

PRASANTA KUMAR SARKAR

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v.

ASHIS CHATTERJEE & ANR.

(Criminal Appeal No. 2086 of 2010)

OCTOBER 29, 2010

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[D.K. JAIN AND H.L. DATTU, JJ.]

Code of Criminal Procedure, 1973:

s.439 – Bail – Factors to be taken into account while considering an application for bail – Explained – HELD: In the instant case, the High Court completely lost sight of the basic principles – In the circumstances, it was not the stage at which bail u/s 439 should have been granted to the accused more so when even charges were not framed – Order of High Court set aside.

Respondent no. 1 was accused of committing murder of an old widow by strangulation. His bail applications were rejected by the Additional Chief Judicial Magistrate as also the Court of Session. However, the High Court granted him regular bail u/s 439 CrPC. Aggrieved, the brother of the deceased filed the appeal.

Allowing the appeal, the Court

HELD: 1.1. It is trite that the Supreme 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

- A 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. 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 non-application of mind, rendering it to be illegal. [para 11 and 12] [1169-G-H; 1170-A-E]

- D *State of U.P. through CBI Vs. Amarmani Tripathi* 2005 (3) Suppl. SCR 454 = 2005 (8) SCC 21; *Prahlad Singh Bhati Vs. NCT, Delhi & Anr.* 2001 (2) SCR 684 = 2001 (4) SCC 280; *Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.* 2002 (2) SCR 526 = 2002 (3) SCC 598; and *Masroor Vs. State of Uttar Pradesh & Anr.* 2009 (14) SCC 286 - relied on.

- F 1.2. In the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles. The accused is alleged to have committed a heinous crime of killing an old and helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. Under the given circumstances, it was not the stage at which bail u/s 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed. It is also pertinent to note that the

Additional Chief Judicial Magistrate had rejected three bail applications of the accused, but the High Court did not find it worthwhile to even make a reference to these orders. [para 13] [1171-A-D]

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Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. 2004 (7) SCC 528 - relied on.

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Case Law Reference:

2009 (14) SCC 286 relied on para 9

2005 (3) Suppl. SCR 454 relied on para 11

2001 (2) SCR 684 relied on para 11

2002 (2) SCR 526 relied on para 11

2004 (7) SCC 528 relied on para 13

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2086 of 2010.

From the Judgment & Order dated 11.01.2010 of the High Court at Calcutta in CRM N. 272 of 2010.

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Nagender Rai, C.K. Rai, Babita Sant, Harish Pandey for the Appellant.

Ujjwal Banerjee, Asit Kumar Rari, Namita Roy, Sarla Chandra, Satish Vig for the Respondents.

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The Judgment of the Court was delivered by

D.K. JAIN, J. 1. Leave granted.

2. This appeal, by special leave, is directed against order dated 11th January, 2010 passed by the High Court of Calcutta in C.R.M. No. 272 of 2010, granting regular bail to respondent No. 1 in this appeal (hereinafter referred to as "the accused"),

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A under Section 439 of the Code of Criminal Procedure, 1973
(for short "the Code").

B 3. The accused is facing trial for an offence punishable
under Section 302 of the Indian Penal Code, 1860 (for short
"IPC") for allegedly committing the murder of one Ms. Mallika
Sen. Respondent No.2 is the State of West Bengal.

4. Very briefly stated the facts material for the adjudication
of this appeal can be stated thus:

C Ms. Mallika Sen, a 57 years old widow was found
strangled at her residence on 2nd July, 2009. The appellant,
who is the brother of the victim, lodged a written complaint at
the Rampurhat Police Station, on the basis of which FIR No.
111/09 dated 2nd July, 2009 was registered under Section
D 302, IPC.

