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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
M.R. SHAH; B.V. NAGARATHNA, JJ.
CRIMINAL APPEAL NO. 342 & 343 OF 2022; 11th MARCH, 2022
KAMLA DEVI *VERSUS* STATE OF RAJASTHAN & ANR

Code of Criminal Procedure, 1973 : Section 439 - Bail - The Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused. (Para 26)

Code of Criminal Procedure, 1973 : Section 439 - Bail - It is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystallised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. (Para 26)

Code of Criminal Procedure, 1973 : Section 439 - Bail - When bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have arisen since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima -facie case against the accused. (Para 29)

Constitution of India, 1950 : Article 136 - An order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of the Constitution of India. [Referred to *Manoj Kumar Khokhar v. State of Rajasthan*, [2022 LiveLaw \(SC\) 55](#)]

Legal maxim - Cessante razione legis cessat ipsa lex - Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself. (Para 25)

Appeal against Bail granted by the High Court in a murder case - Allowed - The High Court has granted bail to the -accused by passing a very cryptic and casual order, de hors cogent reasoning. We find that the High Court was not right in allowing the applications for bail filed by the accused.

For Appellant(s) Mr. H. D. Thanvi, Adv Achal Singh Bule, Adv. U .N. Goyal, Adv. Mr. Rishi Matoliya, AOR

For Respondent(s) Dr. Manish Singhvi, Sr Adv Mr. D. K. Devesh, AOR Mr. Harsh Singh Rawat, Adv Mr. Mehul M. Gupta, Adv. Ms. Kiran Bala Dewangan, Adv. Mr. Jhingan Ashwani Omprakash, Adv. Mr. Y.P. Singh, Adv. Mr. Vishwa Pal Singh, AOR Mr. Ronak Karanpuria, AOR

JUDGMENT

NAGARATHNA J.

These appeals have been preferred by the appellant who is the wife of the deceased, Sohan Singh, challenging orders dated 9th September, 2019 and 17th October, 2019, passed by the High Court of Rajasthan at Jodhpur, in S.B. Criminal Miscellaneous Bail Application Nos. 10473 of 2019 and 11546 of 2019 respectively, whereby bail has been granted to the two accused, namely, Kishor Singh @ Kishan Singh, who is the second respondent in Criminal Appeal No. 342 of 2022 and Kalu Singh who is the second respondent in Criminal Appeal No. 343 of 2022, in connection with FIR No.229 of 2019, registered at Police Station Bhim, District Rajsamand, Rajasthan.

2. The facts in a nutshell are that appellant is the wife of the deceased. She is stated to be the person who lodged a missing person report on 14th May, 2019 stating therein that the deceased, Sohan Singh, aged 48 years, had on 13th May 2019 left their residence to attend the marriage ceremony of one Sawai Singh and was expected to return by 2.00 a.m. the next morning. When the deceased did not return home, the appellant assumed that he may have continued to stay at Sawai Singh's house. However, when she inquired the next morning, Sawai Singh informed her that the deceased had left the marriage ceremony the previous night itself.

The appellant further stated in the missing person report that she had a suspicion that the respondents-accused herein in connivance with their mother, Teji Devi, had in some manner caused harm to her husband.

3. That a First Information Report, being FIR No. 229 of 2019 dated 15th May, 2019 came to be lodged, at the instance of the son of the deceased, stating that the deceased was returning to his house after attending the marriage function of Sawai Singh, the nephew of the deceased. The deceased was last seen outside the house of the three accused, namely Kishore Singh alias Kishan Singh, Kalu Singh, who are the two respondents-accused herein and Teji Devi who is the mother of the respondents-accused. That three passersby had disclosed to the informant-son of the deceased that they saw the accused persons quarrelling with the deceased on the night of his death. One Nath Singh had informed the complainant that he had seen the accused quarrelling with the deceased outside their house and subsequently dragging the deceased into their house, wherein he was assaulted and murdered. The dead body of the deceased was dragged by the accused and thrown into a well nearby.

4. Report of the postmortem examination conducted on 15th May, 2019 recorded that the deceased had died as a result of "cardiopulmonary arrest due asphyxia and venous congestion." The report further stated that the deceased was drowned following his death and that the hyoid bone of the deceased appeared to be fractured. Final report as to

cause of death was reserved, to be finalised based on the report of the forensic science laboratory.

