

---

**(2001) 12 CAL CK 0024**  
**In the Calcutta High Court**  
**Case No : C.R.M. No. 2949 of 2001**

R.C. Goyel and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

---

**Date of Decision :** 14-12-2001

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 167, 389, 397, 397(1), 398  
Penal Code, 1860 (IPC) — Section 120B, 466, 467, 469

**Citation :** (2002) 1 CALLT 48 : (2002) 1 CHN 112

**Hon'ble Judges :** Sujit Barman Roy, J; Pradip Kumar Biswas, J

**Bench :** Division Bench

**Advocate :** Balai Ch. Roy and Partha Basu, for the Appellant; Sudipto Moitra, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

---

## Judgement

1. The application was originally filed u/s 438 of the Code of Criminal Procedure before another Division Bench of this Court for granting anticipatory bail to the two petitioners, namely, Sri R.C. Goel and Sri Lalit Kumar Jain as they apprehended arrest in connection with Kulti P.S. Case No. 11/2001 under sections 466/467/469/120B IPC. However, it appears from the record of this case that the said Division Bench by an order dated 30.8.2001 granted leave to the petitioners to amend the cause title so as to make it an application u/s 439 of the Code of Criminal Procedure for bail. Accordingly, petitioners amended the cause title of the petition by scoring out section 438 Cr.PC. therefrom and inserting there in section 439 of the said Code. After that this matter stood transferred to us in view of our the then determination. Therefore, petitioners by this application now pray for their release on bail, though admittedly they are not in custody.

2. Before we proceed to deal with the main Issues involved in the present proceeding, it will be expedient to record certain facts for better appreciation of the contentions of the respective counsel for the parties.

3. On an earlier occasion the petitioners filed another application u/s 438 of the Code of Criminal Procedure for anticipatory bail in connection with the aforesaid police case. Said application was disposed of by another Division Bench of this Court by an order dated 1.2.2001 by giving the following directions: -

"This is an application u/s 438 of the Code of Criminal Procedure for anticipatory bail by the petitioner who apprehend that he may be arrested in connection with Kulti P.S. Case No. 11 dated 13.1.2001 under sections 466/467/469/120B of the Indian Penal Code.

4. Having heard the learned Advocate for the petitioner as well as the learned Advocate for the State and on perusal of the case diary, we pass the following order:

In the event of the petitioner being arrested in connection with the aforesaid case he will be released on bail subject to the following conditions :

(i) that the petitioner shall make himself available for interrogation by a Police Officer as and when required;

(ii) that the petitioner shall not, directly or indirectly make any inducement, threat or promises to any person acquainted with the facts or the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

(iii) that the petitioner must attend the concerned police station twice a week that is, on every Tuesday and Friday until further orders;

If any application for bail is hereafter made by the petitioner before an appropriate Court under sections 437/439 of the Criminal Procedure Code, the same shall be disposed of by such Court in accordance with law.

Nure Alam Chowdhury, J. Joytosh Banerjee, J."

5. In view of the aforesaid direction issued by this Court, petitioners surrendered before learned S.D.J.M. Asansol on 3.2.2001 and prayed for bail. They also produced certified copy of the order dated 1.2.2001 passed by this Court granting them anticipatory bail before the learned S.D.J.M. However, learned S.D.J.M. granted interim bail to the petitioners till 23.2.2001 with a direction to them to obtain final order from this Court. They were further directed to obtain such order within 23.3.2001 as interim bail was granted to the petitioners till 23.3.2001.

6. As already stated, the petitioners filed the instant application u/s 438 of the Code of Criminal Procedure before another Division Bench of this Court for granting them anticipatory bail. However, on the prayer of the petitioners, cause title of the instant application was directed to be amended and accordingly Section 439 Cr.PC was inserted after scoring out section 438 of the said Code and after that the instant application came up before us for disposal.

7. Now, the admitted position is that the petitioners are on interim bail, though

extended from time to time, and hence they are not at all in custody. Question is whether in such circumstances any relief u/s 439 of the Code can be given to the petitioners? Sub-section (1) of Section 439, inter alia, provides that the High Court or a Court of Session may direct that any person accused of an offence and in custody be released on bail and if the offence is of the nature specified in sub-section (3) of Section 437. may impose any condition which it considers necessary for the purposes mentioned in that section.

