

KANWAR SINGH MEENA
v.
STATE OF RAJASTHAN & ANR.
(Criminal Appeal No. 1662 of 2012)

OCTOBER 16, 2012

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Code of Criminal Procedure, 1973 – s. 439(2) – Cancellation of bail – Considerations for – Held: The primary considerations are whether accused likely to tamper with evidence; whether bail was granted ignoring relevant materials indicating prima facie case or whether bail was granted on irrelevant materials – On facts, the bail order was passed ignoring relevant evidence indicating prima facie case against the accused and ignoring the fact that brother of the accused, an IPS officer was influencing the investigation – In a gruesome crime, High court exercised its discretion to grant bail in an arbitrary and casual manner – Bail order suffers from serious infirmities and hence legally not tenable.

A criminal case was registered against respondent No. 2 accused and 5 others u/ss. 147, 148, 149, 364 and 302 IPC. High Court released respondent No. 2 – accused on bail. The appellant-complainant filed this appeal against the bail order.

The complainant contended that the High Court released the accused on bail ignoring the principles which guide the courts in exercise of their discretion to grant bail and also over-looked vital evidence collected by the Investigating agency in the case and the fact that the brother of the accused was an IPS officer and was influencing the investigation.

Disposing of the appeal, the Court

A HELD: 1.1 Section 439 Cr.P.C. confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity
B of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course
C of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only
D opine as to whether there is *prima facie* case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the
E accused of a fair trial. [Para 10] [856-E-H; 857-A]

1.2 While cancelling bail under Section 439(2) Cr.P.C. the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due
F course of justice or evade the due course of justice. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating
G *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized
H principles underlying the power to grant bail. Such orders

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are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Supreme Court is equally guided by the above principles in the matter of grant or cancellation of bail. [Para 10] [857-A-F]

2. In the interest of justice, the impugned order granting bail to the accused deserves to be quashed. The order passed by the High Court releasing the accused involved in a heinous crime on bail, ignoring the relevant material, is legally not tenable. It suffers from serious infirmities. The High Court has exercised its discretionary power in an arbitrary and casual manner. The statements of the two witnesses appear to be relevant as they *prima facie* indicate involvement of the accused in the crime in question. The High Court ought not to have ignored those statements. The High Court has expressed no opinion as to why it was releasing the accused on bail. It was imperative for the High Court to do so. A diary entry indicates that brother of the accused tried to bring pressure on the investigating agency. In his affidavit filed in this court, Additional Deputy Commissioner of Police, has confirmed that the accused had made an effort to influence the investigation. The fact that brother of the accused is an IPS officer is not noticed by the High Court. Even Assuming that the accused is not likely to flee from justice or after release on bail he has not tried to tamper with the evidence, a legally infirm and untenable order passed in arbitrary exercise of discretion releasing the accused involved in a gruesome crime on bail should not

A be allowed to stand. This order needs to be corrected because it will set a bad precedent. Besides, it will have adverse effect on the trial. [Paras 15 and 16] [868-D-H; 861-A-D]

B *Gurcharan Singh and Ors. etc. v. State (Delhi Administration)* (1978) 1 SCC 118: 1978 (2) SCR 358 ; *Puran v. Rambilas and Anr.* (2001) 6 SCC 338: 2001 (3) SCR 432; *Dinesh M.N. (S.P.) v. State of Gujarat* (2008) 5 SCC 66: 2008 (6) SCR 1134 – relied on.

C *Dolat Ram v. State of Haryana* (1995) 1 SCC 349: 1994 (6) Suppl. SCR 69 – referred to.

Case Law Reference:

D	1978 (2) SCR 358	Relied on	Para 7
	2001 (3) SCR 432	Relied on	Para 8
	1994 (6) Suppl. SCR 69	Referred to	Para 8
	2008 (6) SCR 1134	Relied on	Para 9

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1662 of 2012.

F From the Judgment & Order dated 19.08.2011 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Criminal Misc. Bail Application No. 7452 of 2011.

Lekh Raj Rehalia (For Varinder Kumar Sharma) for the Appellant.

