

VIRUPAKSHAPPA GOUDA AND ANOTHER

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v.

THE STATE OF KARNATAKA AND ANOTHER

(Criminal Appeal No. 601 of 2017)

MARCH 28, 2017

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[DIPAK MISRA AND A. M. KHANWILKAR, JJ.]

*Code of Criminal Procedure, 1973 – s.439 – Criminal proceedings against appellants for offence punishable u/ss.143, 147, 323, 302, 504, 114 r/w s.149 IPC – Bail application rejected by trial court – Aggrieved, appellant filed petition before High Court which was also rejected – Thereafter second bail application filed before trial court was also rejected – Plea of accused that he was entitled to bail as in the meantime the investigation was completed and charge sheet was also filed and, therefore, there was change of circumstance – Plea rejected – Petition before High Court rejected – Special leave petition thereagainst also rejected – Third application for bail, however, allowed by trial court – Father of the victim-deceased moved High Court for cancellation of bail – Bail cancelled – On appeal, held: Trial court was swayed by the fact that when a charge sheet is filed it amounts to change of circumstance – Filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution – In the instant case, trial judge did not keep himself alive to the fact that twice the bail applications were rejected and the matter had travelled to the Supreme Court – Once Supreme Court declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed – The gravity of the crime should have been taken note of by the trial court – Prosecution case was that the victim-deceased had married daughter of accused-appellant No.1 belonging to different community and was living peacefully away from the resentful community, but due to some kind of “misconceived class honour”, accused put an end to the life of the young man – In such a situation, the accused persons should not have been granted liberty – There was no error in the order of the High Court – Penal Code, 1860 – ss.143, 147, 323, 302, 504, 114 r/w s.149 – Honour killing.*

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A *Precedent: Binding effect of judgments/orders granting/*  
*rejecting bail – Held: A bail application is not to be entertained on*  
*the basis of certain observations made in a judgment in a different*  
*context – It depends upon the nature of the crime and the manner in*  
 B *which it is committed – There has to be application of mind and*  
*appreciation of the factual score and understanding of the*  
*pronouncements in the field.*

**Dismissing the appeal, the Court**

C **HELD: 1. A bail application cannot be allowed solely or**  
**exclusively on the ground that the fundamental principle of**  
**criminal jurisprudence is that the accused is presumed to be**  
**innocent till he is found guilty by the competent court. [Para**  
**14][380-A-B]**

D *Sanjay Chandra v. Central Bureau of Investigation*  
*(2012) 1 SCC 40 : [2011] 13 SCR 309; Siddharam*  
*Satlingappa Mhetre v. State of Maharashtra and others*  
*(2011) 1 SCC 694 : [2010] 15 SCR 201 – distinguished.*

E **2. A bail application is not to be entertained on the basis of**  
**certain observations made in a judgment in a different context.**  
**It depends upon the nature of the crime and the manner in which**  
**it is committed. The requisite factors 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 with the witness or apprehension of**  
**threat to the complainant; and (iii) prima facie satisfaction of the**  
**court in support of the charge. [Paras 15, 16][381-B, C-D]**

F *Chaman Lal v. State of U.P. and another (2004) 7 SCC*  
*525 : [2004] 3 Suppl. SCR 584; Prasanta Kumar*  
*Sarkar v. Ashis Chatterjee and another (2010) 14 SCC*  
*496 : [2010] 12 SCR 1165; Central Bureau of*  
 G *Investigation v. V. Vijay Sai Reddy (2013) 7 SCC 452 –*  
*relied on.*

