**Court No. - 23**

**Case :-** APPLICATION U/S 482 No. - 2613 of 2023
**Applicant :-** Arvind Singh
**Opposite Party :-** State Of U.P. Thru. Secy. Home Deptt.
**Counsel for Applicant :-** Diwaker Singh,Nikhil Sonkar
**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajay Bhanot,J.**

1. Heard Sri Nikhil Sonkar, learned counsel for the applicant and learned AGA for the State.

2. The applicant is an employee of the offending company. The applicant had no role to pay in the fraudulent policies for those responsible in day to day functioning of the company.

3. The applicant has been enlarged on bail in all six cases lodged against him. The trial court has fixed a separate surety for each case. However he has not been set at liberty as he is unable to arrange sureties in aforesaid six cases. The aforesaid cases are connected to the offences committed by the company against different investors.

4. The prayer made by Sri Nikhil Sonkar, learned counsel for the applicant is that the applicant may be permitted to produce a single surety for the aforesaid six cases so that he is set at liberty in pursuance of the bail order. The learned counsel contends that he cannot make good the said demand of six separate sureties due to financial penury. Relying on various authorities of constitutional courts it is submitted that the demand of six sureties is arbitrary. Learned AGA contends that sureties serve an important role. But fairly admits that sureties

should be reasonable.

> "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread," ~Anatole France

5. The right of bail is entrenched in the charter of fundamental liberties of the Constitution by high judicial authorities. The necessity of appropriate sureties for a criminal trial cannot be denied. The trial court while determining the sureties needs to satisfy twin requirements. The trial court has to balance and correlate the imperative of setting prisoners at liberty pursuant to the bail order and securing their fundamental rights with the demand of producing adequate sureties as an assurance of their regular attendance at the trial and a deterrence against flight from justice.

6. The trial court should factor the socioeconomic circumstances of the prisoner while fixing sureties. Many persons belonging to the downtrodden sections of the society simply do not have requisite social standing to arrange multiple sureties, or the financial clout to satisfy prohibitive surety demands. Persons belonging to poor economic strata or socially marginalized segments of the society may not be set at liberty despite being enlarged on bail in case inordinate sureties are demanded of them or they are required to submit multiple sureties. Onerous surety conditions which have no connection with the socio-economic status of the prisoner will negate the order granting bail, and undermine the fundamental right of liberty of the prisoner guaranteed under Article 21 of the Constitution. The purpose of sureties is dissuasive in intent, but

unrealistic surety demands are punitive in effect. The Indian Constitution does not put a price tag on liberty.

7. The report of legal aid committee headed by Justice P.N. Bhagwati (as CJ of Gujarat High Court) later Chief Justice of India (as His Lordship then was) dealt into the infirmities in the system of bails which put liberty beyond the reach of poor prisoners since the latter could not furnish bail even in a small amount. The relevant parts of the report are extracted hereunder:-

> "..The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount." (emphasis added)
>
> The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences, namely: (1) though presumed innocent he is subjected to the psychological and physical deprivations of jail life; (2) he loses his job, if he has one, and is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily

> on the innocent members of the family, (3) he is prevented from contributing to the preparation of his defence; and (4) the public exchequer has to bear the cost of maintaining him in the jail."

8. The endeavour to redeem the constitutional promise of equality for all citizens and a realistic understanding of the socio-economic landscape of the country underlay the discussion on the rationale and the scope of sureties in a bail in **Moti Ram and others Vs State of Madhya Pradesh** reported at **(1978) 4 SCC 47**.

9. The narrative in **Moti Ram (supra)** commenced with a ringing endorsement of the Gujarat Report (supra).

10. **Moti Ram (supra)** opined that bail is comprehensive enough to cover release on one's own bond with or without surety.

11. The relevant provisions of Chapter XXXVII which is the nidest of law of bail were explained as follows in **Moti Ram (supra)**:-

> "24. Primarily Chapter XXXIII is the nidus of the law of bail. Section 436 of the Code speaks of bail but the proviso makes a contradistinction between 'bail' and 'own bond without sureties'. Even here there is an ambiguity, because even the proviso comes in only if, as indicated in the substantive part, the accused in a bailable offence 'is prepared to give bail'. Here, 'bail' suggests 'with or without sureties'. And, 'bail bond' in Section 436(2) covers own bond. Section 437(2) blandly speaks of bail but speaks of release on bail of persons below 16 years of age, sick or infirm people and women. It cannot be that a small boy or sinking invalid or pardanashin should be refused release and suffer stress and distress in prison unless sureties are haled into a far-off court with obligation for frequent appearance: 'Bail' there suggests release, the accent being on undertaking to appear when directed, not on the production of sureties. But Section 437(2) distinguishes between bail and bond without sureties.
>
> 25. Section 445 suggests, especially read with the marginal note,

