other accused person had conspired and committed the alleged act of murder.

Learned AAG points out the autopsy report which clearly suggests that the death of the deceased was homicidal due to ante mortem Strangulation; he drew attention of this court towards the statements of Smt. Rammurti recorded under 161 CrPC, who states the last location of the deceased in the company of accused persons. He further strenuously urged that statements of the witness Yogesh Kumar cannot be bypassed, who reveals that the death threats were given by the accused Bhim Saini to Azad (deceased) who had also posted the same on his Instagram handle. Another witness shri Ajay Jain, the shop vendor who sold chains etc. to the accused person which were used in the commission of the crime. He also pointed towards the CCTV footage of the accused at Jodhpur where they came to destroy the phone of the deceased as well as the call details between all the accused persons during the relevant point of time.

It is submitted by learned AAG that all the circumstantial events are unerringly pointing towards the guilt of the accused (5 of 21) [CRLMB3255/2022] persons as the same goes on to establish chain of events connecting them to the alleged offence so committed by them in furtherance of their common intention and motive. Thus, the bail application of the petitioners deserves to be dismissed.

Heard learned counsel(s) for the petitioner(s), as well the respondent State; perused the order so assailed, and other material made available on record.

This court is well conscious of factum of the case as well as the gravity of the offences as alleged against the accused petitioners. Needless, to observe that every citizen of this country is abided and governed by rule of Law and one has to follow it as no one is above the Law, as in fact no one can. Every citizen is principally embodied to access their fundamental right and legal right peacefully and if it is being hindered by any one, the rule of law and the procedure established by law is there for its recourse, but no citizen is allowed to take the course of law in its own hands, strictly not.

The instant case has its own peculiar facts which are circumstantially diffusing smell of intent-full homicidal death on account of Honour and prestige i.e. having a strong trait of honour killing.

I have bestowed my anxious endeavours to address and appreciate the chain of events and transaction took place just before, during and after the alleged incident took place. The instant matter requires a sense of familiarity with the alleged factual backdrop of the entire case which goes to the roots of the case and how certain events had germinated the motive in the consciousness of the accused petitioners for conspiring and (6 of 21) [CRLMB3255/2022] evolving the occasion and the ultimate effect of ensuring murder of the deceased Azad @ Pawan.

First in the series of events, the deceased eloped with the petitioner's sister Jiya and entered into a marital relationship after solemnising marriage on 09.04.2021. In pursuant to her elopement, an MPR No. 17/2021 came to be registered at Police Station Mahaveer Nagar, and during the course of

the search, the agency traced out both of them from Ujjain Madhya Pradesh on 12.04.2021. Indisputably, the sister of the accused petitioner namely Jiya, is a major girl. As she hasn't levelled any allegation nor any report came to be filed against the deceased Azad @ Pawan therefore, from the circumstances, at this stage, it can safely be inferred that she went along with the deceased at her own free will and volition.

Thereafter, in a dramatic manner, the girl agreed to accompany with the accused petitioner Bhim Saini and went along with him. Being dejected by this, on 11.06.2021, the deceased filed a Habeas Corpus Petition No. 184/2021, before the Division bench of this court on the ground that his wife Jiya has been illegally detained by her family, upon which the Division Bench of this Court had issued notices in the matter.

The power on behalf of the accused -petitioner in the Habeas Corpus Petition came to be filed on 12.07.2021 and as per the prosecution story on 13.07.2021, the deceased was called by the accused persons to settle the matter by entering into compromise and resultantly on 14.09.2021, the Habeas Corpus Petition came to be withdrawn by the deceased on account of compromise arrived between them. The dates and events in the (7 of 21) [CRLMB3255/2022] present case are much relevant in order to have a better overview of the matter.

