

CASE NO.:
Appeal (crl.) 198 of 2008

PETITIONER:
Gobarbhai Naranbhai Singala

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 29/01/2008

BENCH:
ASHOK BHAN & ALTAMAS KABIR

JUDGMENT:
JUDGMENT
(Arising out of SLP(CRL) No. 6646 of 2005)
WITH

CRIMINAL APPEAL NO. 199 OF 2008
(Arising out of SLP(CRL) No. 4283 of 2006)

Jayeshbhai @ Panchabhai Muljibhai Satodiya Appellant(s)

Versus

Jayrajsinh Temubha Jadeja & Anr. Respondent(s)

BHAN, J.

1. Leave granted.
2. This judgment shall dispose of the Criminal Appeal arising out of SLP(Crl) No. 4283/2006 (for short \0231st case\024) and Criminal Appeal arising out of SLP(Crl) No. 6646/2005 (for short \0232nd case\024).
3. The 1st case has been filed by the Complainant Jayeshbhai @Panchabhai M. Satodiya seeking cancellation of the bail granted to respondent Shri Jayrajsinh Temubha Jadeja who, at that time, was a sitting Member of Legislative Assembly of Gujarat (the first accused in Criminal Case No.1-25/2004 registered under Sections 302, 307, 143, 147, 148, 149, 341, 120B, 201 IPC and Sections 25(1) A, (1-a), 27 of the Arms Act and Section 135 of the Bombay Police Act at Police Station Gondal City) for the alleged murder of Nilesh.
4. The 2nd case has been filed by the complainant, namely, Gobarbhai Naranbhai Singala seeking cancellation of the bail granted to the respondents - Shri Shivbhadrasinh @ Gopalsinh Giriraj Jadeja (Respondent No.2 herein) and Shri Jayrajsinh Themubha Jadeja (Respondent No.3 herein) [2nd and 3rd Accused in Criminal Case No.I-173/2005, wrongly mentioned as I-102/2004 dated 19.3.2004] registered at Police Station Malviya Nagar, Rajkot City, Rajkot under sections 143, 148, 149, 449, 302 IPC and 25(1)(b)(a) of the Arms Act, for the alleged murder of appellant\022s son Vinodrai Singala.
5. The facts in brief culminating into filing of these appeals are narrated below.
6. That, on 9th February, 2004 the complainant Jayeshbhai [appellant in 1st case] along with Nilesh Rayani and Ramjibhai Markana had allegedly gone to hostel. While coming back, they were followed by a car, which overtook Jayeshbhai\022s vehicle driven by Ramjibhai. When they reached

near Central Talkies at about 8.15 p.m., three persons, namely Jairajsinh Jadeja, Amarjit Singh and Bhagat came out of the car and allegedly fired at the Jayeshbhai's car. The said fire hit the glass of the car. Jayeshbhai was hit by the shattered pieces of glass. Ramjibhai, who was driving the car at that point of time, to save himself, came out of the vehicle and tried to run away. But finding that there was another car which was following them, he again entered the vehicle. Meanwhile, the deceased Nilesh started driving the vehicle. The respondent-Jayrajsinh Jadeja again fired which hit Nilesh Rayani. The car went out of control and hit another car and thereafter side railing on the road. The appellant and Ramjibhai ran away from the scene and, while running, they saw that the Nilesh Rayani was being beaten by other persons. Nilesh died on the spot. The appellant came to his house where Vinubhai Singala and others were present. Appellant thereafter narrated the story to Vinubhai Singala and then they went to meet Ramjibhai, who was hiding in the Town hall out of fear. They lodged the report, i.e., Case No.1-25/2004 under Sections 302, 143, 147, 148, 149, 341, 307, 120B, 201 IPC, Sections 25(1)(a) and 27 of the Arms Act and Section 135 of the Bombay Police Act.

7. On 17th February, 2004 the respondent was released on anticipatory bail by the Additional Sessions Judge, Rajkot in Criminal Misc. Application No. 28/2004. The State of Gujarat filed CPA No.102/2004 in the High Court, seeking cancellation of the anticipatory bail granted to the respondent. Appellant also filed CRA No.92/2004 for the same relief. Anticipatory bail granted to the respondent was cancelled by the High Court on 5th March, 2004.