> that deposit of money will do duty for bond 'with or without sureties'. Section 441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively understood. Section 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release with sureties will stultify the sub-section; for then, an accused released on his own bond without bail i.e. surety, cannot be conditioned to attend at the appointed place. Section 441(2) uses the word "bail" to include "own bond" loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Section 441(1) compels a contrary meaning.
>
> 27. The slippery aspect is dispelled when we understand the import of Section 389(1) which reads:
>
> "389. (1) Pending any appeal by a convicted person the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."
>
> 12. The Court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse off than a convict or that the power of the court to release increases when the guilt is established. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation, pro tempore without sureties while an undertrial cannot is a reductio ad absurdem."

12. The intimate nexus of bails and sureties with Part III of the Constitution undergirded the above stated enunciations of law by the Supreme Court in **Moti Ram (supra)**:

> "30. If sureties are obligatory even for Juveniles, females and sickly accused while they can be dispensed with, after being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release only with sureties while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean viz. a generic expression used to describe judicial release from custodia juris. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigents's rights, we hold that bail covers

> both — release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.
>
> 31. Even so, poor men — Indians are, in monetary terms, indigents — young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances — put whatever reasonable conditions you may."

13. **Moti Ram (supra)** also evidences the judicial vision of India one as a single geographical unit and adds judicial content to the indissoluble unity of India:

> “To add insult to injury, the magistrate has demanded sureties from his own district. (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamilian or Andhra to do if arrested for alleged misappropriation or them or criminal trespass in Bastar , Port Blair ,Port Blair . Pahalgaam of Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha . Judicial disruption of Indian unity is surest achieved buy such provincial allergies. What law prescribes sureties from outside or non- regional linguistic, some times legalistic. applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic , sometimes linguistic, some times legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority. including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies theat even a vakalat 6-526 SCI/78 or affirmation made ill any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.”

14. The courts were long alerted to the plight of poor prisoners and their inability to realise their basic freedoms in the face of mechanical fixation of surety amounts. The Supreme Court in **Hussainara Khatoon and others Vs Home Secretary, State of Bihar, Government of Bihar, Patna** reported at **(1980) 1**

**SCC 81** set its face against adoption of antiquated methods while fixing surety and concluded that this system of bail operates very harshly against poor by holding thus:-

> "3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family.
>
> 4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our

> Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course, it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pre-trial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our courts in regard to pre-trial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond, it can safely release the accused on his personal bond."

15. Advocating a more fact based approach in tune with social realities to serve justice **Hussainara Khatoon (supra)** mandated the consideration of the roots of an accused in the community and stated the law as follows:-

> "To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused:
>
> "1. The length of his residence in the community,
>
> 2. his employment status, history and his financial condition,
>
> 3. his family ties and relationships,
>
> 4. his reputation, character and monetary condition,
>
> 5. his prior criminal record including any record of prior release on recognizance or on bail,
>
> 6. the identity of responsible members of the community who would vouch for his reliability,
>
> 7. the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance, and
>
> 8. any other factors indicating the ties of the accused to the

community or bearing on the risk of wilful failure to appear."

If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused, his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the Court may not release the accused on his personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the Court in releasing the accused on his personal bond and particularly in cases where the offence is not grave and the accused is poor or belongs to a weaker section of the community, release on personal bond could, as far as possible, be preferred. But even while releasing the accused on personal bond it is necessary to caution the Court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond. Moreover, when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the Court—and what we have said here in regard to the court must apply equally in relation to the police while granting bail—that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond."

16. The discussion has the advantage of the judgment rendered by the Karnataka High Court in **Afsar Khan Vs State** reported at **I.L.R. 1992 KAR 2894**, wherein while dealing with the provisions relating to grant of bail and sureties the court recognised the legislative faith in the judicial system and cast following duties on the courts;

