KUMER SINGH
v.
STATE OF RAJASTHAN & ANR

(Criminal Appeal No. 571 of 2021)

JULY 20, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND M. R. SHAH,* JJ.]

Code of Criminal Procedure, 1973: s.439 – Bail – Prosecution case was that the accused brutally killed brother of the complainant in a pre-planned manner – 26 injuries were found on the body of the victim-deceased and 11 injuries on brother of the deceased caused by blunt and sharp weapons – Complainant filed instant appeal challenging the bail granted by High Court on the ground that no reasons whatsoever were assigned by High Court while releasing the accused on bail – Held: Except narrating the submissions made on behalf of the accused and the public prosecutor and the complainant, there was no independent application of mind by the High Court and as such no reasons whatsoever were assigned by the High Court releasing the accused on bail, that too in a case where the accused were facing charges for offences punishable under ss.302 and 307 read with s.149 of the IPC and the other offences in which one person was killed and another person was seriously injured – High Court did not at all take into consideration the facts of the case; the nature of allegations; gravity of offences and role attributed to the accused – As a matter of fact, there was no discussion or analysis of circumstances at all – The impugned order passed by the High Court can be said to be perverse and suffers from non-application of mind to the relevant factors to be considered while grant of bail – Interference warranted.

Allowing the appeals, the Court Held:

1. **All the accused are facing trial for the offences punishable under Sections 147, 148, 341, 323, 307, 427, 302 read with Section 149 of the IPC on the allegation of having killed the brother of the appellant and having injured one person. As per the medical evidence on record total 26 injuries were found on the deceased and 11 injuries on the injured which**

* Author

were caused by blunt and sharp weapons. As per the case of the prosecution the respondents – accused were part of the unlawful assembly and all of them who were carrying the lathis actually participated in the commission of the offences. Despite the seriousness of the offence committed by the accused and despite the manner in which the offence took place, without adverting to the seriousness of the offence and the manner in which the offence was committed, by the impugned orders, the High Court has released the accused on bail. The impugned orders releasing the accused on bail showed that except first narrating the submissions/contentions on behalf of the accused and the submissions made by the Public Prosecutor thereafter the High Court without assigning any further reasons released the accused on bail by simply observing that "considering the contentions put forth by counsel for the petitioner, I deem it proper to allow the second bail application". The impugned order passed by the High Court can be said to be perverse and suffers from non-application of mind to the relevant factors to be considered while grant of bail and therefore the interference of this Court is warranted. [Paras 10, 13.2]

2. **Now so far as the submission on behalf of the accused that the accused are released on bail in the year 2019 and by now more than approximately 2 years have passed after they were released on bail and there are no allegations of misuse of liberty and/or having committed any breach of the conditions of the grant of bail and therefore this court may not set aside the order passed by the High Court is concerned, the aforesaid cannot be accepted. Immediately after the grant of bail in the month of May, 2019, the present appeals have been preferred in the month of July, 2019 i.e. within a period of 2 months and even this Court also issued notice in the present proceedings in the month of August, 2019. Therefore, as such there is no delay on the part of the complainant in challenging the impugned orders passed by the High Court releasing the accused on bail. The application for cancellation of bail stands on a different footing than challenging the order passed by the High Court/ Appellate Court releasing the accused on bail. [Para 15]**

Mahipal v. Rajesh Kumar @ Polia and Anr. **(2020) 2 SCC 118 : [2019] 14 SCR 529;** *Neeru Yadav v. State*

of U.P. **(2014) 16 SCC 508 : [2014] 12 SCR 453 ;** *Gulabrao Baburao Deokar v. State of Maharashtra* **(2013) 16 SCC 190 : [2013] 16 SCR 1181;** *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana (Koli)* **2021 (6) SCALE 41;** *Chaman Lal v. State of U.P.* **(2004) 7 SCC 525 : [2004] 3 Suppl. SCR 584;** *Sonu v. Sonu Yadav* **2021 SCC OnLine SC 286;** *Parvez Noordin Lokhandwalla v. State of Maharashtra* **(2020) 11 SCC 648 – relied on.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 571 of 2021

From the Judgment and Order dated 28.05.2019 of the High Court of Judicature for Rajasthan at Jaipur in S. B. Criminal Misc. II Bail Application No. 7179 of 2019.