8. On 19th March, 2004 Vinubhai Singala (Vinod Rai Singala) was murdered. The respondent was named in the FIR as one of the assailants. The case was registered as Criminal Case No. I-173/05 at P.S. Malviya Nagar, Rajkot. The said FIR was lodged by Gobarbhai Naranbhai Singala, father of the deceased Vinubhai Singala, appellant in the 1st Appeal under Sections 143, 148, 149, 447, 302 IPC and 23(1)(b) of Arms Act. In the said FIR it was inter alia alleged:

\023Today at about 8/00 to 8/30 a.m. my son Vinodrai was reading newspaper in garden of bungalow compound and was seating in the coat, nearby Vanupuriyabhai was seating. And after giving grass to my cow myself came in garden and heard a sound of firing and when I seen that were two persons who were fining out of which one Viranndev and other Gopalsinh after firing both of them ran away to the east side of building wall which I have seen I know them they are residing in Gondal. I do not know full name of the person, they were jumped the wall at that time on wall M.L.A. Jayrajsinh Jadeja was standing and the person who runaway has told him that they have completed Vinodrai Singala and revenge has been taken and telling this they got down the wall and runaway with them.\024(sic)

9. Pursuant to the cancellation of bail by the High Court in Criminal Case No.I-25/2004, the respondent surrendered on 20th of March, 2004. After his arrest, the respondent filed an application for bail in Criminal Case No.I-25/2004.

10. The High Court by its order dated 14th September, 2004 refused to grant bail to the respondent, inter alia, observinging:

\023From the aforesaid facts and looking to the statements of the witnesses, panchnama, reports, including ballistic report, prima facie reflects that there is direct involvement of the applicants in commissioning of the offences. The applicants were not available after the offence is committed as narrated in para 6 and para 8 of the judgment by the trial court. Looking to gravamen of charge against the present applicants, their involvement (prima facie clearer from the record of the case), quantum of punishment, their tenancy (sic) to remain away from police (as per para 6 and para 8 of judgment of the trial court), leads me to believe that they may not be available at the time of trial and due to cumulative effect of all the aforesaid factors, I am not inclined to use discretionary power, to enlarge the present applicants on bail, there, is no substance in the present application and hence, the present application is rejected. Notice is discharged.\024

11. Aggrieved against the rejection of bail by the High Court in CrI. Misc. Application No. 7579/2004, the respondent filed a petition being SLP (CrI) No.1128/2005 before this Court.

12. This Court while rejecting the petition on 18th February, 2005, observed as under:
\023Delay condoned.

It is stated that the petitioner has been in custody since 28th March 2004 and in the case of the co-accused whose bail application was rejected, this Court made an observation on 1.11.2004, that the bail application could be renewed after six months.

Though we are not inclined to interfere at this stage, we would like to give liberty to the petitioner to renew bail application before the High Court after four months. Such bail application, if filed, shall be considered on its own merits.\024(sic)

13. Respondents filed M.A. No.8305/2004 seeking bail. On 26th October, 2005 the High Court granted bail to the respondents herein in CR No.I-173/2005, lodged by the appellant in the 2nd case - Gobarbhai.

14. Against the aforesaid order, the complainant Gobarbhai has filed the Appeal arising out of SLP(CrI) No. 6646/2005, seeking cancellation of the bail granted to the respondents, in which this Court issued notice on 16th of December, 2005.

15. In Criminal Case No.1-25/2004 (incident of 9th February 2004) respondent filed an application for temporary bail, which was granted by the High Court on 23rd of December, 2005 for one month. Respondent was released on bail on 27th December, 2005. Appellant filed an application for cancellation of temporary bail granted to the respondent. In the meantime, on expiry of the period of temporary bail granted to the respondent, the respondent had surrendered on 27.1.2006. Thus, application filed by the appellant, seeking cancellation of the temporary bail was dismissed as infructuous on 10th February, 2006, as the respondent had already surrendered.