5. A charge sheet was submitted by the police on 9th July, 2019, against the three accused persons, before the Court of the District Judge, Rajsamand, Rajasthan, for charges under Sections 302, 201 and 34 of the Indian Penal Code, 1860 (for short, the “IPC”). The chargesheet has recorded that on the night of the incident, the deceased had at about 2.00 a.m. knocked on the door of Teji Devi. She informed her sons, Kalu Singh and Kishan Singh, the respondents-accused, of the same. The respondents-accused who were on the roof of their house, jumped down and attacked the deceased with *lathis*, with an intention to murder him. After the deceased was killed, all three accused dragged the dead body of the deceased and threw it in a well nearby, together with the lathi used to cause his death.

The matter was committed to the Court of the Additional Sessions Judge, Rajsamand, Rajasthan for trial.

6. The respondents-accused were arrested on 23rd May, 2019, in connection with FIR No. 229 of 2019 and were sent to judicial custody. They remained in judicial custody for a period of nearly four months before they were granted bail by the High Court *vide* the impugned judgments.

7. The respondents-accused preferred separate applications seeking bail, under Section 439 of the Code of Criminal Procedure, 1973 (for short, the “CrPC”) before the Court of the Additional Sessions Judge, Rajsamand, Rajasthan. Bail application preferred by Kishan Singh, respondentaccused in Criminal Appeal No. 342 of 2022 came to be rejected by an order dated 09th July, 2019, having regard to the gravity of the offences alleged and the *prima facie* evidence on record as regards the guilt of the accused. Subsequently, the bail application preferred by Kalu Singh, respondentaccused in Criminal Appeal No. 343 of 2022 was also rejected by an order dated 05th September, 2019.

8. The respondents-accused preferred separate bail applications before the High Court and by the impugned orders dated 9th September, 2019 and 17th October, 2019, the High Court has enlarged them on bail in the case arising out of FIR No. 229 of 2019.

Being aggrieved by the grant of bail to the respondents-accused, the appellantwife of the deceased has preferred the instant appeals before this Court.

9. We have heard Sri. H.D. Thanvi, learned counsel appearing on behalf of the appellant and Sri. Mehul M. Gupta, learned counsel for the second respondent in Criminal Appeal No. 342 of 2022 and perused the material on record.

10. Learned counsel for the appellant submitted that the High Court has not properly exercised its discretionary power to grant bail to the respondents-accused in a judicious manner. That the High Court, in the impugned orders, had failed to consider the severity of the offences alleged against the respondents-accused and the brutal manner in which

the offences were committed and attempted to be concealed by throwing the body of the deceased, together with the murder weapon, into a well.

11. It was urged that the trial has just commenced and thirteen witnesses are yet to be examined; therefore, it is imperative that the accused remain under custody, in order to ensure that they do not abscond or tamper with evidences or threaten the family of the deceased and/or witnesses, more so because, the accused had previously attempted to cause disappearance of evidence by disposing off the body of the deceased, together with the *lathis* used to commit murder, by throwing the same into a well.

12. That following the grant of bail by the High Court, the accused, Kishan Singh had threatened the appellant herein of dire consequences of her pursuing the criminal trial in connection with case No. 299 of 2019. That a complaint under Sections 107 and 116(3) of the Cr.P.C. has also been filed in this regard.

13. According to the learned counsel for the appellant, the High Court has not assigned reasons for the grant of bail to the respondents-accused and has granted bail by a cryptic order *de hors* any reasoning, notwithstanding the fact that the accused, if convicted for the offences alleged, could be sentenced to life imprisonment.

14. In order to buttress his submissions, learned counsel for the appellant placed reliance on the following decisions of this Court:

i) In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr. – [(2004) 7 SCC 528]***, this Court held that although it is established that a Court considering a bail application cannot undertake a detailed examination of the evidence and make an elaborate discussion on the merits of the case, the Court is required to indicate the *prima facie* reasons justifying the grant of bail.

ii) Reference was made to ***Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr. – [(2012) 9 SCC 446]*** to contend that the period of custody undergone by the accused seeking bail, was a relevant factor to be considered while deciding an application for bail. That in the instant case, the accused had been committed to custody barely four months before they were released on bail and therefore, the impugned orders granting bail to the accused are not tenable in the eyes of law.

15. In the aforesaid case, this Court held that a Court, before granting bail ought to consider the factors which would justify the grant of bail, in juxtaposition with the societal concern involved in releasing an accused on bail.

