

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1712 OF 2010

[ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 6100 OF 2010]

JAI KUMAR

.....

APPELLANT

VERSUS

BALHARI & ANR.

.....

RESPONDENTS

O R D E R

1. Leave granted.

2. Accused, aggrieved by the order of the High Court cancelling his bail has preferred this appeal.

3. Appellant happens to be the husband of the deceased Meera with whom he married on 23rd November, 2005. According to the prosecution, she committed suicide on 5th November, 2008. On the statement of her father Balhari, FIR under Section 498A and 304B of the Indian Penal Code was registered against the husband, mother-in-law Phulwati and sister-in-law Gyanwati. After investigation, police submitted the charge sheet. Accused filed an application for discharge along with an application filed by the appellant for grant of bail. Additional Sessions Judge, Dwarka, by order dated 27th June, 2009 rejected the

application of discharge of all the accused excepting the mother-in-law. By order of the same day, the learned Additional Sessions Judge, granted bail to the appellant.

4. Aggrieved by the order of discharge of the mother-in-law and granting bail to the appellant, the informant Balhari filed two separate applications before the High Court which was registered as Criminal M.C. No. 3547 of 2009 and Criminal MC No. 3506 of 2009. By the impugned order dated 25th May, 2010, the order of discharge had been set aside and the order granting bail to the appellant has been cancelled.

5. Appellant aggrieved by the cancellation of his bail has preferred this appeal.

6. Mr. Neeraj Kumar Jain, the learned Senior Counsel for the appellant submits that the Additional Sessions Judge after assigning reasons had granted bail to the appellant and that ought not to have been cancelled by the High Court. He submits that the parameters for cancellation of bail is entirely different from that for granting of bail. Mr. S.K. Dubey, learned Senior Counsel appearing on behalf of respondent No. 1, however, submits that without discussing the merits of the case, the trial court has

granted bail to the appellant and the same was rightly cancelled by the High Court. In support of the submission, he has placed reliance in a large number of decisions of this Court in Puran v. Ram Bilas & Anr. (2001) 6 SCC 338; Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. (2004) 7 SCC 528; Anwari Begum v. Sher Mohammad & Anr. (2005) 7 SCC 326; and Ram Govind Upadhyay v. Sudershan Singh & Ors. (2002) 3 SCC 598.

7. True it is, that the High Court possesses power to cancel the bail granted to an accused by an inferior Court but it is well-settled that the parameters for cancellation of bail and for granting of bail is entirely different. Here, in the present case, the trial court taking into account the period of custody as also delay in conclusion of the trial, directed for the release of the appellant. Relevant portion of the order of the trial court in this regard reads as follows:

“Accused is in custody in this case since 07/11/2008 and the trial of the case is going to take time. There is no likelihood of accused jumping the bail or influencing the witnesses in any manner. Considering the facts and circumstances of the case, accused Jai Kumar is admitted to bail on his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount. The application for bail stand disposed of.”

8. The High Court, however, has cancelled the bail on

its finding that the trial court has not given any reason for granting bail. It has also observed that by the same order when the trial court has found materials to frame charge against the appellant, it ought not to have granted bail to him. Relevant portion of the judgment of the High Court in this regard reads as follows:

“A perusal of the impugned bail order would show that the learned trial court has not given any reasons at all for releasing the husband on bail on the same day of framing of charges under Sections 498A/304B IPC against him.”

9. We have considered the rival submissions and we find that it was not a fit case in which the High Court should have cancelled the bail. The trial court while granting bail has taken into consideration the period of incarceration and further expected delay in conclusion of the trial. The High Court, in our opinion, is not correct when it observes that the trial court has not given any reason to grant bail to the appellant. Further, the High Court erred in holding that when there were materials to frame charge against the appellant the trial court ought not to have granted bail. Charges are framed when materials prima facie show the complicity of the accused in the crime. It is not correct to say that bail is granted only in those cases where there are no materials.

Considerations are entirely different for exercising the power to grant bail and to frame charge. As the High Court had cancelled the bail on erroneous considerations, the same requires to be interfered with by this Court.

10. In the result, we allow the appeal, set aside the impugned order of the High Court whereby it has cancelled the bail granted to the appellant with the observation aforesaid. We make it clear that any observations made by us in this order shall have no bearing on the merits of the case.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
SEPTEMBER 06, 2010.