Shivani Tyagi vs State Of U.P. on 5 April, 2024

Author: C.T. Ravikumar

Bench: C.T. Ravikumar, Rajesh Bindal

2024 INSC 343

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.1957-1961 of 2024
(Arising out of SLP(Crl.) Nos.3484-3488 of 2024)

Shivani Tyagi Appellant(s)

Versus

State of U.P. & Anr. Respondent(s)

ORDER

Leave granted.

1. In these quintuplet appeals the victim of an acid attack assails the suspension of sentence of life imprisonment of the convicted persons, the private respondents and their consequential enlargement on bail.

2. Heard learned counsel appearing for the self- same appellant-victim in the captioned appeal, learned counsel appearing for the common first respondent- State of Uttar Pradesh and learned counsel appearing for the private respondents.

3. Section 389 of the Code of Criminal Procedure (for short the “Cr.PC”) deals with the suspension of execution of sentence pending the appeal against conviction and release of appellant(s) on bail. The said provision mandates for recording of reasons in writing leading to the conclusion that the convicts are entitled to get suspension of sentence and consequential release on bail. The said requirement thus indicates the legislative intention that the appellate Court invoking the power under Section 389, Cr. PC, should assess the matter objectively and that such assessment should reflect in the order.

4. We will briefly refer to some of the relevant decisions dealing with Section 389, Cr. PC. In the case of short-term imprisonment for conviction of an offence, suspension of sentence is the normal rule and its rejection is the exception. (See the decision in Bhagwan Rama Shinde Gosai & Ors. v. State of Gujarat1). However, we are of the considered view that the position should be vice-versa in the case of conviction for serious offences when invocation of power under Section 389 is invited. This Court, in the decision in Kishori Lal v. Rupa & Ors.2, held in paragraphs 4 and 5 thus:-

> "4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail.
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> There is a distinction between bail and suspension of sentence. One of the essential
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> ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing (1999) 4 SCC 421 (2004) 7 SCC 638 clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

5. The appellate Court is duty-bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail. In the instant case, the only factor which seems to have weighed with the High Court for directing suspension of sentence and grant of bail is the absence of allegation of misuse of liberty during the earlier period when the accused-respondents were on bail."

5. In the decision in Anwari Begum v. Sher Mohammad & Anr.3 this Court in paragraphs 7 and 8 held thus:-

> "7. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though a detailed examination of the evidence (2005) 7 SCC 326 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.

8. 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. It is necessary for the Courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;

2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant;

3. Prima facie satisfaction of the Court in support of the charge.

Any order dehors of such reasons suffers from non-application of mind as was noted by this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598, Puran v. Rambilas (2001) 6 SCC 338 and in Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528."

6. After referring to the aforesaid paragraphs in the decisions in Kishori Las's case (supra) and Anwari Begum's case (supra), this Court in the decision in Khilari v. State of Uttar Pradesh & Ors.4 interfered with an order suspending the sentence and granting bail for non-application of mind and non-consideration of the relevant aspects.

7. Applying the principles and parameters for invocation of the power under Section 389. Cr. PC, revealed from the decisions, as above, we will have to consider the sustainability of the challenge against the impugned orders by the appellant victim. In that (2009) 4 SCC 23 regard a succinct narration of the facts involved in the case, strictly confining to the requirement for consideration of these appeals, is required. The private respondents in the appeals, five in numbers, were convicted finding guilty of offences, including under Sections 307/149 and 326A/149, IPC. The appellant-victim was then aged about 31 years and, in the incident, she suffered attack with sulfuric acid and her body was burnt 30 to 40 percent. PW-6, Dr. Uttam Jain with Ext.A5, would reveal that she suffered deep burn on the face, chest and both hands and injuries on her were grievous in nature.

8. We may hasten to add that regarding the merits of the appeals by the party respondents against their conviction, we shall not be understood to have held or made any observation as it is a matter to be considered on its own merits in the pending appeals.

