

KUMARI SUMAN PANDEY
v.
STATE OF UTTAR PRADESH AND ANR.

FEBRUARY 14, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Code of Criminal Procedure, 1973; ss. 164, 438 and 439:

Murder—Grant of bail—Requirements of—Held: Exhaustive exploration of merits of the case not necessary yet the Court should be satisfied as to whether there is a prima facie case made out to exercise its discretion of granting bail in a judicious manner—Reasons for granting bail need to be indicated in the order, order dehors of such reasons suffers from non-application of mind—Reasoning as indicated by High Court while granting bail totally fallacious—Evidence of the eye witness was of vital importance—Her evidence could not be recorded as she was pursuing her studies abroad and would have been available for recording her evidence during summer vacation only, which has been lost sight of by the High Court—Under the circumstances, order of the High Court granting bail to accused not sustainable.

Appellant's brother, the deceased, was pursuing his studies in a Medical College. Respondent No.2 allegedly committed his murder. In the First Information Report lodged by the appellant, respondent No.2 was indicated as sole accused and one 'P' was stated to be one of the eye witnesses. Her statement was recorded in terms of s.164 of the Code of Criminal procedure, 1973. Police filed charge-sheet and cognizance was taken by the Magistrate. In the meantime, accused filed a bail application, which was rejected by the High Court. Second bail application also rejected by the High Court reiterating its earlier view that the application for bail can be considered after the evidence of the eye witness 'P' who was studying abroad is recorded or if she failed to appear for the purpose of recording her evidence. A certificate was issued by the Ministry of Health, Ukraine that the summer vacation of the said 'P', the eye witness was between 3.7.2006 and 31.8.2006. This certificate was filed before the trial court. In the meantime, respondent No.2 filed the third bail application in which High Court has granted the bail. Hence the

A present appeal.

Appellant contended that the grant of bail was unwarranted and in any event respondent No.2 has misused the liberty of bail; and that although notices on respondent No.1-State and respondent No.2-accused had been served but none has appeared to represent them when the matter was taken up.

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Allowing the appeal, the Court

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HELD:1.1. Even on a cursory perusal 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. [Para 10 [582-D]

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Omar Usman Chamadia v. Abdul and Anr., JT (2004) 2 SC 176 and *V.D. Chaudhary v. State of Uttar Pradesh and Anr.*, (2005) 7 SCALE 68, relied on.

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1.2. 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 following factors also before granting bail:

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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.

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Any order dehors of such reasons suffers from non-application of mind. [Paras 11 and 12] [582-E, F, G]

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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 Orissa & Ors.*, JT (2006) 12 SC 55 and *Anwari Begum v. Sher Mohammad and Anr.*, [2005] 7 SCC 326, relied on. A

1.3. High Court noted that inspite of adjournments the witness did not appear; the fact that the witness was not appearing though her dates of appearance have been fixed entitled the appellant to be released on bail. The reasoning of the High Court is totally fallacious. [Para 13] [583-B, C] B

1.4. It is evident from the material on record that the trial court was informed of the fact that the witness was pursuing her studies abroad and would be available to appear as witness during summer vacation. The fact that the trial court adjourned the matter for a few dates notwithstanding this intimation cannot be a factor to release the accused who chose not to appear and made a prayer for exemption on the ground that he was in custody in some other case. The details of these cases were not furnished to the Court though ample opportunity was granted. The appellant is, therefore, justified in her grievances that there has been misuse of the liberty. The evidence of the witness was of vital importance to the case, but she had to go back to pursue her studies. Therefore, her evidence was not recorded. This is a factor which has been lost sight of. High Court instead has unnecessarily emphasized on the number of adjournments which has no relevance. Hence, the order of bail passed by the High Court is not sustainable. [Para 13] [583-C, D, E] C D E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 204 of 2007.

From the Judgment/final Order dated 22.5.2006 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in CrI. Misc. Case No. 2233 (B) of 2006. F

B.K. Satija for the Appellant.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court, Lucknow Bench granting bail to the respondent No.2-Jitendra Pratap Singh (hereinafter referred to as the 'Accused').