(i) In ***State through C.B.I vs. Amaramani Tripathi – [(2005) 8 SCC 21]***, this Court held that a Court granting bail to an accused, must apply its mind and go into the merits and evidence on record and determine whether a *prima facie* case was established against the accused. It was held that the seriousness and gravity of the crime was also a relevant consideration. Based on such observations, this Court set aside an order of the High Court whereby bail had been granted to the accused therein, having no regard to the material placed by the prosecution therein, which indicated that the accused had, at all material times, tried to interfere with the course of investigation, tamper with witnesses, fabricate evidence, intimidate or create obstacles in the path of investigation officers and derail the case.

16. In the above context, it was contended by Sri H.D. Thanvi, learned counsel for the appellant that it was highly probable that the accused herein, if not remanded to custody on cancellation of their bail bonds, are likely to interfere with the investigation, abscond or even cause harm to the appellant herein and the informant. It was urged that the grant of bail to the respondents-accused was contrary to the settled principles of law and judgments of this Court. It was submitted on behalf of the appellantwife of the deceased that these appeals may be allowed by setting aside the impugned orders.

17. Per contra, Sri. Mehul M. Gupta, learned counsel for the respondent accused in Criminal Appeal No.342 of 2022 submitted that the impugned orders do not suffer from any infirmity warranting interference by this Court. That the appellant and her son, the informant, have narrated an untrue version of events in order to falsely implicate the accused.

18. Referring to the contents of the postmortem report of the deceased dated 15th May, 2019, it was contended that the deceased had died as a result of suffering a sudden cardio pulmonary arrest and therefore, the death of the deceased could not be attributed to an assault by the accused. It was further submitted that, since the final report as to the cause of death was reserved and was to be finalised based on the forensic laboratory reports, it was rather premature to conclude that the accused had any role to play in the death of the deceased.

19. The allegation that accusedKishan Singh, after he was enlarged on bail threatened the appellant herein, has been denied. It has been submitted in this regard that such allegation and the complaint registered by the appellant in connection with such allegation were merely attempts to further implicate the accused, falsely.

20. It was next urged that the High Court was not required to conduct an elaborate discussion as to the merits of the case and the evidence on record, at a pretrial stage. That such exercise, if undertaken by the High Court while deciding a bail application, would prejudice fair trial. That the accused have no criminal antecedents and have been cooperating with the investigation of the case. Therefore, the impugned orders granting bail to the accused do not call for interference by this Court.

21. Having regard to the contention of Sri. H.D. Thanvi, learned counsel for the appellant, that the impugned orders of the High Court whereby bail was granted to the respondents-accused, are bereft of any reasoning and that such orders are casual and cryptic, we extract, hereinunder, those portions of the impugned orders dated 9th September, 2019 and 17th October, 2019 passed by the High Court, which records the “reasoning” of the High Court for granting bail:

Impugned order dated 09 th September, 2019

“Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C.

Accordingly, this bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioner Kishore Singh @ Kishan Singh S/o Sh. Dungar Singh Rawat shall be released on bail in connection with FIR No.229/2019 of Police Station Bhim, District Rajsamand provided he executes a personal bond in a sum of Rs.50,000/with two sound and solvent sureties of Rs.25,000/each to the satisfaction of learned trial Court for his appearance before that Court on each and every date of hearing and whenever called upon to do so till the completion of the trial.”

Impugned order dated 17 th October, 2019

“Having regard to the totality of the facts and circumstances of the case, without expressing any opinion on the merits of the case, I deem it just and proper to grant bail to the accused petitioner under Section 439 Cr.P.C.

Accordingly, this bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioner Kalu Singh S/o Sh. Dungar Singh Rawat shall be released on bail in connection with FIR No.229/2019 of Police Station Bheem, District Rajsamand provided he executes a personal bond in a sum of Rs.50,000/with two sound and solvent sureties of Rs.25,000/each to the satisfaction of learned trial Court for his appearance before that Court on each and every date of hearing and whenever called upon to do so till the completion of the trial.”

22. This Court has, on several occasions has discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) the seriousness of the offence; (ii) the likelihood of the accused fleeing from justice; (iii) the impact of release of the accused on the prosecution witnesses; (iv) likelihood of the accused tampering with evidence. While such list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, *vide Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh*[(1978) 1 SCC 240] ; *Prahlad Singh Bhati vs. NCT of Delhi & Ors. – [(2001) 4 SCC 280 ; Anil Kumar Yadav vs. State (NCT of Delhi) [(2018) 12 SCC 129].*

