

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 04.03.2025**

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

**CRL.O.P.No.31787 of 2024**

**and**

**CRL.M.P.No.113 of 2025**

Y.Babu

... Petitioner

Vs.

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 Nagarik Suraksha Sanhita Act, 2023, pleased to enlarge the petitioner on bail in Crime No.39 of 2024 on the file of the respondent police.

For Petitioner

: Mr.A.Manoj Kumar  
For Mr.T.Balachandran

For Respondent

: Mr.Hasan Mohamed Jinnah  
State Public Prosecutor  
Assited by Mr. A. Damodaran  
Additional Public Prosecutor and

Mr.E.Raj Thilak  
Additional Public Prosecutor

For Intervenor : Mr.M.Mohammed Riyaz,  
Additional Public Prosecutor

## **ORDER**

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

### **Introduction to the Reference:**

This bench is called upon to answer the following reference made by the learned Single Judge of the High Court of Madras in an order dated 21.02.2025 in Crl.O.P.No.31787 of 2024:

*“Whether the clarification issued by the Hon’ble Supreme Court in Shekhar Prasad Mahto @ Shekhar Kushwaha vs. The Registrar General, Jharkhand High Court [W.P.(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?”*

**Background of the Context:**

2. Reference has been made on account of line of Judgments of the Hon'ble Supreme Court of India and the observations made by the Apex Court, and it necessitates this Court to consider the reference in order to avoid inconsistency in dealing with bail/anticipatory bail petitions. Different High Courts are following distinct procedures for listing of bail/anticipatory bail petitions. Therefore, certain procedures being adopted by the one High Court if applied to other High Courts, it results in an anomalous situation and inconsistency in deciding the bail petitions have arisen. Therefore, it is imminent to look into the march of law on the issue relating to listing of bail/anticipatory bail petitions for hearing.

**Relevant Precedents:**

3. Initially, the Hon'ble Supreme Court of India in the case of ***Shahzad Hasan Khan vs. Ishtiaq Hasan Khan and Another***<sup>1</sup>, made an observation in paragraph No.5 of the Judgment that "If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and the litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the Court and the confidence of the other side being put in issue and there would be wastage of Court's time. Judicial discipline

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1. (1987) 2 SCC 684

requires that such matters must be placed before the same Judge, if he is available for orders”.

4. Perusal of the facts in the above case reveal that the criminal case arose from and out of a single First Information Report (F.I.R) and in order to avoid inconsistency in the matter of grant of bail/anticipatory bail applications, the Apex Court made an observation. The said observation was made in the context of the facts and need not be construed as a direction to be followed universally by all the High Courts across the Country.

5. In the case of State of ***Maharashtra vs. Captain Buddhikota Subha Rao***<sup>2</sup>, the Apex Court made certain observations to avert inconsistency in dealing with the bail/anticipatory bail applications. Even in the said case, while emphasizing the importance of personal liberty, the Apex Court has not issued any direction to all the High Courts across the Country.

6. In the case of ***M.Jagan Mohan Rao vs. P.V.Mohan Rao and Another***<sup>3</sup>, the Hon'ble Supreme Court considered the case of ***Shahzad***

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2. (1989) Supplementary (2) SCC 605

3. 2010 (15) SCC 491

**Hasan Khan** cited *supra* and made an observation that “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. **We hope that the High Court will take notice of the Judgment of this Court**”.

7. In the case of **Jagmohan Bahl and Another vs. State (NCT of Delhi) and Another**<sup>4</sup>, the Apex Court in paragraph No.13 of the Judgment reiterated that “the learned Judge, who has declined to entertain the prayer for grant of bail, if available, should hear the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum-shopping which has no sanction in law and definitely has no sanctity. If the same is allowed to prevail, it is likely to usher in anarchy, whim and caprice and in the ultimate eventuate shake the faith in the adjudicating system.”

8. The Hon’ble Supreme Court had an occasion to decide the issue in

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4. (2014) 16 SCC 501

the case of ***Sajid vs. State of Uttar Pradesh***<sup>5</sup>. The three Judges Bench of the Hon'ble Supreme Court of India in the ***Sajid's*** case took a view that "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. The Apex Court further held "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."

9. Above observations / findings of the Apex Court are relating to the bail/anticipatory bail applications in the High Court of Allahabad. The Three Judges Bench directed the Registrar General, Allahabad High Court, but not issued any direction to all other High Courts across the Country.

10. In the case of ***Rajpal vs. State of Rajasthan***<sup>6</sup>, reported in again the Two Judges Bench of the Hon'ble Supreme Court of India made an observation that "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

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5. (2023) SCC Online SC 1816

6. (2023) SCC Online SC 1714

consistency in the orders passed. The said orders to be communicated to the Registrar (Judicial) of all the High Courts and they are directed to place the same before the Hon'ble Chief Justice of the High Court for consideration". Observations in **Sajid's** case and **Rajpal's** case are mainly relatable to bail/anticipatory bail applications arising from and out of same FIR/Crime number.

11. In the case of **Kusha Duruka vs. State of Odisha**<sup>7</sup>, the Hon'ble Supreme Court held that "this Court has already directed vide order passed in **Pradhani Jani vs. State of Odisha**<sup>8</sup>, 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".

