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LACHHMAN DASS

v.

RESHAM CHAND KALER AND ANR.

(Criminal Appeal No. 161 of 2018)

B

JANUARY 23, 2018

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

Bail:

C *Prosecution u/ss. 302, 307, 324, 326, 120B, 148 and 149
IPC and ss. 25, 27, 54 and 59 of Arms Act, 1959 – Bail applications
filed by respondents-accused rejected by trial court – High Court
granted bail – Complainant’s appeal – Held: A prima facie case is
made out against the accused – The seriousness and gravity of the
offence is evident from the Compact Disc (CD) – There is no reason
to accord any special consideration to the respondent-accused (in
D Crl. A. No. 161 of 2018) for his not being Indian National – In the
eyes of law every accused is the same, irrespective of their nationality
– He is alleged to be the kingpin of the criminal conspiracy which
demands his custodial interrogation – Accused in Crl. A. No. 162
of 2018 was granted bail on the basis of parity with the above
E accused – Bail order of that accused having been set aside, bail of
this accused is also liable to be set aside – Accused in Crl. A. No.
163 of 2018 was granted bail without taking into consideration
that he was declared a proclaimed offender – His bail is also liable
to be set aside – Code of Criminal Procedure, 1973 – s.439.*

F *Appeal seeking cancellation of bail and appeal challenging
an order granting bail – Distinction between.*

Judiciary:

G *Judicial discipline – Held: It is not expected of High Court to
pass a mandatory order commanding the subordinate court to
compulsorily grant bail – Such mandatory directions breach the
independence of subordinate courts – Bail.*

Allowing the appeals, the Court

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HELD:

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Criminal Appeal No. 161 of 2018:

1. A *prima facie* case is made out against the respondent-accused, as in the Compact Disc (CD) filed alongwith the petition, the group of persons are seen committing the offence using deadly weapons and sticks. The seriousness and gravity of the offence can be clearly observed from the CD. However, aforesaid observations must not be construed as findings on merits. Though respondent No. 1 is not a citizen of this country (British national), yet the fact remains that he along with other persons has indulged in the criminal activity. The case of the prosecution mainly revolves around him as he is alleged to be the kingpin of the criminal conspiracy which demands his custodial interrogation. In such circumstances, the High Court did not appreciate the facts of the case with prudent legal perception. There is no reason to accord any special consideration for respondent No.1 by virtue of a simple fact that he is a citizen of different country. The law under Section 439 of Cr.P.C is very clear and in the eyes of the law every accused is the same, irrespective of their nationality. [Para 11][331-H; 332-A-C]

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2. This case is not an appeal seeking cancellation of bail in any sense rather, this case calls for the legal sustainability of the impugned order granting bail to the accused-respondent. The difference between the cancellation of the bail and a legal challenge to an order granting bail for non-consideration of material available on record is a settled proposition. To clarify, there is no ground pleaded herein that a supervening event breaching bail conditions is raised. [Para 12][332-D-E]

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State through C.B.I. v. Amarmani Tripathi (2005) 8 SCC 21; Prakash Kadam v. Ramprasad Vishwanath Gupta (2011) 6 SCC 189; Mohan v. State of Rajasthan [2017] 14 SCALE 280 – referred to.

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Criminal Appeal No. 162 of 2018:

3. The impugned judgment which granted bail to the respondent in this appeal on the basis of parity with respondent No. 1 in CrI. Appeal No. 161 of 2018. As his bail has already been

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A set aside, thereby effacing the footing on which the grant of bail by the High Court stood. Otherwise also, this case is not fit for extending the liberty of bail. Therefore, the impugned order passed by the High Court granting bail to respondent No. 1 is set aside. [Para 16][332-H; 333-A-B]

B Criminal Appeal No. 163 of 2018:

4. The order of the High Court on the first instance clearly points out that it has virtually directed the course of action to be undertaken by the subordinate court. It is not expected from the High Court to pass such mandatory orders commanding the subordinate court to compulsorily grant bail. Courts cannot issue mandatory directions which breach the independence of subordinate courts. Therefore, such circuitous method undertaken by the respondent in obtaining a bail is a gross abuse of the court process undertaken in bad faith. Moreover, he was declared as a proclaimed offender before the grant of bail, which was not taken into consideration by the High Court. Therefore, the order of the High Court is set aside and the concerned authorities are directed to take the respondent No. 1 into custody. [Para 25][335-C-E]

Case Law Reference

E [2005] 3 Suppl. SCR 454 referred to Para 12
 [2011] 6 SCR 800 referred to Para 12
 [2017] 14 SCALE 280 referred to Para 25

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 161 of 2018.

