

# SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Sitaram Popat Vetal

Crl.A.No.921 of 2004

(A. Pasayat and C. K. Thakker JJ.)

23.08.2004

## JUDGEMENT

**Arijit Pasayat, J.**

1. Leave granted
2. The State of Maharashtra calls in question legality of the order passed by a learned single Judge of the Bombay High Court granting bail to respondents (hereinafter referred to as the 'accused').
3. Background facts necessary for disposal of the appeal are essentially as follows:
  4. On 20-11-2000 one Hanumant Vithal Choudhary (hereinafter referred to as the 'deceased') met homicidal death due to attack by several persons. The law was set into motion against six persons including the respondents. Though they were specifically named in the first information report implicating them as accused, they could not be arrested till 3-5-2002 and 20-5-2002 respectively allegedly on the ground that they had absconded. After they were arrested, test identification parade was conducted where they were identified. Charge-sheet has been filed indicating commission of offences punishable under Section 302 of the *Indian Penal Code, 1860* (in short the 'IPC'). While the matter stood thus the respondents filed an application for bail before the Bombay High Court which by the impugned judgment accepted the prayer for bail, primarily on the ground that charge-sheet was filed and though both had criminal antecedents, the cases related to 1991, 1993 and 1996 and are not of recent past. The High Court felt that though a political rivalry has a double edged effect, the applicants were to be released on bail as they pleaded that on account of political rivalry they have been falsely implicated. Though it is not very clear from the order as to what stands were taken by the applicants for bail and the State it appears that accused persons pleaded that in a dark night the alleged occurrence took place and no bloodstains were found on the weapons seized and that on account of political rivalry they have been falsely implicated. State appears to have contended that charge-sheet has been filed and that accused persons

were involved in serious crimes in the past. Unfortunately, the order does not even show these factors clearly.

5. Learned counsel for the appellant-State submitted that the High Court has by practically a non-reasoned order granted bail without appreciating the gravity of the offences and the criminal antecedents. It was pointed out that subsequently also the present respondents were involved in cases involving offences under Sections 302, 364, 201 read with Section 34 of IPC and a case under Section 3(1)(4) of the *Maharashtra Control of Organised Crime Act, 1999* (in short the 'Act'). It was further pointed out that one of the accused Sitaram Vetal was not attending the Court regularly and for the last three preceding dates he has not appeared before the Court.

6. Learned counsel for the respondents submitted that the order granting bail was passed long back and merely because certain allegations have been made that does not prove the accused to be guilty as false cases have been foisted because of political rivalry and, therefore, the subsequent cases have no relevance.

7. 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.

8. Any order de hors of such reasons suffers from non-application of mind as was noted by this Court, in *Ram Govind Upadhyay v. Sudarshan Singh and others*<sup>1</sup>; *Puran etc. v. Rambilas and another etc.*<sup>2</sup> and in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another*<sup>3</sup>.

9. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated.

10. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double edged effect was based on surmises without any material before it to show that a false case

had been foisted because of political rivalry. Further, the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in Court on the date fixed. If that is really so, it is open to the trial Court to take such action as is available to be taken in law.

11. Looked at from the above angle, the grant of bail to the respondents does not appear to be in order. Accordingly, the order of the High Court granting bail to the respondents is set aside. The appeal is allowed.

Appeal allowed.

<sup>1</sup>(2002) 3 SCC 598)

<sup>2</sup>(2001) 6 SCC 338)

<sup>3</sup>(JT 2004 (3) SC 442)