IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No. 417 of 2023

1. Dharam Kumar Saw @ Dharam Kr. Gupta, accused no.2, aged about 41 years, son of Ritlal Sao, resident of Bharamdih, P.O. & P.S. Itkhori, District- Chatra
2. Sambhu Sao, accused no.3, age about 65 years, son of Genda Sao
3. Mundri Devi, aged about 55 years, W/o Sambhu Sao, accused no.4, Petitioner nos. 2 and 3 are resident of Singhrawn, P.O. & P.S. Champaran, District- Hazaribagh **... Petitioners**

-Versus-

1. The State of Jharkhand
2. Resam Sao Devi, age about 31 years, daughter of Vijay Sao, wife of Bharat Kumar Gupta, resident of Saldanga Naglen College Road, P.O. & P.S. Raniganj, District- Badhaman, State- West Bengal

... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Gaurav Kumar, Advocate
For the State : Mr. Sanjay Kumar Srivastava, A.P.P.
For O.P. No.2 : Mr. Ranjan Kumar Singh, Advocate

18/11.09.2025 Heard Mr. Gaurav Kumar, learned counsel for the petitioners, Mr. Sanjay Kumar Srivastava, learned counsel for the State and Mr. Ranjan Kumar Singh, learned counsel for opposite party no.2.

2. This criminal revision petition has been preferred challenging the order dated 25.02.2023 passed by the learned Judicial Magistrate, 1st Class, Dhanbad in connection with Complaint Case No.1581 of 2014, in which, the learned Court has been pleased to reject the petition dated 24.11.2017 filed by the petitioners under Section 245 of the Code of Criminal Procedure (hereinafter to be referred to as "the Code") for discharge.

3. Learned counsel for the petitioners tried to convince the Court on merit, however the Court has put question to the learned counsel for the petitioners why the petitioners have surpassed the jurisdiction of the learned Sessions

Judge by filing revision against the order of the learned Judicial Magistrate, he submits that the learned Sessions Judge and High Court are having the jurisdiction in light of Section 397 read with Section 399 and 401 of the Code, corresponding to Sections 438 read with Section 440 and 442 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter to be referred to as "BNSS") and in view of that, it is for the litigant to choose the forum. He further submits that in view of that, the present criminal revision petition has been filed directly before the High Court. He relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***Central Bureau of Investigation v. State of Gujarat***, reported in ***(2007) 6 SCC 156***. He refers paragraphs 3 and 5 of the said judgment, which read as under:

> ***"3.*** *The High Court observed that the CBI was a litigant before the Court like any other litigant and it cannot be placed in a special category or in a privileged category. According to the High Court, prima facie that appears to be the claim of the appellant. It was held that the petition was not maintainable and the orders of the learned Chief Judicial Magistrate could have been challenged before the Sessions Court in terms of Section 397 of Code of Criminal Procedure (in short 'Cr.PC'). It was held that the CBI ought to have taken care to move the proper court and instead of that the CBI, bypassed the alternative remedy and moved the High Court directly. After having said so, the High Court felt that the approach of the CBI deserved to be deprecated and was deprecated. A cost of Rs. 1000/- was imposed holding that the CBI had chosen a wrong path and it was not respecting and adhering to law. The Director of CBI was directed to hold an inquiry in the matter and whoever was found responsible for filing the petition before the High Court was to reimburse the cost to be deposited by the CBI. It was further directed that the inquiry as directed by the learned Chief Judicial Magistrate was to be completed within six months.*
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> ***5.*** *We find that the High Court was not right in its approach. This Court in CBI v. State of Rajasthan, reported in (2001) 3 SCC 333 has laid down the principles as to whether direction can be given to the CBI under Section 156(3) Cr.P.C. It was held that magisterial power cannot be stretched under the said provision beyond directing the officer incharge of a police station to conduct the investigation and no such direction can be given to the CBI. In the instant case, the first information report was already registered and in that sense Section*

> *156(3) Cr.P.C. had no application. There is substance in the plea of learned counsel for the CBI that routine matters should not be entrusted to the CBI as the investigating agencies of various States can effectively investigate such matters. Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to the CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of Muddamal property. The learned Sessions Judge, therefore, rightly appears to have set aside the orders passed by the learned Chief Judicial Magistrate. The High Court had no basis to doubt the bona fides of the CBI in moving the application before it under Section 397 Cr.P.C. There was no bar for the High Court to entertain the said petition. The criticism levelled against the CBI and its officers and cost imposed do not have any legal sanction. They are accordingly set-aside."*

