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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
N.V. RAMANA, CJI; KRISHNA MURARI, J.
APRIL 19, 2022
CRIMINAL APPEAL No. 649 of 2022 (ARISING OUT OF SLP (CRL.) No. 7893 of 2021)
Ms. Y *VERSUS* **STATE OF RAJASTHAN AND ANR.**

Code of Criminal Procedure, 1973; Section 439 - Bail - A recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered - Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. *[Referred to Mahipal v. Rajesh Kumar, (2020) 2 SCC 118] (Para 13)*

Code of Criminal Procedure, 1973; Section 439 - Bail - Parameters which must be considered while granting bail discussed - certain important factors that are always considered, inter-alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused - At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. *(Para 8-10)*

Code of Criminal Procedure, 1973; Section 439 - Bail - Appellate Court required to analyze whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. *(Para 11-15)*

Judgment and order- Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. *(Para 18)*

Summary: Appeal against Rajasthan HC order granting bail to appellant accused of rape of his niece - Allowed - The impugned order passed by the High Court is cryptic, and does not suggest any application of mind.

Advocate(s): Rishi Matoliya, Milind Kumar, Anuj Bhandari

J U D G M E N T

N.V. RAMANA, CJI.

1. Leave granted.

2. The present appeal has been filed against the final judgment and order dated 20.09.2021 passed in S.B. Criminal Miscellaneous Bail Application No. 14458 of 2021 by the High Court of Rajasthan, at Jaipur, whereby the High Court granted regular bail to respondent no. 2 accused.

3. The counsel for the appellantprosecutrix submits that the High Court erred in granting bail to the respondent no. 2 accused in a mechanical manner without any reasoning. Learned counsel submits that the High Court did not consider the facts of the case before it, more particularly, the gravity of the offences alleged to have been committed by the respondent no. 2 accused. Additionally, the High Court did not consider that the respondent no. 2 – accused is a hardened criminal with nearly twenty criminal cases pending against him. Under such circumstances, this Court should exercise its jurisdiction under Article 136 of the Constitution and set aside the bail granted to respondent no. 2 accused.

4. Learned Counsel for respondent no. 1State supported the submissions of the appellant and submitted that the impugned order is a cryptic one which is liable to be set aside. He submitted that there is a strong *prima facie* case against the respondent no. 2 accused who committed the heinous offence of rape and sexual assault upon his minor niece for nearly three to four years. Further, respondent no. 2 accused is an infamous criminal who has twenty criminal cases registered against him, in some of which he has already been convicted. The list of cases registered against him include cases relating to murder, attempt to murder, kidnapping, dacoity, *etc*. Therefore, the order of the High Court granting bail to respondent no. 2 accused should be set aside.

5. *Per contra*, learned counsel for respondent no. 2 submits that the High Court passed the impugned order granting bail after hearing the respondent no. 2 accused and the State. No new materials have been placed on record before this Court, requiring this Court to interfere with the impugned order. Further, it is a settled position of law that an appellate Court must be slow to interfere in an order granting bail to the accused.

6. Heard the learned counsel for the parties.

7. Before adverting to the submissions made by the parties relating to the grant of bail, it is necessary to provide a brief conspectus of the allegations made against respondent no. 2 – accused. As per the chargesheet dated 29.06.2021 filed in the present case, it is stated that the appellantprosecutrix registered an FIR on 30.05.2021 wherein it was stated that on the 1617.05.2021 the respondent no. 2 – accused, her uncle, had come to her house. At around midnight to 1 am the respondent no. 2 – accused had called her to his room and forcibly raped her on two occasions. Although, initially, she did not narrate this to anyone because she was scared, some of her relatives noticed her strange behaviour. When they asked her why she was sad, she narrated the entire incident to her family. Even before this incident, the respondent no. 2 – accused had misbehaved with her. In 2014, he touched her inappropriately. In 2015, he had attempted to rape her. He used to try to chat with her and used obscene language, and attempted to establish physical relationship with her on various occasions. She had never disclosed these incidents to anyone as he threatened her. It is in the background of these allegations that the appropriateness of the impugned order passed by the High Court granting bail to respondent no. 2 – accused must be considered.

8. This Court has, in a catena of judgments, outlined the considerations on the basis of which discretion under Section 439, CrPC has to be exercised while granting bail. In ***Gurcharan Singh v. State (Delhi Administration),*** **(1978) 1 SCC 118** this Court has held as to the various parameters which must be considered while granting bail. This Court held as follows:

"24. …Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) CrPC of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) CrPC of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

9. The above factors do not constitute an exhaustive list. The grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be prescribed as to what the relevant factors could be. However, certain important factors that are always considered, *interalia,* relate to *prima facie* involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused [see ***State of U.P. v. Amarmani Tripathi*****, (2005) 8 SCC 21**].

10. At the stage of granting bail the Court is not required to enter into a detailed analysis of the evidence in the case. Such an exercise may be undertaken at the stage of trial.

