IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. Filing No. 980 of 2026

Naveen Kedia, aged about 55 years, son of Late Shri K.P. Kedia, resident of 41/2-3 Motilal Nehru Nagar, East Bhilai, PO- Nehru Nagar, PS Bhilai Nagar. District Durg, Chhattisgarh-490042.

..... … Petitioner

Versus

State of Jharkhand through the Anti-Corruption Bureau (ACB)

..... … Opposite Party

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	:	Mr. Siddharth Agarwal, Sr. Advocate.
	:	Mr. Madhav Khurrana, Sr. Advocate.
	:	Ms. Arpana Sharma, Advocate
	:	Mr. Shailesh Poddar, Advocate.
	:	Mr. Saurav Raj Sharma, Advocate
	:	Mr. Xenia Dhar, Advocate.
	:	Ms. Vismita Diwan, Advocate.
For the ACB	:	Mr. Sumeet Gadodia, Advocate.
	:	Mr. Ritesh Kumar Gupta, Advocate
	:	Mr. Nillohit Choubey, Advocate
	:	Ms. Shruti Shekhar, Advocate.
	:	Ms. Nidhi Lall, Advocate.

C.A.V. on 28.01.2026 **Pronounced on 03.02.2026.**

Heard Mr. Siddharth Agarwal, learned senior counsel appearing for the petitioner and Mr. Sumeet Gadodia, learned counsel appearing for the A.C.B.

2. I.A. No. 876 of 2026 has been filed for ignoring the defect No. 20, as pointed out by the office.

3. Learned senior counsel appearing for the petitioner has submitted that so far as defect No. 20 is concerned, the *vakalatnama* of the petitioner has been filed, however, it is not in the stamp of the Jail Superintendent. He next submitted that the petitioner was arrested by the ACB on 07.01.2026 from Goa and was thereafter produced before the Court of the learned Sessions Judge, Merces, Goa on 08.01.2026

and on that day, the petitioner preferred an application for grant of bail under the Second proviso to Section 83 read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023. He further submitted that during the pendency of bail application, the petitioner was remanded to police custody for one day. He then submitted that the bail application of the petitioner was allowed by the learned Court at Goa on 09.01.2026, granting the petitioner interim bail for a period of four days, i.e., till 12.01.2026. He also submitted that the petitioner filed his regular bail petition before the learned Trial Court on 12.01.2026, being Misc. Criminal Application No. 78 of 2026 and the said petition was listed before the learned In-charge Judge, AJC-XIII, Ranchi, since the regular court was not available on that day, wherein, he has been pleased to reject the said bail application of the petitioner, on the ground, that the petitioner has not surrendered before the learned court physically. In these backgrounds, he submitted that the petitioner was not in the jail, in view of that *vakalatnama*, certified by the Jail Superintendent has not been filed.

4. The present application has been filed seeking regular bail to the petitioner, in connection with FIR, bearing ACB Case No. 09 of 2025 dated 20.05.2025 registered under Section 120-B read with Sections 420/467/468/471/409/107/109 of IPC (corresponding to Section 61(2) read with Sections 318/336/340/316/45 and 49 of the Bharatiya Nyaya Sanhita, 2023) and Section 7(c)/12, Section 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act, 1988, (Amended in 2018), pending in the Court of learned Special Judge, Anti-Corruption Bureau, Ranchi.

5. Mr. Agarwal, learned senior counsel appearing for the

petitioner has submitted that the petitioner was arrested by the ACB on 07.01.2026 from Goa and was thereafter produced before the Court of the learned Sessions Judge, Merces, Goa on 08.01.2026 and on that day itself, the petitioner preferred an application for grant of bail under the Second proviso of Section 83 of the Bharatiya Nyaya Sanhita, 2023 with Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and during the pendency of bail application, the petitioner was remanded to police custody for one day. He next submitted that the bail application of the petitioner was allowed by the learned Court at Goa on 09.01.2026, granting the petitioner interim bail for a period of four days, i.e., till 12.01.2026. He further submitted that the petitioner filed his regular bail petition before the learned Trial Court on 12.01.2026, being Misc. Criminal Application No. 78 of 2026 and since the regular court was not available on that day, learned In-charge Judge, AJC-XIII, Ranchi heard the bail application and rejected the same, as the petitioner was physically not present before the court, despite of the request to appear through Video Conferencing along with his counsel.

