

SUPREME COURT OF INDIA

Ash Mohammad

Vs.

Shiv Raj Singh

Crl.A.No.1456 of 2012

(K.S.Radhakrishnan and Dipak Misra,JJ.)

20.09.2012

JUDGMENT

Dipak Misra,J.

1. Leave granted.

2. The present appeal by special leave has been preferred assailing the legal defensibility of the order dated 26.04.2012 passed in Criminal Application No. 28461 of 2011 by the High Court of Judicature at Allahabad and praying for quashment of the same, and further to cancel the grant of bail to the accused- respondent (hereinafter referred to as ‘the accused’) in respect of offences punishable under Sections 365/506 of the Indian Penal Code (for short ‘the IPC’).

3. The facts material for adjudication of this appeal are that an FIR was lodged by the present appellant on 29.05.2011 alleging that while he was going to his in-laws’ place in village Samadia, P.S. Patwai along with Bihari Lal near canal of Milk Road from Patwai which leads to Samdia Khurd, two persons came on a motorcycle and after inquiring about the identity of Bihari Lal told him that they had been asked by Lalla Babu @ Shiv Raj Singh to compel him to accompany them. As there was resistance, they threatened to kill him and eventually made Bihari Lal sit in between them on the Hero Honda motorcycle and fled towards Patwai. The incident was witnessed by Munish and Rajbir. In quite promptitude the appellant went to the Patwai Police Station, District Rampur and lodged the FIR as a consequence of which crime No. 770 of 2011 was registered for offences punishable under Section 364 and 506 of the IPC. On the basis of the FIR the criminal law was set in motion and the accused was arrested and taken into custody.

4. The accused Shiv Raj Singh @ Lalla Babu preferred bail Application No. 1268 of 2011 which came to be dealt by the learned Additional Sessions Judge, Rampur who taking note of

the allegations in the FIR and the stand put forth in oppugnation by the prosecution as well as by the victim observed as follows:-

“I have perused the case diary. While confirming his abduction, victim Bihari Lal has stated under Section 164 Cr.P.C. that the abductors took him to the accused. Applicant-accused and his accomplices kept him confined in a room for about 8 days and they also used to assault him and threaten for life. As per the victim, he escaped from their captivity after about 8 days of abduction under the pretext of nature’s call/time. Munish and Rajbir reported as eye-witnesses in the First Information Report stated before the Investigating Officer that the abductors had stated at the time of abduction that the applicant-accused Lalla Babu has send them to mend you.”

5. Thereafter, taking note of the fact that the accused is a history- sheeter and involved in number of cases rejected the application for bail.

6. Being unsuccessful to secure bail from the court of Session, the accused preferred a Bail Application No. 28461 of 2011 before the High Court under Section 439 of the Code. The High Court though took note of the statement made under Section 164 CrPC that name of Shiv Raj Singh @ Lalla Babu had figured as allegations were made against him to that effect that victim Bihari Lal was taken by the kidnappers to him, yet observed that he only sat there and offended Bihari Lal. The High Court only mentioned the fact that the accused has a criminal history and is involved in number of cases but considering the factum that he has been in custody since 30.09.2011 directed his enlargement on bail on certain conditions, namely, the accused shall report at the police station concerned on the first day of each English Calendar month, shall not commit any offence similar to the offence which he is accused of, and shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

7. Questioning the justifiability of the impugned order Ms. Abha R. Sharma, learned counsel for the petitioner has contended that the High Court has absolutely misdirected itself by not appositely considering the statement recorded under Section 164 of the Code of Criminal Procedure, the gravity of the offences and criminal antecedents of the accused and further the affidavit filed by the prosecution bringing number of factors as a consequence of which an illegal order enlarging the appellant on bail has come into existence. The learned counsel submitted that the non- consideration of the material facts vitiates the order of the High Court and annulment of the same is the judicial warrant.

8. Per contra, Mr. Irshad Ahmed, learned counsel appearing for the accused contended that the prosecution case is a fabricated, false and malicious one and it has been foisted because of

political vendetta. It is urged by him that there is discrepancy between statements recorded under Section 161 Cr.P.C and 164 Cr.P.C and, therefore, the order passed by the High Court cannot be found fault with. It is his further submission that though the accused has been released on bail, yet he has conducted himself and in the absence of any supervening circumstances it would be undesirable to cancel the order granting bail as the sanctity of liberty should be treated with paramount importance. It is also argued that the High Court was absolutely conscious of the cases pending against accused but because of election disputes and constant animosity of the administration which was stand of the accused they were not dwelled upon in detail and an order admitting the accused to bail was passed on imposing stringent conditions. That apart, it is put forth that in the absence of any failure on his part to respect the conditions his liberty should not be put to any jeopardy at the instance of an interested party who is bent upon to harass him.

