



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 4] [727-B-D]

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, they are: i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; ii) reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; iii) prima facie satisfaction of the Court in support of the charge. Any order *dehors* such reasons suffers from non-application of mind. [Paras 5 and 6] [727-D-H; 728-A]

*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 and *Anwari Begum v. Sher Mohd.* 2005 (7) SCC 326, relied on.

2. The High Court's order is a bundle of confusion. On one hand it noted that there was no dispute that the death had taken place within seven years of the marriage and that it was unnatural death. Having said so, it is not understood as to how the High Court observed that the provisions of s.113B of the Indian Evidence Act, 1872 are not applicable and this is not a case punishable under

A s.304B IPC. That being so the impugned order of the High court is set aside and the matter is remitted to it for fresh consideration and disposal by a reasoned order. [Para 8] [728-B-E]

B Case Law Reference :

(2002) 3 SCC 598 relied on Para 6

(2001) 6 SCC 338 relied on Para 6

JT 2004 (3) SC 442 relied on Para 6

C 2005 (7) SCC 326 relied on Para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 787 of 2009.

D From the Judgment & Order dated 30.10.2007 of the High Court of Judicature at Allahabad in CrI. Misc. Bail Application No. 15520 of 2007.

E Swaraj Kaushal, Dr. Monika Gusain and Hariom Yaduvanshi for the Appellant.

U.U. Lalit, Reetesh Singh, Jhanvi Wona and Surya Kant for the Respondents.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the the order passed by a learned Single Judge of the Allahabad High Court granting bail to the respondent No.1. The appeal is by the father of the Shobhna (hereinafter referred to as the 'deceased') who was married to the respondent No.1. It is stated that the death took place within seven years of the marriage and it was unnatural death. The High Court by a practically non-reasoned order granted bail. It is pointed out by learned counsel for the H appellant that no reason has been indicated for directing grant

of bail and even the conclusions are contradictory in terms. A

3. Learned counsel for the respondent No. 1 on the other hand submitted that the bail was granted on 30th October, 2007. There is no allegation that the accused respondent No. 1 has misused the liberty after release on bail. The charge sheet has already been submitted and the investigation is over. The accused was in custody for more than five months. B

4. Even 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. C D

5. 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: E

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

2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; G

3. Prima facie satisfaction of the Court in support of the charge.

6. Any order de hors such reasons suffers from non- H

A 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].

B 7. The above position was highlighted by this Court in *Anwari Begum v. Sher Mohd.* (2005(7) SCC 326).

C 8. As rightly submitted by the learned counsel for the appellant, the High Court's order is a bundle of confusion. On one hand it is noted that there was no dispute that the death had taken place within seven years of the marriage and that it was unnatural death. Having said so, it is not understood as to how the High Court observed that the provisions of Section 113(B) of the Indian Evidence Act, 1872 (in short the 'Evidence Act') are not applicable and this is not a case punishable under Section 304 B IPC. That being so we set aside the impugned order of the High Court and remit the matter to it for fresh consideration and disposal by a reasoned order.

D 9. The Appeal is allowed.

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BBB.

Appeal allowed.