With

Criminal appeal nos. 572 & 573 of 2021

Devendra Singh, Anant Kumar Vatsya, Shiv Kumar, Advs. for the appellant.

Dr. Manish Singhvi, Sr. Adv., Milind Kumar, Sushil K Tekriwal, Dr. Mamta Tekriwal, Venkateswara Rao Anumolu, Rishi Matoliya, Advs. for the respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court of Rajasthan, Jaipur Bench releasing the private respondents herein – Kamlesh, Bhojraj Singh and Arif on bail under Section 439 CrPC, in connection with FIR No.210 of 2017 dated 17.08.2017 registered with PS Laxmangarh, District Sikar, Rajasthan for the offences punishable under Sections 147, 148, 341, 323, 307, 427, 302 read with Section 149 of the IPC, the original informant/complainant – brother of the deceased has preferred the present appeals.

2. That the appellant herein lodged an FIR against the accused named in the FIR for the offences under Sections 147, 148, 341, 323, 307, 427, 302 read with Section 149 of the IPC having brutally killed his brother Sumer Singh who was the member of the Border Security Force and was on leave. The date of incident was 16.08.2017. 10 accused persons were named in the FIR including Kamlesh, Arif, and Bhojraj Singh – private respondents herein. That 26 injuries were found on the deceased Sumer Singh and 11 injuries on one Vikram Singh caused by blunt and sharp weapons. It was alleged in the FIR as under:

   (i) "On the date of the incident that is 16.08.2017, during the fair of Goganavami in the village Choti Roru, an altercation took place between both the parties due to the old enmity.

   (ii) On 16.08.2017, a dinner was scheduled in the house of uncle of the complainant at Rajiyasar Meetha and the family members departed around 11:20 PM at night 2 cars (1) a Bolero driven by complainant departed with other family members was leading ahead and followed by (2) and Innova driven by Chandra Pal Singh with other family members including the complainant's brother, Sumer Singh.

   (iii) Thereafter accused persons somehow came to know of the program of the complainant or going to Rajiyasar and Narendra Singh etc. called their other accomplices and friends in their village in their cars during the night. These 3 Cars (1) An Innova No. DL 4CN 0857 (2) a Bolero Camper (without number plate) (3) Pickup (without number plate) were loaded with weapons including Sword, Khokhri, Dhariya, Iron Pipes and Lathis.

   (iv) The complainant's Bolero car was leading ahead and found the Innova car of accused Kamlesh parked at the T point and drove but on discovering that the Innova car following behind was not visible, took a U-turn and upon reaching the T point, found that the Innova car was stuck in the fields with the windows smashed and accused Kamlesh along with 3 other Camper cars and about 20-25 persons and his brother Sumer Singh lying inside the field of Kamlesh and all the accused were indiscriminately stabbing him with Sword, Knife, Khokhri, Lathis and Rods.

(v) The accused persons ambushed the Innova car of the deceased by parking their cars sitting inside on different locations near the Bagichi and all the accused were sitting inside every car loaded with weapons.

(vi) The accused had complete knowledge that Sumer Singh who was working in the BSF, had come home on vacations and they wanted to murder him only.

(vii) The brutal manner in which Sumer Singh was ambushed, cornered and killed mercilessly is evident from the fact that when he tried to run and attempted save his life, he was hit by another Camer and Got Stuck between the Camper and the barbed wire and fell down and broke his leg. Thereupon all the accused pounced upon him and indiscriminately stabbed him with sharp weapons while he was lying on the ground.

