

**(2022) 06 BOM CK 0027**

**In the Bombay High Court**

**Case No : Criminal Writ Petition No.1925 Of 2022**

|                                                   |            |
|---------------------------------------------------|------------|
| Mohammad Nawab Mohammad Islam Malik @ Nawab Malik | APPELLANT  |
| Vs                                                |            |
| Directorate Of Enforcement Through Asst. Director | RESPONDENT |

**Date of Decision : 10-06-2022**

**Acts Referred:**

Constitution Of India, 1950 — Article 227  
Code Of Criminal Procedure, 1973 — Section 437, 439, 440, 441, 482

**Citation : (2022) 06 BOM CK 0027**

**Hon'ble Judges : Prakash D. Naik, J**

**Bench : Single Bench**

**Advocate :** Amit Desai, Taraq Sayyed, Gopal Shenoy, Kushal Mor, Rohan Dakshini, Pooja Kothari, Deepa Shetty, Arushi Dube, Tejas Popat, Rashmikant, Anil Singh, Aditya Thakkar, D.P. Singh, Ashish Chavan, Savita Sadananda, Pranav Thackur, Smita Thakur, Aamir Qureshi, Amandeep Singh, A.R. Patil

## **Judgement**

Prakash D. Naik, J

1. This petition has been preferred under Article 227 of the Constitution of India and Section 482 of Criminal Procedure Code.

The petitioner has prayed that the order dated 9th June, 2022, passed by the learned Special Judge be set aside and the petitioner be released on personal bond with sureties on such terms and conditions.

2 Learned counsel for the petitioner has submitted that the Biennial Election of the Rajya Sabha Election 2022, are being held today i.e. 10th June, 2022, between 09:00 a.m. to 04:00 p.m. The Petitioner is Member of Legislative Assembly (MLA) and the Cabinet Minister in the Government of Maharashtra, and, he intends to cast his vote in this Election. He submitted that he may be permitted to cast his vote under escort.

3 Learned ASG representing respondent no.1 submitted that this petition is not maintainable. The petitioner had applied for bail before the Special Court, and,

therefore, he could have resorted to the remedy under Section 439 of Cr.P.C. Prayer clause (a) in this petition is also for releasing him on bail. The title clause of this application also indicate that the petitioner is being denied bail by the Special Court. Before the Special Court also the petitioner has urged that he may be released on bond.

4 In rejoinder, learned counsel for the petitioner submitted that apart from the issue of release of petitioner for casting vote, the larger issue is involved in this petition about exercising democratic right to cast vote. He further urged that he would give up his prayer of releasing him on bail bond and would be satisfied if the he is permitted to cast his vote under the police escort.

5 From the tenor of the application preferred before the Special Court as well as before this Court, it is apparent that the primary prayer is for releasing the petitioner from prison for casting his vote on bond. The bond which can be referred to for a person who is in prison as under-trial prisoner to be released, can only be a bail bond in the light of the provisions under Sections 439, 437, 440 and 441 of Cr.P.C. The petitioner is an under-trial prisoner and the subject matter of this petition would indicate that he is required to be released. The prayer in this petition is for release on personal bond with sureties. The petitioner has moved this Court being aggrieved by order passed by Special Court. Merely on submission that the petitioner would not give up any prayer or restrict to prayer, as contended is no ground to entertain this petition. The petitioner could have resorted to powers under Section 439 of Cr.P.C. for bail or any connected prayer. In this circumstances, the petitioner would have made an application before the appropriate Court for seeking appropriate relief and not seeking the release as contended in this application by preferring the petition under Section 482 of Cr.P.C. and Article 227 of the Constitution of India.

6 At this stage, learned counsel for the petitioner submits that the petitioner be permitted to amend this Petition by adding appropriate averments. Petitioner is permitted to amend the petition. Amendment is permitted to be carried out forthwith in Court. Liberty to move before the appropriate Court after notice. The petitioner is at liberty to urge requisite prayers before appropriate Court including release on bail bond.