

THE HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION No.11606 OF 2023

ORDER:

The Criminal Petition is filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to grant regular bail to the petitioner herein/A.5 in S.C.No.1 of 2023 pending on the file of Principal Special Judge for CBI Cases, Hyderabad. The offences alleged against him are punishable under sections 120-B read with Sections 302 and 201 of the Indian Penal Code, 1860 (for short, 'the IPC').

2. Heard Sri E.Uma Maheshwar Rao, learned counsel, representing Sri Enuganti Sudhanshu Rao, learned counsel for the petitioner/A.5, Sri Anil Tenwar, learned Spl.Public Prosecutor – cum – Senior Public Prosecutor for CBI and Ms.Tekuru Swetcha, learned counsel appearing for 2nd respondent.

3. The petitioner is A.5 in S.C.No.1 of 2023 pending on the file of learned Principal Sessions Judge for CBI Cases Hyderabad. Vide order dated 19.09.2023, the bail application filed by the petitioner/A.5 was dismissed by the said Court. He is in jail from 17.11.2021.

4. S.C.No.1 of 2023 is commonly came to be known as Y.S.Vivekananda Reddy murder case. It involves murder of

Y.S.Vivekananda Reddy (hereinafter called as 'deceased'), former Member of Legislative Assembly of erstwhile combined State of Andhra Pradesh and also former Member of Parliament. He is brother of former Chief Minister of erstwhile combined State of Andhra Pradesh i.e. late Dr.Y.S.Raja Sekhar Reddy, and he is paternal uncle of present Chief Minister of Andhra Pradesh i.e. Mr.Y.S.Jagan Mohan Reddy.

5. According to the prosecution, on 15.03.2019 in the morning hours, the deceased was lying in a pool of blood at his house in Pulivendula, Y.S.R. Kadapa District. On the complaint lodged by Sri M.V.Krishna Reddy, Personal Assistant of the deceased, Police Pulivendula have registered a case No.84 of 2019 under Section 174 of Cr.P.C. After the inquest, the provision of law was altered to Section 302 of IPC. The State Government had constituted a Special Investigation Team (SIT) to investigate the alleged murder of the deceased.

6. Dissatisfied with the investigation conducted by the SIT, wife of the deceased approached the High Court of Andhra Pradesh at Amaravati by way of filing a writ petition vide W.P.No.3944 of 2019 seeking entrustment of investigation to CBI from SIT. Considering the seriousness, graveness of the offences and the allegations made therein, vide order dated 11.03.2020, the High Court of Andhra Pradesh, allowed

the said writ petition and entrusted the investigation to CBI. High Court also directed the CBI to conduct investigation into the allegations of **larger conspiracy and destruction of evidence** and also directed the CBI, to complete investigation as expeditiously as possible and file final report.

7. In compliance with the said order, CBI registered a case bearing RC-04(S)/2020/CBI/SC-III/New Delhi on 09.07.2020 and launched investigation into the death of the deceased. After conducting investigation, CBI filed charge sheet dated 26.10.2021 against A.1 to A.4 i.e. Thumallapalli Gangi Reddy (A.1), Yadati Sunil Yadav (A.2), Gajjala Uma Sankar Reddy (A.3) and Shaik Dasthagiri (A.4).

8. In the said charge sheet dated 26.10.2021, it is stated by the CBI that the case requires further investigation. The accused therein were charged under Section 302 read with 120-B IPC. During the course of further investigation, A.4 statement was recorded under Section 161 of Cr.P.C. wherein he confessed the commission of murder of the deceased and stated the involvement of the petitioner herein/A.5 to A.8 in commission of the said murder. A.4 later turned as an Approver and was granted pardon under Section 306 of Cr.P.C.

9. On 31.01.2022 a supplementary charge sheet was filed arraigning the petitioner herein as A.5 for the offences punishable under Sections 201 and 120-B read with 302 and 201 of IPC and against A.1 under Sections 201, 506 and 120-B of IPC read with Section 201 of IPC in continuation of charge sheet dated 26.10.2021.

10. Thus, according to the CBI, petitioner herein being accused No.5 actively involved in commission of offences. During investigation, the role of petitioner/A.5 has been found in participation of conspiracy for murder of the deceased and also in the destruction of the evidence at the scene of offence. Petitioner herein is a political functionary of Yuvajana Sramika Raithu Congress Party (YSRCP) and active mainly in the District of Kadapa , Andhra Pradesh. Petitioner and his close senior politician were unhappy when the deceased joined YSRCP as there increasing influence in politics could have been challenged as deceased was very active in politics not only in the district of Kadapa but also in the other districts of Rayalaseema region.