6. Learned senior counsel next submitted that the NBW was issued on 31.10.2025, which stood returned unexecuted. He submitted that the ACB has filed another application on 02.01.2026, seeking process under Section 84 of Bharatiya Nagarik Suraksha Sanhita, 2023 to be initiated against the petitioner and a fresh NBW dated 08.01.2026 has been issued against the petitioner by the learned trial court, i.e. a day after his arrest. He then submitted that on the date of arrest, there was no active, valid or subsisting warrant authorizing such arrest. He further submitted that the petitioner was granted interim bail for the purpose of enabling him to seek regular bail, however, the learned trial

court without appreciating the settled proposition of law and the object of granting interim bail, rejected the bail application solely on the ground that the petitioner was not physically present before the court. He next submitted that the said approach of the learned court was not in accordance with the jurisdiction and law. He submitted that the petitioner was granted interim bail and thus, he is in the constructive custody and during the subsistence of the said interim bail, the petitioner has approached the learned trial court seeking regular bail. He further submitted that in the compelling circumstances, arising from the conduct of the investigating agency, the petitioner specifically requested permission to appear through video conferencing and the said request was *bona fide*, however, the learned court has declined the said request and rejected the bail application solely on the ground of physical non-appearance, without appreciating that the petitioner remained under the control and authority of the court at all material times.

7. Learned senior counsel appearing for the petitioner has submitted that the learned trial court has failed to consider the settled position of law that the custody under Section 439 of the Cr.P.C. corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 is not limited to formal arrest or physical confinement. According to him, the custody is attracted when the accused surrenders or appears before the learned court, submits to its directions, or is released on interim bail or regular bail, subject to conditions, thereby remaining withing the fold of the court's authority. In these backgrounds, he submitted that the petitioner may kindly be allowed the regular bail.

8. Learned senior counsel appearing for the petitioner has

relied in the case of ***Kanaksinh Mohansinh Mangrola Versus State of Gujarat***, reported in **(2006) 9 SCC 540** and submited that in that case also, the interim bail was granted and the bail application was dismissed on the ground of non-maintainability and the matter was remitted back to the High Court to consider the matter afresh on merits.

9. He next relied in the case of ***Sunil Fulchand Shah Versus Union of India & Ors.***, reported in **(2000) 3 SCC 409** and he referred to para-24 of the said judgment, which reads as under:-

> *"**24.** Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word "bail" is surety. In Halsbury's Laws of England [Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.] , the following observation succinctly brings out the effect of bail:*
>
> *The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at*

a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned."

10. Relying on the above judgment, he submitted that once the bail is granted, the petitioner was released from the custody of law and to entrust him to the custody of his sureties.

11. Learned senior counsel has next relied in the case of ***Susanta Kumar Samantaray & Anr. Versus State of Odisha (Vig.),*** reported in **2023 SCC OnLine Ori 6661** and he referred to Para-28 of the said judgment, which is as under:-

*"**28.** Hence, on the touchstone of the authoritative pronouncement of the Apex Court in the case of Sundeep Kumar Bafna (Supra), it is held that by virtue of the interim bail granted, Petitioners are deemed to be in the constructive custody of the Court in seisin and since for reasons already stated, the impugned order is set-aside, the interim order is made absolute till the conclusion of trial on the terms fixed, while releasing the Petitioners."*

12. Relying on the above judgment, learned senior counsel has submitted that the petitioner was in the constructive custody of the court and the interim bail was also the subject matter in that case.

13. He further relied in the case of ***Amit Jain Versus Harvinder Kaur***, reported in **2012 (128) DRJ 210** and by way relying on the said judgment, he has submitted that for the error of the court, the petitioner cannot be allowed to suffer and the petitioner is required to be placed in

the same position, in which, he was there on 12.01.2026.

14. Relying on the aforementioned judgments, learned senior counsel has further elaborated his argument by way of submitting that once the interim bail was granted to the petitioner by the learned court, he was in the constructive custody of the court, as such, the bail application of the petitioner was required to be decided on merits, which has not been done by the learned court, hence the said order may kindly be set aside and the petitioner may kindly be enlarged on bail.

