AMINUDDIN A

v.

STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 1669 of 2022)

SEPTEMBER 23, 2022 B

[DINESH MAHESHWARI AND KRISHNA MURARI, JJ.]

Bail – Grant of, on parity – When not justified – Penal Code, 1860 – ss.147, 148, 149, 302, 352 and 34 – Held: When the bail granted to co-accused person has been disapproved by Supreme Court and such grant of bail to co-accused had been the only reason for which the bail was granted to the respondent no.2, the impugned order is liable to be set aside– In the said case, the High Court had proceeded in a rather cursory manner and without regard to the salient feature of the case at hand, being that of gruesome day-light murder of the son of the appellant with 8 grievous injuries, including those of incise wounds and stab wounds on and around the neck and the chest – Impugned order equally suffers from the shortcoming that the relevant features of the case have not at all been considered by the High Court – Respondent no.2 has been specifically named in the FIR as one of the assailants and looking to the nature of the accusations and the nature of injuries, the prosecution case prima facie *cannot be dubbed as fanciful or improbable – Impugned order set aside – Respondent no.2 to surrender – If he applies for bail afresh after surrendering and at an appropriate stage, such an application may be considered on its own merits.* C D E F

Mahipal vs Rajesh Kumar **(2020) 2 SCC 118 : [2019] 14 SCR 529 – referred to.**

Case Law Reference

[2019] 14 SCR 529	**referred to**	**Para 13**

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1669 of 2022.

From the Judgment and Order dated 03.12.2020 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No.20894 of 2020. H

A Anilendra Pandey, Wahid Hussain, Nadeem Hussain, Sandeep, Advs. for the Appellant.

Shashank Shekhar Singh, Bahar U. Barqi, Aftab Ali Khan, D. S. Mishra, Advs. for the Respondents.

B The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

Leave granted.

2. The appellant, at whose behest FIR No. 438 of 2019 dated C 10.07.2019 came to be registered at Police Station Kasganj, District Kasganj, Uttar Pradesh for offences under Sections 147, 148, 149, 302, 352 and 34 of the Indian Penal Code, 1860[1], has preferred this appeal by permission and by special leave, in challenge to the order dated 03.12.2020, as passed by the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No. 20894 of 2020.

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2.1. By order impugned, the High Court has granted the concession of bail to one of the accused persons (respondent No. 2 herein), essentially on the consideration that identically placed co-accused persons had already been granted bail. The appellant has, *inter alia*, pointed out that the order granting bail to one of the alleged identically placed co- E accused has been disapproved by this Court in the judgment and order dated 15.03.2021, as passed in Criminal Appeal No. 317 of 2021 arising out of SLP(Crl.) No. 6744 of 2020.

3. Briefly put, the relevant background aspects of the matter are F as follows: The appellant had lodged the First Information Report on 10.07.2019 at about 09:08 p.m. with the allegations that his son Danish was attacked with knife and sharp weapons by as many as 7 persons when he was coming from his house for milking the cattle. It was further alleged that the victim Danish sustained grievous injuries because of such assault and died on the spot. Two persons, Nisar and Jalil, were G said to be the eye-witnesses to the incident. As many as 8 ante-mortem injuries were detected on the person of the deceased, most of which had been either incise wounds or stab wounds on and around the neck and the chest. One of the accused persons, Imran, was arrested on 11.07.2019.

H [1] 'IPC', for short.

As per the assertion of the Investigating Officer, the other accused persons, including the present respondent No. 2, remained absconding where for, non-bailable warrants and then, even proclamation under Section 82 of the Code of Criminal Procedure, 1973 were issued. The other accused persons surrendered or were apprehended on different dates. The respondent No. 2 surrendered on 02.09.2019.

4. The application for bail moved on behalf of the respondent No. 2 was declined by the Sessions Court and then, the first bail application moved on his behalf in the High Court, being Criminal Misc. Bail Application No. 4842 of 2020 came to be dismissed on 10.02.2020 for non-prosecution. Thereafter, the respondent No. 2 moved the second bail application bearing No. 20894 of 2020 that has been considered and allowed by the High Court by the impugned order dated 03.12.2020. Before that, the bail application of one of the co-accused, Fahim, bearing No. 6083 of 2020 was allowed by the High Court on 25.02.2020.

5. As regards the second bail application moved on behalf of the respondent No. 2, the frontal submission had been that identically placed persons had been granted bail and, therefore, he was also entitled to the same relief on parity. This submission was considered by the High Court and only for this reason that the co-accused had been granted bail, the High Court proceeded to accept the application made on behalf of the respondent No. 2 and ordered his release on bail with certain conditions. The relevant aspects of the order impugned, carrying the submissions made on behalf of the appellant, the opposition by the counsel for the State and consideration of the High Court, could be usefully reproduced as under: -

> "Learned counsel for the applicant argued that applicant has been falsely implicated in the present case. There are general allegations against all the accused persons. It is next submitted that co-accused, namely, Faim, Nasir and Qamruddin have been granted bail by co-ordinate Benches of this Court in Criminal Misc. Bail Application Nos. 6083 of 2020, 11840 of 2020 and 21839 of 2020 vide orders dated 25.2.2020, 17.6.2020 and 26.8.2020 respectively. Copy of the order granting bail to co-accused Faim has been annexed at page no. 60 to the affidavit filed in support of the bail application while copy of the orders granting bail to Nasir and Qamruddin has been produced today in Court, which are taken

on record. It is argued that the case of the applicant stands on identical footing as that of co-accused who have been granted bail, hence, he may be granted bail on ground of parity. It has also been pointed out that the applicant is not having any criminal history as stated in para-21 of the affidavit and he is in jail since 2.9.2019 and there is no likelihood of early conclusion of trial and hence, the applicant may be released on bail during pendency of trial.

