Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2587 OF 2014
(Arising out of S.L.P. (Crl.) No. 8469 of 2014)

Neeru Yadav ...
Appellant

Versus

State of U.P and another ...
Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The present appeal, by special leave, calls in question the legal substantiality and defensibility of the order dated 22.09.2014 passed by the High Court of judicature at Allahabad in Criminal Misc. Bail Application No. 31078 of 2014 whereby the learned Judge, in exercise of power under Section 439 of Code of Criminal Procedure, 1973 (Cr.PC) had admitted the 2nd respondent to bail in Crime No. 237 of 2013 instituted

for offences punishable under Sections 147, 148, 149, 302, 307, 394, 411, 454, 506, 120B and 34 of the Indian Penal Code (IPC).

3. As the impugned order would reveal, it was contended on behalf of the 2nd respondent that similarly placed co-accused, Ashok, had already been enlarged on bail by the High Court by order dated 23.9.2013 in Criminal Misc. Bail Application No. 21876 of 2013 and role of the accused-respondent No.2 was identical to that of Ashok Kumar and he should be released on bail. Thus the foundation of the prayer for grant of bail was on the bedrock of parity. The said prayer for grant of bail was opposed with vehemence by the learned A.G.A. contending, inter alia, that the accused had criminal antecedents and the role attributed to him was different. The same was controverted by the accused asserting that the said aspect had been explained in the affidavit attached to the bail application.

4. As the factual narration would further undrape, the learned Single Judge keeping in view the aforesaid aspects passed the following order:-

> "Considering the submission made by the learned counsel for the applicant as well as learned A.G.A., this Court is of the view that the applicant has made out a case for grant of bail on the ground of party.
>
> In view of the above, let the applicant, Mitthan Yadav be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the court concerned in Case Crime No. 237 of 2013, under sections 147, 148, 149, 302, 307, 394, 411, 454, 506, 120B and 34 I.P.C., P.S. Kavinagar, district-Ghaziabad with the following conditions:-
>
> (a) The applicant shall attend the court according to the conditions of the bond executed by him.
>
> (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence."

5. Being aggrieved by the aforesaid order, the wife of the deceased has preferred this appeal for setting aside the order.

6. At this juncture, it is apt to note that 2nd respondent had moved an application for bail before the learned Additional District & Sessions Judge, Ghaziabad who took note of the factual matrix, which is as follows:-

> "As per the prosecution story complainant Sakek Chand has lodged the report at PS Kavi Nagar that accused Mitthan, Manoj, lala Kapil and Budhu @ Budhpal were keeping enmity with the brother of the complainant Salekh Chand on their consuming

> wine in front of the house of complainant and due to this fear brother the complainant had keep a private gunner. On 25.2.13 at about 11.00 a.m. complainant and his brother Yashvir, Munir and Deepak were sitting in the house and suddenly above all accused carrying weapon in their hands entered into the house of the complainant and began hectic firing. Brother of the complainant received several bullet injuries. Complainant ran raising noise and also caught him and cause grievous injuries on his head, due to which he fell down. Hearing the voice of firing gunner also came and his rifle was snatched him them and also gave beatings to him and injured him. When people of the village gathered accused fled away giving threatening. People of the village admitted brother of the complainant in hospital where doctor declared him dead."

Learned Additional District & Sessions Judge, after taking note of the aforesaid allegations, declined to grant bail. Being unsuccessful to secure bail from the Court of Session, the 2nd respondent approached the High Court and as has been stated hereinbefore, the High Court has admitted him to bail.

7. Questioning the legal acceptability of the impugned order, it is contended by Mr. Malkan, learned counsel for the appellant that the High Court has failed to appreciate the role ascribed to Ashok Kumar and to the 2nd respondent who had fired on the deceased; and further the High Court has absolutely remained oblivious to the criminal antecedents of the said accused. That apart, it is contended by him that the

trial has commenced and at that stage it was absolutely improper on the part of the High Court to enlarge the accused on bail brushing aside the fact that the man with criminal antecedents has the potentiality to intimidate the rest of the witnesses. In essence, the submission is that the gravity of the offence, the manner in which it has been committed and the criminal antecedents of the accused – the 2nd respondent, have been totally ignored by the High Court and bail has been granted on non-consideration of the material facts, which makes the order vulnerable.

8. Mr. Ratnakar Dash, learned senior counsel appearing for the State of Uttar Pradesh, supporting the stand of the appellant submitted that though the State has not assailed the legal acceptability of the impugned order, yet the fact remains that when the real victim has approached this Court and on a perusal of the facts which have been asserted, it is quite manifest that the 2nd respondent is a history-sheeter and the order passed by the High Court should be nullified.

9. Mr. Praveen Chaturvedi, learned counsel appearing for the respondent no.2, resisting the aforesaid stand and stance put forth by the learned counsel for the appellant as well as

the learned senior counsel for the State has canvassed that the High Court has appositely applied the principle of parity and, therefore, the order passed by it cannot be faulted. It is urged by him that when the trial has commenced and many witnesses have been examined, there was no justification not to release the 2nd respondent on bail on such terms and conditions which have been determined by the High Court. It is put forth by him that the number of cases which were instituted against the 2nd respondent are not that grave and in some cases he has been acquitted, but unfortunately, emphasis has been laid on the same by the appellant and also learned senior counsel for the State. It is further contended that in the absence of any failure to abide by the terms and conditions imposed by the High Court while granting the accused the benefit of bail, this Court should not interfere as that would seriously jeopardize the liberty of the respondent no.2.

