Prerna Sharma vs State Of H.P. And Another on 2 June, 2017

Author: Tarlok Singh Chauhan

Bench: Tarlok Singh Chauhan

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CrMMO No.350 of 2016

.

Reserved on : 25.5.2017

Decided on: 2.6. 201

Prerna Sharma. ...Petitione

Versus

State of H.P. and another. ...Responden

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? 1 Yes

For the Petitioner: Mr. Vipul Sharda, Advocate.

For the Respondents: Ms. Meenakshi Sharma, Addl. A.G. with Mr. Neeraj Sharma, Dy. A.G. for respon No.1.

Mr. George, Advocate for respondent No

_____

Justice Tarlok Singh Chauhan, Judge:

This petition under section 482 of the Code of Criminal Procedure seeks cancellation of bail granted to respondent No.2 in FIR No.235/2015 registered on 5.12.2015 in Police Station, Dharamshala, District Kangra under sections 420, 467, 468 and 120 (B) of the Indian Penal Code.

Whether reporters of the local papers may be allowed to see the judgment? yes

2. It is not disputed that this Court vide order dated 26.8.2016 dismissed the bail application filed by .

the aforesaid respondent; however, learned Magistrate granted bail on 30.8.2016.

3. It would be noticed that in the application filed by the respondent for bail, this Court on 22.7.2016 had been pleased to grant him bail and the matter was thereafter listed on 5.8.2016, when undertook to remit the fees of all the students for the entire courses run by him over these years, as would be respondent evident from the order passed on that day, which reads thus:

> "The petitioner undertakes to remit the fees of all the students for the entire courses run by him over these years. In view of this undertaking, interim order dated 22.07.2016 is extended upto next date of hearing. List on 26.08.2016. In the meanwhile, petitioner will join investigation on 07.08.2016 by reporting at 10.00 a.m. at Police Station, Dharamshala and shall continue to join investigation as and when directed by the Investigating Agency."

4. However, when the matter came up for consideration on 26.8.2016, respondent No.2 expressed his reluctance to comply with the aforesaid undertaking constraining this Court to reject the bail application by a detailed order, relevant portion whereof reads thus:

> .
>
> 3. The prosecution story as emerges from the records is that the petitioner was indulging in large scale racketing of issuing various degrees, diplomas and other certificates without having any authority, thereby duping and robbing the innocent students of their hard earned money.
>
> 4. The petitioner is running an institute under the name and style of Interactive Education/Interactive Fashion Designing and issuing various mark sheets, advance degrees and diplomas by obtaining amounts ranging from `30,000/- to `2,50,000/-. When confronted with the aforesaid degrees, diplomas etc, the petitioner would bank upon the Empanelment Certificate issued by the Deputy Commissioner, Kangra at Dharamshala in November, 2014, which reads thus:-

"No.-REE/DSL/SDA/EMP-2014/6002 Office of Deputy Commissioner, Kangra at Dharamshala Dated: Dharamshala, November, 2014 Empanelment Certificate On the recommendation of spot inspection Team under the Chairmanship of local Sub Divisional Magistrates, following institute is empanelled under SDA Scheme-2013 as per following conditions:

Name of Training Course & Centre/Institutes	Maximum No. of Trainee at one Time	Male/ Female / Both	Period of Training	Batch & Time
Interactive Education Top Floor Above PNB Kachahri Adda Dharamshala. Fashan Designing'	80	Both	One Year & Two year	One one Batch 10 AM to 2 PM

You will certify in enrolment certificate of trainees that the applicant is not pursuing any other Higher Education, Training and simultaneously enrolled in a Skill Development .

Training and maintain & preserve all records viz. attendance register of trainees and faculty, Machinery and equipment, Question papers & Answer Sheets etc. Sd/-

Deputy Commissioner For Kangra at Dharamshala"

5. It is on the strength of the aforesaid certificate that the petitioner would vehemently contend that he had been duly authorized to issue the certificates/diplomas, degrees etc. Even if, the aforesaid letter is taken into consideration, then at best the petitioner was entitled to empanel under the SDA Scheme, 2013, only 80 trainees at one time, that too in one batch for training ranging from one to two years.

6. However, the recovery of large number of certificates during the course of investigation is clear indication of the involvement of the petitioner in the case. The recovery reveals that the petitioner has issued certificates/diplomas/degrees for probably every course.

available under the sun, for example, Information and Technology, duration six months, Advance Diploma in Information and Technology, duration fifteen months, Certificate Interactive Fashion Designing, duration fourteen days, Certificate of Achievement, ADIT, course duration fourteen months, Certificate of Achievement in ADIT, course duration one year etc.

7. It prima facie appears that the students were made to believe that the certificates/diplomas/degrees are lawful and were thus duped of their money illegally extracted from them, resulting in not only playing with the career of the students, but also cheating them.

8. The unwarranted conduct on the part of the petitioner speaks volume of his greed and to say the least his action is highly deplorable.

.

9. It is only when the petitioner had no explanation to offer as regards the authority under which the certificates/diplomas/ degrees were being issued, he on 5.8.2016 undertook to refund the fees of all the students, who had been issued such certificates etc. Obviously, the students and parents are entitled to the refund of the entire amount deposited by them along with interest and would also be entitled to compensation for the same, as the petitioner neither had any legal nor a moral right to play with the academic career of the hapless students.

10. However, when the matter was taken up today, the petitioner changed his counsel, who tried to impress upon this Court for adjournment or for waiving the condition of refund of the fees. To say the least, practice of changing counsel is depreciative of the petitioner's conduct.

