

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 439 OF 2024

Sandeep Ashok Bansude

...Applicant

Versus

Ravindra Bhaskar Jaywant and Anr.

...Respondents

Mr. K. H. Holambe Patil a/w Mr. Nitin S. Murkute and Vishal G. Shirsat i/b Mr. Krishna Kundlikrao Holamabe Patil, learned Advocates for the Applicant.

Dr. Ashwini A. Takalkar a/w Mr. Vinod Chate, learned A.P.P. for the State/Respondent.

Mr. Subodh Desai, Senior Counsel a/w Mr. Kartik S. Garg, learned Advocate for Respondent No. 1.

CORAM : ASHWIN D. BHOBE, J.

DATE : 1st JULY 2025.

P.C. :

1. Heard Mr. K. H. Holamabe Patil, learned Advocate for the Applicant, Mr. Subodh Desai, learned Senior Counsel for Respondent No. 1 and Dr. Ashwini Takalkar alongwith Mr. Vinod Chate, learned A.P.P. for the State/Respondent.

2. By the present Application, the Applicant (Complainant) has sought for the following relief :-

“That this Hon’ble Court further be pleased to call for the records and proceedings of (i) Misc. Criminal Application No. 2921 of 2024 in May 2024 from the file of the Hon’ble Sessions Court, Pune and (ii) records and proceedings of Application for Bail in C.R. No. 425 of 2024 filed before the

learned JMFC, Pimpri and after examining the legality and validity thereof, this Hon'ble Court further be pleased to set aside the order dated 21st September 2024 and the order dated 30th April 2024 passed in their respective Applications and this Hon'ble Court be pleased to cancel the bail of Respondent No. 1 and direct him to surrender before the learned JMFC."

3. Facts as would be relevant to the present Application, are as follows :-

a. On the basis of the complaint filed by the Applicant, Crime No. 425 of 2024 was registered with Wakad Police Station, Pimpri-Chinchwad for the offences punishable under Sections 406, 409, 420, 465, 467, 471 and 506 read with 34 of the Indian Penal Code, 1860 ("IPC" for short).

b. There are 3 Accused in the present crime. Respondent No. 1 is Accused No. 1 in the said crime.

c. Respondent No. 1 was arrested on 4th April 2024. Bail Application filed by Respondent No. 1 in Crime No. 425 of 2024 was allowed by the learned 4th Judicial Magistrate First Class ("JMFC" for short), Pimpri, Pune.

d. Aggrieved by the order dated 30th April 2024, passed by the learned JMFC, the Applicant filed Miscellaneous Criminal Bail Application No. 2921 of 2024 before the learned Sessions Court at Pune by invoking Section 439(2) of the Criminal Procedure Code, 1973.

e. By order dated 21st September 2024, the learned Additional

Sessions Judge, Pune, dismissed the Miscellaneous Criminal Bail Application No. 2921 of 2024, filed by the Applicant. Hence, the Applicant is before this Court with the present Application.

4. Mr. K. H. Holamabe Patil, learned Advocate for the Applicant submits that the order dated 30th April 2024, passed by the learned JMFC, suffers from perversity in as much as the learned Magistrate has not considered the parameters, which are required to be considered for granting or refusal of the bail. He further submits that the consideration referred to by the learned Magistrate in the order dated 30th April 2024, would not qualify to be the conditions for grant of bail. On the basis of said two contentions, Mr. K. H. Holamabe Patil, learned Advocate states that the order dated 30th April 2024 is liable to be cancelled.

5. *Per contra*, Mr. Subodh Desai, learned Senior Counsel for Respondent No. 1 has submitted that the order dated 30th April 2024 refers to the required parameters while considering grant of bail. He submits that the learned JMFC after having considered the records, has opined that the offence is serious and thereafter imposed the conditions, which according to the learned Magistrate would be fit and proper in the facts and circumstances of the case. He submits that the learned Sessions Court has tested each and every contention urged by the Applicant and after having considered the order passed by the learned Magistrate, as also the supervening circumstances, viz. Respondent No. 1 having complied with all the conditions imposed by the learned JMFC, rejected the Application filed by the Applicant. He submits that there is neither any perversity nor any irregularity in the order passed by the

learned JMFC or the learned Additional Sessions Judge, Pune.

6. Dr. Ashwini Takalkar alongwith Mr. Vinod Chate, learned A.P.P. for the State/Respondent submit that the order passed by the learned JMFC, is perverse and untenable in law. They submit that the learned Magistrate has not considered the say of the prosecution and the grounds of opposition, as raised by the prosecution opposing the Bail Application.

