

CASE NO.:
Appeal (crl.) 520-521 of 2008

PETITIONER:
State of Maharashtra

RESPONDENT:
Madhukar Wamanrao Smarth

DATE OF JUDGMENT: 24/03/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NOS. 520-521 OF 2008
(Arising out of SLP (Crl.) Nos. 5951-5952/2007)
(With Crl.A. 522 /2008 @SLP (Crl.) No. 7157/2007)
(With Crl.A. 523 /2008 @SLP (Crl.) No. 7158/2007)
(With Crl.A. 524-527 /2008 @SLP (Crl.) No. 7159-7162/2007)
(With Crl.A. 528 /2008 @SLP (Crl.) No. 7164/2007)
(With Crl.A. 529 /2008 @SLP (Crl.) No. 8114/2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. In each of these cases challenge is to the bail granted to the respondent by the Bombay High Court, Nagpur Bench. Since all these appeals have a common matrix, they are taken up together.

3. On the basis of allegations that the respondents were guilty of having committed cheating, preparing forged and false documents for the purpose of cheating, using the said documents as genuine, abetment of crime, committing criminal breach of trust by forming criminal conspiracy in furtherance of their common intention, law was set into motion.

4. They were convicted by the trial Court, and have preferred appeals before the High Court and had prayed for grant of bail by suspension of sentence in terms of Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court primarily granted bail to each of the respondents on the ground that bail was granted during trial and the liberty was not misused. Further ground indicated was that there was likelihood of delay in disposal of the appeals. In the case of respondent-Madhukar it was stated that the evidence appeared to be scanty against him.

5. Questioning correctness of the order passed in each case, learned counsel for the State submitted that there was large scale of manipulation of records resulting in manipulation of results of the candidates and each of the respondents had a definite role to play. Apart from the cases where they have been convicted, large number of connected cases are also pending. In the case of respondent-Yadav Nathoba Konchade, two cases under the Prevention of Corruption Act, 1988 (in short 'PC Act') were pending. In one case the said accused had offered bribe to the investigating officer and was caught red handed. It was submitted that considering the gravity of the

offence the sentences were directed to run consecutively in terms of Section 31(1) of Code. It was stated that the High Court was misled in the case of respondent-Madhukar who made a false statement before the High Court that he had deposited fine amount while in fact he had not done so as would be apparent from the second order. It was essentially submitted that without indicating any plausible reason, much less, the reasons contemplated under Section 389 of the Code, the bail has been granted. The seriousness of the allegations for which the accused respondents have been already convicted has been completely lost sight of.

6. Learned counsel for the respondents on the other hand submitted that the parameters for grant of bail and cancellation of bail are different. It was submitted that some of them are very elderly persons and have retired from services. It is not a case where any irrelevant factor has been taken into consideration. It is pointed out on behalf of respondent-Madhukar that the only link the said accused is stated to have centres round two chits which were exhibited. They did not in any way establish the involvement of the accused in the alleged crime. That is why in his case the High Court observed that the evidence is scanty.

7. In reply, learned counsel for the State submitted that in some cases, for example, accused Shamrao Kisanrao Kamlakar the ground for releasing him was the grant of bail to co-accused. Further, the plea taken by Madhukar is not correct inasmuch as one of the co-accused has categorically stated that pressure was exerted by accused Madhukar for doing the illegal acts.

8. The factual details involved are as follows:

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Case Name
& No.

State of
Maharashtra
v. Sunil
Mishra

State of
Maharashtra
Vs.

Rajendra
Yadav

JUDIS

State of
Maharashtra
Vs.
Shailesh
Tupkari

JUDIS

State of
Maharashtra
Vs.
Mahendra
Goti

JUDIS

State of
Maharashtra
Vs.
Mohd. Ishaq

State of
Maharashtra
Vs.
Laxmikant
Zade

State of
Maharashtra
Vs
Atul Gudadhe

State of
Maharashtra
Vs
Parag Bagde

Case No.

Regular
Criminal
Case No.
Regularrr Cr1. Case N.372/02

Regular
Criminal
Case No.
380/02

JUDIS

ReRegular
Regular
Criminal
Case No.
368/2002

JUDIS

RRRegular

Regular
Criminal
Case No.
361/2002

JUDIS

Acquittal

Acquittal

Acquittal

Acquittal
Date of
conviction

10.1.2007

1.3.2007

JUDIS

18.6.2007

JUDIS

12.2.08

JUDIS

Acquittal

Acquittal

Acquittal

Acquittal

Date of
bail

22.2.07

JUDIS

23.3.0
7

JUDIS

30.6.0
7

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Imme-
diately
Taken
In
Custody
On
12.2.08
And is
In jail

JUDIS

Acquitt-
al

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A1
Sentence
undergone

43 days

JUDIS

22 days

JUDIS

12 days

In custody

JUDIS

Acquittal

Acquittal

Acquittal

Acquittal
Date of supply
of copy of the
Judgment

No information

4.3.2007

JUDIS

20.6.2007

JUDIS

14.2.2008

JUDIS

Acquittal

Acquittal

Acquittal

Acquittal
Conviction under
section

(A) U/S 420 r/w
S.34, 109 IPC
S.248 (ii) Cr.P.C.