16. On 3rd of March, 2006, the respondent filed another application for temporary bail in Criminal Case No. I-

25/2004, which was granted by the High Court for a period of one month from 6th March, 2006 to 5th of April, 2006. After expiry of the period of temporary bail, the respondent surrendered and thereafter filed a Criminal Misc. Application, which came up for hearing before the same Hon\022ble Judge who had heard CrI.Misc. Application No. 7579/2004 filed earlier by the respondent in which prayer for grant of bail was turned down by his order dated 14th September, 2004. This time, the Hon\022ble Judge granted regular bail to the respondent by observing thus: \0235. Having heard the learned advocates for the rival sides and looking to the facts and circumstances of the case, it appears that the applicant is in judicial custody since March, 2004. Sessions case has not yet commenced and no prosecution witness has been examined. Moreover, this Court has twice granted temporary bail to the present applicant, initially for the period from 27th December, 2005 to 27th January, 2006 with stringent conditions and the present applicant had surrendered to the judicial custody in time without any breach of conditions. Similarly, for the second time also, this Court had granted temporary bail to the present applicant for the period from 6th March, 2006 to 5th March, 2006 (sic) with stringent conditions and at that time also, the applicant had surrendered to judicial custody in time without any breach of conditions. The offence being Cr. No.I.102 of 2004 was registered in the intervening period wherein charge sheet has already been filed which is not against the present applicant. Thus, twice this court has tested the present applicant for one month. On each of the occasions, the conditions imposed by this Court have been fulfilled and obeyed by the applicant coupled with the fact that no prosecution witness has yet been examined though period of more than two years have elapsed.

6. In view of the above facts and circumstances of the case, this application is required to be allowed and the applicant is required to be enlarged on bail. Accordingly, the applicant is hereby ordered to be enlarged on bail in pursuance of the offence registered bearing C.R. No.I 25/2004 at Gondal Police Station on his furnishing a bond of Rs.50,000/- (Rs. Fifty Thousand) and solvent surety of the like amount, on the following terms and conditions that he shall:

- (a) not take undue advantage of his liberty or abuse his liberty;
- (b) not act in a manner injurious to the interest of the prosecution;
-) maintain law and order;
- (d) mark his presence on every Tuesday and Friday in a week at Sector 21, Police Station, Gandhinagar between 9.00 a.m. to 2.00 p.m.;
- (e) not leave the State of Gujarat without prior permission of the Sessions Court concerned;

(f) furnish the address of his residence at the time of execution of the bond and shall not change the residence without prior permission of this Court;

(g) not enter into the local limits of district Rajkot without prior permission of this Court, but for attending the Court in connection with this case he will be free to enter the limits for a period to the extent necessary and will leave the limits thereafter soon after the case is adjourned;

(h) surrender his passport, if any, to the lower court within a week.\024

17. Aggrieved against the aforesaid order granting bail to the respondent in CrI. Case No. I-25/2004, Jayeshbhai has filed the Appeal arising out of SLP(CrI) No. 4283/2006, seeking cancellation of bail.

18. Heard learned counsel appearing for the parties.

19. The High Court by the impugned order has granted bail to the respondent-Jayrajsinh Jadeja (in 2nd case) on three grounds \026 (i) that the respondent was in judicial custody since March, 2004; (ii) that trial had yet not commenced and no prosecution witness had been examined; and (iii) that the Court had tested the respondent twice by granting temporary bail to him with stringent conditions for a duration of one month each, i.e., from 27th December 2004 to 27th January, 2005 and 6th March, 2006 to 5th April, 2006 and, on both the occasions, the respondent had surrendered within time, without breach of any of the conditions.

20. From a reading of the impugned order it is found that the learned Judge, who incidentally happens to be the same Judge who had declined to release the respondent on bail earlier, did not advert to any of the reasons given by him declining to release the respondent on bail. There was no change of circumstances. The reasons given by the learned Judge in the impugned order for grant of bail are untenable.

21. That the respondent did not misuse his liberty while on temporary bail twice by itself is no ground to grant bail in a murder case especially when he was allegedly involved in a subsequent case of murder. It may be mentioned here that apart from the present two cases of murder, respondent has been named in 10 other criminal cases in the last 25 years or so, out of which 5 cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. We are informed at the Bar that the respondent has been acquitted in most of the cases for want of sufficient evidence. This speaks volumes. We refrain from saying anything further, lest it may prejudice the trial in these two cases.