7. I have perused the records made available with the assistance of the learned Advocates of the parties.

8. Learned JMFC vide order dated 30th April 2024, has granted bail to Respondent No. 1. Reasons as can be seen from the order dated 30th April 2024, are recorded in Paragraph No. 4 of the order, which is transcribed hereinbelow :-

“4. After hearing both the sides and going through the record in my opinion, it reveals that the prosecution has alleged that the Accused has committed serious offences. No doubt the offences are serious one, but the said offence is triable by this Court, it means this Court has jurisdiction to decide the same. Final Report yet to be received. For the commencement of trial, it can't be say that how much time will be required. Possibility of Accused tampering the prosecution witnesses and absconding of Accused can be avoided by imposing certain conditions. Thus, considering over all facts and circumstances, in my opinion, if the Application is allowed subject to condition, the purpose will suffice. Hence, the order :-

ORDER

(i) The accused Ravindra Bhaskar Jayvant be released on furnishing P.B. & S.B. of Rs. 50,000/- and cash security of Rs.

50,000/-.

(ii) Accused is directed to file his permanent and temporary address proof i.e. Election Card and Voter I.D. and also directed to inform to I.O. if he change his address.

(iii) Accused shall not leave India without previous permission of this Court.

(iv) Accused shall not tamper the evidence or cause threat of inducement to any person acquainted with the facts of the case.

(v) Accused shall co-operate with the investigating authority and shall not involve to themselves in criminal activities.

(vi) Accused shall visit at the concerned police station on every Wednesday till filling charge sheet or till further order whichever is earlier.”

9. The Hon’ble Supreme Court in the case of *Harjit Singh v/s. Inderpreet Singh Alias Inder And Another*¹, by relying on its various earlier decisions, has held as follows :-

“8. At this stage, a recent decision of this Court in *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana* [*Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana*, (2021) 6 SCC 230 : (2021) 2 SCC (Cri) 722] is also required to be referred to. In the said decision, this Court considered in great detail the considerations which govern the grant of bail, after referring to the decisions of this Court in *Ram Govind Upadhyay* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688]; *Prasanta Kumar Sarkar* [*Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765]; *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525 : 2004 SCC (Cri) 1974]; and the decision of this Court in *Sonu v. Sonu Yadav* [*Sonu v. Sonu Yadav*, (2021) 15 SCC 228].

¹ (2021)19 Supreme Court Cases 355.

After considering the law laid down by this Court on grant of bail, in the aforesaid decisions, in paras 23 & 39-40 it is observed and held as under : (*Ramesh Bhavan Rathod case* [*Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana Makwana*, (2021) 6 SCC 230 : (2021) 2 SCC (Cri) 722], SCC pp. 244 & 251-52)

“23. The first aspect of the case which stares in the face is the singular absence in the judgment [*Vishanbhai Hirabhai Makwana Makwana v. State of Gujarat*, 2020 SCC OnLine Guj 2987] of the High Court to the nature and gravity of the crime. The incident which took place on 9-5-2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on whether bail should be granted. In the two-Judge Bench decision of this Court in *Ram Govind Upadhyay v. Sudharshan Singh* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688], the nature of the crime was recorded as “one of the basic considerations” which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract : (*Ram Govind Upadhyay case* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688], SCC p. 602, para 4)

‘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.'

This Court further laid down the standard for overturning an order granting bail in the following terms : (*Ram Govind Upadhyay case* [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 : 2002 SCC (Cri) 688], SCC p. 602, para 3)

'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.'

39. Grant of bail under Section 439 CrPC 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. This Court in *Chaman Lal v. State of U.P.* [*Chaman Lal v. State of U.P.*, (2004) 7 SCC 525 : 2004 SCC (Cri) 1974] in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed : (SCC p. 527, paras

8-9)

‘8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence.’

40. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

- (1) the facts of the case;
- (2) the nature of allegations;
- (3) gravity of offences; and
- (4) role attributed to the accused.”

10. Perusal of the order dated 30th April 2024 would indicate that the learned JMFC has made a reference to the offence being serious one and thereafter noted that the Final Report was not received and commencement of the trial would take some time.

11. The provisions of Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS” for short) refer to the period of filing a Report. Section 187(3) of the BNSS reads thus :-

“The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody

under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV the purposes of that Chapter.”

12. Crime No. 425 of 2024 was registered on 4th April 2024, the Accused was arrested on 15th April 2024 and the order granting bail is passed on 30th April 2024. Reason for referring to the said dates is to test the observations of learned Magistrate in the context of the Final Report not being received. The mandate of law to file the Final Report for the offences, which are punishable for less than 10 years, is 60 days and for offences, which are punishable for 10 years or more, is 90 days. In the present case, the maximum punishment is 10 years, as such the outer limit for filing the Final Report is upto 90 days.

