

[2022] 4 S.C.R. 1

DEEPAK YADAV

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v.

STATE OF U.P. & ANR.

(Criminal Appeal No. 861 of 2022)

MAY 20, 2022

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**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

Code of Criminal Procedure, 1973 : s. 439 – Bail – Cancellation of – Accused with the common intention to kill the victim, inflicted gun shot injuries to victim who later succumbed to his injuries – Before death, the victim gave statement naming the accused and the co-accused which was recorded by the DSP and SI – Criminal case against accused and co-accused u/ss. 302 and 34 IPC – Rejection of bail to the accused by the Sessions Court, however, granted by the High Court on the ground of parity as the co-accused was granted bail – Sustainability of – Held: Not sustainable – In case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail, which was already granted – Cancellation of bail cannot be limited to the occurrence of supervening circumstances – Even in the absence of the supervening circumstances, the Court has the inherent powers and discretion to grant bail – On facts, High Court granted bail to the accused without considering the relevant facts and circumstances and appropriate evidence which proves that the accused was charged with a serious offence – Granting of bail on the basis of parity shows that the order suffers from the vice of non-application of mind rendering it unsustainable – Criminal history, nature of crime, material evidences and recovery of weapon from the possession of the accused not considered by the High Court – Thus, the order passed by the High Court set aside.

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Allowing the appeal, the Court

HELD: 1.1 Section 439 of the CrPC is the guiding principle for adjudicating a Regular Bail Application wherein Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well - settled

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- A principles having regard to the facts and circumstances of each case. [Para 19][10-F]

1.2 The importance of assigning reasoning for the grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations. [Para 26][14-F-G]

- C 1.3 Bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). [Para 30][17-D-E]

- E 1.4 Cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. [Para 31][18-A-B]

- F 1.5 In the instant case, the respondent no.2/accused was arrested on 13.01.2021 subsequent to which, he had applied for regular bail before the Sessions Court which was rejected on the ground that he is named in the FIR on the basis of the information provided by the deceased himself and that the same has been clarified after perusal of the documents/forms that the bullet was shot by the respondent no.2/accused himself. Being aggrieved by the same, respondent no.2/accused filed an application under Section 439 Cr.P.C before the High Court seeking regular bail. The High Court granted bail to the respondent no.2/accused without considering the relevant facts and circumstances. [Para 35][20-A-C]

- H 1.6 A bare perusal of the impugned order reveals that the High Court failed to take into consideration that the respondent

no.2/accused has been named in the FIR lodged under Sections 302 and 34 IPC and was the main assailant who had a weapon in his hand; that the main role of respondent no.2/accused was that he opened fire at the deceased due to which the bullet hit his right cheek and made its exit through the other side; that the deceased succumbed to his injuries on 14.01.2021; that the respondent no.2/accused had the intention to murder the deceased as there was previous enmity between him and the deceased with regard to some land which accused threatened to grab; that the respondent no.2/accused was clearly named by the appellant/informant's mother and the deceased and he was actively involved in opening fire which caused the death of the deceased; that the respondent no.2/accused's statement was recorded by the then IO under Section 161 Cr.P.C in which he admitted to having committed the offence; and that the respondent no.2/accused has a criminal history and several criminal matters have been lodged against him [Para 36][20-C-H; 21-A-B]

1.7 There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves 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. 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 basic principles laid down. [Para 37][21-D-E]

1.8 It is manifestly incorrect on the part of the High Court to have granted bail to the respondent no.2/accused without taking into consideration the relevant facts and circumstances and appropriate evidence which proves that the respondent no.2/accused has been charged with a serious offence. [Para 38][21-E-F]

1.9 Grant of bail to the respondent no.2/accused only on the basis of parity shows that the impugned order passed by the

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- A **High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court did not take into consideration the criminal history of the respondent no.2/accused, nature of crime, material evidences available, involvement of respondent no.2/accused in the said crime and recovery of weapon from his possession. The impugned order passed by the High Court is not liable to be sustained and is set aside. [Paras 39, 40][21-F-H]**