E It has been alleged that a neighbour of late Ms. Sen, one
Mr. Somenath Dutta, saw the accused rushing out of the
residence of the deceased, around the time the incident took
place. The accused was arrested on 13th July, 2009 and
produced before the Additional Chief Judicial Magistrate who
remanded him to judicial custody. Thereafter, on the same day,
the police filed a forwarding report in the said court, *inter alia*,
requesting for holding of a Test Identification Parade (T.I.P.) of
F the accused. The T.I.P. was conducted, but perhaps the
accused could not be identified. However, in the second T.I.P.,
the accused was duly identified by the aforesaid witness.

G 5. The accused filed several bail applications before the
Additional Chief Judicial Magistrate which were all dismissed
vide orders dated 7th September, 2009, 16th September, 2009
and 19th September, 2009.

H 6. On 7th October, 2009, charge-sheet No. 138 of 2009
under Section 302 IPC was filed against the accused before
the Additional Chief Judicial Magistrate.

7. Having failed to secure bail from the Sessions Court, the accused preferred a bail application, being C.R.M. No. 272 of 2010 before the High Court under Section 439 of the Code. As stated above, by the impugned order, the High Court allowed the application, and granted bail to the accused by a short order, observing thus:

“Having regard to the nature of the alleged crime, we do not think that interest of investigation requires or (*sic*) justifies further detention of the present petitioner at this stage.”

8. Hence the present appeal by the complainant.

9. Mr. Nagender Rai, learned senior counsel appearing on behalf of the appellant, while assailing the impugned order, contended that the said order being non-speaking, deserves to be set aside in light of the decision of this Court in *Masroor Vs. State of Uttar Pradesh & Anr.*¹ Learned counsel submitted that the High Court has failed to take into consideration the manner in which a hapless old lady was done to death as also the fact that the accused had been duly identified by an independent witness.

10. Per contra, Mr. Ujjwal Banerjee, learned counsel appearing for the accused, contended that the case against the accused was false, as is evident from the fact that the witness had failed to identify the accused in the first T.I.P. Learned counsel contended that the accused had been arrested on a mere suspicion, and in light of the fact that he has not misused the bail, the impugned order needs to be affirmed.

11. 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,

1. (2009) 14 SCC 286.

- A 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
- B 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)
- C 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. (See: *State of U.P. through CBI Vs. Amarmani Tripathi*;² *Prahlad Singh Bhati Vs. NCT, Delhi & Anr.*³; *Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.*⁴)
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12. 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 non-application of mind, rendering it to be illegal. In *Masroor* (supra), a Division Bench
- E of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows:

- F “Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.” (See also: *State of Maharashtra Vs. Ritesh*⁵; *Panchanan Mishra Vs.*
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2. (2005) 8 SCC 21.

3. (2001) 4 SCC 280.

4. (2002) 3 SCC 598.

5. (2001) 4 SCC 224.

*Digambar Mishra & Ors.*⁶; *Vijay Kumar Vs. Narendra & Ors.*⁷; *Anwari Begum Vs. Sher Mohammad & Anr*⁸) A

13. We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail under Section 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed. It is also pertinent to note that, as stated above, the Additional Chief Judicial Magistrate had rejected three bail applications of the accused but the High Court did not find it worthwhile to even make a reference to these orders. In this regard, it would be useful to refer to the following observations echoed in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr*⁹:- B C D

"In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted." (See also: *Ram Pratap Yadav Vs. Mitra Sen Yadav & Anr*¹⁰.) E F

6. (2005) 3 SCC 143. G

7. (2002) 9 SCC 364.

8. (2005) 7 SCC 326.

9. (2004) 7 SCC 528.

10 (2003) 1 SCC 15. H

- A 14. For the foregoing reasons, the appeal is allowed, and the impugned order is set aside. The bail bond and the surety furnished by the accused in terms of the impugned order stands cancelled and it is directed that he will be taken into custody forthwith. Needless to add that observations touching the merits
- B of the case against the accused are purely for the purpose of deciding the question of grant of bail and if in future any such application is filed by the accused, it shall be considered on its own merits untrammelled by any of these observations.

R.P.

Appeal allowed.