

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
CRIMINAL APPEAL NO. 198/2023

Mukesh @ Sonya Avdhut Bharti

.. Appellant

versus

The State of Maharashtra

Th: Its PSO PS Mahagaon Dist.Yavatmal and another .. Respondent/s

.....
Mr.Joseph Bastian, Adv. for appellant

Mr.S.M. Ghodeswar, APP for Respondent No.1

Mrs. Sonali Saware-Gadhawe, Adv.(appointed) for Respondent No.2

.....

CORAM: ANIL L. PANSARE, J.

DATED : 27th April, 2023.

PC:

. Heard.

2. The Appellant is apprehending arrest in Crime No.22/2023 registered with Police Station, Mahagaon Dist. Yavatmal for the offences punishable under Sections 509, 506, 354D of the Indian Penal Code and Section 3(1)(r)(s) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The learned Counsel for the appellant submits that the maximum punishment for the offences alleged is below seven years.

3. The learned APP submits that the charge-sheet has been filed.

4. The learned Counsel for the appellant submits that if the protection is granted to the appellant for some days, he will withdraw the Application and approach the

trial court for appropriate remedy. Such submission is made on the premise that if the protection is not granted and the appellant approaches the trial court for regular bail, the say of the prosecution is called and till the application is decided the persons like the Appellant are remanded to the judicial custody.

5. To my mind, once the charge-sheet is filed, the custodial interrogation or arrest may not be necessary. Thus, there appears no reason why the learned Magistrate should remand the appellant to the Magisterial custody, unless the situation demands otherwise.

6. In the case of *Satender Kumar Antil V/s Central Bureau of Investigation and Another, (2022) 10 Supreme Court Cases 51*, while considering the scope of Section 170 of the Code of Criminal Procedure, 1973 the Hon'ble Apex Court, in this regard, has issued following guidelines and observed thus :

“1. Taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code” for short), an endeavour was made by this Court to categorise the types of offences to be used as guidelines for the future. Assistance was sought from Shri Sidharth Luthra, learned Senior Counsel, and learned Additional Solicitor General Shri S. V. Raju.

2. Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212 (6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

[No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P)].

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POCSO, etc.

4. Needless to say that Category A deals with both police cases and complaint cases.

5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat while has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before

the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

6. *We may also notice an aspect submitted by Mr. Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.*

7. *The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as “economic offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra v. CBI has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account :*

(a) seriousness of the charge, and

(b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the

punishment imposed by the statute would also be a factor.

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43. *The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due*

compliance of Section 170 of the Code, there is no need for filing of a bail application.”

(Emphasis now)

7. The appellant, the learned Magistrate, the Prosecutors will naturally follow the dictum of the Hon'ble Apex Court, and therefore, the apprehension put-forth by the Appellant is uncalled for.

8. The Criminal Appeal is allowed to be withdrawn in above terms.

9. The professional fees of Mrs. Sonali Saware, Advocate (appointed) for respondent No.2 be quantified and paid as per the Rules.

[ANIL L. PANSARE, J.]

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