3. That the bail applications submitted by the private respondents herein – accused came to be dismissed by the Learned Sessions Judge considering the seriousness of accusations leveled against the accused. That Kamlesh was arrested on 20.08.2017, Arif was arrested on 18.08.2017 and Bojraj Singh was arrested on 23.10.2017. That the police submitted a charge-sheet against all the accused persons on 14.11.2017 for the offences punishable under Sections 147, 148, 149, 302, 341, 323 & 427 IPC. That the bail applications preferred by Kamlesh, Arif and Bhojraj Singh came to be rejected by the High Court vide order dated 10.01.2018. However, the High Court opined that the accused persons are at liberty to move fresh bail application before the concerned court after recording of the statement of the material witnesses. At this stage, it is required to be noted that as per the charge-sheet there are 38 witnesses to be examined by the prosecution. Thereafter the Learned trial Court framed the charge against the accused persons on 09.02.2018. Supplementary charge-sheet came to be filed against other co-accused namely Hari Singh, Surjit Singh and Dalip Singh. A second supplementary charge-sheet came to be filed against one Rajendra Singh on 11.12.2018. A third supplementary charge-sheet came to be filed against the main accused Narendra Singh on 23.04.2019. Thereafter the bail applications submitted by Arif and Bhojraj Singh bearing Bail Application Nos.250 of 2019 and 251 of 2019 came to be rejected by the Learned trial Court vide its order dated 30.04.2019.

Thereafter by the impugned judgment and orders dated 17.05.2019, 28.05.2019 and 01.06.2019, the High Court has enlarged Arif, Kamlesh and Bhojraj Singh respectively on bail.

4. Feeling aggrieved and dissatisfied with the impugned orders passed by the High Court enlarging/releasing the accused - Arif, Kamlesh and Bhojraj Singh on bail in connection with FIR No.210 of 2017, registered at PS Laxmangarh, District Sikar, Rajasthan for the offences punishable under Sections 147, 148, 341, 323, 307, 427, 302 read with Section 149 IPC, the original complainant, brother of the deceased has preferred the present appeals.

5. We have heard Mr. Devendra Singh, Learned Counsel for the appellant, Mr. Sushil K. Tekriwal, Learned Counsel appearing on behalf of accused – Kamlesh, Mr. Rishi Matoliya, learned Counsel appearing for accused Arif Lohar and Bhojraj Singh and Dr. Manish Singhvi, learned Senior Counsel for the State of Rajasthan.

6. Learned Counsel appearing on behalf of original complainant/ informant has vehemently submitted that the High Court has committed a grave error in releasing/enlarging the respondents – accused on bail. It is vehemently submitted that the High Court has not at all considered the brutality and seriousness of the crime, while enlarging the accused on bail.

   6.1 It is vehemently submitted that the High Court has not at all considered the fact that Sumer Singh was killed brutally and in a pre- planned manner. The High Court has not at all noted and considered that total 26 injuries were found on the body of the deceased and 11 injuries on the injured brother of the deceased Vikram Singh which have been caused by blunt and sharp weapons.

   6.2 It is further submitted that except noting the submissions on behalf of the accused and the learned public prosecutor, no reasons whatsoever have been assigned by the High Court while releasing the accused on bail.

   6.3 It is submitted that the submissions which are made on behalf of the accused were that they are in custody since 1 ½ year; that accused were having lathis and that there is no specific overact in the statement of the witnesses under Section 161 CrPC and that there are 36 witnesses to be examined which

is likely to take long time. It is submitted that the manner in which Sumer Singh was killed in a pre-planned manner and the accused killed the deceased Sumer Singh brutally, the High Court ought not to have released the accused on bail.

6.4 Reliance is placed on the decisions of this Court in the cases of **Mahipal vs. Rajesh Kumar @ Polia and Anr.**[1]; **Neeru Yadav vs. State of U.P.**[2]; **Gulabrao Baburao Deokar vs. State of Maharashtra**[3] and a recent decision of this Court in the case **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli)**[4].

