[2022] 1 S.C.R. 229

SUNIL KUMAR

v.

THE STATE OF BIHAR AND ANR.

(Criminal Appeal No. 95 of 2022)

JANUARY 25, 2022

[M. R. SHAH AND SANJIV KHANNA, JJ.]

Bail – Murder – Unlawful assembly – Respondent No.2 and other accused persons allegedly formed an unlawful assembly and killed the elder brother of informant- appellant – Deceased was fired at, and also assaulted with danda and lathi – Respondent no.2 was a history-sheeter and having criminal antecedents – He was also allegedly involved in murder of informant's father and younger brother – Trial of these cases were at the crucial stage of recording of evidence, and there were allegations of the informant and the witnesses being pressurised by respondent no.2 – Judgment of High Court releasing respondent No.2 on bail – Held: Not justified – No reasons whatsoever was assigned by the High Court while releasing respondent no.2 on bail – High Court did not advert to the relevant considerations for grant of bail and also did not consider the criminal antecedents of respondent no.2 even when so pointed out on behalf of the informant – High Court did not consider the gravity, nature and seriousness of the offences alleged – Respondent no.2 directed to surrender forthwith – IPC – ss.147, 148, 149, 341, 323, 324, 427, 504, 506, 307 and 302 – Arms Act – s.27.

Allowing the appeal, the Court

HELD: 1. From the impugned judgment and order passed by the High Court, it can be seen that no reasons whatsoever have been assigned by the High Court while releasing the respondent No.2 on bail. After recording the submissions made by the counsel appearing on behalf of the accused and the State thereafter the High Court has only observed that "considering the rival submissions as also the facts and circumstances of the case, this Court for the purposes of grant of bail is inclined to accept the submissions advanced by the petitioner's counsel.

Prayer for the bail of the petitioner is allowed." There is no further reasoning given at all. Neither the High Court has considered the gravity, nature and seriousness of the offences alleged against the accused. [Para 7][235-C-E]

2. Even otherwise the High Court has erred in not considering the material relevant to the determination of whether the accused was to be enlarged on bail. Even the High Court has also not at all considered the criminal antecedents of the respondent No.2 - accused. Though it was pointed out on behalf of the informant that the accused is involved in two cases and that the appellant (informant) was restrained from proceeding further in earlier cases pending against the accused, the High Court has simply brushed aside the same and has not considered the same at all. The High Court has noted the submission on behalf of the accused that one other accused has been released on bail. However, the High Court has not at all considered whether the case of the said other accused is similar to that of the respondent No.2-accused or not. It appears that the High Court has passed the order mechanically and in a most perfunctory manner. [Paras 9, 10][237-G; 238-A-D]

3. Considering the fact that respondent No.2 is a history sheeter and is having a criminal antecedent and is involved in the double murder of having killed the father and brother of the informant and the trial of these cases is at the crucial stage of recording evidence and there are allegations of pressurizing the informant and the witnesses, the impugned judgment and order passed by the High Court releasing the respondent No.2 on bail is absolutely unsustainable. The High Court has not at all considered the gravity, nature and seriousness of the offences alleged. [Para 11][239-B-C]

Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and Others, **(2021) 6 SCC 230;** *Mahipal v. Rajesh Kumar* **(2020) 2 SCC 118 : [2019] 14 SCR 529;** *Anil Kumar Yadav v. State (NCT of Delhi),* **(2018) 12 SCC 129 : [2017] 11 SCR 195; and** *Neeru Yadav v. State of UP & Anr.,* **(2016) 15 SCC 422 : [2015] 10 SCR 802 – relied on.**

Bhoopendra Singh v. State of Rajasthan & another, **2021 (13) SCALE 38 – referred to.**

Case Law Reference

(2021) 6 SCC 230	**relied on**	**Para 3.1**
[2019] 14 SCR 529	**relied on**	**Para 3.1**
2021 (13) SCALE 38	**referred to**	**Para 3.2**
[2017] 11 SCR 195	**relied on**	**Para 3.3**
[2015] 10 SCR 802	**relied on**	**Para 10**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.95 of 2022.