While observing the statements recorded under Section 161 Cr.P.C of Smt. Rammurti Bai, the landlord of the deceased, the same tends to establish the last proximity of the deceased with the accused petitioners, as she had stated in her statements that the deceased had come to meet her on 17.09.2021 to return Rs. 20,000/- which the deceased borrowed from her for marriage. She further stated that the deceased had told her about the compromise with the Bhima Saini and he will now come along with his wife. Furthermore, she stated that on 18.09.2022, the deceased had called her at least 5-6 times and said that he is with Bhima Saini, Arjun Saini, Ravikant Dhakad and will come late at night and thereafter his phone was switched-off; and after few days she came to know that Azad has been murdered. Whether or not her statement would come under Clause (1) of Section 32 of Indian Evidence Act? This court at this stage refrains from observing further on the issue as the same is subject matter of trial.

This Court further sailed towards the statements of Yogesh Kumar, brother of deceased, who fortifies that his brother received death threats from the accused petitioner Bhim Saini. He also stated that chat regarding the same was also given to the agency which was given to him by one Dinesh Kumawat. Surprisingly, the statement of Dinesh Kumawat has not been recorded by the agency. Whether it was wilful/deliberate or otherwise this court at this stage doesn't want to pass any comment on this point;

(8 of 21) [CRLMB3255/2022] however this witness would have been an important witness for the prosecution.

The deceased had also uploaded the chat on his Instagram ID akkumawat830 on 20.05.2021 specifically stating that "bhai mujhe jaan se maarna chahta hai bhim saini. Shaadi karli hai uski ladki se." at the stage of hearing of bail plea this Court can very well consider the above fact which

strongly pointing towards the motive and possible guilt of the accused person.

That apart from the statements, other relevant fact is the homicidal death which the post mortem report establishes. The Medical Officer has opined that the death was caused due to strangulation. It was further noted in the report that there was a fracture of greater horn of thyroid cartilage, which is usually the result of blunt trauma, e.g. a punch, or strangulation; and all the injuries were ante mortem in nature. These circumstances shed away the doubt over the death of the deceased which clearly speaks volumes of an active human interference to lead to a desired result of homicidal death. When the body was taken out from water pond it was found tied with heavy iron chain (sankal) along with two heavy war hammer (ghan) and an heavy iron jack which were collectively tied with chain with the aid of iron bolts. It seems that the same has been done with an intent to conceal the body under the water. The body was found on 22.09.2021 and as per Autopsy Report, the death occurred around 5 days ago. This is an estimated opinion. The deceased was missing and not being heard of since 18.09.2021. These chain of events are strongly airing towards the complicity of the accused persons in the alleged (9 of 21) [CRLMB3255/2022] crime. On 18.09.2021 itself, two war hammers (ghan) and heavy iron chain (sankal) were allegedly purchased from the shop of witness Ajay Jain and the payment of Rs 1432/- were made by the brother of the petitioner Arjun Saini by his phonepe account, one of the accused persons.

This court further took notice of the fact regarding the seizure of the alleged vehicle which is alleged to have been used in the commission of the offence as well as the factum of blood stains found on the seats and hair strand from vehicle Scorpio, which were collected by the investigating agency and were forwarded for the forensic compliance and the report is awaited. The CCTV footage of Abhay Command Centre where the accused were seen in Jodhpur at relevant period of the alleged incident cannot be left to consider.

The substratum of the present case predominantly based upon circumstantial evidence, as no direct evidence or eye witness is at stand-by for the same. More so, this Court is very well aware of the fact that the present case of the accused petitioner(s) is to be dealt to the extent of adjudication on the issue of bail only. Thus, the appreciation and meticulous evaluation of the facts and circumstances are not ordinarily warranted. But exercising Judicial discretion as well as invoking the sense for exercising judicial discretion lies with the Court. In order to reach on to a plausible conclusion, over an issue placed before it, the character of such relevant facts and circumstances of the case are important. As the character of relevant facts and circumstances tends to display two probable sides of an issue; there the judicial discretion recognises (10 of 21) [CRLMB3255/2022] that side of an issue which is more close and pregnant with sound legal traits based upon the parameters of Rule of Law. Thus, there is a fine distinction in between final hearing on merits and hearing a bail plea under section 439 CrPC.

