

CASE NO.:
Appeal (crl.) 972 of 2006

PETITIONER:
Gajanand Agarwal

RESPONDENT:
State of Orissa & Ors

DATE OF JUDGMENT: 18/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) No. 3745 of 2006)
[With Criminal Appeal No 973 of 2006 (Arising out of SLP (Crl.) No.3746 of 2006)]

ARIJIT PASAYAT, J.

Leave granted.

Challenge in these appeals is to the order of the learned Single Judge of the Orissa High Court granting bail to the respondent no.2 in each case. In criminal Appeal relating to SLP (Criminal) 3745 of 2006 respondent no.2 is Bimal Kumar Khetan whereas in the criminal appeal relating to SLP (Criminal) 3746 of 2006, the respondent no.2 is Sunil Kumar Khetan. The primary stand of the appellant is that the bail was granted without application of mind, as no reason was indicated as to why respondent no.2 (hereinafter referred to as the 'accused') was entitled to bail. It is pointed out that earlier several petitions were rejected by learned Additional Sessions Judge and the High Court.

It is unnecessary to elaborately state the factual position as stated by the appellant.

Bimal was married to the daughter of the appellant i.e. Manisha (hereinafter referred to as 'deceased'). The marriage between the deceased and the said accused took place on 9.5.2005. Within five months of marriage, the deceased was found dead on 1.10.2005. The appellant lodged FIR at the Jharsuguda police station and on the basis case was registered and investigation was undertaken. The offences indicated were under Sections 498A, 304B read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and Section 4 of the Dowry Prohibition Act, (in short 'the Act') Respondent no.2-Bimal was arrested on 3.10.2005. Rest of the accused persons were found to be absconding and police having failed to arrest them in spite of issuance of non-bailable warrants of arrest made an application in terms of Sections 82 and 83 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was filed. On 16.12.2005 father-in-law of the deceased Kailash Khetan and mother-in-law Kanta Khetan filed application in terms of Section 438 Cr.P.C. before the High Court which was rejected. Process under Section 82 of the Cr.P.C. was issued by the learned ADJM on 19.12.2005. On 16.1.2006 respondent no.2 Bimal filed application for bail

which was rejected on the ground that investigation was still in progress. Liberty was granted to the accused to move the Sessions Judge for bail after completion of investigation and submission of final form. On 24.1.2006 application in terms of Section 438 was filed by Sunil Kumar (respondent no.2 in the connected appeals) and Sujata Khetan. The same were rejected by order dated 24.1.2006. An application under Section 438 Cr.P.C. was filed by Kailash and Kanta. The same was again rejected by the High Court. On 27.1.2006 the Trial Court issued orders in terms of Section 83 Cr.P.C. to attach the moveable properties of the accused. On 30.1.2006 the investigating officer submitted the charge-sheet/final report before the learned SDJM indicating that a prima facie case has been made against the respondent No.2-Bimal Kumar Kailashnath (father-in-law), Kanta Devi (mother-in-law), Sunil (brother-in-law) the respondent no.2 in the connected appeal under Sections 498A, 304B, 302, 406 read with Section 34 IPC and Section 4 of the D.P. Act. The prosecution made a further prayer to permit investigation in terms of Section 173(8) Cr.P.C. since some of the accused persons were still absconding and were not arrested. After surrendering, Kanta Khetan and Sujata Devi filed application for bail. The same was rejected by learned SDJM. Learned Sessions Judge also rejected the bail application. The applications filed by Kailashnath and Sunil were also subsequently rejected. On 13.2.2006, respondent no.2 Bimal filed fresh bail application before the Sessions Court, which was rejected. The learned Additional Sessions Judge took note of factual position which according to him were relevant for the purpose of rejecting the bail application. It was noted that strong case under Section 302/304B IPC was made out. Sujata Devi filed bail petition before the High Court after rejection of bail application by the Sessions Judge. The High Court by order dated 6.3.2006 granted bail to her.