4. Relying on the above judgment, learned counsel for the petitioners submits that this criminal revision petition is maintainable before this Court. He further submits that when concurrent jurisdiction is there, the option is left with the party to choose the forum which he wishes. It has been further argued that once the petitioners prefer revision petition before the Sessions Court, the petitioners cannot be in a position to file second revision in the High Court by virtue of bar contained in Section 397(3) of the Code, corresponding to Section 438(3) of the BNSS. He submits that there are several judgments on the issue that once the revision petition is dismissed by the learned Sessions Judge, the petitions under Section 482 of the Code are not being entertained by the High Court on the ground that it deemed to be a second revision before the High Court. He further submits that the Coordinate Bench of this Court by the order passed in Cr. Revision No.551 of 2025 with Cr. Revision No.440 of 2025, vide order dated 30.07.2025 has dismissed the criminal revision petitions as not maintainable with liberty to the petitioners to move before the Sessions Court against the impugned

orders and further Stamps Reporting Section of this Court has been directed to comply the said direction. He submits that this order is against the spirit of statute under Section 397 of the Code read with 438 of BNSS. On these grounds, he submits that it is neither desirable nor permissible to first approach the Sessions Court.

5. Before discussing various citations, it will be relevant to refer the provisions contained in Sections 397, 399, 401 and 482 of the Code, corresponding to Sections 438, 440, 442 and 528 of the BNSS respectively, which are as under:

> ***"397.*** *Calling for records to exercise powers of revision. - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
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> *Explanation- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.*
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> *(2) The powers of revision conferred by Subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*
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> *(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.*
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> ***399. Sessions Judge's powers of revision****.—(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.*
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> *(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.*
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> *(3) Where any application for revision is made by or on*

behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

***401. High Court's powers of revision**.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.*

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

***482.** Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

6. In light of the above provisions and looking into Section 397 of the Code, it transpires that there is no prohibition for approaching the High Court directly and for that, reference can be made to the judgments of the Hon'ble Supreme Court in the cases of ***Jagir Singh v. Ranbir Singh and another***, reported in ***AIR 1979 SC 381*** and ***Central Bureau of Investigation v. State of Gujarat (supra)***.

7. The Hon'ble Supreme Court in the case of ***Pranab Kumar Mitra v.***

State of West Bengal, reported in ***AIR 1959 SC 144*** has discussed the scope of revisional powers of the High Court in the following words:

> ***"****Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigation, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case.****"*

8. The above judgment of the Hon'ble Supreme Court was the base in a revision petition filed under Section 397 of the Code directly to the High Court before the learned Single Judge of Bombay High Court in ***Padmanabh Keshav Kamat v. Anup R. Kantak and others***, reported in ***1999 Cri.L.J. 122***, wherein at paragraphs 11 and 12, it has been held as under:

> ***"11.*** *The net result of the foregoing discussion is that the present revision application which is filed directly to the High Court, will have to be held as maintainable and not barred by any provision of section 397 of the Criminal Procedure Code. However, maintainability of a proceeding is one thing while its entertainment is another. When the proceeding is maintainable by two different courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. It is material to note that revision is not a statutory right of a litigant but it is a matter of discretion of the Court having revisional jurisdiction.*
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> ***12.*** *In (Pranab Kumar Mitra v. State of West Bengal and another)3, A.I.R. 1959 S.C. 144, the Supreme Court while dealing with the revisional powers of the High Court observed:--*
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> > *"Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by section 439 of the Code, read with section 435,do not create any right in the litigant, but*

only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine. The High Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice."

In the case of Madhavlal v. Chandrashekhar (supra) there were special and exceptional circumstances which in a way justified filing of the revision application directly to the High Court. However, in the instant case no special circumstances which required the petitioner to bypass the forum of the Sessions Judge and rush directly to the High Court, are pointed out. The petitioner could have very well filed his application even before the Sessions Judge, Panaji. However, he did not do so. The only explanation which Shri Lotlikar could give was that previously this dispute had come before this Court when the petitioner had filed Criminal Writ Petition No. 9 of1997. However, it is material to note that the said criminal writ petition was not decided on merit nor did the learned Single Judge give any finding on any factual aspect. He simply remanded the matter with a direction to decide the respondent No. 1's application under section 457 after giving opportunity of hearing to the petitioner. Therefore, the mere fact that the dispute between the parties had once come before this Court cannot be regarded as a special or exceptional circumstance justifying the entertainment of this revision application by this Court. Exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. Hence, as pointed out above when two fora are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, this Court to consider whether it should entertain or not of such a revision application which can lie before the Sessions Judge. In this respect I am in full agreement with the opinion expressed by my learned brother R.M. Lodha, J., in the case of Tejram v. Sunanda and I am of the opinion that this Court should not entertain this revision application which can be entertained and decided by the Sessions Judge, Panaji. No question of causing inconvenience or prejudice to the petitioner arises, if the Sessions Judge, in exercise of his revision powers, deals with the application."