22. The other reason given in the impugned order is that the trial of the case has not progressed / begun. We find from the record that between 2nd June, 2004 and 19th December, 2005 the case was listed before the trial court 31 times and on each date, it had to be adjourned on the ground that one or the other accused was not present. There are 16 accused in the case. It is not clear from the record whether the accused were not brought by the police from the jail or that they were on bail and had not appeared of their own, but the fact remains that the complainants were not in any way instrumental in delaying the trial between 2nd June, 2004 and 19th December, 2005. It was brought to our notice that the only witness who has been examined so far has turned hostile. Trial was stayed by the High Court on 15th February, 2007 at

the instance of the appellant as Shri R.R. Trivedi, A.P.P., to whom the case had been assigned for conducting the trial and was allegedly the counsel for the respondent in some other case earlier, continued to appear in the case in spite of the fact that he was replaced by another A.P.P. It just shows that the trial was not progressing smoothly. In any case, complainant party was in no way responsible for any delay in trial.

23. The third reason given by the High Court for grant of bail, that the respondent had been in jail for the last more than 2 years, is equally untenable in view of the observations made by this Court in State of U.P. vs. Amarmani Tripathi [(2005) 8 SCC 21]:

"the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."
[Underlining is ours]

24. Shri Arun Jaitley, learned senior counsel appearing for the respondents, submitted that this Court should not ordinarily interfere in the matters relating to bail. It was pointed out that in the last two years, the respondent has not misused the liberty granted to him. There is no doubt that this Court does not ordinarily interfere in the matters granting bail but the same is subject to certain exceptions. When the basic requirements necessary for grant of bail are completely ignored by the High Court, this Court would be justified in canceling the bail. In the present case, three witnesses, who had allegedly seen the occurrence, have unequivocally in their statements under Section 161 Cr.P.C. have stated that the respondent, was present at the time of occurrence and he had fired with his gun. Prima facie a case for grant of bail was not made out.

25. This Court in Amarmani Tripathi\022s case (supra) had held that while considering the application for bail, what is required to be looked is, (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by

grant of bail.

26. In Panchanan Mishra v. Digambar Mishra, [(2005) 3 SCC 143], this Court while considering the question of cancellation of bail, observed:

"The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime.... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

27. We are of the view that the High Court has completely ignored the general principles, for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.

28. In the second case, another learned Judge has granted the bail by the impugned order which runs into 22 pages. The findings recorded therein touch upon the merits of the case. The learned Judge has proceeded as if an order of acquittal is being passed. This Court in Amarmani Tripathi\022s case (supra) has held that a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no pre-judging and no prejudice is caused. Only a brief examination is to be done to satisfy about the facts and circumstances or otherwise of a prima facie case.

29. Taking the overall view of the entire matter and in particular to the antecedents of the respondent-Jayrajsinh Temubha Jadeja, the alleged statements made by the witnesses, who were present at the spot, to the police and the admitted enmity between the parties (which is a double edged weapon to commit the crime as well as to falsely implicate), we are of the view that it was not a fit case to grant bail to the respondents in this case as well. Without elaborating further, we set aside the impugned orders granting bail to the respondents. Respondents are directed to surrender to the judicial custody forthwith. In case, the respondents do not surrender within seven days, steps be taken, in accordance with law, to apprehend them.

30. The counsel appearing for the State of Gujarat has informed us that Shri R.R. Trivedi has been replaced by Ms. Amita Ben Sippy as the new A.P.P. to conduct the trial. She has assured us that Shri R.R. Trivedi will not appear and conduct the trial in either of these two cases. Thus, the grievance of the appellants on the basis of which the trial was stayed, stands redressed. Stay of trial granted by the High Court on 15th February, 2007 is vacated. Trial of the case to begin forthwith. Trial Court is directed to take up the trial on day to day basis and, if possible, conclude the same within the next six months from the date of production of a certified copy of this judgment. The prosecution as well as defence counsel is directed to cooperate in conducting the trial on day to day basis. In case, any of the accused who is on bail and does not appear, then his bail be cancelled and he be taken into

custody.

31. Nothing stated herein above be taken as an expression of opinion on merits of the matter. The trial court shall proceed with the trial in accordance with law, without in any manner being influenced by the observations made herein above or in the Orders passed by the High Court granting bail to the respondents.

32. With these observations, the appeals are allowed.

JUDIS