15. *Per contra*, Mr. Sumeet Gadodia, learned counsel appearing for the A.C.B. vehemently opposed the prayer and draws the attention of the court to the interim bail order dated 09.01.2026, passed by the learned Sessions Judge, Merces, Goa and submitted that by the interim bail granted to the petitioner, certain conditions have been put by the learned Sessions Judge, which have not been complied by the petitioner. He next submitted that the condition No. (4) was to the effect that the petitioner shall surrender before the I.O. in FIR No. 09 of 2025, registered at Anti-Corruption Bureau, Ranchi, Jharkhand and further direction was that upon surrender, the petitioner shall be taken in police custody. He submitted that in light of the said direction, the petitioner was required to comply by way of surrendering before the ACB by mid night of 12.01.2026, however, the petitioner filed the bail petition before the court with intention not to comply the interim bail condition.

16. Learned counsel appearing for the ACB has submitted that in light of Section 187(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner was arrested and thereafter he was produced before the court. He also referred to Section 83 of Bharatiya Nagarik Suraksha Sanhita, 2023 and submitted that in light of Second Proviso of Section

83 of Bharatiya Nagarik Suraksha Sanhita, 2023, the ACB has further complied the procedure by way of producing the petitioner before the learned court. He further submitted that the petitioner has moved the bail application on 12.01.2026 and on that day, in fact the petitioner was not in judicial custody, in view of that the learned court has rightly passed the said order.

17. By way of referring Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, he submitted that the provisions of regular bail is there, once a person is in judicial custody. He relied in the case of ***Niranjan Singh & Anr. Versus Prabhakar Rajaram Kharote & Ors.***, reported in **(1980) 2 SCC 559** and he refers to paras-7, 8 and 9 of the said judgment, which is as under:-

> *"**7.** When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into*

informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. *Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.*

9. *He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439 CrPC. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions*

Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to overselves we might not have granted bail but, sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below."

18. Relying on the above judgment, he submitted that once a person will be deemed to be in custody, if he is present before the learned court physically.

19. He next relied in the case of ***Sundeep Kumar Bafna Versus State of Maharashtra & Anr.***, reported in **(2014) 16 SCC 623** and he refers to para-16 of the said judgment, which is as under:-

"***16.*** *It appears to us from the above analysis that custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their*

liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. In Roshan Beevi [Roshan Beevi v. State of T.N., 1984 Cri LJ 134 : (1984) 15 ELT 289 (Mad)] , the Full Bench of the High Court of Madras, speaking through S. Ratnavel Pandian, J. held that the terms "custody" and "arrest" are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. This thesis is reiterated by Pandian, J. in Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] by deriving support from Niranjan Singh v. Prabhakar Rajaram Kharote [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] . The following passages from Deepak Mahajan [Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785] are worthy of extraction: (SCC p. 460, para 48)

"48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him

according to law. Needless to emphasise that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide Roshan Beevi [Roshan Beevi v. State of T.N., 1984 Cri LJ 134 : (1984) 15 ELT 289 (Mad)] .

49. While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in Niranjan Singh v. Prabhakar Rajaram Kharote [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] observed that: (SCC p. 563, para 9)

'9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions.'"

(emphasis supplied)

If the third sentence of para 48 is discordant to Niranjan Singh [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] , the view of the coordinate Bench of earlier vintage must prevail, and this discipline demands and constrains us also to adhere to Niranjan Singh [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] ; ergo, we reiterate that a person is in custody no sooner he surrenders before the police or before the appropriate court. This enunciation of the law is also available in three decisions in which Arijit Pasayat, J. spoke for the two-Judge Benches, namely, (a) Nirmal Jeet Kaur v. State of M.P. [Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558 : 2004 SCC (Cri) 1989] , (b) Sunita Devi v. State of Bihar [Sunita Devi v. State of Bihar, (2005) 1 SCC 608 : 2005 SCC (Cri) 435] , and (c) Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , where the co-equal Bench has opined that since an accused has to be present in court on the moving of a bail petition under Section 437, his physical appearance before the Magistrate tantamounts to surrender. The view of Niranjan Singh [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508] (see extracted para 49 supra) has been followed in State of Haryana v. Dinesh Kumar [State of Haryana v. Dinesh Kumar,

(2008) 3 SCC 222 : (2008) 1 SCC (Cri) 722] . We can only fervently hope that members of the Bar will desist from citing several cases when all that is required for their purposes is to draw attention to the precedent that holds the field, which in the case in hand, we reiterate is Niranjan Singh [Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559 : 1980 SCC (Cri) 508]"

20. Relying on the above judgment, he submitted that the case of ***Niranjan Singh (supra)*** has further been endorsed by the Hon'ble Supreme Court in that case.