- C *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana(Koli) & Another* (2021) 6 SCC 230; *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Another* (2004) 7 SCC 528; *Babu Singh & Ors. v. State of U.P.* (1978) 1 SCC 579 : [1978] 2 SCR 777; *Dataram Singh v. State of Uttar Pradesh and Another* (2018) 3 SCC 22 : [2018] 1 SCR 882; *Prahlad Singh Bhati v. NCT of Delhi and Another* (2001) 4 SCC 280 : [2001] 2 SCR 684; *Prasanta Kumar Sarkar v. Ashish Chatterjee and Another* (2010) 14 SCC 496 : [2010] 12 SCR 1165; *Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and Another* (2012) 9 SCC 446 : [2012] 7 SCR 584; *Ranjit Singh v. State of Madhya Pradesh and Others* (2013) 16 SCC 797 : [2013] 11 SCR 273; *Neeru Yadav v. State of Uttar Pradesh and Another* (2014) 16 SCC 508 : [2014] 12 SCR 453; *Virupakshappa Gouda and Another v. State of Karnataka and Another* (2017) 5 SCC 406 : [2017] 4 SCR 373; *State of Orissa v. Mahimananda Mishra* (2018) 10 SCC 516; ‘Y’ v. *State of Rajasthan & Anr. Criminal Appeal No. 649 of 2022*; *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598 : [2002] 2 SCR 526; *Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another* (2004) 7 SCC 528; *Mahipal v. Rajesh Kumar Alias Polia and Another* (2020) 2 SCC 118 : [2019] 14 SCR 529; *Dolat Ram and Others v. State of Haryana* (1995) 1 SCC 349 : [1994] 6 Suppl. SCR 69; *Prakash Kadam and Others v. Ram Prasad Vishwanath Gupta and Another* (2011) 6 SCC 189 : [2011] 6 SCR 800 – referred to.

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Case Law Reference

(2021) 6 SCC 230	referred to	Para 11	A
(2004) 7 SCC 528	referred to	Para 11	
[1978] 2 SCR 777	referred to	Para 15	B
[2018] 1 SCR 882	referred to	Para 15	
[2001] 2 SCR 684	referred to	Para 20	
[2010] 12 SCR 1165	referred to	Para 21	
[2012] 7 SCR 584	referred to	Para 22	C
[2013] 11 SCR 273	referred to	Para 22	
[2014] 12 SCR 453	referred to	Para 22, 32	
[2017] 4 SCR 373	referred to	Para 22	D
(2018) 10 SCC 516	referred to	Para 22	
[2002] 2 SCR 526	referred to	Para 24	
(2004) 7 SCC 528	referred to	Para 25	E
[2019] 14 SCR 529	referred to	Para 29	
[1994] 6 Suppl. SCR 69	referred to	Para 30	
[2011] 6 SCR 800	referred to	Para 34	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 861 of 2022. F

From the Judgment and Order dated 22.10.2021 of the High Court of Judicature at Allahabad, Lucknow Bench in Bail No. 11848 of 2021.

Awanish Sinha, Prem Ranjan Kumar, Advs. for the Appellant. G

Vinod Diwakar, AAG, Siddharth Dave, Sr. Adv., Pushkar Sharma, Devendra Gupta, Abdul Qadir, Aditya Vaibhav Singh, Satish Pandey, Adarsh Upadhyay, Divyanshu Sahay, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

KRISHNA MURARI, J.

1. Leave granted

B 2. The present appeal is directed against the judgment and order dated 22.10.2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench (hereinafter referred to as “**High Court**”) in Bail No. 11848 of 2021 filed by Respondent No.2 - Accused with a prayer to release him on bail in Case Crime No. 16 of 2021 registered at PS Para, Lucknow under Sections 302 and 34 of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) during pendency of trial. By the said
C judgment, the High Court granted bail to Respondent No.2/Accused on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the trial court subject to certain conditions.