G U.U. Lalit, Ajay Vir Singh Jain, Atul Agarwal, Pravin Agarwal, Ajay Saroya, Munawwar Naseem, Sanchit Dhawan, Siddharth Arora, Nisha Mohan Das for the Respondents.

The Judgment of the Court was delivered by

H (SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

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2. The appellant is the brother of one Purna Singh Meena. On 20/5/2009, he lodged a complaint in respect of murder of Purna Singh Meena (*“the deceased”*) against Khushi Ram Meena, who is respondent 2 herein and five others at Gandhi Nagar Police Station, District Jaipur City (East), which was registered under Sections 147, 148, 149, 364 and 302 of the Indian Penal Code (for short, *“the IPC”*). By the impugned order, the Rajasthan High Court released Khushi Ram Meena (*“the accused”*) on bail. The appellant has challenged the said order in this appeal.

3. The grievance of the appellant as stated by his counsel Mr. Lekh Raj Rehalia is that the High Court committed a grave error in releasing the accused on bail. According to him the High Court ignored the well established principles which guide the courts in exercise of their discretion to grant bail. It is *inter alia* contended that the High Court overlooked extremely vital evidence collected by the investigating agency and, without assigning any reasons, it released the accused on bail. The High Court failed to notice that there is more than *prima facie* case against the accused and that the brother of the accused who is an IPS Officer is trying to exert pressure on the investigating officers. It is submitted that the High Court’s order being perverse must be set aside and the accused must be directed to be taken in custody.

4. Mr. Ajay Vir Singh, learned counsel for respondent 1-State supported the appellant. He relied on the affidavit of Mr. Yogesh Dadhich, Additional Deputy Commissioner of Police, Jaipur City (East), Jaipur in support of his submissions. He also drew our attention to an extract from the relevant station diary which indicates that the brother of the accused tried to pressurize the investigating agency.

5. Mr. U.U. Lalit, learned senior counsel appearing for the accused submitted that though the High Court has not assigned any reasons for releasing the accused on bail, it has made a reference to various important features of the matter. The High

A Court has observed that the information was received by the police at 6.10 a.m. on 20/5/2009 on mobile; however, no FIR was registered immediately; that the FIR came to be filed at 3.15 p.m. on 20/5/2009; that though the investigation was transferred to CID (CB) on 5/6/2009, the same officer continued the investigation and got the statements of witnesses recorded under Section 164 of the Criminal Procedure Code (for short, "the Code") on 10/6/2009; that when the matter was investigated by CID (CB), the factual report of investigation was submitted by Sandeep Singh and Rajesh Sharma which reveals that the accused was not involved in this case; that the location of the mobile of the accused as per the investigation was at Sikar and that the trial court had rejected the application filed by the investigating agency to declare the accused as absconder. The High Court also considered the fact that the other co-accused have been enlarged on bail by the High Court. Counsel submitted that the impugned order was passed after taking all the above vital features into account and, therefore, it cannot be said that there is any non application of mind. Counsel submitted that each of the above circumstances is very relevant and makes out a case of false implication of the accused. Counsel pointed out that there is nothing on record to indicate that after release on bail, the accused had tried to bring pressure on the police. The diary entry produced in this court pertains to an earlier period. Counsel submitted that the accused is on bail for a considerable period. There is nothing on record to show that he has tried to tamper with the evidence or he has obstructed the course of administration of justice. It would be, therefore, improper to cancel his bail.

6. Cancellation of bail is a serious matter. Bail once granted can be cancelled only in the circumstances and for the reasons which have been clearly stated by this court in a catena of judgments. It would be appropriate to refer to a few of them before dealing with the rival contentions.

