[2023] 10 S.C.R. 1147 : 2023 INSC 637

TEESTA ATUL SETALVAD

v.

STATE OF GUJARAT

(Criminal Appeal No(s). 2022 of 2023)

JULY 19, 2023

[B. R. GAVAI, A. S. BOPANNA AND DIPANKAR DATTA, JJ.]

Bail– Appellant was on interim bail on account of order dtd. 02.09.2022 passed by Supreme Court – By the impugned order, High Court rejected the bail application filed by the appellant and directed the appellant to surrender immediately – Legality of – Held: There was no alarming urgency to direct the appellant to surrender immediately when she was enjoying the interim protection under the orders of Supreme Court – The considerations which were available when the order dtd.02.09.2022 was passed are still available even at this stage – Most of the evidence in the present case are documentary evidence already in possession of the Investigating Agency and the charge-sheet has been filed – Appellant entitled for bail – Impugned order quashed and set aside – Appellant would not make any attempt to influence the witnesses and shall remain away from them – Penal Code, 1860 – ss.468, 469, 471, 194, 211, 218 and 120B.

Zakia Ahsan Jafri v. State of Gujarat and another **2022 (9) SCALE 385;** *Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others* **(1980) 2 SCC 559 : [1980] 3 SCR 15 – referred to.**

Case Law Reference

2022 (9) SCALE 385	**referred to**	**Para 5**
[1980] 3 SCR 15	**referred to**	**Para 22**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2022 of 2023.

From the Judgment and Order dated 01.07.2023 of the High Court of Gujarat at Ahmedabad in CRLMA No. 14435 of 2022.

Kapil Sibal, Chander Uday Singh, Mihir Thakore, Mihir Desai, Sr. Advs., Ms. Aparna Bhat, Ms. Karishma Maria, Nizam Pasha, Adit

A Subramaniam Pujari, Ms. Rupali Samuel, Rishabh Parikh, Ms. Bidya Mohanty, Ms. Sumedha Sarkar, Advs. for the Appellant.

S.V. Raju, A.S.G., Rajat Nair, Ms. Swati Ghildiyal, Kanu Agrawal, Ms. Devyani Bhatt, Madhav Sinhal, Advs. for the Respondent.

B The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted.

2. The appeal is taken up for final hearing.

C 3. The appeal challenges the judgment and order dated 1st July 2023, passed by the learned Single Judge of the High Court of Gujarat, thereby rejecting the bail application filed by the present appellant.

4. The facts in the present matter are not in dispute.

5. A judgment came to be delivered by this Court, on 24th June D 2022, in the case of ***Zakia Ahsan Jafri v. State of Gujarat and another***[1], wherein at paragraph 88, this Court observed thus:-

> "88. While parting, we express our appreciation for the indefatigable work done by the team of SIT officials in the challenging circumstances they had to face and yet, we find that E they have come out with flying colours unscathed. At the end of the day, it appears to us that a coalesced effort of the disgruntled officials of the State of Gujarat alongwith others was to create sensation by making revelations which were false to their own knowledge. The falsity of their claims had been fully exposed by the SIT after a thorough investigation. Intriguingly, the present F proceedings have been pursued for last 16 years (from submission of complaint dated 8.6.2006 running into 67 pages and then by filing protest petition dated 15.4.2013 running into 514 pages) including with the audacity to question the integrity of every functionary involved in the process of exposing the devious G stratagem adopted (to borrow the submission of learned counsel for the SIT), to keep the pot boiling, obviously, for ulterior design. As a matter of fact, all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law."

H [1] **2022 (9) SCALE 385**

6. Immediately on the next day i.e. on 25th June 2022, an FIR came to be registered for offences punishable under Sections 468, 469, 471, 194, 211, 218 and 120B of the Indian Penal Code, 1860 (for short "IPC"). The appellant came to be arrested on the same day after lodging of the FIR. On 26th June 2022, the appellant came to be produced before the learned Magistrate, who granted police remand for a period of seven days. After the completion of the police remand of seven days, the appellant was sent to judicial custody on 03rd July 2022.

7. Thereafter, the appellant filed an application for bail before the learned Trial Judge i.e. Sessions Judge. The said application was rejected vide order dated 30th July 2022.

8. The appellant thereafter approached the High Court by filing Criminal Miscellaneous Application No.14435 of 2022. The High Court vide its order dated 03rd August 2022 issued rule and made it returnable on 19th September 2022.

9. Being aggrieved by the order of the High Court of not considering the interim relief in bail application, the appellant approached this Court, by way of Criminal Appeal Nos.1417-1418 of 2022. This Court, vide its order dated 2nd September 2022, after considering various factors, which we will be referring to hereinafter, directed the appellant to be released on interim bail, subject to certain conditions as could be found in the said order.

