

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29628 of 2021

Arising Out of PS. Case No.-79 Year-2020 Thana- AANDAR District- Siwan

ARJUN RAM Son of Late Shyam Lal Ram Resident of Village- Bharauli,
P.S.- Andar, District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Prakash Singh, Adv.

For the Opposite Party/s : Mr.APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

- 5 10-05-2022 1. This is an application for grant of bail in Crime No. 79 of 2020 registered with Andar Police Station for the offences punishable under Sections 302 and 34 of the IPC.
2. Heard the learned counsel appearing for the applicant. By relying on the order dated 16.09.2021 passed in Cr. Misc. No. 8836 of 2021, it is argued by the learned counsel for the applicant that other co-accused with similar accusation are granted anticipatory bail by the Co-ordinate Bench of this Court and therefore on the principle of parity, the applicant is entitled for bail. It is further argued that omnibus allegations are made against the applicant and as there is no specific allegation against him in the assault, he is entitled for bail.
3. The learned Additional Public Prosecutor opposed the application by filing the counter affidavit.



4. I have considered the submissions so advanced and also perused the material placed on record.

5. So far as principle of parity is concerned, one will have to go by the reasoning given for grant of bail or anticipatory bail to the co-accused. I have carefully and minutely perused the order dated 16.09.2021 passed in Cr. Misc. No. 8836 of 2021 by the co-ordinate Bench of this Court granting pre-arrest bail to some of the accused persons. The following are the observations of the co-ordinate Bench of this Court while granting pre-arrest bail to the accused persons “Considering the aforesaid facts and circumstances, the petitioner nos. 2 to 5, above named, in the event of arrest/surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on their personal bonds -----”

6. The Hon’ble Supreme Court in the matter of **Sunil Kumar V. The State of Bihar (Criminal Appeal No.95 of 2022)** has made the following observations which are material for granting parity to the applicant:-

“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)

“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.”



(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.”

7. Similarly, in the matter of **Manisha Vs. The State of Rajasthan {Criminal Appeal No.649 of 2022 (arising out of SLP (Crl.) No.7893 of 2021)}** decided recently on 19.04.2022 by the Bench of the Apex Court presided over by the Hon’ble the Chief Justice of India has made following observations in like matter those reads thus:



“17. Apart from the general observation that the facts and circumstances of the case have been taken into account, nowhere have the actual facts of the case been adverted to. There appears to be no reference to the factors that ultimately led the High Court to grant bail. In fact, no reasoning is apparent from the impugned order.

18. Reasoning is the life blood of the judicial system. That every order must be reasoned is one of the fundamental tenets of our system. An unreasoned order suffers the vice of arbitrariness. In *Puran v. Rambilas*, (2001) 6 SCC 338 this Court held as under:

8. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for *prima facie* concluding why bail was being granted did not have to be indicated.
(emphasis supplied)

19. In *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528 this Court indicated the importance of reasoning in the matter concerning bail and held as follows:

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
(emphasis supplied)

20. In *Brij Nandan Jaiswal v. Munna*, (2009) 1 SCC 678, which concerned a challenge to grant of bail in a serious offence, this Court has reiterated the same position as was observed in *Kalyan Chandra Sarkar* (supra). This Court has held as under:

12 However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter.

While granting bail, particularly in serious cases like murder some reasons justifying



the grant are necessary.

(emphasis supplied)

21. From the above, it is clear that this Court has consistently upheld the necessity of reasoned bail orders, with a special emphasis on matters involving serious offences. In the present case, respondent no. 2 – accused has been accused of committing the grievous offence of rape against his young niece of nineteen years. The fact that the respondent no. 2 – accused is a habitual offender and nearly twenty cases registered against him has not even found mentioned in the impugned order. Further the High Court has failed to consider the influence that the respondent no. 2 –accused may have over the prosecutrix as an elder family member. The period of imprisonment, being only three months, is not of such a magnitude as to push the Court towards granting bail in an offence of this nature.

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.

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:

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.”

(emphasis supplied)

8. In this view of the matter unless and until, reasons are reflected in the order of which aid is sought for seeking



parity, parity cannot be granted to the applicant. Unfortunately, I am unable to find any reason for grant of anticipatory bail to the co-accused in order to test the case of the applicant on testone of parity. Hence, I find no merit in contention of the learned counsel for the applicant that in view of the order dated 16.09.2021 passed by the co-ordinate Bench of this court, the applicant is entitled for parity.

9. So far as contention of the learned counsel for the applicant that no specific allegations are there against the present applicant is concerned, the FIR itself which is lodged by mother of the deceased, who herself is an injured witness is very categorical and specific. She has stated that initially Punit Ram had assaulted her son Mithilesh Ram and thereafter, the present applicant along with other co-accused came armed with sticks and assaulted Mithilesh Ram indiscriminately. The averments so made by the eye witness to the incident in question is specific, attributing role of assault on deceased Mithilesh Ram by means of stick by the present applicant. Report of postmortem examination of deceased Mithilesh Ram is corroborating the version of the first informant who happens to be eye witness to the incident.

10. In this view of the matter, no case for grant of bail



is made out. The application is, accordingly, rejected.

(A. M. Badar, J)

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