DEEPAK SINGCHI

v.

STATE OF RAJASTHAN AND ANR.

AUGUST 3, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Code of Criminal Procedure, 1973:

S.438—While dealing with bail application, order must show proper application of mind by the Court—Court is required to satisfy as to whether there is a prima facie case—But exhaustive exploration of the merits of case is not necessary—Bail.

S.438—Bail—Grant of—Determining factor—Stated.

The appellant-informant had reported about the murder of his brother committed by accused persons. The accused filed bail application before the CJM who rejected the same. Additional Sessions Judge also dismissed the bail application filed before it. Thereafter High Court was moved for grant of bail. The High Court granted bail. While granting bail, no reason was indicated in the impugned order as to why the bail was granted. The impugned order is questioned by appellant before this Court.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: 1. The High Court's order shows complete non-application of mind even on a cursory perusal. 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.

[Para 9] [791-E, F]

Omar Usman Chamadia v. *Abdul and Anr.,* JT (2004) 2 SC 176 and *V.D.*

787

A   *Chaudhary* v. *State of Uttar Pradesh and Anr.,* **(2005) 7 SCALE 68, relied on.**

     2. 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
B   **following factors also before granting bail. They are: the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and *prima facie* satisfaction of the Court in support of the charge. [Para 10] [791-F, G, H; 792-A]**

C   *Ram Govind Upadhyay* v. *Sudarshan Singh and Ors.,* **[2002] 3 SCC 598;** *Puran etc.* v. *Rambilas and Anr. etc.* **[2001] 6 SCC 338;** *Kalyan Chandra Sarkar* v. *Rajesh Ranjan alias Pappu Yadav & Anr.,* **JT (2004) 3 SC 442;** *Chaman Lal* v. *State of U.P. and Anr.,* **JT (2004) 6 SC 540;** *Kamaljit Singh* v. *State of Punjab and Anr.,* **[2005] 7 SCC 326;** *Gajanand Agarwal* v. *State of*
D   *Orissa and Anr.,* **Criminal Appeal Nos. 543-544 of 2007 decided on 12.4.2007 by Supreme Court, relied on.**

     CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1002 of 2007

E   From the Judgment & Order dated 5.10.2006 of the High Court of Rajasthan, Jaipur Bench, Jaipur in S.B. Criminal Misc. Bail Application No. 4381 of 2006

     Sunil Kumar, Jitendra Jha, Shree Prakash Singh, Shekhar Kumar, A.K.Srivasatava and Manoj Prasad for the Appellant.
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     Sushil Kumar, Kumar Kartikay, Aruneshwar Gupta, L.K.Upadhyay, Neeraj Shekhar, N.Hariharan, Rajesh Kumar and Mohan Pandey for the Respondents.

     The Judgment of the Court was delivered

G   **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

     2. Challenge in this appeal is to the order passed by a learned Single Judge of the Rajasthan High Court at Jaipur, granting bail to the respondent no.2. (hereinafter called as the 'accused').

H   3. Background facts in a nutshell are as follows:

On 18.9.2002, appellant lodged report about the killing of his brother by some persons. It surfaced during investigation that the accused and co-accused Nasik Singh had hired two contact killers- Rohitas and Dharmendra for killing the deceased.

Application for bail was filed by the accused before the Additional Chief Judicial Magistrate, Jaipur, who by order dated 6.6.2006 rejected the application. Application for bail filed before the Additional Sessions Judge, Jaipur, was rejected by order dated 12.7.2006. It was, inter alia, noted as follows:

"The Court heard the arguments advanced by both the parties and has gone through the legal provisions. It is correct that the incident is 4 years old and accused has been investigated twice and the final report was given. In my opinion that enquiry was also done treating him as one of the suspects. Late on the evidence which were collected primarily show his involvement in the crime. Dispute relating to the business of property between both the parties, having ill feelings against the deceased because of the same, bringing the co-accused Nasib Singh to the house of the deceased on the day of incident, the recognition of this Nasib Singh by the wife of deceased during TIP, recognition of the accused who shot the deceased by his wife and his brother-in-law and after their arrest their recognition during TIP, bullets found on the place of incident which was of co-accused's pistol, on the information given by the co-accused the recovery of bullets and arms alongwith the car, the same colour of the car which was reported 4 years back, the recovery of items at the instant of accused persons, the recovery of the places where the conspiracy was hatched by the accused persons, long conversation between accused and co-accused Nasib Singh for hours during, before and after the date of the incident (Applicant/Accused and co-accused did not tell about their conversation on the phone before and after the incident in the enquiries), etc. have come up clearly by the enquiries.