9. The centripodal issue that emerges for consideration is whether the order passed by the High Court is legitimately acceptable and legally sustainable within the ambit and sweep of the principles laid down by this Court for grant of regular bail under Section 439 of the Code.

10. In Ram Govind Upadhyay v. Sudarshan Singh and Others[1], it has been opined that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. Heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision inPrahlad Singh Bhati v. NCT, Delhi and Another[2] and stated as follows:-

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the

event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. ”

11. In *Chaman Lal v. State of U. P. and Another*[3] this Court while dealing with an application for bail has stated that certain factors are to be considered for grant of bail, they are; (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge.

12. In *Masroor v. State of Uttar Pradesh and another*[4], while giving emphasis for ascribing reasons for granting of bail, however, brief it may be, a two-Judge Bench observed that there is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case.

13. In *Prasanta Kumar Sarkar v. Ashis Chatterjee and another*[5] it has been observed that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail of the accused, however, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. Among other circumstances the factors which are to be borne in mind while considering an application for bail are whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation; severity of the punishment in the event of conviction; danger of the accused absconding or fleeing, if released on bail; character, behavior, means, position and standing of the accused; likelihood of the offence being repeated; reasonable apprehension of the witnesses being influenced; and danger, of course, of justice being thwarted by grant of bail.

14. In *State of U.P. through CBI v. Amarmani Tripathi*[6] it has been ruled that in an appeal against grant of bail all aspects that were relevant under Section 439 read with Section 437 continue to be relevant.

15. In *Puran v. Rambilas and another*[7] it has been noted that the concept of setting aside an unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself or because of some supervening circumstances warranting such cancellation.

16. In *Dr. Narendra K. Amin v. State of Gujarat and another*[8], a three- Judge Bench has observed that when irrelevant materials have been taken into consideration the same makes the order granting bail vulnerable. If the order is perverse, the same can be set at naught by the superior court.

17. In *Prakash Kadam and others v. Ramprasad Vishwanath Gupta and another*[9], while making a distinction between cancellation of bail and consideration for grant of bail, this Court opined thus: -

“18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

18. We have referred to the above authorities solely for the purpose of reiterating two conceptual principles, namely, factors that are to be taken into consideration while exercising power of admitting an accused to bail when offences are of serious nature, and the distinction between cancellation of bail because of supervening circumstances and exercise of jurisdiction in nullifying an order granting bail in an appeal when the bail order is assailed on the ground that the same is perverse or based on irrelevant considerations or founded on non-consideration of the factors which are relevant.

19. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasize, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to Rule of Law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice,

its desire for peace and harmony and its necessity for security cannot be allowed to be trivialized. The life of an individual living in a society governed by Rule of Law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.

20. It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilized milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organized society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquility and safety which every well-meaning person desires. Not for nothing J. Oerter stated: “Personal liberty is the right to act without interference within the limits of the law.”

21. Thus analyzed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardized, for the rational collective does not countenance an anti-social or anti-collective act.

22. Having said about the sanctity of liberty and the restrictions imposed by law and the necessity of collective security, we may proceed to state as to what is the connotative concept of bail. In Halsbury’s Laws of England[10] it has been stated thus: -

“The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.”

23. In Sunil Fulchand Shah v. Union of India and others[11] Dr. A.S. Anand, learned Chief Justice, in his concurring opinion, observed: -

“Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety.”

24. As grant of bail as a legal phenomenon arises when a crime is committed it is profitable to refer to certain authorities as to how this Court has understood the concept of crime in the context of society. In *P.S.R. Sadhanantham v. Arunachalam and another*[12], R.S. Pathak, J. (as his Lordship then was), speaking for himself and A.D. Kaushal, J, referred to *Mogul Steamship Co. v. McGregor Gow Co.* (1989) 23 QBD 598, 606 and the definition given by Blackstone and opined thus: -

“A crime, therefore, is an act deemed by law to be harmful to society in general, even though its immediate victim is an individual.”

25. In *Mrs. Harpreet Kaur Harvinder Singh Bedi v. State of Maharashtra and another*[13] a two-Judge Bench, though in a different context, has observed: -

“Crime is a revolt against the whole society and an attack on the civilization of the day. Order is the basic need of any organized civilized society and any attempt to disturb that order affects the society and the community.”

