

SUPREME COURT OF INDIA REPORTABLE

Bench: Justices Vikram Nath and Sanjay Kumar

Date of Decision: 19th April 2024

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. ARISING OUT OF SLP(CRL.) NOS. 7961-7963
OF 2023

JADUNATH SINGH ...APPELLANT

VERSUS

ARVIND KUMAR & ANR. ETC. ...RESPONDENT

Legislation:

Sections 147, 148, 149, 201, 224, 302, 307, 120B of the Indian Penal Code,
1860

Subject:

Criminal appeal against the High Court's decision granting bail to respondents involved in multiple severe crimes including murder, based on their lengthy pre-trial incarceration and the bail granted to co-accused.

Headnotes:

Bail Granted by High Court – Review by Supreme Court – Criminal Appeal against the order of Allahabad High Court granting bail to accused persons convicted under multiple sections including 302/149 IPC – High Court granted bail based on period of incarceration and previous bails granted to co-accused – Supreme Court examines subsequent criminal activities and the involvement of accused in other serious offenses. [Paras 1-3]

Circumstances of the Case – Detailed narrative of events leading to the convictions under 302/149 IPC for life – Accused involved in a fatal shooting incident and subsequent killing of a Police Constable during judicial custody – Escape and re-arrest by Special Task Force – Detailed analysis of the involvement of each accused in additional crimes beyond the original case. [Paras 4-7]

Assessment of Parity in Bail Conditions – High Court’s rationale for bail based on parity and length of incarceration challenged – Supreme Court finds fault with the non-disclosure of pertinent facts during the bail hearing, specifically the serious offenses committed by the accused post the initial crime. [Paras 8-11]

Re-evaluation of Bail for Multiple Accused – Supreme Court distinguishes roles of co-accused in subsequent serious offenses – Bail for Arvind Kumar upheld due to absence of involvement in the murder of Police Constable Ajay Kumar – Bail for Chandra Kumar and Rishi Kumar revoked due to direct involvement in further serious crimes. [Paras 12-13]

Decision – Grant of bail to Rishi Kumar and Chandra Kumar set aside due to their dangerous conduct post initial incarceration and ongoing risks posed – Supreme Court orders their return to custody – Appeal against Arvind Kumar’s bail dismissed, bail upheld. [Paras 14]

Referred Cases: None.

J U D G M E N T

VIKRAM NATH

Leave granted.

2. These appeals arise from a Common Order passed by Allahabad High Court on 08.02.2023 while adjudicating three Criminal Appeals- Criminal Appeal No. 5033 of 2019 (Arvind Kumar vs State of U.P.), Criminal Appeal No. 5100 of 2019 (Chandra Kumar @ Chandu vs State of U.P.) and Criminal Appeal No. 5102 of 2019 (Rishi Kumar vs State of U.P.). The Applicants ad sought for suspension of sentence and grant of bail through these Appeals on the primary ground that they are in jail for more than ten years. Also, two co-accused Pramod Kashyap and Adesh Kumar had been granted bail by coordinate bench of same High Court. By the Impugned order, the three Applicants- Arvind Kumar, Chandra Kumar @ Chandu and Rishi Kumar were granted bail during the pendency of their Criminal appeals, with condition of furnishing a personal bond in the sum of Rs.50,000/- each (Fifty Thousand)

along with two sureties. Appellant is the Complainant and has challenged the order of granting bail through these appeals.

3. The three Applicants have filed separate Criminal Appeals before High Court against order of Sessions Court dated 06.06.2019 whereby total five Accused namely, Arvind Kumar, Chandra Kumar @ Chandu, Rishi Kumar, Pramod Kashyap and Adesh Kumar were convicted under Sections 147, 148, 302/149 and 120B of Indian Penal Code, 1860¹. They were sentenced for life imprisonment under Section 302/149 of IPC along with fine of Rs. 20,000/-. By the same order two other accused- Monu and Amit Kumar were acquitted of all the Charges.
4. The brief facts leading to these appeals are as

follows:

- 4.1 On 11.02.2011, the appellant/Complainant- Jadunath Singh submitted a Written Report narrating the incident leading to present Criminal case. He stated that in Village Bhogaon there is a plot illegally taken by Arvind Kumar (accused- respondent). He was removed from its illegal possession by Rajvir, son of the

Complainant, in accordance with the order of District Magistrate.

- 4.2 On the same day around 11.45 AM, Complainant Jadunath Singh along with his son Rajvir, Pawan Kumar, Rawan Kumar, Upendra, Chedalal were sitting together, discussing the disputed plot. At this time, Arvind Kumar, armed with country made pistol (katta of 315 bore), his two sons Chandra Kumar @ Chandu armed with katta and Rishi Kumar armed with katta along with Amit Kumar, armed with a rifle and two unknown persons with rifles, arrived there in white coloured Maruti 800 Car and immediately opened fire at the complainant and all other persons sitting with him.
- 4.3 The Complainant and others ran into a nearby building owned by one Harvilas. They were chased by accused persons along with continuous firing. They managed to intrude in the room in which Rajvir and Pawan entered while hiding and escaping from the shots. There the accused aimed at Rajvir and Pawan, shot them dead and thus caused the death of both these victims and also injured Ravita- daughter in law of Harvilas, causing injuries upon

¹ In short, "IPC"

her. Thereafter the accused persons fled away. The injured persons were taken to Hospital.