H **3. An order of bail cannot be granted in an arbitrary or**  
**fanciful manner. In the instant case, the trial Judge was not guided**  
**by the established parameters for grant of bail. He did not keep**  
**himself alive to the fact that twice the bail applications were**

rejected and the matter had travelled to the Supreme Court. Once Supreme Court declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety call for axing of the order. The gravity of the crime should have been taken note of by the trial Judge. The deceased and his wife (the daughter of the accused-appellant No.1) were staying in peace, away from the acrimonious community, but due to some kind of “misconceived class honour”, the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. In such a situation, the accused persons should not have been granted liberty. The perversity of approach by the Additional Sessions Judge, who has enlarged the appellants on bail, is totally unacceptable. In such a situation, the High Court has performed its legal duty by lancing the order passed by the trial Judge. [Paras 18, 20 and 21][382-E; 383-E-H; 384-A-D]

*Neeru Yadav v. State of Uttar Pradesh and another* (2014) 16 SCC 508 : [2014] 12 SCR 453; *Dinesh M.N. (S.P.) v. State of Gujarat* (2008) 5 SCC 66 : [2008] 6 SCR 1134 – relied on.

Case Law Reference

[2011] 13 SCR 309	distinguished	Para 7
[2010] 15 SCR 201	distinguished	Para 7
[2004] 3 Suppl. SCR 584	relied on	Para 16
[2010] 12 SCR 1165	relied on	Para 16
(2013) 7 SCC 452	relied on	Para 17
[2014] 12 SCR 453	relied on	Para 18
[2008] 6 SCR 1134	relied on	Para 19

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 601 of 2017.

A From the Judgment and Order dated 16.09.2016 of the High Court of Karnataka at Kalaburgi in Criminal Petition No. 200768 of 2016.

Basava Prabhu S. Patil, Sr. Adv., Anirudh Sanganeria, Chinmay Deshpande, Amjid Maqbool, Advs. for the Appellants.

B V. N. Raghupathy, Adv. for the Respondents.

The Judgment of the Court was delivered by

**DIPAK MISRA, J.** 1. Leave granted.

C 2. The appellants, who have been arraigned as accused in sessions case being S.C. No.90 of 2015 arising out of Crime No.118 of 2015, registered at Raichur Rural Police Station for the offences punishable under Sections 143, 147, 148, 323, 302, 504, 114 read with Section 149 of the Indian Penal Code (IPC) after being taken into custody, in the course of investigation being aspirant for obtaining liberty, preferred an application under Section 439 of the Code of Criminal Procedure (Cr.P.C.), that is, Criminal Misc. No. 457 of 2015 in the court of Principal Sessions Judge at Raichur, which stood dismissed.

D 3. Being grieved by the aforesaid order of rejection for grant of bail, the accused-appellants moved the High Court of Karnataka at Kalaburagi Bench in Criminal Petition No. 200629 of 2015. The High Court adverted to the deadly weapons that were carried by the accused persons, the nature of injuries sustained on the vital parts by the deceased and the allegation of specific overt acts, and rejected the application.

E 4. Thereafter, a second application for grant of bail was moved by the appellants before the Principal Sessions Judge at Raichur, that is, Criminal Misc. No. 791 of 2015. It was contended before the learned trial Judge that as, in the meantime, the investigation had been completed and the charge-sheet had been filed, there had been a change of circumstance and hence, they were entitled to be admitted to bail. That apart, certain grounds pertaining to ailment of some of the accused persons were highlighted. The learned trial Judge, as is evident, referred to the allegations made in the F.I.R., the materials that had come on record during the investigation and the postmortem report and considering all other relevant aspects, declined to enlarge the appellants on bail. It is worthy to note here that though a ground of parity was urged on the base that the accused Nos. 4 to 7 had been released on anticipatory

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bail, the same did not impress the court and accordingly the inevitable result, the dismissal, followed. A

5. The aforesaid order of dismissal constrained the appellants to move the High Court in Criminal Petition No. 200944 of 2015. The High Court *vide* its order dated 23<sup>rd</sup> September, 2015, after referring to the nature of alleged assault by the accused persons, the type of injury sustained by the deceased and considering the pertinent facts did not accede to the prayer for grant of bail. B