11. That apart, the petitioner has been running money minting institution by illegally collecting huge sums of money and duping the poor and innocent students and raising his own business empire. All this was done without any legal sanction or authority and the so called degrees and diplomas etc. issued by the petitioner are nothing, but waste papers. It is but a cruel joke that has been meted out to the poor students, thereby the petitioner has played havoc with their lives and career, so much so, that some of the students have even been compelled to give up their education midway, while other are even unable to pay the debts and loan raised for obtaining these certificates/diplomas/ degrees.

12. To say the least, the petitioner has played havoc with the career of several score of students and jeopardized their future irretrievably. I have no hesitation in saying that the petitioner has started this venture only with a view to make money from gullible individuals anxious to obtain certificates/ diplomas/degrees with a sustained hope of .

getting job. It was nothing but a daring imposture and scul-duggery.

13. It is high time that the State Authorities wake up from deep slumber and crack down the mushrooming growth of unnumbered educational institutions, who are openly flouting the law and playing havoc with the several scores of students and jeopardizing their future irretrievably. This evil has to be nipped in the bud. There is no gainsaying that the problem of undesirable number of education institutions does have its semblance and is direct result of active connivance of the authorities and the individuals or so called societies running the education intuitions. In such circumstances, the State Authorities are expected to be vigilant enough and get to the other king-pin(s) who are instrumental in running such instructions.

14. This issue regarding the private institution operating like money minting institutions came up for consideration before me in CWP No. 8789 of 2014, titled Business Institute of Management Studies Vs. State of Himachal Pradesh, decided on 27.4.2016, wherein it was observed as under:-

> "47. The private institutions cannot be permitted to operate like money minting institutions, rather it has to be ensured that they comply with all the rules, regulations and norms before they are granted permission to operate within the State of Himachal Pradesh. The innocent people of this State cannot be allowed to be duped any further.
>
> 48. History is witness to the fact that it is education alone, which is the backbone of progress of a country.
>
> Imparting education can never be equated with profit oriented business as it is neither commerce nor business and if it is so, then the regulatory controls .
>
> by those at the helm of affairs have not only to be continued, but are also required to be strengthened.
>
> 49. The term 'education' would mean a process of developing and training the powers and capabilities of human being. Over a period of time, education has become a commodity in India. All the genres of society are so overly obsessed with education that it has devalued the real essence of education. Education is no more a noble cause but it has become a business, therefore, the paradigm shift, especially in the higher education from service to business is a r matter of concern. The commercialization of education has a dreadful effect that is so subtle that it often goes unnoticed.
>
> 50. Mushroom growth of ill-equipped, understaffed and unrecognized educational institutions was noticed by the Hon'ble Supreme Court in State of Maharashtra versus Vikas Sahebrao Roundale and others (1992) 4 SCC 435 and it was observed that the field of education had become a fertile, perennial and profitable business with the least capital outlay in some States and that societies and individuals were establishing such institutions without complying with the statutory requirements.

> 51. The Hon'ble Supreme Court in Morvi Sarvajanik Kelavni Mandal Sanchalit MSKM B.Ed. College versus National Council for Teachers' Education and others (2012) 2 SCC 16 while rejecting the prayer of the institutions to permit students to continue in unrecognized institutions, observed that mushroom growth of ill-equipped, understaffed and unrecognized educational institutions has caused serious problems with the students who joined the various courses.

.

52. It is unfortunate that despite repeated pronouncements by the Hon'ble Supreme Court for over the past two decades deprecating the setting up of such institutions, the mushrooming of schools, colleges, universities, technical boards and institutions continues all over the State at times in complicity with the statutory authorities, who fail to check this process by effectively enforcing the statutory provisions.

53. Judicial notice can also be taken of the fact that there are various advertisements published day in and day out in print as also visual media offering various courses, whereby 8th fail student can appear in 10th class and similarly a 10th class fail student can appear in 12th class. All this unfortunately is happening right under the nose of the State Government. It is difficult to fathom and believe that the functionaries of the State would have no knowledge of the same or would not come across such misleading advertisements.

54. It is not difficult to understand that the education system in India is not only large but is also complex with more than 700 universities (736 as on 30.09.2015-UGCs) and more than 35000 affiliated colleges enrolling more than 20 millions students. In such scenario, the mushrooming of private universities has only led to a cut-throat competition leading to misleading advertisements which can only be termed to be persuasive, manipulative and exploitative to attract the widest possible audience. These institutes trap into their web the innocent, vulnerable and unsuspecting students. Their lucrative and mesmerizing advertisements hypnotize the students only to fall into an unknown world of .

uncertainties. Some institutes promise hundred percent placement, some claim excellent staff, some claim free wi-fi campus, some promise free transportation etc. But what should really matter is 'education'. This problem is further compounded by the proliferation of coaching institutes which have only made 'education' more dirty and murkier.

55. The State and the Central Government have enacted various laws to tackle this wide spread menace of commercialization of education and one such step in this regard was the promulgation of the H.P. Private Education Institutions (Regulation) Act, 1997 (for short 'Regulation Act, 1997) and thereafter the H.P. Private Educational Institutions (Regulatory Commission) Act, 2010.

56. Unfortunately not only the aforesaid statutes are opposed tooth and nail, but the provisions contained therein are implemented more in breach.

This would be clearly evident from the fact that though Regulation Act was enacted in the year 1997, but the Rules therein came to be finally published only in the year 2003, that too with the intervention of this Court. Despite these rules in place the private education institutions do not comply with the provisions contained therein. The Private Education Institutions including schools do not have the requisite infrastructure, nor do they maintain the accounts and have further failed to constitute the parent teacher associations and as if that was not enough, would charge exorbitant fees.

