

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 838 OF 2009
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 3572 OF 2008

Masroor

... Appellant

Versus

State of U.P. & Anr.

... Respondents

J U D G M E N T

D.K. JAIN, J.

Leave granted.

2. Challenge in this appeal by the complainant is to the order dated 10th March, 2008 passed by a Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application No. 4167 of 2008, granting bail to the second respondent, Chhunnu @ Chhidda. The said respondent was one of the persons named in FIR No.181 of 2007, registered at Police Station Asmouli, District Moradabad against 22 persons. The FIR was initially registered for offences under

Sections 147, 148, 149 and 307 of the Indian Penal Code ("IPC" for short), but subsequently, on the death of two injured persons, Section 302, IPC was also added. The first respondent is the State of U.P.

3. Briefly stated, the background facts giving rise to the present appeal are as follows:

On 18th September, 2007, at about 5.25 p.m., an FIR was lodged by the appellant with the said police station for an incident which took place at about 3.30 p.m. at village Asmouli. The case was registered as Crime Case No. 347 of 2007. It was reported that at about 3.30 p.m., on that day the appellant had gone to the shop of one Anzar s/o Mehboob where one Basiruddin @ Lala also came to buy some fruits. On Anzar's (shopkeeper) refusal to sell goods to him on credit, Basiruddin started beating him, on which the appellant intervened. Being annoyed, Basiruddin left the place. But, after a short while he came back, accompanied by 21 other persons, including the second respondent. All of them were armed with guns and country made firearms. Due to fear, the appellant rushed to the house of his brother Qayyum. All the said 22 persons attacked the house of Qayyum. On hearing noise, the

residents of the house and many other residents of the village, collected at the spot. The said accused started firing indiscriminately, injuring 9 persons. Some of them sustained multiple injuries. All the injured persons were removed to the District hospital for examination. As per the medical reports, the injured persons sustained gunshot injuries which were grievous in nature. Two persons, namely, Anzar Hussain s/o Mazhar Hussain and Rizwan @ Bhoora s/o Matloob Hussain, later succumbed to their injuries. While Rizwan died on 19th September, 2007, Anzar Hussain died on 30th September, 2007.

4. On the very same day viz. 18th September, 2007, another FIR (No.182 of 2007), pertaining to the same incident, was lodged at about 6.40 p.m. by the said Basiruddin @ Lala against 25 persons, *inter alia*, alleging that when he went to the shop of Anzar s/o Mehboob to buy some vegetables, he told Anzar that his vegetables were very expensive, on which Anzar and one Shahroz, who was standing there, started abusing him. When Basiruddin protested, they started beating him with legs and fists. Basiruddin then came back home but after some time, many people, including Shahroz,

Anzar (since deceased) and Qayyum, came to his house and started firing with an intention to kill him.

5. The persons named in the first FIR were arrested on different dates. Upon recording the statements of some eye-witnesses, including the injured witnesses, charge-sheet was filed against all the 22 accused persons named in Crime Case No.347/2007, including the second respondent, on 19th November, 2007.
6. The second respondent moved an application before Additional Sessions Judge/Fast Track Court, Moradabad for grant of bail. Keeping in view the fact that two persons had died and few others had sustained multiple injuries, by an order dated 18th January, 2008, the Addl. Sessions Judge rejected the bail application. On 20th February, 2008, charges were framed against all the accused for offences under Sections 148, 307 read with Section 149 IPC and Section 302 read with 149, IPC.
7. Aggrieved by the order passed by the trial Court rejecting his bail application, the second respondent preferred the aforementioned bail application before the High Court. As

noted above, by the impugned order, the High Court allowed the application and granted bail to the second respondent.

The operative part of the impugned order reads as follows:

“Considering the facts, circumstances of this case, submissions made by learned counsel for the applicant, learned A.G.A., learned counsel for the complainant and without expressing any opinion on the merits of the case, the applicant is entitled to be released on bail with the below mentioned conditions.

Let the applicant Chhunna @ Chhidda involved in Crime Case No. 347 of 2007 under Sections 147, 148, 149, 307 & 302, IPC, P.S. Asmoli, District Moradabad be released on bail on his furnishing a personal bond and two heavy sureties each in the like amount to the satisfaction of the Court concerned.

- The applicant shall report to the court of learned C.J.M. concerned in the first week of each month to show his good conduct and behaviour.
- He shall not tamper with the evidence.

In case of default of any of the above mentioned conditions, the bail granted to the applicant shall be deemed cancelled and he shall be taken into custody forthwith.”

8. Being aggrieved by the order enlarging the second respondent on bail, the complainant is before us in this appeal.

9. Learned counsel appearing for the appellant strenuously urged that the High Court has not only failed to take into consideration the circumstances under which a heinous crime, resulting in loss of two lives and grievous injuries to a number of persons was committed, it also failed to record any reason as to why the bail was being granted to the said respondent. It was argued that the order suffers from the vice of non-application of mind and, therefore, deserves to be set aside. In support of the proposition that any order *de hors* the reasons for grant of bail suffers from non-application of mind, learned counsel placed reliance on the decisions of this Court in ***Puran etc. etc. Vs. Rambilas & Anr. etc. etc.***¹, ***Suresh Kumar Somabhai Rana Vs. Ashok Kumar Haraklal Mittal & Ors.***², ***Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.***³ and ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.***⁴. It was also pointed out that relying on the order impugned in this appeal, all other accused have also been released on bail.