8. From a plain reading of Sub-section (1) of Section 439 of the Code it is manifest that condition precedent for entertaining such application for granting bail is that the applicant must be an accused of an offence and he must be in custody. Otherwise, no such application is clearly maintainable. In *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others*, it has been laid down in clear and unambiguous terms that no person accused of an offence can move the Court for bail u/s 439 unless he is in custody. Again a Constitution Bench of the apex Court in *Gurbaksh Singh v. State of Punjab* MR 1980 SC 1632, has clearly laid down that the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and, therefore, means release from the custody, the latter is granted in anticipation of arrest and is, therefore, effective only at the very moment of arrest. From these two decisions of the apex Court we believe that there should not be any room for further argument against the proposition that unless a person is accused of an offence and is in custody, he cannot apply, either before the Court of Session or before the High Court, for releasing him on bail from custody. It is of course true that while granting anticipatory bail to the petitioners by an order dated 1.2.2001, Division Bench of this Court, inter alia, directed that if any application for bail is thereafter made by the petitioners before an appropriate Court under sections 437/ 439 of the Criminal Procedure Code, same shall be disposed of by such Court in accordance with law. In our considered opinion after the apex Court in as many as two decisions, one being of the Constitution Bench, having held that unless a person is accused of an offence and is in custody, no application at his instance u/s 439 of the Code for bail is maintainable.

9. It is also true that the apex Court in the case of *K.L. Verma v. State* 1997 Cal.Cr.LR (SC) 88 in the last sentence of paragraph 4 thereof issued the following directions :-

"As far as the order of 9.10.96 is concerned, since it proceeds on a misreading of *Salauddin's* case, we modify the order by directing that anticipatory bail will enure till the regular Court decides the question of grant of bail and for a week thereafter, so that if the regular Court refuses bail, the accused person can, if so advised, move the Higher Court."

10. It is, therefore, manifest that in view of the aforesaid direction of the apex Court given in the case of *K.L. Verma* and in view of directions issued by the Division Bench of this Court by an order dated 1.2.2001. the learned Magistrate while rejecting the prayer of the petitioner for regular bail granted them

sometime for obtaining necessary bail order from this Court. While passing this order the Magistrate declined to take the petitioners into custody.

From the above quoted observations of the apex Court in the case of K.L. Verma it does not appear as to under which provision of law the petitioners can seek necessary relief from the Superior Court in case the concerned Magistrate refuses to grant them bail and directs them to obtain appropriate order from a Superior Court within specific period of time without taking them into custody? This question seems to have been designedly left open. In such situation it is for us to clarify the position as to under which provision of law remedy is available to the petitioners.

11. Another question may very well arise here as to the exact meaning of the word "custody": In the circumstances of the present case, is it possible for us to say that the petitioners applied for regular bail before this Court u/s 439 of the Code while in custody? In this connection we have already referred to two decisions of the apex Court one being of Constitution Bench. These decisions are binding upon us. However, in the case of Niranjana Singh while giving somewhat extending meaning to the word "custody", apex Court observed in paragraph 8 and 9 as follows :-

"8. Custody in the context of Section 439 (we are not, be it noted, dealing with anticipatory bail u/s 438 Cr.PC) is physical control or at least physical presence of the accused in Court coupled with submission to the Jurisdiction and order 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 the police custody. He can be stated to be in Judicial custody when he surrenders before the Court and submits to his directions ..... but for the fact that in the instant case the accused made up for it by surrender before the sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application."

12. Therefore, as per the extended meaning given to the word "custody" in the aforesaid decision of the apex Court in the context of Section 439 Cr.PC. the word custody may also mean physical control or at least physical presence of the accused in Court coupled with submission to the jurisdiction and order of the Court. Therefore, mere submission to the Jurisdiction or orders of the Court is not enough to constitute custody. Accused must surrender to the physical control of the Court and he must remain physically present before the Court apart from his submission to the jurisdiction and order of the Court. In the absence of such circumstances, it is not possible to hold that the accused is in custody. The instant application before us does not contain even a whisper that the petitioners physically surrendered before this Court so as to enable this Court to invoke its jurisdiction u/s 439. That apart, it is not advisable nor it is possible under the law for this Court to take an accused into custody upon his surrender for various reasons. As a matter of fact under the Code of Criminal Procedure the High Court