57. It is shocking that the private institutions have been raising their assets after illegally collecting funds like building fund, development fund, .

infrastructure fund etc. It is high time these practices are stopped forthwith and there is a crack down on all these institutions. Every education institution is accountable and no one, therefore, is above the law. It is not to suggest that the private education institutions are not entitled to their due share of autonomy as well as profit, but then it is out of this profit that the private education institutions, including schools are required to create their own assets and other infrastructure. They cannot under the garb of building fund etc. illegally generate funds for their "business expansion" and create "business empires".

58. That apart, it is the responsibility of the institution imparting education to set up proper infrastructure for the students and, therefore, the fee charged towards building fund is both unfair as well as unethical.

59. Thus, there is an urgent need for Government intervention, correcting the systematic anomalies or else if commercialization persists and continues to grow unabated, then anything and everything will only be aimed at exploiting and manipulating for profit insofar as the higher education is concerned. It is, therefore, high time that the respondent-State acts responsibly by conducting a fresh investigation of all these institutions.

60. In these given circumstances, the Chief Secretary to Government of Himachal Pradesh is directed to constitute a committee which shall carry out inspection of all the private education institutions at all levels i.e. schools, colleges, coaching centres, extension centres, (called by whatever name), universities etc. throughout the State of Himachal Pradesh and submit report regarding compliance of .

the H.P. Private Educational Institutions (Regulation) Act, 1997 within three months. Special emphasis and care shall be taken to indicate in the report as to whether the private institutions have the requisite infrastructure, parents teacher associations, qualified staff, whether these institutions are maintaining the accounts in terms of Rule 6 and are regularly submitting all the information in the forms prescribed under the Rules and are further charging the 'fee' as approved by the Govt.

61. The Committee shall further report regarding violations being carried out by the educational institutions with respect to the guidelines issued by the UGC from time to time as have otherwise been taken note of in this judgment and shall be free to report violation of any Act, Rule, statutory

provisions, guidelines etc., irrespective of the fact that the same have been issued by the Central or the State Governments.

62. The Committee shall also keep in mind the provisions of the UGC Act, UGC (Establishment and Maintenance of Standards in Private Universities) Regulations, 2003, instructions issued by the UGC from time to time, more particularly, the public notices issued on 27.06.2013 and thereafter on 04.06.2015 quoted in extenso hereinabove. It shall specifically report as to whether any University/Deemed University/Institution is offering any programme through open and distance learning (ODL) in gross violation of the policy of the UGC and, at the same time also issuing misleading advertisements by stating that their programmes are recognized.

63. In the meanwhile, the respondent-State is .

directed to ensure that no private education institution is allowed to charge fee towards building fund, infrastructure fund, development fund etc.

64. In addition to this, the Principal Secretary (Education) is directed to issue mandatory orders to all educational institutions, whether private or government owned, to display the following detailed information on the notice board which shall be placed at the entrance of the campus and on their websites:-

i) Faculty and staff alongwith their qualifications and job experience (profile).

ii) Details of Infrastructure.

iii) Affiliation alongwith certificate (s) of affiliation.

iv) Details of Internship and placement.

v) Fees with complete breakup and details.

vi) Extra curricular activities with complete details.

vii) PTA-with address and telephone numbers of its members.

viii) Transport facilities with details.

ix) Age of the institute and its achievements (if any).

x) Availability of scholarships with complete details.

xi) List of alumni (s) alongwith complete addresses and telephone numbers.

The aforesaid information shall also be displayed on the website of all private educational institutions and in case any educational institution is currently not having its own website, the same shall be created within one month and immediately thereafter the aforesaid information would be displayed on the website.

65. Any violation of these directions shall be viewed seriously and shall constitute contempt of Court order."

.

15. The petitioner has duped thousands of innocent students under the garb of promising them a bright future and has played not only with their future, but has even played with their lives. The petitioner has made a quick buck by exploiting these innocent, vulnerable and unsuspecting students. In such circumstances, no case for bail is made out and the petition is accordingly dismissed and the interim bail granted on 22.7.2016 is cancelled."

5. Accordingly, when this petition came up for consideration for the first time on 8.12.2016, this Court directed the Investigating Officer ASI Balam Ram to be present in person alongwith records on the next date of hearing, which was fixed on 15.12.2016. On 15.12.2016, learned Assistant Advocate General represented that at the time when the bail was granted by the learned Judicial Magistrate 1st Class, Court No.1, Dharamshala, the orders passed by this Court from time to time, more particularly, the orders passed on 5.8.2016 and 26.8.2016 were specifically brought to the notice of the concerned court. On such representation, the Investigating Officer ASI Balam Ram was asked to file his personal affidavit. The case was taken up during the post-lunch session so that the aforesaid undertaking was taken on record and the following order came to be passed:

> .
>
> "Accordingly, the Registry is directed to send a copy of this order alongwith the affidavit filed by the Investigating Officer through FAX to the concerned Magistrate i.e. Judicial Magistrate 1st Class, Court No.1, Dharamshala, H.P. calling upon her explanation, which shall be submitted by her through FAX, so as to reach this Court before the next date of hearing.
>
> List on 23.12.2016"

6. r On 23.12.2016, the explanation offered by the concerned Magistrate was received by this Court and after perusal thereof, this Court proceeded to pass the following order:

> "The explanation offered by the learned Judicial Magistrate 1 st Class, Court No.1, Dharamshala, is not at all satisfactory. However, final action on this reply would be taken at the time of decision of the lis.

> For the time being, respondent No.2 is directed to show cause why the bail granted to him by the learned Magistrate on 30.08.2016 be not cancelled.
>
> List for consideration on 30.12.2016."

7. As observed earlier, respondent No.2 on 5.8.2016 during the course of hearing of his bail application had specifically undertaken to remit the fees of all the students for the entire courses run by him from the inception and since he had failed to do so, this Court on 30.12.2016 issued show cause notice against him as to why contempt proceedings be not initiated.