10. This Court had further observed that the applications, which were pending before the High Court, should be considered by the High Court independently and uninfluenced by any of the observations made by this Court in the instant order.

11. Pursuant to the aforesaid order passed by this Court, the matter was heard by the learned Single Judge on various dates, and finally vide order dated 01st July 2023, which is impugned herein, the High Court rejected the application. Hence the present appeal.

12. Initially, this matter was listed before the Vacation Bench consisting of two Hon'ble Judges on 1st July 2023. However, since the two learned Judges on the Bench differed on the question, as to whether the appellant was entitled to interim protection or not, the Hon'ble the Chief Justice of India constituted a Bench consisting of three of us, to decide the issue.

A 13. Vide the order of the even date, we had stayed the impugned order passed by the High Court for a period of one week therefrom. We had also directed the Registrar (Judicial) to obtain orders from Hon'ble the Chief Justice of India and place the matter before an appropriate Bench for considering the Special Leave Petition.

B 14. Thereafter, the matter was listed before us on 5th July 2023. On the said date, we had issued notice, returnable today and directed the parties to complete the pleadings before that. Accordingly, the matter is listed before us today.

15. We have heard Shri Kapil Sibal, learned senior counsel C appearing for the appellant and Shri S.V. Raju, learned Additional Solicitor General of India, appearing for the respondent-State of Gujarat at length.

16. Shri Kapil Sibal, learned senior counsel for the appellant, submits that out of the offences registered against the appellant, only Sections 194 and 468 IPC are non-bailable. Shri Sibal submits that even if the D allegations made in the FIR are taken on its face value, the case under Section 194 and 468 IPC is not made out.

17. Shri Sibal submits that the allegations made against the appellant are that she influenced certain citizens to swear false affidavits, which were used as a part of investigation. He submits that Section 194 IPC E only deals with the evidence recorded before the Court. Shri Sibal would submit that since there is no material to show that the appellant has fabricated false evidence intending thereby to cause or knowing it to be likely that she will thereby cause any person to be convicted of an offence, which is capital, the case taken at its face value would not bring it under the purview of Section 194 IPC. He further submits that even the F ingredients of section 468 IPC are not made out in the present case.

18. Shri Sibal further submits that in the proceedings which led to the judgment in the case of ***Zakia Ahsan Jafri*** (supra), though the appellant had filed an application to be joined as petitioner No.2, the said application was vehemently opposed by the State. It is submitted that on G the opposition of the State Government, the Court did not wish to dilate on the issue of locus of the appellant herein and kept the preliminary objection open to be decided in an appropriate case. It is, therefore, submitted that in the absence of the appellant being made party in the proceedings the observations made in paragraph 88 of ***Zakia Ahsan Jafri*** (supra) could not have been used against her. H

19. Shri S.V. Raju, learned Additional Solicitor General of India, with usual vehemence at his command, strenuously opposes the appeal. He submits that the appellant is involved in a very heinous crime of trying to get conviction of totally unconnected persons by forging the evidence. He submits that a number of persons have deposed that the appellant had forced them to give affidavits so as to implicate the higher ups in the State Government at that time. He submits that the attempt was to destabilize a democratically elected Government. Shri Raju submits that the appellant, by accepting huge sums of money, has indulged in such heinous activities and thus, is not entitled for bail.

20. Shri Raju submits that the considerations which weigh with the Court for grant or refusal of bail to an ordinary litigant would differ with the considerations that will weigh while considering an application of a person who is involved in a serious crime of attempting to convict innocent citizens for offences punishable with capital punishment and destabilize the democratically elected Government.

21. Shri Raju further submits that the learned Single Judge, upon appreciation of the materials placed on record, has *prima facie* found that the ingredients to constitute an offence under Section 194 IPC are present and a *prima facie* case has been made out and, therefore, the High Court has rightly rejected the bail application.

22. As held by this Court in a catena of cases right from ***Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others***[2], a detailed elaboration of evidence at the stage of bail has to be avoided. This is neither in the interest of the prosecution nor the accused. As such, we would be avoiding any detailed elaboration of evidence at this stage.

23. The order passed by the learned Judge, running into more than a hundred pages, makes for an interesting reading. On one hand, the learned Judge has spent pages after pages to observe as to how it is not necessary, rather not permissible at the stage of consideration of grant of bail to consider as to whether a *prima facie* case is made out or not.

24. Having made the aforesaid observation on the one hand, the learned Judge, on the other hand, goes on to discuss the statements of some witnesses and observes that a *prima facie* case under

[2] **(1980) 2 SCC 559**

A Section 194 IPC is made out. The findings are totally contrary, to say the least.