13. Mr. Subodh Desai, learned Senior Counsel by relying on the decision of the Hon’ble Supreme Court in the case of *Harjit Singh (supra)*, made an attempt to persuade this Court by submitting that the parameters laid down in this decision can be applied to the order dated 30th April 2024. He submitted that the learned JMFC in Paragraph No. 4, has applied his mind to all the given parameters. Mr. Subodh Desai, learned Senior Counsel submits that though the Hon’ble Supreme Court deals with the parameters

of bail, however while deciding the case of *Harjit Singh (supra)*, the Hon'ble Supreme Court has not set aside the order on the ground of same being either unreasoned or without any reason.

14. Answer to the submission of Mr. Subodh Desai, learned Senior Counsel, is found in the decision of the Hon'ble Supreme Court in the case of *Mahipal v/s Rajesh Kumar @ Polia and Another*², wherein in Paragraph Nos. 22 and 23, the Hon'ble Supreme Court has observed as under :-

“22. 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 paragraph 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.”

23. 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.

² (2020)2 SCC 118.

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.”

15. Mr. Subodh Desai, learned Senior Counsel contends that even if the observations of learned Magistrate which pertains to the non-filing of the Final Report are excluded, then in such an event also, the impugned order can be sustained as the learned Magistrate has considered the issues with regards to the possibility of Respondent No. 1 absconding and/or interfering with and/or tampering with the prosecution witnesses. Though, Mr. Subodh Desai, learned Senior Counsel may be right in referring to one of the parameters being noted by the learned Magistrate, however if Paragraph No. 4 of the order dated 30th April 2024 is perused, the same does not stand the test of requirement, as laid down by the Hon’ble Supreme Court in the case of *Harjit Singh (supra)*.

16. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is certainly a need to indicate in such orders reasons for concluding why bail was being granted. The order dated 30th April 2024 does not consider the factors for granting bail. The said order is devoid of reasons. Order dated 30th April 2024, passed by the learned Magistrate, in my view suffers from perversity for non-consideration of the parameters for grant or refusal of bail under Section 483 of the BNSS (old Section 439 of the Criminal Procedure Code, 1973). I am therefore unable

to accept the contentions of Mr. Subodh Desai, learned Senior Counsel.

17. Mr. K. H. Holamabe Patil, learned Advocate for the Applicant and Dr. Ashwini Takalkar alongwith Mr. Vinod Chate, learned A.P.P. for the State/Respondent, would be right in contending that irrelevant considerations have been taken into account by the learned Magistrate while granting bail to Respondent No. 1.

18. The learned Additional Sessions Court has failed to address the contentions raised by the Applicant, while questioning the order dated 30th April 2024 in Criminal Bail Application No. 2921 of 2024. The learned Additional Sessions Court was impressed by the Applicant following and abiding by the conditions of bail dated 30th April 2024.

19. In view of the above, the order dated 30th April 2024 passed by the learned JMFC and the order dated 21st September 2024 passed by the Additional Sessions Judge, Pune in Miscellaneous Criminal Bail Application No. 2921 of 2024, are quashed and set aside. The order granting bail to Respondent No. 1 is also quashed. Criminal Bail Application dated 8th April 2024 filed by Respondent No. 1 stands restored on the file of the learned JMFC. The learned JMFC shall consider the said Application *denovo*, on its own merits and in accordance with law on the subject.

20. As the order dated 30th April 2024 granting bail stands cancelled, the consequence of the same would be Respondent No. 1 requiring to surrender himself before the learned 4th JMFC, Pimpri.

21. Mr. Subodh Desai, learned Senior Counsel submits that Respondent No. 1 was on bail since 30th April 2024 and therefore, on instructions of Respondent No. 1 states that Respondent No. 1 seeks time to surrender before the learned JMFC. Considering that the bail was operative from 30th April 2024 till today, Respondent No. 1 is granted four weeks' time to surrender before the learned 4th JMFC, Pimpri. Respondent No. 1 shall surrender himself before the learned JMFC on 31st July 2025 at 11.00 a.m., subject to Respondent No. 1 furnishing PR Bond in the sum of Rs. 25,000/- (Rupees Twenty-five Thousand Only) with one surety in the like amount, to the satisfaction of the learned JMFC within 10 days from today.

22. It is clarified that the order dated 30th April 2024 is set aside on the ground that it fails to meet the parameters required to be considered while granting or refusing bail. This Court has not considered or dealt with the matter on merits.

23. Criminal Application No. 439 of 2024 is allowed in the abovesaid terms.

[ASHWIN D. BHOBE, J.]

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