Per contra, learned brief holder for the State opposed the prayer for bail but could not dispute the fact that the applicant has no criminal antecedents.

After having heard the learned counsel for the parties and looking to the fact that identically placed co-accused persons have been granted bail by this Court, therefore, the applicant be released on bail."

6. In this matter, on 12.07.2021, this Court granted permission to the present appellant to file the petition for leave to appeal and issued notices to the respondents. Detailed counter affidavits have been filed on behalf of the State as also on behalf of the respondent No. 2. While the State has supported the contentions urged on behalf of the appellant, the respondent No. 2 has opposed, while supporting the order impugned.

7. Learned counsel appearing on behalf of the appellant has argued in the first place that the High Court granted bail to the respondent No. 2 only for the reason of the orders passed in favour of the co-accused persons, including the order dated 25.02.2020 granting bail to the co-accused Fahim but then, the order so passed by the High Court in favour of the co-accused was not approved by this Court and was set aside by the judgment and order dated 15.03.2021 in Criminal Appeal No. 317 of 2021. In this view of the matter, according to the learned counsel, the very basis of grant of bail to the respondent No. 2 having been knocked out, the impugned order cannot sustain itself and deserves to be set aside.

7.1. Learned counsel for the appellant has further submitted that while granting bail to the respondent No. 2, the High Court has totally omitted to consider that the present case had been of a broad day-light murder of the son of the appellant in brutal and gruesome manner where

7 persons attacked him with sharp weapons and caused as many as8grievous injuries on vital parts of the body. In such a matter, the learned counsel has contended, the order granting bail even before commencement of the trial suffers from gross illegality and impropriety and, therefore, deserves to be set aside.

8. Learned counsel for the State has duly supported the submissions made on behalf of the appellant and has submitted that the impugned order deserves to be set aside.

9. Learned counsel for the respondent No. 2, on the other hand, has countered the submissions made on behalf of the appellant and the State, and has contended that the impugned order does not call for interference merely because this Court has set aside the order granting bail to the co-accused Fahim.

9.1. Learned counsel for the respondent No. 2 has contended that in the said order dated 15.03.2021, the major aspects had been that no counter-affidavit was filed on behalf of the respondent-accused and then, on the date of hearing, learned counsel appearing for the said co-accused sought an adjournment, which was declined by the Court. Thus, according to the learned counsel, the order dated 15.03.2021 does not operate against the interests of respondent No. 2.

9.2. Learned counsel has further submitted that a strong case for grant of bail in favour of the respondent No. 2 was made out, and therefore, the High Court had rightly granted him bail. In support of these submissions, learned counsel has relied upon the factors that the respondent No. 2 had been in custody since 02.09.2019; that he had no negative antecedents or adverse records; that no specific role has been assigned to him as regards the incident in question; and that the story of the prosecution appears to be palpably false for the scientific reason that 7 accused persons could not have inflicted injuries on the body of the decease with 7 knives at the same time.

9.3. Learned counsel has further submitted that the statement of the present appellant had already been completed in the trial and there had not been any allegation of tempering with the witnesses. Thus, according to the learned counsel, the impugned order granting bail to the respondent No.2 does not call for interference.

A 10. In rejoinder submissions, learned counsel for the appellant has submitted that the eye-witnesses, namely Nasir and Jalil, are yet to be examined and looking to the nature of the accusations and the order passed by this Court in relation to the co-accused person, the impugned order deserves to be set aside.

B 11. Having given anxious consideration to the rival submissions and having examined the record, we are clearly of the view that the impugned order dated 03.12.2020 cannot be approved from any standpoint.

C 12. A perusal of the order impugned makes it clear that in essence, the principal part of submissions before the High Court on behalf of the present respondent No. 2, while seeking bail, had been that the co-accused persons had been granted bail and he was entitled to the same relief on the ground of parity because his case was standing on identical footing. The other submissions had been that the respondent No. 2 was in custody D since 02.09.2019; that he had no criminal history; and that trial was likely to take time. The High Court did not consider any other aspect of the matter at all and proceeded to grant bail to the respondent No. 2 only for the reason that the so-called identically placed co-accused persons had already been granted bail. The fact that the order granting bail to the co-accused Fahim met with its strong disapproval by this Court remains E rather indisputable.