From the Judgment and Order dated 17.08.2021 of the High Court of Judicature at Patna in Criminal Miscellaneous No.13149 of 2021.

Rituraj Choudhary, Rituraj Biswas, Chandan Kumar, Mayan Prasad, Ms. Sujaya Bardhan, Advs. for the Appellant.

Devashish Bharuka, Ms. Sarvshree, Justine George, Manas Sayal, Atul Kumar, Ms. Sweety Singh, Ms. Archana Kumari, 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 Judicature at Patna dated 17.08.2021passed in Criminal Miscellaneous Application No. 13149 of 2021 by which the High Court has released the respondent No.2 – original accused on bail in connection with alleged case No.328 of 2020 – Vaishali Police Station for the offence under Sections 147, 148, 149, 341, 323, 324, 427, 504, 506, 307 and 302 IPC and Section 27 of the Arms Act, the original informant – younger brother of the deceased has preferred the present appeal.

2. That the appellant herein – informant – younger brother of the deceased Shardanand Bhagat lodged F.I.R. with the Vaishali, Bihar Police Station against all the accused named in the F.I.R. for the offence under Sections 147, 148, 149, 341, 323, 324, 427, 504, 506, 307 and 302 IPC and Section 27 of the Arms Act for having assaulted them and killed his

A elder brother Shardanand Bhagat, who succumbed to the bullet injury. As per the case of the prosecution, on fateful date of occurrence accused Ramawatar Bhagat (respondent No.2 herein) and other accused named in F.I.R. having armed with lethal weapons came to the Bamboo Clumps of the informant and they started cutting the bamboos. So, his brother - Shardanand Bhagat went to forbade them. On this accused Ramawatar B Bhagat ordered to kill Shardanand Bhagat and then Shardanand Bhagat started fleeing away but he was chased and surrounded by all the accused persons. After that the co-accused Manish Kumar fired upon him from his rifle due to which Shardanand Bhagat got injured and fell down and when the informant went to save him, the co-accused namely Rambabu C Kumar fired twice upon the informant due to which the informant also got injured to some extent. After that all the accused persons brutally assaulted the informant by means of Lathi, Danda. When co-villagers started assembling there then all the accused persons fled away. Later on, both the injured persons were brought to the Sadar Hajipur and thereafter they were referred to P.M.C.H. for treatment.

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2.1 That during the course of treatment, Shardanand Bhagat succumbed to the bullet injury. So, later on, Section 302 IPC was added. All the accused persons were arrested including the respondent No.2 - Ramawatar Bhagat. The bail application filed by the respondent No.2 - Ramawatar Bhagat came to be rejected by the Sessions Court by giving E cogent reasons and by observing that the respondent No.2 - accused Ramawatar Bhagat and other accused persons named in the F.I.R. formed an unlawful assembly and thereafter killed Shardanand Bhagat. The Sessions Court also observed that so far as respondent No.2 - Ramawatar Bhagat is concerned, he has actively participated in such F heinous offence and therefore having considered the gravity of the case, no case for bail is made out. That thereafter the respondent No.2 approached the High Court by way of present application under Section 439 Cr.P.C. and by the impugned judgment and order without assigning any cogent reasons and without even considering the gravity and nature of the offence committed in which one of the persons got killed and G after narrating the submissions made on behalf of the accused and the State and after observing "Considering the rival submissions as also the facts and circumstances of the case, this Court for the purposes of grant of bail is inclined to accept the submissions advanced by the petitioner's counsel. Prayer for bail of the petitioner is allowed."

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2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court releasing the respondent No.2 on bail, the original informant -younger brother of the deceased, who himself is an injured eye witness has preferred the present appeal.

3. Shri Rituraj Choudhary, learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in releasing the respondent No.2 accused on bail in a case where one person is killed.