or a Court of Session has absolutely no power/jurisdiction to remand an accused to custody in course of investigation. It is essentially the power of the Magistrate and not of the High Court or the Court of Session. Of course a Court of Session has limited power of remanding an accused to custody in course of enquiry or trial pending before it. During investigation stage even the Sessions Court does not have any power to remand an accused to judicial custody. Therefore, even if the accused surrenders before the High Court and applies for bail u/s 439, and he is treated to be in custody of this Court it will create a difficult situation as in case his application is rejected, he cannot be remanded to judicial custody by this Court and, hence, it is evident that even this extended meaning of the word custody does not cover the case the petitioner as it is bound to create an absurd situation.

13. From the relevant observations of the apex Court as already quoted above from K.L. Verma's case what appears is that order of anticipatory bail would continue to be operative till the regular Court decides the question of bail and if the Court of Magistrate ultimately rejects such prayer for bail and the accused is given little time so that he may, if so advised, may move the Higher Court for appropriate relief. It is , therefore, apparent from these observations that the Supreme Court did not direct an accused to move the Higher Court an application u/s 439 Cr.PC in similar circumstances. In these circumstances only reasonable interpretation of the aforesaid observations of the apex Court seems to be that accused has to move the Higher Court for anticipatory bail again u/s 438 Cr.PC within this stipulated period after the regular Court refuses to grant him bail and gives him time to do so. Any other interpretation will be inconsistent with the provisions of Section 439 Cr.PC and the decisions of the apex Court in the cases of Naranjan Singh and Gurubox Singh. It is therefore, manifest that unless a person accused of an offence is in custody, he cannot be directed by this Court to be released on bail u/s 439(1). In the instant case, though the petitioners are accused of some offences, yet, they are not in custody and hence the instant application u/s 439(1) for a direction to release them on bail is clearly not maintainable. For some practical difficulties as already discussed above, it is also not possible to apply extended meaning of the word custody to the case of the petitioners before us. The direction given by the Division Bench of this Court in the above quoted order dated 1.2.2001 that if any application is thereafter made by the petitioners before an appropriate Court under Sections 437/439 Cr.PC., same shall be disposed of by such Court in accordance with law does not contain any such observation that application of the petitioners u/s 439 is maintainable even when they are not in custody. Of course, if they are in custody, their application for bail has to be filed either u/s 437 or u/s 439 Cr. PC. The decisions of the apex Court in the cases of Naranjan Singh, Gurubox Singh and K.L. Verma have to be harmoniously interpreted, if possible, to avoid any inconsistency or absurd consequences.

14. We are required to answer another question as to whether we can give any relief to the petitioners by invoking our revisional or inherent Jurisdiction suo

moto.

15. Even if we accept that it may be possible for us to grant some relief to the petitioners by suo motu invoking our revisional or at least inherent jurisdiction, only three types of orders can be passed by this Court viz, (1) to reject the prayer of the petitioners for bail and remand them to custody, (11) to allow the prayer for bail either from custody or grant them a relief in the form of anticipatory bail or (iii) to quash the order of the Magistrate by which he rejected the prayer of petitioners for bail and remand matter the back to the Magistrate for reconsideration afresh.

16. Under the Code, the power to remand an accused to custody during investigation has been conferred upon Magistrates only. A bare perusal of Sections 167 and 437 of the Code will make it abundantly manifest that such power has been conferred upon Magistrates only. High Court has not been vested with any such power under the aforesaid provisions to remand an accused to custody. As the High Court has not been vested with any power to remand an accused to custody, this Court cannot have such power to take an accused into custody even if he surrenders. Therefore, when High Court has not been vested any such power to remand an accused to custody in case his prayer for bail is rejected, we wonder how High Court can be said to have requisite Jurisdiction to take an accused into custody upon his surrender before it and then allow a prayer for bail by invoking its revisional or inherent Jurisdiction? Further, when admittedly the petitioners are not in custody, it is not understood as to how this Court by invoking its inherent or revisional jurisdiction can issue such absurd direction to release them on bail from custody? Inherent or revisional jurisdiction cannot provide us with magic solution for all problems. Undoubtedly, this Court has power to grant bail to an accused only when he is in custody pursuant to some Judicial order passed by any subordinate Court. Petitioners have not at all been taken into custody by any Court so far, and, therefore, this Court cannot issue any such absurd direction to release them on bail from custody.