3. A brief reference to the factual aspect would be necessary. On H

A 14.5.2003 First Information Report (in short the 'FIR') was lodged by the appellant alleging murder of her younger brother-Ravish Kumar Pandey (hereinafter referred to as the 'Deceased'). At the relevant point of time the deceased was pursuing his studies in Era Medical College. In the FIR name of respondent No.2 was indicated to be the sole accused. One of the eye witnesses was stated to be one Priyanka Tiwari. She appeared before the concerned Magistrate and her statement was recorded in terms of Section 164 of the Code of Criminal Procedure, 1973 (in short the 'Code'). In the statement she specifically stated that murder of the deceased was committed by respondent No.2 in her presence. Charge sheet was filed on 19.11.2004. Cognizance was taken by the concerned Magistrate. Thereafter, the investigation was transferred to C.B.C.I.D. The order of the State Government was challenged by the appellant by filing a writ petition No.5874(M/B) of 2004 before the High Court. By order dated 13.1.2005 the writ petition was allowed and the order transferring investigation to CBCID was quashed by the High Court. Application for bail was filed by respondent No.2 before the High Court which was numbered as Criminal Misc. Case No.869 (B) of 2005. The said bail application was rejected by order dated 15.3.2005 with the observation that if any fresh bail application is filed, the same shall be considered after the statements of the appellant and aforesaid Priyanka Tiwari are recorded by the trial court in the trial proceedings. On 20.6.2005 appellant's evidence was recorded and she categorically stated that in her presence murder was committed. On 25.8.2005 Priyanka Tiwari who was claimed to an eye-witness was also examined and her evidence was recorded by the trial court. The cross-examination was concluded on 5.9.2005. In January, 2006 the respondent No. 2 filed the second bail application before the High Court which was numbered as Criminal Misc. Case No. 6282 (B) of 2005. The said bail application was rejected reiterating the earlier view that the application for bail can be considered after the evidence of Priyanka Tiwari as recorded or if she failed to appear for the purpose of recording her evidence. A certificate was issued by the Ministry of Health, Ukrain that the summer vacation of Priyanka Tiwari was between 3.7.2006 and 31.8.2006. This certificate was filed before the trial court. In May, 2006 respondent No.2 filed the third bail application which was number as Criminal Misc. Case No.2233(B) of 2006. The High Court by its impugned order dated 22.5.2006 has granted the bail.

4. According to the appellant after commencement of summer vacation when Priyanka Tiwari came to India she knew about the court's proceeding and appeared on 28.7.2006. But on the said date the respondent No. 2 was not represented. Therefore, the court issued Non-Bailable Warrant (in short

'NBW') and the matter was adjourned to 10.8.2006.

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5. On 10.8.2006 when the matter was taken up, learned counsel appearing for respondent No.2 submitted before the Court that respondent No.2 had been arrested in some other case and his absence may be exempted. The trial Court rejected the application and adjourned the matter to 21.8.2006.

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6. On 21.8.2006 the respondent No.2 again was not present. The court had on the earlier occasion directed the learned counsel appearing for respondent No.2 to indicate the details of the case where he was purportedly arrested but those details were not filed and the matter was further adjourned to 21.9.2006. On 21.9.2006 also respondent No.2 did not appear.

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7. In view of the aforesaid scenario it is stated by learned counsel for the appellant that the grant of bail was unwarranted and in any event the respondent no.2 has misused the liberty of bail. Although notices on respondent No.1-State and respondent No.2-accused had been served but none has appeared to represent them when the matter was taken up.

D.

8. At this juncture, it would be appropriate to take note of a decision 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 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 the lower courts. The High Court should not, unless for very good 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 lower courts. It may be convenient for the said court to pass orders without indicating the grounds or basis but it certainly is not

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A 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 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".

9. The view was reiterated in *V.D. Chaudhary v. State of Uttar Pradesh and Anr.*, (2005) 7 SCALE 68.

10. Even on a cursory perusal 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.

11. 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.

12. 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, *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 Orissa & Ors., JT (2006) 12 SC 55 and *Anwari Begum v. Sher Mohammad and Anr.*, [2005] 7 SCC 326. A

13. The High Court noted that the first application was rejected as the witnesses was apprehending danger to their lives and the trial was going to commence and therefore, it was not proper to release the applicant on bail. Second application was moved when there was no significant progress and Priyanka Tiwari was not examined. The High Court noted that in spite of adjournments Priyanka Tiwari did not appear. According to the High Court the fact that Priyanka Tiwari was not appearing though her dates of appearance have been fixed entitled the appellant to be released on bail. The reasoning of the High Court is totally fallacious. It is evident from the material on record that the trial court was informed of the fact that Priyanka Tiwari was pursuing her studies abroad and would be available to appear as witness during summer vacation. The fact that the trial court adjourned the matter for a few dates notwithstanding this intimation cannot be a factor to release the respondent No.2 who chose not to appear and made a prayer for exemption on the ground that he was in custody in some other case. The details of these cases were not furnished to the Court though ample opportunity was granted. The appellant is, therefore, justified in her grievances that there has been misuse of the liberty and that the respondent No. 2 has unnecessarily prolonged the trial. The evidence of Priyanka Tiwari was of vital importance to the case, but she had to go back to pursue her studies. Therefore, her evidence was not recorded. This is a factor which has been lost sight of. High Court instead has unnecessarily emphasized on the number of adjournments which, as noted above, has no relevance. The order of bail passed by the High Court is not sustainable and is accordingly set aside. B C D E

14. The appeal is allowed. F

S.K.S.

Appeal allowed.