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SUDHA VERMA
v.
STATE OF U.P. AND ANR.

AUGUST 24, 2007

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[DR. ARIJIT PASAYAT AND ALTAMAS KABIR, JJ.]

Code of Criminal Procedure, 1973:

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s.439—Bail—Allegation of cold blooded murder of elder brother by the accused—High Court granting not only bail but also opining that case fell under s.304 (Part-II) IPC as there was sudden quarrel and no motive to kill—Justification of—Held: Not justified—While dealing with bail application, Court should only indicate whether there was a prima facie case in view of settled principles about nature of crime and manner of commission of offence—Matter remitted to High Court to consider bail application afresh.

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s.439—Bail—Grant of—Determining factors—Stated.

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Prosecution case was that some time prior to the incident, there was tension in the family on the issue of partition amongst deceased, his father and the two brothers i.e. respondent no.2 and accused. Appellant was wife of deceased. On the fateful day, father of respondent No.2 told brother of appellant about the tense situation and asked him to immediately come. The two brothers of appellant rushed to the place.

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The father and the two sons i.e. respondent No.2 and the accused were sitting in a room inside the house and talking about the partition and distribution of property. Suddenly, the father became extremely excited and took out his licensed revolver and became offensive towards the deceased. Immediately, respondent No.2 picked up the licensed gun which was lying in a corner of the room, loaded the same and fired a shot at the deceased who sustained grievous injuries on his vital organs.

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He was rushed to hospital. On the way, he succumbed to injuries. The FIR was lodged against deceased's father and respondent No.2 by appellants' brothers. The two accused absconded for more than 2 months before their surrender. The co-accused was granted bail by Sessions Judge. Thereafter,

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respondent No.2 and other criminals tried to compel the appellant to enter into a compromise. An FIR in this regard was lodged by the appellant with the police authorities. Thereafter respondent No.2 filed bail application before the High Court. The High Court not only granted bail but recorded a finding that the case fell within the ambit of s.304 Part II IPC.

Appellant was aggrieved with the grant of bail and filed the present appeal. According to appellant, even after release on bail, respondent No.2 and his father wanted to get the case finished and for this they assaulted the appellant physically and an FIR was lodged by brother of the appellant in this context.

Partly allowing the appeal and remitting the matter to High Court to consider bail application afresh, the Court

HELD: 1. 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 which 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; *Prima facie* satisfaction of the Court in support of the charge.

[Para 12] [319-B, C, D]

Gajanand Agarwal v. State of Orissa and Anr., (2007) 5 SCALE 639; *Omar Usman Chamadia v. Abdul and Anr.*, JT (2004) 2 SC 176; *V.D. Chaudhury v. State of Uttar Pradesh and Anr.*, (2005) 7 SCALE 68; *Imran Ali v. Habibullah and Anr.*, (2007) 4 SCALE 610 and *State of U.P. Through CBI v. Amarmani Tripathi*, [2005] 8 SCC 21, relied on.

2. The High Court has not indicated as to what is the relevance of grant of bail to co-accused ignoring that the respondent No.2 was the alleged assailant who fired the gun and killed the deceased. Strangely the conclusions, that there was no motive or there was a sudden quarrel appear to have been arrived at without any discussion and/or without reference to any particular material. Bail granted to respondent No.2 by the High Court is cancelled.

[Para 15] [320-G; 321-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1122 of 2007.

A From the final Judgment and Order dated 21.11.2005 of the High Court of Judicature at Allahabad in Criminal Misc Bail Application No. 21470 of 2005.

B K.T.S. Tulsi, Raj Kamal. Rajat Pahwa, Sahdev Singh and Pramod Dayal for the Appellant.

H.L. Agrawal, Ankur Mittal, Vikrant Yadav, Shahid Ali Rao, Musharraf Chawdhry, S.M. Rao, Javed Mahmud Rao, Anoop Kr. Srivastava, R.N. Upadhyay and Rameshwar Prasad Goyal for the Respondents.