21. Learned counsel appearing for the ACB further submitted that so far as the case of ***Kanaksinh Mohansinh Mangrola (supra)*** is concerned, the petitioner of that case has appeared before the court in view of that the facts of that case is otherwise.

22. He further submitted that in the case of ***Susanta Kumar Samantaray & Anr. (Supra)***, the petitioner has also appeared before the learned court and has filed the application for bail and in view of that the said judgment is also not applicable in the present case.

23. Lastly, he submitted that the said learned Sessions Judge, Merces, Goa after anxious consideration, has further ordered on 23.01.2023 that the petitioner has not complied the conditions of the interim bail order and directed the investigating officer to forfeit and deposit the amount of Rs. 5 lakhs in the Malkhana of the concerned police station, as the petitioner was released on furnishing the bail bond / surety of Rs. 5 lakhs. He submitted that in view of that petitioner has not even complied the interim bail condition, imposed by the learned Sessions Judge, Merces, Goa and in view of that the learned court has

rightly passed the order.

24. In reply, Mr. Agarwal, learned senior counsel appearing for the petitioner has submitted that in the case of ***Niranjan Singh (supra)***, when the person is under duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court, can be said to be in custody.

25. He next submitted that the judgment passed in the case of ***Sundeep Kumar Bafna (supra)*** still holds the field and further the interim bail is granted, the petitioner will be treated into the custody of the court.

26. Learned senior counsel appearing for the petitioner has further relied in the case of ***Vinit Agarwal @ Vineet Agarwal Versus Union of India***, passed in **Special Leave to Appeal (Crl.) No. 779 of 2022** and submitted that in that case, the interim bail was provided to the petitioner for 30 days to the petitioner and the petitioner was put at liberty to move for cancellation of NBW and for bail before the learned trial court and the learned court has taken the petitioner into custody and in view of that the Hon'ble Supreme Court has granted bail.

27. He also relied in the case of ***Jitendra Versus State of U.P.,*** reported in **2022 SCC OnLine All 674** and submitted that it has been held that for release on bail, the petitioner is required to be in custody and it is not necessary that the accused to be in physical custody.

28. He lastly submitted that the petitioner was on interim bail and the ACB has taken coercive measures against the petitioner by way of entering into the house of the petitioner and the petitioner was kept in surveillance. On these grounds, he submitted that the order of the learned court is not in accordance with law, as such, the said order may

kindly bs set aside.

29. In view of the above submissions of learned counsel appearing for the respective parties, the court has gone through the materials available on record. Admittedly, the petitioner was arrested on 07.01.2026 and was produced before the learned Sessions Judge, Merces, Goa and remanded to the custody on 08.01.2026 and on 08.01.2026 for a transit remand, he was produced before the said court and the learned court in light of Section 83 of Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner was granted interim bail for four days w.e.f. that order to be expired on 12.01.2026 subject to the following conditions:-

> "*(1) The applicant to furnish bail bond of Rs. 5,00,000 (Five Lakhs Only) with one surety in like amount to the satisfaction of Investigating Officer.*
> *(2) Since the applicant is arrested by the Calangute Police Station, the surety amount to be produced before the Calangute Police Station.*
> *(3) The applicant shall not leave India without the permission of this court.*
> *(4) The applicant shall surrender before the IO in FIR 9/25 registered at Anti Corruption Bureau Ranchi, Jharkhand.*
> *(5) Upon surrender the accused / applicant namely Mr. Naveen Kedia shall be taken in Police Custody."*

30. It appears that the petitioner has not complied the condition Nos. 4 and 5 by way of appearing before the IO and has not surrendered, in view of that the learned Sessions Judge, Merces, Goa by

order dated 23.01.2026 has recorded that the petitioner has violated the conditions imposed upon him and in view of that the direction has been issued to the investigating officer to deposit Rs. 5 lakhs in the Malkhana of the concerned police station.