7. In *Gurcharan Singh and others etc. v. State (Delhi*

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Administration)¹, the appellant Gurcharan, who was Superintendent of Police, was charged along with other police personnel under Section 120-B read with Section 302 of the IPC. During the preliminary enquiry six alleged eye-witnesses, who were police personnel, did not support the prosecution case. However, after the FIR was lodged during the course of investigation, seven witnesses including the said six police personnel gave statements implicating appellant Gurcharan Singh. One eye-witness A.S.I. Gopal Das made a statement under Section 164 of the Code in favour of the prosecution. Learned Sessions Judge released appellant Gurcharan Singh on bail after observing that there was little to gain by him by tampering with the witnesses who had, themselves, already tampered with their evidence by making contradictory statements. Learned Sessions Judge further observed that after reviewing the entire material he was of the opinion that there was little probability of appellant Gurcharan Singh fleeing from justice or tampering with the witnesses. He noted that having regard to the character of evidence he was inclined to grant bail. The prosecution moved the High Court under Section 439 (2) of the Code for cancellation of the said order. The High Court *inter alia* observed that considering the nature of the offence and the character of the evidence, the reasonable apprehension of witnesses being tampered with and all other relevant factors, it had no option but to cancel the bail. The High Court observed that learned Sessions Judge did not exercise his judicial discretion on relevant well-recognized principles. An appeal was carried from the said order to this court. This court observed that the powers of the High Court and the Sessions Court under Section 439 (1) of the Code are much wider than those conferred on a court other than the High Court and Sessions Court in respect of bail. However, certain considerations which have to be taken into account are common to all courts. This court noted that gravity of the circumstances in which the offence is committed; the position

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1. (1978) 1 SCC 118.

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A and the status of the accused with reference to the victim and the witnesses; the likelihood of the accused fleeing from justice; of repeating the offence; of jeopardizing his own life being faced with a grim prospect of a possible conviction in the case; of tampering witnesses; the history of the case as well as its
 B investigation and such other relevant grounds will have to be taken into account. To ascertain whether there is *prima facie* case against the accused, character of the evidence will have to be considered. While confirming the High Court's interference with the discretion exercised by the Sessions
 C Court, this court expressed its displeasure about the unwarranted premature comments made by the Sessions Court on the merits of the case when at that stage it was only called upon to consider whether *prima facie* case was made out against the accused or not. This court particularly referred to
 D statement of ASI Gopal Das, recorded under Section 164 of the Code and observed that this witness had made no earlier contradictory statement and the taint of unreliability could not be attached to his statement at that stage as was done by the Sessions Court. This court found that the Sessions Court was
 E not alive to legal position that there was no substantive evidence recorded against the accused until the eye-witnesses were examined in the trial. Serious note was taken of the fact that the Sessions Court had not focused its attention on relevant considerations. The approach of the Sessions Judge was
 F viewed as suffering from serious infirmity and cancellation of bail was endorsed.

8. In *Puran v. Rambilas & Anr.*², the appellant therein was charged under Sections 498-A and 304-B of the IPC. The Additional Sessions Judge, Nagpur released the appellant therein, on bail. The High Court cancelled the bail granted to the appellant. The said order was under challenge before this court. It was argued that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted
 G have to be considered and dealt with on different basis. Very

H 1. (2001) 6 SCC 338.

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cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. It was argued that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. Reliance was placed on *Dolat Ram v. State of Haryana*³ in support of this submission. This court observed that in *Dolat Ram*, it was clarified that the above instances are merely illustrative and not exhaustive and one such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime and that too without giving any reasons. This court observed that such an order would be against the principles of law and, interest of justice would require that such a perverse order be set aside and bail be cancelled. This court found that inasmuch as the Sessions Court had ignored vital materials while granting bail, the High Court had rightly cancelled the bail. It was further observed that such orders passed in heinous crimes would have serious impact on the society and an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

9. In *Dinesh M.N. (S.P.) v. State of Gujarat*⁴, the appellant therein - a police officer was involved in a case of fake encounter. Learned Sessions Judge released him on bail. It was evident from the bail order that learned Sessions Judge was influenced by the fact that the deceased was a dreaded criminal, against whom as many as 25 FIRs were lodged. An application for cancellation of bail was moved before the High Court under Section 439(2) of the Code. The High Court cancelled the bail holding that learned Sessions Judge had not kept in view the seriousness of the offence in which the high ranking police officer was involved. It was observed that past conduct or antecedents of the deceased could not have been

3. (1995) 1 SCC 349.

4. (2008) 5 SCC 66.