25. The learned Judge has further observed that since the appellant, after filing of an FIR and filing of a charge-sheet, has neither challenged the same in a proceeding under Section 482 of the Code of Criminal B Procedure, 1973 ("Cr.P.C." for short) or under Article 226 of the Constitution of India before the High Court or under Article 32 of the Constitution of India before this Court, it is not permissible for her to contend that a *prima facie* case is not made out.

26. In the limited understanding of law that we have, the factors C which are required to be taken into consideration at the stage of grant of bail are - (i) *prima facie* case, (ii) the possibility of the accused tampering with the evidence or influencing the witnesses, and (iii) the possibility of the accused fleeing away from the hands of justice.

27. No doubt, the gravity and the seriousness of the offence is yet D another factor that has to be taken into consideration.

28. If the observations, as recorded by the learned Judge, are to be accepted then no application for bail at a pre-trial stage could be entertained unless the accused files an application for quashing the proceedings under Section 482 Cr.P.C., or Articles 226 or 32 of the E Constitution of India.

29. To say the least, such findings are totally perverse.

30. Though Shri Sibal has made submission with regard to applicability of the observations made in paragraph 88 of the judgment in F ***Zakia Ahsan Jafri*** (supra), judicial propriety would not permit us to delve into those issues.

31. Similarly, though Shri Sibal has strenuously argued that the case is not made out for offence under Section 194 IPC, we refrain from observing anything on that issue, as we have already held G hereinabove that a detailed elaboration of evidence has to be avoided at this stage. Any observations in that regard would adversely affect the interest of either of the parties.

32. We find that the considerations which were available when the order was passed by this Court on 02nd September 2022 are still H available even at this stage.

33. It will be apposite to reproduce certain observations from the said order:-

> "We need not go into the rival contentions advanced by the learned counsel for the parties touching upon the merits of the matter. For the present purposes, in our considered view, following aspects of the matter, which emerge from the record, are of some significance.
>
> a. The appellant – a lady has been in custody since 25.06.2022.
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> b. The offences alleged against her relate to the year 2002 and going by the assertions in the FIR pertain to documents which were sought to be presented and/or relied upon till the year 2012.
>
> c. Investigating machinery has had the advantage of custodial interrogation for a period of seven days whereafter judicial custody was ordered by the concerned Court
>
> xxx xxx xxx
>
> The essential ingredients of the investigation including the custodial interrogation having been completed, the relief of interim bail till the matter was considered by the High Court was certainly made out."

34. The consideration which weighed with the Court while passing the aforesaid order that the appellant is a lady has not changed. The fact that the offence alleged against her relates to the year 2002 and that the FIR pertains to documents which are sought to be presented or relied upon till the year 2012 has also not changed. The fact that the appellant was available for custodial interrogation for a period of seven days and thereafter she was in continuous judicial custody has also not changed.

35. Another factor that needs to be taken into consideration is that after she was released on interim bail by this Court, she has admittedly not been called for investigation even on a single occasion.

36. Taking into consideration that most of the evidence in the present case are documentary evidence, which are already in possession of the Investigating Agency and, further, that the charge-sheet has been filed, we find that she is entitled for bail.

A 37. Another factor that needs to be taken into consideration is that at the time of pronouncing the impugned order, the learned Judge, though noticing that on account of order of this Court dated 2nd September 2022 passed in Criminal Appeal No. 1417 and 1418 of 2022 the appellant was on interim bail, directed her to surrender immediately. The appellant prayed for stay of the said order for thirty days. However, the said prayer was also rejected. We fail to understand as to what was the alarming urgency to direct the appellant to surrender immediately, particularly, when the appellant was enjoying the interim protection under the orders of this Court from 2nd September 2022.

C 38. Insofar as the apprehension of the prosecution that she may influence the witnesses is concerned, the concern of the prosecution can be taken care of by directing her not to make any attempt to influence the witnesses.

39. In that view of the matter, we are inclined to allow the appeal.

D 40. The impugned order is quashed and set aside and the appeal is allowed.

41. The appellant is directed to be continued on bail, which was granted to her in terms of the order dated 02nd September 2022. The appellant has already surrendered her passport, which shall continue to E be in the custody of the Sessions Court.

42. We make it clear that the appellant would not make any attempt to influence the witnesses and shall remain away from them. If the prosecution feels that any such attempt is made by the appellant, they would be entitled to move this Court directly for modification of our F orders.

43. We clarify that none of the observations made in the impugned order and any of the observations made by us in our order would influence the trial court at the stage of the trial.

44. Pending application(s), if any, shall stand disposed of.

Divya Pandey Appeal allowed.
(Assisted by : Roopanshi Virang, LCRA)