

SUPREME COURT OF INDIA

Mahipal

Vs.

Rajesh Kumar @ Polia

CrI.A.No.1843 of 2019

(Dr.D.Y.Chandrachud and Hrishikesh Roy,JJ.,)

05.12.2019

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(CrI.)No.6339 of 2019

1. Leave granted.

2. This batch of appeals arises from a judgment of a learned Single Judge of the High Court of Rajasthan at its Jaipur Bench dated 10 May 2019. Allowing the bail application filed under Section 439 of the *Code of Criminal Procedure 1973*¹, the High Court enlarged the first respondent on bail subject to certain conditions therein. The original complainant is in appeal before this Court.

3. By similar orders, the learned Single Judge granted bail to the other four accused - Anil Kumar, Ajay Kumar, Vikas Kumar and Vijay Kumar. The appeals filed by the appellant against those orders have been tagged with the present appeal. Since the facts in all these matters and the questions involved are similar, they have been heard together and are being disposed of by this common judgment. For the sake of convenience, the facts in SLP (CrI.) No. 6339 of 2019 are discussed.

4. A *First Information Report*² was lodged by the appellant on 3 December 2018 stating that his now deceased nephew - Akhilesh had visited town on leave for a month for his marriage. It was stated that at about 7.00 pm on 2 December 2018, the deceased and his friend Aashish left the matrimonial home to run an errand. At about 7.30 pm, the deceased and Aashish stopped their bike on the road which caused a quarrel with two accused persons - Vijay and Anil, who then hurled abuses at the deceased. At that time, five to six boys armed with dandas assaulted the deceased who was rescued by near-by villagers. It was stated that the deceased left the scene on his motorcycle only to be confronted a short distance thereafter by the accused - Anil, Ajay, Rajesh (the first respondent), Vikas and Vijay. It was alleged that the accused used rods to beat the deceased with an intention to

kill him. It was alleged that after beating the deceased, the accused fled from the scene of the incident. The deceased was rushed to Jhunjhunu R & R Hospital at Chirawa. However, owing to the serious nature of the injuries, he was referred to Fortis Hospital at Jaipur where he was declared dead.

5. The post-mortem report was recorded on 3 December 2018. Twenty-seven ante-mortem injuries on the body of the deceased were noted. The first respondent was arrested on 3 December 2018. The statements under Section 161 of the CrPC of the appellant and Aashish were recorded. A charge-sheet was filed against the five accused on 10 March 2019 under Sections 147, 148, 149, 302 and 397 of the *Indian Penal Code 1908*³. Cognizance was taken by the Judicial Magistrate, Pilani on 27 March 2019. As the accused were charged under Section 302, the case was committed to the Additional Sessions Judge, Jhunjhunu for trial.

6. The bail application filed by the first respondent before the Additional Sessions Judge was rejected on 10 April, 2019. Thereafter, the first respondent filed a bail application before the High Court of Rajasthan, which was allowed. The appellant has filed the present appeal before this Court assailing the order of the High Court enlarging the first respondent on bail. Notice was issued by this Court on 12 July 2019.

7. Assailing the judgment of the High Court, the learned counsel appearing on behalf of the appellant submits:

(i) A prima facie involvement of the accused has emerged upon investigation, in a case involving a gruesome murder. There was no reason for the High Court to exercise its power to grant bail;

(ii) The High Court has not passed a reasoned order justifying the grant of bail to the accused;

(iii) The High Court failed to appreciate the statement of the sole injured eye-witness Aashish who was present at the spot of the incident that the accused were responsible for the death of the deceased;

(iv) The post-mortem report observes twenty-seven ante-mortem injuries and opines that the injuries causing death were inflicted within six hours of death; and

(v) The phone of the deceased was recovered from one of the accused Anil, while the bike involved in the incident was recovered from the first respondent.

8. The second respondent - the State of Rajasthan has filed a counter-affidavit assailing the order of the High Court on grounds similar to those urged by the appellant. It was also stated that another *FIR*⁴ had been registered against the friends of the accused alleging an intention to kill the friend of the deceased - Ashish.

9. On the other hand, the learned counsel appearing on behalf of the first respondent contended that:

(i) On the date of the incident, there was an altercation between the deceased and the first respondent, in which the deceased was the aggressor. Thereafter, the deceased fell off his bike and suffered injuries which caused his eventual death;

(ii) The first respondent has been in custody for five months on the basis of a false allegation in the FIR;

(iii) Even on a reading of the allegations in the FIR and the charge sheet, no prime facie case has been made out against the accused justifying the setting aside of bail; and

(iv) The registration of an FIR against the friends of the accused has no bearing on the present case. A common counter affidavit was filed by all the five accused before this Court reaffirming the above contentions.

10. These rival submissions fall for our consideration.

11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 of the CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v Sudarshan Singh*⁵, Justice Umesh Banerjee, speaking for a two judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(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.¶

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. The principles that guide this Court in assessing the correctness of an order passed by the High Court granting bail were succinctly laid down by this Court in *Prasanta Kumar Sarkar v Ashis Chatterjee*⁶. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order of the High Court, Justice DK Jain, speaking for a two judge Bench of this Court held:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to 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. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (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.

12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal.”

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding. The decision of this Court in *Prasanta* has been consistently followed by this Court in *Ash Mohammad v Shiv Raj Singh*⁷, *Ranjit Singh v State of Madhya Pradesh*⁸, *Neeru Yadav v State of U.P.*⁹, *Virupakshappa Gouda v State of Karnataka*¹⁰, and *State of Orissa v Mahimananda Mishra*¹¹.