7. Dr. Manish Singhvi, Learned Senior Counsel appearing on behalf of the State of Rajasthan has supported the appellant. It is submitted that the High Court has committed a grave error in releasing the respondents – accused on bail. It is submitted that the manner in which Sumer Singh was brutally killed, was pre-planned and that there were 26 injuries found on the dead body of the deceased Sumer Singh and there was a prior enmity and therefore the motive has been established. Merely because the accused are in the custody for approximately 1 year and 6 months, the High Court ought not to have released the accused on bail. It is submitted that from the impugned orders passed by the High Court it can be seen that as such except noting the submissions made on behalf of the accused and public prosecutor no reasons whatsoever have been assigned by the High Court. It is submitted that even it can be seen from the impugned orders that the High Court has not adverted itself to the seriousness of the crime at all. It is submitted that even the High Court has not considered the fact that the accused are charged for the offences punishable under Section 302 read with Section 149 of the IPC. It is submitted that once the respondents – accused were found to be the member of the unlawful assembly and all of them were present at the time of the incident and they also participated in the commission of the offence, the individual role at this stage is not required to be considered in view of Section 149 of the IPC.

1 (2020) 2 SCC 118
2 (2014) 16 SCC 508
3 (2013) 16 SCC 190
4 2021 (6) SCALE 41

7.1 It is further submitted by Dr. Singhvi, Learned Senior Counsel appearing on behalf of the State of Rajasthan that as held by this Court in the case of **Mahipal** (Supra) there is a difference and distinction between the power of the Appellate Court in assessing the correctness of an order granting bail and assessment of an application for cancellation of bail. It is submitted that as held by this Court in the case of **Mahipal** (Supra) the correctness of an order granting bail is tested on the anvil of whether there is improper and arbitrary exercise of discretion in the grant of bail. It is submitted therefore when the impugned orders passed by the High Court releasing the accused on bail are non-speaking orders and the High Court has not at all considered the relevant factors and circumstances while considering the applications for bail, this is a fit case to quash and set aside the orders passed by the High Court releasing the respondents - accused on bail.

8. Learned Counsel appearing on behalf of the respective accused while opposing the present appeals have vehemently submitted that in the facts and circumstances of the case the High Court has not committed any error in enlarging/releasing the respondents – accused on bail. Shri Tekriwal, Learned Counsel appearing on behalf of the accused – Kamlesh has further submitted that more than approximately 2 years have passed after the accused are released on bail and after they are released on bail there are no allegations of misusing the liberty or having committed any breach of the conditions of the grant of bail, by the accused. It is submitted that therefore the interference of this Court is not called for. It is further submitted by Mr. Tekriwal, Learned Counsel appearing on behalf of the accused that the High Court has noted the submissions on behalf of the accused and the Learned Public Prosecutor and thereafter considering the submissions made on behalf of the accused that the charge-sheet is already filed; charge has been framed; they are in custody since more than one year 3 months/six months and that out of 36 witnesses only 3 witnesses have been examined and that earlier when the bail application was rejected by the High Court a liberty was reserved to move an appropriate application before the trial Court afresh, considering the nature of allegations against the respective accused, the High Court has not committed any error in releasing the accused on bail. It is vehemently submitted that the High Court has noted that considering the submissions made on

behalf of the accused means the High Court has concurred with the submissions and/or accepted the submissions on behalf of the accused and thereafter has released the accused on bail and therefore it can be said that the High Court has applied its mind to the relevant circumstances pointed out on behalf of the accused.

8.1 Making the above submissions, it is prayed to dismiss the present appeals, more particularly when other accused, as noted by the High Court, were released on bail.

