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CHAMAN LAL
v.
STATE OF U.P. AND ANR.

AUGUST 16, 2004

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

Code of Criminal Procedure, 1973 :

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Murder—Application for bail—Rejected by trial Court—Allowed by High Court on the ground that name of the accused not recorded in FIR—On appeal, Held : Before granting bail to accused, the Court should satisfy itself that on the basis of evidence, prima facie case against accused could not be made out—However, detailed examination of the evidence and elaborate documentation of the merit of the case to be avoided—Reasonable apprehension of tempering of witness/threat to complainant does not exist—Order of the High Court indefensible as non-reasoned—Bail bonds of the accused cancelled—Penal Code, 1860—Section 302/120-B.

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Respondent No. 2 allegedly shot dead the deceased, a money lender. FIR was lodged by a person who was not an eye witness, stating that an unknown assailant killed the deceased. However, on the basis of the statements made by other witnesses, accused-Respondent No. 2 along with other two accused was taken to custody by the Police. Respondent No. 2 filed bail application, which was rejected by the trial Court. High Court granted bail. Hence the present appeal.

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It was contended by the appellant that grant of bail to a person accused of murder would obstruct the course of justice; and that the High Court granted the bail to accused even without examining the facts which weighed with the trial Court.

Allowing the appeal, the Court

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HELD 1.1. The High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court

while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The Court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. There is a need to indicate in the order, reasons for granting bail particularly where an accused was charged of having committed a serious offence. [587-H; 588-A, B]

1.2. It is necessary for the Courts to consider among other circumstances, the following factors also before granting bail:

(1) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

(2) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(3) *Prima facie* satisfaction of the Court in support of the charge.

Any Order *dehors* of such reasons suffers from non-application of mind. [588-C, D, E]

1.3. The cryptic non-reasoned order of the High Court, is clearly indefensible and is set aside. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. The bail bonds of Respondent No. 2 are cancelled and he is directed to surrender to custody forthwith. It is clarified that no opinion is expressed on the merits of the case. [588-H, F; 589-A]

Ram Govind Upadhyay v. Sudarshan Singh & Ors., [2002] 3 SCC 598; *Puran Etc. v. Rambilas & Anr. Etc.*, [2001] 6 SCC 338 and *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*, JT (2004) 3 SC 442, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 896 of 2004.

A From the Judgment and Order dated 5.8.2003 of the Allahabad High Court in CrI. M. No. 10985 of 2003.

Amarendra Sharan, R.K. Kapur, B.R. Kapur, M.K. Verma and Sudarsh Menon for the Appellant.

B Sahdev Singh and Jatinder Kumar Bhatia for State.

W.A. Nomani for the Respondent No. 2.

The Judgment of the Court was delivered by

C **ARIJIT PASAYAT, J.:** Leave granted.

Grant of bail to respondent No. 2 (hereinafter referred to as 'accused') has been challenged in this appeal.

D Background facts as projected by the appellant essentially are as follows:-

One Prem Kumar (hereinafter referred to as the 'deceased') was engaged in the business of money lending. He had advanced a loan of **E** Rs. 2 lakhs to one of the accused persons named Naeem. On 11.3.2003, the deceased was called to the factory of one Kamil, where the accused Naeem was working as a contractor, by telephone call which was purportedly made by the accused Naeem. When the deceased went to that place, he was shot at by respondent no. 2, accused - Meer Hasan and one **F** other accused named Wasim. Accused-respondent no. 2 shot the fatal shot. On the basis of statements made by three persons namely Nawab, Tulshi Ram and Harish Kakkar the respondent No. 2 was taken to custody. The first information report was lodged by a person who was not an eye witness. In the first information report, it was indicated that unknown assailants **G** killed the deceased. After arrest the accused Meer Hasan filed application for bail before the learned Sessions Judge, Saharanpur, which was rejected. On being moved by the accused Meer Hasan- respondent No. 2, by the impugned judgment, a learned Single Judge has granted bail to him.

H According to the appellant, without even discussing the facts which weighed with learned Sessions Judge, the High Court by a cryptic order

has granted bail. The only stand taken by the accused, during hearing of the bail application was that he was not named in the FIR and subsequently his name has been disclosed in the statements, recorded under Section 161 of the Code of Criminal Procedure, 1973, (in short the 'Code') after three days. The accused was charged for commission of offence punishable under Sections 302/120B of the Indian Penal Code, 1860 (in short the 'IPC'). It is submitted that the grant of bail will obstruct the course of justice and this is not a case where grant of bail was justified.

In response learned counsel for the respondent no. 2 accused submitted that bail has been granted taking into consideration relevant aspects and the order is operative since 5.8.2003 without any allegation of any abuse of the liberty granted by the order of bail. That being so it is submitted that no interference is called for.

There is no definition of the word 'Bail' in the Code, although offences are classified as 'Bailable' and 'Non-Bailable'. Section 2(a) defines 'Bailable Offence' to mean an offence which is known as bailable in the first schedule or which is made bailable by any other law for the time being in force and "Non-Bailable Offence" means any other offence.

Impugned order of the High Court reads as follows ;

"Applicant's counsel submits that applicant is not named in the F.I.R. and subsequently his name has been disclosed in the statement recorded under Section 161 Cr.P.C. after 3 days.

Considering the facts and circumstances of the case and without expressing any opinion in the merits of the case applicant is admitted to bail.

Let the applicant Meer Hasan @ Faddar involved in case Crime no. 90/2003 under Sections 302/120-B I.P.C. P.S. Mandi District Saharanpur be released on bail on his executing a personal bond and on furnishing two sureties each in the like amount to the satisfaction of court concerned."

Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and

A elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied as to whether there is a *prima facie* case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

B There is a need to indicate in the order, reasons for *prima facie* concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. *Prima facie* satisfaction of the Court in support of the charge.

E Any order *dehors* of such reasons suffers from non-application of mind as was noted by this Court, in *Ram Govind Upadhyay v. Sudarshan Singh and Ors.*, [2002] 3 SCC 598; *Puran Etc. v. Rambilas and Anr. Etc.* [2001] 6 SCC 338 and in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*, JT (2004) 3 SC 442.

F Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for *prima facie* concluding why bail was being granted is not required to be indicated.

G Above being the position, the cryptic non-reasoned order of the High Court, is clearly indefensible.

The impugned order of the High Court is set aside. The bail bonds A
of the respondent no. 2 accused are cancelled and he is directed to
surrender to custody forthwith and in case he does not do so it shall be
the duty of the respondent No. 1 State to take him to custody immediately.
We make it clear that we have not expressed any opinion on the merits
of the case. Learned counsel for the respondent no. 2 submitted that after B
charge-sheet is placed and/or charge is framed, the accused shall move for
bail afresh. If it is so done, it goes without saying the same shall be
considered on its own merit in accordance with law, about which we
express no opinion.

Appeal is accordingly allowed. C

S.K.S.

Appeal allowed.