15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the

anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v State of Uttar Pradesh*,² the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Justice Dipak Misra (as the learned Chief Justice then was) held:

“...It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail.

Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

16 Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment. The order of the High Court in the present case, in so far as it is relevant reads:

“2. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. Learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.”

17 In assessing the rival submissions, it is necessary to advert to the findings of the post-mortem report dated 3 December 2018. On the basis of the injuries, the post-mortem report concluded:

“All above mentioned injuries are ante mortem in nature. Duration within about 6 hrs prior to death. We the members of medical board are of the opinion that cause of death is COMA brought about as a result of ante mortem head injuries mentioned in this PMR, sufficient to cause death in ordinary course of nature. However final opinion will be given after receiving FSL reports of above sent samples.”

A total of twenty-seven ante-mortem injuries were recorded of which seven were found to be inflicted on the head. This led the members of the medical board to conclude that the cause of death was coma brought about by the result of the head injuries. The learned counsel for the first respondent contended that the deceased fell from the bike and sustained injuries which led to his death. However, it is not for the court to assess in detail the evidence on record to come to a conclusive finding on a chain of causation. A court assessing a plea of bail is required to find a prima facie view of the possibility of the commission of the crime by the accused and not conclude that the alleged crime was in fact committed by the accused beyond reasonable doubt.

18. The statement of Aashish Kumar who was allegedly present with the deceased at the time of the incident was recorded under Section 161. The statement details the alleged incident and names all five accused, attributing to them the common intention to kill the deceased. It was stated that the accused thereafter drove away with the bike of the deceased.

19. The following extract from the charge-sheet dated 10 March 2019 is relevant:

“Thereafter, in compliance to the Order No. Complaint/2018/4899-4900 dated 28.12.18 of the Hon’ble Superintendent of Police of the District, further investigations of the case were started by the Circle Officer, Smt. Mamta Saraswat, R.P.S. Circle, Jhunjhunu City. During investigation proceedings, Circle Officer Smt. Mamta Saraswat, R.P.S. Circle Jhunjhuna City conducted investigations of all the accused persons arrested in the present case namely Vijay Kumar, Ajay Kumar alias Sheodan, Vikas Kumar, Anil Kumar alias Bhirriya and Rajesh Kumat alias Pauliya. Mobile of deceased was recovered from accused Anil Kumar alias Bhirriya according to his disclosure memo under Section 277 of the Evidence Act. Seizure memo of mobile was concluded and attached at the case file. Motorcycle used in the incident, according to the disclosure memo, was recovered from accused Rajesh Kumar alias Pauliya. Thereafter, friends of Anil Kumar namely Ajay Kumar, Rajesh and Vikas, all the three came at the place of occurrence Garakhera Tiraha and immediately on coming there, they started giving beatings to deceased Akhilesh and Monu with lathies and thereafter, Anil Kumar and Vijay Kumar also started giving beatings to deceased Akhilesh and Monu. however, it has been mentioned

that seven injuries have been caused at the head of the deceased. This makes clear that the accused persons caused many serious injuries on the head of the deceased at the place of occurrence Mark A at the time of occurrence on the head of the deceased, due to which, deceased after running from there went in Coma and collided with the Tank, due to which, Akhilesh has died due to the injuries sustained by him.”

(Emphasis supplied)

20. Without expressing any finding or opinion on the merits of the case, a case has been made out for setting aside the bail granted by the High Court. The High Court has manifestly erred in not taking note of the material which has been adverted to above. The order passed by the High Court fails to notice material facts and shows a non-application of mind to the seriousness of the crime and the circumstances referred to earlier which ought to have been taken into consideration.

21. The High Court has erred in not considering material relevant to the determination of whether the accused were to be enlarged on bail. The order of the High Court enlarging the accused on bail is erroneous and liable to be set aside.

22. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. In the present case, the assessment by the High Court is essentially contained in a single paragraph which reads:

“4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.”

23. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not sub-serve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion. Court was required to assess the correctness of a decision of a High Court enlarging the accused on bail. Justice Santosh Hegde, speaking for the Court, discussed the law on the grant of bail in non-bailable offences and held:

24. In *Kalyan Chandra Sarkar v Rajesh Ranjan*¹³, a two judge Bench of this

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.”

(Emphasis supplied)

25. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. Where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why bail should be granted.

26. The perfunctory analysis by the High Court in the present case cannot be sustained. For the reasons indicated above, the appeal is allowed and the order of the High Court enlarging the first respondent on bail is set aside.

27. The connected appeals also are allowed in terms of the judgment recorded above.

28. Since the accused have been released on bail during the pendency of these proceedings, we order that the bail bonds shall stand cancelled and the five accused shall be taken into custody forthwith. A copy of this judgment shall be forwarded to the Additional Sessions Judge, Chirawa District, Jhunjhunu and the police station concerned to secure compliance.

29. We clarify that the present judgment shall not be construed as the expression of any opinion on the merits of the case at the trial.

Judgment Referred.

¹*CrPC*

⁴*FIR No. 52/2019*

⁷*(2012) 9 SCC 0446*

¹⁰*(2017) 5 SCC 0406*

¹³*(2004) 7 SCC 0528*

²*FIR No. 347/2018*

⁵*(2002) 3 SCC 0598*

⁸*(2013) 16 SCC 0797*

¹¹*(2018) 10 SCC 0516*

³*Penal Code*

⁶*(2010) 14 SCC 0496*

⁹*(2014) 16 SCC 0508*

¹²*(2015) 15 SCC 0422*