9. In the above case, the judgment of ***Madhavlal v. Chandrashekhar***,

reported in ***1976 CRI. L.J. 1604*** was also discussed and it was held that there were special and exceptional circumstances in the way justifying filing revision petition directly to the High Court.

10. In the case of ***Padmanabh Keshav Kamat (supra)***, the observations of the learned Single Judge (Hon'ble Mr. Justice R.M. Lodha) as he then was in Bombay High Court in the case of ***Tejram Mahadeorao Gaikwad v. Smt. Sunanda Tejram Gaikwad***, reported in ***1996 Cri. L.J. 172***, were also quoted as under:

> *"It is undoubtedly true that Section 397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional grounds for taking the matter directly before the Superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this count alone. This Court does not encourage filing of revision application under Section 397 of the Code of Criminal Procedure directly before this Court it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter."*

11. In the case of ***Central Bureau of Investigation v. State of Gujarat (supra)*** on which much reliance has been placed by the learned counsel for the petitioners, learned CJM passed the order directing the CBI to investigate the matter on 29.09.1999. The CBI moved an application for recalling the order, but that application was rejected on 26.10.1999. Then, the CBI directly filed the application to the High Court against both the orders which were dismissed on the ground of bypassing Sessions Court, though the petitioner was directed to move before the learned Sessions Judge as directed by the High Court and by order dated 17.05.2007, the orders passed by learned CJM were set-aside and the CBI was directed to

investigate the case with special cost and criticism, against which, Special Appeal was filed before the Hon'ble Supreme Court by the CBI, which was allowed by quashing the order of the High Court with the following observations:

> *"Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to the CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of Muddamal property. The learned Sessions Judge, therefore, rightly appears to have set aside the orders passed by the learned Chief Judicial Magistrate. The High Court had no basis to doubt the bonafides of the CBI in moving the application before it under Section 397 Cr.P.C. There was no bar for the High Court to entertain the said petition. The criticism levelled against the CBI and its officers and cost imposed do not have any legal sanction. They are accordingly set aside."*

12. In view of the above observations, it is clear that there is of-course no bar for filing revision directly to the High Court under Section 397 of the Code read with Section 401 of the Code, corresponding to the Section 438 read with Section 442 of the BNSS against the order of the learned Magistrate, but when concurrent jurisdiction is given specially under such circumstances when both are superior Courts one to the Magistrate and another to the Sessions, then the propriety demands that elder superior Court in Hierarchy must be first approached. This is the customary common law as the first elders are always respected.

13. Further, the scope and ambit of Section 397 of the Code is not only confined to the correctness or legality of the order but also to its propriety. Both the Courts of Sessions and Magistrate are inferior to the High Court and Courts of Judicial Magistrate are inferior to the Court of Sessions Judge. When an order is passed by the learned Sessions Judge, the only remedy left with

the aggrieved party is to approach the High Court under the said Code to question correctness, legality or propriety, but when the same is passed by a Magistrate, though power lies to both the Sessions and the High Court, but as a matter of prudence and propriety, it will be appropriate to first approach the first forum and except in rare and special circumstances to the High Court. Such special circumstances may be where the Sessions Judge has directly or indirectly participated in the enquiry or investigation or trial or through his any action or order interest of justice demands that High Court alone should interfere in the order of the learned Magistrate.

14. In light of the above and though, there are various sections in the Code of Criminal Procedure where the concurrent powers have been given like anticipatory bail under Section 438 Cr.P.C and Section 482 of the BNSS and regular bail under Section 439 Cr.P.C. and Section 483 of the BNSS and also in Constitution of India with regard to writ jurisdiction to the Hon'ble Supreme Court under Article 32 or before the Hon'ble High Court under Article 226 of the Constitution, but in the matters of bail and writ jurisdiction, the first forum is always chosen.

15. In view of the above discussion, the approach taken by the Bombay High Court in the case of ***Padmanabh Keshav Kamat (supra)***, which is based on the judgment of the Hon'ble Supreme Court in the case of ***Pranab Kumar Mitra (supra)*** is a correct proposition of law with regard to the scope and ambit of Section 397 of the Code and on that basis, this Court has got no hesitation in coming to the conclusion that when two forums are available, then certainly it is a matter of propriety for the party to first approach the first forum and except in rare and special circumstances to the High Court.

