

CRM-M-39073-2018
CRM-M-51516-2018
Reserved on: 29.11.2023
Pronounced on: 13.12.2023

MonuPetitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanwar Arun Singh, Advocate for
Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

Mr. Ajit Lamba, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J.

1. This common order shall dispose of two petitions bearing CRM-M No.39073 of 2018 and CRM-M No.51516 of 2018 each titled as 'Monu Vs. State of Haryana and another' as they arise from the same factual matrix.

2. The respective prayer made in both the petitions is for

cancellation of bail of Surjeet son of Fakir Chand and Jogi Ram son of Madu Ram in FIR No. 217 dated 13.06.2017 under Sections 148, 149, 323, 341, 302 and 307 of IPC registered at Police Station Sadar Tohana, District Fatehabad.

FACTUAL BACKGROUND

3. The facts, in brief, are that the respondents-accused herein, along with other co-accused, arrived at the land of the petitioner-complainant, in order to take possession of the same. In order to avoid conflict, the petitioner started walking towards his house, but respondent-Surjeet, along with rest of the armed, unlawful assembly attacked the complainant party, with an intention to kill. Resultantly, Deepak son of Madan Lal and Virender son of Zile Singh died on the spot and Krishan son of Tara Chand sustained a firearm injury on his eye. Additionally, Ajay, Shamsheer, Dhoopa, Harjit and Monu son of Ram Kumar also sustained injuries due to *charre*, *laathi* and *gandasi* blows. The petitioner, Bittu son of Rameshwar, Ram Lal son of Veer Bhan, Sukhbir son of Shishpal, Rajbir son of Shishpal, Raj Kumar son of Kehar Singh and Jagdeep son of Krishan rescued the injured. The accused fled the spot with their respective weapons.

4. Respondent-accused Surjeet was armed with pistols and fired shots that hit the deceased Deepak son of Madan Lal and Virender son of Zile Singh and injured Krishan son of Tara Chand.

Respondent-accused Jogi Ram was named in the FIR and accused-Surjeet in his disclosure statement added that both Surjeet and Jogi Ram used 0.12 bore guns in the alleged incident. Surjeet and Jogi Ram each got a 0.12 bore gun recovered. Surjeet also got the tractor recovered which was used to cultivate the petitioner's land in order to take its possession. Both of them were arrested on 13.06.2017. Learned Additional Sessions Judge, Fatehabad granted the concession of bail to respondent-Surjeet vide order dated 14.08.2018 and to respondent-Jogi Ram vide order dated 17.10.2018.

OBSERVATIONS & ANALYSIS

5. Having heard learned counsel for the parties and after perusing the record of the case, this Court would like to examine the facts and circumstances of the present case to ascertain whether cogent and overwhelming circumstances are made out for cancellation of bail granted to respondent No.2 of both cases, respectively. It is a trite law that the scope of interference in an order granting bail is quite narrow while exercising the power of judicial review yet the Courts are under obligation to ensure that a fine balance is maintained between the precious right of the accused enshrined under Article 21 of the Constitution of India and the rights of the victim and society.

6. The scope and power of the judicial review of an order

granting bail has been illustrated by the Hon'ble Supreme Court in '**Dolat Ram and others Vs. State of Haryana**' (1995) 1 SCC 349, as follows:-

- (i) interference or attempt to interfere with the due course of administration of justice;
- (ii) evasion or attempt to evade the due course of justice;
- (iii) abuse of the concession granted to the accused in any manner;
- (iv) possibility of the accused absconding;
- (v) likelihood of/actual misuse of bail;
- (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

7. A three Judge Bench of the Hon'ble Supreme Court in '**Deepak Yadav Vs. State of Uttar Pradesh and another**' (2022) 8 SCC 559, speaking through Justice Krishna Murari, has summarized the principles for grant or denial of bail. The power and discretion of the Court to cancel the bail of the accused in the absence of overriding circumstances was illustrated and the following was observed:-

“33. *It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:*

33.1. Where the Court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the Court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In Neeru Yadav v. State of U.P., the accused was granted bail by the High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under:

“12. ...It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the

superior Court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

35. *This Court in Mahipal held that : (SCC p. 126, para 17)*

“17. Where a Court considering an application for bail fails to consider relevant factors, an appellate Court may justifiably set aside the order granting bail. An appellant Court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment.”