31. In course of the argument, it has been pointed out that the petitioner has tried to appear through Video Conferencing in light of the Jharkhand High Court Video Conferencing Rules, 2025. Rule-4.3 thereof stipulates as under:-

> "*4.3.* ***Appearance via Video Conferencing (BNSS Section 154, 355)***
> *Accused persons may be presented before the court via video conferencing except for the first appearance, which requires physical presence."*

32. In view of the above rule, it transpires that an accused person can be allowed to appear through video conferencing except for the first appearance, which requires physical appearance and in view of this Rule, the learned Sessions Judge has rightly not allowed the petitioner to appear through V.C. on 12.01.2026.

33. Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the remand of the accused and extension of the remand. For the purpose of better appreciation, Section 187(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 reads as follows:-

> "*187(4) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police,*

but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means."

34. Thus, it is made clear that for the first remand after arrest, physical production of the accused before the learned court is necessary and for subsequent remands, namely remand extensions, the accused may be produced before the learned court, either in person or through the media of electronic linkage. No order of remand or remand extension should be made without such production indicated above.

35. It is very strange that the interim bail was allowed by the learned Sessions Judge, Merces, Goa and the petitioner was directed to appear / surrender before the IO of the ACB Case No. 9/25 with certain conditions, however, he has not complied the same and was not taken into custody and even before the learned court, the petitioner has not appeared and if the petitioner was on interim bail, he was required to appear physically and pray to confirm the interim bail, but the petitioner chosen not to appear, which further suggest that intention of the petitioner was to misuse the interim bail.

36. The Hon'ble Supreme Court in the case of ***Sunita Devi Versus State of Bihar & Anr***., reported in (2005) 1 SCC 608, considering the case of ***Niranjan Singh & Anr. Versus Prabhakar Rajaram Kharote & Ors*.,** reported in **(1980) 2 SCC 559**, has held in paras-14 and 15, which is produced as under:-

*"**14.** The crucial question is when is a person in custody, within the meaning of Section 439 of the Code? When he is in duress either because he is held by the investigating agency*

or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.

15. *Since the expression "custody" though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in the setting in which it is used and the provisions contained in Section 437 which relate to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterised as "in custody" in a generic sense. The expression "custody" as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia,*

that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the court of the Magistrate."

37. The Hon'ble Supreme Court has further considered the case of ***Salauddin Abdulsamad Shaikh*** in the case of ***Sunita Devi (Supra)*** and in para-18 of that judgment it has held as under:-

"***18.*** *In Salauddin case [(1996) 1 SCC 667 : 1996 SCC (Cri) 198 : AIR 1996 SC 1042] also this Court observed that the regular court has to be moved for bail. Obviously, an application under Section 439 of the Code must be in a manner in accordance with law and the accused seeking remedy under Section 439 must ensure that it would be lawful for the court to deal with the application. Unless the applicant is in custody, his making an application only under Section 439 of the Code will not confer jurisdiction on the court to which the application is made. The view regarding extension of time to "move" the higher court as culled out from the decision in K.L. Verma case [(1998) 9 SCC 348 : 1998 SCC (Cri) 1031 : (1996) 7 Scale (SP) 20] shall have to be treated as having been rendered per incuriam, as no reference was made to the prescription in Section 439 requiring the accused to be in custody. In State v. Ratan Lal Arora [(2004) 4 SCC 590 : 2004 SCC (Cri) 1353] it was held that where in a case*

the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and shall have to be treated as having been rendered per incuriam. The present case stands on a par, if not, on a better footing. The provisions of Section 439 do not appear to have been taken note of."