From the Judgment and Order dated 19.01.2017 of the High Court of Punjab & Haryana at Chandigarh in CRM-M-36539 of 2016.

WITH

G Crl. A. Nos. 162 and 163 of 2018.

A. Tewari, Ms. Eliza Bar, Shree Pal Singh, Advs. for the Appellant.

Shubham Bhalla, Roopam Rai, Jeevesh Nagrath, Ms. Jaspreet Gogia, Vikas Mahajan, Vishal Mahajan, Vinod Sharma, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

N. V. RAMANA, J.

Criminal Appeal No.161 of 2018 @ SLP (Crl.) No. 3168 of 2017

1. Leave granted.

2. This case arises out of an order dated 19.01.2017, passed by B
the High Court of Punjab and Haryana, at Chandigarh, in CRM-M-
36539/2016, wherein the High Court has granted regular bail to the
respondent no.1 in FIR 205/2015, dated 05.11.2015, filed under Sections
302, 307, 324, 148 & 149 of Indian Penal Code of 1860 [*hereinafter*
'IPC' for brevity] and Sections 25, 27, 54 & 59 of the Arms Act, 1959. C

3. The facts as alleged in the FIR portray that, on 05.11.2015 at
about 5 to 5.15p.m., when complainant's brother (Harbilas) and one
Shingar Chand, were present near the crime scene, Resham Chand Kaler
(respondent no. 1—an NRI) accompanied by Kulbir Singh and various
other persons, arrived there and started quarrelling with Harbilas and D
Shingar Chand. In this incident Kulbir Singh is alleged to have fired a
shot from his revolver at Shingar Chand. Further, it is alleged that,
complainant as well his family members sustained various injuries inflicted
by armed cohorts accompanying Resham Chand Kaler (respondent no.
1 herein).

4. After completion of the investigation Sections 326 and 120B of E
IPC were added in addition to those sections reported under the FIR
and a final report was filed by the concerned Police Officer against the
accused persons including respondent no. 1. It is brought to our notice
that the aforesaid challan was submitted before the Sessions Court on
22.03.2016 and the trial is pending. F

5. The respondent no. 1 first approached the trial court in Bail
Application 3018/2016, wherein the trial court *vide* order dated
14.09.2016, rejected the bail application on the ground that, there were
serious allegations as to the culpability of respondent no. 1 and the nature
of the offences were serious which was committed on broad daylight. G

6. Aggrieved, by the rejection of bail by the trial court, respondent
no. 1 approached the High Court of Punjab and Haryana, Chandigarh, in
CRM-M-36539/2016, wherein the High Court has granted bail on usual
terms to respondent no. 1. It would be apt to reduce the reasoning of the
High Court- H

A “Heard.

Notice of motion.

On asking of the Court, Mr. Ashish Sanghi, DAG Punjab, who is present in the Court accepts notice and submits that intimation by Registry informing of fixation of the petition has already been received and record of the case is available with him.

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Allegation against the petitioner is that he was main conspirator in the occurrence, in which Shingara Chand was given fire shot injury, who died at the spot while complainant and his nephew Jiwan Kaler were caused injuries with sword.

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It is a case of land dispute. The petitioner was arrested in this case on 06.11.2015 and the challan has already been presented. No injury has been attributed to petitioner.

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Without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time,

the present petition is allowed. Petitioner-Resham Chand Kaler is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

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a) The petitioner shall comply with the conditions mentioned in Section 437(3) CrPC.

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b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.

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c) He shall not leave the country without the previous permission of the Court.”

(emphasis supplied)

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7. Aggrieved by the order of the High Court granting bail to the respondent no.1, the appellant has approached this Court by way of special leave petition.