D 3. Briefly, the facts relevant for the purpose of this appeal are that the Appellant/Informant Deepak Yadav lodged an FIR being Crime Case No. 16/2021 on 09.01.2021 at PS Para, Lucknow under Section 307 IPC against Respondent No. 2/Accused Harjeet Yadav, co-accused Sushil Kumar Yadav and two unknown persons. The allegations against the said accused persons were that on the night of 08.01.2021, at around 8.30 PM, Appellant’s father Mr. Virendera Yadav (deceased) was on
E way to his home from the lawn located near Jaipuria School and at the same time, the accused persons took position on Kulhad Katta Bridge and fired at him with the common intention to kill the deceased. The bullet shot hit his right cheek and made its exit through the other side leaving him severely injured. In view of his serious condition, the people present on the spot informed the local police station and admitted him at
F the Trauma Centre, Medical College, Lucknow. The Appellant/Informant, on receiving the information about his injured father rushed to the Trauma Centre with his mother Smt. Sunita Yadav and elder sister Ms. Jyoti Yadav. The Appellant’s mother asked her husband about the incident to which he replied that he was shot by Respondent No.2/Accused Harjeet
G Yadav and one, Sushil Yadav and that they were accompanied by two other persons as well. The statement given by the deceased was noted down by Sri Mahesh Kumar Chaurasia, DSP/ACP Chowk, Lucknow and Sri. Ashok Kumar Singh, SI/First Investigating Officer.

H 4. Respondent No. 2/Accused was arrested by the police on 13.01.2021 and one country made pistol with two live cartages were

recovered from him. The Appellant/Informant's father passed away on 14.01.2021 on account of which the case was converted to one under Section 302 IPC. The co-accused, Sushil Kumar Yadav surrendered before the Judicial Magistrate, Lucknow on 16.01.2021. A

5. After completion of investigation and upon finding sufficient evidence, charge sheet was filed before the trial Court on 06.04.2021 against Respondent No.2/Accused and co-accused Sushil Kumar Yadav under Sections 302 and 34 IPC. Furthermore, investigation against two unknown accused persons is pending B

6. Respondent No.2/Accused filed Bail Application No. 3340/2021 before the Sessions Judge, Lucknow and the same was rejected vide order dated 28.06.2021 on the ground that he has been named on the basis of the information provided by the deceased himself and that the same has been clarified after the perusal of the documents/forms that the bullet was shot by Respondent No. 2/Accused himself. C

7. Respondent No. 2/Accused then moved the High Court for grant of regular bail vide Bail No. 11848/2021 wherein Counsel for the Respondent No.2/Accused contended that the co-accused, Sushil Kumar Yadav has been granted bail by the High Court on 18.10.2021 in Bail No. 8501 of 2021 and that the case of the Respondent No. 2 stands on identical footing making him entitled for bail on the ground of parity. The said bail application was allowed vide impugned judgment/order dated 22.10.2021. The operative portion of the judgment reads as under : - D
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*“Keeping in view the nature of the offence, arguments advanced on behalf of the parties, evidence on record regarding complicity of the accused, larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of **Dataram Singh Vs. State of U.P. & Anr**¹ and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.* F

Let the applicant be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified. G

¹(2018) 3 SCC 22

- A *1. The applicant shall not tamper with the prosecution evidence by intimidating/ pressurizing the witnesses, during the investigation or trial;*
- 2. The applicant shall cooperate in the trial sincerely without seeking any adjournment;*
- B *3. The applicant shall not indulge in any criminal activity or commission of any crime after being released on bail;*
- 4. That the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
- C *5. The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence and the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law to ensure presence of the applicant;*
- D *6. The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court, default of this condition is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of his bail and proceed against him in accordance with law;*
- E *7. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad;*
- 8. The concerned court/authority/official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.*
- G *In case of breach of any of the above conditions, it shall be a ground for cancellation of bail.”*
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8. We have heard Mr. Awanish Sinha, learned counsel appearing for the Appellant and Mr. Siddharth Dave, learned Senior Counsel appearing for Respondent No. 2. A