Interestingly, it was noted that the order was not to be treated as a precedent so far as other accused persons are concerned. The correctness of such a direction shall be dealt with later. It is to be noted that on 22.3.2006 Kanta Devi moved the High Court for bail. The High Court granted the bail imposing condition similar to those which were stipulated in case of Sujata Devi. Accused Sunil Kumar moved the High Court for regular bail. By order dated 7.4.2006 the prayer was rejected but liberty was granted to renew his prayer for bail after the case was committed to the Court of Sessions. On 21.4.2006 the High Court granted bail to Kailashnath on the ground that he was aged and was sick. Here again, the High Court passed an order to the effect that same was not to be treated as a precedent so far as other accused persons are concerned. On 3.5.2006 accused Sunil Kumar moved the Sessions Court for bail on the ground that his father requires further treatment at Apollo Hospital and there was no male member to accompany him. The learned Sessions Judge rejected the prayer of bail by order dated 3.5.2006 suspecting genuineness of the documents filed. It was noted that report was dated 30.6.2006 i.e. date put on the advisory report, while the application was made earlier. Because of this suspicious document, the application for bail was rejected.

On 10.5.2006 another application for bail was moved by respondent no.2 Bimal Kumar after case was committed to the Court of Sessions. Learned Additional Sessions Judge rejected the prayer in view of the fact that no changed circumstances have been shown. On 18.5.2006 accused Sunil moved the High Court for bail. The order granting bail to him is the

subject-matter of challenge in one of the appeals.

The date for framing of charge was fixed to 6.6.2006. Accused Bimal filed bail application before the High Court. By order dated 22.6.2006 bail has been granted. The orders passed in the cases of Bimal and Sunil read as follows:

Bimal's case

"Heard learned counsel for the petitioner and learned counsel for the State.

Mr. Dhal, learned counsel for the petitioner submits that the cause of death was not known and the other accused persons have been released on bail, so the present petitioner also be released on bail.

Mr. Naik, learned counsel for the informant, at the other hand, strongly repudiates the submissions made by Mr. Dhal and submit that though cause of the death was not known and causing suspicion, but some blood stained clothes were found.

Considering the submissions made and perusing the materials available and in the peculiar facts and circumstances of the case, I direct that the petitioner, who is in custody for ten months, be released on bail on executing a bond of Rs.50,000/- (Rupees Fifty thousand) with two local sureties each for the like amount to the satisfaction of the learned Addl. Sessions Judge, Jharsuguda in S.T. case No.24/2006. With further conditions that he shall not threaten or coerce the witnesses, shall not indulge in any criminal activity, shall appear in court on each date to which the case stands posted for trial and shall cooperate with the investigation. Deviation of any of the conditions shall entail cancellation of bail.

The PLAPL is disposed of."

(Underlined for emphasis)

Sunil's case

"Perused the case diary and other materials available on record. The petitioner is the brother-in-law. He is in custody for quite some time. In the peculiar facts and circumstances of the case I direct that the petitioner who is in custody be released on bail on his executing bond for Rs.25,000/- (Rupees Twenty five thousand) with two local sureties, each for the like amount to the satisfaction of the Court below, with further conditions that he shall not indulge in any criminal activity, shall appear before the Court on each date to which the case will be posted for trial. Violation of any of the above conditions will entail cancellation of bail.

This order shall however not be treated as precedent so far as husband is concerned."

(Underlined for emphasis)

Learned counsel for the appellant submitted that no reason has been indicated by the High Court for granting bail except stating that " in the peculiar facts and circumstances of the case" the bail was being granted because the accused is in custody for ten months". Similar is the case of Sunil Kumar.

It is urged that as to what the peculiar facts and circumstances of the case are, the High Court did not indicate even it did not refer to the various orders passed earlier by the learned Additional Sessions Judge and by the High Court on the earlier occasions. Even factually the High Court is not correct in stating that the accused was in custody for ten months. In fact, he was arrested on 3.10.2005 and the date of order is 22.6.2006.