11. Petitioner was aiming MLC ticket from Kadapa District in the year 2017 but the same was given to the deceased. Therefore, petitioner did not support the deceased in 2017 MLC Elections. Thus, deceased lost

the said Election. Therefore, deceased was angry on the petitioner and A.1 and also other political functionaries.

12. It is further alleged that during the course of further investigation, A.4, one of the accused has disclosed that the conspiracy for murder of the deceased was hatched one month prior to the murder of the deceased, somewhere around 10.02.2019. On being enquired by A.4, A.1 informed that A.5 and some senior politicians are also involved in the said plan of murder and A.5 would give them an amount of Rs.40 Crores. On 15.03.2019 at about 5.20 A.M. A.2 called A.4 and other two accused, told them not to worry. A.1 also told them that A.5 and his close senior politicians will handle everything and they will receive money later. On the said assurance, when the police called them for enquiry on 15.03.2019, A.1 told that A.4 and other accused told that they need not worry about police. A.1 also informed that that all proofs of murder have been destroyed and everything has been cleaned.

13. It is further alleged that during further investigation, it revealed that petitioner along with the close associates on 15.03.2019 visited house of the deceased at around 6.00 A.M. and he along with other associates as part of conspiracy propagated a fake theory with regard to the death of the deceased that he died due to heart attack, in furtherance of the same,

A.5 also informed Sakshi TV that deceased died due to heart attack. He has contacted Circle Inspector of Pulivendula Police Station to reach the deceased house to control the mob. Accordingly, Circle Inspector of Police, was intimidated by the petitioner/A.5 to keep mum about the grievous injuries on the body of the deceased and to manage it as a heart attack and blood vomiting. The blood at the scene of the offence was cleaned by L.W.14 a maid working in the house of the deceased and that she had cleaned blood on being forcibly instructed by the petitioner and A.1 through other persons present at the scene of offence.

14. In order to dress up the scene of offence, the petitioner herein/A.5 and A.1 played an active role in arrangement of cotton, bandages and body freezer box through his close associates. Thereafter, the room was bolted from inside, the petitioner/A.5, A.1 and their close associates actively participated in destruction of scene of crime by cleaning the bed room, bathroom and getting wounds cleaned with the help of a compounder namely Gajjela Jaya Prakash Reddy and others. The witnesses namely Inayuthulla, Ragiri Lakshmi (Maid), Prakash (Lakshamma's son) and others have revealed the active role of the petitioner, and A.1 in arrangement of cotton, bandages and body freezer to their close associates. Sri T.Madhussudhan Reddy and

R.Venkataramana of Pulivendula, witnesses have revealed that the room was bolted from inside while clearing and bandaging were going on as per directions of A.5 and his close associates. Y.S.Pratap Reddy, another witness, after reaching house of the deceased had seen one maid clearing the bedroom and A.5 and A.1 were forcing her to clean the blood immediately. He also stated with C.I. of Pulivendula P.S. as to why A.5, A.1 getting the scene of crime cleaned as it will get complicated as they are destroying the evidence. According to Vara Prasad, Jagadeshwar Reddy, Guduru Siva Ramakrishna Reddy @ Babu, Lecturer, Dr. Venkateshwar Naik, Shaik Inayuthullah and other house servants etc., witnesses, revealed about the behaviour, conduct of A.5 and his close associates to convince the persons visited the scene of offence that deceased died due to blood vomiting and heart attack. Mopuri Balakrishna Reddy of Sakshi TV, witness, was informed by the petitioner herein/A.5 at 6.44 hours about the death of the deceased due to heart attack. Video footage from Sakshi TV has been obtained to establish the flashing of heart attack news.

15. It is further alleged by CBI that the petitioner, A.1 and their close associates after reaching the scene of crime seeing the dead body of the deceased in pool of blood with grievous injuries, they did not inform

the daughter of the deceased and her husband. On the other hand, they started to dress up the scene of crime as per their propagated theory of death due to heart attack and blood vomiting. Petitioner, A.1 and their close associates planned for burial of dead body of the deceased without informing the next of kins. Petitioner herein/A.5 also tried to conceal the information regarding the design of murder of deceased in FIR lodged in P.S. Pulivendula on 15.03.2019. He dictated a vague complaint to M.V.Krishna Reddy, Personal Assistant of the deceased, without mentioning with regard to the grievous injuries, pool of blood in the bed room and bathroom. A.5 also insisted C.I. of Police, to register FIR on the basis of the said vague complaint. K.Gangadhar Reddy, was offered Rs.10 Crores by A.5 for taking the responsibility of deceased murder. Petitioner was trying to influence A.4 after recording his statement under Section 164 of Cr.P.C.

