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KISHORI LAL
v.
RUPA AND ORS.

SEPTEMBER 23, 2004

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[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

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Code of Criminal Procedure, 1973—Section 389—Conviction for murder by trial Court—During pendency of appeal suspension of execution of sentence and grant of bail by High Court—On the ground that accused while on bail during trial did not misuse the liberty—Appeal challenging grant of bail—Held: Order to suspend execution of sentence and grant of bail was erroneous—Such order is not to be passed as a matter of routine—Order was passed without considering the relevant factors required to be considered while granting bail in case involving offence of murder.

D

Respondents-accused were convicted by trial Court u/s 302 IPC and sentenced for the same. In the appeal before High Court, they filed application u/s 389 Cr.P.C. for suspension of execution of sentence. High Court granted bail on the ground that during trial, they were on bail and had not misused the liberties granted to them. Appellant-informant

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filed appeal before this Court challenging the grant of bail.

Allowing the appeal, the Court

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HELD: 1. The order directing suspension of sentence and grant of bail is unsustainable. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not *per se* warrant suspension of execution of sentence and grant of bail. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. What really was necessary to be considered by the High Court was whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view. [631-F; 631-A-B]

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State of Haryana v. Hasmat, JT (2004) 6 SC 6, relied on.

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2. One of the essential ingredients of Section 389 Cr.P.C. 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. [630-D-F]

3. In cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The impugned order of the High Court does not meet the requirement. In considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. These aspects have not been considered by the High Court, while passing the impugned order. [631-C-E]

Vijay Kumar v. Narendra and Ors., [2002] 9 SCC 364 and *Ramji Prasad v. Rattan Kumar Jaiswal and Anr.*, [2002] 9 SCC 366, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1067 of 2004.

From the Judgment and Order dated 13.1.2004 of the Allahabad High Court in Crl. A. No. 148 of 2004.

Dr. (Mrs.) Vipin Gupta for the Appellant.

Shahid Anwar and Naresh Kumar for the Respondents.

R. K. Singh and J.K. Bhatia for State.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

The informant calls in question legality of grant of bail to accused-

A respondent Nos.1 to 3 by the High Court of Allahabad. In the appeal preferred by respondents 1 to 3, an application was filed purportedly under Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code') with the prayer that execution of substantive sentence of imprisonment for life and a fine of Rs.10,000 imposed after finding them guilty for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') be suspended. The High Court, by the impugned order, granted bail primarily on the ground that during trial, the accused respondents were on bail and had not misused the liberties granted to them.

C According to learned counsel for the appellant-informant, who is supported by learned counsel for respondent No. 4 - State, the approach of the High Court is clearly erroneous. In a large number of cases the accused-respondent Nos. 1 to 3 were involved and the appellant and his family members have been threatened with dire consequences for having set law into motion. Learned counsel for accused-respondent Nos.1 to 3, however, submitted that the case was instituted on account of previous enmity and at present no case is pending where they are accused.

E 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.

G The appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail.

H The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The

effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not *per se* warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.

A similar question was examined in *State of Haryana v. Hasmat*, JT (2004) 6 SC 6.

In *Vijay Kumar v. Narendra and Others*, [2002] 9 SCC 364 and *Ramji Prasad v. Rattan Kumar Jaiswal and Another*, [2002] 9 SCC 366, it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. The impugned order of the High Court does not meet the requirement. In *Vijay Kumar's* case (*supra*) it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder. These aspects have not been considered by the High Court, while passing the impugned order.

The order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. Learned counsel for the accused-respondents stated that a fresh application shall be moved. In case it is done, the High Court, it goes without saying, shall consider the matter in accordance with law, in its proper perspective. We express no opinion in that regard.

The appeal is, accordingly, allowed.

K.K.T.

Appeal allowed.