

SUPREME COURT OF INDIA**Bench : Justice SATISH CHANDRA SHARMA, J.****Date of Decision: April 19, 2024,**

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2024 [Arising out of SLP (Crl.) No(s). 14988 of 2023 and SLP (Crl.) No(s). 355 of 2024]

RAMAYAN SINGH ...APPELLANT(S)**VERSUS****THE STATE OF UTTAR PRADESH & ANR. ...RESPONDENT(S)****Legislation and Rules:**

Sections 147, 148, 149, 323, 504, 506, 427, 394, 411, 302, 120B of the Indian Penal Code, 1860

Section 439 of the Code of Criminal Procedure, 1973

Section 7 of the Criminal Law Amendment Act, 2013

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986

Subject: Criminal appeals against High Court orders granting bail to respondents in a murder case involving a brutal daylight attack, assessing the propriety of bail given the nature of the crime and the accused's influence.**Headnotes:**

Cancellation of Bail – Criminal Appeals against High Court orders granting bail – Assault and murder case involving accused Vivek Pal and Punit Pal – High Court granted bail which was challenged by the original complainant in Supreme Court – Supreme Court considers the severity of the crimes, the influence of the accused, and potential threat to the judicial process – Held, bail granted by the High Court set aside, accused to be taken into custody immediately. [Paras 1-22]

Seriousness of Offense – Analysis of criminal charges – Accused charged under Sections 147, 148, 149, 323, 504, 506, 427, 394, 411, 302, and 120B

IPC – Allegations of market closure and influence on local area following the crime – Supreme Court stresses the severity and impact of the crime committed in broad daylight, leading to the reversal of bail. [Paras 18-19]

Judicial Discretion in Bail – Application of judicial principles for bail – Supreme Court cites precedents on proper bail consideration – Highlights lack of appropriate discretion in bail granting by High Court given the serious nature of the allegations and evidence against the accused – Orders for cancellation of bail and immediate custody of the accused. [Paras 15-20]

Decision – Sets aside High Court's bail orders, citing improper exercise of judicial discretion in light of the accused's conduct and the gravity of the crime – Orders immediate custody of the accused and expeditious trial [Paras 19-21].

Referred Cases:

- Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496
- Mahipal v. Rajesh Kumar, (2020) 2 SCC 118

J U D G M E N T

SATISH CHANDRA SHARMA, J.

1. Leave granted.
2. The present appeal i.e., arising out of SLP(Crl.) No 14988 of 2023, seeks to assail the correctness of a judgment of the Learned Single Judge of the High Court of Judicature at Allahabad (the “**High Court**”) dated 24.04.2023 wherein, the High Court allowed Vivek Pal @ Vikki Pal’s / Respondent No. 2’s bail application under Section 439 of the Code of Criminal Procedure, 1973 (“**CrPC**”) and accordingly enlarged Respondent No. 2 on bail subject to certain conditions contained therein (the “**Impugned Order**”).
3. By an order dated 31.10.2023, a co-accused i.e., Punit Pal was enlarged on bail by a coordinate bench of the High Court. The appeal filed by the Appellant

against that order has been tagged with the present appeal *vide* an order dated 02.01.2024 in SLP (Crl) No. 355 of 2024. Moreover, as the facts and the questions involved in the present appeal(s) are similar, they have been heard together and are being disposed of by this common judgment.