C The Judgment of the Court was delivered by

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

D 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court granting bail to respondent No.2-Dinesh Kumar. Bail was granted primarily on the ground that the co-accused has been released on the bail and at the most the case is one under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') and not Section 302 IPC.

E 3. Learned counsel for the appellant submitted that the accused-respondent No.2 was involved in daylight cold blooded murder of his elder brother (husband of the appellant herein) by the licensed gun of his father in the presence of all family members and the relatives. Appellant was married to the deceased Rajesh Kumar in February, 1990 and they were blessed with three children. Some times prior to the incident, there was tension in the family on the issue of partition amongst deceased, his father and the two sons. On F 16.5.2005 Rajjan Lal Verma, father of the respondent No.2 talked to Ved Prakash i.e. the brother of the appellant and told him about the extremely tense situation and told him to immediately come to Pukhrayan. Ved Prakash and Prem Prakash, brothers of the appellant reached Pukhrayan on 17.5.2005. The father and the two sons i.e. respondent No.2 and the accused were sitting G in a room inside the house and talks for partition and distribution of property was going on. At about 3.30 p.m. the father became extremely excited and took out his licensed revolver and became offensive towards the deceased. Immediately, respondent No.2 picked up the licensed gun which was lying in a corner of the room, loaded the same and fired a shot at his elder brother-Rajesh Kumar, the deceased who sustained grievous fire-arm injuries on his H

vital organs. Injured Rajesh Kumar was shifted to a nearby hospital. He was referred to Kanpur Hospital. Before reaching the said hospital, he breathed his last. A

4. The First Information Report (in short the 'FIR') was lodged against the deceased's father and the respondent No.2 by Ved Prakash and Prem Prakash. Deceased's father and respondent No.2 absconded for more than two months and ultimately surrendered on 23.7.2005 before learned Chief Judicial Magistrate, Kanpur. Charge sheet has already been filed on 2.8.2005 indicating commission of offence punishable under Section 302 IPC. The co-accused was granted bail by learned Sessions Judge on 6.8.2005. Thereafter, Dinesh Kumar and other criminals tried to compel the appellant to enter into a compromise. An FIR in this regard was lodged by the appellant with the police authorities and a case has been registered for offences punishable under Sections 147, 452, 323, 504, 506 and 307 IPC. Sessions Judge, Kanpur rejected the bail application of the respondent No.2 on 7.9.2005. Case was committed to the Court of Sessions and the matter is pending trial in Sessions Trial no.326 of 2005. B C D

5. On 21.11.2005, respondent No.2 filed bail application. The High Court not only granted bail but recorded a finding that the case falls within the ambit of Section 304 Part II IPC. It is submitted that even after release on bail, the respondent No.2 and his father want to get the case finished and for this they assaulted the appellant physically. An FIR was lodged by Ved Prakash-brother of the appellant in this context on 21.3.2006. E

6. In support of the appeal, Mr. K.T.S. Tulsi, learned Senior counsel submitted that the order passed by the High Court is clearly unsustainable. FIR clearly indicates the factual scenario and the continued tension in the family over distribution of property. The High Court ought not to have equated the case of father of the deceased with that of the respondent No.2 who had in a diabolical manner killed an innocent person. There was no question of any sudden quarrel. The High Court has come to an abrupt conclusion about sudden quarrel and the absence of motive. It has also been held that there was only about a single shot fired. All these aspects could not have been considered while considering the bail application. Further the conduct of the respondent No.2 clearly shows that he has misused the liberties by threatening the appellant and her brothers. F G

7. Learned Counsel for the State supported the stand of the appellant. H

A 8. However, learned counsel for the respondent No.2 submitted that the High Court has rightly granted bail to respondent No.2. It is not a case which is covered by Section 302 IPC and the conclusions of the High Court are tentative and they are not likely to have any effect on the trial.

B 9. The parameters to be kept in view by Court while dealing with bail applications has been highlighted by this Court in *Gajanand Agarwal v. State of Orissa and Anr.* (2007) 5 SCALE 639.