16. On 03.03.2021, CBI called A.4 and others to Delhi by serving notices. 10 days prior to leaving for Delhi, A.5 called A.4 at the house of one Bayapa Reddy at Pulivendula, briefed him not to disclose their names before CBI and his life would be settled. The said Bayapa Reddy confirmed the visit of the petitioner at his house in the morning at around 6.30 A.M. in March, 2021 and stated that they came to his house, had a

discussion at the relevant period of time. Bharat Yadav accompanied A.4 to Delhi as per the instructions of the petitioner to keep a watch on the fact being enquired by CBI.

17. Thus, according to CBI, there is sufficient evidence available on record to prosecute the petitioner under Sections 201 and 120-B read with 302 and 201 of IPC.

18. It is apt to note that A.6 filed a complaint on 09.02.2022 under Section 200 read with 156(3) of Cr.P.C. before the learned Special Mobile Judicial Magistrate of First Class, Kadapa against the then Investigating Officer in the said crime i.e. Mr. Ram Singh. In the said complaint, A.6 alleged that he was forced and coerced by the said Investigating Officer to implicate certain people including A.8 and the petitioner herein in the murder of the deceased. The learned Magistrate referred the said complaint to the Police under Section 156(3) of the Cr.P.C. vide order dated 16.02.2022 and police registered a case in Cr.No.29 of 2022 against the said Investigating Officer for the offences punishable under Sections 195-A, 323 and 506 read with 34 of IPC. He has filed a petition under Section 482 of Cr.P.C. Vide CrI.P.No.1258 of 2022 before the High Court of Andhra Pradesh at Amaravati and the said

Court granted stay of all further proceedings arising out of the said FIR vide order dated 22.03.2022.

19. 2nd respondent herein and her mother filed writ petition vide W.P.(Crl) No.169 of 2022 before the Hon'ble Apex Court seeking transfer of the trial arising out of the said crime pending before the CBI Special Court, Kadapa, Andhra Pradesh to CBI Special Court, Hyderabad or CBI Special Court, New Delhi and also to direct the CBI to complete investigation at the earliest. The Apex Court noted the allegations of **larger conspiracy in the death of the deceased, destruction of evidence and involvement of the petitioners herein** and vide order dated 29.11.2022, transferred the trial arising out of the aforesaid crime and for further investigation to the CBI Special Court, Hyderabad. On completion of investigation, the Investigating Officer, filed second supplementary charge sheet on 28.06.2023.

20. Learned Principle Special Judge, for CBI Cases, Hyderabad vide order dated 27.01.2023 took cognizance of the same against the petitioner herein for the offences punishable under Sections 120-B read with 302 and Section 201 of IPC in S.C.No.1 of 2023.

21. Sri E.Uma Maheshwar Rao, learned counsel, representing Sri Enuganti Sudhanshu Rao, learned counsel for the petitioner and Sri

Anil Tenwar, learned Spl.Public Prosecutor – cum –Senior Public Prosecutor for CBI and Ms. Tekuru Swetcha, learned counsel for 2nd respondent, referring to the chargesheet and various proceedings made their submissions extensively.

22. Learned counsel for the petitioner would contend that in the charge sheet dated 26.10.2021, there is no allegation against the petitioner herein and his reference was not there. A.4 declared as an Approver. In his statements dated 25.08.2021 and 31.08.2021, he stated about alleged role played by the petitioner herein. In the first supplementary charge sheet dated 31.01.2022, petitioner was included as A.5. He was implicated in a false case. There are contradictions in the statements of the Approver recorded under Section 161, 164 and 306 of Cr.P.C. CBI facilitated A.4 to get anticipatory bail. Trial Court without considering the seriousness of the case and also the role played by A.4, granted pardon to him under Section 306 of Cr.P.C. and also anticipatory bail. The alleged money was recovered in September, 2020. The supplementary charge sheet ought to disclose fresh evidence which was not available to the complainant at the time of filing the initial Final Report. The First supplementary charge sheet dated 31.01.2022 filed by the complainant is devoid of any fresh material and the same cannot be

relied on in order to array the petitioner herein as A.5. Absolutely there is no motive for the petitioner/A.5 even according to first supplementary charge sheet. There is no admissible evidence to show that the petitioner herein/A.5 conspired with other accused and destructed the scene of offence. A bare perusal of first supplementary charge sheet does not reveal any substantive evidence with respect to the charges leveled against him and the present allegations are not sufficient to array him as an accused much less to continue his detention in judicial custody since 17.11.2021.