Thus the facts and circumstances state that because of the enmity relating to property business the accused planned to murder of the deceased with the co-accused and entered into an illegal contract with the other accused Rohitaas and Dharmendra to kill the deceased. They murdered the deceased and for this work only the accused took the co-accused Nasib Singh to the deceased's house to make him

A   familiar with the person supposed to be killed by them. The accused and the co-accused had a long conversation before and after the incident and this fact was not revealed by them in the earlier enquiries which clearly show the involvement of accused in the crime."

4. The High Court was moved for grant of bail. Learned Single Judge
B by the impugned order granted bail which is being questioned by the informant. It is submitted that two courts on analyzing the material on record rejected the prayer for bail. The High Court without indicating any reason has granted the bail. No reason has been indicated as to why the bail was granted notwithstanding the well-reasoned orders of learned Additional Chief Judicial Magistrate, Jaipur, and Additional Sessions Judge, Jaipur.
C

5. In response, learned counsel for the accused submitted that initially final report was submitted but subsequently, a fresh look was taken after taking permission from Court. The accused persons were in custody for more than seven months. On considering all relevant aspects learned Single Judge
D has accepted the prayer for bail.

6. The relevant portion of the High Court's order reads as follows:

"It is not desirable to discuss the evidence available on record at this stage. However, taking into consideration all the facts and
E circumstances of the case and without expressing any opinion on the merits of the case I deem it just and proper to release the accused applicant on bail under Section 439 Cr.P.C. 1 cite [2005] 2 SCC 13 in support."

7. At this juncture, it would be appropriate to take note of a decision
F of this Court in *Omar Usman Chamadia* v. *Abdul and Anr.* JT (2004) 2 SC 176. In para 10, it was observed as follows:

"However, before concluding, we must advert to another aspect of this case which has caused some concern to us. In the recent past, we had several occasions to notice that the High Courts by recording
G the concessions shown by the counsel in the criminal proceedings refrain from assigning any reason even in orders by which it reverses the orders of the lower courts. In our opinion, this is not proper if such orders are appealable, be it on the ground of concession shown by learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before
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the lower courts. The High Court should not, unless for very good A reasons desist from indicating the grounds on which their orders are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower court's order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the B lower courts. It may be convenient for the said court to pass orders without indicating the grounds or basis but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. *The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but* C *must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order.* The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. This Court in a somewhat similar situation has deprecated the practice of non-speaking orders in the case of *State of Punjab and Ors.* v. *Jagdev Singh Talwandi,* AIR (1984) SC 444)". D

(underlined for emphasis)

8. These aspects were recently highlighted in *V.D. Chaudhary* v. *State of Uttar Pradesh and Anr.,* (2005) 7 SCALE 68.

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9. Even on a cursory perusal the High Court's order shows complete non-application of mind. Through 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 F court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

10. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was G 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;   H

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.

11. Any order dehors of such reasons suffers from non-application of

B   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.

12. The above position was highlighted by this Court in *Chaman Lal*

C   v. *State of U.P. and Anr.,* JT (2004) 6 SC 540, and in *Kamaljit Singh* v. *State of Punjab and Anr.,* [2005] 7 SCC 326, and Crl. Appeal No. 543 of 2007 (Arising out of SLP (Crl.) No.49 of 2007) *Gajanand Agarwal* v. *State of Orissa and Anr.*)

13. In view of the settled position in law, the inevitable conclusion is

D   that the impugned order of the High Court is indefensible and the same is set aside. The matter is remitted to the High Court for fresh consideration of the bail application.

14. Needless to say the respondent No.2 shall forthwith surrender to

E   custody because of cancellation of his bail. The bail application can be considered after only he surrenders to custody.

15. The appeal is disposed of accordingly.

D.G.   Appeal disposed of.