4. The facts of the case reveal that a First Information Report (the “**FIR**”) was lodged by the Appellant i.e., the Original Complainant, on 03.01.2022 stating that on 02.01.2022 at around 3:30 PM, the Appellant along with his uncle i.e., Jitendra Singh (the “**Deceased**”) and his driver i.e., Rahul were returning from *Bankati Bazar* when their vehicle was stopped by the accused person(s) including *inter alia* (i) Respondent No. 2; and (ii) Punit Pal. The accused persons verbally abused the Deceased and proceeded to shatter the windows of the vehicle with iron rods. Subsequently they dragged the Deceased out of the vehicle – and physically assaulted the Deceased with iron rods, hockey sticks and bats with an intention to kill him. It was also alleged that although the Appellant and Rahul i.e., the Driver attempted to intervene, they were injured by the accused persons. The accused persons snatched the mobile phones of the Deceased and the driver; as well as a gold chain belonging to the Deceased and ran away from the spot of the incident. The Deceased was initially rushed to the Primary Health Centre, Bankati, however, due to the serious nature of the injuries he was referred to the District Hospital, Basti and thereafter to Sahara Hospital in Lucknow where he eventually succumbed to his injuries on 10.02.2022.
5. On the same day i.e., 10.02.2022, (i) an inquest report of the person of the Deceased was prepared wherein injuries were recorded on the head, hand and knee; and (ii) a post-mortem was conducted which revealed 4 (four) major *ante mortem* head injuries on the person of the Deceased. Pertinently, the cause of death was identified as coma due to *ante mortem* head injuries.
6. Notably, Respondent No. 2 came to be apprehended in relation to the FIR on 05.01.2022 and the murder weapon i.e., a bat used in the assault of the Deceased was also recovered at his instance. On the other hand, Punit Pal came to be apprehended on 07.01.2022. A chargesheet came to be filed in relation to the FIR on 14.03.2022 under Section(s) 147, 148, 149, 323, 504, 506, 427, 394, 411, 302 and 120B of the Indian Penal Code, 1872 (“**IPC**”) read with Section 7 of the Criminal Law Amendment Act, 2013 (the “**Act**”) (the “**Chargesheet**”). Pursuant to the filing of the Chargesheet, committal proceedings ensued and thereafter charges were framed against the accused person(s) *vide* an order dated 19.04.2023.

7. Respondent No. 2 preferred an application seeking the grant of bail in relation to the proceeding(s) emanating from the FIR before the Learned Sessions Judge, Basti (the “**Trial Court**”). *Vide* an order dated 15.03.2022, the aforesaid bail application came to be rejected by the Trial Court. Thereafter, Respondent No. 2 filed an application seeking the grant of bail which came to be allowed by the High Court *vide* the Impugned Order.
8. On the other hand, Punit Pal preferred an application seeking the grant of bail in relation to the proceeding(s) emanating from the FIR before the Trial Court. *Vide* an order dated 29.03.2022, the aforesaid bail application came to be rejected by the Trial Court. Thereafter, Punit Pal filed an application seeking the grant of bail which came to be allowed by the High Court *vide* an order dated 31.10.2023.
9. The Appellant herein i.e., the Original Complainant filed the present appeals assailing the correctness of the order(s) passed by the High Court enlarging (i) Respondent No. 2; and (ii) Punit Pal on bail in relation to the FIR.
10. The learned Counsel appearing on behalf of the Appellant, urged the following:
 - (a) The High Court ought not to have exercised its jurisdiction to grant Respondent No. 2 and Punit Pal bail in light of the fact that (i) charges had been framed against the accused person(s); (ii) recovery of the weapon used in the assault of the Deceased has been effected from Respondent No. 2; (iii) well-reasoned order(s) had been passed by the Trial Court declining the grant of bail to Respondent No. 2; and Punit Pal;
 - (b) That there is a real and probable threat qua the ability to influence witnesses in light of the overwhelming influence exercised in the area by the accused person(s) including *inter alia* Respondent No. 2 and Punit Pal i.e., after the incident all shops near the place of occurrence remained shut for a period of 10 (ten) days; and
 - (c) That Respondent No. 2; and Punit Pal have misused their liberty i.e., an identified witness had previously sought police protection from the Trial Court on account of threats having been extended to him during the pendency of the trial; and it was specifically contended that threats were extended to the Appellant himself by Respondent No. 2; and Punit Pal.