23. This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of nonapplication of mind, rendering it illegal, *vide Ram Govind Upadhyay vs. Sudarshan Singh*[(2002) 3 SCC 598 ; *Kalyan Chandra Sarkar vs. Rajesh Ranjan (supra) ; Prasanta Kumar Sarkar vs. Ashis Chaterjee – [(2010) 14 SCC 496] ; Ramesh Bhawan Rathod vs. Voshanbhai Hirabhai Makwana (Koli) & Ors. – [(2021) 6 SCC 230 ; Brijmani Devi vs. Pappu Kumar & Anr. – Criminal Appeal No. 1663 of 2021 [2021 SCC OnLine SC 1280].*

24. Reference may also be had to recent decisions of this very Bench in *Manoj Kumar Khokhar vs. State of Rajasthan & Anr., Criminal Appeal No. 36 of 2022 [2022 SCC OnLine SC 30]* and *Jaibunisha vs. Meharban & Anr., Criminal Appeal 77 of 2022 [2022 SCC OnLine SC 58]*, wherein, on engaging in an elaborate discussion of the case law cited *supra* and after duly acknowledging that liberty of individual is an invaluable

right, we have held that an order granting bail to an accused, if passed in a casual and cryptic manner, *de hors* reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising jurisdiction under Article 136 of the Constitution of India.

25. The Latin maxim “*cessante ratione legis cessat ipsa lex*” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also apposite.

26. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the “reasoning” of the High court while granting bail. As noted from the aforesaid judgments, it is not necessary for a Court to give elaborate reasons while granting bail, particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystallised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt which would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a *prima facie* satisfaction of the Court in support of the charge against the accused.

27. In view of the aforesaid discussion, we shall now consider the facts of the present case. The allegations against respondents-accused as well as the contentions raised at the Bar have been narrated *supra*. On a consideration of the same, the following aspects of the case would emerge:

a) The allegations against the respondents-accused are under Section 302, 201 and 34 of the IPC, with regard to the murder of Sohan Singh, husband of the appellant herein. The offences alleged against the respondents-accused are of grave nature.

b) The accusation against the accused is that they committed the offence of murder on the deceased and attempted to clandestinely dispose off the dead body of the deceased and the lathis used to attack him, by throwing the same in a well nearby so as to conceal the offence.

c) It is also the case of the appellant that following the release of accused Kishan Singh on bail, he had threatened the appellant herein with dire consequences for pursuing the criminal trial in connection with FIR No. 299 of 2019. A complaint in this regard also came to be filed against Kishan Singh. Thus, the possibility of the accused threatening or otherwise influencing the witnesses, if on bail, cannot be ruled out.

d) As regards the contention advanced on behalf of the respondents-accused to the effect that the deceased had died as a result of suffering a sudden cardio pulmonary

arrest and therefore, the death of the deceased could not be attributed to an assault by the accused, we observe, while not expressing any opinion on merits of the case, that, the postmortem report when considered in its entirety is suggestive of the fact that the deceased was murdered. Although the cause of death is recorded as “cardio pulmonary arrest due asphyxia and venous congestion,” the hyoid bone of the deceased appeared to be fractured. Therefore, we are not inclined to hold that the prosecution has not established a *prima facie* case as to the guilt of the accused. We are therefore, not of the *prima facie* opinion that the subject FIR was filed with a view to implicate the accused.

e) The bail applications preferred by the respondents-accused under Section 439 of the CrPC before the Additional Sessions Judge, Rajsamand, Rajasthan were rejected, having regard to the gravity of the offences alleged.

f) The High Court of Rajasthan, in the impugned orders dated 9th September, 2019 and 17th October, 2019 has not considered the aforesaid aspects of the case in the context of the grant of bail.

28. Having considered the aforesaid facts of the present case in light of the law cited above, we do not think that this case is a fit case for the grant of bail to the respondents-accused, given the seriousness of the allegations against them.

29. As noted in ***Gurcharan Singh vs. State (Delhi Admn.) [1978 CriLJ 129]***, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have arisen since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a *prima facie* case against the accused. Strangely, the State of Rajasthan has not filed any appeal against the impugned orders herein.

While we are conscious of the fact that a Court considering the grant of bail must not engage in an elaborate discussion on the merits of the case, we are of the view that the High Court while passing the impugned orders has not taken into account even a single material aspect of the case. The High Court has granted bail to the respondents-accused by passing a very cryptic and casual order, *de hors* cogent reasoning. We find that the High Court was not right in allowing the applications for bail filed by the respondents accused. Hence the impugned orders dated 9th September, 2019 and 17th October, 2019 are set aside. The appeals are allowed.

30. The respondents-accused are on bail. Their bail bonds stand cancelled and they are directed to surrender before the concerned jail authorities within a period of two weeks from today.