

ATMARAM

v.

STATE OF U.P.

(Criminal Appeal No. 1678 of 2013)

OCTOBER 8, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Bail - Grant of - Validity - Assault with balkati (a sharp edged weapon) and lathis - Four victims - All suffered serious injuries - One died - Case registered u/ ss.147,148,149,323,325,302 IPC - Respondent no.2 and three co-accused denied bail by Sessions Judge - High Court, however, granted them bail - On appeal, held: Keeping in view the criminal antecedents of Respondent no.2, as well as the specific role assigned against him, it cannot be said that it was fanciful, unreasonable or irresponsible for the State to contend that Respondent no.2 violated the terms of his bail by threatening or intimidating witnesses - It was incorrect and imprudent for the High Court to grant him bail at least till such time as examination of the eye witnesses had been completed - The Court should not lose perspective of the fact that intimidation of witnesses is a common occurrence at least as regards persons come into conflict with the law on multiple occasions - Accordingly, bail of Respondent no.2 cancelled - Alleged role ascribed to one co-accused identical in material particulars to that of Respondent no.2, both of whom allegedly were armed with balkatis - High Court erred in granting bail to that co-accused as well - Other two co-accused were not armed with sharp edged weapons but with lathis/dandas - The State did not allege pendency of any previous cases against them and it was also not the prosecution case that they endeavoured to intimidate or influence witnesses - Bail order in respect of them accordingly not interfered with.

A The prosecution case was that pursuant to an
altercation, Respondent no.2-accused and other accused
persons armed with a sharp edged weapon (balkati) and
lathis attacked the appellant, his two sons and grandson
all of whom suffered serious injuries. One son of appellant
B died. Case was registered under Sections 147, 148, 149,
323, 325, 302 I.P.C. Respondent no.2 and three other
accused 'R', 'S' and 'H' were denied bail by the Sessions
Judge. The High Court, however, granted them bail, by
the impugned order.

C Disposing of the instant appeals, the Court

HELD: 1. It is the asseveration on behalf of the State
of U.P. that Respondent no.2 has been tampering with
evidence by giving threats to witnesses and that the High
D Court had ignored his criminal antecedents as well as the
specific role assigned against him in the subject
complaint. Keeping the above factors in view, primarily
the criminal antecedents of Respondent no.2, it cannot
be said that it is fanciful, unreasonable or irresponsible
E for the State of U.P. to contend that Respondent no.2 has
violated the terms of his bail by threatening or intimidating
witnesses. Even in the Affidavit filed by the State, details
of as many as ten cases in which Respondent no.2 is
involved have been given. In these circumstances,
F therefore, it was incorrect and imprudent for the High
Court to grant bail at least till such time as the examination
of the eye witnesses had been completed. The Court
should not lose perspective of the fact that intimidation
of witnesses is a common occurrence at least as regards
G persons who have come into conflict with the law on
multiple occasions. Accordingly, the bail of Respondent
no.2 is cancelled. [Para 4-6] [518-D-H]

2. The alleged role ascribed to 'R' is identical in
material particulars to that of Respondent no.2, both of
H whom allegedly were armed with Balkatis. As per the

Affidavit filed on behalf of the State there are as many as fifteen cases pending against him. Therefore, the High Court erred in granting bail to 'R' as well. So far as 'S' and 'H' are concerned, it appears that they were not armed with sharp edged weapons but with lathis/dandas. The State has not alleged pendency of any previous cases against them and it is also not the prosecution case that these two persons have endeavoured to intimidate or influence witnesses. For these reasons, so far as 'S' & 'H' are concerned, the impugned Order is not interfered with. [Paras 8 and 9] [519-C-D, F-G]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1678 of 2013 etc.

From the Judgment and Order dated 05.09.2011 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No. 17466 of 2011.

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WITH

Crl. A. No. 1679 of 2013.

Jitendra Mohan Sharma, Sandeep Singh, Vibhor Vardhan, Sanchit, Harsh Vardhan Surana for the Appellant.

