

SATISH JAGGI
v.
STATE OF CHATTISGARH & ORS.

APRIL 30, 2007

[H.K. SEMA AND LOKESHWAR SINGH PANTA, JJ.]

Bail:

Granting of bail—Consideration for—Held, primary consideration is gravity and nature of offence—Court can only go into question of Prima facie case established for granting bail—It cannot go into the question of credibility and reliability of witnesses put up by prosecution—In instant case, the High Court, while granting bail to the accused charged of murdering a rival political leader while campaigning in the election, in the election, did not at all consider the nature and gravity of the offence and its impact on the democratic fabric of the society—The observations and findings recorded by High Court on credibility and evidentiary value of witnesses virtually amounts to regular trial—Such findings cannot be allowed to sustain—Order granting bail set aside.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 651 of 2007.

From the Final Judgment and Order dated 03.05.2006 of the High of Judicature of Chattisgarh at Bilaspur in Misc. Criminal Case No. 850 of 2006.

A.K. Ganguly, C.D. Singh, Merusagar Samantaray and Vairagya Vardhan for the Appellant.

Rajiv Dutta and Vivek Tankha, Atul Jha, Dharmendra Kumar Sinha, Rahul Sharma, Siddharth Gupta and P.N. Puri for the Respondents.

Amarendra Sharan, ASG., Amit Anand Tiwari and P. Parmeswaran for the CBI.

The Order of the Court was delivered by

A O R D E R

Leave granted.

Respondent No.3 is an accused under Section 302/120B IPC. His bail application was rejected by the trial Court. The same was confirmed by the
B High Court. Criminal Appeal No. 1630/2005 filed by him was also rejected by this Court by an order dated 05/12/2005.

It appears that his subsequent application for bail filed before the trial Court was also unsuccessful. Aggrieved thereby, he filed Misc. Criminal Case No.850/2006 before the Hon'ble S.R. Nayak, Chief Justice of Chhattisgarh
C High Court at Bilaspur (as His Lordship then was). By an impugned order dated 03/05/2006, the Chief Justice of the High Court granted bail to the respondent-accused on his executing a bond in a sum of Rupees One Lakh with two sureties of like amount to the satisfaction of the trial Court.

For the purpose of disposal of this case, it may not be necessary to
D recite the entire facts leading to the filing of this appeal. Suffice it to say that as many as 27 material prosecution witnesses have now turned hostile.

It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence.
E In the present case the respondent No.3 is accused of murdering a rival political leader while campaigning in the election.

It appears that learned Chief Justice did not consider the nature and the gravity of the offence while considering the bail application of the accused. On the contrary, while considering for bail, the learned Chief Justice appears
F to have decided the case pending trial on merit after scrutinising the evidence. To say the least, it is against all canons of law and judicial propriety.

In paragraph 19 of its order, the learned Chief Justice recorded that among the witnesses examined on behalf of the prosecution to prove the charge of criminal conspiracy against the accused, PW-97 and PW-100 have
G categorically denied that they were present in the meeting alleged to have held on 21/05/2003 at the Hotel Green Park. He has also observed that PW-126 has stated that he was not at all in Raipur on 21/05/2003. He says that only isolated evidence in support of the charge is that of PW-85 but it was suggested that his testimony is unreliable not only in view of the evidence
H of PW-73 but also for the reason that PW-85 has a motive to falsely involve

the accused in the commission of the offence.

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Learned Chief Justice has further noted in paragraph 20 that the evidence so far adduced by the prosecution does not appear to prove the case of the prosecution that Ram Avtar Jaggi was murdered by Chiman Singh in pursuance of a conspiracy hatched in the meeting held on 21/05/2003 at the Hotel Green Park, Raipur. He further goes on to state that the two eye-witnesses, namely, Abdul Jameel Khan and Banke Bihari, who were examined to prove the above charge have turned hostile in Court. He further observed that the conspiracy theory propounded by the prosecution against the accused stands shattered.

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In paragraph 21 of the judgment, he further observed that from the quality of the evidence so far adduced by the prosecution to prove the charge of criminal conspiracy in the murder of Ram Avtar Jaggi by Chiman Singh in pursuance of that criminal conspiracy, it cannot be said that there is a *prima facie* evidence against the applicant-accused to prove his involvement in the alleged crime.

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In paragraph 24 of his judgment, the learned Chief Justice observed that only evidence of PW-85 regarding criminal conspiracy attributed to the accused is suspicious and tenuous and the same stands contradicted by the evidence of the witnesses PW-126 and PW-73. He further observed that there is no corroboration to the testimony of PW-85.

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On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr. A.K. Ganguly, learned senior counsel appearing on behalf of the appellant-complainant, Mr. Amarendra Sharan, learned ASG appearing on behalf of the CBI and Mr. Rajiv Datta, learned senior counsel appearing on behalf of the State of Chhattisgarh strenuously contended that having regard to the observations and findings of the learned Chief Justice as recorded above, it clearly shows that the learned Chief Justice while granting bail to the accused virtually decided the case on merit which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr. Vivek Tankha, learned senior counsel contended that now evidence is closed so there is no question of accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case have finally started and the arguments of the prosecution are over and only the defence is to give its reply. He, accordingly, contended that the bail granted by the learned Chief Justice need not be disturbed.

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Normally in the offence of non-bailable also, bail can be granted if the

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- A facts and circumstances so demand. We have already observed that in granting bail in non-bailable offence, the primary consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of the society was not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress and if such findings are allowed to stand it would seriously prejudice the prosecution case. At the stage of granting of bail, the Court can only go into the question of the *prima facie* case established for granting bail. It cannot go into the question of credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial.

D In the present case, the findings recorded by the learned Chief Justice, as referred to above, virtually amounts to the regular trial pointing out the deficiency and reliability/credibility of prosecution evidence. Such findings recorded at the stage of consideration of bail, in our view, cannot be allowed to sustain.

E For the reasons aforesaid, the order of the learned Chief Justice granting the bail is not sustainable in law. It is, accordingly, set aside. The bail bonds and sureties of the respondent No.3 stand cancelled. He is directed to be taken back to the custody forthwith.

F The appeal is disposed of in the above terms.

We clarify that we are not making any observations on the merit of the case or on the credibility of the prosecution witnesses.

R.P.

Appeal disposed of.