

SUPREME COURT OF INDIA

Vinay Kumar

Vs.

Narendra

(D Mohapatra and B Kumar JJ.)

05.03.2002

ORDER

1. Leave granted.
2. We have heard learned counsel for the parties.
3. This appeal filed by the first informant is directed against the order of the Allahabad High Court granting bail to the respondents on consideration of the petition filed by them under Section 389, Criminal Procedure Code in criminal appeal No. 854/2001. The respondents were convicted under Section 302/34 IPC for committing the murder of Ram Charan Singh, who is father of the appellant, on 15th June, 1992 between 10.00 a.m to 11.00 a.m.
4. The prosecution case shortly stated was that the incident took place when the deceased accompanied by his two sons, the appellant, Vijay Kumar and Ajay Kumar went to inspect the agricultural operations on his land in village Suaheri. There the respondents and the accused Amit Mohan, who is absconding, killed Ram Charan Singh by firing from the pistols carried by them. The appellant lodged the first information report. On receipt of the same, the police swung into action, conducted investigation and submitted the charge-sheet in the case.
5. On conclusion of the trial, the learned trial judge, on appreciation of the evidence placed before him found the respondents guilty of charge, convicted them for the offence of murder punishable under Section 302 read with Section 34 IPC and sentenced them to life imprisonment.
6. In the appeal filed by the respondents, the High Court by a cryptic order passed on 27th March, 2001 released the appellants on bail. The relevant portion of the order reads thus:

"Mr. Misra, contended that the appellants were on bail during trial.

Perused the findings recorded by the trial court, it is a fit case for grant of bail. Let appellants-Narendra, Habir and Kamendra @ Chilli, be released on bail on furnishing a personal bond and two sureties of the like amount to the satisfaction of the C.J.M. concerned in S.T.No. 258 of 92."

The said order is under challenge.

7. The main thrust of the arguments of Mr. R.B. Mehrotra, learned senior counsel appearing for the appellant, is that the High Court, on the facts and circumstances of the case and the findings recorded by learned trial court, committed error in granting bail to the appellants in the appeal pending in the court. He submitted that in view of the serious nature of the offence, the gravity of the accusations, the manner in which the crime was committed, the conduct of the accused persons in delaying the trial, the High Court should not have exercised its discretion to grant bail to them. Mr. R.B. Mehrotra, placed reliance on the decision of this Court in *Ramji Prasad v. Rattan Kumar Jaiswal & Anr.*, wherein this Court considering the power of suspension of sentence under Section 389(1) Cr. P.C observed:

"Absolutely no reason is shown by the learned single judge for adopting this exceptional course in a case where an accused was found guilty by the trial court under Section 302 of the Indian Penal Code. The normal practice in such cases is not to suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted."

8. Shri Tripurari Ray, learned counsel appearing for the respondents on the other hand contended that the power to suspend the sentence and to grant bail under Section 389(1) Cr.P.C are distinct and separate powers to be exercised by the appellate court. He further contended that the power to grant or refuse bail is at the discretion of the court and the order passed in exercise of such discretionary jurisdiction in the present case should not be interfered with by this Court. Drawing our attention to some of the contentions raised on behalf of the defence before the trial court, the learned counsel submitted that there are many unsatisfactory features in the judgment of the trial court which give rise to a fair assumption that the respondents are likely to succeed in the appeal and in such a case, if the High Court has ordered release of the appellants on bail, no exception can be taken to the order.

9. On perusal of the record and on consideration of the submissions made by the learned counsel appearing for the parties, we are of the view that in the context of the facts and circumstances of the case, the High Court was in error in passing the order releasing the respondents on bail. The High Court has neither given any reason nor has indicated any exceptional circumstance for granting bail to the respondents. In the above circumstances, it is difficult for us to even surmise the circumstance which prompted the learned single judge to consider the accused persons to be entitled to the discretionary relief of bail pending the appeal. The principle is well-settled that in considering the prayer for bail in a case involving serious offence like murder, punishable under Section 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. Our attention has not been drawn to any material, which would show that the learned single judge took into consideration the relevant factors while passing the bail order. We refrain ourselves from making any observation touching on merits

of the case lest it may prejudice any of the parties. Suffice it to state that we do not consider this a fit case for grant of bail to the respondents during pendency of the appeal filed by them.

10. Accordingly, the appeal is allowed. The order passed by the High Court granting bail to the respondents is set aside. The trial court will take steps for their arrest. It will be open to any of the parties to approach the hon'ble Chief Justice of the High Court of Allahabad with a request for early hearing of the appeal.