.

The matter was heard on 12.1.2017 and kept for further hearing on 13.1.2013 when the original counsel for respondent No.2 did not appear and adjournment on his behalf was made on the ground that he was indisposed.

8. Notably this happened to be the last working day before the winter vacations and this Court left with no option had to adjourn the matter to 2.3.2017 as the Court reopened only on 27.2.2017. However, when the matter was taken up on 2.3.2017, it was represented that the counsel for respondent had undergone surgery and accordingly the matter was adjourned to 6.4.2017 and thereafter to 7.4.2017. On 7.4.2017 only the vice counsel appeared on behalf of respondent No.2 and the matter was accordingly adjourned to 27.4.2017.

Subsequently, when the matter was taken up on 27.4.2017, vice counsel for respondent No.2 again sought adjournment on the ground that the original counsel has gone to Maxx Hospital, Mohali for his check up and the matter was adjourned to 25.5.2017, on which date it was finally heard.

.

9. Having set out the factual matrix, it would now be necessary to advert to the order passed by the learned Judicial Magistrate 1st Class on 30.8.2016 whereby she granted bail to respondent No.2.

10. It would be noticed that the learned Magistrate has neither cared to go through the orders passed by this Court in Cr.M.P.(M) No. 872/2016 (supra) nor has taken into consideration the final order passed by this Court on 26.8.2016 and has proceeded to grant bail by according the following reasons:

> "It is not the case of police that the accused has been previously convicted or has any past criminal record. Also, sufficient time has been granted to the police for interrogation of the accused to complete their investigation.
>
> It is a settled law that bail is a rule and jail is an exception and also an accused should not be punished at a pre-trial stage merely on the basis of suspicion. Accused is resident of VPO Kuther, Tehsil Jawali, District Kangra and has his roots in the society

> and, therefore, his chances of fleeing are very rare. Thus, in view of above discussion, bail application moved by accused is allowed and the application of police seeking five days police remand of accused is rejected. Accused is ordered to be release on bail, subject to the following conditions."

11. It is not that the undertaking of respondent No.2 and thereafter order of rejection of his bail were .

not in her notice because this fact stands duly established in the personal affidavit filed by the Investigating Officer ASI Balam Ram. The relevant portion whereof reads as under:

> "3. That the bail application in FIR No. 235/15 filed by Sh.
>
> Chander Kant accused under section 438 Cr.P.C. before this Hon'ble High Court was rejected on 26.8.2016 by this Hon'ble High Court of HP in presence of deponent and accused Chander Kant was taken in the custody and produced before the Ld. JMIC Dharamshala on 27.8.2016 and the police was granted 4 days remand upto 30.8.2016.
>
> 4. That on 30.8.2016 Shri Chander Kant, accused was produced by the deponent alongwith other police officials before the Ld. JMIC Dharamshala. The deponent submitted the status report to oppose the bail application of accused which was prepared and signed by Inspector, Surinder Kumar Incharge, SIU/CIA and police requested the Ld. JMIC Court No.1 Dharamshala for further remand and bail petition filed on behalf of accused under section 437 Cr.P.C. was opposed with the request that recovery is still pending and investigation is going on.
>
> 5. That as per report submitted by the police officials in which it has been specifically mentioned in the operative para of the report at page 7, that the interim bail of the accused Chander Kant has been rejected by the Hon'ble High Court of HP on 26.8.2016.
>
> 6. That the deponent has also mentioned in that report that recovery of amount etc. are still pending from the accused, hence further remand is required. Copy of status report is annexed as Annexure R/A. It is pertinent to mention here that the deponent has separately filed the application for police remand in the same very case. The .
>
> copy of report is annexed as Annexure R/2."

12. Now, adverting to the explanation offered by the learned Magistrate in compliance to the order passed on 15.12.2016, it could be noticed that only explanation offered by her is as under:

> 1. Sir, the affidavit filed by I.O. Balam Ram corroborates the application filed for extension of remand by the I.O.

2. In the status report it was requested to extend police remand and grant of more time for the recovery of 2 flat seals and interrogation to find out who had helped him in making forged website.

3. Sir, I was verbally informed by I.O. Balam Ram that other two accused were already interrogated regarding the recovery of these 2 seals and at that time these seals were not recoverable. This was mentioned by I.O.

in presence of Adv. Pawan Sharma.

4. Sir, the other two accused in this case Ravi and Rakesh had already been released on bail after their police remand was over and they have also been interrogated regarding recovery of things mentioned above.

5. Sir, while allowing the bail application on 30.8.2016, I have given my reasoning for grant of bail as he had been sufficiently remanded to police custody for 4 days but no recovery has been effected by police in these 4 days.

6. Sir, we have direct or indirect directions to grant bail liberally. Taking into consideration that anticipatory bail has been rejected but now as the accused remanded to custody and opportunity was given to police for custodial interrogation and recovery, I considered it to be a changed circumstance.

.

7. Sir, I have put in service as JMIC since two and half years, therefore I omitted inadvertently to consider the fact that the anticipatory bail has been rejected by the Hon'ble High Court.

8. Sir, I have always tried to do my duty as Magistrate to the best of my ability and uphold the dignity of the institution. However, if by mistake I have erred in passing any order, that is bonafide. So, taking into consideration the years of service I have put in or due to lack of experience I seek the guidance and protection of Hon'ble High Court.

13. To my mind, the action of the Magistrate is clearly subversive to judicial discipline and amounts to gross impropriety because so long the order passed by this Court was in force, the Magistrate could not have entertained the application for bail much less granted the bail.