9. Heard Learned Counsel appearing for the parties at length.

10. At the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 147, 148, 341, 323, 307, 427, 302 read with Section 149 of the IPC. All the accused therefore, are facing trial for the aforesaid offences, on the allegation of having killed one Sumer Singh, brother of the appellant and having injured one Vikram Singh. It is also required to be noted that as per the medical evidence on record total 26 injuries were found on the deceased Sumer Singh and 11 injuries on the injured Vikram Singh which have been caused by blunt and sharp weapons. As per the case of the prosecution the respondents – accused were part of the unlawful assembly and all of them who were carrying the lathis actually participated in the commission of the offences. Despite the seriousness of the offence committed by the accused and despite the manner in which the offence took place, without adverting to the seriousness of the offence and the manner in which the offence was committed, by the impugned orders, the High Court has released the accused on bail. If the impugned orders releasing the accused on bail are perused, we find that except first narrating the submissions/ contentions on behalf of the accused and the submissions made by the Learned Public Prosecutor thereafter the High Court has without assigning any further reasons has released the accused on bail by simply observing that "considering the contentions put forth by counsel for the petitioner, I deem it proper to allow the second bail application". The orders passed by the High Court releasing the respondents – accused on bail in a serious case for offence punishable under Section 302 of the IPC and other offences are the subject matter of present appeals.

11. Before considering the rival submissions made on behalf of the respective parties, few decisions of this Court on how to exercise

the discretionary power for grant of bail and the duty of the Appellate Court, particularly when the bail was refused by the courts below are required to be referred to and considered.

11.1 In the case of **Mahipal** (Supra) where the High Court released the accused on bail in a case for the offence under Section 302 of the IPC and other offences recording the only contention put forth by the counsel for the accused and further recording that "taking into account the facts and circumstances of the case and without expressing the opinion on merits of case, this Court deems fit just and proper to enlarge/release the accused on bail."

While setting aside the order passed by the High Court granting bail, one of us Dr. Justice D.Y. Chandrachud observed in paragraphs 11 and 12 as under:

11. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 CrPC to grant bail. The power to grant bail under Section 439 is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course. In *Ram Govind Upadhyay v. Sudarshan Singh*[5] Umesh Banerjee, J. speaking for a two-Judge Bench of this Court, laid down the factors that must guide the exercise of the power to grant bail in the following terms:

"*3*. Grant of bail though being a discretionary order— but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. … The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

5 (2002) 3 SCC 598

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

11.2 that guide while assessing the correctness of an order passed by the High Court granting bail. This Court specifically observed and held that normally this Court does not interfere with an order passed by the High Court granting or rejecting the bail to the accused. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. This Court further observed that the power of the appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for cancellation of bail. It is further observed that the correctness of an order granting bail is tested on the anvil of whether there was a proper or arbitrary exercise of the discretion in the grant of bail. It is further observed that the test is whether the order granting bail is perverse, illegal or unjustified. Thereafter this Court considered the difference and distinction between an application for cancellation of bail and an appeal before this Court challenging the order passed by the appellate court granting bail in paras 13, 14, 16 and 17 as under:

13. The principles that guide this Court in assessing the correctness of an order [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting bail were succinctly laid down by this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*[6] . In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] of the High Court, D.K. Jain, J., speaking for a two-Judge Bench of this Court, held:

"*9*. … It is trite that this Court does not, normally, interfere with an order [*Ashish Chatterjee* v. *State of W.B.*, CRM No. 272 of 2010, order dated 11-1-2010 (Cal)] passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent

6 (2010) 14 SCC 496

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.

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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 non- application of mind, rendering it to be illegal."

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by

this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.

16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v. State of U.P.*, the accused was granted bail by the High Court [*Mitthan Yadav* v. *State of U.P.*[7], . In an appeal against the order [*Mitthan Yadav* v. *State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J.

"*12*. … 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."

7 2014 SCC OnLine All 16031

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 non-application 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. The order [*Rajesh Kumar* v. *State of Rajasthan*, 2019 SCC OnLine Raj 5197] of the High Court in the present case, insofar as it is relevant reads:

"*2*. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail."