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Irshad Ahmad, AAG, Gaurav Abhishth Kumar, P.K. Jain, Saurabh Jain, P.K. Goswami, S.P. Singh, Haresh Raichura, Saroj Raichura, Kalp Raichura for the Respondents.

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The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J.

Crl.Appeal No. 1678 of 2013

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[Arising out of S.L.P.(Crl.)No.1387 of 2012]

1. Leave granted. The Appellant had reported to the Chauki-in-charge, Sheikpura Kadi, P.S. Kotwali Dehat, Saharanpur, U.P. that on 13/14.3.2011 Respondent no.2,

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A namely, Kunwar Singh and other co-accused had cut the ridge
of his field on 12.3.2011 which resulted in an altercation
between them at 7.00 a.m. on 13.3.2011. Five other persons,
namely, Rafal Singh, Issam Singh, Shahspal, Hanish @ Hanif
@ Awanish and Pillu @ Ravindra were already present at the
B site; Kunwar Singh and Rafal Singh were armed with Balkati
and the others with lathis. The six persons allegedly attacked
the Appellant, his sons, namely, Sanjay and Baliram and his
grandson Udaiveer all of whom suffered serious injuries. All of
them stand charged under Sections 147, 148, 149, 323, 325,
C 302 I.P.C. Sanjay (deceased) suffered the following injuries:

"(i) Multiple LW 8 x 4 cm top of head into bone deep 12
cm above (eligible) root of nose CTs 6 x 8 cm.

(ii) IW 6 x 6 cm into bone deep rt side head 7 cm above
D rt ear K/W."

According to the Medical Report Injury no.(i) has been caused
by hard and blunt object and Injury no.(ii) by sharp edged object.
Although Respondent no.2 Kunwar Singh has set up an alibi,
E it is not in dispute that it was he who had taken the members
of his group to the hospital on that fateful day itself. Eventually,
he was granted bail by the impugned Order in respect of Case
Crime No.29/119 of 2011 registered for offences punishable
under Sections 147, 148, 149, 323, 325, 302, I.P.C. P.S.
F Kotwali Dehat, District Saharanpur.

2. On the other hand, the Additional Sessions Judge,
Saharanpur, had prior thereto noted that Kunwar Singh had
been named in the FIR, along with a specific role. The learned
Addl. Sessions Judge was obviously influenced by the fact that
G injuries on Sanjay (deceased) were on vital part of the body,
i.e., the head; that on the indication of Kunwar Singh, the Balkati
was recovered from a sugarcane field and that the un rebutted
case is that Kunwar Singh was involved in a number of cases
including four shown pending in the Gang Chart including one
H for murder and another for rape. In the view of the Additional

Sessions Judge, Saharanpur, these were sufficient reasons to decline bail as transpires from his Order dated 20.5.2011.

3. The learned Additional Govt. Advocate had submitted to the High Court, and the learned Addl. Advocate General for the State of U.P. has similarly pressed before us, that the Applicant-Respondent no.2 was armed with the reaping hook (Balkati) and the deceased had sustained Injury no.2 allegedly by this weapon. Moreover Respondent no.2 is involved in several criminal cases and that if he is released on bail, he is likely to tamper with evidence. Learned Counsel for Respondent no.2 has contended that all the cases in which Respondent no.2 has been named, he has been acquitted in two and has been released on bail in the third. The High Court was impressed with the view that the occurrence has taken place in a sudden quarrel and, therefore, there was no "pre-intention" or pre-meditation; that it has not been specified as to whose blow caused the incised wound being Injury no.2; that it was difficult to decide which party was the aggressor; that Respondent no.2, the Applicant before the High Court, was in jail since 25.3.2011. It was in these premises that Kunwar Singh had been granted bail on terms in the impugned Order dated 5.9.2011.