14. Judicial discipline requires decorum known to law which warrants that that the appellate directions should be followed in the hierarchical system by the Court which exists in this country. It is necessary for each lower tier to accept loyally the decisions of the higher tier. The judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted.

.

15. Once the judgment rendered by this Court was absolutely clear and the bail granted to respondent No.2 had been rejected by a detailed order, then judicial comity, discipline, concomitance, pragmatism, poignantly point, per force to observe constitutional

16.

r to propriety and adhere to the decision so rendered by this Court.

Even if the explanation offered by the concerned Magistrate, which was called for by this Court, is perused, the learned Magistrate appears to be completely oblivious of her duties like in the present case; she even proceeded to grant bail to another co-

accused Ravi Kumar whose bail application had already been rejected by the Coordinate Bench of this Court (Justice Rajiv Sharma, J.) on 7.7.2016 passed in Cr.M.P.(M) No. 526 of 2016, titled as Ravi Kumar vs. State of H.P. The relevant portion whereof reads thus:

> "3. According to the averments made in the petition, an institute in the name of "Interactive Fashion Designing"

provides for professional degree and diploma in fashion designing. It was affiliated to "Ideal Educare Institute of Management and Technology" having affiliation with "Karnataka State Open University" and "Excelsior Interactive Solutions Private Limited". The .

authorization was given in the name of Rakesh Rana. The petitioner was merely working as Manager with the Institute and has nothing to do with the authorization/running of the institute or other institutions. Petitioner filed earlier an application on 9.3.2016 before the learned Sessions Judge, Kangra at Dharamshala under section 438 of the Code of Criminal Procedure. He passed the following order on 9.3.2016:

> "Office report seen. It be registered. This interim bail application under section 438 Cr.P.C. has been filed by the bail applicant for interim bail in case FIR r which is stated to have registered against him in police station, Dharamshala for commission of the offence punishable under section 420 IPC. The FIR number is not known at this stage.
>
> The learned P.P. has taken notice of the bail application on behalf of the State and its copy has been supplied to him today in the court. He shall file detailed reply/report concerning the said case FIR if any in this court on 21.3.2016 till then in the event of arrest of the bail applicant/accused he shall be released on bail on his furnishing personal and surety bonds each in the sum of Rs. 20,000/- each to the satisfaction of SHO police station Dharamshala. However, bail applicant/accused shall join investigation and appear before SHO police station, Dharamshala on 10.3.2016 at

> 11.00 a.m. and thereafter he shall keep on joining further investigation as per directions of the I.O. of the case. Be now pout up for reply/report of the State on 21.3.2016."

4. Thereafter, the matter was taken on 21.3.2016 and the following order was passed:

> "Case file has been produced by SI Des Raj of P.S. .
>
> Dharamshala. Reply filed. Copy given. The verification of the affiliation has to be made from Gurgaon and from Karnataka for which at least one month time is required. Adjournment prayed is allowed. Now fresh status report be filed on 21.4.2016. Till then interim bail order is extended."

5. The matter again came up before the Sessions Judge on 3.5.2016. He passed the following order on 3.5.2016:

> "Reply/status report has been placed on record by SI Nanak Ram. Copy supplied. The perusal of the r report shows that the recovery from the bail applicant/accused is yet to be procured and he had joined the investigation only once when he produced some of the record, but thereafter he ahs never reported for investigation. Since the bail application/accused is not present himself and he has not been joining further investigation and the recovery from him is yet to be procured, therefore, for non co-operation in the investigation and for not being present today the bail application is dismissed. Be consigned to the record room."

6. It is evident from the order dated 3.5.2016 that the petitioner has not joined further investigation and the recovery from him was yet to be procured. Thus, the bail application was dismissed.

7. It is evident from the status report that the police has carried out investigation and the Interactive Fashion Designing was neither affiliated with Ideal Educare Institute of Management and Technology having affiliation with Karnataka State Open University nor with Excelsior Interactive Solutions Private Limited.

8. This Court had directed the I.O. to ascertain .

the bank accounts details wherein the accused and co-

accused have deposited the money. It is evident from the status report that the petitioner was maintaining Accounts in PNB bearing No. 3373000101048082, 33730001010262448 and 337300JH00000587. A sum of Rs. 27,31,551/- was deposited in two accounts and Rs. 27,30,057/- were withdrawn from these accounts.

Petitioner has also maintained bank accounts in Canara Bank bearing No. 2062201005735 and 2062101010401. A sum of Rs. 24,65,399/- was deposited in these accounts also. Substantial amount

was withdrawn from these accounts. Petitioner has also raised loan of Rs. five lakhs.

Thus, total sum of Rs. 51,96,950/- was found deposited in the bank accounts of the petitioner and substantial amount was withdrawn by him. It has also come on record that 69 students have deposited money with the "Interactive Fashion Designing" institute towards admission, tuition fee etc. The receipts are still to be taken into possession by the police. Petitioner is not disclosing whereabouts of the money received from the students and he has not accounted for the money withdrawn from the bank accounts, which was received by him for admission, tuition fee etc. from the students for providing degrees and diploma in fashion designing. It has also come on record that Rakesh Rana is also at the helm of affairs of the "Interactive Fashion Designing institute", as per the record made available during hearing of the petition. According to the averments made in the petition, he was being shielded by the police at the behest of the politicians. Petitioner has also placed on record copy of affidavit sworn in by Rakesh Rana claiming himself to be Managing Director of M/s Interactive Education, Kachehri Adda, Dharamshala.

9. Prima facie case is also made out against .

Rakesh Rana son of Malkiat Singh. The Court is of the prima facie view that accused as well as Rakesh Rana have defrauded the students by receiving huge money towards admission, tuition fee etc. for providing degrees and diplomas in fashion and designing. It has come on record, as noticed hereinabove, that the Interactive Fashion Designing institute is neither affiliated with Ideal Educare Institute of Management and Technology having affiliation with Karnataka State Open University nor with Excelsior Interactive Solutions Private Limited.