11. The learned Counsel appearing on behalf of the Respondent State of Uttar Pradesh supported the stand of the Appellant. Moreover, it was brought to our attention that both Respondent No. 2; and Punit Pal were also being prosecuted under the provisions of the Uttar Pradesh Gangsters and AntiSocial Activities (Prevention) Act, 1986.

12. On the other hand, Mr. Sudhir Kumar Saxena, learned Senior Counsel appearing on behalf of the Respondent No. 2; and Punit Pal has vehemently contended as under:

- (a) That Respondent No. 2; and Punit Pal have been cooperating with the trial, however, the Appellant has stalled proceedings before the Trial Court; and
- (b) That the allegation levelled against Respondent No. 2; and Punit Pal vis-à-vis extension of threats to the Appellant was wholly erroneous and is in fact, a part of a calculated effort to paint Respondent No. 2; and Punit Pal in bad light; and

13. We have heard the learned counsel(s) appearing on behalf of the parties and perused the materials on record.

14. The fulcrum of the dispute before this Court is whether the High Court appropriately exercised its discretion under Section 439 of the CrPC to grant Respondent No. 2; and Punit Pal bail in relation to the proceeding(s) emanating out of the FIR?

15. It is well settled that the grant of bail involves the exercise of a discretionary power which ought not to be used arbitrarily, capriciously; and injudiciously.¹ In the aforesaid prism we must assess the correctness of the order(s) of the High Court granting Respondent No. 2; and Punit Pal bail in relation to the proceeding(s) emanating out of the FIR.

16. This Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee***, (2010) 14 SCC 496, enunciated certain parameters on which the correctness of an order granting bail must be evaluated. The relevant paragraph(s) are reproduced as under:

“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

¹ *Neeru Yadav v. State of U.P.*, (2014) 16 SCC 508

rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to 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.

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.”

17. Furthermore, this Court in ***Mahipal v. Rajesh Kumar***, (2020) 2 SCC 118, followed ***Prasanta Kumar Sarkar (Supra)*** and succinctly summarised the position qua interference by this Court *vis-à-vis* an order granting bail. The relevant paragraph is reproduced as under:

“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.” Turning to the issue at hand, we note that Respondent No. 2; and Punit Pal have been charged under *inter alia* Section(s) 147, 148, 149, 323, 504, 506, 427, 394, 411, 302 and 120B IPC on the basis of the materials on record including but not limited to the post-mortem report; and statements of witnesses. Furthermore, on 2 (two) occasions there have been allegations levelled against Respondent No. 2; and Punit Pal alleging *inter alia* that the accused persons have attempted to intimidate the Appellant i.e., the Original Complainant and another identified witnesses in an effort to de-rail the trial in the present case.

18. Accordingly, in our considered opinion, the High Court ought not to have granted Respondent No. 2; and Punit Pal bail in relation to the proceedings emanating from the FIR on account of (i) the seriousness of the crime; (ii) the conduct of the accused person(s); and (iii) the overall impact of the crime on society at large i.e., the accused person(s) were involved in a broad daylight murder which led to the closure of a market for a prolonged period of 10 (ten) days due to their overwhelming influence in the area.

19. In the aforementioned context, the impugned orders dated 24.04.2023 and 31.10.2023 granting bail to accused Vivek Pal @ Vikki Pal

and Punit Pal, respectively, cannot be sustained and are, accordingly, set aside.

20. The appeals are allowed in the aforesaid terms. The bail bond(s) of accused Vivek Pal @ Vikki Pal and Punit Pal shall stand cancelled. The aforesaid person(s) shall be taken into custody forthwith. A copy of this judgment shall be forwarded to the Trial Court and PS Lalganj, Basti, Uttar Pradesh for onward action and necessary compliance. The Trial Court is directed to conclude the trial expeditiously preferably within a period of one year from the date of receipt of copy of this judgment.

21. It is clarified that any observations made in this judgment shall not be treated as an expression of opinion on the merits of the case at trial.

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