26. In *T.K. Gopal alias Gopi v. State of Karnataka*[14] it has been held that crime can be defined as an act that subjects the doer to legal punishment. It may also be defined as commission of an act specifically forbidden by law; it may be an offence against morality or social order.

27. Keeping in mind the aforesaid aspects, namely, the factors which are to be borne in mind while dealing with an application preferred under Section 439 of the Code of Criminal Procedure in respect of serious offences, the distinction between a perverse or illegal order and cancellation of order granting bail, the individual liberty and social security, the concept of bail, the definition of crime and the duty of the court, we may proceed to deal as to how in the case at hand the bail application has been dealt with by the High Court.

28. On a perusal of the order passed by the High Court it will be difficult to say that the High Court has passed a totally cryptic or unreasoned order. The spinal question is whether it has ignored the relevant factors which were brought to its notice at the time of extending the

benefit of enlargement of bail to the accused. The prosecution by way of an affidavit had brought to the notice of the High Court about the cases pending against the accused. The High Court recorded the submission of the complainant that the accused was involved in 52 cases. On a perusal of the counter-affidavit filed before the High Court it is perceptible that it was categorically stated that the accused was a history-sheeter; that he was the pivotal force in getting the kidnapping done; that the victim Bihari Lal was in captivity for eight days; and that he escaped under the pretext that he was going to attend the call of nature. The High Court has only made a passing reference to the same and took note of period of custody of seven months and held, “considering the facts and circumstances of the case but without expressing any opinion on the merits of the case, the applicant is entitled to be released on bail”.

29. It is worthy to note that the fact relating to involvement of the accused in various crimes was brought to the notice of the High Court by virtue of an affidavit filed by the competent authority of the prosecution. As per the Inspector-in-charge of the concerned police station the following cases were pending against the accused:

“S. | Crime No. | Sections | Police | District | | No. | | | Station | | | 1. | 270/86 | 25 Arms Act | Shahabad | Rampur | | 2. | 271/86 | 395/397/307/332/ | Shahabad | Rampur | | | 337/225/427 | | | 3. | 137/88 | 3(1) Gangster Act | Shahabad | Rampur | | 4. | 209/92 | 147/148/149/302 | Shahabad | Rampur | | 5. | 189/95 | 323/342/35/504/ | 506 | Shahabad | Rampur | | 6. | 184/96 | 3/4 U.P. Gunda Act | Shahabad | Rampur | | 7. | 1185/96 | 1147/148/149/307/ | 225 | Shahabad | Rampur | | 8. | 485/98 | 323/504/506/3(1) | 10 | Shahabad | Rampur | | | S.C./S.T. Act | | | 9. | 493/98 | 420/506/467/468/ | 47 | Shahabad | Rampur | | 10. | 281/99 | 3/4 U.P. Gunda Act | Shahabad | Rampur | | 11. | 626/05 | 347/504/506 | Shahabad | Rampur | | 112. | 628A/05 | 452/352/504/506 | Shahabad | Rampur | | 13. | 363/06 | 3(1) Prevention of | Shahabad | Rampur | | | damage to Public | | | | Property Act, 1984 | | | 114. | 2171/08 | 147/143/283/341 and 6 | Shahabad | Rampur | | | United Province | | | | Special Power Act, | | | | 11936 and Section 7 of | | | | Criminal Law Amendment | | | | Act. | | | 115. | 670/09 | 3(1) Gangster Act | Shahabad | Rampur | | 116. | 11207/09 | 448/380 | Shahabad | Rampur | | 117. | 939/10 | 323/324/307/302 | Shahabad | Rampur | | 18. | 507/11 | 147/506 | Shahabad | Rampur | | 19. | 537/11 | 1147/148/149/307 | Shahabad | Rampur | | 20. | 538/11 | 1147/148/149/307/ | Shahabad | Rampur | | | 353/354 and Section 7 | | | | of Criminal Law | | | | Amendment Act | | | 21. | 313/91 | 447/323/504/506 | 3(1) | Shahabad | Rampur | | | 10 S.C./S.T. Act | | | 22. | 391/92 | 348/379/504/506 | 3(4) | Shahabad | Rampur | | | 10 S.C./S.T. Act | | | 23. | 199/09 | 1147/148/307/323/ | Milk | Rampur | | | 504/506 | 3(2) | 10 | | | | S.C./S.T. Act | | | 24. | 2007/08 | 147/504/506/307/ | 427 | Milk | Rampur | | | 3(1) | 10 S.C./ S.T. Act | | | 25. | 770/11 | 364/506 | Patwai | Rampur | | 26. | 575/93 | 1302/392/412 | IPC | Islam Nagar

[Badayun | 27. 441/94 25 Arms Act|Civil Line |Moradabad | 28. 117/01 364 IPC (The court |Faizganj |Badayun | | issued non-bailable |Behta | | | | warrants but | | | | | absconding) | | | 29. 269/02 420 IPC |Kasganj |Eta | 30. 270/02 25 Arms Act |Kasganj |Eta | In this Court also the same list has been filed. Thus, there is no doubt that the accused is a history-sheeter.”