> “7. A reading of the entire Chapter which deals with the provisions relating to bail, does not say that when a person is released on bail, the Court can also insist upon him to give cash security. After all, the object of granting bail is to see that the liberty of an individual is extended. Of course, when an accusation is made against a person, in the event of his release, it is the duty of the Court to see that the interest of the State and the public is safeguarded. For that purpose, the Court is empowered to insist upon appearance of the accused whenever so required either by the Police or Court either for investigation or to take up trial. During this period the Court can also warn the accused of his activities or movements in any way causing a fear or resulting in tampering with the prosecution evidence. While the Court exercises its discretion, whether it is under S. 437 or 438 or 439, it shall exercise the same properly and not in an arbitrary manner. The discretion exercised shall appear a just and reasonable one. It is true that no norms are prescribed to exercise the discretion. Merely because, norms are not prescribed for the Court to exercise discretion under Ss. 437, 438 or 439 that does not mean the discretion shall be left to the whims of the Court. Guiding principle shall be as indicated earlier with sound reasoning and in no way opposed to any other law. The Legislature has given this discretion to the Court keeping full faith in the system of administration of justice. While administering justice; it is the duty of the Court to see that any order to be passed or conditions to be imposed shall always be in the interest of both the accused and the State. The conditions shall not be capricious. On the otherhand, it shall be in the aid of giving effect to the very object behind the discretion."

17. The Madras High Court in **Sagayam @ Devasagayam Vs The State of Tamil Nadu** reported at **2017 (3) CTC 291**, emphasised the need for following sound judicial principles while imposing bail conditions and proscribed imposition of onerous bail conditions for sureties as the same may amount to denial of bail:

> "14. Grant of bail is an exercise of judicial discretion by the Court based on consideration of several factors. Imposition of bail condition is also part of such exercise. It should be based on sound judicial principles. It should not be arbitrary, mechanical. Imposition of bail condition should not be for the sake of imposition of bail-condition.
>
> 15. Under the guise of imposition of bail-condition, there shall not be imposition of any onerous condition. Conditions which are in the nature of and which could not be complied with by the accused would be like granting bail by one hand and taking it away by

another hand.

16. Imposition of onerous and stringent conditions amount to denial of bail. Actually, our bail system is not based on any cash system. If it is so then poor people have to spend rest of their life in jail itself. That is not the objective of a bail system. The object of bail is to enable the accused to send him out of jail with an assurance to return to the Court to put up an effective defence.

17. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing an heavy amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

18. Reading Sections 440, 441 and 445 Cr.P.C. together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the Court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445 Cr.P.C.)."

18. Further in **Sundar @ Ashok Vs Inspector of Police, T-16 Nazarathpet Police station** (Crl. O.P. No. 993 of 2017 dated 18.1.2017) the Madras High Court held that Court cannot expect every accused or surety to be a propertied person.

19. Reference may also be profitably made to the order of the Supreme Court in **Hani Nishad @ Mohammad Imran @ Vikky Vs. State of U.P.** in Special Leave to Appeal (Crl.) 8915 of 2018, where in the bail condition of producing 31 sureties was found to be onerous, and the prisoner was permitted to execute a personal bond for Rs. 30,000/- which was to hold good for 31 cases.

20. Similar concerns were voiced by Supreme Court in **Satender Kumar Antil Vs Central Bureau of Investigation and another**, reported at **(2022) 10 SCC 51**;

> "83. Under Section 440 the amount of every bond executed under Chapter XXXIII is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed shall not be mechanical and uniform in all cases. It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible of compliance would be defeating the very object of the release. In this connection, we would only say that Sections 436, 437, 438 and 439 of the Code are to be read in consonance. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power under Section 88 of the Code also the said factum has to be kept in mind."

21. More recently the Supreme Court in **Guddan @ Roop Narayan Vs State of Rajasthan** (Criminal Appeal No. 120 of 2023 @ SLP (Criminal) No. 9756 of 2022) reiterated the judicial concern against fixation of excessive conditions which tantamount to refusal to grant bail:

> "15. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.
>
> 16. As has been stated in the Sandeep Jain case (supra), the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail."

22. Finally the Supreme Court in **In Re: Policy Strategy for Grant of Bail (SMWP (Criminal) No. 4/2021 )** issued the following directions:

> "With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:
>
> (1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].
>
> (2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.
>
> (3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.
>
> (4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.
>
> (5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.
>
> (6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.
>
> (7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety. "

23. Mahatma Gandhi shone a light on the eternal dilemma of taking the rightful decision when faced with conflicting choices;

> “I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man [woman] whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny?
>
> Then you will find your doubts and your self melt away."

The talisman of the Mahatma animated the freedom struggle, inspired the Constitution makers and guides Constitutional law discourse in the country Also see para 23 **Moti Ram (supra)**.