8. Learned counsel for the appellant (complainant) submits that the nature of crime is very serious and the High Court without application of mind, casually granted bail to respondent no.1 even after observing that there were serious allegations of criminal conspiracy in accompanying a habitual criminal (Kulbir Singh) who is alleged of being an accused in nineteen criminal cases including thirteen murder cases. It is further contended that the evidence on record clearly establishes the fact of respondent no. 1 hatching criminal conspiracy and in that pursuit of the same accompanied the accused-Kulbir Singh to the place of incident where Shingar Chand was shot dead. The criminal conspiracy between respondent no. 1 and Kulbir Singh in accompanying the latter to the scene of crime cannot be ignored, more so when Section 149 of IPC was invoked. Learned counsel finally submitted that there is also a likelihood of the accused—respondent no.1 tampering with the process of investigation, but the High Court granted bail to the accused ignoring the established principles of criminal jurisprudence and hence the order of High Court needs be set aside.

9. Learned counsel for the respondent no. 1 submits that he is a British citizen and the genesis of the crime is a land dispute. The involvement of respondent no. 1 in the alleged conspiracy is a matter of trial and this court should assess only *prima facie* culpability, concerning the involvement of respondent no. 1. He further submitted that this court should take into consideration the difference between the rejection of a bail and cancellation of a bail while analyzing the instant case.

10. Learned counsel appearing on behalf of the State, while fully supporting the complainant's case, agrees with the contention that the bail was granted against established tenets under the bail jurisprudence. Learned counsel of the State has referred a detailed counter affidavit for the perusal of the Court and has submitted that the accused Kulbir Singh was a notorious criminal who was extradited from USA and he is a henchman of respondent no. 1 with whose support the accused persons attacked the complainant party to grab their land. The High Court has ignored all these material facts and has wrongly granted bail to the respondent no. 1.

11. Having heard the learned counsel appearing on behalf of the parties and perusing all the material available on record, particularly the compact disk (CD) filed with the petition, we are of the considered opinion that a *prima facie* case is made out against the respondent—

- A accused, as the group of persons are seen committing the offence using deadly weapons and sticks. The seriousness and gravity of the offence can be clearly observed from the CD. However, aforesaid observations must not be construed as findings on merits. Though the respondent no. 1 is not a citizen of this country (British national), yet the fact remains that he along with other persons has indulged in the criminal activity.
- B The case of the prosecution mainly revolves around him as he is alleged to be the kingpin of the criminal conspiracy which demands his custodial interrogation. In such circumstances, it is unfortunate that the High Court did not appreciate the facts of the case with prudent legal perception. We see no reason to accord any special consideration for respondent
- C no.1 by virtue of a simple fact that he is a citizen of different country. The law under Section 439 of Cr.P.C is very clear and in the eyes of the law every accused is the same irrespective of their nationality.

12. Apart from the above, it is also important to note the legal principles governing this case. We make it clear that this case is not an appeal seeking cancellation of bail in any sense rather, this case calls for the legal sustainability of the impugned order granting bail to the accused-respondent herein. The difference between the cancellation of the bail and a legal challenge to an order granting bail for non-consideration of material available on record is a settled proposition. To clarify, there is no ground pleaded herein that a supervening event breaching bail conditions is raised. [refer *State through C.B.I. vs. Amarmani Tripathi*, (2005) 8 SCC 21; *Prakash Kadam v. Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189].
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13. Having cleared this confusion, we may clarify, though seriously urged by the counsel appearing on behalf of the respondent no.1, that there is no warrant for cancellation of bail as there has been no breach of bail condition, yet such submission is not countenanced under the law.
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14. For all the aforesaid reasons, the appeal is allowed. We, therefore, set aside the order of the High Court granting bail to the respondent no. 1 and direct the concerned police authorities to take the respondent no. 1 into custody immediately.
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Criminal Appeal No. 162 of 2018 @ SLP (Crl.) No. 3167/17

15. Leave granted.

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16. We have perused the impugned judgment which granted bail to the respondent in this SLP on the basis of parity with Resham Chand Kaler (respondent no. 1 in SLP(CrI) No. 3168 of 2017). As we have already set aside the bail of Resham Chand Kaler, thereby effacing the footing on which the grant of bail by the High Court stood. Otherwise also, we do not think that this case is fit for extending the liberty of bail for the reasons as provided above. Therefore, we allow the appeal and set aside the impugned order passed by the High Court granting bail to respondent no. 1 herein.