10. Petitioner was granted pre-arrest bail by the learned Sessions Judge, Kangra at Dharamshala, but he has not associated in the investigation. The police has yet to recover receipts and details of the money, therefore, he is not entitled to be enlarged on bail. The petitioner and co-

accused are hand in glove and they cannot be permitted to take advantage by confusing the nomenclature of the institutions. They have allured the students to deposit huge amount of admission, tuition fee etc. knowing fully well that the institutions managed by them were not recognized/affiliated.

11. Accordingly, there is no merit in the application and the same is dismissed. It is made clear that the observation made hereinabove above shall have no bearing on the merits of the main case.

12. Before parting with the judgment, it is pertinent to note that the I.O. has failed to discharge his statutory duty by not carrying out investigation in accordance with law. He has failed to collect necessary facts after the registration of FIR on 5.12.2015 till date. The Court can take judicial notice of the fact that if investigation is delayed, material evidence disappears. Thus, the Superintendent of Police, Kangra at Dharamshala is directed to change the I.O. in FIR No. .

235/2015 dated 5.12.2015 for offence under section 420 of the Indian Penal Code registered at Police Station, Dharamshala and handover the investigation to the CIA to be carried out by an

officer not below the rank of Inspector. The I.O./Inspector shall investigate the FIR registered against petitioner bearing No. 235/2015 and also carry out investigation to ascertain prominent role played by Rakesh Rana son of Malkiat Singh Rana by registering FIR against him also in this episode. The I.O. is directed to attach the bank accounts of the petitioner and Rakesh Rana forthwith. He is further directed to collect the details of the money received by them and where they have invested or deposited the same.

13. The Court can also take judicial notice of the fact of mushrooming private institutions, which are run in shops and are also not affiliated/recognized by the Universities/Boards or the State Government. These institutions allure the gullible students by giving advertisements in the leading Newspapers and collect huge amount of money from them. It is the duty of the State Government to ensure that no fake/bogus intuitions are run throughout the State of Himachal Pradesh and to trace out them and close them down. All the Superintendents of Police throughout the State of Himachal Pradesh are directed to find out fake/bogus institutions run within their respective jurisdiction and register case against them against the relevant provisions of law, seal their premises and also seize their bank accounts in the interest of students of Himachal Pradesh. The Superintendents of Police shall also ensure that the money illegally collected by these institutions be got refunded to the students."

17. As observed earlier, this Court had already vide order dated 23.12.2016 held the explanation .

offered by the learned Magistrate to be not at all satisfactory, however, final action on the reply was deferred till the decision of the instant lis.

18. The taste of the pudding is in the eating.

The propriety of a judicial order or the judgment is, sacrosanct.

therefore, to be tested in the light of law and fact. It is the judicial seal which makes an order or judgment Following from the above concept, the application of judicial mind is the pole star to determine its objectivity (Refer State of West Bengal vs. Nebulal Shaw, 1997 (3) RCR (Cr) 39).

19. In Shahzad Hasan Khan vs Ishtiaq Hasan Khan and another, (1987) 2 SCC 684, the Hon'ble Supreme Court has considered the longstanding convention and judicial discipline required to be maintained at the court level. It has been held that subsequent bail application should be placed before the same Judge, who may have passed the earlier order, as would be evident from the following relevant observations:

> "[5] Normally this court does not interfere with bail matters and the orders of the High Court are generally accepted to be final relating to grant or rejection of bail. In this case, .
>
> however, there are some disturbing features which have persuaded us to interfere with the order of the High Court. The matrix of facts detailed above would show that

three successive bail applications made on behalf of respondent No. 1 had been rejected and disposed of finally by Justice Kamleshwar Nath. In that view it would have been appropriate and desirable and also in keeping with the prevailing practice in the High Court that the bail application which was filed in June 1986 should have been placed before Justice Kamleshwar Nath for disposal. In fact on June 3, 1986, Justice D. S. Bajpai being conscious of this practice and judicial discipline himself passed order directing the bail application to be placed before Justice Kamleshwar Nath but subsequently on 7th June 1986 he recalled his order. We are of the opinion that Justice D. S. Bajpai should not have recalled his order dated June 3, 1986 keeping in view the judicial discipline and the prevailing practice in the High Court. Justice D. S. Bajpai was persuaded to the view that Justice Kamleshwar Nath had passed orders on March 18, 1986, releasing the bail application the matter was therefore not tied up to him. However, the learned Judge failed to notice that when the bail application was listed before Justice Kamleshwar Nath on March 24, 1986 the respondent No. 1, for reasons known to him only, withdrew his application, as a result of which Justice Kamleshwar Nath dismissed the same as withdrawn. This fact was eloquent enough to indicate that respondent No. 1 was keen that the bail application should not be placed before Justice Kamleshwar Nath. Long standing convention and judicial discipline required that respondent's bail application should have been placed before Justice Kamleshwar Nath who had passed earlier orders, who was available as Vacation Judge. The convention that subsequent bail application should be .

placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every judge till he gets an order to his liking resulting in the creditability of the court and the confidence of the other side being put in issue and there would be wastage of courts time. Judicial discipline requires that such matter must be placed before the same Judge, if he is available for orders. Since Justice Kamleshwar Nath was sitting in Court on June 23, 1986 the respondent's bail application should have been placed before him for orders. Justice D. S. Bajpai should have respected his own order dated June 3, 1986 and that order ought not to have been recalled, without the confidence of the parties in the judicial process being rudely shaken."