6. Being grieved by the aforesaid order, the appellants preferred Special Leave Petition (Criminal) No. 9858 of 2015, which was dismissed *vide* order dated 27<sup>th</sup> November, 2015. C

7. The aforesaid narration of facts would give one the impression that the attempt of the appellants to be enlarged on bail was over unless some extraordinary circumstance could usher in which could be considered as change of circumstance, but as the chronology of events would show the indefatigable spirit of the appellants forced them to remain embedded in their stance for putting any stand as a change of circumstance for the purpose of grant of bail. We do not intend to mean even for a moment that the accused cannot move successive application for grant of bail. That is his right in law. Our emphasis is on the delineation by the Court. The said right invigorated with adroit efforts, resulted in filing of an application in S.C. No. 90 of 2015. As is evident from the record, the earlier bail applications were rejected by the Principal Sessions Judge, Raichur, but the third application was taken up by the learned Additional Sessions Judge, Raichur. As the order would reveal, the learned trial Judge has thought it apposite to deal with the application as if he was dealing with the first application and copiously referred to the materials brought on record, referred to pronouncements in *Sanjay Chandra vs. Central Bureau of Investigation*<sup>1</sup> and *Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*<sup>2</sup> and commented on the delay in trial and, eventually, released the appellants on bail on certain conditions. D E F

8. The enlargement of bail to the accused persons, as it seems, did not affect the prosecution. The State of Karnataka chose to maintain silence and did not think it appropriate to assail the order. G

<sup>1</sup> (2012) 1 SCC 40

<sup>2</sup> (2011) 1 SCC 694

A 9. The informant, who has crossed six scores and five, lost his  
son in an unfortunate and brutal circumstance, moved the High Court in  
Criminal Petition No. 200768 of 2016 under Section 439(2) Cr.P.C.  
seeking cancellation of bail. The High Court while dealing with the  
application, adverted to the allegations in the F.I.R. The nature of  
allegations, being significant, deserves to be adverted by us. It is alleged  
B in the F.I.R. that the accused-appellant No.1, had a daughter named  
Basavarajeshwari who fell in love with the deceased Anand Sagar, the  
son of the informant, who belongs to “Uppar” community and the accused  
belongs to “Lingayat” community. The deceased, Anand Sagar, had  
eloped with the daughter of the accused No.1 in the year 2014 and at  
C that juncture, an F.I.R. was registered filed by the accused to that effect.  
As the narration would further unroll, the couple left the village, entered  
into wedlock and thereafter started residing at Bengaluru and later on at  
Bellary. On 17<sup>th</sup> May, 2015, the deceased, Anand Sagar, had come to  
his native place Yeramarus and had gone to Raichur on the motorbike of  
his father. When he returned to Yeramarus at 9.30 p.m. and reached  
D near the bus stop, the accused persons assaulted him with weapons and  
he breathed his last on the spot. After noting the facts and the injuries  
sustained by the deceased, the High Court also adverted to the attempts  
made by the accused persons to obtain liberty despite the same having  
been declined by this Court. It also came to hold that the spark of life of  
E the deceased had been extinguished because he had dared to fall in love  
and get married to the daughter of the accused No.1, and ultimately  
opined that delineation by the learned trial Judge with regard to grant of  
order of bail, was absolutely perverse and, founded on irrelevant aspects.  
In view of the aforesaid premises, it allowed the application for  
cancellation of bail and set aside the order passed by the learned Additional  
F Sessions Judge, admitting the appellants to bail.

10. We have heard Mr. Basava Prabhu S. Patil, learned senior  
counsel along with Mr. Anirudh Sanganeria, learned counsel for the  
appellants and Mr. V.N. Raghupathy, learned counsel for the respondent-  
State. Despite service of notice, no one has entered appearance on behalf  
G of the informant.