30. Coming to the nature of crime it is perceivable that two persons came on a motorcycle and kidnapped Bihari Lal and kept him in confinement for eight days. The role of the accused is clearly stated. It is apt to note that a history-sheeter has a recorded past. The High Court, in toto, has ignored the criminal antecedents of the accused. What has weighed with the High Court is that the accused had spent seven months in custody. That may be one of the factors but that cannot be the whole and the sole factor in every case. It depends upon the nature of the offence, the manner in which it is committed and its impact on the society. We may hasten to add that when we state that the accused is a history-sheeter we may not be understood to have said that a history-sheeter is never entitled to bail. But, it is a significant factor to be taken note of regard being had to the nature of crime in respect of which he has been booked. In the case at hand, as the prosecution case unfolds, the accused did not want anyone to speak against his activities. He had sent two persons to kidnap Bihari Lal, who remained in confinement for eight days. The victim was tortured. Kidnapping, as an offence, is on the increase throughout the country. Sometimes it is dealt with formidable skill and sometimes with terror and sometimes with threat or brute force. The crime relating to kidnapping has taken many a contour. True it is, sometimes allegations are made that a guardian has kidnapped a child or a boy in love has kidnapped a girl. They do stand on a different footing. But kidnapping for ransom or for revenge or to spread terror or to establish authority are in a different realm altogether. In the present case the victim had been kidnapped under threat, confined and abused. The sole reason for kidnapping is because the victim had shown some courage to speak against the accused. This may be the purpose for sustaining of authority in the area by the accused and his criminal antecedents, speak eloquently in that regard. In his plea for bail the accused had stated that such offences had been registered because of political motivations but the range of offence and their alleged years of occurrence do not lend prima facie acceptance to the same. Thus, in the present case his criminal antecedents could not have been totally ignored.

31. Be it noted, a stage has come that in certain States abduction and kidnapping have been regarded as heroism. A particular crime changes its colour with efflux of time. The concept of crime in the contextual sense of kidnapping has really undergone a sea change and has really shattered the spine of the orderly society. It is almost nauseating to read almost every day

about the criminal activities relating to kidnapping and particularly by people who call themselves experts in the said nature of crime.

32. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction of liberty of the accused.

33. In the present context the period of custody of seven months, in our considered opinion, melts into insignificance. We repeat at the cost of repetition that granting of bail is a matter of discretion for the High Court and this Court is slow to interfere with such orders. But regard being had to the antecedents of the accused which is also a factor to be taken into consideration as per the pronouncements of this Court and the nature of the crime committed and the confinement of the victim for eight days, we are disposed to interfere with the order impugned.

34. We may note with profit that it is not an appeal for cancellation of bail as cancellation is not sought because of supervening circumstances. The present one is basically an appeal challenging grant of bail where the High Court has failed to take into consideration the relevant material factors which make the order perverse.

35. Consequently, the order passed by the High Court is set aside and the bail bonds of the accused are cancelled. The accused is directed to surrender to custody forthwith failing which it shall be the duty of the investigating agency to take him to custody immediately. We may hasten to clarify that anything that has been stated here are only to be read and understood for the purpose of annulment of the order of grant of bail and they would have no bearing whatsoever on trial.

36. The appeal is, accordingly, allowed.

Judgment Referred

[1] (2002) 3 SCC 0598

- [2] (2001) 4 SCC 0280*
- [3] (2004) 7 SCC 0525*
- [4] (2009) 14 SCC 0286*
- [5] (2010) 14 SCC0 496*
- [6] (2005) 8 SCC 0021*
- [7] (2001) 6 SCC 0338*
- [8] (2008) 6 SCALE 0415*
- [9] (2011) 6 SCC 0189*
- [10] (2000) 3 SCC 0409*
- [1] AIR 1980 SC 0856*
- [12] AIR 1992 SC 0979*
- [13] AIR 2000 SC 1669*