4.4 The Medical Officer on duty declared Rajvir and Pawan Kumar as brought dead. Ravita's treatment is under process. As per testimony of Dr. Ankit Nikant, Pawan's death was caused by fire arm injury on his chest and excessive bleeding from the same. Rajvir's death is caused from excessive bleeding from the 9 firearm wounds found on his body. Two injuries were found on Rajvir's shoulder and one injury was on his chest.

5. On the basis of the complaint given by Jadunath Singh (Appellant), FIR No. 1411 of 2011 was registered at Police Station Kotwali Dist. Mainpuri under Sections 147, 148, 149, 302, 307, 120B of IPC against five named accused and two unknown. After investigation Chargesheet was submitted against all the seven accused. However, three separate trials were registered being Session Trial No. 48 of 2013- State of U.P. vs Chandra Kumar and three others, namely Pramod Kashyap, Aadesh Kumar and Monu, Session Trial No. 321 of 2013- State of U.P. vs Arvind Kumar and Rishi Kumar and Session Trial No. 531 of 2013- State of U.P. vs Amit Kumar. The trials were clubbed and the leading case was ascertained as Sessions Trial No. 48 of 2013- State vs Chandra Kumar and three others.

6. Trial Court after appreciating the evidence led during the trial, convicted five accused namely Arvind Kumar, Chandra Kumar, Pramod Kashyap, Rishi Kumar and Aadesh Kumar under Section 302/149, 147, 148 and 120-B of IPC and awarded life sentence. It, however, acquitted two other accused namely Monu and Amit Kumar of all the charges.

7. At this juncture it is relevant to note another criminal case involving some of the present convicted accused. On 31.01.2013, two accused viz Rishi Kumar and Chandra Kumar were produced before Sessions Court at Mainpuri, while in judicial custody by Constable Ajay Kumar. The two accused persons requested the police constable Ajay Kumar to take them out for attending nature's call. The police constable Ajay Kumar went along with two accused persons along with family members in a Maruti Car. As soon as they moved out from the Court campus, the two accused Chandra Kumar and Rishi Kumar opened fire on said police constable Ajay Kumar due to which said constable died on the spot and thereafter his dead body was thrown by the accused persons in front of the house of one Munshi Lal. Consequently, an FIR being Case Crime No.60 of 2013 was registered under Section 302 IPC. Charge sheet No. 29 of 2013 dated 27.07.2013 was also filed against eight

accused persons- Rishi Kumar, Chandra Kumar, Sudha- wife of Rishi Kumar, Babli- wife of Chandra Kumar, Dharmveer, Monu, Jayshree and Ravindra Singh under Sections 302, 201, 120B, 34, 224 of IPC, with allegation that all eight accused hatched conspiracy for committing murder of Police Constable Ajay Kumar. The accused Chandra Kumar and Rishi Kumar absconded and were later on arrested by STF from Maharashtra where also they had opened fire on the police party for which a separate FIR Case Crime No. 54 of 2013.

8. Thus, Complainant has challenged the impugned order of granting bail on primary ground that the accused persons are dreaded criminals as initially they have committed two murders and later co-accused Chandra Kumar and Rishi Kumar, the sons of co-accused Arvind Kumar killed a Police Constable Ajay Kumar while he was on duty during the course of trial. Therefore, Complainant fears that after being released from jail, they will hatch another conspiracy for eliminating the complainant and his family members.
9. We have heard learned counsel for the parties and perused the material on record.
10. The High Court has granted bail taking into consideration the following two factors:
 - i) Period of incarceration;
 - ii) Two other co-accused have been granted bail.
11. It appears that before the High Court, the fact relating to the murder of Ajay Kumar Police Constable in whose custody the accused Chandra Kumar and Rishi Kumar were produced before the Trial Court at Mainpuri and further, the fact that they had absconded after throwing the dead body of deceased Constable Ajay Kumar and later on arrested by Special Task Force (STF) from Maharashtra and during their arrest also they had resisted and opened fire on the police party for which a separate case was registered. Such facts have not been placed before the High Court. These were relevant facts which ought to have been placed before the High Court. The parity mentioned by the High Court in the impugned order relating to Adesh Kumar and Pramod Kashyap was clearly distinguishable not only with respect to their role in the case in hand but also, they were not involved in the murder of Ajay Kumar Police Constable.
12. In our considered opinion, two accused respondents namely Chandra Kumar and Rishi Kumar despite their period of incarceration of more than 10 years

would not be entitled to grant of bail for their subsequent conduct for which they are facing separate trial.

13. Insofar as Arvind Kumar is concerned, he is not charge sheeted in the murder case of Ajay Kumar as such we are not inclined to interfere with the order of the High Court granting bail to him i.e. Arvind Kumar. However, insofar as the other two accused Rishi Kumar and Chandra Kumar are concerned, their bail deserves to be cancelled.

14. **Accordingly, the appeal against Arvind Kumar is dismissed, and other two appeals i.e. against Chandra Kumar and Rishi Kumar are allowed.** The impugned order of the High Court granting bail to Rishi Kumar and Chandra Kumar is set aside. They may surrender within two weeks failing which the High court will take appropriate steps for taking them into custody using coercive measures as are permissible under law.

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