9. Mr. Awanish Sinha, learned counsel appearing for the Appellant vehemently submitted that the High Court has granted bail to the Respondent No. 2/Accused, who is a known criminal with criminal antecedents in a very casual manner only on the ground of parity without any focus on the role of the accused. It was further submitted that the arrest of the Respondent No.2/Accused was made on the statement of the deceased made to his wife in the presence of IO. It was further pointed out that the Respondent No.2/Accused has been named in the FIR as the person who had fired at the deceased leading to his untimely death and on commission of such a heinous crime, bail cannot be granted. B C

10. It was further submitted that the High Court has erred in granting bail to the Respondent No. 2/Accused on the very first day of being listed without granting any opportunity to the Appellant/Informant or the State to respond and that the State was not even given any opportunity to file a counter or even the present status of the case. D

11. Heavy reliance was placed on the decisions of this Court in *Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana(Koli) & Another*², *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another*³. E

12. Mr. Siddharth Dave, learned Senior Counsel appearing on behalf of the Respondent No.2/Accused submitted that the Respondent No.2/Accused was a young student, pursuing the course of D.Pharma from Himalayan Garhwal University, Uttarakhand having no criminal antecedents and the case registered against him under Sections 3 and 25 of the Arms Act, 1959 is an off-shoot of the instant case and has been lodged on the basis of erroneous recovery in the instant case. F

13. It was further submitted that no particular role has been attributed to the Respondent No.2/Accused, nor has he been expressly mentioned by the deceased in his statement, which simply states that Ratilal's younger son shot the deceased. Furthermore, granting bail on the first day of hearing does not violate any established legal concept, statutory requirement or precedent. G

²(2021) 6 SCC 230

³(2004) 7 SCC 528

A 14. It was further submitted that while granting bail to the Respondent No.2/Accused, the High Court has weighed all relevant factors, including the nature of the charge, the gravity of the offence and penalty, the nature of evidence and the criminal history of the accused.

B 15. Heavy reliance was placed on the decisions of this Court in *Babu Singh & Ors. Vs. State of U.P.*⁴ and *Dataram Singh Vs. State of Uttar Pradesh and Another*⁵.

16. We have carefully considered the submissions made at the Bar and perused the materials placed on record.

C 17. The main issue arising in this appeal for our consideration is whether the High Court was justified in exercising jurisdiction under Section 439(1) of the Code of Criminal Procedure (for short “Cr.P.C”) for grant of regular bail in the facts of the present case.

D 18. Before advertent to the facts of the case, it is important to understand the extent of the power of the High Court to grant bail and the factors determining nature and gravity of the crime in order to grant bail to accused concerned. As rightly stated by Justice V.R. Krishna Iyer “*the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process*”.

E ANALYSIS

A. Principles governing grant of bail

F 19. Section 439 of the Cr.P.C is the guiding principle for adjudicating a Regular Bail Application wherein Court takes into consideration several aspects. The jurisdiction to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case.

G 20. In *Prahlad Singh Bhati Vs. NCT of Delhi And Another*⁶, a two-Judge Bench of this Court stated the principles which are to be considered while granting bail which are as follows : -

“8. *The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner.*

⁴(1978) 1 SCC 579

⁵(2018) 3 SCC 22

H ⁶(2001) 4 SCC 280

While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

21. As reiterated by the two-Judge Bench of this Court in **Prasanta Kumar Sarkar Vs. Ashish Chatterjee And Another**⁷, it is well-settled that 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.