C 10. 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:

D “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 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*

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of Punjab and Ors. v. Jagdev Singh Talwandi, AIR (1984) SC 444". A

(underlined for emphasis)

11. The view was re-iterated in *V.D. Chaudhury v. State of Uttar Pradesh and Anr.*, (2005) 7 SCALE 68.

12. 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: B

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; C
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. D

13. In *Imran Ali v. Habibullah and Anr.*, (2007) 4 SCALE 610 it has been held as follows:

"It is no doubt true that the High Court felt persuaded to grant bail to the respondents in the pending appeal before it. The High Court however, went on to record a very detailed reasoned order virtually holding that the prosecution case has no merit. Such observations either for or against the prosecution, made in orders disposing of bail applications may prejudicially affect the interests of the parties because in case a trial is pending before the Sessions Court, the trial Judge may consider itself bound by the observations made in such an order. In any event, such observations are bound to influence its mind. It is no doubt true that in appropriate cases particularly in serious matters, the High Court may record reasons, but the High Court while recording reasons must take care to safeguard against prejudicing the case of the parties. The recording of reasons, wherever necessary, is only to indicate the considerations that may have weighed with the Court in passing the order and the Court must do so in a manner that may not prejudice the case of the parties. The trend recently noticed, to virtually write a judgment while disposing of an application for grant of bail must be discouraged." E F G

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A 14. The effect of the alleged subsequent threats have also been considered in *State of U.P. Through CBI v. Amarmani Tripathi*, [2005] 8 SCC 21. It was inter-alia observed as follows:-

B “The evidence collected above discloses that there were repeated attempts by the accused Amarmani to interfere, and side track the investigation and threaten the witnesses to come out with a story that will deflect the suspicion from him and his wife to Anuj Mishra or others. It is also not in dispute that Amarmani was on bail in a kidnapping case, when he indulged in these activities in May, 2003. These materials were placed by the prosecution before the High Court to establish a reasonable apprehension of tampering. The learned C Single Judge has, however, completely ignored these materials relating to tampering with evidence/witnesses. This necessitates interference with the order of the High Court.

D Shri Subramaniam, learned ASG next referred to the threats to witnesses held out by Amarmani after his release on bail. Reliance is placed on the four complaints received by the crucial prosecution witnesses. Nidhi Shukla, sister of the deceased by letter dated 10.9.2004, and Shanti Kumari, mother of the deceased by an undated letter, have made separate complaints to the CBI in regard to efforts made by Amarmani to induce them to accept money through one NK Mishra to settle the matter and that when they refused, he threatened them. E Another witness Najib Khan (a family friend of the deceased) has also sent a complaint dated 22.9.2004, stating that on that day two persons knocked on his door, hurled abuses at him and told him that the CBI officers were far away and once the cases were closed, no one will F protect him and he will be killed. Lastly, one Birjesh Pathak, Member of Parliament has also sent a complaint dated 16.9.2004 to the CBI alleging that an attempt on his life was made on 7.9.2004 which, according to him, was at the instance of Amarmani. The said allegations are denied in the counter-affidavit filed on behalf of Amarmani by his G brother/Pairokar. It is contended that these complaints must have been sent at the instance of the CBI itself. In so far as Brijesh Pathak is concerned, it is also alleged that he is a close confidant of Amarmani's political rival. However, in the view we have taken, it is unnecessary to examine this aspect.”

H 15. The High Court has not indicated as to what is the relevance of grant of bail to co-accused ignoring that the respondent No.2 was the alleged

assailant who fired the gun and killed the deceased. Strangely the conclusions, A
that there was no motive or there was a sudden quarrel appear to have been
arrived at without any discussion and/or without reference to any particular
material. The impugned order is unsustainable and is set aside. The matter is
remitted to the High Court to consider the bail application afresh keeping in
view the principles of law delineated above. Bail granted to respondent No.2
by the High Court is cancelled. He shall forthwith surrender to custody and B
thereafter only, his bail application can be considered.

16. Appeal is allowed to the aforesaid extent.

D.G.

Appeal partly allowed.