11. Once bail has been granted, the Appellate Court is usually slow to interfere with the same as it pertains to the liberty of an individual. A Constitution Bench of this Court in ***Bihar Legal Support Society v. Chief Justice of India*****, (1986) 4 SCC 767** observed as follows:

"3. … It is for this reason that the Apex Court has evolved, as a matter of selfdiscipline, certain norms to guide it in the exercise of its discretion in cases where special leave petition are filed against orders granting or refusing bail or anticipatory bail.…**We reiterate this policy principle laid down by the bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter."**

(emphasis supplied)

12. The above principle has been consistently followed by this Court. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee,*** **(2010) 14 SCC 496** this Court held as under:

"**9.** We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting

bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

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

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

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

(vi) likelihood of the offence being repeated;

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

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

xxx xxx xxx

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of nonapplication of mind, rendering it to be illegal….."

13. In ***Mahipal v. Rajesh Kumar*****, (2020) 2 SCC 118** this Court followed the holding in ***Prasanta Kumar Sarkar*** *(supra)* and held as follows:

"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a nonapplication of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment…"

14. Recently, a three Judges' Bench of this Court in ***Jagjeet Singh & Ors. V. Ashish Mishra @ Monu & Anr***. in **Criminal Appeal No. 632 of 2022,** has reiterated the factors that the Court must consider at the time of granting bail under Section 439 CrPC, as well as highlighted the circumstances where this Court may interfere when bail has been granted in violation of the requirements under the abovementioned section. This Court observed as follows:

"28. We may, at the outset, clarify that power to grant bail under Section 439 of CrPC, is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court of the Sessions Court must grant bail after the application of a judicial mind, following wellestablished principles, and not in a cryptic or mechanical manner."

15. It is worth noting that what is being considered in this case relates to whether the High Court has exercised the discretionary power under Section 439 CrPC in granting bail appropriately. Such an assessment is different from deciding whether circumstances subsequent to the grant of bail have made it necessary to cancel the same. The first situation requires the Court to analyze whether the order granting bail was illegal, perverse, unjustified or arbitrary. On the other hand, an application for cancellation of bail looks at whether supervening circumstances have occurred warranting cancellation. In ***Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508** this Court held as follows:

"12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."

16. In the present case, it is necessary to determine whether the High Court while granting bail to the respondent no. 2 accused has properly exercised its discretion under Section 439 CrPC by following various parameters laid down by this Court. A bare perusal of the impugned order passed by the High Court does not suggest that the Court has considered any of the relevant factors for grant of bail. It would be fruitful to extract the impugned order at this juncture:

"1. The present bail application has been filed under Section 439 Cr.P.C. The petitioner has been arrested in connection with FIR No. 319/2021 Registered at Police Station Udhyog Nagar, District Sikar for the offence(s) under Sections 354, 354B, 354D, 376(2)F, 376(2)N, 450, 506, 509 IPC and Sections 9N/10, 5L/6, 5(N)/6 and 18 of POCSO Act.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He is behind the bars since 30.05.2021. Chargesheet has been filed against the petitioner. Learned counsel for the petitioner further submits that during trial, statement of the prosecutrix was recorded by the learned trial Court. Learned counsel for the petitioner also submits that the prosecutrix has made improvement in her statement. Conclusion of trial may take long time.

3. Learned counsel for the complainant has opposed the bail application and submitted that the petitioner is a habitual offender and he has been booked in PASA.

4. Learned Public Prosecutor has opposed the bail application.

5. Considering the contentions putforth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing any opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.

6. Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accusedpetitioner Omprakash @ Jeevanram @ Oma Thehat S/o Boduram shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/with two sureties of Rs.25,000/each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so."

17. Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the High Court to grant bail. In fact, no reasoning is apparent from the impugned order.

18. Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In ***Puran v. Rambilas*, (2001) 6 SCC 338** this Court held as under:

"8. …Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 1192000 was to discuss the merits and demerits of the evidence. That was what was deprecated. **That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.**"

(emphasis supplied)

19. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528** this Court indicated the importance of reasoning in the matter concerning bail and held as follows:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken**, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind**…**"**

(emphasis supplied)

20. In ***Brij Nandan Jaiswal v. Munna*, (2009) 1 SCC 678,** which concerned a challenge to grant of bail in a serious offence, this Court has reiterated the same position as was observed in ***Kalyan Chandra Sarkar*** *(supra)***.** This Court has held as under:

"12… However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. **While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary.**"

(emphasis supplied)

21. From the above, it is clear that this Court has consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no. 2 accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that the respondent no. 2 accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no. 2 accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature.

22. The impugned order passed by the High Court is cryptic, and does not suggest any application of mind. There is a recent trend of passing such orders granting or refusing to grant bail, where the Courts make a general observation that "the facts and the circumstances" have been considered. No specific reasons are indicated which precipitated the passing of the order by the Court.

23. Such a situation continues despite various judgments of this Court wherein this Court has disapproved of such a practice. In the case of **Mahipal** *(supra)* this Court observed as follows:

"**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 dutybound to explain the basis on which they have arrived at a conclusion."**

(emphasis supplied)

24. In view of the above, the impugned order passed by the High Court is set aside. The Criminal Appeal is accordingly allowed. Bail bonds stand cancelled. Respondent no. 2 accused is directed to surrender within one week from the receipt of this order, failing which, the concerned police authorities shall take him into custody.