⁷(2010) 14 SCC 496

A 22. The decision in *Prasanta(Supra)* has been consistently followed by this Court in *Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu And Another*⁸, *Ranjit Singh Vs. State of Madhya Pradesh And Others*⁹, *Neeru Yadav Vs. State of Uttar Pradesh And Another*¹⁰, *Virupakshappa Gouda And Another Vs. State of Karnataka And Another*¹¹, *State of Orissa Vs. Mahimananda Mishra*¹².

B 23. In a recent pronouncement of this Court in the case of ‘Y’ Vs. *State of Rajasthan & Anr.*¹³ authored by one of us (Hon’ble N.V. Ramana, CJI), it has been observed as under :-

C “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.

D 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:-

E 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

⁸ (2012) 9 SCC 446

⁹ (2013) 16 SCC 797

¹⁰ (2014) 16 SCC 508

¹¹ (2017) 5 SCC 406

¹² (2018) 10 SCC 516

H ¹³ Criminal Appeal No. 649 of 2022 decided on 19.04.2022

*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.***

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(emphasis supplied)

24. For grant or denial of bail, the “nature of crime” has a huge relevancy. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in **Ram Govind Upadhyay Vs. Sudarshan Singh**¹⁴, wherein it has been observed as under: -

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“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:

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(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.

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(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.

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(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.”

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¹⁴ (2002) 3 SCC 598

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A 25. Similarly, the parameters to be taken into consideration for grant of bail by the courts has been described in ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav And Another***¹⁵ as under : -

B “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. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

D (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

E (c) *prima facie* satisfaction of the court in support of the charge.”

B. Recording of reasons for grant of bail by the High Court of the Sessions Court

F 26. The importance of assigning reasoning for grant or denial of bail can never be undermined. There is *prima facie* need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.

G 27. A two-Judge Bench of this Court in ***Ramesh Bhavan Rathod (Supra)*** held that the duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court, is

H ¹⁵ (2004) 7 SCC 528

exercised in a judicious manner. The operative portion of the judgment reads as under : -

“35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties “do not press for a further reasoned order”. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 of Cr.P.C would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. **But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail.** The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the “respective parties do not press for further reasoned order”. If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. **Grant of bail under Section 439 of the Cr.P.C 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

A *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.”*

B 28. Similarly, this Court in **Ram Govind Upadhyay (Supra)**, observed that :-

C *“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. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”*

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29. A two-Judge Bench of this Court in **Mahipal Vs. Rajesh Kumar Alias Polia And Another**¹⁶ observed :-

F *“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*

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H ¹⁶ (2020) 2 SCC 118

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.”

C. Cancellation of Bail

30. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted). A two-Judge Bench of this Court in ***Dolat Ram And Others Vs. State of Haryana***¹⁷ laid down the grounds for cancellation of bail which are :-

- (i) interference or attempt to interfere with the due course of administration of Justice
- (ii) evasion or attempt to evade the due course of justice
- (iii) abuse of the concession granted to the accused in any manner
- (iv) Possibility of accused absconding
- (v) Likelihood of/actual misuse of bail
- (vi) Likelihood of the accused tampering with the evidence or threatening witnesses.

¹⁷ (1995) 1 SCC 349

A 31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-

- B a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is *prima facie* misuse of position and power over the victim.
- C c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.
- d) Where bail has been granted on untenable grounds.
- D e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.
- E g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

F 32. In ***Neeru Yadav Vs. State of Uttar Pradesh And Another***¹⁸, the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under :-

G “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**

H ¹⁸ (2014) 16 SCC 508

should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it 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”

A

B

33. This Court in **Mahipal (Supra)** held that: -

C

“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.”

D

E

34. A two-Judge Bench of this Court in **Prakash Kadam And Others Vs. Ram Prasad Vishwanath Gupta And Another**¹⁹ held that:-

“18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. if there are serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him.