23. The Apex Court vide order dated 04.08.2023 in Mis.Appl.No.1623 of 2023 in W.P.(Crl) No.104 of 2023 reiterated the direction for expeditious conclusion of trial and for whatever reason if the trial does not begin within six months from the date of the order, the petitioner/A.5 can exercise his right and pray for regular bail in accordance with law on its own merits. There is no prospect of immediate trial in S.C.No.1 of 2023. Taking cognizance of alleged offences against the petitioner herein is without application of mind. The petitioner is aged 55 years and is suffering from severe cervical spondylitis and recently underwent left shoulder displacement surgery. He has severe loss of appetite and lost 10 kilos of weight since the date of remand and

collapsed in the prison premises on 17.02.2023 and under continuous treatment. The petitioner will not tamper or interfere with the investigation and he will not threaten or intimidate any of the witnesses. The earlier applications vide Crl.M.P.No.917 of 2021 and Crl.M.P.No.93 of 2022 filed by the petitioner herein/A.5 before the District and Sessions Judge, Kadapa, Andhra Pradesh State and Crl.P.No.7550 of 2021 and 1904 of 2022 were dismissed. The petitioner/A.5 has filed an application Crl.M.P.No.3639 of 2023 under Section 439 Cr.P.C. before learned Principal Special Judge for C.B.I. Cases, Hyderabad and the same was dismissed on 19.09.2023 erroneously without considering the aforesaid aspects. With the said submissions, he sought bail to the petitioner herein.

24. Whereas, learned Special Public Prosecutor for CBI and and Ms. Tekuru Swetcha, learned counsel for 2nd respondent would contend as follows:-

- i. The allegations leveled against the petitioner are serious and the offences committed by him are grave in nature.
- ii. The petitioner is an influential person.
- iii. He is very close to the present Chief Minister of Andhra Pradesh and A.8-Member of Parliament from YSR Kadapa Parliamentary Constituency.

- iv. There is every possibility of the petitioner interfering with the trial in which event, conducting of fair trial in S.C.No.1 of 2023 is not possible.
- v. While granting bail, this Court cannot consider the reliability of the statement of the witnesses including the statement of A.4 Shaik Dasthagiri, an Approver under Section 161, 164 and 306 of Cr.P.C.
- vi. The bail applications filed by the petitioner/A.5 were dismissed by the trial Court, High Court and Apex Court. Therefore, the petitioner herein is not entitled for bail.
- vii. The petitioner/A.5 in connivance with the other accused conspired in the murder of the deceased and tried to destruct the evidence.
- viii. The Investigating Officer recorded the statements of the witnesses, obtained analyst report from CFSL and also call data etc. with regard to Google take out, which is also one of the methods of collecting evidence and its reliability cannot be considered at the time of considering the bail applications and it is for the trial Court to consider the same.
- ix. Vide order dated 29.11.2022 in W.P.(Crl) No.169 of 2022, the Hon'ble Apex Court transferred trial of S.C.No.1 of 2023 from CBI Special Court, Kadapa to CBI Special Court, Hyderabad on

considering the nature of allegations made against all the accused including the petitioner and also their positions.

- x. With the said submissions, they sought to dismiss the present application.

25. Ms. Tekuru Swetcha, learned counsel for 2nd respondent also filed a memo dated 29.01.2024 along with a copy of video extract and copy of newspaper articles to show that after the case is reserved for orders, wife of A.4, the Approver, revealed that sons of the petitioner herein/A.5 are trying to influence A.4 by offering him money in order to withdraw his confession statement.

CONSIDERATION OF THE COURT:-

26. The petitioner herein is A.5. His name was not there in the chargesheet filed on 26.10.2021. In the supplementary charge sheet dated 31.01.2022, petitioner was shown as A.5. Admittedly, the Investigating Officer completed investigation and filed charge sheet on 26.10.2021, first supplementary charge sheet on 31.01.2022 and second supplementary charge sheet on 30.06.2023. 1st supplementary charge sheet was filed arraigning the petitioner herein/A.5 for the offences punishable under Sections 120-B read with Section 302 and 201 of IPC.

27. Chargesheet was filed on 26.10.2021 against A.1 to A.4 on consideration of the statements of the witnesses, recovery and seizure of articles etc., as specifically mentioned in Annexure 2 and 3 of the said cahrgesheet, whereas, first supplementary chargesheet was filed on 31.01.2022 on consideration of further statements of Sri N.Jagadeeshwar Reddy, R.Venkataramana, Pulivendula, Sri Vennu Srinivasa Rao, Kalluru Gangadhar Reddy, Gumudavalli Jitender, Kotakam Venkata Bayapareddy, Nagappa and Sri K.Ratnaprasad and also documents mentioned in Annexure -2 of the said supplementary chargesheet.