24. However despite unequivocal holdings of various constitutional courts the trial courts continue to adopt a rote response to a dynamic problem and approach the issue of fixation of sureties in a mechanical manner and neglect to make requisite enquiries as contemplated in the preceding parts of the judgment. The duties of the trial courts as well as other agencies while fixing sureties can be summed up as under:-

(1) In case a prisoner cannot arrange the sureties fixed by the trial court the former can make an application to the learned trial court for a lesser surety. Material facts relating to the socioeconomic status and roots in the community of the prisoner shall be stated in the application.

(2) Similarly it is bounden duty of the DLSA to examine the status of the prisoners who have been enlarged on bail but are not set at liberty within seven days of the bail order. In case the prisoners cannot arrange for sureties they may be advised and assisted to promptly move an application for refixation of the surety in light of this judgment.

(3) Once the prisoner makes such application the trial court shall make an enquiry consistent with this judgment and pass a reasoned order depicting consideration of relevant criteria for fixing sureties with utmost expedition.

(4) Every trial court is under an obligation to satisfy itself about the socioeconomic conditions of the prisoner and probability of absconding and his roots in the community and fix sureties commensurate with the same. The State authorities or other credible agencies as the court may direct to promptly provide the requisite details.

(5). In case the prisoner is from another State and is unable to produce local sureties, sureties from the prisoner's home district or any other place of his choice determined by the court of competent jurisdiction of the said district and State shall be accepted by the trial court.

(6) The prisoner/counsel may state the details of the socio-economic status of the prisoner in the bail application in the first instance. This will facilitate an expeditious consideration of the issue related to sureties.

25. In the wake of the submissions made by learned counsel for the applicant and the preceding discussion, this Court finds that the demand of multiple sureties made by the trial court was onerous and is unsustainable in law.

26. The right of fundamental liberties of the applicant are being curtailed on account of his poverty and inability to arrange multiple sureties for cases instituted against him.

27. The learned trial court is directed to execute the following directions:

(i) A single surety provided by the applicant shall be sufficient for being enlarged on bail in the following six criminal cases;

1. Cr. No. 230/2022, U/S-34/419/420/406/504/506 IPC, P.S.-Masauli, District Barabanki.

2. Cr. No. 233/2022, U/S-34/419/420/406/504/506 IPC, P.S.-Masauli, District Barabanki.

3. Cr. No. 234/2022, U/S-34/419/420/406/504/506 IPC, P.S.-Masauli, District Barabanki.

4. Cr. No. 641/2022, U/S-419/420/406/427/504/506 IPC, P.S.-Kotwali Nagar, District Barabanki.

5. Cr. No. 1003/2022, U/S-420/406/409/504/506 IPC, P.S.-Kotwali Nagar, District Barabanki.

6. Cr. No. 369/2022, U/S- 3(1) U.P. Gangsters Act, P.S.-Masauli, District Barabanki.

(ii) The trial court shall examine the socioeconomic status of the applicant.

(iii) The trial court shall fix surety which is within his reach and has correlation to his ability to produce the surety.

28. The application is allowed.

Before parting some thoughts. The preceding discussion underlines the significance of the judgments of the

constitutional courts, but also underscores the limitations of the judicial process. Judgments of the courts cannot are no substitute for legislative enactments on the issue of developing alternative deterrence against flight from justice apart from the exclusive concept of risk of monetary loss. The observations in **Hussainara Khatoon (supra)** regarding the responsibility of the Parliament in this regard also need to be reiterated.

The road from the seat of learning to the temple of justice cannot be long. True knowledge serves all. Institutions engaged in the study and research of law like J.T.R.I. Lucknow also need to address various live issues which confront the courts by undertaking detailed research. Endeavours of this nature will make academic research more fruitful, and enrich the legal process. The issue of fixing of sureties is one which arises time and again. Some issues that need greater study are as under.

(i) Empirical studies on correlation of socio-economic conditions of the prisoners and ability to produce sureties.

(ii) The cases in which the prisoners who were granted bail but could not be set free or set at liberty after delay on account of their inability to arrange for sureties.

(iii) Method and criteria for determination of socioeconomic conditions and social roots of the prisoner. Role of State authorities and other credible agencies to assist in determination of socioeconomic condition and social roots of the prisoner in an expeditious manner to avoid delays. Feasibility of drawing up a format in which the prisoner may provide the necessary details regarding the same while instituting the bail application.

(iv) Alternative methods including technological solutions which may ensure appearance of under trials or enable ascertainment of their locations or deter flight from justice without insisting on high surety demands.

(v) Comparative studies of different systems of bails prevalent in other States and countries and the efficacy of such systems.

(vi) Any other related issues.

**Order Date :-** 21.3.2023
Pravin