Learned counsel for respondent no.2 submitted that though the High Court order's prima facie does not disclose reasons, the various materials were placed in support of the prayer for bail which were not considered. According to him High Court was justified in granting bail. The Hon'ble Judge had earlier dealt with the matter and was, therefore, conversant with the materials on record. That probably is the reason for holding that peculiar circumstances existed.

This Court had occasion to deal with similar casual disposal of the bail application.

At this juncture, it would be appropriate to take note of a decision of this Court in Omar Usman Chamadia v. Abdul and Anr. (JT 2004 (2) SC 176). In para 10, it was observed as follows:

"However, before concluding, we must advert to another aspect of this case which has caused some concern to us. In the recent past, we had several occasions to notice that the High Courts by recording the concessions shown by the counsel in the criminal proceedings refrain from assigning any reason even in orders by which it reverses the orders of the lower courts. In our opinion, this is not proper if such orders are appealable, be it on the ground of concession shown by learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before the lower courts. The High Court should not, unless for very good reasons desist from indicating the grounds on which their orders are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower court's order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the lower courts. It may be convenient for the said court to pass orders without indicating the grounds or basis

but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. This Court in a somewhat similar situation has deprecated the practice of non-speaking orders in the case of State of Punjab and Ors. v. Jagdev Singh Talwandi (AIR 1984 SC 444)".

These aspects were recently highlighted in V.D. Chaudhary v. State of Uttar Pradesh and Anr. (2005 (7) SCALE 68).

Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

Any order devoid of such reasons suffers from non-application of mind as was noted by this Court, in Ram Govind Upadhyay v. Sudarshan Singh and Ors. [(2002) 3 SCC 598], Puran etc. v. Rambilas and Anr. etc. [(2001) 6 SCC 338] and in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr. [JT 2004 (3) SC 442].

The above position was highlighted by this Court in Chaman Lal v. State of U.P. and Anr. (JT 2004 (6) SC 540), and in Kamaljit Singh v. State of Punjab and Anr. (2005 (7) SCC 326).

In the case of Sunil the order is still more queer. Bail was granted to him as he was the brother-in-law and has been in custody for quite some time.

The least that the High Court could have done is to refer to the earlier orders and, in fact, as to how the scenario had

changed to warrant a departure from the earlier view expressed. That apparently has not been done. In case of Sunil, learned Additional Sessions Judge, had observed as to how the non-genuine documents were pressed into service while applying for bail. That aspect has not been even noted by the High Court.

Nothing more is needed at this stage to set aside the impugned order of the High Court.

What is more baffling is that in the impugned orders there is no mention about the States' stand. Was it a silent spectator before the High Court? Similar callousness was deprecated by this Court in *Salim Khan v. Sanjai Singh and Anr.* (2002 (9) SCC 670). While allowing these appeals we direct reconsideration of the applications for bail by the High Court in accordance with law keeping in view the principles set out above.

Before parting the appeals we would take note of the direction by the High Court that its order is not to be treated as a precedent. In fairly well settled that orders of bail are not necessarily orders of any precedent value. Apart from that the correcting of orders stating that they shall not be treated as a precedent has been dealt by this Court.

In *State of Punjab and Anr. v. Rajesh Syal* [2002 (8) SCC 158] it was observed as follows:

"Before concluding, we would like to observe, with respect, that by directing that the order which was passed in *V.K. Sharma* case [(2000) 9 SCC 449] should not be treated as a precedent implies that the said order is otherwise not in accordance with law and therefore should not be regarded as a precedent. This Court has ample jurisdiction to pass orders under Article 142(1) of the Constitution which may be necessary for doing complete justice in any case or matter. But even in exercising this power, it is more than doubtful that an order can be passed contrary to law. In *V.K. Sharma* case this Court did not purport to exercise any jurisdiction under Article 142. The decision to direct the applicant to file applications to be moved for consolidation of the cases pending in different courts for different offences to be tried in a single court was not in accordance with law, and the said decision in *V.K. Sharma* and that of *P.K. Sharma* (WP (Crl.) Nos. 72-75 of 2000, dated 5.5.2000 (SC) are overruled."

The appeals are accordingly allowed.