This will also be in the benefit of the litigants by doing so as the party getting order from learned Magistrate will get double remedy, firstly he will approach the Court of Sessions in revision, which is a highest Court of criminal trial and after examining the legality, propriety and correctness of the order of sentence, the Sessions Court comes to the conclusion that the order requires no interference under Section 397 of the Code, then the party has still second remedy to approach the High Court under Section 482 Cr.P.C. or Section 528 of BNSS if both the learned Courts have passed such orders which either cannot give effect to the orders in this Code or results in abuse of the process of law or otherwise does not secure the ends of justice. Certainly, a litigant can approach the High Court under Section 482 of Cr.P.C. or Section 528 of BNSS. Thus, the scope of Section 397 and 482 of the Code are altogether different. At the same time, these two remedies cannot be availed simultaneously or one after the other in the High Court. The party filing a petition under Section 397 read with Section 401 of the Code before the High Court cannot invoke the jurisdiction under Section 482 of the Code.

16. The power under Section 482 of the Code is sparingly used and that too under the above referred circumstances. In this regard, a reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Madhu Limaye v. State of Maharashtra***, reported in ***AIR 1978 SC 47***, wherein, it has been held that Section 397 Sub-section (2) cannot lower the scope of Section 482 of the Code but such cases should be few and far between while exercising the jurisdiction of the High Court very sparingly.

17. In the case of ***Dharampal v. Ramshri***, reported in ***1993 Cri.L.J.***

1049, the Hon'ble Supreme Court held that necessary powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred in the Code.

18. In the case of ***Ganesh Narayan Hegde v. S. Bangarappa***, reported in ***1995 SCC 441***, it has been held as under:

> ***"****While it is true that availing of the remedy of the revision to the Sessions Judge under Section 397 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the compliant is allowed to proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges.****"*

19. In view of the above discussions, the arguments of the learned counsel for the petitioners that after invoking jurisdiction of the Sessions Judge under Section 397 of the Code (corresponding to Section 438 of the BNSS), there is bar of petition under Section 482 of the Code (corresponding to Section 528 of the BNSS) is devoid of force as it is always open to the High Court to correct the impugned order passed at any stage i.e. right from filing complaint or FIR till judgment in any inquiry, investigation and trial in any of three circumstances discussed above namely, (i) when it is necessary to give effect to the order under this Court or (ii) to prevent abuse of the process of the Court or (iii) to secure the ends of justice, whereas, barring interlocutory order under Sub-section (2) of Section 397, the revisional Court can call for the record of any inferior Court to look into the correctness, legality or propriety of the order or sentence including regularity of proceedings under Section 397 of the Code.

20. Further, the exercise of revisional powers is not a matter of course, but it is a matter of rare and sparing use and, as such, when two fora are available to the petitioners for getting redressal of the alleged wrong, then it will certainly be more appropriate for them to first approach the first forum. It is certainly within the discretion of the higher forum, i.e., this Court to consider whether it should entertain or not of such a revision petition which can lie before the Sessions Judge. In view of that, this Court is of the view that this Court should not entertain this revision petition which can be entertained and decided by the learned Sessions Judge. There is no question whatsoever arises of causing inconvenience or prejudice to the petitioners, if the learned Sessions Judge, in exercise of his revisional powers, deals with the application.

21. So far as the order passed by the Coordinate Bench of this Court in Cr. Revision No.551 of 2025 with Cr. Revision No.440 of 2025, vide order dated 30.07.2025 is concerned, the Court finds that in that order, several judgments of the Hon'ble Supreme Court has not been considered and statute clearly suggests that either of the Court i.e. the Court of Sessions or High Court can entertain revision petition. What are the exceptional circumstances of directly approaching the High Court, that can be decided only by the Bench. The order of the learned Coordinate Bench of this Court is *per incuriam* in view of the fact that other judgments on the issue in question have not been considered while passing the said order. In that view of the matter, that judgment is not a bar to place the matter before the Bench and it is discretion of the Bench to entertain the petitions directly filed before the High Court after the order of the learned Magistrate.

22. In view of the above facts, reasons and analysis, this Court is not inclined to interfere with the impugned order, which has been passed by the learned Judicial Magistrate without first approaching to the next higher court i.e. the Court of Sessions under Sections 397 read with 399 of the Code, corresponding to Sections 438 and 440 of the BNSS, as no special and exceptional reasons have been assigned for filing the revision petition directly in this Court.

23. Consequently, this criminal revision petition is dismissed. However, the petitioners are at liberty to file fresh revision petition before the learned Sessions Judge and in that event the period taken during this revision petition will not come in the way for the purpose of limitation. The ground/plea taken by the petitioners herein, will be considered by the learned Sessions Judge.

24. Considering that the Coordinate Bench of this Court has passed the interim protection in favour of the petitioners vide order dated 06.03.2025 and it is continued till date and since the petitioners are given liberty to approach the learned Sessions Judge and in that view of the matter, the said interim protection shall remain operational for further one month.

25. Pending I.A., if any, is disposed of.

(Sanjay Kumar Dwivedi, J.)

Ajay/ ***A.F.R.***