

CASE NO.:
Appeal (crl.) 1065 of 2007

PETITIONER:
State of Gujarat

RESPONDENT:
Narendra K. Amin

DATE OF JUDGMENT: 13/08/2007

BENCH:
TARUN CHATTERJEE & P.K. BALASUBRAMANYAN

JUDGMENT:
JUDGMENT

ORDER
CRIMINAL APPEAL NO. 1065 OF 2007
(Arising out of SLP(Crl.) No.4294 of 2007)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. In Writ Petition (Criminal) 6 of 2007 praying for the issue of a writ of habeas corpus, while monitoring the investigation into the alleged killing of Sohrabuddin Sheikh and the disappearance of his wife, the learned amicus curiae brought to our notice an order of the Sessions Court granting anticipatory bail to Dr. Amin, a Deputy Superintendent of Police. He submitted that the said order was unsupportable and had an impact on the investigation itself. When the learned amicus curiae pointed out that the State of Gujarat has not even appealed against that order, learned Senior Counsel appearing for the State of Gujarat sought permission of this Court to challenge the said order directly in this Court in view of the fact that this Court was already in seisin of the matter relating to the concerned crime and that in his view also, the order required to be challenged. Thereupon, we granted permission to the learned Senior Counsel for the State of Gujarat to file a Petition for Special Leave to Appeal against that order. When such a petition, the present one, was filed, we issued notice on the same in spite of the request of learned Senior Counsel for the respondent who had appeared on caveat, that notice need not be issued and the matter itself may be heard finally. Today, we heard learned Senior Counsel for the State of Gujarat, learned Senior Counsel appearing for the respondent and the learned amicus curiae.

3. Learned Senior Counsel for the State of Gujarat submitted that the learned judge has travelled beyond the scope of an inquiry under Section 438 of the Code of Criminal Procedure and that he had dealt with the matter in such a way that it was almost like passing an order of acquittal. This was exactly the submission that the learned amicus curiae made the other day, which induced us to entertain this petition directly in this Court. Learned Senior Counsel for the State of Gujarat also submitted that there was no proper application of mind by

the learned Sessions Judge to all the facts available and considering the gravity of the offence, the circumstances surrounding the transaction and the position occupied by the respondent, it was a fit case for refusing anticipatory bail. This was a case where custodial interrogation was a must. The Sessions Judge has also completely ignored the apprehension clearly expressed by the prosecution that the respondent, if granted bail, would be in a position to influence and coerce the witnesses into retracting statements already made and in not disclosing relevant information to the prosecution. This aspect has been totally ignored by the court while granting bail.

4. Learned Senior Counsel for the respondent submitted in answer, that the learned Sessions Judge has only gone by the parameters drawn for an inquiry into an application under Section 438 of the Code and the observations made by him are in connection with that inquiry and it was not correct to characterise the order as almost amounting to an order of acquittal. Learned counsel submitted that the extraordinary jurisdiction of this Court under Article 136 of the Constitution of India is exercised by this Court only based on the circumstances available in a case and in the case on hand, the circumstances available and the materials available, did not justify interference by this Court. He referred to the charge sheet to plead that the grant of bail was justified. He also pointed out that subsequent to the order impugned herein, the respondent has been arrested and enlarged on bail pursuant to the order and he has made an application for regular bail in the concerned court and it would be appropriate to leave the matter to be decided by that court while entertaining the application under Section 439 of the Code.

5. We think that in view of the fact that the application for regular bail made by the respondent is pending before the concerned court, it would not be appropriate for us to go into the various aspects projected before us. All the same, we think that the approach made by the Sessions Court in granting anticipatory bail to the respondent, leaves much to be desired. The apprehension that the respondent is in a position to influence, induce or coerce witnesses to desist from furnishing relevant information to the investigating agency cannot be considered to be imaginary and the court ought to have considered that aspect seriously before granting anticipatory bail. The court also should have considered the need put forward for custodial interrogation of the respondent for finding out what exactly happened to Kausarbi or how she met with her end. Suffice it to say that in the circumstances, we are inclined to interfere with the order granting anticipatory bail to the respondent but only to the limited extent of setting it aside and leaving the bail application of the appellant to be dealt with by the trial court in accordance with law and after taking note of all the relevant aspects. Thus, even though we set aside the order, we do not think it proper to go into the question on merits and to pass a final order on that application. This course, we think, will sub-serve the interests of justice and prejudice neither.

6. Thus, we allow this appeal, set aside the order of the court below granting anticipatory bail to the respondent but consider it not necessary to decide that

application at this stage since in a sense, the said order has worked itself out. We direct the Sessions Court to deal with the application for bail made by the respondent under Section 439 of the Code in accordance with law, consider that application totally uninfluenced by anything contained in the order challenged before us and by anything we have said in this order vacating it.

JUDIS