that offend the core values of a member State's national policy, which it cannot be expected to compromise. However, in the light of the law already laid down, the judgment in *NAFED* may be treated like an aberration, resulting from the complex factual matrix of the case.

The general enforcement bias of the Courts may be recognised from the words of the High Court of Delhi in *Cruz City's* case (supra), in which the Court opined that where public policy considerations are to be weighed, it is not difficult to visualise a situation where both permitting as well as declining enforcement would fall foul of the public policy. Thus, even in cases where it is found that the enforcement of the award may not conform to public policy, the Courts may evaluate and strike a balance whether it would be more offensive to public policy to refuse enforcement of the foreign award - considering that the parties ought to be held bound by the decision of the forum chosen by them and there is finality to the litigation - or to enforce the same; whether declining to enforce a foreign award would be more debilitating to the cause of justice, than to enforce it. In such cases, the Court would be compelled to evaluate the nature, extent and other nuances of the public policy involved and adopt a course which is less pernicious.

D. Morality and Justice

The last clause refers to a conflict with the most basic notions of morality or justice, with regard to which it was held that only those awards that shock the conscience of the Court can be set aside on this ground, as has been discussed in detail in the preceding section.

VI. Conclusion

Public policy, as discussed, is fluid and has no concrete parameters, that determine its scope and usage. As a result, its interpretation by the Courts has been tottering, which has been used by parties to arbitral proceedings as a weapon to avoid the enforcement of awards. As witnessed, some judicial pronouncements and legislation have tried to tame the unruly horse that public policy is, with considerable success, paving a way for the enforcement of commercial awards, the ease of which, *inter alia*, will significantly improve the ease of investment and trade in India, apart from projecting India as one of the most viable seats of arbitration in the developing countries. It may be hoped that the restrictive interpretations of public policy as have been laid down, will stand the test of time, assisted by certain legislative changes, as has been discussed, in order to invigorate the regime of arbitration in India, by adhering to international standards, which would ultimately help in popularising India as one of the preferred seats for international commercial arbitrations.

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STUDY OF LEGAL POSITION AGAINST THE ORDER PASSED BY THE MAGISTRATE IN Cr.MP No.920/2020 IN CRIME NO.553/2020 OF I TOWN PS, NANDYAL, IN ABDUL SALAM AND HIS FAMILY SUICIDE CASE

By

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After the suicide of the deceased *Abdullah* alongwith his other family members, the I Town PS Nandyal registered a case in Crime No.553/2020 for the offences under

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Sections 323, 506, 509, 306 read with 34 IPC and produced the accused 1 and 2 before the Jurisdictional Magistrate under a remand report. The Jurisdictional Magistrate remanded the A1 and A2 to judicial custody till 9.11.2020 for the offence under Section 506 read with 34 IPC only but not in respect of the other offence cited in the remand report. The Judicial Magistrate without mentioning anything about other offences namely 306, 323 and 509 IPC followed by granting of bail for the offence under Section 506 IPC. It can be inferred that Judicial Magistrate has rejected the request of police to remand the accused for judicial custody for the offences under punishable under Section 306 and other offences requested under remand report.

The accused 1 and 2 moved bail applications under Section 436 IPC as the offence under Section 506 read with 34 IPC is bailable in nature and the Magistrate enlarged them on bail at once.

Considering the above facts, one can understood that the order passed by the Magistrate resulted in two things.

Firstly, the Magistrate upon production of the accused in the above crime, has rejected the request of the police to remand of the accused to judicial custody for the offences under Sections 306, 323 and 509 IPC.

Secondly, the Magistrate has enlarged both A1 and A2 on Bail for the offence under Section 506 read with 34 IPC which is bailable in nature on the application moved on behalf of the A1 and A2 under Section 436 Cr.P.C.

At this point of time, lots of discussion were taken place about the correctness of the order passed by the jurisdictional Magistrate and further action to be taken by the police in this regard.

Some of the Law Officers and Police authorities came to a decision to move *an application under Section 439 Cr.P.C., for cancellation of bail granted by the jurisdictional Magistrate for the offence under 506 read with 34 IPC or*;

Some suggested for *Revision under Section 397 Cr.P.C. against the order passed by the Jurisdictional Magistrate*.

On that the local police developed confusion due to difference of legal opinions for further action against the order passed by the Jurisdictional Magistrate.

As discussed *supra*, the order passed by the Magistrate in Cr. MP No.920/2020 in Crime No.553/2020 of I Town PS, Nandyal has to be discussed in two legal aspects.