36. *A two-Judge Bench of this Court in Prakash Kadam v. Ramprasad Vishwanath Gupta held that: (SCC p. 195, paras 18-19)*

“18. In considering whether to cancel the bail, the Court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. ...

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.”

8. Further, the importance of assigning *prima facie* reasons for grant or denial of bail has been examined by three Judge Bench of the Hon'ble Supreme Court in '**Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana**' (2021) 6 SCC 230 where, speaking through Justice Dr. Dhananjaya Y. Chandrachud, the following was held:-

“38. ... 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. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But 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. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason 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. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in

which a succession of orders in the present batch of cases has recorded that the counsel for the ‘respective parties do not press for further reasoned order.’ If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

39. Grant of bail under Section 439 Cr.P.C. 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.”

Reference in this regard, can also be made to ‘**Ram Govind Upadhyay Vs. Sudarshan Singh**’ 2002 SCC (Criminal) 688 and ‘**Mahipal Vs. Rajesh Kumar**’ (2020) 2 SCC 118.

9. Adverting to the facts of the case, apparently, respondent No.2 in both cases, namely, Surjeet and Jogi Ram were named in the FIR and have been assigned specific roles. 0.12 bore guns used in the alleged occurrence have been recovered pursuant to the disclosure statements suffered by Surjeet and Jogi Ram, respectively. Due to the shots fired by Surjeet, two persons, namely, Deepak and Virender had

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died on the spot and six persons including the petitioner suffered gunshot injuries as well.

10. Learned counsel for the petitioner has referred to the order dated 20.12.2017 vide which the co-accused, namely, Shamsheer and Sunil, were denied regular bail by the learned Additional Sessions Judge-1, Fatehabad. Thereafter, the co-accused-Sunil @ Sonu approached this Court by filing CRM-M-3107-2018 and was granted regular bail vide order dated 30.01.2018. The operative part assigning *prima facie* reasoning for granting bail to Sunil @ Sonu is reproduced as under:-

'I have considered the submissions made by the counsel for the parties and keeping in view the fact that no specific role has been attributed to the petitioner nor any specific injury to either deceased or the injured, petitioner, who is stated to be armed with a danda and out of 32 accused persons, 5 have already been granted the concession of bail, he is in custody for the last more than 7 months and the charges have already been framed and the trial is not likely to conclude soon as there are total 34 prosecution witnesses and none of them is examined, the present petition is allowed. The petitioner is ordered to be released on bail subject to his furnishing personal and surety bonds to the satisfaction of the trial Court/Duty Magistrate, Tohana.'

11. Surprisingly, the same officer serving as Additional Sessions Judge, Fatehabad, granted regular bail to the main accused i.e. respondent No.2, namely, Surjeet and operative part of the reasoning in the impugned order is reproduced as under:-

“6. Present petitioner-accused) is in custody in this case since 13.06.2017. Investigation in the present case is complete and challan has already been submitted in this case and presently the case is pending in this Court for 18.09.2018 for prosecution evidence. Co-accused Sunil @ Sonu has been granted the benefit of regular bail by Hon’ble High Court of Punjab and Haryana vide order dated 30.01.2018 and other co-accused namely, Manish, Sikandar, Lakhanand Puri, Fakir Chand, Satbir @ Bir, Shamsher, Rohtash and Sandeep Kumar have already been granted the benefit of regular bail by this Court vide orders of different dates. Trial of the case may take a long time to conclude. No fruitful purpose would be served by keeping the petitioner-accused behind the bars for an indefinite period. Therefore, in the facts and circumstances of the case but without commenting anything on merits of the case, the present application for regular bail is allowed ...”