28. Perusal of charge sheet dated 26.10.2021, first supplementary charge sheet dated 31.01.2022 and second supplementary charge sheet dated 28.06.2023 would reveal that the statement of R.Venkataramana of Pulivendula was recorded on 04.09.2021 and further statement was recorded on 01.04.2022. Even statement of Vennu Srinivasa Rao was recorded on 01.10.2021 and his further statement was not recorded. Even the statement of Kalluru Gangadhar Reddy was recorded on 02.10.2021. Thereafter, the Investigating Officer did not record the statement of any witness and further statement of witnesses was also not recorded. Even the statement of Gumudavalli Jitender was recorded on 29.09.2021 and Katakam venkata Bayapareddy was recorded on 28.09.2021. Sri

E.Umamaheshwar Rao, learned counsel for the petitioner/A.5 referring to the same, would submit that though there is reference to recording of statements of 8 witnesses in Annexure-1 of first supplementary chargesheet, there is no incriminating material against the petitioner herein. The statement of L.W.85 under Section 161 CrPC was recorded on 09.08.2021 and 15.08.2021. Nagappa is not even eye witness.

29. As rightly contended by learned counsel for the petitioner/A.5, the entire case against petitioner/A.5 rests on circumstantial evidence. There is no direct evidence against him. The offences alleged against him are under Sections 302 read with Section 120-B of IPC. No new evidence was collected from 26.10.2021 to 17.11.2021.

30. It is trite to note that there are 329 witnesses in S.C.No.1 of 2023 and according to learned counsel for the petitioner, it is at the stage of Section 207 Cr.P.C.

31. The petitioner herein/A.5 is jail from 17.11.2021. This Court granted anticipatory bail to A.8.

32. There is no dispute that, *prima facie*, there are serious allegations against the petitioner herein and the offences committed by him along with the other accused are also grave and serious. Allegations were made against the earlier investigating Officer.

33. It is trite to note that vide order dated 04.08.2023, Apex Court made it clear that it would be open for A.5 to apply for bail at any time and the observations made in the said order are not in any manner effect his right to apply for bail at any stage, which if moved shall be considered on its own merits in accordance with law. Apex Court also made it clear that any part of the said order may not influence the trial Courts in deciding the application for bail as Apex Court has not considered the merits of the case.

34. Vide order dated 29.03.2023, Apex Court observed that in case, for whatever reasons, not attributed to the accused, the trial does not begin within a period six months from the said date i.e 29.03.2023, it will be open for A.5 to pray for regular bail before the concerned trial Court at Hyderabad which may be considered in accordance with law and on its own merits. Apex Court also directed the trial Court to complete trial as expeditiously as possible.

35. As discussed supra, there are 329 witnesses in the present case and it is at the stage of Section 207 Cr.P.C. Though Apex Court directed the trial Court to complete the trial expeditiously, the said S.C.No.1 of 2023 is only at the stage of Section 207 of Cr.P.C.

36. The apprehension of CBI as well as 2nd respondent is that petitioner/A.5 is an influential person, close associate of the present Chief Minister of Andhra Pradesh and A.8-Member of Parliament from YSR Kadapa Parliamentary Constituency. There is every possibility of petitioner interfering with the trial, threaten the witnesses, in which event, it is not possible for the trial court to conduct trial in a fair manner.

37. At the same time, this court has to consider the petitioner/A.5 is in jail from 17.11.2021.

38. It is relevant to note that in **Mahipal v. Rajesh Kumar @ Polia**¹, discussed with regard to the power of granting bail under Section 439 of Cr.P.C. and held that the power to grant bail under Section 439 of Cr.P.C. is of a wide amplitude. Though the grant of bail involves the exercise of discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course.

39. In the said case, the guiding factors for exercise of power to grant bail as held in **Ram Govind Upadhyay v. Sudarshan Singh**², were referred, which are as follows:

“3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter

¹. (2020) 2 SCC 118

². (2002) 3 SCC 598

of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail - more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

- (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
- (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.
- (c) While it is not expected to have the entire evidence establishing the guilt of the Accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the court in support of the charge.
- (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be (2002) 3 SCC 598 considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the Accused is entitled to an order of bail.”

40. It was further held in the very same judgment that the determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a *prima facie* view of the involvement of the Accused are important. No straitjacket formula

exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the Accused. That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the Accused had committed the offence and on a balance of the considerations involved, the continued custody of the Accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a trial court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

41. The Apex Court has also referred to the principles laid down by it in **Kalyan Chandra Sarkar v. Rajesh Ranjan**³, wherein it was held that 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

³. (2004) 7 SCC 528

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.

42. Referring to the above said judgments, the Hon'ble Apex Court held that 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 the 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 interest of 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.

43. In **Deepak Yadav Vs. State of UP**⁴ a three Judges Bench of Apex Court summarized the principles for grant or denial of bail.

⁴ (2022) 8 SCC 559

Paragraph Nos.22 to 29 are relevant and the same are extracted below:-

22. As reiterated by the two-Judge Bench of this Court in **Prasanta Kumar Sarkar Vs. Ashish Chatterjee** And Another, it is well-settled that 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.

