

PREM GIRI

A

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 2188 of 2017)

B

DECEMBER 14, 2017

[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Criminal Procedure, 1973:

C

s.438 – Anticipatory bail – Rejection of, by High Court – On appeal, held: High Court failed to assign any reason for rejecting the bail – Thus, did not apply its judicial mind and passed the order in a causal and cavalier manner – Matter remitted to High Court to decide the application afresh in accordance with law – Bail.

D

Allowing the appeal and remitting the matter to High Court, the Court

HELD: 1. High Court failed to assign any reason for rejecting the bail application of the appellant. The general observations that “Looking to the overall facts and circumstances of the case, it is not considered proper to grant bail to the Petitioner” can never be the reasoning much less judicial reasoning required for rejection of the bail petition whether it is filed under Section 438 or Section 439 of Cr.P.C. The High Court did not apply its judicial mind and passed the impugned order in a very casual and cavalier manner. It will be just and proper to remand the case to the High Court for deciding the bail application afresh on its merits and in accordance with law. [Paras 7, 8, 9 and 12] [489-C-E; 490-G]

E

F

Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr. (2004) 7 SCC 528 – relied on.

G

Case Law Reference

(2004) 7 SCC 528

relied on

Para 9

H

A **CRIMINAL APPELLATE JURISDICTION** : Criminal Appeal No.2188 of 2017.

From the Judgment and Order dated 22.11.2017 of the High Court of Judicature for Rajasthan at Jodhpur in S.B Criminal Miscellaneous Bail No.9471/2017.

B Puneet Jain, Ms.Christi Jain, Ms. Ankita Gupta, Priyal Jain, Abhinav Gupta, Ms.Pratibha Jain, Advs. for the Appellant.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

C 2. This appeal is filed against the final judgment and order dated 22.11.2017 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. Bail No.9471 of 2017 whereby the Single Judge of the High Court dismissed the bail application filed under Section 438 of the Code of Criminal Procedure, 1973(hereinafter referred to as “the Code”) by the appellant herein.

D 3. Facts of the case lie in a narrow compass. They, however, need mention infra to appreciate the short issue involved in the case.

E 4. The appellant apprehending his arrest in connection with commission of the offences punishable under Sections 143, 341, 323, 308, 332 and 353 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) pursuant to FIR No. 332/2017 registered at Police Station Jaitaran, Dist. Pali, filed an application for grant of anticipatory bail under Section 438 of the Code before the High Court of Rajasthan. The Single Judge of the High Court dismissed the application by impugned order, which has given rise to filing of this appeal by way of special leave in this Court by the applicant.

F 5. The impugned order reads as under:

G **“This bail application has been filed under Section 438 CrPC in connection with FIR No.332/2017 registered at Police Station Jaitaran, Dist. Pali for the offences under Sections 143, 341, 323, 308, 332 & 353 IPC.**

H **Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the State as also learned counsel for the complainant and carefully perused the relevant material made available on record.**

Looking to the overall facts and circumstances of the case, but without expressing any opinion on the merits and demerits of the case, I do not deem it just and proper to enlarge the petitioner(s) on bail. A

Therefore, this bail application is rejected.”

6. We have heard learned counsel for the appellant and perused the record of the case. In our view, keeping in view the order, which we are passing, it is not necessary to issue notice to the State much less to hear the State in this appeal. B

7. Mere perusal of the impugned order quoted supra would go to show that the Single Judge failed to assign any reason for rejecting the bail application of the appellant. C

8. The general observations that “Looking to the overall facts and circumstances of the case, it is not considered proper to grant bail to the Petitioner” can never be the reasoning much less judicial reasoning required for rejection of the bail petition whether it is filed under Section 438 or Section 439 of the Code. D

9. We are constrained to observe that the learned Single Judge did not apply its judicial mind and passed the impugned order in a very casual and cavalier manner. This Court cannot countenance such casual approach of the High Court while deciding the application for bail. E

10. Time and again, this Court has emphasized the need for assigning reasons while considering the grant or reject of the bail. It is apt to reproduce what this Court has held in Paras 11 and 12 of the decision in **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.** (2004) 7 SCC 528 on this issue. F

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from G

H

A non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

B (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Puran v. Rambilas*, (2001) 6 SCC 338)

C 12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted. (See *Ram Govind Upadhyay*)”

E 11. In our considered opinion, the Single Judge failed to take note of the law laid down by this Court quoted supra and thus erred in passing the impugned order. He also neither set out the facts of the case nor mentioned the submissions of the learned counsel appearing for both the parties and nor his reasoning as to why he does not consider it proper to grant anticipatory bail to the appellant. This was the least, which was expected of from the Single Judge to keep in mind, while passing the order.

F 12. In such a situation arising in this case, we instead of considering the case of the appellant on its merits in this appeal consider just and proper to remand the case to the High Court for deciding the bail application afresh on its merits and in accordance with law.

G 13. We, however, make it clear that we have not gone into the merits of the case of the appellant having formed an opinion to remand the case to the High Court for deciding the bail application afresh on merits and, therefore, the High Court would decide the bail application un-influenced by any of our observations on merits except to take into

H

PREM GIRI v. STATE OF RAJASTHAN
[ABHAY MANOHAR SAPRE, J.]

491

account what we have said about the manner in which the bail application is required to be decided. A

14. In view of foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside and the case is remanded to the High Court for deciding the bail application of the appellant afresh on its merits. B

Kalpana K. Tripathy

Appeal allowed.