3.1 It is vehemently submitted that while releasing the respondent No.2 on bail as such no reasons have been assigned by the High Court except after narrating the submissions observing that considering the rival submissions as also the facts and circumstances of the case, the Court is inclined to grant the bail. It is submitted that as held by this Court in a catena of decisions, the aforesaid can hardly be said to be sufficient reasons assigned while releasing the accused on bail. Reliance is placed on the decisions of this Court in the case of **Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana (Koli) and others, (2021) 6 SCC 230**, as well as in the case of **Mahipal Vs. Rajesh Kumar, (2020) 2 SCC 118**.

3.2 It is submitted that therefore the impugned order passed by the High Court releasing the respondent No.2 on bail is just contrary to law laid down by this Court in the aforesaid decisions as well as the recent decision of this Court in the case of **Bhoopendra Singh Vs. State of Rajasthan & another** (**Criminal Appeal No. 1279 of 2021**, decided on 29.10.2021).

3.3 It is further submitted that even otherwise while releasing the respondent No.2 accused on bail, the High Court has not at all adverted to the relevant considerations while granting bail as laid down by this Court in a catena of decisions, including the decision of this Court in the case of **Anil Kumar Yadav Vs. State (NCT of Delhi), (2018) 12 SCC 129.**

3.4 It is further submitted that the High Court has even totally ignored the antecedents of the accused. It is submitted that what is weighed with the High Court seems to be a parity as one other co-accused Shashi Bhushan Bhagat has been allowed bail. It is submitted that however, the High Court has not at all appreciated the distinct and distinguished features so far as the case of co-accused Shashi Bhushan

A Bhagat is concerned. It is submitted that the High Court ought to have appreciated that the case of co-accused Shashi Bhushan Bhagat is different from the respondent No.2 accused. It is further submitted that the High Court has also not at all considered the fact that earlier the respondent No.2 is also an accused in double murder case. He is involved in murder of the informant's father and younger brother and for which the cases are pending against him and the trial is at the stage of recording of evidence. It is submitted that the High Court has not at all noted and/ or appreciated the fact that the respondentaccused is threatening and building pressure upon the informant either to withdraw the aforesaid Session trial or to turn hostile in the aforesaid case as the trial is at the evidence stage. It is submitted that the High Court has not at all considered the aforesaid relevant aspects, which are very material while considering the grant of bail while releasing the respondent No.2 on bail.

4. Shri Devashish Bharuka, learned counsel appearing on behalf of the State has supported the appellant and submitted that after conclusion of the investigation, the respondent No.2 has been charge sheeted for the offence under Sections 147, 148, 149, 302, 34 and 447 IPC having murdered/killed Shardanand Bhagat – the elder brother of the appellant. It is submitted that therefore the High Court ought not to have released the respondent No.2 on bail in such a serious case for the offence under Section 302 IPC.

5. Present appeal is vehemently opposed by Shri Atul Kumar, learned counsel appearing on behalf of the respondent No.2 accused. It is vehemently submitted that having accepted the submissions on behalf of the accused and after considering all the facts of the case, the High Court has released the accused – respondent No.2 on bail and the same is not required to be interfered with by this Court in exercise of the powers under Article 136 of the Constitution of India.

5.1 It is submitted that the respondent No.2 is a 70 years old senior citizen suffering from various ailments and has nothing to do with the alleged offences. It is submitted that the alleged involvement in two previous cases has not been concealed from the Hon'ble Court while making application or submission of arguments and has also been discussed by the High Court in the impugned order.

5.2 It is further submitted that even otherwise the evidence in other cases is almost complete and only the doctor and the investigating

officer are remained to be examined. It is submitted that in the earlier case, the respondent accused is enlarged on bail and that there is no allegation of misuse of liberty granted by the High Court for 30 years.

5.3 Making the above submissions, it is prayed not to cancel the bail and/or interfere with the impugned judgment and order passed by the High Court releasing the respondent No.2 on bail.

6. We have heard the learned counsel for the respective parties at length. We have also gone through the impugned judgment and order passed by the High Court releasing the respondent No.2 accused on bail.