17. Section 482 (corresponding to Section 561A of the old Code) confers no new powers on High Courts. It merely safeguards all existing inherent powers possessed by the High Court necessary among other purposes to secure ends of Justice or to prevent abuse of the process of any Court or to give effect to any order under this Code. This section provides that those power which the Court inherently possessed shall be preserved lest it be considered that the powers possessed by the Court are those expressly conferred by the Code and that no inherent power survived the passing of the Code. In this respect we may refer to the decision of the apex Court in *The State of Uttar Pradesh Vs. Mohammad Naim*, . It is, therefore, apparent from this that Section 482 assumes that the Code is not exhaustive, though it is exhaustive with regard to matters specifically dealt with by it. The section emphasises that the High Court has widest Jurisdiction to pass orders to secure the aforesaid purposes and for those purposes to entertain applications not contemplated by other provisions of the

Code. It cannot, therefore, be resorted to if there is a specific provision in the Code for redress of the grievance of the aggrieved party. In this connection, we are fully fortified by a catena of decisions of the apex Court in *Madhu Limaye Vs. The State of Maharashtra*, : *Pampapathy Vs. State of Mysore*, ; *R.P. Kapur Vs. The State of Punjab*, : *Palantappa v. State of Tamil Nadu* AIR 1977 SC 1723 ; *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another*, ; *Khushi Ram v. Hashim* AIR 1959 SC 542; *Janata Dai v. U.S. Chawdhury* (1992) SCC 305. This has been the consistent view of the Supreme Court in these decisions and large number of other similar decisions that High Court cannot invoke its inherent power even for the purposes set out in Section 482 in respect of any matter fully covered by specific provisions of the Code.

18. Chapter 33 of the Code contains all specific provisions for bail and anticipatory bail. Section 389 of the Code contains specific provisions to grant bail during pendency of appeal from judgment of conviction and sentence. Similarly u/s 401(1) read with Section 389, revisional Court has been vested with the power to grant bail to a convict in a revision application against conviction and sentence. Therefore, all aspects of bail or anticipatory bail have been specifically dealt with by specific provisions of the Code. All these matters relating to bail or anticipatory bail are fully covered by the aforesaid provisions. No aspect of bail or anticipatory bail has been left untouched by these provisions of the Code and, therefore, Section 482 cannot be resorted to grant any relief like bail or anticipatory bail whether directly or indirectly. What cannot be done directly should not also be done indirectly by quashing the order of the Magistrate by invoking revisional or inherent power suo motu and remanding the case back to the Court of Magistrate for a fresh consideration on such matter. Furthermore, if we cannot give a finding as to how the order of the learned Magistrate was bad, any interference therewith suo motu by invoking revisional or inherent Jurisdiction will be an abuse of power of this Court. Before making any interference with the order of the Magistrate, this Court has a duty to say as to how the order of the Magistrate was bad. This being essentially a bail matter and having been dealt with by or under specific provisions of the Code, there is absolutely no Justification to interfere with the same by invoking revisional or inherent power of this Court suo motu.

19. The Old Code of Criminal Procedure did not contain any provision for anticipatory bail. Privy Council in AIR 1945 94 (Privy Council) had an occasion to consider the provisions of Chapter 39 of the Old Code (corresponding to Chapter 33 of the new Code) and Section 426 of the old Code and expressed the view that "Chapter 39 of the Code together with Section 426 is, and was intended to contain, a complete and exhaustive statement of the powers of the High Court in India to grant bail, and excludes the existence of any additional inherent power in a High Court relating to subject of bail."