(B) U/S 468 r/w
S.34 IPC + S.
248(ii) Cr.P.C.

(C) U/S 471 r/w
34 IPC + S. 248
(ii) Cr.P.C.

(D) U/S 120B +
S.248(ii) IPC

Total
Imprisonment

(A) U/S 420 r/w
S. 34 IPC

(B) U/S 468 r/w
S.34 IPC

(C) U/S 471 r/w
S. 34 IPC

(D) U/s 120B r/w
S.109 and
S.34 IPC

(E) U/s 409 IPC

Total imprison-
ment

(A) U/S 420 r/w
Sec. 34 IPC

(B) U/S. 468 r/w
S.34 IPC

(C) U/S. 471 r/w
S.34 IPC

(D) U/S.120B r/w
S.109 and S.34
IPC

(E) U/S 409 IPC

Total imprison-
ment

(A) U/S 420
r/w
S.34 IPC

(B) U/S 468
r/w
S.34 IPC

(C) U/S 471
r/w S.34
IPC

(D) U/S
120B r/w
S.109 and
S.34 IPC

(E) U/S 409
IPC

Total
Imprison-
ment

Acquittal

Acquittal

Acquittal

Acquittal
Imprisonment

(A) RI for 6
years
And fine of
Rs.20000/-
and in default
to
suffer RI for 3
months

(B) RI for 5 years
And fine of
Rs.15,000/- in
Default to suffer
RI for 2 months

(C) RI for 1 year
and fine of
Rs.5,000/- in
Default to suffer
RI for 1 month

(D) RI for 6
Months and fine
Of Rs.2,000/-
In default to
Suffer RI for
15 days

(sentences to
run
consecutively)

12 years 6
months

(A) RI for 4
Years and to
pay
Fine of
Rs.20,000/- and
In default to
Suffer RI for
2 months

(B) RI for 3
years
And to pay fine
Of Rs.15,000/-
And in default to
Suffer RI for 1

Month

(C) RI for 1 year
And to pay fine
Of Rs.5,000/-
And in default to
Suffer RI for one
Month

(D) RI for 6
months
And to pay fine
Of Rs.2,000/-
And in default to
Suffer RI for 15
Days

(E) RI for 4
years
And to pay fine
of
Rs.20,000/- and
In default to
suffer
RI for 2 months
(Sentences to
run
consecutively)

12 yrs 6 months

(A) RI for 3
Years and to
pay
Fine of
Rs.10,000/-
And in default
To suffer RI for
2 months

(B) RI for 5
years
And to pay fine
Of Rs.15,000/-
And in default to
Suffer RI for
2 months

(C) RI for 1 year
And to pay
Fine of
Rs.5,000/- and
In default to
suffer
RI for 1 month

(D) RI for 6
months
And to pay fine
Of Rs.2,000/-
and
In default to
suffer
RI for 15 days

(E) RI for 3
Years and to
pay
Fine of
Rs.20,000/- and
In default to
suffer
RI for 3 months

12 yrs 6 months

(A) RI for 3
Years and
to
Pay fine of
Rs.10,000/-
And in
default
To suffer RI
For 2
months

(B) RI for 5
Years and
to
Pay fine of
Rs.15,000
And in
Default to
Suffer RI for
2 months

(C) RI for 1
Year and to
Pay fine of
Rs.5,000/-
And in
Default to
Suffer RI for
1 month

(D) RI for
6 months
and
to pay fine
of Rs.2,000
and in
default
to suffer RI

for
15 days

(E) RI for 3
Years and
to
Pay fine of
Rs.20,000
And in
Default to
Suffer RI for
3 months
(sentences
to run
consecutivel
y)

12 yrs.
6 months

Acquittal

Acquittal

Acquittal

Acquittal

9. The parameters to be observed by the High Court while dealing with an application for suspension of sentence and grant of bail have been highlighted by this Court in many cases. In *Kishori Lal v. Rupa and Ors.* (2004 (7) SCC 639) it was observed as follows:

"Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he

be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine."

10. The above position was re-iterated in Vasant Tukaram Pawar v. State of Maharashtra (2005 (5) SCC 281).

11. It is true that the parameters to be applied in cases where life or death sentence is imposed, may not be applicable to other cases. But, the gravity of the offence, the sentence imposed and several other similar factors need to be considered by the Court. The fact that accused was on bail during trial is certainly not a relevant factor. This position has been fairly conceded by learned counsel for the respondents. The reasons indicated by the High Court for granting bail in our opinion do not satisfy the parameters. It needs to be pointed out that the trial Court considering the gravity of the offence has directed the sentences to run consecutively. This aspect has also not been considered by the High Court. In the circumstances, the impugned order in each case is indefensible and deserves to be set aside which we direct. But considering the fact that the High Court had not applied correct principles it would be proper for the High Court to reconsider the matter and for that purpose the matter is remitted to the High Court. Needless to say the High Court shall consider all the relevant aspects and pass orders in accordance with law.

12. The appeals are allowed.