11. It is submitted by Mr. Patil, learned senior counsel for the  
appellants that the High Court has erred in cancelling the order of bail as  
the appellants, after being enlarged on bail, had neither abused the freedom  
nor have they violated the terms and conditions of the bail order. It is  
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urged by him that there is no allegation of tampering with the evidence or influencing any witnesses and therefore, there was no justification for cancellation of the order of granting bail. Learned senior counsel would further contend that the analysis made by the learned trial Judge for the purpose of grant of bail cannot be regarded as perverse and he has correctly relied upon the pronouncements as is noticeable from his order. It is put forth by Mr. Patil that at such distance of time not to admit the appellants on bail and give the stamp of approval to the order cancelling the bail by the High Court, would not sub-serve the cause of justice.

12. Mr. Raghupathy, learned counsel appearing for the State, *per contra*, would submit that the learned trial Judge should not have entertained the prayer for bail after this Court has special leave petition for the same relief. It is his submission that the High Court has correctly opined that there is perversity in the approach by the learned trial Judge while dealing with the application under Section 439 Cr.P.C. and hence, it deserved to be set aside.

13. On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons. As is further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge. He has been swayed by the observations made in *Siddharam Satlingappa Mhetre (supra)*, especially in paragraph 86, the relevant part of which reads thus:-

“The courts considering the bail application should try to maintain fine balance between the societal interest *vis-a-vis* personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court.”

A 14. The proposition expounded above, has to be accepted, but  
that has to be applied appositely to the facts of each case. A bail  
application cannot be allowed solely or exclusively on the ground that  
the fundamental principle of criminal jurisprudence is that the accused is  
presumed to be innocent till he is found guilty by the competent court.  
B The learned trial Judge has also referred to the decision in *Sanjay  
Chandra (supra)*, wherein a two-Judge Bench while dealing with bail  
applications, observed thus:-

C “21. In bail applications, generally, it has been laid down from the  
earliest times that the object of bail is to secure the appearance of  
the accused person at his trial by reasonable amount of bail. The  
object of bail is neither punitive nor preventative. Deprivation of  
liberty must be considered a punishment, unless it can be required  
to ensure that an accused person will stand his trial when called  
upon. The courts owe more than verbal respect to the principle  
that punishment begins after conviction, and that every man is  
deemed to be innocent until duly tried and duly found guilty.

D 22. From the earliest times, it was appreciated that detention in  
custody pending completion of trial could be a cause of great  
hardship. From time to time, necessity demands that some un-  
convicted persons should be held in custody pending trial to secure  
their attendance at the trial but in such cases, ‘necessity’ is the  
operative test. In this country, it would be quite contrary to the  
concept of personal liberty enshrined in the Constitution that any  
person should be punished in respect of any matter, upon which,  
he has not been convicted or that in any circumstances, he should  
be deprived of his liberty upon only the belief that he will tamper  
with the witnesses if left at liberty, save in the most extraordinary  
circumstances.

E 23. Apart from the question of prevention being the object of a  
refusal of bail, one must not lose sight of the fact that any  
imprisonment before conviction has a substantial punitive content  
and it would be improper for any Court to refuse bail as a mark of  
disapproval of former conduct whether the accused has been  
convicted for it or not or to refuse bail to an unconvicted person  
for the purpose of giving him a taste of imprisonment as a lesson.”

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15. Be it noted, though the aforesaid passages have their relevance A  
but the same cannot be made applicable in each and every case for  
grant of bail. In the said case, the accused-appellant was facing trial for  
the offences under Sections 420-B, 468, 471 and 109 of the IPC and  
Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption  
Act, 1988. Thus, the factual matrix was quite different. That apart, it B  
depends upon the nature of the crime and the manner in which it is  
committed. A bail application is not to be entertained on the basis of  
certain observations made in a different context. There has to be  
application of mind and appreciation of the factual score and understanding  
of the pronouncements in the field.

