

STATE OF MAHARASHTRA ETC.
v.
DHANENDRA SHRIRAM BHURLE ETC.
(Criminal Appeal No. 269-270 of 2009)

FEBRUARY 11, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

Code of Criminal Procedure, 1973 – s. 438 – Bail – Grant of – Factors to be considered – Explained – On facts, accused charged under Unlawful Activities (Prevention) Act, Arms Act and Penal Code – Grant of bail by High Court holding that accusations as regard charged offences not made out – Justification of – Held: Not justified – High Court did not keep in view the relevant parameters while granting bail – Thus, order of High Court set aside – Unlawful Activities (Prevention) Act, 1967 – ss 10, 13, 18 & 20 – Arms Act, 1959 – ss. 3 & 4 – Penal Code, 1860 – s. 353 r/w ss. 34 & 120 B.

The question which arose for consideration in these appeals was whether the High Court was justified in granting bail to the accused facing trial for the commission of offences punishable u/ss. 10, 13, 18 and 29 of the Unlawful Activities (Prevention) Act, 1967; ss. 3 and 4 of the Arms Act 1959; and s. 353 r/w ss. 34 and 120 B IPC by an abrupt conclusion that no offence was made out as regard the charged offences.

Allowing the appeals, the Court

HELD: 1.1 While dealing with an application for bail, 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

A with application for bail to consider among other
circumstances, the following factors also before granting
bail: The nature of accusations and the severity of
punishment in case of conviction and the nature of
supporting evidence; reasonable apprehension of
B tampering of the witness or apprehension of threat to the
complainant; and prima facie satisfaction of the Court in
support of the charge. Any order *de hors* such reasons
suffers from non-application of mind. [Para 8 and 9] [147-
B-F]

C 1.2. Though a conclusive finding in regard to the
aforesaid points is not expected of the Court considering
the bail application, yet giving reasons is different from
discussing merits or demerits. At the stage of granting
bail a detailed examination of evidence and elaborate
D documentation of the merits of the case has not to be
undertaken. But that does not mean that while granting
bail some reasons for prima facie concluding why bail
was being granted is not required to be indicated. [Para
10] [147-G-H; 148-A]

E *Ram Govind Upadhyay v. Sudarshan Singh and Ors.*
(2002) 3 SCC 598, *Puran etc. v. Rambilas and Anr. Etc.*
(2001) 6 SCC 338 and *Kalyan Chandra Sarkar v. Rajesh*
Ranjan alias Pappu Yadav & Anr. JT 2004 (3) SC 442, relied
F on.

Lokesh Singh v. State of U.P. and Anr. SLP(Crl.) No.
2861 of 2007 disposed of by Supreme Court on 21.11.08,
referred to.

G 2. High Court found that on reading of the charge
sheet, nothing is disclosed as to what are the imputations
of acts done by these applicants under ss 10, 13, 18 and
20 of the Unlawful Activities (Prevention) Act, 1967 and
other offences. None of the ingredients of those Sections
H are described as committed by these persons. All that is

asserted is that except that these accused had a meeting with accused Nos.1 and 2 and an inference that they are associated with the accused Nos.1 and 2. There are no other imputations. By order dated 19.9.2008 a Bench of this court has directed stay of the impugned order. It is stated that the accused persons were sent to custody in view of the order and are presently in custody. Since the High Court did not keep the relevant parameters in view, while granting bail, the impugned order is set aside. [Para 6, 7 and 15] [146-G; 147-A; 150-C]

Case Law Reference:

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|--------------------|------------|-------------|
| (2002) 3 SCC 598 | Relied on. | Para 9 |
| (2001) 6 SCC 338 | Relied on. | Paras 9, 13 |
| JT 2004 (3) SC 442 | Relied on. | Paras 9, 11 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 269-270 of 2009.

From the Judgment and Order dated 15.7.2008 of the High Court of Judicature at Bombay, Bench at Nagpur in Criminal Application No. 1502 of 2008 and 1612 of 2008.

Ravindra Keshavrao Adsure for the Appellant.

Manish Pitale & Chaner Shekhar Ashri for the Respondent.

The Judgment of the Court was delivered by

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

2. Challenge in these appeals is to the order passed by a learned Single Judge of the Bombay High Court, Nagpur Bench, granting bail to the respondents. The accused persons are facing trial for alleged commission of offences punishable under Sections 10, 13, 18 & 29 of the Unlawful Activities (Prevention) Act, 1967 (in short the 'Act') and Sections 3&4 of the Arms Act, 1959 (in short the 'Arms Act') and Section 353

A read with Sections 34 & 120B of the Indian Penal Code, 1860 (in short the 'IPC'). The High Court referred to the circumstances highlighted by the parties and came to hold that the accusations/imputation do not constitute the charged offences. Accordingly, bail was granted subject to certain conditions.

B 3. Learned counsel for the appellant submitted that the High Court has misconceived the scope and ambit of the provisions and misinterpreted the ingredients of the offence and came to an abrupt conclusion that no offence is made out. This will seriously prejudice the trial. No reason has been indicated as to why the High Court came to the conclusion, that too abruptly that no offence was made out so far as the charged offences are concerned.

C 4. If the versions contained in the affidavits opposing the bail applications are taken into account the offences are made out. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court. It is stated that the imputations do not constitute and even do not describe the commission of offence under Sections 10,13,18 and 20 of the Act or other offences alleged against them.

D 5. It is seen that the charge sheet does not comprise of statements of witnesses as to exact involvement of the accused persons, describing involvement to correspond to the ingredients of Sections 10, 13, 18, 20 of the Act and other offence is alleged against the applicants.

E 6. The High Court found that on reading of the charge sheet, nothing is disclosed as to what are the imputations of acts done by these applicants under Sections 10, 13, 18 and 20 of the Act and other offences. Non of the ingredients of those Sections are described as committed by these persons. All that is asserted is that except that these accused had a meeting with accused Nos.1 and 2 and an inference that they are associated with the accused Nos.1 and 2. There are no other imputations.

7. By order dated 19.9.2008 a Bench of this court has directed stay of the impugned order. It is stated that the accused persons were sent to custody in view of the order and are presently in custody.

8. While dealing with an application for bail, 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.

9. Any order de hors 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] and in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.* [JT 2004 (3) SC 442].

10. Though a conclusive finding in regard to the points urged by the parties is not expected of the Court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being

A granted is not required to be indicated.

11. In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.* (2004 (7) SCC 528) In para 11 it was noted as follows:

B “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
C 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
D the accused is charged of having committed a serious
offence. Any order devoid of such reasons would suffer
from 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:

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

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

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

G 12. It was also noted in the said case that the conditions
laid down under Section 437 (1)(i) are sine qua non for granting
bail even under Section 439 of the Code.

13. In *Puran v. Rambilas and Anr.* (2001 (6) SCC 338) it
was noted as follows:

H

"11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in *Gurcharan Singh v. State (Delhi Admn.)*. In that case the Court observed as under: (SCC p.124, para 16)

"If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session *vis-à-vis* the High Court."

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A already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session *vis-à-vis* the High Court.”

B 14. The above position was highlighted in *Lokesh Singh v. State of U.P. and Anr.* (SLP(CrI.) No. 2861 of 2007 disposed of on October 21, 2008)

C 15. Since the High Court had not kept the relevant parameters in view, while granting bail, we set aside the impugned order. We, however, make it clear that we have not expressed any opinion on the merits of the case. We however, request the trial court to complete the trial as early as practicable preferably within six months from the date of receipt
D of this court's order.

16. The appeals are allowed to the aforesaid extent.

N.J.

Appeals allowed.