20. Aforesaid decision of the Privy Council in the case of *Lala Jairam Das* came to be considered by the Supreme Court in a different context in *Talab Haji Hussain*

Vs. Madhukar Purshottam Mondkar and Another, . In the case of Hussain it was contended that in view of the law laid down by the Privy Council in the case of Lala Jairam Das, bail granted u/s 496 of the old Code (corresponding to Section 436 of the new Code) to a person accused of bailable offence cannot be cancelled even if the accused misused the liberty granted to him. Logic behind such contention was that it has been laid down by the Privy Council in the case of Lala Jairam Das that Chapter 39 together with Section 426 of the old Code was intended to be complete and exhaustive statement of the powers of the High Courts in India to grant bail and excludes the existence of any additional inherent power in a High Court relating to subject of bail. Relying on this decision of the Privy Council, it was contended before the Supreme Court in the case of Hussain that no inherent power is left in the High Courts to cancel bail of a person accused of bailable offence. After considering various provisions of the Code, it was held by the Supreme Court that the Code does not contain any such provision dealing with cancellation of bail granted to a person accused of bailable offence. Other provisions for cancellation of bail relating to non-bailable offences. Therefore, in an appropriate case High Court can certainly take recourse to inherent power to cancel bail granted to a person accused of bailable offence as such matter is not covered by any provision of the old Code. Again in Ratilal Bhanji v. Asst. Customs Collector. AIR 1967 SC 1639, the Supreme Court reiterated the same view. In none of the aforesaid two decisions of the Supreme Court, law laid down by the Privy Council in the case of Lala Jairam Das has been diluted. In a Full Bench decision of the Lahore High Court in Hidayat Ullah v. The Crown AIR 1949 Lah 77, same view was held that the High Court has no such inherent power to grant bail. Therefore, it would be evident from the above discussion that by now it is well-settled that as the law of bail/anticipatory bail has been exhaustively dealt with by various provisions of the Code, no further additional inherent power has been left in the High Court relating to the subject of bail. Under the old Code there was no such provision for anticipatory bail like Section 438 of the new Code. Before the new Code came into force, there was a divergence of opinion between different High Courts on the question as to whether High Court possessed any power to grant anticipatory bail in exercise of its inherent power as the old Code did not contain any such provisions for anticipatory bail. However, majority High Courts expressed the view that under the old Code High Court did not possess any such inherent power to grant any relief in the form of anticipatory bail. In fact the Supreme Court in Balchand Jam v. State of M.P. AIR 1977 SC 366 observed in paragraph 2 of the report that "There was at one time conflict of decisions amongst different High Courts in India about the power of a Court to grant anticipatory-bail. The majority view was that there was no such power in the Court under the old Code of Criminal Procedure .....". Now the Code has incorporated express provision for anticipatory bail in Section 438. Hence, law relating to anticipatory bail has been completely and exhaustively covered by the new Code and. therefore, under the new code no further inherent power has been left with the High Court to entertain an application for anticipatory bail. Since the subject relating to

anticipatory bail has been fully covered by an express provision of this new Code, High Court cannot resort to its inherent power u/s 482 to grant any relief in the form of anticipatory bail also.

21. Further, Sections 397 to 402 of the Code deal with revisional powers of the High Court and Court of Session. Power to call for the records of any case from any inferior Court with a view to satisfying itself as to the legality, correctness or otherwise propriety of any finding, sentence or order or as to the regularity of any proceeding has been conferred on the High Court and the Court of Session by or u/s 397 of the Code. Said provision of the Code further confers power upon the revisional Court to direct that execution of any sentence or order be suspended and if the accused is in confinement, he be released on bail or on his own bond pending examination on the records. From the language of Sub-section(I) of Section 397 it would be manifest that power to suspend execution of any sentence or order and to grant bail is in the form of an interim order pending final examination of such records and to disposed of the revisional application. Such interim relief cannot be granted if the revisional Court does not have power to pass final order for bail while disposing of such revisional application. It has to be ascertained as to whether the revisional Court has any such power to pass final order in the form of bail. It is needless to say that if the revisional Court does not possess to grant relief like bail in final form while disposing of such application, no interim order by way of bail can be granted under the aforesaid section. The nature of power of the revisional Court has been dealt with by or u/s 401 of the Code. Now, Sub-section (1) of Section 401 provides that where records of any proceeding has been called for by the High Court or which otherwise comes to its knowledge, it may in its discretion exercise any of powers conferred on a Court of appeal by, *infer alia*, by Section 389. Section 389 deals with suspension of sentence and bail of the convict petitioners during pendency of an appeal against such judgment of conviction and sentence. Therefore, on a Joint reading of Section 401 and Section 389, it will abundantly clear as to what is the intention of the legislature. It is manifest therefrom that power of bail by a revisional Court can be exercised in a revisional application against a judgment of conviction and sentence during pendency of such revisional application before the revisional Court. Therefore, it is evident that so far as bail matter is concerned, a Court of revision has been vested with the Jurisdiction to exercise the power conferred on a Court of appeal by or u/s 389 only, and therefore, save and except order contemplated u/s 389, a Court of revision has no further power to grant bail or anticipatory bail. We are of the further view that during the stage of investigation, a revisional Court has no power to deal with bail of an accused, whether directly or indirectly. What cannot be done directly should not be done indirectly. When the revisional Court has no such power to grant bail to an accused during investigation stage of the case, it will be totally inappropriate to exercise such power indirectly by interfering with the order passed by the Magistrate rejecting a prayer of the accused for bail and to direct the Magistrate to consider the prayer of the accused for bail afresh.