Hon'ble the Supreme Court in Ram Govind Upadhyay vs. Sudarshan Singh - (2002) 3 SCC 598, had emphasized as follows:

That a court exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail cannot be granted as a matter of course, bereft of

cogent reasoning, this Court observed as follows:

"3. Grant of bail though being a discretionary order-- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail -- more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

Similarly, in addition to the aforesaid, regarding detailed examination of the case at the stage of bail the Hon'ble Supreme Court, in Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr. - (2004) 7 SCC 528, has held that:

(11 of 21) [CRLMB3255/2022] "although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail."

The fact of the present case is actively pregnant with motive. As on the pitch of relevancy; motive remains a determining factor for washing away clouds over certain facts and pushes blurred discoloured events towards clarity by establishing a logical link/relation between certain acts so committed in thrust of a desired result. Section 8 of the Indian Evidence Act, 1872 deals with relevance of motive in criminal trial. It reads as under:

"8. Motive, preparation and previous or subsequent conduct. -- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or (12 of 21) [CRLMB3255/2022] relevant fact, and whether it was previous or subsequent thereto.

From the bare perusal of the section it can be said that Motive is a relevant fact in itself, in other words it can be said that it is like a gravitational force which pulls a person's consciousness rather drives him towards to do or omit to do a particular act for the desired result.

In present matter, the accused petitioner could not seem to have digested the fact of relationship of his sister Jiya with deceased Azad@ Pawan. Certain events thereafter appears to have added fuel in the fire which had germinated the fact in issue i.e the murder of Azad @ Pawan.

The due value and importance of motive has also been recognized by the Hon'ble Supreme Court in *Amitava Banerjee Vs State of West Bengal*, (2011) 12 SCC 554 wherein it has been observed that:

"....motive for the commission of an offence assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of the offence is available."

Similarly, Supreme Court in *Shivaji Genu Mohite V State of Maharashtra*, AIR 1973 SC 55 observed regarding importance of existence of motive in a criminal case as under: -

"In case the prosecution is not able to discover an impelling motive, that could not reflect (13 of 21) [CRLMB3255/2022] upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye- witness is rendered untrustworthy."

At this stage, it would be appropriate to advert certain judicial pronouncements of the Hon'ble Supreme Court on the issue of grant of bail which are essentially required for it and the same are stated as neath I. In *Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh -- (1978) 1 SCC 240*, Krishna Iyer, J., elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial, has laid down the key factors that have to be considered while granting bail, which are extracted as under:

"7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

(14 of 21) [CRLMB3255/2022]

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record - particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in

irrelevance."

II. Further Hon'ble Supreme Court in Prahlad Singh Bhati vs. NCT of Delhi & ORS - (2001) 4 SCC 280 . had carved out relevant aspects which should be taken into consideration by a court while adjudicating bail application. The same may be extracted as follows:

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the (15 of 21) [CRLMB3255/2022] accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

III. In Prasanta Kumar Sarkar vs. Ashis Chaterjee -- (2010) 14 SCC 496 had observed that

where a High Court has granted bail mechanically, the said order would suffer from the vice of nonapplication of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under:

"It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) (16 of 21) [CRLMB3255/2022] reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail."

IV. In Neeru Yadav vs. State of UP & Anr. - (2016) 15 SCC 422, Hon'ble supreme Court carved out the considerations to be placed at balance while deciding to grant bail, it is observed in Paragraphs

15 and 18 as under:

"15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

It can rightly be observed that there is no straight jacket formula for grant and dismissal of a bail, but guiding by the judicial pronouncements referred supra, it is clear that every case has its own peculiar facts and circumstance attached to it.

The issue of bail shall be considered in light of the same and that too judiciously and carefully after taking into consideration the overall circumstances of the case; manner in which it has been committed or discovered ordinarily; which also includes the (17 of 21) [CRLMB3255/2022] appreciable facts from the point of view of an accused aiding him as well as from the victim side too in mitigating it. So that the final balance on the issue could be seen tilted towards that side which carries or place itself more near to the sound legal exposition on the issue of bail.

