

SUPREME COURT OF INDIA

State of Haryana

Vs.

Hasmat

Crl.A.Nos.715-716 of 2004

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

26.07.2004

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. The State of Haryana calls in question grant of bail to accused Hasmat (respondent herein) by the Punjab and Haryana High Court. Criminal miscellaneous No. 14009/2003 was filed in Criminal Appeal No. 100/2002 purportedly under Section 389 of the *Code of Criminal Procedure, 1973* (in short the 'Code') with a prayer that the substantive sentence imposed i.e. imprisonment for life and a fine of Rs. 10,000/- should be suspended and the respondent be released on bail during the pendency of the appeal filed. The accused-respondent along with twenty two others faced trial for alleged commission of offences punishable under Sections 148, 302, 307, 324 read with Section 149 of *Indian Penal Code, 1860* (in short the 'IPC') and Sections 25 and 27 of the *Arms Act, 1959* (in short the 'Arms Act'). Accused - respondent along with some others was found guilty of offences punishable under Sections 302, 307, 148 read with Section 149 IPC. They were sentenced to undergo imprisonment for life and pay the fine as aforesaid for the offence punishable under Section 302 read with Section 149 IPC.

3. The High Court by the impugned order granted bail primarily on the ground that after the conviction the accused respondent had been granted parole on three occasions and there was no allegation of any misuse of liberty during the period of parole.

4. According to learned counsel for the appellant-State it was the accused respondent who was the key figure in a gruesome murder and there was directed and unimpeachable evidence establishing the commission of the crime by him. The trial Court by a detailed and reasoned judgment held him guilty, convicted and sentenced as aforesaid. Merely because parole was granted, the same cannot be a ground for suspension of the sentence and grant of bail in terms of Section 389 of the Code.

5. Per contra, learned counsel for the accused-respondent submitted that there was no allegation of misuse of liberty during the parole period. The High Court was justified in granting bail to the accused respondent. It is not a fit case which calls for interference in terms of Article 136 of the *Constitution of India, 1950* (in short the 'Constitution').

6. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the Appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

7. The Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the period the accused-respondent was granted parole.

8. The learned Sessions Judge, Gurgaon by a judgment dated 24.10.2001 had found the accused respondent guilty. Criminal Appeal No. 100 DB/ 2002 was filed by the respondent. The fact that during the pendency of the appeal the accused respondent was on parole goes to show that initially the accused respondent was not given the benefit of suspension of execution of sentence. The mere fact that during the period of parole the accused has not misused the liberties does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court was whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.

9. In *Vijay Kumar vs. Narendra and others* 7) and *Ramji Pasad vs. Rattan Kumar Jaiswal* and another 9), it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The impugned order of the High Court does not meet the requirement. In *Vijay Kumar's* case (supra) it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of 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. These aspects have not been considered by the High Court, while passing the impugned order.

10. The order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. We, therefore, set aside the order. Learned counsel for the accused-respondent stated that a fresh application shall be moved. In case it is done, the High Court, it goes

without saying, shall consider the matter in accordance with law, in its proper perspective. We express no opinion in that regard.

11. Learned counsel for the respondent vehemently urged that though application for suspension of execution of sentence and grant of bail was filed containing several reasons and not only absence of mis-use of liberties during the period of parole, the High Court has not touched those aspects.

12. The appeals are accordingly disposed of.