Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2335 OF 2014
[Arising out of S.L.P. (Crl.) No. 8355 of 2014]

Jagmohan Bahl & Anr. ... Appellants

Versus

State (NCT of Delhi) & Anr. ... Respondents

J U D G M E N T

Dipak Misra, J.

The present appeal, by special leave, is directed against the order dated 01.10.2014 passed by the High Court in CRLMC No. 3202/2014, whereby the learned Single Judge, in exercise of the jurisdiction under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC), has set aside the order dated 20.06.2014 passed by the learned Additional Sessions

Judge, Saket Courts, Delhi, who had granted the benefit of anticipatory bail to the appellants in FIR No. 92/2014 instituted for the offence punishable under Section 420/34 IPC, registered at P.S. Defence Colony, New Delhi.

2. The factual matrix that is required to be exposited for the purpose of disposal of the present appeal is that the 2nd respondent filed an FIR against the present appellants alleging that both of them had conspired against him and in furtherance of the said conspiracy, they had subjected him to cheating, criminal breach of trust and have misappropriated the money. As alleged in the FIR, the appellants allured the said respondent to buy a property situated at C-93, Defence Colony, New Delhi, for which he had paid an advance of Rs.1,50,00,000/- (Rupees one crore fifty lakhs). As the narration would unfurl, it was apprised by the appellants that the property comprising entire basement floor and entire ground floor with one servant quarter with servant's W.C. and with two car parking space, with structure standing thereon admeasuring 401 sq. yards along with proportionate undivided, indivisible

and impartible share of ownership rights in the land underneath would be sold to him and he will be delivered vacant peaceful physical possession. There are series of other allegations which would show that on the basis of oral agreement, certain amount was paid and on 30.04.2013, an agreement to sell was duly executed between the parties. It is also the case of the informant that remaining part of the amount i.e. Rs.4,50,00,000/- (Rupees four crores fifty lakhs) was to be paid to the accused persons at the time of registration of the sale deed on or before 26.10.2013.

3. As the allegations proceed, after receipt of the amount, the appellants disputed the amount and delayed the execution of the sale deed. On an enquiry being made, the 2nd respondent came to know that the appellants had entered into an agreement to sell the said property to a third person. That was the foundation to lodge the FIR.

4. After the lodgment of the FIR, the appellants moved an application under Section 438 CrPC for grant of anticipatory bail which was dismissed by the learned

Additional Sessions Judge-6, South East, Saket Courts, New Delhi vide order dated 26.05.2014. Thereafter, the appellants after expiry of three weeks filed second application under Section 438 CrPC which came to be considered by the learned Additional Sessions Judge-04 (Special Judge, NDPS), South East, New Delhi, who allowed the same by the impugned order dated 20.06.2014. The aforesaid order was assailed before the High Court on two grounds, first the accused persons had misrepresented the facts and that there was no change in the circumstances; and second, the application for grant of anticipatory bail could not have been entertained by the learned Additional Sessions Judge-04, for the first application was rejected by the learned Additional Sessions Judge-6, South East Saket.

5. The High Court referred to certain decisions with regard to the parameters for grant of anticipatory bail, absence of change of circumstances, conduct of the accused persons in the manner in which they had executed the agreement for sale, the need for custodial interrogation and the impropriety in view of the fact that another court

had entertained the application for consideration despite the fact that the first application was earlier rejected by another court and analyzing these aspects, set aside the order for grant of bail. It is necessary to state here that the High Court has drawn a distinction between an order passed which is perverse in nature inviting the wrath of impropriety and an order cancelling order of bail due to supervening circumstances after the grant of bail.

6. We have heard Mr. Parag P. Tripathi, learned senior counsel for the appellants, Ms. Pinki Anand, learned ASG for the State of NCT of Delhi and Mr. Sanjeev Kumar, learned counsel for the informant, the 2nd respondent.

7. On a perusal of the order passed by the High Court, we find that it has felt disturbed that the second application under Section 438 CrPC was allowed by another Additional Sessions Judge who had not dealt with the first application. It has opined that the Second Judge could not have entertained the bail application especially when the earlier Judge was available. To elaborate, the Additional Sessions Judge who has dealt with the matter

on the first occasion, had neither been transferred from the said court, nor had he become incapacitated to come to court nor was he absent for a considerable length of time. As it appears, the High Court has taken exception to the fact that the application was moved when the 2nd Judge was allotted the roaster to deal with the application under Section 438 CrPC.

8. To appreciate the analysis made by the High Court we have bestowed our anxious consideration and perused the order impugned. As far as the distinction drawn by the High Court between the categories of situations, namely, a bail order passed in a perverse manner excluding the relevant matters and considering the extraneous matters which deserves to be lancinated in exercise of supervisory jurisdiction to nullify the same and the other, which is fundamentally and absolutely situation based for cancelling the order of bail because of violation of the terms and conditions of the order granting bail and other supervening circumstances, the distinction gets support from the recent decisions rendered in ***Ash Mohammad V. Shiv Raj Singh***

@ ***Lalla Babu & Anr.***[1] and ***Neeru Yadav v. State of U.P. and Another***[2] which have taken note of number of earlier authorities. However, the said situation or circumstance does not arise in the case at hand.