16. The court has to keep in mind what has been stated in *Chaman C  
Lal vs. State of U.P. and another*<sup>3</sup>. The requisite factors 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 with the witness or apprehension of threat to the complainant;  
and (iii) *prima facie* satisfaction of the court in support of the charge. D  
In *Prasanta Kumar Sarkar vs. Ashis Chatterjee and another*<sup>4</sup>, it has  
been opined that while exercising the power for grant of bail, the court  
has to keep in mind certain circumstances and factors. We may usefully  
reproduce the said passage:-

“9...among other circumstances, the factors which are to be borne E  
in mind while considering an application for bail are:

(i) whether there is any *prima facie* or reasonable ground to be  
believed that the accused had committed the offence.

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction; F

(iv) danger of the accused absconding or fleeing, if released on  
bail;

(v) character, behaviour, means, position and standing of the  
accused; G

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;  
and

<sup>3</sup> (2004) 7 SCC 525

<sup>4</sup> (2010) 14 SCC 496

A (viii) danger, of course, of justice being thwarted by grant of bail.”

17. In *Central Bureau of Investigation vs. V. Vijay Sai Reddy*<sup>5</sup>, the Court had reiterated the principle by observing thus:-

B “While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

D 18. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from *Neeru Yadav vs. State of Uttar Pradesh and another*<sup>6</sup>, wherein the Court setting aside an order granting bail observed:-

E “The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2<sup>nd</sup> respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a person

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<sup>5</sup> (2013) 7 SCC 452

H <sup>6</sup> (2014) 16 SCC 508

has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.”

19. In this context what has been stated by a three-Judge bench in *Dinesh M.N. (S.P.) v. State of Gujarat*<sup>7</sup> is quite instructive. In the said case, the Court has held that where the Court admits the accused to bail by taking into consideration irrelevant materials and keeping out of consideration the relevant materials the order becomes vulnerable and such vulnerability warrants annulment of the order.

20. In the instant case, as is demonstrable, the learned trial Judge has not been guided by the established parameters for grant of bail. He has not kept himself alive to the fact that twice the bail applications had been rejected and the matter had travelled to this Court. Once this Court has declined to enlarge the appellants on bail, endeavours to project same factual score should not have been allowed. It is absolute impropriety and that impropriety call for axing of the order.

21. That apart, as we find from the narration of allegations from the order of the High Court, it is not a case where the trial court could have entertained a bail application by elaborate dissection of facts and appreciation of statements recorded under Section 161 Cr.P.C. The gravity of the crime should have been taken note of by the learned trial Judge. The deceased and his wife (the daughter of the accused-appellant

<sup>7</sup> (2008) 5 SCC 66

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A No.1) were staying in peace away from the acrimonious community, but due to some kind of “misconceived class honour”, the vengeance reigned and awe for law went on a holiday. They thought that their perception mattered and as alleged, they put an end to the life spark of the young man. The choice of the daughter was allowed no space. Her identity was crushed and her thinking was crucified by parental dominance which has roots in an unfathomable sense of community honour. Though the lovers became fugitive, the anger founded on anachronistic values prompted the accused persons to annihilate the life of a young man. In such a situation, the factors that have been highlighted by this Court from time to time were required to be adverted to and the accused persons should not have been granted liberty on the grounds that have been thought appropriate by the learned trial Judge. The perversity of approach by the learned Additional Sessions Judge, who has enlarged the appellants on bail, is totally unacceptable. It is reflective of sanctuary of errors. In such a situation, we are obligated to say that the High Court has performed its legal duty by lancinating the order passed by the learned trial Judge.

22. Consequently, the appeal, being *sans* merit, stands dismissed. As we have dismissed the appeal, the appellants shall surrender to custody forthwith and it will be the duty of the trial Judge to see that they are taken into custody. Needless to say, whatever we have stated in the present judgment, is only confined to the defensibility of the order passed by the High Court cancelling the bail granted by the learned Additional Sessions Judge and shall not weigh in the mind of the learned trial Judge for the purpose of the trial as that shall depend upon evidence to be adduced during the trial.

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