

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Madhukar Wamanrao Smarth

Crl.A.No.520-521 of 2008

(Dr.Arijit Pasayat and P.Sathasivam, JJ.)

24.03.2008

JUDGMENT

Dr. Arijit Pasayat, J.

(Arising out of SLP (Crl.) Nos. 5951-5952/2007)

1. Leave granted.
2. In each of these cases challenge is to the bail granted to the respondent by the Bombay High Court, Nagpur Bench. Since all these appeals have a common matrix, they are taken up together.
3. On the basis of allegations that the respondents were guilty of having committed cheating, preparing forged and false documents for the purpose of cheating, using the said documents as genuine, abetment of crime, committing criminal breach of trust by forming criminal conspiracy in furtherance of their common intention, law was set into motion.
4. They were convicted by the trial Court, and have preferred appeals before the High Court and had prayed for grant of bail by suspension of sentence in terms of Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The High Court primarily granted bail to each of the respondents on the ground that bail was granted during trial and the liberty was not misused. Further ground indicated was that there was likelihood of delay in disposal of the appeals. In the case of respondent-Madhukar it was stated that the evidence appeared to be scanty against him.
5. Questioning correctness of the order passed in each case, learned counsel for the State submitted that there was large scale of manipulation of records resulting in manipulation of results of the candidates and each of the respondents had a definite role to play. Apart from the cases where they have been convicted, large number of connected cases is also pending. In the case of respondent-Yadav Nathoba Konchade, two cases under the Prevention of Corruption Act, 1988 (in short 'PC Act') were pending. In one case the said accused had

offered bribe to the investigating officer and was caught red handed. It was submitted that considering the gravity of the offence the sentences were directed to run consecutively in terms of Section 31(1) of Code. It was stated that the High Court was misled in the case of respondent-Madhukar who made a false statement before the High Court that he had deposited fine amount while in fact he had not done so as would be apparent from the second order. It was essentially submitted that without indicating any plausible reason, much less, the reasons contemplated under Section 389 of the Code, the bail has been granted. The seriousness of the allegations for which the accused respondents have been already convicted has been completely lost sight of.

6. Learned counsel for the respondents on the other hand submitted that the parameters for grant of bail and cancellation of bail are different. It was submitted that some of them are very elderly persons and have retired from services. It is not a case where any irrelevant factor has been taken into consideration. It is pointed out on behalf of respondent-Madhukar that the only link the said accused is stated to have centres round two chits which were exhibited. They did not in any way establish the involvement of the accused in the alleged crime. That is why in his case the High Court observed that the evidence is scanty.

7. In reply, learned counsel for the State submitted that in some cases, for example, accused Shamrao Kisanrao Kamlakar the ground for releasing him was the grant of bail to co-accused. Further, the plea taken by Madhukar is not correct inasmuch as one of the co-accused has categorically stated that pressure was exerted by accused Madhukar for doing the illegal acts.

8. The factual details involved are as follows:

Case Name & No.	Case No.	Date of conviction	Date of bail	Sentence undergone	Date of supply of copy of the Judgment	Conviction under section	Imprisonment
State of Maharashtra v. Sunil Mishra	Regular Criminal Case No. Regularr Crl. Case N.372/02	10.1.2007	22.2.07	43 days	No information	(A) U/S 420 r/w S.34, 109 IPC S.248 (ii) Cr.P.C. (B) U/S 468 r/w S.34 IPC + S. 248(ii)	(A) RI for 6 years And fine of Rs.20000/- and in default to suffer RI for 3 months

<p>State of Maharashtra Vs. Rajendra Yadav</p>	<p>Regular Criminal Case No.380/02</p>	<p>1.3.2007</p>	<p>23.3.07</p>	<p>22 days</p>	<p>4.3.2007</p>	<p>Cr.P.C. (C) U/S 471 r/w 34 IPC + S. 248 (ii) Cr.P.C. (D) U/S 120B + S.248(ii) IPC Total Imprisonment (A) U/S 420 r/w S. 34 IPC (B) U/S 468 r/w S.34 IPC</p>	<p>(B) RI for 5 years And fine of Rs.15,000/- in Default to suffer RI for 2 months (C) RI for 1 year and fine of Rs.5,000/- in Default to suffer RI for 1 month (D) RI for 6 Months and fine Of Rs.2,000/- In default to Suffer RI for 15 days</p>
<p>State of Maharashtra Vs. Shailesh Tupkari</p>	<p>ReRegular Criminal Case No. 368/2002</p>	<p>18.6.2007</p>	<p>30.6.07</p>	<p>12 days</p>	<p>20.6.2007</p>	<p>(C) U/S 471 r/w S. 34 IPC (D) U/s 120B r/w S.109 and S.34 IPC (E) U/s 409 IPC</p>	<p>(sentences to run consecutively) 12 years 6months (A) RI for</p>