9. We have already referred to the mandate under Section 389 Cr.PC that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in State of Haryana v. Hasmat5, this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr.PC. It is also (2004) 6 SCC 175 relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr.PC without referring to the relevant factors. We say so because there cannot be any doubt with respect

to the position that disposal of appeals against conviction, (especially in cases where life imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. PC, likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr.PC. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail.

10. Having observed and held as above, we are deeply peeved on perusing the impugned judgment, for the same reflects only non-application of mind and non-consideration of the relevant factors despite the fact that the case involved an acid attack on a young woman resulting into permanent disfiguration. In the case on hand, a scanning of the impugned order would reveal that what mainly weighed with the Court is the offer made on behalf of the convicts that they would give a payment of Rs. 25 lakhs through demand drafts, taking into account the evidence that the victim had incurred an amount of Rs. 21 lakhs for her treatment. Paragraph 10 of the impugned order would reveal that taking note of the said offer besides the period of incarceration and also the delay likely to occur in the consideration of appeal, sentence imposed was suspended and the private respondents were enlarged on bail. Paragraph 10 of the order would reveal this position and it reads thus:-

> "10. After hearing counsel for the parties and considering the voluntarily offer made by the appellants, which is without prejudice to the right of defence as well as right of the prosecution to be decided at the time of final adjudication and having no bearing on the merit of the case, over and above, the amount of compensation being paid by the District Legal Services Authority, Meerut, the appellants have offered to pay an amount of Rs. 25 lacs to the victim for her medical treatment and also in view of the long custody as well as the antecedents of the appellants and also considering the fact that the appeals pertain to the year 2021 and are not likely to be listed for final argument in near future, we deem it appropriate to grant suspension of sentence of the appellants."

11. We have no hesitation to hold that the impugned order is infected with non-application of mind and non- consideration of the relevant factors required for invocation of power under Section 389 in the light of the settled position of law. An acid attack may completely strip off the victim of her basic human right to live a decent human life owing to permanent disfiguration. We have no hesitation to hold that in appeals involving such serious offence(s), serious consideration of all parameters should

be made. Even a cursory glance of the impugned order would reveal the consideration thereunder was made ineptly. The serious nature of the offence involved was not taken into account besides the other relevant parameters for the exercise of power under Section 389, Cr. PC.

12. In such circumstances, the impugned judgment cannot be sustained. The upshot of the discussion is that the order suspending the sentence of the private respondents and enlarging them on bail, invite interference. Consequently, the impugned order is set aside and consequently the bail granted to the private respondent in all these appeals stands cancelled. Consequently, the appellants shall surrender before the trial Court for the purpose of their committal to judicial custody. This shall be done within a period of four days. In case of their failure to surrender as ordered, the private respondents who are convicts shall be re- arrested and committed to custody.

13. The Appeals are allowed as above.

.....J. (C.T. Ravikumar) New Delhi;

April 05, 2024 REPORTABLE IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NOS. 1957-1961 OF 2024 (Arising out of SLP(Crl.) Nos. 3484-3488 of 2024) SHIVANI TYAGI ... Appellant (s) VERSUS STATE OF U.P. & Anr. ... Respondent(s) ORDER

1. I have gone through the detailed reasons recorded by brother C.T. Ravikumar, J. Elaborate discussion has been made on the aspect of suspension of sentence in heinous crimes as it is a case where the High Court had directed suspension of sentence of the respondents in an acid attack case, which will haunt the victim throughout her life. The disfigurement of the face of the victim, as is evident from the photographs placed on record, could not even be seen.

2. It is a case in which after hearing the arguments raised by the appellant and going through the paper book our conscience was shocked. By a short order we granted the leave in the matters and allowed the appeals, for the reasons to follow. The respondents were directed to surrender before the Trial Court on or before 09.04.2024. The same is extracted below:

> “Leave granted.
>
> Appeals are allowed. Reasons to follow. The respondents-life convicts shall surrender on or before 9.4.2024 before the concerned Trial Court. In case of their failure to surrender, they shall be taken into custody and produced before the Trial Court.” 2.1. I fully subscribe to the views expressed, but wish to add some more reasons.
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> 3. The main ground on which the High Court ordered suspension of sentence of the respondents, who have been awarded life imprisonment is that the counsel for the accused submitted that in the evidence it had come on record that about 21 lakhs (Rupees Twenty-One Lakhs only) have been spent on her treatment as she suffered disfigurement of her face. It was further argued that the Trial Court in its judgment of

conviction had directed that the victim be granted adequate compensation for her treatment under the Victim Compensation Scheme. Then, it was collectively argued by the learned counsel for the accused that without prejudice to their right of defence the accused collectively and voluntarily offered to pay a sum of 25 lakhs (Rupees Twenty Five Lakhs only) which may be given to the victim for her medical treatment. It was objected to by the learned counsel for the State. Taking note of the offer made by the counsel for the private respondents, who are the convicts, the High Court accepted the offer made by them and directed that, over and above, the amount of compensation paid by the District Legal Services Authority to the victim, the private respondents have offered to pay a sum of 25 lakhs (Rupees Twenty-Five Lakhs only) for her treatment. The sentence awarded to them was suspended. It was further noticed that the hearing of appeal is likely to take some time. Relevant paragraph 10 of the impugned order is extracted below:

"10. After hearing counsel for the parties and considering the voluntarily offer made by the appellants, which is without prejudice to the right of defence as well as right of the prosecution to be decided at the time of final adjudication and having no bearing on the merit of the case, over and above, the amount of compensation being paid by the District Legal Services Authority, Meerut, the appellants have offered to pay an amount of 25 lakhs to the victim for her medical treatment and also in view of the long custody as well as the antecedents of the appellants and also considering the fact that the appeals pertain to the year 2021 and are not likely to be listed for final argument in near future, we deem it appropriate to grant suspension of sentence of the appellants."

4. As the victim may also be in shock and not interested in receiving the amount as offered by the private respondents, the respondents moved a Correction Application1 before the High Court.

On the aforesaid application, the High Court, while noticing that offer made by the private respondents was not acceptable to the victim, directed the respondents to deposit the amount with the Chief Judicial Magistrate, Meerut. The relevant part of the order dated 21.02.2024 is reproduced hereinunder:

"Correction in the order dated 12.12.2023, is sought to the extent that the applicants have already handed over the demand drafts in the Court of Chief Judicial Magistrate, Meerut, as the victim has not come forward to accept the drafts, the appellants, who are granted bail, are still languishing in judicial custody.

It is further submitted that appellants have performed their part of liability by depositing the demand draft before the CJM, Meerut, thus they may be released on bail.

In paragraph No. 11 of the order dated 12.12.2023, we modify to the extent that the appellants may be released on Criminal Misc. Correction Application No. 12 of 2024 bail, even prior to handing over the demand drafts to the victims as ordered earlier.

Notice of the application has been sent by registered post to Sri P.K. Rai, learned counsel for the respondent No. 2 by Sri P.K. Mishra, learned counsel for the appellants on 04.01.2024, but none appeared on behalf of respondent No.

2. Learned AGA has no objection to the prayer made by counsel for the appellants.

The bail order dated 12.12.2023 was passed in other connected Criminal Appeal No. 996 of 2021, Criminal Appeal No. 801 of 201, Criminal Appeal No. 1155 of 2021 and Criminal Appeal No. 467 of 2021.

Considering the facts and circumstances of the case, it is undisputed that the demand drafts have been handed over to the CJM, Meerut, the appellants be released on bail subject to furnishing of surety bond.

The appellants will tender an undertaking before the Court that in case the victim appears subsequently and applies for release of money and in the meantime if the validity of the drafts have lapsed, they will revalidate the draft and hand over the same to the Court of CJM, Meerut.

With the aforesaid observations, the order dated 12.12.2023 is modified accordingly."

5. Detailed discussions have been made in the opinion expressed by my brother C.T. Ravikumar, J. with reference to the suspension of sentence in case of heinous offences. I would like to touch upon the issue of offer of money to the victim for suspension of sentence in a heinous crime of acid attack, where the victim suffered burn injuries to the extent of 30 to 40% resulting in total disfigurement of her face. As is evident from the record, despite spending 21 lakhs (Rupees Twenty-One Lakhs only) on the treatment, she still has not been cured.

