SUPREME COURT OF INDIA

Neeru Yadav

Vs.

State of U.P. & Anr.

Crl.A.No.1272 of 2015

(Dipak Misra and Prafulla C.Pant,JJ.,)

29.09.2015

JUDGMENT

Dipak Misra,J.,

SLP(Crl) No. 1596 of 2015

1. The present appeal, by special leave, on a summary glance may appear that a victim who might have an axe to grind against the accused, the respondent no.2 herein, and further to wreck his vengeance has approached this Court seeking cancellation of his bail, possibly being emboldened by the inaction of the State authorities who have chosen to maintain sphinx like silence or decided to assume the stagnated posture of a splendid sculpture of Rome, and invigorated by the thought that he can singularly carry the crusade, without any support, for he has a cause to vindicate by valiantly exposing the legal infirmities in the order passed by the High Court admitting the 2 nd respondent to bail and also unconceal the lackadaisical attitude of the State, but on a keener scrutiny the initial impression melts away and the perversity of the order impugned gets unrolled. Be it stated, at a narrow level it may look like a combat between two individuals, but when analytical scrutiny is done and the State is compelled to wake up from its slumber, the unveiling of facts reveal the contestation between the accord and the discord, the scuffle betwixt the sacrosanctity and the majesty of law on one hand and the maladroit ingenious efforts to get the benefit by the abuse of process of the Court on the other. The analysis has to be made, that being an imperative command, between the honest modification and the surreptitious edifice.

2. Mr. Pradeep Kumar Yadav, learned counsel for the appellant, with all the distress and the intellectual agony at his command, has submitted that the High Court without appropriate analysis and even without being fully apprised of the fact situation, solely on the basis of parity, as if it is the only foundation or for that matter, the comet that has come off to shine, has enlarged the respondent no.2 on bail totally being oblivious that no accused, however influential he may be or clever he thinks to be, cannot be allowed to nullify the sanctity and purity of law and jettison the age old values “truth in action” and “the firm and continuous desire to render to every one which is due”, the two fundamental pillars of justice. The plea,

submits Mr. Yadav, apart from cleverness also shows an attempt of the nonchalant mind of the respondent No 2 to engage in fertile imagination possibly thinking that the ground of parity is the real structure of palladium to bring the nemesis of the prosecution and put the Court in a situation to choose between Scylla and Charybdis. And, at this juncture, we must state that both the appellant and the State (though at a later stage) have become Argus-eyed and destroyed the ingenious foundation so astutely built by the accused.

3. Keeping in view the aforesaid submissions, we shall proceed to adumbrate the requisite factual score. One Salek Chand s/o. Satpal Singh lodged an FIR at P.S. Kavinagar, Ghaziabad on 25.02.2013 about 11.45 a.m. against certain persons relating to the murder of his elder brother, Yashvir Yadav. On the basis of the lodging of the FIR, the criminal law was set in motion and eventually chargesheet was filed which formed the subject matter of Case Crime No. 237 of 2013 for the offences punishable under Sections 147, 148, 149, 302, 307, 394, 411, 454, 506, 120B read with Section 34 IPC. After the application for bail was rejected by the learned trial Judge, the accused person, respondent no.2, moved the High Court in Criminal Misc. Bail Application No. 25466 of 2014. It was contended before the High Court that an omnibus role had been ascribed to him and the other accused persons that they had indulged in general firing as a consequence of which one person had died, for he had received three gun shot injuries. It was also contended that there was no credible evidence against the accused persons. The real plank of submission before the High Court, as is perceptible, was that prayer for bail in respect of 11 accused persons including Mitthan Yadav had already been allowed, and there was no justification to deny him the said benefit as he was similarly placed.

4. The prayer for bail was resisted by the Public Prosecutor contending, inter alia, that there was indiscriminate firing by the accused person causing fatal injuries. The High Court, after hearing both the parties, has passed following order:-

> "In view of above facts, considering the nature of allegation, severity of punishment and period of detention, without expressing any opinion on merit, it is a fit case for bail. Let the applicant Budhpal @ Buddhu be enlarged on bail on his furnishing a personal bond with two heavy sureties each in the like amount to the satisfaction of court concerned in case crime no. 237 of 2013 under Section 147,148, 149, 302, 307,394,411,454,506, 120B, 34 I. P.C. Police Station Kavi Nagar, District Ghaziabad with the following conditions:
>
> (i) The applicant will not tamper with the evidence during the trial.
>
> (ii) The applicant will not pressurize/intimidate the prosecution witness.
>
> (iii) The applicant will appear before the trial court on the date fixed, unless personal presence is exempted.
>
> In case of breach of any of the above conditions, the court below shall be at liberty to cancel the bail."

The said order is the subject matter of assail in the present appeal by special leave.

5. At the outset we are obliged to clarify that it is not an appeal seeking cancellation of bail in the strictest sense. It actually calls in question the legal pregnability of the order passed by the High Court. The prayer for cancellation of bail is not sought on the foundation of any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 CrPC while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely perverse and totally indefensible. That is why there is a difference between cancellation of an order of bail and legal sustainability of an order granting bail. [See *State of U.P. v. marmani Tripathi*[1], *Puran v. Rambilas*[2], *Narendra K. Amin v. State of Gujarat*[3], *and Prakash Kadam v. Ramprasad Vishwanah Gupta*[4].]

6. Having cleared that maze, we may clarify, though seriously urged by Mr. P. George Giri that there is no warrant for cancellation of bail as there has been no supervening circumstances, yet the said enthusiastic submission leaves us unimpressed, as that is not the real thrust of the matter.