22. What has been consistently held by the Privy Council and the apex Court of the land that inherent power cannot be invoked to grant bail or anticipatory bail in view of the fact that such matters have been expressly dealt with by specific provisions in the Code should equally apply in respect of revisional power of the High Court or the Court of Session. Here, all aspects of bail matter or anticipatory bail matter having been expressly dealt with by specific provisions of the Code, revisional power cannot be invoked to deal with some subject matter either directly or indirectly. That apart, in view of nature of inherent power or revisional power of the High Court as delineated in various decisions of the apex Court as well as the Privy Council, we are unable to record a finding in exercise of such powers that rejection of the bail prayer by the concerned Magistrate was bad either in law or on facts. As we are unable to record such a finding, it will be fully unjustified to interfere with the order passed by the Magistrate and to remand the case back to him for a fresh consideration of the bail prayer of the petitioners.

23. Now, the only question is, are the petitioners left without any remedy whatsoever in view of the peculiar facts and circumstances of the case? In our considered view, there is a remedy. It is true that power of the High Court or of the Court of Session to grant anticipatory bail u/s 438 of the Code is discretionary in nature. It is self-imposed restraint on the Court and not a rule of law that High Court or the Court of Session should not entertain an application u/s 438 Cr.PC again after a similar application was rejected on an earlier occasion by the same Court. This self-imposed restraint is not the rule of law. The relief contemplated u/s 438 of the Code being discretionary in nature, Courts have imposed this restraint against repeated exercise of the power once an application u/s 438 is rejected. However, this is certainly not an inviolable rule of law. In a given situation there may be Justification for entertaining a second application u/s 438 Cr.PC. Court cannot take a hyper-technical view of such self-imposed limitations/restraints when important rights of a accused are involved. In the instant case petitioners approached this Court on an earlier occasion for anticipatory bail. Said application was allowed by granting anticipatory bail to the petitioners. While allowing such application, this Court directed that if the petitioners apply for regular bail before appropriate Court u/s 437/439 of the Code, such Court shall dispose of the same in accordance with law. In these circumstances of the case Section 439 is inapplicable inasmuch as petitioners are not in custody. Therefore, the only remedy open to the petitioners is an application u/s 438 again before this Court or before the Court of Session. There is absolutely no reason to blindly adhere to such self-imposed limitations/restraints in respect of discretionary power of this Court u/s 438, if proper justification is available for entertaining second petitioner for anticipatory bail. In the instant case certainly justifications are available to entertain a second petition u/s 438 of the Code of Criminal Procedure again which may be, if so filed will be disposed of in accordance with law by the proper Court.

24. In view of the aforesaid position of law as discussed above, learned counsel

for the petitioner submits that instead of dismissing the petition, he may be allowed to amend the cause title of the petition so as to make it an application u/s 438 of the Code and to move it before appropriate bench of this Court having requisite determination.

Accordingly, we allow the prayer of the learned counsel of the petitioner to amend the cause title of the petition by inserting Section 438 in place of Section 439 and to move it before appropriate Bench of this Court having requisite determination.