SUPREME COURT OF INDIA

V.D. Chaudhary

Vs.

State of U.P.

Crl.A.No.1115 of 2005

(Arijit Pasayat and Arun Kumar JJ.)

01.09.2005

JUDGMENT

Arijit Pasayat, J.

1. Leave granted.

2. Informant calls in question legality of the order passed by a learned Single Judge of the Allahabad High Court granting bail to respondent No.2 (hereinafter referred to as the 'accused').

3. Background facts sans unnecessary details are as follows:

> "On 5.2.2000 complainant lodged the First Information Report. It was stated therein that when he and his son were attending a marriage party, the respondent-accused started firing shots from his gun. When he was asked not to do so, he did not stop and continued the firing. The appellant's son Saurabh received injuries due to the shots fired by the accused and he died due to the injuries. Initially, the police registered a case alleging commission of offences punishable under Sections 304-A and 338 of the *Indian Penal Code, 1860* (in short the 'IPC'). After investigation charge sheet was filed under Sections 304 and 338 IPC. Cognizance was taken and process was issued. Accused filed an application for being released on bail. By the impugned order bail has been granted."

4. According to the appellant, the accused was absconding for about 2 years. His prayer for bail was initially rejected. Non-bailable warrant and process under Sections 82 and 83 of the *Code of Criminal Procedure, 1973* (in short the 'Code' were issued. Subsequently he was arrested. It was submitted for the accused that he was already on bail for offence punishable under Sections 304-A and 338 IPC. On a reading of FIR and other documents offence under Section 304 could appear against the accused but "surreptitiously" the same has been converted into offence under Section 304 IPC. With the following observations the High Court granted bail by the impugned order:

"It is said that even if allegations made in the FIR and other papers are accepted to be true on its face value, offence under Section 304A and 338 IPC would appear against the accused applicant in Case Crime No. 2072/2002 State vs. Dev Kumar, P.S. Sadar Bazar District Saharanpur. But surreptitiously it was converted into the offence under Section 304 IPC. It was said that the applicant was already on bail for the offences under Section 304A and 338 IPC. Looking to the facts and circumstances of the case, learned Magistrate is directed also to accept fresh bail bonds for the added offence under Section 304 IPC in the Case No. 2702/2002.

Application is disposed of accordingly."

5. Complainant has filed this appeal questioning the correctness of the order passed. According to him, the High Court should not have accepted plea of accused that police surreptitiously changed the nature of the offence. It is clearly contrary to facts. In fact, on completion of investigation it has been noted that the applicable offence is Section 304 IPC and not 304-A. There was no surreptitious act involved and, therefore, grant of bail is proper. High Court has not even indicated any reason for grant of bail. It is pointed out that taking advantage of the fact that the accused is on bail, there is an effort to prolong the trial and hardly any progress has been made though nearly 5 years have elapsed.

6. In response, learned counsel for the respondent No.2- accused submitted that after considering the relevant factors bail has been granted

7. We find that the High Court has not indicated any reason for grant of bail. As the facts go to show the charge sheet was filed alleging the commission of offence under Section 304 IPC. Merely because at some earlier point of time the investigation proceeded on the line as if offence punishable under Section 304-A is committed yet there is no embargo on the police filing charge-sheet indicating appropriate offence. At this juncture it would be appropriate to take note of a decision of this Court in Omar Usman Chamadia v. Abdul and Anr.)) (referred). In para 10, it was observed as follows:

"However, before concluding, we must advert to another aspect of this case which has caused some concern to us. In the recent past, we had several occasions to notice that the High Courts by recording the concessions shown by the counsel in the criminal proceedings refrain from assigning any reason even in orders by which it reverses the order of the lower courts. In our opinion, this is not proper if such orders are appealable, be it on the ground of concession shown by the learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before the lower courts. The High Court should not, unless for very good reasons desist from indicating the grounds on which their orders are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower courts' order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the lower

courts. It may be convenient for the said court to pass orders without indicating the grounds or basis but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. This court in a somewhat similar situation has deprecated the practice of non-speaking orders in the case of ,State of Punjab & Ors. V. Jagdev Singh Talwandi"

8. It was submitted by learned counsel for the accused that there is no allegation of misuse of liberty after grant of bail. Though the respondent No.2-accused's stand is that the trial is at the verge of conclusion according to the appellant, on some ground or the other the matter has been adjourned. As the quoted impugned order go to show the High Court had not considered the application in its proper perspective. It is submitted by learned counsel for respondent No.2-accused that examination of all the witnesses is over and only the investigation officer (in short the 'IO') is to be examined. It is submitted that unnecessarily adjournments shall not be sought for and in any event the respondent No.2-accused shall fully cooperate for early completion of the trial.

9. Though this is a fit case for cancellation of bail in view of the infirmities pointed out above considering the fact that prosecution evidence is practically closed, we dispose of the appeal in the following terms:

> "(i) The trial Court would try to complete the trial by end of December, 2005.
>
> (ii) The respondent No.2-accused shall fully co-operate for completion of trial. He shall not seek unnecessary adjournments. If the Court feels that he is taking advantage of the bail granted which is being continued for nearly five years, it shall direct cancellation of bail.
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> (iii) In case the trial is not completed within the stipulated time and respondent no.2 is found to be responsible for delay and/or tampering with evidence, the trial Court shall direct cancellation of bail."

10. The appeal is accordingly disposed of.