38. In the said judgment of ***Sunita Devi (Supra)***, the Hon'ble Supreme court in paras-19 to 22, it has been held as under:-

"***19.*** *"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The "quotable in law", as held in Young v. Bristol Aeroplane Co. Ltd. [(1944) 2 All ER 293 : 1944 KB 718] is avoided and ignored if it is rendered "in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience.*

20. *For making an application under Section 439 the fundamental requirement is that the accused should be in custody. As observed in Salauddin case [(1996) 1 SCC*

667 : 1996 SCC (Cri) 198 : AIR 1996 SC 1042] the protection in terms of Section 438 is for a limited duration during which the regular court has to be moved for bail. Obviously, such bail is bail in terms of Section 439 of the Code, mandating the applicant to be in custody. Otherwise, the distinction between orders under Sections 438 and 439 shall be rendered meaningless and redundant.

21. *If the protective umbrella of Section 438 is extended beyond what was laid down in Salauddin case [(1996) 1 SCC 667 : 1996 SCC (Cri) 198 : AIR 1996 SC 1042] the result would be clear bypassing of what is mandated in Section 439 regarding custody. In other words, till the applicant avails remedies up to higher courts, the requirements of Section 439 become dead letter. No part of a statute can be rendered redundant in that manner.*

22. *These aspects were recently highlighted in Nirmal Jeet Kaur v. State of M.P. [(2004) 7 SCC 558 : 2004 SCC (Cri) 1989 : JT (2004) 7 SC 161] Therefore the order of the High Court granting unconditional protection is clearly untenable and is set aside. However, the petitioner is granted a month's time from today to apply for regular bail after surrendering to custody before the court concerned which shall deal with the application in accordance with law. We express no opinion about the merits of the case."*

39. In the case of ***Niranjan Singh (supra)***, on which, the

reliance has been placed by the learned counsel appearing for the ACB and submitted that the accused of that case has appeared and surrendered before the learned Sessions Judge and in that case also in para-8 of ***Niranjan Singh's case (supra)***, it has been held that the custody, in the context of Section 439 of Cr.P.C. is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

40. In the case of ***Niranjan Singh (Supra)***, the Hon'ble Supreme Court has explained the meaning of custody within Section 439 of the Cr.P.C., as a person is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. It is pertinent to note that in the same decision, the court has observed that, accused is stated to be in judicial custody, when he surrenders before the court and submits to its directions and in that case, the accused applied for bail before Magistrate, who refused bail and still the accused without surrendering before Magistrate, obtained order for stay to move Sessions Court. The direction of Magistrate was wholly irregular and may be, enabled the accused to circumvent the principle of Section 439 Cr.P.C. The Court did not take serious view of such course, indifferent to mandatory provisions, by the learned magistrate since, the accused made up for it by surrender before Sessions Court.

41. In the present case, after granting of the interim bail by the learned Sessions Judge, Merces, Goa, the petitioner has not complied the directions of the interim bail and even the he has not appeared

before the learned court in the State of Jharkhand, in that view of the matter, it can be safely said that the petitioner has applied for bail without being in judicial custody and in the said petition, it was not stated that the petitioner was surrendering before the learned court and thereafter the petitioner has approached this court without complying the interim directions of learned Sessions Judge, Merces, Goa and even before appearing before the learned court in the State of Jharkhand. As such, it is a clear case of the abuse of the process of law.

42. In view of the above discussions, it is crystal clear that the Custody means when a police officer arrests a person, produces him before the learned Magistrate and gets a remand to judicial or other custody, he can be stated in judicial custody when he surrenders before the court and submits to its directions. If a person who has been released on bail is treated in custody, then it will be a mockery of justice. The bail always presupposes custody and can be granted only when a person is detained.

43. So far as the judgment relied by the learned senior counsel appearing for the petitioner in the case of ***Kanaksinh Mohansinh Mangrola (supra)*** is concerned, the petitioner of that case has appeared before the court in view of that the facts of that case is otherwise.

44. Further in the case of ***Susanta Kumar Samantaray & Anr. (Supra)***, the petitioner has also appeared before the learned court and has filed the application for bail and in view of that the said judgment is also not applicable in the present case.

45. Further the case relied by the learned counsel appearing for the petitioner in the case of ***Sunil Fulchand Shah (supra),*** the Hon'ble Supreme Court has mainly focused on the issue of the personal liberty

and law relating to the bail and parole has been distinguished. In this para-24 (supra), as relied by the learned counsel for the petitioner that constructive control through the sureties have been discussed, but in the case in hand, the issue is different, as such, present case is not helping the petitioner.