9. In this context, we may refer with profit to the decision in ***Shahzad Hasan Khan V. Ishtiaq Hasan Khan and Anr***[3] wherein this Court took note of the fact that three successive bail applications made on behalf of the accused had been rejected and disposed of finally by one Judge of the High Court. However, another learned Judge, despite being aware of the situation, granted bail to the respondent. In that context, this Court held that long standing convention and judicial discipline requires bail application to be placed before the learned Judge who had passed earlier orders. Proceeding further this Court observed:

> "…… The convention that subsequent bail application should be placed before the same Judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a

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[1] (2012) 9 SCC 446
[2] Crl. Appeal No. 2587 of 2014 (judgment pronounced on 16.12.2014)
[3] (1987) 2 SCC 684

> court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of courts' time. Judicial discipline requires that such matters must be placed before the same Judge, if he is available for orders. Since Justice Kamleshwar Nath was sitting in court on June 23, 1986 the respondent's bail application should have been placed before him for orders".

10. In ***State of Maharashtra V. Captain Buddhikota Subha Rao***[4], the Court, placing reliance on *Shahzad Hasan Khan* (supra), opined that:

> "...... In such a situation the proper course, we think, is to direct that the matter be placed before the same learned Judge who disposed of the earlier applications. Such a practice or convention would prevent abuse of the process of court inasmuch as it will prevent an impression being created that a litigant is avoiding or selecting a court to secure an order to his liking. Such a practice would also discourage the filing of successive bail applications without change of circumstances. Such a practice if adopted would be conducive to judicial discipline and would also save the court's time as a judge familiar with the

[4] (1989) Supp (2) SCC 605

> facts would be able to dispose of the subsequent application with despatch. It will also result in consistency".

11. In ***M. Jagan Mohan Rao v. P.V. Mohan Rao***[5], this Court reiterating the principle laid down in ***Shahzad Hasan Khan*** (supra), ***Buddhikota Subha Rao*** (supra) and ***Harjit Singh V. State of Punjab***[6] held as under:

> "In view of the principle laid down by this Court, since the learned Judge who had refused bail in the first instance was available, the matter should have been placed before him. This Court has indicated that such cases of successive bail applications should be placed before the same Judge who had refused bail in the first instance, unless that Judge is not available".

12. In this context, we may refer to a two-Judge Bench decision in ***Vikramjit Singh V. State of Madhya Pradesh***[7], wherein bail granted by one Judge of the High Court was cancelled by another Judge. This Court, on being moved by the accused, opined that such a practice is not consistent with judicial discipline which is expected to be maintained by courts. Proceeding further, the Court observed:-

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[5] (2010) 15 SCC 491
[6] (2002) 1 SCC 649
[7] AIR 1992 SC 474

> "….. Otherwise, a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter re-opened before another Bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary."

13. On a perusal of the aforesaid authorities, it is clear to us that the learned Judge, who has declined to entertain the prayer for grant of bail, if available, should hear the second bail application or the successive bail applications. It is in consonance with the principle of judicial decorum, discipline and propriety. Needless to say, unless such principle is adhered to, there is enormous possibility of forum-shopping which has no sanction in law and definitely, has no sanctity. If the same is allowed to prevail, it is likely to usher in anarchy, whim and caprice and in the ultimate eventuate shake the faith in the adjudicating system. This cannot be allowed to be encouraged. In this regard we may refer to the pronouncement in ***Chetak Construction Ltd. V. Om Prakash and others***[8], wherein

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[8] (1998) 4 SCC 577

this Court has observed that a litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" must be crushed with a heavy hand. In ***Tamilnad Mercantile Bank Shareholders Welfare Association V. S.C. Sekar and others***[9], it has been observed that the superior courts of this country must discourage forum-shopping.

14. Though the said decisions were rendered in different context, the principle stated therein is applicable to the case of present nature. Unscrupulous litigants are not to be allowed even to remotely entertain the idea that they can engage in forum-shopping, depreciable conduct in the field of law.

15. In the instant case, when the Additional Sessions Judge-6 had declined to grant the bail application, the next Additional Sessions Judge-04 should have been well advised to place the matter before the same Judge. However, it is the duty of the prosecution to bring it to the notice of the concerned Judge that such an application was rejected earlier by a different Judge and he was available.

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[9] (2009) 2 SCC 784

In the entire adjudicatory process, the whole system has to be involved. The matter would be different if a Judge has demitted the office or has been transferred. Similarly, in the trial court, the matter would stand on a different footing, if the Presiding Officer has been superannuated or transferred. The fundamental concept is, if the Judge is available, the matter should be heard by him. That will sustain the faith of the people in the system and nobody would pave the path of forum-shopping, which is decryable in law.

16. Having said what we have stated hereinabove, the natural corollary would have been to set aside the order as it has been passed in an illegal manner. Ordinarily we would have issued that direction but, a significant one, in the present case, the allegations, as we find, are quite different. The FIR was instituted under Section 420/34 IPC and relates to execution of an agreement. In such a situation, we do not intend to set aside the order and direct the appellants to move a fresh application for bail under Section 438 CrPC. We are only inclined to direct that the

bail order granted in their favour shall remain in force and the appellants shall abide by the terms and conditions imposed by the Court and would not deviate from any of the conditions.

17. Consequently, we dispose of the appeal concurring with the reasoning given by the High Court, but in the facts and circumstances of the case, we set aside the direction cancelling the order of bail.

....J.
[DIPAK MISRA]

....J.
[UDAY UMESH LALIT]

NEW DELHI
DECEMBER 18, 2014.