20. Similar reiteration of law can be found in the judgment rendered by the Hon'ble Supreme Court in State of Maharashtra vs Captain Buddhikota Subha Rao, 1989 Supp (2) SCC 605, wherein it was observed as under:

"7.....In the present case the successive bail applications preferred by the respondent were rejected on merits having regard to the gravity of the offence alleged to have been committed. One such application No. 36 of 1989 was rejected by Suresh, J. himself. Undeterred the .

respondent went on preferring successive applications for bail. All such pending bail applications were rejected by Puranik, J. by a common order on 6th June, 1989.

Unfortunately, Puranik, J. was not aware of the pendency of yet another bail application No. 995/89 otherwise he would have disposed it of by the very same common Order. Before the ink was dry on Puranik, J. order, it was upturned by the impugned order. It is not as if the court passing the impugned order was not aware of the decision of Puranik, J. in fact there is a reference to the same in the impugned order. Could this be done in the", absence of new facts and changed circumstances? What is important to realise is that in Criminal Application No. 375 of 1989, the respondent had made an identical request as is obvious from one of the prayers (extracted earlier) made therein.

Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-

situation. And when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. 'Between the two orders there was a gap of only two days and it is nobody's case that during these two days drastic changes had taken place necessitating the release of the respondent on bail. Judicial discipline propriety and comity demanded that the 1 impugned order should not have been passed !reversing all earlier orders including the one rendered by Puranik, J. only a couple of days before, in the absence of any substantial change in the fact-situation. In such cases it is necessary to act with restraint and circumspection so that the process of the Court is not abused by a litigant and an impression does not gain ground that the litigant has either successfully avoided one judge or selected another to .

secure an order which had hitherto eluded him. In such a situation the proper course we think, is to direct that the matter be placed before the same learned judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conclusive to judicial discipline and would also save the Court's time as a judge familiar with the facts would be able to dispose of the subsequent application with despatch. It will also result in consistency. In this view that we take we are fortified by the observations of

> this Court in paragraph 5 of the judgment in Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684: (AIR 1987 SC 1613). For the above reasons we are of the view that there was no justification for passing the impugned order in the absence of a substantial change in the fact-situation. That is what prompted Shetty, J. to describe the impugned order as 'a bit out of the ordinary'. Judicial restraint! demands that we say no more."

21. The Bombay High Court in Devidas Raghu Naik vs The State 1989 Crl. L.J. 252 while commenting on decorum and hierarchy of the courts observed that though the concurrent jurisdiction is given to the High Court and Sessions Court under section 439 Cr.P.C. and the fact that the Sessions Court had refused the bail under section 439 Cr.P.C.

.

does not operate as a bar for the High Court to entertain similar application under section 439 Cr.P.C.

on the same facts and for the same offence. However, if the choice was made by the party to move first the High Court and the High Court has dismissed the application then the decorum and hierarchy of the Courts require that if the Sessions Court is moved with the similar application on the facts, the said application be dismissed.

22. The Allahabad High Court in State through Smt. Malti Gaur vs. State of U.P., 1990 Crl. L.J 1894 held as under:

> "3.....There is no denial of this judicial convention that in order to maintain judicial discipline and consistency subordinate courts used to obtain endorsement on the bail applications that no other bail application of the accused is pending before any other court. The object of this endorsement is that there will be no conflicting orders passed by the subordinate courts and the High Court and this would prevent passing of contrary orders by the subordinate courts to the orders of High Court. In the instant case this question was raised before the Judge concerned who observed that there is no bar in the Code of Criminal Procedure and, therefore, he has a right to pass orders of bail on the third bail application, in spite of the fact that a bail application of the accused is pending and is being heard by the High Court. The Additional Judge did .
>
> not consider the prevalent practice and the long standing convention on which basis an endorsement was asked for on every bail application that no bail application is pending in any other court. As pointed out above, the long standing convention has also the binding effect in order to maintain judicial discipline and decorum and, therefore, in my opinion these long standing convention and judicial discipline cannot be ignored. The purpose behind this convention is to maintain public faith in judicial system as well as the orders passed by the courts. Whenever there is violation

> of this convention, litigants in general used to raise their voice and if these conventions will be allowed to be violated then in my opinion it will involve judicial anarchy. If the subordinate courts are permitted to grant bail in cases where bail applications are being heard by this Court and are pending, then conflicting and contrary orders can be passed and it would be very difficult to maintain consistency and in my opinion if there will be inconsistency then it will result in judicial anarchy."

23. The Rajasthan High Court in Padam Chand Jain vs. State of Rajasthan and another, 1991 Crl.L.J. 736 had observed that wherein bail application was dismissed by the High Court, the Sessions Judge could not allow the subsequent bail application based on similar material.

24. In Bimla Devi vs State of Bihar and others, (1994) 2 SCC 8, the Magistrate granted .

provisional bail after the High Court had rejected two earlier bail applications, the conduct of the Magistrate was found to be against judicial discipline and the Chief Justice was asked to take action against the Magistrate on the administrate side. It is apt to reproduce the relevant observations, which read thus:

> "[2] In view of the fact that the Judicial Magistrate at a later stage has himself cancelled the bail, it is not necessary for us to pass any order with regard to the petitioner's prayer for cancellation of bail but the disturbing feature of the case is that though two successive applications of the accused for grant of bail were rejected by the High court yet the learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions. (See in this connection Shahzad Hasan khan case.) The manner in which the learned Magistrate dealt with the case can give rise to the apprehensions which were expressed by the complainant in her complaint, which was treated by this court as a writ petition and is being dealt with as such. In the course that we are adopting, we would not like to comment upon the manner in which the learned Magistrate dealt with the case any more at this stage. We, in the facts and circumstances stated above, direct that a copy of this order be sent to the chief justice of the Patna High court for taking such action on the administrative side as may be deemed fit by him."

