SUPREME COURT OF INDIA

Anwari Begum

Vs.

Sher Mohammad

Crl.A.No.1223 of 2005

(A. Pasayat and Arun Kumar, JJ.)

19.09.2005

JUDGEMENT

ARIJIT PASAYAT, J.:-

1. Leave granted.

2. This appeal is by the informant questioning grant of bail to respondent No. 1(hereinafter referred to as the 'accused') by the impugned judgment passed by a learned single Judge of the Allahabad High Court, Lucknow Bench.

3. Factual position, as highlighted by the appellant is as follows:

On 26-4-2002, the respondent No.1 and others in pursuance of their common object, surrounded

Jamaluddin, husband of the appellant, (hereinafter referred to as the 'deceased') while he was coming by scooter along with the appellant and their daughter. Because of some previous litigations, respondent No.1 - accused had animosity with the deceased and with the intention of causing his death the respondent No.1 - accused who was armed with a double barrel gun shot at the deceased. Others also participated in the attack. The informant and her daughter started crying for help hearing which co-villagers came to the spot. The respondent No.1 and others fled away but they were still firing and had threatened to wipe out the entire family of the deceased. The occurrence took place at about 6.00 p.m. and the First Information Report was lodged immediately thereafter. The respondent No.1 and others filed application for bail before the trial Court. The learned Additional Sessions Judge, Sultanpur rejected the application taking note of the fact that the incident had been witnessed by eye-witnesses and their statements recorded during investigation clearly implicated the respondent No.1. An application for bail in terms of Section 439 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed by respondent No.1 before the High Court. By the impugned order, the prayer for bail has been accepted.

4. According to learned counsel for the appellant, no reason has been assigned by the High Court as to why the prayer for bail was accepted, notwithstanding the fact that respondent No.1 was clearly implicated by the persons whose statements were recorded during investigation. Respondent No.1 is the main accused and the accusations against him were clearly established. The trial Court had elaborately analyzed the factual position and keeping in view the statement of the eye-witness, who clearly implicated the respondent No.1, had rejected the prayer for bail. There is no appearance on behalf of respondent No.1 in spite of service of notice. The learned counsel appearing for the State-respondent No.2 supported the stand of the appellant and submitted that this is not a case where bail is to be granted. It is pointed out that the respondent No.1 is implicated in several cases involving heinous crimes and even proceedings under Goonda Act have been initiated.

5. We find that the High Court had disposed of the bail application without indicating any reason and in a very cryptic manner. The entire order reads as follows:

"Heard learned counsel for the parties.

Considering the overall facts and circumstances, I find this is a fit case for bail, let applicant Sher Mohd. be enlarged on bail in Crime No. 149 of 2002 under Sections 147/148/149/504, 302 IPC P.S. Amethi, District Sultanpur on his furnishing a personal bond of Rs. 5,000/- (Rupees five thousand only) and two sureties each in the like amount to the satisfaction of CJM, Sultanpur, subject to the condition that once every week he would report at P.S. Amethi, District Sultanpur."

6. The order of the High Court shows that there are allegations of commission of offences punishable under Sections 147/148/149/504/302 of the Indian Penal Code, 1860 (in short the "IPC").

7. At this juncture, it would be appropriate to take note of a decision of this Court in Omar Osman Chamadia v. Abdul and Anr. (JT 2004 (2) SC 176). In para 10, it was observed as follows: 2004 AIR SCW 613 : AIR 2004 SC 1508 : 2004 Cri LJ 1364) (Para 10)

"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 orders 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 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 1984 Cri LJ 177 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 court's 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 and others v. Jagdev Singh Talwandi (AIR 1984 SC 444)".

These aspects were recently highlighted in V. D. Chaudhary v. State of Uttar Pradesh and another (2005 (7) SCALE 68). 2005 AIR S C W 4138

8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications, yet a court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the cause is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. 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:

Prima facie satisfaction of the Court in support of the charge. 2002 AIR SCW 1342 AIR 2002 SC 1475 : 2002 Cri LJ 1849 : 2002 All LJ 961

10. Any order dehors of such reasons suffers from non-application of mind as was noted by this Court, in Ram Govind Upadhyay v. Sudarshan Singh and others (2002) 3 SCC 598, Puran etc. v. Rambilas and Anr. etc. (2001 (6) SCC 338) and in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Anr. (JT 2004 (3) SC 442). 2001 AIR SCW 1935 : AIR 2001 SC 2023 : 2001 Cri LJ 2566

2004 AIR SCW 1581 : AIR 2004 SC 1866 : 2004 Cri LJ 1796 : 2004 AIR -- Jhar HCR 1410

11. The above position was highlighted by this Court in Chaman Lal v. State of U.P. and another (JT 2004 (6) SC 540). 2004 AIR SCW 4705 : AIR 2004 SC 4267 : 2004 AIR Jhar HCR 2548 : 2004 All LJ 3242 : 2004 Cri LJ 4243

12. Above being the position, the cryptic non-reasoned order of the High Court, is clearly indenfensible.

13. The inevitable conclusion is that the grant of bail to the respondent by a non-speaking and non-reasoned order was not proper. Therefore, we set aside the order of the High Court. The bail granted to respondent No.1 stands cancelled. The respondent No.1 shall surrender to custody forthwith.

14. The appeal is, accordingly, allowed.

Appeal allowed.