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STATE OF HARYANA

v.

HASMAT

JULY 26, 2004

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

Code of Criminal Procedure, 1973:

C

S.389—Suspension of sentence and grant of bail—Accused convicted u/s 302 IPC—Pending appeal, on application of accused u/s 389, High Court releasing him on bail observing that the accused was on parole earlier and there was no allegation of misuse of liberty by him—Held, appellate court is duty bound to objectively assess the matter and to record reasons for conclusion that the case warrants suspension of execution of sentence and grant of bail—Order of High Court does not meet the requirement—Impugned order set aside.

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Respondent-accused was convicted alongwith others, *inter alia*, us/ 302 r/w s.149 IPC and sentenced to imprisonment for life. In the appeal before the High Court, he filed an application purported to be u/s 389 of the Code of Criminal Procedure, 1973 for suspension of sentence and releasing him on bail. The High Court granted bail observing that after the conviction the accused had been granted parole and he did not misuse the liberty during that period.

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It was contended for the State that the respondent accused was the key figure in the gruesome murder and because he was granted parole, the same could not be a ground for suspension of sentence and grant of bail in terms of s.389 Cr.P.C.

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Disposing of the appeals, the Court

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HELD : There is a distinction between bail and suspension of sentence. One of the essential ingredients of s.389 of the Code of Criminal Procedure, 1973, is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. 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. 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 period the accused-respondent was granted parole. It does not *per se* warrant suspension of execution of sentence and grant of bail. Order of the High Court does not meet the requirement, and is set aside. [134-F-H; 135-A-G]

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

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 715-617 of 2004.

From the Judgment and Order dated 12.5.2003 of the Punjab and Haryana High Court in Crl. Misc. No. 14009-10 of 2003 in Crl. A. No. 100-DB of 2002.

Sunder Khatri and Vijay Kumar Garg for the Appellant.

Zafar Sadique and Balraj Dewan for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

The State of Haryana calls in question grant of bail to accused Hasmat (respondent herein) by the Punjab and Haryana High Court. Criminal miscellaneous No. 14009/2003 was filed in Criminal Appeal No. 100/2002 purportedly under Section 389 of the Code of Criminal Procedure, 1973 (in short the 'Code') with a prayer that the substantive sentence imposed i.e. imprisonment for life and a fine of Rs. 10,000 should be suspended and the respondent be released on bail during the pendency of the appeal filed. The accused-respondent along with twenty two others faced trial for alleged commission of offences punishable under Sections 148, 302, 307, 324 read with Section 149 of Indian Penal Code, 1860 (in short the 'IPC') and Sections 25 and 27 of the Arms Act, 1959 (in short the 'Arms Act'). Accused – respondent along with some others was found guilty of offences

A punishable under Sections 302, 307, 148 read with section 149 IPC. They were sentenced to undergo imprisonment for life and pay the fine as aforesaid for the offence punishable under Section 302 read with Section 149 IPC.

B The High Court by the impugned order granted bail primarily on the ground that after the conviction the accused respondent had been granted parole on three occasions and there was no allegation of any misuse of liberty during the period of parole.

C According to learned counsel for the appellant-State it was the accused respondent who was the key figure in a gruesome murder and there was direct and unimpeachable evidence establishing the commission of the crime by him. The trial Court by a detailed and reasoned judgment held him guilty, convicted and sentenced as aforesaid. Merely because parole was granted, the same cannot be a ground for suspension of the sentence

D and grant of bail in terms of Section 389 of the Code.

Per contra, learned counsel for the accused - respondent submitted that there was no allegation of misuse of liberty during the parole period. The High Court was justified in granting bail to the accused respondent.

E It is not a fit case which calls for interference in terms of Article 136 of the Constitution of India, 1950 (in short the 'Constitution').

F 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

G 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.

The Appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension

H 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 period the accused-respondent as granted parole. A

The learned Sessions Judge, Gurgaon by a judgment dated 24.10.2001 had found the accused respondent guilty. Criminal Appeal No.100DB/2002 was filed by the respondent. The fact that during the pendency of the appeal the accused respondent was on parole goes to show that initially the accused respondent was not given the benefit of suspension of execution of sentence. The mere fact that during the period of parole the accused has not misused the 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 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. B C

In *Vijay Kumar v. Narendra and Ors.*, [2002] 9 SCC 364 and *Ramji Pasad v. Rattan Kumar Jaisweal and Anr.*, [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. D E F

The order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. We, therefore, set aside the order. Learned counsel for the accused-respondent 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. G H

A Learned counsel for the respondent vehemently urged that though application for suspension of execution of sentence and grant of bail was filed containing several reasons and not only absence of mis-use of liberties during the period of parole, the High Court has not touched those aspects.

B The appeals are accordingly disposed of.

R.P.

Appeals disposed of.