PETITIONER:
BHAGIRATH SINH S/O MAHIPAT SINGH JUDEJA

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT21/11/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA, R.B. (J)

CITATION:
1984 AIR 372 1984 SCR (1) 839
1984 SCC (1) 284 1983 SCALE (2)818
CITATOR INFO :
D 1985 SC 969 (12)

ACT:
Criminal Procedure-Bail-For cancellation of bail very cogent and overwhelming circumstances are necessary.
Practice-Bail granted by Sessions Judge by a well reasoned order-Set aside by High Court-Supreme Court to interfere if approach adopted by High Court is not commending.

HEADNOTE:
The appellant, against whom an offence under sec. 307 I.P.C. had been registered for giving knife blows to a person was granted bail by the Sessions Judge. On application by the State, a Single Judge of the High Court cancelled the bail. Hence this appeal by special leave.
Allowing the appeal,
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HELD: Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled that the power to grant bail is not to be exercised as if the punishment before trail is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. [842 D-E]
In the instant case the order made by the High Court is conspicuous by its silence on these two relevant considerations. The learned Judge was impressed by some of the most irrelevant considerations and misdirected himself. The circumstances found by him that the victim attacked was a social and political worker could not be considered so overriding as to permit interference by the High Court with the discretionary order of the Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation on the bail. [842 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 658 of 1983.

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Appeal by Special leave from the Judgment and Order dated the 21st October, 1983 of the Gujarat High Court in Criminal Misc. Application No. 1724 of 1983.

Vimal Dave for the Appellant.

M. N. Phadke, R. N. Poddar, Girish Chandra and C. V. Subba Rao for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. Special Leave granted.

Ordinarily this Court is not inclined to interfere with the orders either granting or refusing to grant bail to an accused person either facing a criminal trial or whose case after conviction is pending in appeal. However, this is not a case where bail is granted or refused but the order granting the bail by the learned Sessions Judge was set aside by the High Court adopting an approach which does not commend to us.

It is alleged that the appellant gave blows with a knife to one Popatlal Sorathia, who had come to visit an indoor patient Navalsinh Bhatti on August 17, 1983 around 9.45 A.M. Appellant was accosted by the policemen on duty. An offence under Sec. 307 I.P.C. was registered against him and the appellant was taken into custody and was subsequently remanded to judicial custody. An application for releasing him on bail was made on August 22, 1983 to the Chief Judicial Magistrate, Rajkot. The Chief Judicial Magistrate, Rajkot was pleased to dismiss the same by his order dated August 29, 1983.

On the same day, an application for releasing the appellant on bail was moved before the learned Sessions Judge. A notice was issued to the learned Public Prosecutor. After hearing both the sides, the learned Sessions Judge by a well-reasoned order directed that the appellant be released on bail on his furnishing security in the amount of Rs. 5000 and personal bond of the like amount.

It appears that the State of Gujarat filed Miscellaneous Criminal Application No. 1724 of 1983 in the High Court of Gujarat seeking cancellation of the order granting bail to the appellant. A learned Single Judge of the High Court held that once a prima facie case is

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established, the learned Sessions Judge ought to have taken into consideration the nature and gravity of the circumstances in which the offence is committed. The charge against the appellant is that he has committed an offence punishable under Sec. 307 I.P.C. and Sec. 135 of the Bombay Police Act and even on the date of hearing of this appeal before us on November 18, 1983, the Court-was informed that the victim is alive and at present there is no danger to his life. Nearly 3 months have rolled by from the date of the offence. We fail to understand what the learned Judge of the High Court desires to convey when he says that once a prima facie case is established, it is necessary for the court to examine the nature and gravity of the circumstances in which the offence was committed. If there is no prima facie case there is no question of considering other circumstances But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion grained

in his favour by tampering with evidence. We would have certainly overlooked this aspect of the matter if the approach of the learned judge was otherwise one which would commend to us. It however appears that the learned judge was impressed by some of the most irrelevant considerations which prima facie emerge from the following observations of the learned judge which permits his whole order running into about 13 pages.

Says the learned judge:

> "The learned Judge ought to have seen the fact that the helpless victim had gone to the hospital for pre-operation check-up. He was a leading social and political worker. He was an active worker and Secretary of "Gundagiri Nivaran Samiti" which had raised a campaign against the atrocities allegedly having been committed by the Rajputs of Girasiya community. Admittedly the respondent is Girasiya and the complainant who was an active worker and Secretary of Gundagiri Nivaran Samiti had become a victim at the hands of the respondent. The learned Judge ought to have taken into consideration the material fact that the incident had taken place in the premises of the Hospital which may terrorize a number of sick persons who might be getting treatment in the hospital."

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At another place, the learned Judge has observed that the learned Sessions Judge has ignored, the fact that a social and political worker was attacked in the hospital premises with a knife having 9" blade and as many as 1 l injuries were caused to a helpless victim.

In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted ill his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court.

We accordingly allow this appeal and set aside the order made by the learned High Court Judge and restore the one made by the learned Sessions Judge with following modifications:

(i) The appellant shall be released or if he is on bail continue ’to be on bail on his furnishing two fresh bail-bonds each in the amount of Rs.5000

supported by a solvent security.

(ii) The 'appellant shall report on first Monday every month before the Chief Judicial Magistrate, Rajkot at 11.00 A.M. till his trial commences. Thereafter
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he would be subject to the further orders that may be made-in this behalf by the court which would try him.

(iii) Other conditions imposed by the learned Sessions Judge remain unaltered.

Order accordingly.

H.S.K. Appeal allowed.
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