6. One of the principles of sentencing in criminal law is proportionality. If the appropriate punishment is not awarded or if, after conviction for a heinous crime, the court directs the suspension of the sentence without valid reasons, the very purpose for which the criminal justice system exists will fail.

7. After passing of the order dated 12.12.2023 vide which the High Court directed the suspension of the sentence of the private respondents on payment of 25 lakhs (Rupees Twenty-Five Lakhs only) to the victim, the amount was not accepted by the victim and the convicts could not be released from the jail. An application for correction2 of the impugned order was filed by the private respondents. The infirmity of the court is evident from the fact that despite this development, the High Court went on to modify the earlier Criminal Misc. Correction Application No. 12 of 2024 order dated 12.12.2023 and noted that a Demand Draft having been handed over to the Chief Judicial Magistrate, Meerut the private respondents be released on bail subject to Surety Bonds. It was

recorded that, in case subsequently the victim appears in court for release of amount and the validity of the Demand Draft lapses, the private respondents shall get the same revalidated.

8. From the facts it can safely be noticed that there is no question of acceptance of money by the victim as she has challenged the order of suspension of sentence of the private respondents.

9. This court had been taking the offence of acid attacks, which are on increase, seriously. It is even to the extent of regulating the sale of the acid with stringent action so that the same is not easily available to the people with perverse mind. Observations made by this court in paragraph 13 of Parivartan Kendra vs Union of India and Others3 being appropriate is extracted below:

> "13. We have come across many instances of acid attacks across the country. These attacks have been rampant for the simple reason that there has been no proper implementation of the regulations or control for the supply and distribution of acid. There have been many cases where the victims of acid attack are made to sit at home owing to their difficulty to work. These instances unveil that the State (2016) 3 SCC 571: 2015 INSC 893 has failed to check the distribution of acid falling into the wrong hands even after giving many directions by this Court in this regard. Henceforth, stringent action be taken against those erring persons supplying acid without proper authorisation and also the authorities concerned be made responsible for failure to keep a check on the distribution of the acid."

10. In Suresh Chandra Jana vs State of West Bengal and Others4, while rejecting the acquittal of an accused as ordered by the High Court in an acid attack case, this Court observed that the acid attack has transformed itself to a gender-based violence, which causes immense psychological trauma resulting in hurdle in overall development of the victim. Paragraph 30 thereof is extracted below:

> "30. At the outset, certain aspects on the acid attack need to be observed. Usually vitriolage or acid attack has transformed itself as a gender based violence. Acid attacks not only cause damage to the physical appearance of its victims but also cause immense psychological trauma thereby becoming a hurdle in their overall development. Although we have acknowledged the seriousness of the acid attack when we amended our laws in 2013 [The Criminal Law (Amendment) Act, 2013 (13 of 2013).] , yet the number of acid attacks are on the rise. Moreover, this Court has been passing various orders to restrict the availability of (2017) 16 SCC 466 : 2017 INSC 1296 corrosive substance in the market which is an effort to nip this social evil in the bud. [Parivartan Kendra v. Union of India, (2016) 3 SCC 571 : (2016) 2 SCC (Cri) 143] It must be recognised that having stringent laws and enforcement agencies may not be sufficient unless deep-rooted gender bias is removed from the society."

11. In another case reported as State of Himachal Pradesh and Another vs Vijay Kumar alias Pappu and Another5 regarding acid attack on a young girl of 19 years, in which this Court observed in paragraph 13 thereof, that the victim had suffered 16% burn injuries and that such a victim cannot be compensated by grant of any compensation. Paragraph 13 is thereof extracted below:

> "13. Indeed, it cannot be ruled out that in the present case the victim had suffered an uncivilised and heartless crime committed by the respondents and there is no room for leniency which can be conceived. A crime of this nature does not deserve any kind of clemency. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which cannot be compensated either by sentencing the accused or by grant of any compensation." (2019) 5 SCC 373 : 2019 INSC 377

12. The circumstances under which a bail granted by the court below can be cancelled, having been summarised by this Court in Deepak Yadav vs State of Uttar Pradesh and Another6. Relevant paragraphs 31 to 35 are extracted below:

"C. Cancellation of bail

31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).