13. In the judgment and order dated 15.03.2021, this Court took note of the fact that the High Court had granted bail to the co-accused while ignoring the relevant considerations and with a mere reference to F the mandate of Article 21 of the Constitution of India. The relevant observations and comments by this Court in the judgment and order dated 15.03.2021 could be usefully extracted asunder: -

> "7 The circumstances would indicate that a brutal murder has been committed of the son of the appellant. The postmortem report G would indicate as many as eight ante mortem injuries. The offence is alleged to have taken place in broad day light. The First Information Report being Case Crime No 438 of 2019 was registered at about 2108 hours, within a period of four hours of the incident which is alleged to have taken place at 1715 hours on the same day. After the investigation was completed, the charge- H

sheet has been submitted before the competent court under Section 173 of the Code of Criminal Procedure 1973. In several judgments of this Court, the need for the High Court to adduce reasons while granting bail has been underscored. At this stage, we may advert to the recent decision in ***Mahipal vs Rajesh Kumar***[2], which was relied on by Ms Bansuri Swaraj, learned counsel for the State of UP. Speaking for a two-Judge Bench, one of us (Justice D Y Chandrachud, J) observed:

> "**25**. Merely recording "having perused the record" and "on the facts and circumstances of the case" does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.
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> **27.** Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court."

8 In the present case, the High Court has merely observed that bail was being granted after considering the submissions and having regard to the "larger mandate of Article 21". There can be no manner of doubt that the protection of personal liberty under Article 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious offence of murder has taken place, the

[2] (2020) 2 SCC 118

A liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account. Having regard to the settled principles which govern the grant of bail in a matter involving a serious offence in a case such as the present, we are of the view that the order of the High Court does not clearly pass muster. No case for the grant of bail is made out. In granting bail, the High Court has failed to notice relevant considerations which ought to have been, but have not been taken into account.

C 9 In the above circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dated 25 February 2020. As a consequence of this order, the second respondent shall surrender forthwith."

14. The position aforesaid equally applies to the present case too. D Moreover, when the bail granted to co-accused person has been disapproved by this Court and such grant of bail to co-accused had been the only reason for which the bail was granted to the respondent No. 2, the impugned order is liable to be set aside.

15. The submissions on behalf of the respondent No. 2 that there E was no proper contest on behalf of the said co-accused in this Court could hardly take away the substance of the *dictum* of this Court. It is clear that in said case, the High Court had proceeded in a rather cursory manner and without regard to the salient feature of the case at hand, being that of gruesome day-light murder of the son of the appellant with F 8grievous injuries, including those of incise wounds and stab wounds on and around the neck and the chest.

16. As regards the case of respondent No. 2, we are constrained to observe that even if the High Court proceeded to consider the fact that the co-accused person had been granted bail, at least this much was G required that the relevant facts of the case were indicated as also the reasons as to how the case of respondent No. 2 was treated to be identical. The relied upon order had been suffering from failure on the part of the High Court to notice the relevant considerations and the impugned order equally suffers from the shortcoming that the relevant features of the case have not at all been considered by the High Court. H

17. The submissions that the respondent No. 2 had been in custody since 02.09.2019 or that he had no negative antecedents, by themselves, do not make out a case for grant of bail, looking to the seriousness of crime in question. In this regard, the submissions of the Investigating Officer cannot go unnoticed that while the incident took place on 10.07.2019 and one of the accused persons was arrested on 11.07.2019, the other accused persons remained absconding and the respondent No. 2 surrendered as late as on 02.09.2019. So far the questions relating to the role assigned to the respondent No. 2 or about the doubt on the prosecution case, suffice it to observe at the present stage that the respondent No. 2 has specifically been named in the FIR as one of the assailants; and looking to the nature of the accusations and the nature of injuries, the prosecution case, *prima facie*, cannot dubbed as fanciful or improbable.

18. For what has been noticed hereinabove, the impugned order is required to be set aside.

19. We have pondered over the question as to the order that needs to be passed in this matter finally. It is noticed that in the judgment and order dated 15.03.2021, this Court disapproved the order dated 15.02.2020 granting bail to the co-accused and directed him to surrender forthwith. More or less the same position would apply to the present case too. Herein, the order granting bail was passed on 03.12.2020 and the present matter was initially taken up for consideration on 12.07.2021. Even if one witness, that is, the present appellant, has already been examined, the other witnesses, including the eye-witnesses, are to be examined in the trial. In the given circumstances and in the interest of justice, we also deem it proper to leave it open for the respondent No. 2 to apply for bail afresh after surrendering and at an appropriate stage.

20. Accordingly and in view of above, this appeal is allowed; the impugned order dated 03.12.2020 is set aside with the requirement that the respondent No. 2 shall surrender forthwith. In the interest of justice, it is provided that if the respondent No. 2 applies for bail afresh after surrendering and at an appropriate stage, such an application may be considered on its own merits.

21. In the interest of justice, it is also made clear that we have not pronounced on the merits of the case either way and none of the

A observations herein, by itself, would operate prejudicial to the interests of the parties nor shall have any bearing on the final verdict by the Trial Court.

22. All pending applications also stand disposed of.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.