7. The mystery does not end there. Mr. P. George Giri, learned counsel for the respondent on 14.9.2015, in course of hearing, on instructions advanced an eminently innocuous, but innovative plea with the potentiality to create immense confusion that the description of respondent no.2 is absolutely erroneous, and, in fact, he is not the accused in any case. Mr. Pradeep Kumar Yadav very fairly stated that there has been a typographical error in describing the name of the respondent no.2, for his name should have been Budhpal @ Buddhu s/o. Sh. Ram and not Santpal Yadav. Mr. R.K. Dash, learned senior counsel appearing for the State apprised us that the address is correct as stated in the FIR and the chargesheet and the same is also reflected in the application for grant of bail. Taking note of the said situation, we permitted the cause title to be corrected. However, the issue having been raised regarding the identity of the respondent no.2, to clear our conscience, we asked the State to show us the documents that he is the person who is accused of the offence. On the next occasion, documents were shown and we were satisfied, and we allowed the ambitious submission to burn into ashes, or to put it differently, evaporate in the thin air.

8. It is interesting to note that learned counsel for the appellant and the learned counsel for the State submitted that the respondent no.2 is still in jail despite the order of bail as he is involved in so many cases. We will take up the said issue at a later stage. It is submitted by Mr. Yadav, learned counsel for the appellant that despite the factum of criminal history pointed out before the High Court, it has given it a glorious ignore which the law does not countenance. The solitary and the singular grievance which is propounded with solidity that the High Court should have dwelt upon the same and thereafter decided the matter. Mr. Dash, learned senior counsel (though the State has not moved any application for setting aside the order of bail granted by the High Court for the reasons which are unfathomable) unhesitatingly accepted the said submission. In the additional affidavit, an independent chart

has been filed by the State and we find that apart from the present case, there are seven cases pending against the respondent no.2. The chart of the said cases is reproduced below:-

> "1. FIR No. 664/02 u/s 302 IPC, PS Kavinagar, Ghaziabad.
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> 2. FIR No. 558/04 u/s. 392, 411 IPC, PS Kotwali, Dist. Bulandshahar.
>
> 3. FIR No. 14/05 u/s. 398, 401, 307 IPC PS Noida, Gautam Budh Nagar.
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> 4. FIR No. 15/05 u/s. 25, 27 Arms Act, PS Sector 49, Noida, Gautam Budh Nagar
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> 5. FIR No. 1614/08 u/s. 364, 302, 201 IPC, PS Sihani Gate, Ghaziabad
>
> 6. FIR No. 98/05 u/s. 2/3 Gangster Act, PS Sector 49, Noida, Gautam Budh Nagar
>
> 7. FIR No. 451/12 u/s. 60 PS Sector 49 Noida, Gautam Budh Nagar"

9. On a perusal of the aforesaid list, it is quite vivid that the respondent no.2 is a history-sheeter and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.

10. In *Ram Govind Upadhyay v. Sudarshan Singh*[5] it has been clearly laid down 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. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi*[6], and thereafter the court proceeded to state the following principles:-

> "(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.
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> (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.
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> (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 en¬titled to an order of bail."

11. It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat tothe complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See *Chaman Lal v. State of U.*P[6].)

12. In *Prasanta Kumar Sarkar v. Ashis Chatterjees*[7], while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors:-

> "9. among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:
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> (i) whether there is any prima facie or reasonable ground to believe that the accused had commit¬ted the offence;
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> (ii) nature and gravity of the accusation;
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> (iii) severity of the punishment in the event of conviction;
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> (iv) danger of the accused absconding or fleeing, if released on bail;
>
> (v) character, behaviour, means, position and standing of the accused;
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> (vi) likelihood of the offence being repeated;
>
> (vii) reasonable apprehension of the witnesses being influenced; and
>
> (viii) danger, of course, of justice being thwarted by grant of bail."

13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the

society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

> "Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their ***fetters***[9]**.**

14. E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals had to state thus:-

> "In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance with¬out which liberty does not exist. They are the essence of liberty. The great problem of the demo¬cratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of man's capabilities, not in a massive globe of faceless animations but as a perfect realization, of each separate human mind, soul and body; not in mute, motionless meditation but in flashing, **thrashing activity**[10]. "

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

16. In this regard, we may profitably reproduce a few significant lines from Benjamin Disraeli:-

> "I repeat that all power is a trust-that we are accountable for its exercise- that, from the people and for the people, all springs, and all must exist."

[9] Alfred Howard, The Beauties of Burke (T. Davison, London) 109
[10] Speech at Law Day Observances (Pentagon, 1962) as quoted in Case and Comment, Mar-Apr 1963

17. That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal.

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order

19. Resultantly, the appeal is allowed and the order passed by the High Court is set aside. If the respondent no.2 is at large, he shall be taken into custody forthwith; and if he is still in custody because of certain other cases, he shall not be admitted to bail in connection with the present case. We make it clear that we have not expressed any opinion with regard to other cases and simultaneously we also clearly state that our observations in this case are only meant for purpose of setting aside the order granting bail and would have no impact or effect during the trial.

Judgment Referred.

[1] *(2005) 8 SCC 0021*
[2] *(2001) 6 SCC 0338*
[3] *(2008) 13 SCC 0584*
[4] *(2011) 6 SCC 0189*
[5] *(2002) 3 SCC 0598*
[6] *(2001) 4 SCC 0280*
[7] *(2004) 7 SCC 0525*
[8] *(2010) 14 SCC 0496*