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STATE OF MAHARASHTRA
v.
SITARAM POPAT VETAL AND ANR.

AUGUST 23, 2004

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

Code of Criminal Procedure, 1973 :

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Bail—Grant of—High Court granted bail to accused on ground of false Implication due to political rivalry—On appeal, Held : Before granting bail to accused of serious offences, the Court should satisfy itself that on the basis of evidence, Prima facie case could not be made out against him—However, conclusive findings on merits/demerits not necessary—Though criminal antecedents not necessarily determinative of question of grant of bail to accused, yet their relevance cannot be totally ignored—Facts relating to recovery of weapons/identification of accused in the Identification Parade/relevancy of criminal antecedents ignored by High Court before granting bail—Findings of High Court based on surmises without any material in support thereto Grant of bail not justified—Hence order of High Court set aside.

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Respondents allegedly attacked the deceased, who succumbed to the injuries. An FIR was lodged against the Respondents. They were arrested and charge-sheet was filed by the Police against them for committing offences punishable under Section 302 IPC. Respondents filed bail applications. High Court granted them bail on the ground that they were falsely implicated on account of political rivalry. Hence the present appeal.

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It was contended for the appellant-State that High Court granted the bail without appreciating the gravity of the offences and the criminal antecedents of the accused; and that since grant of bail they have been indulging in serious offences and not attending the Court regularly.

Allowing the appeal, the Court

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HELD : 1.1. While granting bail, Courts have 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 :

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 de hors of such reasons suffers from non-application of mind. [699-G-H; 700-A-B]

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, referred to.

1.2. 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. But at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken. [700-C-D]

1.3. The High Court has lightly brushed aside the factum of recovery of the weapons and identification of the accused at the test identification parade. It arrived at the conclusion, which was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. The antecedents of the respondents though noticed, were lightly brushed aside by it on the ground that they were not of recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. Since the grant of bail to the respondents does not appear to be in order, the

A order of the High Court is set aside. [700-E-F-G]

1.4. If the accused is not appearing in Court on the date fixed, it is open to the trial Court to take such action as available in law. [700-F]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 921 of 2004.

From the Judgment and Order dated 25.2.2003 of the Bombay High Court in Crl. Application No. 411 of 2003.

C Ravindra Keshavrao Adsure for the Appellant.

Shivaji M. Jadhav for the Respondents.

The Judgment of the Court was delivered by

D **ARIJIT PASAYAT, J.:** Leave Granted.

E The State of Maharashtra calls in question legality of the order passed by a learned Single Judge of the Bombay High Court granting bail to respondents (hereinafter referred to as the 'accused').

Background facts necessary for disposal of the appeal are essentially as follows :

F On 20.11.2000 one Hanumant Vithal Chaudhary (hereinafter referred to as the 'deceased') met homicidal death due to attack by several persons. The law was set into motion against six persons including the respondents. Though they were specifically named in the first information report implicating them as accused, they could not be arrested till 3.5.2002 and 20.5.2002 respectively allegedly on the ground that they had absconded.

G After they were arrested, test identification parade was conducted where they were identified. Charge-sheet has been filed indicating commission of offences punishable under Section 302 of the Penal Code, 1860 (in short the 'IPC'). While the matter stood thus the respondents filed an application for bail before the Bombay High Court which by the impugned judgment

H accepted the prayer for bail, primarily on the ground that charge-sheet was

filed and though both had criminal antecedents, the cases related to 1991, 1993 and 1996 and are not of recent past. The High Court felt that though a political rivalry has a double edged effect, the applicants were to be released on bail as they pleaded that on account of political rivalry they have been falsely implicated. Though it is not very clear from the order as to what stands were taken by the applicants for bail and the State it appears that accused person pleaded that in a dark night the alleged occurrence took place and no bloodstains were found on the weapons seized and that on account of political rivalry they have been falsely implicated. State appears to have contended that charge sheet has been filed and that accused persons were involved in serious crimes in the past. Unfortunately, the order does not even show these factors clearly.

Learned counsel for the appellant-State submitted that the High Court has by practically a non-reasoned order granted bail without appreciating the gravity of the offences and the criminal antecedents. It was pointed out that subsequently also the present respondents were involved in cases involving offences under Section 302, 364, 201 read with Section 34 of IPC and a case under Section 3(1)(4) of the Maharashtra Control of Organised Crime act, 1999 (in short the 'Act'). It was further pointed out that one of the accused Sitaram Vetal was not attending the Court regularly and for the last three preceding dates he had not appeared before the Court.

Learned counsel for the respondents submitted that the order granting bail was passed long back and merely because certain allegations have been made that does not prove the accused to be guilty as false cases have been foisted because of political rivalry and, therefore, the subsequent cases have no relevance.

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;

A 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.

B Any order *de hors* 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.* [2000] 6 SCC 388 and in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.*, JT (2004) 3 SC 442.

C 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.

D 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.

E The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double edged effect was based on surmises without any material before it to show that a false case had been foisted because of political rivalry. Further the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of a recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in Court on the date fixed. If that is really so, it is open to the trial Court to take such action as is available to be taken in law.

G Looked at from the above angle, the grant of bail to the respondents does not appear to be in order. Accordingly, the order of the High Court granting bail to the respondents is set aside. The appeal is allowed.

S.K.S.

Appeal allowed.