Firstly, in fact, no useful purpose would serve to the police in preferring for cancellation of bail under Section 439 Cr.P.C., as the bail is granted for the offence under 506 IPC, which is bailable offence, only but for any other offences cited in the remand report. In response to the demand of the public, the Government intended to take immediate steps to get for cancellation of bail. The reason is to repose the public trust and confidence of the community for which the deceased family belongs and to show its commitment in the matter and to satisfy the agitators with a view to maintain law and order in the areas of agitation. Another reason that I believe is, that the nomenclature of "*Cancellation of Bail*" easily makes the general public to understand the action intended to take in the matter. So, final decision of the authorities tilted towards preferring for cancellation of bail only instead of preferring revision against the order passed by the Magistrate in question.

For a movement even if bail is cancelled by the superior Court, since they were remanded for the offence punishable under Section 506 IPC alone and as it is a bailable in nature, again police it makes the police to grant bail for that offence as the same is mandatory. As such no useful purpose would serve.

So, unless and until there is an order remanding the accused for judicial custody for a non-bailable offence, question of keep them in judicial custody does not arise.

Besides the above thing, some of the senior officers expressed their opinions on true legal position expressing that the Order passed in Cr. MP No.920/2020 in Crime No.553/2020 of I Town PS, Nandyal is an interlocutory order for which no revision would lie as contemplated under sub-section (2) of Section 397 of Code of Criminal Procedure. In view of the above aspect, it was suggested to prefer cancellation of bail under 439 Cr.P.C. only instead of preferring revision under 397 Cr.P.C.

On preferring cancellation of bail application under 439 Cr.P.C. again the question of maintainability was coming into discussions. On that a doubt about the correctness of the action in preferring application for cancellation of Bail granted by the Magistrate came into discussion among the authorities.

What is the correct legal action as per the law, in this case ?

What should have done by the police in this situation ?

* Preferring for cancellation of bail under 439 Cr.P.C. or

* Preferring for revision under 397 Cr.P.C.

In this regard I have formed my opinion based on the observations of the Apex Court in similar cases.

In my opinion the order passed by the Jurisdictional Magistrate in Cr. MP No.920/2020 shall be taken in two-fold for discussion.

(i) *that as per the order of* the jurisdictional Magistrate, it can be rightly inferred that the Magistrate had rejected the request of the police for the remand of the accused 1 and 2 to judicial custody for the offences under Sections 323, 306, 506 IPC and;

(ii) secondly, he had considered the application of the bail under Section 436 Cr.P.C. for the offence of under 506 read with 34 IPC within his power.

As per the observations of the Apex Court, order granting or refusing the bail is *an Interlocutory Order* whereas rejecting the request of the police for remand of the accused *is a final order and not an Interlocutory Order*.

In this case it is clear the request of the police to forward the accused herein to the judicial custody for the offence under 306 IPC is rejected. So, the decision of the Magistrate is nothing but a final order.

If the Police want to prefer an application for cancellation of bail, as against the order passed by the Magistrate, it being interlocutory order, no revision would lie. The decisions in *Dolat Ram v. State of Haryana*, (1995) 1 SCC 349 = 2004 AIR SCW 4970 and *Samarendranath Bhattacharjee v. State of West Bengal*, (2004) 11 SCC 165, relate to applications of *cancellation of bail and not related to appeals* against orders granting bail. In an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding the appeals against grant of bail, where the accused has been at large for a considerable time, the post-bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail."

Thus, the superior Court must satisfy about the subsequent conduct of the person to whom bail was granted regarding the violation of the conditions imposed while

granting the bail, which is absent in the case under discussion.

So, the police should have invoked revisional jurisdiction under Section 397 Cr.P.C. but not for cancellation of bail granted for the offence under Section 506 IPC which is of bailable nature. It is an interlocutory order against which revision would not lie.

In *V.C. Shukla v. State, Fazal Ali*, J., in delivering the majority judgment reviewed the entire case law on the subject and deduced therefrom the following two principles, namely,

(i) that a final order has to be interpreted in contradistinction to an interlocutory order; and

(ii) that the test for *Ambarish Rangshahi Patnigere v. The State of Maharashtra*, on 22nd July, 2010

determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

In criminal proceedings, the word 'judgment' is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused. Applying these tests, it was held that an order framing a charge against an accused was not a final orders but an interlocutory order within the meaning of Section 11(1) of the Special Courts Act, 1979 and therefore not appealable. It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time….."

In this connection the Supreme Court had occasion to deal with *Amar Nath's* case AIR 1977 SC 2185 = 1977 Cri. LJ 1891.