23. The decision in *Prasanta* (supra) (2010) 14 SCC 496) has been consistently followed by this Court in *Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu*(2012) 9 SCC 446), *Ranjit Singh Vs. State of Madhya Pradesh* (2013) 16 SCC 797), *Neeru Yadav Vs. State of Uttar Pradesh* (2014) 16 SCC 797), *Virupakshappa Gouda Vs. State of Karnataka*(2017) 5 SCC 406), *State of Orissa Vs. Mahimananda Mishra* (2018) 10 SCC 516)

24. In a recent pronouncement of this Court in the case of ‘Y’ Vs. State of Rajasthan(2022) 9 SCC 269), authored by one of us (Hon’ble N.V. Ramana, CJI), it has been observed as under :-

“24. 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.

25. 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)

25. For grant or denial of bail, the “nature of crime” has a huge relevancy. The key consideration which govern the grant of bail were elucidated in the judgment of this Court in *Ram Govind Upadhyay Vs. Sudarshan Singh*¹⁴, wherein it has been observed as under(SCCp.602,para4): -

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

26. Similarly, the parameters to be taken into consideration for grant of bail by the courts has been described in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan alias Pappu Yadav* ((2004) 7 SCC 528 as under : -

“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. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) prima facie satisfaction of the court in support of the charge.”

B. Recording of reasons for grant of bail by the High Court of the Sessions Court

27. The importance of assigning reasoning for grant or denial of bail can never be undermined. There is prima facie need to indicate reasons particularly in cases of grant or denial of bail where the accused is charged with a serious offence. The sound reasoning in a particular case is a reassurance that discretion has been exercised by the decision maker after considering all the relevant grounds and by disregarding extraneous considerations.

28. A two-Judge Bench of this Court in Ramesh Bhavan Rathod (Supra) held that 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 operative portion of the judgment reads as under : -

“38. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties “do not press for a further reasoned order”. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. 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 of 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 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.

36. Grant of bail under Section 439 of the 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.” (emphasis supplied)

29. Similarly, this Court in Ram Govind Upadhyay (Supra), observed that :-

“3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”

44. In **Rohit Bishnoi Vs.State of Rajasthan**⁵, the Apex Court held that it is not necessary for the Court to assign elaborate reasons regarding the prosecution case while granting or rejecting bail. Paragraph Nos.18 to 23 are relevant and the same are extracted below:-

⁵ 2023 (2) LS 109 SC

18. This Court has, on several occasions discussed the factors to be considered by a Court while deciding a bail application. The primary considerations which must be placed at balance while deciding the grant of bail are: (i) The seriousness of the offence; (ii) The likelihood of the accused fleeing from justice; (iii) The impact of release of the accused on the prosecution witnesses; (iv) Likelihood of the accused tampering with evidence. While such a list is not exhaustive, it may be stated that if a Court takes into account such factors in deciding a bail application, it could be concluded that the decision has resulted from a judicious exercise of its discretion, vide *Gudikanti Narasimhulu vs. Public Prosecutor, High Court of Andhra Pradesh*- [(1978) 1 SCC 240] ; *Prahlad Singh Bhati vs. NCT, Delhi*– [(2001) 4 SCC 280] ; *Anil Kumar Yadav vs. State (NCT of Delhi)* - [(2018) 12 SCC 129].

19. This Court has also ruled that an order granting bail in a mechanical manner, without recording reasons, would suffer from the vice of non-application of mind, rendering it illegal, vide *Ram Govind Upadhyay vs. Sudarshan Singh*- [(2002) 3 SCC 598]; *Prasanta Kumar Sarkar vs. Ashis Chatterjee* – [(2010) 14 SCC 496]; *Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli)*– [(2021) 6 SCC 230] ; *Brijmani Devi vs. Pappu Kumar* (supra).

20. Reference may also be made to recent decisions of this Court in *Manoj Kumar Khokhar vs. State of Rajasthan*– [2022 SCC OnLine SC 30] and *Jaibunisha vs. Meharban*– [(2022) 5 SCC 465], wherein, on engaging in an elaborate discussion of the case law cited supra and after duly acknowledging that liberty of individual is an invaluable right, it has been held that an order granting bail to an accused, if passed in a casual and cryptic manner, de hors reasoning which would validate the grant of bail, is liable to be set aside by this Court while exercising power under Article 136 of the Constitution of India.

21. The Latin maxim “*cessante ratione legis cessat ipsa lex*” meaning “reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself,” is also apposite.

22. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing on the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail, a prima-facie conclusion must be supported by reasons and must be

arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction *vis-à-vis* the offence/s alleged against an accused.

23. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the “reasoning” of the High Court while granting bail. As noted from the afore-cited judgments, it is not necessary for a Court to assign elaborate reasons or engage in a roving inquiry as to the merits of the prosecution’s case while granting bail, particularly, when the trial is at the initial stages and the allegations against the accused would not have been crystallized as such. Elaborate details cannot be recorded so as to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an Order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering with the evidence; criminal antecedents of the accused; and a prima-facie satisfaction of the Court in support of the charge against the accused.

45. With regard to reliability of statements of Shaik Dasthagiri (A.4), recorded under Sections 161, 164 and 306 of CrPC, it is relevant to note that the order of grant of pardon to him was challenged by A.1 and A.3 vide CrI.P.Nos.6976 and 6980 of 2021. Vide order dated 16.02.2022, the High Court of Andhra Pradesh at Amaravati, dismissed the said petitions. In the said order, the High Court considered the principle laid down by the Apex Court in **CBI Vs. Ashok Kumar Agarwal**⁶ and also four grounds enumerated to interfere with the order on the ground of

⁶ 2001 CrLJ 1905

pardon. The said order was challenged in the Apex Court and vide order dated 10.10.2022, the Apex Court dismissed the SLP. Therefore, the ground of pardon to the Approver i.e. Shaik Dasthagiri (A.4) attained finality.

46. As rightly contended by the learned Special Public Prosecutor for CBI and also the learned counsel appearing for 2nd respondent, this Court cannot conduct a roving enquiry regarding the prosecution case while deciding bail petition and this Court cannot consider the reliability of the statements of prosecution witnesses. The said principle was also laid down by the Apex Court in **Rohit Bishnoi** supra.

47. It is also relevant to note that in Judgment dated 29.11.2022 in W.P.(Crl) No.169 of 2022 filed by 2nd respondent and her mother, the Apex Court considering the apprehension expressed by them, transferred the trial from CBI Special Court, Kadapa to CBI Special Court, Hyderabad. Paragraph Nos.10 to 14 are relevant and the same are extracted below:-

10. Even two key witnesses, namely, Shaik Dastagiri and Ranganna are already given the police protection under the Witnesses Protection Scheme, 2018, pursuant to the order passed by the learned Sessions Court, considering the life threat perception. Even in the response to the present petition, learned counsel appearing on behalf of the State has also produced the orders passed by the competent authority granting police protection to two witnesses.

11. As observed hereinabove, one of the witnesses who was to record his statement under Section 164 Cr.P.C. has not appeared for recording of his statement, though initially he volunteered to give the statement under Section 164 Cr.P.C. The reason seems to be that thereafter his suspension order has been revoked and he has been taken back on duty.

12. From the facts narrated hereinabove, it emerges that one of the key witnesses, namely, K. Gangadhar Reddy, though initially he volunteered to give his statement under Section 164 Cr.P.C. and the CBI submitted an application to record his statement under Section 164 Cr.P.C., thereafter he did not turn up to get his statement recorded and on the contrary he made a statement before the media that he was being pressurized by the CBI. That thereafter he has died under mysterious circumstances.

13. Considering the aforesaid facts and circumstances, it cannot be said that apprehension on the part of the petitioners being daughter a wife of the deceased that there may not be a fair trial and that there may not be any independent and fair investigation with respect to further investigation on larger conspiracy and destruction of evidence at the scene of incident is imaginary and/or has no substance at all. The petitioners being daughter and wife of the deceased have a fundamental right to get justice as victim and they have a legitimate expectation that criminal trial is being conducted in a fair and impartial manner and uninfluenced by any extraneous considerations. Under the circumstances, we are of the opinion that this is a fit case to transfer the trial and further investigation on larger conspiracy and destruction of evidence to the State other than the State of Andhra Pradesh.

14. As per the settled position of law, justice is not to be done but the justice is seen to have been done also. As per the settled position of law, free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. However, at the same

time, looking to the large number of witnesses to be examined during the trial and no hardship is caused to those witnesses, we are of the opinion that instead of transferring the trial to New Delhi, it may be transferred to CB Special Court at Hyderabad.

48. The Apex Court in **Kusha Duruka vs. The State of Odisha**⁷

formulated certain mandatory guidelines for applications filed for grant of Bail, which are as follows:-

(1) Details and copies of order(s) passed in the earlier bail application(s) filed by the petitioner which have been already decided.

(2) Details of any bail application(s) filed by the petitioner, which is pending either in any court, below the court in question or the higher court, and if none is pending, a clear statement to that effect has to be made.

In case it is mentioned on the top of the bail application or any other place which is clearly visible, that the application for bail is either first, second or third and so on, so that it is convenient for the court to appreciate the arguments in that light. If this fact is mentioned in the order, it will enable the next higher court to appreciate the arguments in that light.

(3) The registry of the court should also annex a report generated from the system about decided or pending bail application(s) in the crime case in question. The same system needs to be followed even in the case of private complaints as all cases filed in the trial courts are assigned specific numbers (CNR No.), even if no FIR number is there.