#### **Clarification by the Apex Court:**

12. In the case of **Shekhar Prasad Mahto @ Shekhar Kushwaha vs. The Registrar General, Jharkhand High Court and Another**<sup>9</sup>, significantly, the Apex Court took note of the observations made in line of Judgments are causing inconvenience to various High Courts across the

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7. (2024) 4 SCC 432

8. (2024) 4 SCC 451

9. W.P.(Crl).No.55 of 2025

Country in listing of bail/anticipatory bail applications, and clarified the issues.

**Analysis of the Apex Court's Clarification:**

13. Reading of the Judgments referred above would reveal that in some Judgments, observations are made and in some Judgments, directions are issued. In few Judgments, directions are issued to list the bail/anticipatory bail applications before the same Judge, if it relates to same FIR/crime number. Certain observations made in other Judgments are that successive bail/anticipatory bail applications are to be listed before the same Judge, who initially dealt with the bail/anticipatory bail applications. Thus, the Hon'ble Supreme Court clarified the position in the case of **Shekhar Prasad Mahto** cited *supra*.

14. In the said case, the ratio laid down in the cases of **Sajid** and **Rajpal's** are considered by the Apex Court in paragraph Nos.4 and 5, which reads as under:

*"4. The three Judges – Bench of this Court in SLP (Crl.) 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 two-Judge Bench of this Court in SLP (Crl.)No.15585 of 2023 titled as “Rajpal vs. State of Rajasthan.”*

15. Considering the ratio laid down in previous Judgments, clarifications are issued in paragraph Nos.10 to 14 as under:

*“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 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 accept 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.*

*14. We find that if this is not followed and if the Judges sitting in the Division Bench or thereafter taking up different assignments are required to take up the applications arising out of the same FIR, it may further delay the decisions in the bail matters.”*

#### **Conclusion on the Legal Position:**

16. The legal position on listing of bail/anticipatory bail applications are now clarified by the Apex Court in the case of **Shekhar Prasad Mahto @ Shekhar Kushwaha** cited *supra*. The clarifications issued in unequivocal terms reiterates that all the bail/anticipatory bail applications arising out of the same FIR/crime number should be placed before one learned Judge. This would ensure that there is a consistency in the views taken by the learned Judge in different bail/anticipatory bail applications arising out of the same FIR. However, if on account of change of the roster, the learned Judge who was earlier dealing with the bail/anticipatory bail matters is not taking up the bail/anticipatory bail matters, the aforesaid directions **would not be applicable.**

**Implications of the Apex Court's Clarification:**

17. In view of the above clarifications in Paragraph No.12 upon change of roster, the bail/anticipatory bail applications need not be posted before the learned Judge, who decided the earlier bail/anticipatory bail applications and it is to be listed before the learned Judge holding roster. In paragraph No.13 it is further clarified that the learned roster Judge, who hear the successive bail/anticipatory bail applications may give due weightage to the views taken by the Predecessor Judge.

**Importance of Timely Disposal of Bail Applications:**

18. Justice Krishna Iyer's words liberty occupies a place on pride in our socio-political order and who knew the value of liberty more than the founding fathers of our Constitution, whose liberty was curtailed time and again under Draconian Laws by the colonial rulers. That is why, they provided in Article 21 of the Constitution of India that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Thus, disposing of the bail/anticipatory bail applications in time is a right ensured to an accused under Constitution, which need not be denied on account of certain procedural difficulties in listing of bail/anticipatory bail applications.

**Answer to the Reference:**

19. In the opinion of this Court, the above clarifications would remove inconsistency and to maintain consistency to a significant extent and therefore, this Court is inclined to answer the reference as follows:

- (1) All bail/anticipatory bail applications arising out of the same FIR/Crime Number shall be listed before the same learned Judge holding roster. Currently, in the High Court of Madras no such difficulty exist, as one learned Judge at the Principal Seat and another at the Madurai Bench are holding roster to hear bail/anticipatory bail applications.
- (2) Upon a change of roster, successive bail/anticipatory bail applications, including consequential connected petitions, if any, shall be listed before the learned Judge holding the roster.
- (3) The learned roster Judge, while dealing with the successive bail/anticipatory bail applications may give due weightage to the views expressed by the predecessor learned Judge who dealt with bail/anticipatory bail application arising out of the same FIR/Crime Number. However, in the event of differing views taken, reasons may be recorded.
- (4) The Registry of the High Court of Madras shall ensure that all bail/anticipatory bail petitions filed shall contain the following informations;
  - (a) Number of previous bail/anticipatory bail petitions, if any;

- (b) Details of such petitions;
- (c) Copies of the orders passed;
- (d) A statement regarding the pendency of any petitions before any Court.

**Conclusion:**

20. Accordingly, this reference stands answered. The Registry, High Court of Madras both at the Principal Seat and the Madurai Bench shall list all the bail/anticipatory bail petitions, including consequential connected petitions before the learned Judge holding the roster for disposal.

**[S.M.S., J.]                      [K.R.S., J.]**  
**04.03.2025**

Index : Yes / No  
Speaking order / Non-speaking order  
Neutral Citation : Yes / No

ssi/Jeni

To

1.The Inspector of Police,  
Sulur Police Station,  
Coimbatore District.

2.The Public Prosecutor,  
High Court of Madras.

CRL.O.P.No.31787 of 2024

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**and**  
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