A a ground for grant of bail to the accused. This court while dealing with the challenge to the said order held that though it is true that parameters for grant of bail and cancellation of bail are different, if the trial court while granting bail acts on irrelevant materials, bail can be cancelled. It was observed that perversity of a bail order can flow from the fact that irrelevant materials have been taken into consideration adding vulnerability to the order granting bail. On the facts of the case, this court held that that the deceased had a shady reputation and criminal antecedents, was certainly not a factor which should have been taken into consideration while granting bail to the accused. It was the nature of the act committed by the accused which ought to have been taken into consideration. The order of the High Court was confirmed on the ground that the bail was granted on untenable grounds. The argument that supervening circumstances such as attempt to tamper with the evidence and interference with the investigation were absent and, therefore, bail could not have been cancelled by reappreciating evidence, was rejected by this court.

10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is *prima facie* case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and

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premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail.

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11. It is necessary now to briefly note the facts of the case. The complaint lodged by the appellant stated that on 19/5/2009, the deceased came to his house at about 7.00 p.m. After the deceased received a phone call, he told the appellant that he had to take money from someone and asked him to drop him by his bike at Gandhi Nagar. Accordingly, he dropped the deceased near Janta Store, Opp. Shyam Hawans Paradise Apartment, Gandhi Nagar at 12.00 in the night. The deceased told him that he will come back next morning. Since the deceased did not return as promised, the appellant reached

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A Padawa near Shyam Hawans Paradise Apartment at about 11.00 a.m. and inquired about the deceased. Chowkidar Kuldip Prajapati told him that the deceased was with Rita madam in Flat No.603 and in the morning at about 6.00 a.m., the accused, who used to meet Rita madam came with his four/five men in
 B a jeep bearing Registration No.RJ-14-UB-294. All of them went into Flat no.603; beat up the deceased; dragged him out of the flat, dumped him in the jeep and left the place in the jeep. After that, he searched for the deceased. He ultimately went to the police station and gave the information to the police. Thereafter,
 C he went to the mortuary in SMS Hospital. At the mortuary he saw the dead body of the deceased and identified it. The appellant stated that he was sure that the deceased was murdered by the accused and his associates. On the basis of this FIR, investigation was started.

D 12. During investigation, on 10/6/2009, statements of Kuldip Prajapati, the Chowkidar of Shyam Hawans Paradise Apartment and Rita were recorded under Section 164 of the Code by Judicial Magistrate, First Class No.15, Jaipur City, Jaipur. Copies of these statements have been perused by us.
 E Kuldip Prajapati *inter alia* stated in his statement that Rita came to reside in Flat No.603 situate in Shyam Hawans Paradise Apartment belonging to R.P. Singh on 7/5/2009. The accused was a usual visitor at the said flat. On 19/5/2009 at about 8.30 p.m., he received a phone call from the accused.
 F The accused asked him whether Rita was in the flat to which he answered in the affirmative. He further stated that on 20/5/2009 at about 6.00 a.m., the accused came there in a jeep along with three to four men. He went to Rita's flat. After sometime, Rita came to him and told him that there was a dispute going on in her house. He went upstairs with Rita. He
 G saw the accused along with three to four persons dragging a man. On his enquiry, the accused told him that a wicked man had entered his flat. The accused did not tell him where he was taking the man. He put the man inside the jeep and took him
 H away.

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13. In her statement, recorded under Section 164 of the Code, Rita, *inter alia*, stated that she was married to one Ramgopal Meena. Ramgopal Meena became insane and, therefore, she deserted him. She was staying with her parents. Since her elder brother was dealing in wine, the accused, an Excise Officer used to visit their house frequently. On his request, she began residing with him. Later on, physical relations developed between both of them. The accused made arrangement for her in a rented house wherever he was posted. When she was residing in Deepak Colony, she came in contact with the deceased, who was also residing in Deepak Colony. Intimate friendship developed between her and the deceased. Rita further stated that disputes arose between her and the accused. She stated that the accused knew that she was staying with the deceased. In the absence of the deceased, the accused came to her and threatened her. He told her not to reside with the deceased and vacate the house. He made her vacate the house and put her up in a rented accommodation in Gandhi Nagar. On 19/5/2009, the accused was continuously making telephone calls to her. Last call was received at 11.30 p.m. He was threatening her and asking her as to why she was in touch with the deceased. The deceased came to her flat at about 5.30 a.m. When they were taking tea at about 6.00 a.m., the accused came there. He was accompanied by Rai Singh and two others. Those two other persons caught her. They pushed her outside the flat. They closed the door. She went downstairs to call the guard Kuldip Prajapati. She told him that some dispute was going on in her flat. When both of them were going upstairs, she saw all the four persons dragging the deceased down. She did not know where the deceased was taken. She informed the brother of the deceased that the accused had taken away the deceased. She concluded that the accused, Rai Singh, Vijay and Subhash jointly committed the murder of the deceased.