25. The Patna High Court in Prabhu Yadav .

alias Prabhu Mukhia vs State of Bihar, 1994 (2) East Cr.C. 341 observed as under:

> "However, the practice of the court below in entertaining the bail application by the same accused after the rejection of his earlier bail application by the High Court is not to be appreciated. The court below cannot sit in the review or revision against the order of the High Court and if this practice is allowed to prevail it will undermine the dignity of the higher court. The judicial discipline must be strictly maintained. If someone has any ground for the grant of bail after the rejection of the order has been

> passed he must approach the very higher court which had earlier rejected the application. That very court will be well within its jurisdiction to consider the matter again in the light of new and further circumstances and will pass suitable and appropriate order. The trial court should not entertain an application for bail, even provisional bail, after the bail had been rejected by the High Court.

26. The Kerala High Court in Ajayaraj vs State of Kerala, 2010 Crl. L.J. 534 on matters of judicial discipline and propriety after taking into consideration the ratio laid down by the Hon'ble Supreme Court in Shahzad Hasan Khan's case (supra) took a firm view that when the superior Court had refused to grant bail to the accused on merits of the case and that order remained in force, then judicial discipline and propriety required the subordinate criminal court not to entertain an application for bail from such accused unless the .

superior court had either permitted the accused to move again before the subordinate court or, the case was one covered by sub-clause (a) of the proviso to section 167 (2) of the Code. It was further observed that it was only appropriate to avoid unpleasant situation of this nature and violation of judicial discipline and propriety that the Magistrates also ensure that the petitions for bail filed before them, it is clearly stated whether any petition for bail had been filed in that court or in any other court and if so, with the result thereof.

27. Similar question came up before the Rajasthan High Court in Manish Pahadia vs Smt. Sanju Bai & Anr., 2010 (2) Crimes 77 (Raj.) and it was observed as under:

> "[7] The most crucial question, springing for consideration, in the instant case is as to whether, the Sessions Judge, Baran should have granted anticipatory bail under Section 438 of Cr.P.C. when the prayer to seek such bail was denied by the High Court?
>
> [8] It is true that the principles of judicial discipline and propriety demand that the judges, whatever, their own views, must follow the decision of the superior Courts to which they are judicially sub-ordinate. In the case of Samunder Singh v. State of Rajasthan, 1987 AIR(SC) 737, their Lordships of the Apex Court, propounded that when .
>
> the matter regarding unnatural death of daughter-in-law, in her father-in-law's house, was not investigated, it was not prudent to grant anticipatory bail. In the instant case, albeit, the interim anticipatory bail was granted by the vacation Sessions Judge, Baran for a period of 25 days and hiding this fact, the respondent no. 1 endeavoured to seek anticipatory bail from the High Court, which was denied vide order dated 13th January, 2009. Aggrieved with this, the respondent no. 1 filed Special Leave Petition before the Apex Court and the Hon'ble Apex Court also declined to interfere with the order dated 13th January, 2009 passed by the High Court. But, meantime, the period of interim anticipatory bail was extended by the Sessions Court, Baran. It appears that the fact of rejection of anticipatory bail by the

> High Court and by the Supreme Court was suppressed from the Sessions Judge, Baran and Sessions Judge, Baran finally on 13th February, 2009, granted regular anticipatory bail to her. Learned Sessions Judge, Baran ought to have followed the ratio indicated by the High Court in its rejection order dated 13th January, 2009 and of course, he should have dismissed the bail petition but he did not do so. Such a practice adopted by the sub- ordinate court, which amounts to judicial indiscipline and impropriety has been deprecated by the Hon'ble Apex Court in the case of Bimla Devi v. State of Bihar & ors., 1994 2 SCC 8. It has been held by the Lordships that though two successive applications of the accused for grant of bail were rejected by the High Court yet learned Magistrate granted provisional bail. The course adopted by the learned Magistrate is not only contrary to settled principles of judicial discipline and propriety but also contrary to the statutory provisions.
>
> [9] It is true that the learned Sessions Judge, Baran .
>
> should not have granted anticipatory bail to the respondents when her bail application filed under Section 438 of Cr.P.C. had been rejected by the High Court and Special Leave Petition against that was dismissed by the Hon'ble Apex Court. However, that Session Judge is no more in service now."

28. In Nebulal Shaw's case (supra), it was observed that it is a trite saying "that a person when admitted to bail by the High Court could be committed to custody only by the High Court." Therefore, a person who suffered rejection of bail could only agitate his claim to the very Court which rejected the prayer for bail.

29. In view of settled position of law, this Court has no difficulty in concluding that the concerned Magistrate by granting bail to respondent No.2, that too, within four days of the rejection thereof by this Court and further even without making a reference to the orders passed by this Court has committed judicial impropriety and gross indiscipline.

30. Therefore, in light of the judgment rendered by the Hon'ble Supreme Court in Bimla Devi's case (supra), the matter is required to be placed before Hon'ble the Chief Justice for taking appropriate action .

against the Magistrate on the administrative side.

Ordered accordingly.

31. Consequently, in view of what has been stated above, the order passed by the learned Magistrate in the given circumstances is clearly not sustainable.

other

32. but Having said so, this Court is left with no option to cancel the bail granted to respondent No.2 by the learned Magistrate on 30.8.2016 and the order passed by the learned Magistrate is accordingly quashed and set aside.

33. However, it is made clear that this order shall not debar the respondent No.2 from approaching this Court for grant of regular bail which application need not to state as and when filed shall be considered on its own merits.

The petition is disposed of accordingly.

(Tarlok Singh Chauhan), Judge.

2.6. 2017 *awasthi*