4. In the Counter Affidavit on behalf of the State of U.P., the criminal history of Respondent no.2 is contained in the following table :

S.No.	Crime No.	Sections	Police Station	District
1.	29/119/2011	Under Sec. 147, 148, 149, 323, 325, 302 IPC	Kotwali Dehat	Saharanpur
2.	295/2006	323, 324, 307, 504, 506, IPC	Kotwali Dehat	Saharanpur
3.	142/1993	325 IPC	Kotwali Dehat	Saharanpur
4.	208/91	342, 323 IPC	Kotwali Dehat	Saharanpur

A	5.	231/2008	447, 353, 504, 506, IPC	Kotwali Dehat	Saharanpur
	6.	571/2011	2/3 Gangster Act	Kotwali Dehat	Saharanpur
B	7.	NCR No.176/2011	504, 506 IPC	Kotwali Dehat	Saharanpur
	8.	NCR No.37/2012	504, 506 IPC	Kotwali Dehat	Saharanpur
C	9.	Crime Case No.54/12	Sec.3 U.P. Gunda Control Act	Kotwali Dehat	Saharanpur

D That apart, it is the asseveration on behalf of the State of U.P. that Respondent no.2 has been tampering with evidence by giving threats to witnesses and that it is palpably evident that in the impugned Order, the High Court had ignored his criminal antecedents as well as the specific role assigned against him in the subject complaint.

E 5. Keeping the above factors in view, primarily the criminal antecedents of Respondent no.2, we do not think that it is fanciful, unreasonable or irresponsible for the State of U.P. to contend that Respondent no.2 has violated the terms of his bail by threatening or intimidating witnesses. Even in the Affidavit dated 27.6.2013 filed by the Circle Officer, City-II, District Saharanpur, details of as many as ten cases in which Respondent no.2 is involved have been given.

G 6. In these circumstances, therefore, it was incorrect and imprudent for the High Court to grant bail at least till such time as the examination of the eye witnesses had been completed. The Court should not lose perspective of the fact that intimidation of witnesses is a common occurrence at least as regards persons who have come into conflict with the law on multiple occasions. Accordingly, the impugned Order is set aside and the bail of Respondent no.2 is cancelled. His bail

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bonds shall stand cancelled and the sureties discharged. He shall be taken into custody forthwith. A

7. The Appeal stands allowed accordingly.

Criminal Appeal No. 1679 of 2013

[Arising out of S.L.P. (Crl.)No.7668 of 2012]

8. Leave granted. The Bail Orders dated 3.11.2011 passed by the High Court in favour of Rafal Singh, Shashpal and Hanish @ Hanif @ Awanish have been assailed in this Appeal. Earlier, another Addl. Sessions Judge, Saharanpur had rejected their applications vide Orders dated 14.10.2011. The alleged role ascribed to Rafal Singh is identical in material particulars to that of Kunwar Singh, both of whom allegedly were armed with Balkatis. As per the Affidavit dated 27.6.2013 filed on behalf of the State there are as many as fifteen cases pending against him. We are, therefore, of the opinion that the High Court erred in granting bail to the said Respondent as well. We set aside the Order of the High Court so far as Rafal Singh is concerned. His bail bonds shall stand cancelled and the sureties discharged, and he shall be taken into custody forthwith. C
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9. So far as Shashpal and Hanish @ Hanif @ Awanish are concerned, it appears that they were not armed with sharp edged weapons but with lathis/dandas. Of course, it is alleged, so far as Sanjay (deceased) is concerned, that he had also suffered from multiple lacerated wounds on the top of his head, for which prima facie Shashpal and Hanish are responsible. The State has not alleged pendency of any previous cases against them and it is also not the prosecution case that these two persons have endeavoured to intimidate or influence witnesses. For these reasons, so far as these two Respondents are concerned, the impugned Order is not interfered with. It is, however, made clear that if they are found to be intimidating or influencing witnesses or tampering with the evidence the bail F
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A granted to these respondents shall be liable to be cancelled. It is further made clear that the observations made hereinabove will not affect the Trial which should be conducted on its own merit.

B 10. The Appeal stands disposed of accordingly.

B.B.B.

Appeals disposed of.