(4) It should be the duty of the Investigating Officer/any officer assisting the State Counsel in court to apprise him of the order(s), if any, passed by the court with reference to different bail applications or other proceedings in the same crime case. And the counsel appearing for the parties have to conduct themselves truly like officers of the Court.

49. A.6 filed a complaint under Section 200 Cr.P.C. against the then Investigating Officer i.e. Mr. Ram Singh and the same was referred to the police by the learned Magistrate, who in turn, registered a case in

⁷ 2024 INSC 46

Cr.No.29 of 2022. Mr. Ram Singh, filed a petition under Section 482 of Cr.P.C. vide Cr.P.No.1258 of 2022 on High Court of Andhra Pradesh granted stay of all further proceedings.

50. It is relevant to note that two witnesses died in suspicious circumstances. Reliability of the statements of witnesses including statements of Approver recorded under Sections 161, 164 and 306 of Cr.P.C can be considered by the trial Court during trial and the same cannot be considered while deciding the bail application, more particularly, in the light of the aforesaid findings of the Apex Court.

51. It is apt to note that in the aforesaid charge sheets, CBI specifically stated that the investigation conducted by Investigating Officer, obtaining forensic analysis of CFSL, New Delhi, examination of witnesses, re-examination of witnesses, investigation with regard to source of money trail of Rs.40 Crores and as to the larger conspiracy behind the commission of murder of deceased and destruction of evidence.

52. Except A.4 - Approver, other accused are in judicial custody. A.1 was released on default bail. This Court cancelled the said default bail granted to A.1, he was sent to judicial custody considering the contention of CBI that all the accused are interfering with the

investigation. This Court granted anticipatory bail to A.8 and the same is under challenge before Hon'ble Apex Court.

53. There is no dispute that all the witnesses are from the State of Andhra Pradesh. Conducting of fair trial is integral part of Article 21 of the Constitution of India. At the same time, this Court has to consider right of the accused under Article 21 of the Constitution of India. He is in jail from 17.11.2021. At the cost of repetition, it is relevant to note that there are 329 witnesses and proceedings in the aforesaid S.C.No.1 of 2023 are at the stage of Section 207 of CrPC. Therefore, petitioner cannot be denied of bail only on the apprehension expressed by CBI as well as 2nd respondent that petitioner/A.5 may influence the trial by threatening the witnesses and interfering with the fair trial.

54. It is relevant to note if the petitioner threatens the witnesses and interfere with the trial, it is always open for the CBI and 2nd respondent to seek cancellation of bail granted to the petitioner herein/A.5.

55. It is the specific contention for the petitioner herein that he is aged about 55 years, suffering with severe bodily ailments, recently he went left shoulder displacement surgery in addition to that suffering from cervical spondylitis. He has severe loss of appetite and has lost 10 kilos of body weight since the date of remand. He has collapsed in the prison

premises on 17.02.2023 for which he is being given continuous treatment and has been put on medication without disclosing in diagnosis. He has filed medical reports in proof of the same. Therefore, this Court is inclined to grant bail to the petitioner herein/A.5.

56. In the light of the aforesaid discussion, this criminal petition is allowed granting bail to the petitioner/A.5 on the following conditions:-

- i. The petitioner herein/A.5 is directed to be released on bail on his executing a personal bond for a sum of Rs. 2,00,000/- (Rupees two lakhs only) with two sureties for likesum each to the satisfaction of the learned Principal Special Judge for CBI Cases, Hyderabad.
- ii. Petitioner shall report before Central Crime Station (CCS) Hyderabad, weekly once i.e. on every Monday between 10 A.M. to 5 PM.
- iii. Petitioner herein shall not interfere with the trial in S.C. No.1 of 2023 pending on the file of Principal Special Judge for CBI Cases, Hyderabad, in any manner directly or indirectly.
- iv. The petitioner herein shall not enter into State of Andhra Pradesh where almost all the witnesses in the present case are residing, without permission of the trial Court, during trial.

- v. The petitioner shall surrender his original passport before the trial Court.
- vi. Liberty is granted to the CBI and 2nd respondent to seek cancellation of bail granted to the petitioner/A.5 in the event of petitioner/A.5 interfering with the trial in S.C.No.1 of 2023 pending on the file of Principal Spl. Judge for CBI Cases, Hyderabad and threatens any witness.
- vii. The petitioner herein shall not indulge in any criminal acts which will hamper peace and harmony.
- viii. The petitioner shall cooperate with the trial Court in concluding the trial in S.C.No.1 of 2023.

Consequently, miscellaneous petitions, if any, pending in the criminal petition, shall stand closed.

JUSTICE K. LAKSHMAN

Date:11.03.2024

Vvr

Note: Issue CC today.

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