12. In view of the facts enumerated above, it is clear that the impugned order granting bail is apparently whimsical, capricious and does not meet the objective standard of reason and justice. The learned Additional Sessions Judge has not even recorded his *prima*

facie opinion for grant of bail to respondent No.2 and proceeded to grant bail without considering the nature and gravity of offence or discussing the respective roles of respondent No.2 and the co-accused-Sunil. As such, the impugned order dated 14.08.2018 is against judicial propriety and discipline. The learned Additional Sessions Judge, after rejecting the regular bail of co-accused-Sunil (member of unlawful assembly with the aid of Section 148/149 of IPC), ought not to have granted bail to respondent No.2-Surjeet (accused of double murder and causing injuries under Sections 302, 307 of IPC). There is a huge difference between the allegations against co-accused-Sunil and respondent No.2.

13. The impugned order dated 14.08.2018 is not sustainable in the eyes of law as grant of bail to respondent No.2, in the first place, was not appropriate in view of the very serious nature of charges against the accused. Furthermore, the bail was granted on untenable grounds without even recording the *prima facie* reasons for exercising such discretion. The impugned order is not justifiable as it reflects non-application of mind.

14. Although, the privilege of the regular bail granted to respondent No.2 deserves to be withdrawn but five years have passed since the passing of the impugned order. The learned State counsel, on instructions from ASI Anil Kumar, informed the Court that out of

fifty prosecution witnesses, six have been examined and next date before the trial Court is fixed for 19.12.2023. Learned counsel for the petitioner is not able to point out any supervening circumstances which would indicate that allowing respondent No. 2 to retain his freedom by enjoying the concession of bail, would be uncondusive to the trial being conducted fairly.

15. In '**Vipan Kumar Dhir Vs. State of Punjab and another**' 2021 (15) SCC 518, the Hon'ble Supreme Court explained the impact of supervening circumstances developing post grant of bail, such as interference in the administration of justice, abuse of concession of bail, etc., which are aversive to a fair trial and would warrant cancellation of bail.

16. A two Judge Bench of the Hon'ble Supreme Court in '**Vikas Vs. State of Rajasthan**' reported in (2014) 3 SCC 321, has categorically held as under:-

'14. The Constitution of India is the ground norm the paramount law of the country. All other laws derive their origin and are supplementary and incidental to the principles laid down in the Constitution. Therefore, Criminal Law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their

judicial function to protect and promote the liberty of the citizens.'

CONCLUSION

17. A very disturbing trend is emerging with the trial Courts as they have adopted a practice to grant bails in a mechanical manner, which is a huge cause of concern. The Courts are expected to consistently uphold judicial discipline and propriety to ensure that public confidence is maintained in the judicial process. While the Court is duty bound to secure and safeguard liberty of all citizens, however, when an accusation as serious as a double murder is made, it must give due consideration to the facts and circumstances of the case and exercise its discretionary powers cautiously, bearing in mind the settled law. The grant or denial of bail cannot be done in a mechanical manner and the Courts must satisfy the minimum requirement of assigning a *prima facie* view borne out from the record while exercising such discretion, as any such order has an impact on the liberty of the accused, interest of the society and the victim and, proper administration of criminal justice. Certainly, there is no strait-jacket formula warranting interference with the order granting or denying bail to the accused. It is a matter of discretion but such discretion must be exercised judiciously in accordance with the fundamental principles established by the Hon'ble Supreme Court

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in this regard. The ends of justice are not met only when the accused is granted bail, the victim and the society acting through the State are also entitled to justice. The cause of the victim and society deserves equal aid by the Courts in discharge of their judicial functions and evolved jurisprudence of bail is integral to socially sensitised administration of justice. The discretion to grant bail has to be exercised cautiously on the basis of well-settled principles having regard to the facts and circumstances of each case. Any order granting bail bereft *prima facie* reasons cannot be sustained.

18. In the absence of any supervening circumstances indicating respective respondents No.2, namely Surjeet and Jogi Ram, influencing the witnesses or misusing the concession of bail, post the grant of bail, this Court is restrained from cancelling the bail granted to them on 14.08.2018 and 17.10.2108 respectively, due to efflux of time. As such, both the petitions are dismissed.

(HARPREET SINGH BRAR)
JUDGE

13.12.2023
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No