¹ (2001) 6 SCC 338

² JT 2002 (2) SC 431

³ (2002) 3 SCC 598

⁴ (2004) 7 SCC 528

- 10.** Learned counsel appearing for the second respondent, supported the order passed by the High Court. It was contended that the reasons for grant of bail are implicit in the preceding paragraphs of the impugned order, wherein the contentions of both the sides have been recorded by the High Court. Learned counsel also submitted that there being cross versions of the incident, as projected in the FIRs lodged by both the sides, the High Court was justified in granting bail to the said respondent. It was urged that the present appeal not being one for cancellation of bail on any of the grounds contemplated in Section 439 (2) of the Code of Criminal Procedure (for short “the Code”), there is no other reason warranting interference by this Court.
- 11.** Normally this Court does not interfere with the order of the High Court relating to grant or rejection of bail but in the instant case, having carefully gone through the impugned order, we are constrained to observe that the High Court has completely ignored the basic principles which are to be kept in view while dealing with an application filed under Section 439 of the Code for grant of bail and has thus, committed a

manifest error in the matter of grant of bail to the second respondent, warranting interference by this Court.

12. It is trite to state that the Court granting bail has to exercise its discretion in a judicious manner with care and caution and not as a matter of course. Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided but there is a need to indicate in such order reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) *Prima facie* satisfaction of the Court in support of the charge. (See: **Ram Govind Upadhyay Vs. Sudarshan Singh**⁵, **Puran Vs. Rambilas**⁶ and **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.**⁷)

- 13.** There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the Courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in **Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan**⁸, are quite apposite:

“Liberty is to be secured through process of law, which is administered keeping in mind the interest of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.”

⁵ (2002) 3 SCC 598

⁶ (2001) 6 SCC 338

⁷ (2004) 7 SCC 528

⁸ (1987) 2 SCC 684

14. Therefore, the question for consideration is whether having regard to the nature of the offences the second respondent has been charged with; the background in which these were committed and the stage of the trial, the High Court was justified in granting bail to the said respondent and set him free?
15. As noted earlier, according to both the FIRs, the genesis of the incident is some heated argument between accused Basiruddin and Anzar (shopkeeper). Perhaps on refusal by Anzar to sell his goods to Basiruddin on credit, he took it as a personal affront and the altercation ensued. Though the stand of Basiruddin in the FIR lodged by him is that after the incident, he had gone back to his house but the fact remains that after the investigation, which included recording of statements of many persons, a chargesheet for serious offences has been filed against 22 persons, including the second respondent, for committing the murder of two persons and causing multiple injuries to 8 persons. The background of the incident, the nature of the assembly, the nature of the arms carried by the accused and the manner in

which the offences were committed, *prima facie*, reflect the character and the conduct of the accused for whom perhaps refusal by the shopkeeper to sell goods on credit was a challenge to their authority and the power they wielded in the area. Be that as it may, the significant feature of the case is that the learned Judge, except for recording the submissions of counsel for both the parties, has not indicated any reason whatsoever for grant of bail. This is manifest from the afore-extracted order that there is no consideration of any of the factors, like nature of the offence; the evidence collected by the prosecution and forming part of the chargesheet and the circumstances under which the offences were committed, all relevant for deciding the question whether the bail should be granted or not. In our opinion, failure on the part of the learned judge in not indicating any reason for grant of bail particularly when charges against the second respondent are serious, makes his order indefensible. As observed by this Court in **Puran's** case (supra), giving reasons is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case is not to be

undertaken but that does not mean that while granting bail some reasons for *prima facie* concluding why bail was granted are not to be indicated, which is the case here.

- 16.** For the foregoing reasons, the appeal is allowed and the impugned order granting bail to the second respondent is set aside. The bail bond and surety furnished by the said respondent in terms of the High Court's order stand cancelled and it is directed that he shall be taken into custody forthwith.
- 17.** Before closing, we may also note some disturbing features of the case, which not only show the lack of will on the part of prosecution to get the guilty punished as early as possible, it also *prima facie*, shows some unholy nexus between the prosecuting agency and the accused. In the first instance, the prosecution did not question the order passed by the High Court granting bail to the second respondent and other accused and after the framing of charges as far back as on 20th February, 2008 not a single witness has been examined by the prosecution so far. We say no more.

- 18.** It goes without saying that any observations touching the merits of the case against the second respondent are purely for the purpose of deciding the question of grant of bail and shall not be construed as an expression of final opinion in the main matter.
- 19.** We may also clarify that if in future any application for grant of bail is filed by the second respondent, it shall be considered on its own merits, uninfluenced by this order.

.....J.
(D.K. JAIN)

.....J.
(R.M. LODHA)

**NEW DELHI,
APRIL 27, 2009.**