After going through the chargesheet as well as the other relevant material made available on record, prima facie it appears that the deceased and the sister of the accused petitioner were in relationship, the family of the girl were not pleased with the same therefore, both of them eloped but apprehended by the police. The girl was made to accompany the petitioner side. The deceased filed a habeas corpus petition wherein notices were issued, respondent appeared in the same. As alleged, compromise talks were made in between them and accordingly the deceased withdrew the petition and in a close proximity of time; the boy went missing and after four days his dead body was found lying in pond tied with the heavy iron material. The cause of death was not due to drowning rather it was from strangulation which normally occurs when requisite compression is made on the neck so as to make a person die due to suffocation. The chain of events tentatively showing a well designed conspiracy and the complicity of every accused person is very much available on record.

From the circumstances, it can be assumed that the petitioners are mighty and influential persons. The circumstance of non recording of statements of girl Jiya, Dinesh, and the lawyer before whom the compromise talks were made; raises serious (18 of 21) [CRLMB3255/2022] doubts and concerns. The possibility of winning over the witness at this stage as well as hampering of the same could not be ruled out.

Thus, after going through the conspectus of overall facts and circumstances of the case and the material available on record and otherwise, I am of the firm view, that the present case is not a fit

case for extending bail to the accused petitioners at this stage. Resultantly, both the bail applications filed by the accused Bhima Saini @ Bhimraj and Shubham @ Golu are hereby dismissed.

It is made clear that any observation in this order as made hereinabove, shall not have any impact in the present case at any stage of trial as well as the trial court shall not be influenced by the bail order while deciding the case on merit. The same is observed in respect of limited issue of adjudicating the bail applications and not otherwise.

Before parting with, this Court had observed that the investigating agency had left some facts unattended but the prosecution story had referred those facts during the course of hearing. Like; as the statements of Jiya, the wife of the deceased and sister of the accused Bhim Saini; whose statement could have been very relevant for the present case; the statements of the lawyer where meeting was held between the accused persons and the deceased for the purpose of compromise on the premise of which the habeas corpus petition was withdrawn by the deceased, as alleged; and non-recording of the statement of one Dinesh who happened to be friend of the deceased and who forwarded the chat to witness Yogesh. Non annexing the CDR along with the (19 of 21) [CRLMB3255/2022] chargesheet; which appears to be wilful carelessness on the part of investigating officer, this Court makes stark aversion over the above act of the agency in such a serious case where a well planned murder of a young boy has been committed by the accused persons in a very gruesome manner.

Needless to observe that Section 173(8) of CrPC being a saving clause provides for filing of the supplementary charge sheet in cases where the investigation officer obtains further evidence, be it oral, documentary or any scientific report(s) etc. The relevant sub clause of Section 173(8) CrPC is hereby reproduced:

173. Report of police officer on completion of investigation :-

..

.....

.....

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

That dealing with the issue for filing a supplementary (20 of 21) [CRLMB3255/2022] chargesheet under Section 173(8) Cr.P.C. where the agency collects additional evidence, the Hon'ble Supreme court in Central Bureau Of Investigation vs R.S. Pai And Another, 2002 has held that:

"From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in Narayan Rao v. The State of Andhra Pradesh [(1958) SCR 283 at 293] and it was held that the word 'shall' occurring in sub-section 4 of Section 173 and sub-section 3 of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to (21 of 21) [CRLMB3255/2022] investigation. In such cases, there can not be any prejudice to the accused.

In view of the above, this Court while invoking and exercising its extraordinary jurisdiction, directs the Superintendent of Police, Bundi to appoint a competent officer not below the rank of Add. SP to conduct further investigation in the matter under sub-clause 8 of section 173 CrPC and to file a supplementary chargesheet before the trial court taking all the other left out relevant evidences in the matter, which may include statements and documents collected, received subsequent to filing of the main chargesheet. The said task shall be completed within 60 days from the date of receipt of this order. A copy of this order be directly sent to the S.P. Bundi to do the needful.

It is further directed to the trial Court that upon filing of the supplementary chargesheet; as directed above; relevant witnesses or documents which the trial court feels just and appropriate; be taken on record and shall proceed in accordance with law. The thrust for the justice should not be defeated merely on technical points

rather it shall be ensured that the justice should be done above the technical barriers as the procedure is the handmade of justice.

The bail applications are decided accordingly.

(FARJAND ALI),J Powered by TCPDF (www.tcpdf.org)