32. A two-Judge Bench of this Court in Dolat Ram v. State of Haryana [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] laid down the grounds for cancellation of bail which are:

> (i) interference or attempt to interfere with the due course of administration of justice;
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> (ii) evasion or attempt to evade the due course of justice;
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> (iii) abuse of the concession granted to the accused in any manner;
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> (2022) 8 SCC 559 : 2022 INSC 610
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> (iv) possibility of the accused absconding;
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> (v) likelihood of/actual misuse of bail;
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> (vi) likelihood of the accused tampering with the evidence or threatening witnesses.

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. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] , the accused was granted bail by the High Court. In an appeal against the order [Mitthan Yadav v. State of U.P., 2014 SCC OnLine All 16031] 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 :

(SCC p. 513, para 12) “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 [Mahipal v. Rajesh Kumar, (2020) 2 SCC 118 : (2020) 1 SCC (Cri) 558] 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 appellate 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."

13. The impugned order passed by the High Court is perused. Specifically the order dated 21.02.2024 passed in the Correction Application. The order does not suggest that there was any consideration of the parameters laid down by this court for grant of bail or suspension of sentence. Instead, the High Court had noticed and directed that the convicts have offered to pay compensation to the victim for grant of suspension of sentence, which when she refused to accept, was directed to be deposited in the court. It was in a way kind of "Blood Money" offered by the convicts to the victim for which there is no acceptability in our criminal justice system.

14. This Court in Gian Singh vs State of Punjab and Another7 while dealing with an issue regarding quashing of criminal proceedings on the ground of settlement between the offender and victim, observed that even if settlement or payment of compensation is pleaded in a heinous crime, still the same should not be quashed as the crimes are acts which have harmful effect on the public and in general the well-being of the society. It is not safe to leave the crime-doer on the plea of settlement with victim. Relevant paragraph 58 thereof is extracted below:

> "58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be (2012) 10 SCC 303 : 2012 INSC 419 an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been

> made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed."

15. In the State of Jharkhand vs. Md. Sufiyan8, the Jharkhand High Court directed the accused to deposit certain amount in court, as ad interim compensation to be paid to the victim as a condition for grant of anticipatory bail. It was a case for various crimes committed under IPC, POCSO Act and I.T. Act. The aforesaid direction of the High Court was deprecated by this Court. It was opined that the willingness of the accused to pay compensation to the victim cannot be a reason for grant of anticipatory bail. Para 6, thereof is extracted below:

> "6. The factors on which anticipatory bail could be granted are very well crystallized in a catena of judgments of this Court. Leave aside the discussion of such factors, not even a whisper as to on what grounds anticipatory bail was being allowed were considered by the High Court. Merely because the accused is willing to pay some amount as an SLP (Crl) No. 1960 of 2022 decided on 16.01.2024 interim compensation cannot be a ground for grant of anticipatory bail."

16. Similar view was expressed by this Court in Sahab Alam alias Guddu vs. State of Jharkhand and another9. Paras 2 and 8 thereof are extracted below:

> "2. We have a batch of petitions before us, arising from different nature of offences from dowry to Section 420 IPC to Section 376, IPC and POCSO Act. The common aspect in all these cases is that one particular learned Judge of the High Court has granted bail on condition on deposit of substantive sums of money without consideration of the requirements of bail dependent on the nature of offences. It is trite to say that bail cannot per se be granted if a person can afford to deposit the money or his capacity to pay. That is what seems to have happened. Since there is no proper consideration, it is also difficult for us to analyse what weighed with the learned Judge while granting bail and it is certainly not the jurisdiction of this Court to be first or a second court of bail.
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> 8. We also clarify that in view of our judgment in Dharmesh v. State of Gujarat (2021) 7 SCC 198 there is no 2022 SCC Online SC 1874 question of victim compensation, as there cannot be such a criteria at the stage of grant of bail." .....J. (RAJESH BINDAL) New Delhi April 5, 2024.