In that connection, the Supreme Court observed as follows :—"It is neither advisable, nor possible to make a catalogue of orders to determine which kinds of order would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two". It will be seen that having regard to this view taken by the Supreme Court, in fact in *Madhu Limaye's* case, AIR 1978 SC 47 = 1978 Cri. LJ 165, the Larger Bench of the Supreme Court has expressed an opinion that the broad statement of law contained in *Amar Nath's* case (supra), needed certain modification. However, the Supreme Court reaffirmed the decision in *Amar Nath's* case (supra) and held that *the order releasing some of the accused on perusal of the police report and subsequently summoning them was not an interlocutory order but was a final order.*

To my mind, reading the two cases together *Amar Nath's* case (supra) and *Madhu Limaye's* case (supra), no doubt is left about the legal position, namely, that an order rejecting the application for remand of the accused for the offences under Sections 306 and 509 read with 34 IPC to judicial custody is a final order and not an interlocutory order."

The learned Judge of this Court in *R. Shakuntala*, finally came to conclusion that *an order rejecting application for remand of the accused to judicial custody is a final order and not an interlocutory order.* This will be applicable with equal force to the refusal of request for police custody also. As such, the order passed by the Magistrate rejecting request for police custody cannot be treated as interlocutory order because the police cannot repeat and make applications again and again for police custody after the application for police custody had been rejected once and particularly in view of the limitation under Section 167 Cr.P.C., that the police custody may be granted only during first 15 days after the arrest or detention and not thereafter. If such application for police custody is rejected, that order becomes final and the Investigating Officer is permanently

deprived of seeking police custody of that accused.

In the light of above observations of the Apex Court, if the State feels that the Jurisdictional Magistrate had granted bail in the serious offences (306 IPC) without looking to the gravity of the offences and without giving proper opportunity to the prosecution to present its viewpoint and if it results in the miscarriage of justice, the superior Courts can always interfere in this respect.

Further, after careful reading of the observations of the Apex Court in its series of decisions in

Puran v. Rambilas and another, (2001) 6 SCC 338,

Pandit Dnyanu Khot v. The State of Maharashtra, JT 2002 (6) 21,

State of U.P. v. Amarmani Tripathi, 2005 AIR SCW 4763, Para 18

Dolat Ram v. State of Haryana, (1995) 1 SCC 349; and

Samarendranath Bhattacharjee v. State of W.B., (2004) 11 SCC 165

shows that while considering the factors relevant for consideration of bail already granted *vis-à-vis* the factors relevant for rejection of bail, Court pointed out that for cancellation of bail, *conduct subsequent to release on bail and supervening circumstances will be relevant.*

The said observations were not intended to restrict the power of a superior Court to cancel bail in appropriate cases on other grounds. In fact it is now well settled that if a superior Court finds that the Court granting bail had acted on irrelevant material or if there was non-application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made. (See *Gajanand Agarwal v. State of Orissa*, 2006 (9) Scale 378 = 2006 AIR SCW 4753 and *Rizwan Akbar Hussain Syyed v. Mehmood Hussain*, (2007) 10 SCC 368 = 2007 AIR SCW 3654).

In view of the above authorities of the Supreme Court, it is now settled position of law that even though the grant of bail may be interlocutory order not subject to revisional jurisdiction under Section 397, still the superior Courts by virtue of the powers under Section 439(2) Cr.P.C. can cancel the bail in appropriate cases, if the superior Courts find that the bail was granted acting upon irrelevant material or there was non-application of mind or failure to take note of statutory bar or grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor or complainant.

In my opinion, in the case in which an order was passed by the Jurisdictional Magistrate in Cr. MP No.920/2020 in Crime No.553/2020 of I Town P.S., Nandyal, preferring for cancellation of bail granted for the offence under Section 506 read with 34 IPC would serve no real purpose. The effect of the order passed by the Magistrate resulted in rejection of remand to judicial custody to the accused produced under the remand report for the offence under Section 306 IPC. In these circumstances, the State may prefer revision under Section 397 Cr.P.C., on the ground that the Magistrate had passed order without proper application of mind or failure to take note of allegations made in the material produced alongwith remand report, or on the ground of manifest impropriety as the Magistrate failed to hear the Public Prosecutor by giving reasonable opportunity invoking Revisional Jurisdiction under Section 397 Cr.P.C., it being not an interlocutory order.

Note : This article is made by the author for the benefit of legal fraternity and with a view to give a clarity on the legal position in the light of the observations of the Apex Court, only, without touching the facts in deep, merits and demerits of the case and lapses of any of the parties to the case.