46. Further the case relied by the learned senior counsel for the petitioner in the case of ***Amit Jain (Supra),*** that case relates to order-8 Rule 1 and 10, i.e. filing of the written statement, but in the case in hand, the issue is relating to the judicial custody and petitioner is praying for the regular bail, as such, the point of determination is different and the said case is also not helping the petitioner.

47. So far as the case of ***Vinit Agarwal @ Vineet Agarwal (Supra),*** as relied by the learned senior counsel appearing for the petitioner is concerned, in that case, the interim bail was granted to the petitioner for 30 days and he has appeared before the learned court and the learned court has taken him in custody and in this background, the Hon'ble Supreme Court has granted bail to the petitioner, however, in the case in hand, the petitioner has not appeared before the learned court and has not prayed for confirmation of the interim bail and he has not taken into custody. In this background, the said judgment is on different footing.

48. So far as the case of ***Jitendra (Supra)*** is concerned, that judgment is of Hon'ble Allahabad High Court and in that case, other judgments have not been considered including the judgment of ***Sunita Devi's case (supra),*** as such, that case is also not helping the petitioner.

49. Admittedly, the petitioner was arrested on 07.01.2026 and he was taken into custody for one day and thereafter he was granted

interim bail for four days on 09.01.2026. Further the petitioner has not filed the *vakalatnama* certified by the Jail Superintendent, which further fortifies that the petitioner was not in the judicial custody on 12.01.2026 and the petitioner in light of the interim directions passed by the learned Sessions Judge, Merces, Goa, the petitioner was supposed to appear / surrender before the investigating officer in light of direction No. 4 by the midnight of 12.01.2026, the petitioner has chosen not comply the direction Nos. 4 and 5 of the interim bail and moved before the learned Special Court by way of filing regular bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 and chosen not to appear physically before the learned court.

50. So far as section 439 of Cr.P.C. corresponding Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 is concerned, an application for bail can be made by, or on behalf of, only that person, who is already in custody. Unless, therefore, a person is already in custody, the question of a Court of Sessions or High Court entertaining, under section 439 Cr.P.C. or Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023, an application for bail by such a person does not arise at all. In ***Niranjan Singh* v. *Prabhakar Rajaram Kharote*, (1980) 2 SCC 559**, the Hon'ble Supreme Court has made it clear that a High Court or a Court of Sessions cannot assume jurisdiction, under section 439 Cr.P.C. or Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023, to consider a person's application for bail unless the person, moving the court for bail, is in custody.

51. In the case of ***Sunita Devi (Supra),*** the Hon'ble Supreme Court has taken into considering the case of ***Salauddin Abdulsamad Shaikh (Supra)***, ***Young Versus Bristol Aeroplane Co. Ltd.***, reported in

(1944) 2 All ER 293 and ***State of U.P. Versus Synthetics and Chemicals Ltd.*** reported in **(1991) 4 SCC 139** and further ***Nirmal Jeet Kaur Versus State of M.P.***, reported in **(2004) 7 SCC 558** and held that if the protection umbrella is extended beyond what was laid down, the result would be clear bypassing of what is mandated in Section 439 of Cr.P.C. or Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 regarding custody.

52. Thus, the mandate of law is that the accused should be physically produced before the court at the time when he is to be first remanded in custody. So far as Section 439 of the Cr.P.C. corresponding to Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 is concerned, an application for bail can be made by, or on behalf of, only that person, who is already in custody. Therefore, a person is not in custody, the question of entertaining regular bail under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, by such person does not arise at all.

53. In view of the above reasons, discussions and analysis, the court finds that there is no illegality in the impugned order, passed by the learned court. As such, this petition is dismissed.

54. In view of the above, it appears that the office has rightly pointed out the objections, which cannot be ruled out. As such, the aforementioned I.A., meant for ignoring the defect No. 20, is hereby, rejected. Further I.A. No. 573 of 2026, meant for granting *ad-interim* bail to the petitioner stands rejected.

(Sanjay Kumar Dwivedi, J.)

Jharkhand High Court, Ranchi.
Dated the 3rd February, 2026.
AFR/ Amitesh/-