F

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. that factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

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¹⁹ (2011) 6 SCC 189

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A 35. Coming to the present case at hand, the Respondent No.2/
Accused was arrested on 13.01.2021 subsequent to which, he had applied
for regular bail before the Sessions Court which was rejected on the
ground that he is named in the FIR on the basis of the information provided
by the deceased himself and that the same has been clarified after perusal
of the documents/forms that the bullet was shot by the Respondent No.
B 2/Accused himself. Being aggrieved by the same, Respondent No.2/
Accused filed an application under Section 439 Cr.P.C before the High
Court seeking regular bail. The High Court vide its impugned order
granted bail to the Respondent No.2/Accused without considering the
relevant facts and circumstances.

C 36. A bare perusal of the impugned order reveals that the High
Court has failed to take into consideration the following:-

- D ➤ Respondent No.2/Accused has been named in the FIR
bearing Crime Case No. 16/2021 lodged under Sections
302 and 34 IPC and was the main assailant who had a
weapon in his hand.
- E ➤ The main role of Respondent No.2/Accused was that he
opened fire at the deceased due to which the bullet hit his
right cheek and made its exit through the other side.
- E ➤ The deceased succumbed to his injuries on 14.01.2021
- E ➤ Respondent No.2/Accused had the intention to murder the
deceased as there was previous enmity between him and
the deceased with regard to some land which Respondent
No.2 threatened to grab.
- F ➤ On being asked about the incident by the Appellant/
Informant's mother, the deceased replied "*Ratipal ka dusra
number ka ladka aur ram asre ka putra Sushil Yadav
ne pull par gaadi rukwakar goli maar di hai or unke
sath 2 ladke aur the*". On re-clarifying, the deceased
replied "***Ratipal ka dusra number ka ladka matlab
G Harjeet Yadav***".
- G ➤ Respondent No.2/accused has clearly been named by the
deceased and he was actively involved in opening fire which
caused the death of the deceased.

H

- Respondent No. 2/Accused's statement was recorded by the then IO under Section 161 Cr.P.C in which he admitted to having committed the offence. A
- Respondent No. 2 has a criminal history and several criminal matters have been lodged against him:
 - (1) Case Crime no. 016/2021 u/s 302/34 IPC B
 - (2) Case Crime no. 020/2021 u/s 25 of the Arms Act
 - (3) Proceedings of 110G on 05.11.2021
 - (4) Beat Information (G.D No. 33) dated 18.12.2021 C
 - (5) Beat Information (G.D. No. 44) dated 19.12.2021

37. There is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves 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. 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 basic principles laid down in a catena of judgments by this Court. E

38. However having said that, in the case at hand, it is manifestly incorrect on the part of the High Court to have granted bail to the Respondent No.2/Accused without taking into consideration the relevant facts and circumstances and appropriate evidence which proves that the Respondent No.2/Accused has been charged with a serious offence. F

39. Grant of bail to the Respondent No.2/Accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of the Respondent No.2/Accused, nature of crime, material evidences available, involvement of Respondent No.2/Accused in the said crime and recovery of weapon from his possession. G

40. Having considered the aforesaid facts of the present case in juxtaposition with the judgments referred to above, we are of the opinion that the impugned order passed by the High Court is not liable to be H

A sustained and is hereby set aside. The bail bonds of Respondent No.2/
Accused stand cancelled and he is hereby directed to surrender within
one week from the date of passing of this order, failing which, the
concerned police authorities shall take him into custody.

41. It is however clarified that observations made hereinabove
B are limited to our consideration of the issue of cancellation of bail, as
raised by the appellant. They shall not come in the way of final adjudication
before the trial Court. At the cost of repetition, it is stated that the trial
Court is to consider the matter pending before it, uninfluenced by any of
the observations made, strictly on the basis of evidence that shall be
C brought on record. This order shall also not preclude the Respondent
No. 2/Accused from applying afresh for bail at a later stage, if any, new
circumstances are brought to light.

42. As a result, appeal stands allowed.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal allowed.