14. From the complaint and the aforementioned two statements recorded under Section 164 of the Code, it *prima*

A *facie* appears that there was illicit relationship between the
 accused and Rita. However, Rita came in contact with the
 deceased and intimate relationship developed between the
 two, which was not liked by the accused. It appears to be the
 case of the investigating agency that, therefore, the accused
 B eliminated the deceased with the help of his companions.

15. At this stage, we do not want to comment on the
 credibility or otherwise of the evidence collected by the
 prosecution. Whether the statements of Kuldip Prajapati and
 Rita would ultimately help the prosecution to establish its case
 C can be ascertained only when the trial is concluded. That is the
 function of the trial court. It would be inappropriate to discuss
 the evidence in depth at this stage because it is likely to
 influence the trial court. We, therefore, refrain from doing so.
 But, we must make it clear that the statements of Kuldip
 D Prajapati and Rita, recorded under Section 164 of the Code,
 appear to be relevant as they *prima facie* indicate involvement
 of the accused in the crime in question. The High Court ought
 not to have ignored those statements. It is true that the High
 Court has referred to certain features of the prosecution case,
 E but that reference is in the form of submissions made by counsel
 for the accused. The High Court has not discussed those
 features. It has expressed no opinion as to why it was releasing
 the accused on bail. It was imperative for the High Court to do
 so. We have been shown an extract from a relevant diary entry
 F which does indicate that brother of the accused tried to bring
 pressure on the investigating agency. In his affidavit filed in this
 court, Mr. Yogesh Dadhich, Additional Deputy Commissioner
 of Police, Jaipur City (East), has confirmed that the accused
 had made an effort to influence the investigation. The fact that
 G brother of the accused is an IPS officer is not denied by his
 counsel. This fact is not noticed by the High Court. If it was not
 brought to the notice of the High Court by the investigating
 agency, then, it will have to be said that the investigating
 agency adopted a very casual approach before the High Court.
 H In any case, the order passed by the High Court releasing the

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accused involved in a heinous crime on bail, ignoring the relevant material, is legally not tenable. It suffers from serious infirmities. The High Court has exercised its discretionary power in an arbitrary and casual manner. We have also noticed that the incident took place on 19/5/2009 and the accused could be arrested only on 1/6/2011. His two attempts to get anticipatory bail, one from the Sessions Court and the other from the High Court, did not succeed. Assuming that the accused is not likely to flee from justice or after release on bail he has not tried to tamper with the evidence, that is no reason why a legally infirm and untenable order passed in arbitrary exercise of discretion releasing the accused involved in a gruesome crime on bail should be allowed to stand. This order needs to be corrected because it will set a bad precedent. Besides, it will have adverse effect on the trial.

16. Taking an overall view of the matter, we are of the opinion that in the interest of justice, the impugned order granting bail to the accused deserves to be quashed and a direction needs to be given to the police to take the accused in custody. We enquired with learned counsel for respondent 1-State of Rajasthan as to what is the stage of the case. We were shocked to know that till date, even the charges are not framed. We feel that the matter brooks no further delay. A direction needs to be given to the trial court to frame the charges and conclude the trial at the earliest. In the circumstances, the impugned order dated 19/8/2012 granting bail to accused – Khushi Ram Meena is quashed. The police are directed to take accused - Khushi Ram Meena in custody. The trial court is directed to frame charges within a period of one month from the date of receipt of this order. The trial court is further directed to proceed with the case and conclude it at the earliest independently and in accordance with law without being influenced by any observations made by us which may touch merits of the case as they are merely *prima facie* observations.

17. The appeal is disposed of in the aforestated terms.

K.K.T.

Appeal disposed of.