State of Maharashtra Vs. Mahendra Goti	Regular Criminal Case No.361/2002	12.2.08	Immediately Taken In Custody On 12.2.08 And is In jail	In custody	14.2.2008	Total imprisonment (A) U/S 420 r/w Sec. 34 IPC (B) U/S. 468 r/w S.34 IPC (C) U/S. 471 r/w S.34 IPC (D) U/S.120B r/w S.109 and S.34 IPC (E) U/S 409 IPC	4 Years and to pay Fine of Rs.20,000/- and In default to Suffer RI for 2 months (B) RI for 3 years and to pay fine Of Rs.15,000/-And in default to Suffer RI for 1 Month (C) RI for 1 year and to pay fine Of Rs.5,000/-And in default to Suffer RI for one Month (D) RI for 6 months and to pay fine Of Rs.2,000/- And in default to Suffer RI for 15Days (E) RI for 4
State of Maharashtra Vs. Mohd. Ishaq	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	Total imprisonment (A) U/S 420 r/wS.34 IPC	
State of Maharashtra Vs. Laxmika	Acquittal	Acquittal	Acquittal	Acquittal	Acquittal	(B) U/S 468 r/wS.34	

nt Zade						IPC	yearsAnd
State of Maharas htra Vs Atul Gudadhe	Acquittal		Acquitta l	Acquitt al	Acquitta l	(C) U/S 471 r/w S.34 IPC	to pay fine ofRs.20,00 0/- andIn default to sufferRI for 2 months
State of Maharas htra Vs Parag Bagde						(D) U/S 120B r/w S.109 and S.34 IPC	(Sentences to run consecutiv ely) 12 yrs 6 months
						(E) U/S 409IPC	(A) RI for 3 Years and to pay Fine of Rs.10, 000/-And in default to suffer RI for2 months
						Total Imprison ment	
						Acquittal	
						Acquittal	(B) RI for 5 years and to pay fine of Rs.15, 000/-And in default to suffer RI for2 months
						Acquittal	(C) RI for 1 year and to pay Fine of Rs.5, 000/- and in

						Acquittal	<p>default to suffer RI for 1 month</p> <p>(D) RI for 6 months and to pay fine Of Rs.2, 000/- and in default to suffer RI for 15 days</p> <p>(E) RI for 3 Years and to pay Fine of Rs.20, 000/- and in default to suffer RI for 3 months</p> <p>12 yrs 6 months</p> <p>(A) RI for 3 Years and to Pay fine of Rs.10, 000/- And in default to suffer RI for 2 months</p>
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							<p>(B) RI for 5Years and toPay fine ofRs.15,000And in Default to suffer RI for2 months</p> <p>(C) RI for 1Year and to Pay fine of Rs.5,000/-And in Default to suffer RI for 1 month</p> <p>(D) RI for6 months and to pay fine of Rs.2,000and in default to suffer RI for15 days</p> <p>(E) RI for 3Years and toPay fine ofRs.20,000And in Default to suffer RI for3 months</p> <p>(Sentences</p>
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							to run consecutively) 12 yrs.6 months
							Acquittal
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							Acquittal
							Acquittal

9. The parameters to be observed by the High Court while dealing with an application for suspension of sentence and grant of bail have been highlighted by this Court in many cases. In *Kishori Lal v. Rupa and Ors*¹, it was observed as follows:

"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."

10. The above position was re-iterated in *Vasant Tukaram Pawar v. State of Maharashtra*²

11. It is true that the parameters to be applied in cases where life or death sentence is imposed, may not be applicable to other cases. But, the gravity of the offence, the sentence imposed and several other similar factors need to be considered by the Court. The fact that accused was on bail during trial is certainly not a relevant factor. This position has been fairly conceded by learned counsel for the respondents. The reasons indicated by the High Court for granting bail in our opinion do not satisfy the parameters. It needs to be pointed out that the trial Court considering the gravity of the offence has directed the sentences to run consecutively. This aspect has also not been considered by the High Court. In the circumstances, the impugned order in each case is indefensible and deserves to be set aside which we direct. But considering the fact that the High Court had not applied correct principles it would be proper for the High Court to re-consider the matter and for that purpose the matter is remitted to the High Court. Needless to say the High Court shall consider all the relevant aspects and pass orders in accordance with law.

12. The appeals are allowed.

Judgment Referred.

1(2004) 7 SCC 0639

2(2005) 5 SCC 0281