10. The pivotal issue that emanates for consideration is whether the impugned order passed by the High Court deserves legitimate acceptation and put in the compartment of a legal, sustainable order so that this Court should not

interfere with the same in exercise of jurisdiction under Article 136 of the Constitution of India. In this context, a fruitful reference be made to the pronouncement in ***Ram Govind Upadhyay v. Sudarshan Singh***[1], wherein this Court has observed that grant of bail though discretionary in nature, yet such exercise cannot be arbitrary, capricious and injudicious, for the heinous nature of the crime warrants more caution and there is greater change of rejection of bail, though, however dependant on the factual matrix of the matter. In the said decision, reference was made to ***Prahlad Singh Bhati v. NCT, Delhi***[2] and the Court opined thus:

> "(*a*) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (*b*) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
>
> (*c*) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
> (*d*) Frivolity in prosecution should always be considered and it is only the element of

[1] (2002) 3 SCC 598
[2] (2001) 4 SCC 280

> genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11. In ***Chaman Lal V. State of U.P.***[3], the Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind.

12. In this context, we may profitably refer to the dictum in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***[4], wherein it has been held that normally this Court does not interfere with the order passed by the High Court when a bail application is allowed or declined, but the High Court has a duty to exercise its discretion cautiously and strictly. Regard being had to the basic principles laid down by this Court from time to time, the Court enumerated number of considerations and some of the considerations which are relevant for the present purpose are;

[3] (2004) 7 SCC 525
[4] (2010) 14 SCC 496

whether there is likelihood of the offence being repeated and whether there is danger of justice being thwarted by grant of bail.

13. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the

justifiability and the soundness of the order passed by the Court.

14. In the case at hand, two aspects have been highlighted before us. One, the criminal antecedents of the 2nd respondent and second, the non-applicability of the principles of parity on the foundation that the accusations against the accused Ashok and 2nd respondent are different. First, we shall dwell upon the criminal antecedents. The appellant, the real victim, being the wife of the deceased, has annexed a chart relating to the criminal history of the accused. The State has filed a counter affidavit. We think it apt to refer to the cases which find place in the counter affidavit filed by the state. Be it clarified though it has been filed as a counter affidavit, it is not in oppugnation of the prayer sought in the petition. On the contrary, it is supportive of the stand put forth in the petition. It has been asseverated that the respondent no.2 is a history-sheeter and number of cases have been lodged against him. The following are the details of the cases:-

> "(i) Case crime No. 1009/2006 u/s 302/201/34 IPC Police Station Shahibabad, District Ghaziabad.

(ii) Case crime No. 1007/2006 u/s 302 IPC Police Station Shahibabad, District Ghaziabad.

(iii) Case crime No. 360/2008 u/s 302/201 IPC Police Station Shahibabad, District Ghaziabad.

(iv) Case crime No. 1614/2008 u/s 364/302/201 IPC Police Station Sihani Gate, District Ghaziabad.

(v) Case crime No. 495/2008 u/s 8/15 NDPS Act, Police Station Kavi Nagar, District Ghaziabad.

(vi) Case crime No. 496/2008 u/s 25 Arms Act, Police Station Kavi Nagar, District Ghaziabad.

(vii) Case crime No. 405/2008 u/s 307 IPC Police Station Kavi Nagar, Ghaziabad.

(viii) Case crime No. 913/2008 u/s 25 Arms Act, Police Station Kavi Nagar, Ghaziabad.

(ix) Case crime No. 1247/2009 u/s 147/323/324/506 IPC P.S. Kavi Nagar, Ghaziabad.

(x) Case crime No. 116/2011 u/s 307 IPC Police Station Kavi Nagar, Ghaziabad.

(xi) Case crime No. 170/2011 u/s 25 Arms Act, P.S. Sec-58, Noida, Gautambudh Nagar.

(xii) Case crime No. 2372013 u/s 247/148/149/302/307/ 394/411/506/120B/34 IPC P.S. Kavi Nagar, Ghaziabad.

(xiii) Case crime No. 330/2013 u/s 60 Excise Act, P.S. Kavi Nagar, Ghaziabad.

(xiv) Case crime No. 1091/2013 u/s 384/506 IPC P.S. Kavi Nagar, Ghaziabad.

(xv) Case crime No. 1238/2013 u/s 2/3 Gangster Act, P.S. Kavi Nagar, Ghaziabad.

Note:- The respondent Mitthan has been declared as History Sheetor being H.S. No. 39-A P.S. Kavi Nagar".

In the reply filed by the respondent no.2 contended, inter alia, that he has been acquitted in certain case. However, in the course of hearing, we have been apprised that most of the cases instituted against the respondent no.2 are still pending and some of them are under Section 302 IPC and other heinous offences.

15. In the case at hand the 2nd respondent, as the allegations would show, had fired at the deceased. Two persons were also injured in the attack. The occurrence took place in the broad day light. As we find from the FIR and statement recorded under Section 161 CrPC, the allegations against Ashok and the 2nd respondent are different. That apart, the number and nature of crimes registered against the 2nd respondent speaks voluminously about his antecedents.

16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life.

No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious

manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.

17. Coming to the case at hand, it is found that when a stand was taken that the 2nd respondent was a history sheeter, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the 2nd respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the 2nd respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this court would tantamount to travesty of justice, and accordingly we set it aside.

18. Consequently, the appeal is allowed and the order passed by the High Court admitting the respondent no.2 on bail is set aside. The respondent no. 2 is commanded to surrender to custody forthwith failing which it shall be the duty of the Investigating Agency to take him into custody immediately. We may hasten to clarify that what we have stated here is only to be read and understood for the purpose of annulling the order of grant of bail and they would have no bearing on the trial. The learned trial Judge shall proceed with the trial as per the evidence brought on record.

.....J.
[DIPAK MISRA]

.....J.
[UDAY UMESH LALIT]

NEW DELHI
DECEMBER 16, 2014.