Thereafter this Court set aside the order passed by the High Court releasing the accused on bail. At this stage, it is required to be noted that in the case of **Mahipal** (Supra) the order of the High Court which was set aside by this Court insofar as it is relevant reads as under:

"*2*. Counsel for the petitioner submits that the petitioner has been falsely implicated in this matter. Counsel further submits that, the deceased was driving his motorcycle, which got slipped on a sharp turn, due to which he received injuries on various parts of body including ante-mortem head injuries on account of which he died. Counsel further submits that the challan has already been presented in the court and conclusion of trial may take long time.

3. The learned Public Prosecutor and counsel for the complainant have opposed the bail application.

4. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail."

This Court disapproved such an order of grant of bail by observing that the High Court has not considered material available to the determination of whether the accused were to be enlarged on bail. This court also further observed that it is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. The relevant observations made by this court while setting aside the order passed by the High Court in paragraphs 23, 24 and 25 are as under:

"23. The High Court has erred in not considering material relevant to the determination of whether the accused were to be enlarged on bail. The order of the High Court enlarging the accused on bail is erroneous and liable to be set aside.

24. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an ordern granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. In the present case, the assessment by the High Court is essentially contained in a single para which reads: (*Rajesh Kumar case* [*Rajesh Kumar* v. *State of Rajasthan*, 2019 SCC OnLine Raj 5197] , SCC OnLine Raj para 4)

"*4*. Considering the contentions put forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this Court deems it just and proper to enlarge the petitioner on bail."

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."

It is further observed by this Court that where an order refusing or granting bail does not furnish the reasons that form the decision, there is a presumption of non-application of mind which may require the intervention of this Court. It is further observed that where an earlier application for bail has been rejected, there is a higher burden on the appellate court to furnish specific reasons as to why the bail should be granted.

12. At this stage, a recent decision of this Court in the case of **Ramesh Bhavan Rathod** (Supra) is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in the case of **Ram Govind Upadhyay** (Supra); **Prasanta Kumar Sarkar** (Supra); **Chaman Lal vs. State of U.P.**[8]**;** and the decision of this Court in **Sonu vs. Sonu Yadav**[9]. After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paragraphs 20, 21, 36 & 37 it is observed and held as under:

"20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-judge Bench decision of this Court in *Ram Govind Upadhyay v. Sudharshan Singh,* the nature of the crime was

8 (2004) 7 SCC 525
9 2021 SCC OnLine SC 286

recorded as "one of the basic considerations" which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract:

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

21. This Court further laid down the standard for overturning an order granting bail in the following terms:

"3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained."

xxx xxx xxx

36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail - as in the case of any other discretion which is vested

in a court as a judicial institution - is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in *Chaman Lal v. State of U.P.*[8] in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non- application of mind. This Court observed:

"8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence…"

37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail "without discussing the evidence in detail" taking into consideration:

(1) The facts of the case;

(2) The nature of allegations;

(3) Gravity of offences; and

(4) Role attributed to the accused."

13. Applying the law laid down by this Court in the aforesaid decisions on grant of bail, to the facts of the case on hand; the impugned orders passed by the High Court releasing the accused on bail cannot be sustained. Except narrating the submissions made by Learned Counsel appearing on behalf of the accused and the public

prosecutor and the complainant there is no independent application of mind by the High Court and as such no reasons whatsoever have been assigned by the High Court releasing the accused on bail, that too in a case where the accused are facing the charges for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC and the other offences, referred to hereinabove, in which one person was killed and another person – Vikram Singh was seriously injured. As observed hereinabove, the deceased was having 26 injuries and the injured sustained 11 injuries by blunt and sharp weapons. The order passed by the High Court contained a single para which reads as under:

"Considering the contentions put forth by counsel for the petitioner, I deem it proper to allow the second bail application."

13.1 Such an order has been disapproved by this Court time and again. The High Court has not at all taken into consideration the facts of the case; the nature of allegations; gravity of offences and role attributed to the accused. As a matter of fact, there is no discussion or analysis of circumstances at all.