Criminal Appeal No. 163 of 2018 @ SLP (CrI.) No. 3169 of 2017

17. Leave granted.

18. It is stated by the learned counsel appearing for the respondent no. 1 in this SLP that the case of the present-respondent is distinguishable from the rest of the accused in the above two Criminal Appeals. He further states that his name does not appear in the FIR and the police investigation did not reveal any role attributable to the present-respondent, it was only after recording of the evidence that the court summoned the present-respondent. Therefore, he should be extended the liberty of bail as granted by the High Court.

19. *Per contra*, learned counsel for the appellant drew our attention to a series of orders passed by the courts below which makes it apparent that the bail was granted on a rhetorical footing without there being any application of mind.

20. It would be useful to note certain orders passed by the Courts below in order to understand the non-application of mind.

21. On 06.10.2016, the Sessions Court rejected the first anticipatory bail application of the respondent in this case taking into consideration the gravity and seriousness of the offence.

22. Thereafter, the respondent herein filed an anticipatory bail application in the High Court being CRM-M No.40457 of 2016. It is to be noted that the High Court granted interim protection in the following manner-

“Learned counsel for the petitioner states that the petitioner has not been named in the FIR and the police has found the petitioner innocent. Thus, he was not challaned. It is only on the basis of

A statement of Jiwan Kaler, the name of the petitioner has cropped up. He further states that even though no role has been attributed to the petitioner, but the petitioner is ready to face the trial.

Notice of motion.

B At this stage, Mr. Anil Kumar Spehia, Advocate has put in appearance on behalf of the complainant. Vakalatnama produced on behalf of the complainant in the Court today, is taken on record.

List on 13.02.2017.

C **Meanwhile, in case the petitioner surrenders before the trial Court within one week from today, he shall be admitted on bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court”.**

(emphasis supplied)

D 23. Thereafter, respondent herein made an application, for surrender and bail as per the order of the High Court dated 11.11.2016, before the trial court. The trial court by order dated 16.11.2016, passed the following order granting bail-

E **“Application for surrender and bail received by entrustment, it be checked and registered, along with it copy of order dated November 16,2016 passed by the Hon’ble High Court in CRM-M-40457 of 2016, vide which the applicant Sukhwinder Singh have been ordered to be released on bail to the satisfaction of Trial Court. the order’s have been got verified through Ahlmad of this Court. In view of the order’s of the High Court, applicant is ordered to be released on bail on (illegible).**

F Shall not leave India without the permission of the Court.

He shall appear in court on each and every date of hearing

G Bail/surety bonds accepted and attested. Papers of bail application be attached with the file of the trial pending in this court.”

(emphasis supplied)

H 24. Again, when the matter was listed before the High Court in CRM-M No.40457 of 2016, which was pending before it, was dismissed as being infructuous as under-

“Learned Counsel for the petitioner states that in terms of order dated 11.11.2016 passed by this Court, the petitioner has surrendered before the trial court. Thereafter, the petitioner has been ordered to be released on bail. A

Accordingly, this petition praying for grant of anticipatory bail the petitioner, has been rendered infructuous. B

Dismissed as having become infructuous.”

(emphasis supplied)

25. It is unfortunate to note that the order of the High Court on the first instance clearly points out that it has virtually directed the course of action to be undertaken by the subordinate court. It is not expected from the High Court to pass such mandatory orders commanding the subordinate court to compulsorily grant bail. Recently, this court on similar facts in *Madan Mohan v. State of Rajasthan*¹, has laid down that courts cannot issue mandatory directions which breach the independence of subordinate courts. Therefore, such circuitous method undertaken by the respondent in obtaining a bail is a gross abuse of the court process undertaken in bad faith. Moreover, our attention is drawn to the fact that he was declared as a proclaimed offender before the grant of bail, which was not taken into consideration by the High Court. In light of the above, we allow the appeal, set aside the order of the High Court and direct the concerned authorities to take the respondent no. 1 herein into custody forthwith. C
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Kalpana K. Tripathy

Appeals allowed.

¹ Criminal Appeal No. 2178 of 2017.