7. From the impugned judgment and order passed by the High Court, it can be seen that no reasons whatsoever have been assigned by the High Court while releasing the respondent No.2 on bail. After recording the submissions made by the learned counsel appearing on behalf of the accused and the State thereafter the High Court has only observed that "considering the rival submissions as also the facts and circumstances of the case, this Court for the purposes of grant of bail is inclined to accept the submissions advanced by the petitioner's counsel. Prayer for the bail of the petitioner is allowed." There is no further reasoning given at all. Neither the High Court has considered the gravity, nature and seriousness of the offences alleged against the accused. In the case of **Mahipal (supra)** while emphasizing to give brief reasons while granting the bail to an accused in paragraphs 24 to 27, it is observed and held as under:-

> **"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 order 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)
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> > "*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.

26. In *Kalyan Chandra Sarkar* v. *Rajesh Ranjan* [*Kalyan Chandra Sarkar* v. *Rajesh Ranjan*, (2004) 7 SCC 528], a two-Judge Bench of this Court was required to assess the correctness of a decision [*Rajesh Ranjan* v. *State of Bihar*, Criminal Misc. No. 28179 of 2002, order dated 23-5-2003 (Pat)] of a High Court enlarging the accused on bail. Santosh Hegde, J. speaking for the Court, discussed the law on the grant of bail in non-bailable offences and held : (SCC p. 535, para 11)

> "*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*."
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> (emphasis supplied)

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court. 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 bail should be granted."

8. A similar view has been expressed by this Court in the recent decision in the case of **Ramesh Bhavan Rathod(supra).** Emphasizing on giving brief reasons while granting bail, it is observed by this Court in the above case that though 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 Cr.P.C. would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. It is further observed that however 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. It is observed 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 and the rights of the victims and their families are at stake as well and therefore while granting bail, the Court has to apply a judicial mind and record brief reasons for the purpose of deciding whether or not to grant bail. It is further observed by this Court in the aforesaid decision in paragraph 36 as under:

> "36. Grant of bail Under Section 439 of the Code of Criminal Procedure 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."

9. Even otherwise the High Court has erred in not considering the material relevant to the determination of whether the accused was to be enlarged on bail. The High Court has not at all adverted to the relevant considerations for grant of bail. In the case of **Anil Kumar Yadav (supra)**, it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact

A that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

10. Even the High Court has also not at all considered the criminal antecedents of the respondent No.2 - accused. Though it was pointed out on behalf of the informant that the accused is involved in two cases
B and that the appellant (informant) was restrained from proceeding further in earlier cases pending against the accused, the High Court has simply brushed aside the same and has not considered the same at all. The High Court has noted the submission on behalf of the accused that one other accused – Shashi Bhushan Bhagat has been released on bail. However, the High Court has not at all considered whether the case of
C Shashi Bhushan Bhagat is similar to that of the respondent No.2 – accused - Ramawatar Bhagat or not. It appears that the High Court has passed the order mechanically and in a most perfunctory manner. In the case of In **Neeru Yadav Vs. State of UP & Anr., (2016) 15 SCC 422**, after referring to a catena of judgments of this Court on the considerations to
D be placed at balance while deciding to grant bail, it is observed in paragraphs 15 and 18 as under:

> "15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine
> E of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind.
> F The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the 11 emphasis is on exercise of discretion judiciously and not in a whimsical manner.
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> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the
> H criminal antecedents of the accused and that makes the order a

deviant one. Therefore, the inevitable result is the lancination of the impugned order."

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and more particularly considering the fact that respondent No.2 is a history sheeter and is having a criminal antecedent and is involved in the double murder of having killed the father and brother of the informant and the trial of these cases is at the crucial stage of recording evidence and there are allegations of pressurizing the informant and the witnesses, the impugned judgment and order passed by the High Court releasing the respondent No.2 on bail is absolutely unsustainable and the same cannot stand. The High Court has not at all considered the gravity, nature and seriousness of the offences alleged.

12. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court releasing the respondent No.2 on bail is hereby quashed and set aside. On quashing and setting aside the impugned judgment and order passed by the High Court releasing the respondent No.2 on bail, now the respondent No.2 accused to surrender before the concerned jail authority / before the concerned Court forthwith. Present appeal is accordingly allowed.

Bibhuti Bhushan Bose Appeal allowed.