13.2 The observations made by the High Court "considering the contentions put forth by counsel for the petitioner, I deem it proper to allow the second bail application" does not constitute the kind of reasoning which is expected of a judicial order. The impugned order passed by the High Court can be said to be perverse and suffers from non-application of mind to the relevant factors to be considered while grant of bail and therefore the interference of this Court is warranted.

14. The submission on behalf of the accused that the accused were alleged to have been armed with lathis and therefore they were released on bail is concerned, at the outset, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly. There were 26 injuries found on the dead body of the deceased and 11 injuries on the injured Vikram Singh by blunt and sharp weapons. Therefore, merely because they were armed with lathis cannot be a ground to release them on bail, in the facts and circumstances of

the case, more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of the IPC as well as Sections 147 and 148 of the IPC.

15. Now so far as the submission on behalf of the accused that the accused are released on bail in the year 2019 and by now more than approximately 2 years have passed after they were released on bail and there are no allegations of misuse of liberty and/or having committed any breach of the conditions of the grant of bail and therefore this court may not set aside the order passed by the High Court is concerned, the aforesaid cannot be accepted. At the outset, it is required to be noted that immediately after the grant of bail in the month of May, 2019, the present appeals have been preferred in the month of July, 2019 i.e. within a period of 2 months and even this Court also issued notice in the present proceedings in the month of August, 2019. Therefore, as such there is no delay on the part of the complainant in challenging the impugned orders passed by the High Court releasing the accused on bail. Even otherwise, as observed by this Court in the case of **Mahipal** (Supra) and even in the case of **Ramesh Bhavan** (Supra), the application for cancellation of bail stands on a different footing than challenging the order passed by the High Court/Appellate Court releasing the accused on bail. In the case of **Mahipal** (Supra), this Court considered the decision of this Court in the case of **Neeru Yadav** (Supra) and thereafter has observed in paragraph 16 as under:

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted. In *Neeru Yadav v. State of U.P.*, the accused was granted bail by the High Court. In an appeal against the order [*Mitthan Yadav* v. *State of U.P.*, 2014 SCC OnLine All 16031] of the High Court, a two-Judge Bench of this Court surveyed the precedent on the principles that guide the grant of bail. Dipak Misra, J.

"*12.* … 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 case of **Mahipal Singh** (Supra) this Court also outlined the standards governing the setting aside of bail by this Court in the following terms:

"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 non-application of mind or is not borne out from a prima facie view of the evidence on record."

16.1 The aforesaid principle of law has also been reiterated by this court in the recent decision in **Parvez Noordin Lokhandwalla vs. State of Maharashtra**[10].

17. For the reasons which we have indicated above and the manner in which the High Court has disposed of the bail applications which can be said to be substantially one paragraph order, we are of the opinion that the orders granting bail to the respondents – accused suffers from perversity. Impugned orders passed by the High Court granting bail to the respondents – accused do not pass the test laid down by this Court on grant of bail and exercising of powers of the appellate court laid down in various decisions through **Mahipal** (Supra), **Neeru Yadav** (Supra); **Gulabrao Baburao Deokar** (Supra) referred to

10 (2020) 11 SCC 648

hereinabove. Therefore, the impugned orders passed by the High Court deserve to be quashed and set aside. We accordingly allow these appeals and set aside the following orders of the High Court:

Sl.No.	Accused	SLP No.	Date of order by the High Court	Bail Application No.
1.	Kamlesh	6792 of 2019	28.05.2019	Bail Application No.7179/2019
2.	Arif	7098 of 2019	17.05.2019	Bail Application No.6616/2019
3.	Bhojraj Singh	7099 of 2019	01.06.2019	Bail Application No.7180/2019

All the accused are directed to surrender forthwith. The copy of the order shall be forwarded to the Sessions Judge to secure compliance forthwith.

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

Headnotes prepared by: Devika Gujral

Result of the case:
Appeals allowed.