Puran, Shekhar And Anr vs Rambilas & Anr., State Of Maharashtra & ... on 3 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2023, 2001 (6) SCC 338, 2001 AIR SCW 1935, 2001 CLC 1125, 2001 (3) LRI 103, 2001 ALL MR(CRI) 1210, 2001 CALCRILR 391, 2001 (2) UJ (SC) 875, 2001 SCC(CRI) 1124, 2001 (3) SCALE 695, 2001 (6) SRJ 305, (2001) 5 JT 226 (SC), (2001) 2 CRIMES 283, (2001) 2 RECCRIR 801, (2001) 3 SCJ 237, (2001) SC CR R 657, (2001) 2 DMC 1, (2001) 2 EASTCRIC 218, (2001) 3 GUJ LH 119, (2001) 2 HINDULR 5, (2001) 20 OCR 731, (2001) 2 CURCRIR 255, (2001) 3 SUPREME 685, (2001) 2 ALLCRIR 1456, (2001) 3 SCALE 695, (2001) 2 UC 140, (2001) 43 ALLCRIC 247, (2001) 2 CHANDCRIC 85, (2001) 2 ALLCRILR 761, 2001 (2) ANDHLT(CRI) 108 SC, (2001) 5 BOM CR 830, 2001 (4) BOM LR 375, 2001 BOM LR 4 375

Author: S. N. Variava

Bench: M.B. Shah, S.N. Variava

CASE NO.:
Appeal (crl.) 599 of 2001
Appeal (crl.) 600 of 2001

PETITIONER:
PURAN, SHEKHAR AND ANR.

Vs.

RESPONDENT:
RAMBILAS & ANR., STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT: 03/05/2001

BENCH:
M.B. Shah & S.N. Variava

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

L...I...T.......T.......T.......T.......T.......T.......T..J These two Appeals are against an Order dated 24th January 2001, by which the High Court has cancelled bail, which had been granted to the Petitioner by the Additional Sessions Judge, Nagpur, by his Order dated 13th November, 2000. Briefly stated the facts are as follows :

> The Petitioner got married to one Puja Agrawal on 24th November, 1999. On 2nd of September, 2000 i.e. within a year of the marriage the said Puja Agrawal met with her death on 2nd of September, 2000. The Petitioner has been charged with offences under Sections 498-A and 304-B of the Indian Penal Code. Along with the Petitioner three other ladies had also been charged. Those ladies were granted bail by an Order dated 11th September, 2000. A Petition challenging that Order has been rejected on 20th October, 2000.
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> The evidence prima facie suggests the following:- at the time of the marriage there was a demand of dowry for Rs. 5 lacs including Rs. 2 lacs in cash; that the father of the deceased has spent Rs. 7 lacs on marriage; that about a month prior to the death of the said Puja a demand of Rs. 1 lac was made; that the father of the said Puja had offered Kisan Vikas Patra worth Rs.30,000/- to the Petitioner, which had been refused; that whenever the deceased came to the parents' home she was not wearing any ornaments; that even at the time of her death she was not wearing any ornaments not even her "Mangalsutra". The deceased was eight months pregnant at the time of her death. From the scene of offence, two handkerchiefs, two small cotton balls and one bigger cotton ball were found. Pieces of broken bangles were found. The wire of telephone was found broken. The telephone was found on the bed. There were electric burn injuries over the left index finger, middle finger, thumb, palms and back of palms upto base. Bone of left index finger was exposed and charred. Base of left index finger was swollen, distal part of left index finger was bluish in colour, surrounded by reddish area. There were electric burn injuries over right supramammary region oval shaped 7 cm x 4 1/2 cm. Centre of the burnt area was blackened and hard measuring 5 cm. x 3 1/2 cm. Blisters were found present over lateral aspect of left thigh, upper 1/3rd , 5 cm. x 1 1/2 cm. and 2 cm. Anterior to this injury, as also over lateral aspect of right thigh, upper 1/3rd. Besides this, abrasions were found on the right side of back, over infra scapulas region.
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> We have heard the parties. Mr. Lalit has argued this Appeal at great length. We have given anxious consideration@@ JJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJJ to his submissions but for reasons set out hereafter are@@ JJ unable to accept them.
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> Mr. Lalit submitted that one of the reasons why the High Court set aside bail was that the Additional Sessions Judge had not referred to any material circumstance on record and had not given any reasons. He submitted that the High Court was wrong

in so observing. He submitted that the same Additional Sessions Judge had earlier granted bail to the ladies by his Order dated 11th September, 2000. He pointed out that, whilst so granting bail, the Additional Sessions Judge had given very cogent reasons. He submitted that against that Order a Petition had been filed in the High Court. He submitted that even though the High Court rejected the Petition, the High Court observed as follows :

"I agree with the learned Counsel appearing on behalf of the complainant that while granting bail the learned Judge ought not to have ventured to discuss the merits or demerits of the evidence collected against the accused persons. Probably he was not aware or he was not remined of the advice given by the Apex Court in the case of Niranjan Singh & another vs. Prabhakar Rajaram Kharote and Others reported in AIR 1980 S.C. 785 wherein detailed examination of the evidence and elaborate documentation of the merits of the case while passing orders on bail application was deprecated."

He submitted that in view of these observations the learned Additional Sessions Judge did not given reasons whilst granting bail. He submitted that in these circumstances the Additional Sessions Judge cannot be faulted. He submitted that the High Court could not cancel bail on this ground. We see no substance in this contention. Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done, in the Order dated 11th September, 2000 was to discuss the merits and de-merits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated. Mr. Lalit next submitted that the High Court has itself not given reasons but has mechanically set aside the order of the bail. We see no substance in this submission. The High Court has correctly not gone into merits or demerits of the matter. The High Court has noted that evidance prima-facie indicated demand of dowry. The High Court has briefly indicated the evidence on record and what was found at the scene of the offence. The High Court has indicated that evidance prima facie indicated that a demand for Rs. 1 lac was made just a month prior to the incident in question. The High Court has stated that the material on record suggested that the offences under Sections 498-A and 304-A were prima facie disclosed. The High Court has concluded that the material on record, the nature of injuries, demand for Rs. 1 lac and the other circumstances were such that this was not a fit case for granting bail. Thus the High Court has given very cogent reasons why bail should not have been granted and why this unjustified erroneous Order granting bail should be cancelled.

Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of Dolat Ram & Ors. vs. State of Haryana reported in 1995 (1) S.C.C. 349. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for

cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the Society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in Gurcharan Singh v. State (Delhi Admn.) reported in AIR 1978 SC 179. In that case the Court observed as under:-

> "If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior Court under S. 439 (2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.
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> It must be mentioned that in support of the above submission Mr. Lalit had also relied upon the authorities in the cases of Subhendu Mishra vs. Subrat Kumar Mishra and another reported in 1999 Crl.L.J. 4063, State (Delhi Administration) vs. Sanjay Gandhi reported in (1978) 2 S.C.C. 411 and Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat reported in 1984 (1) S.C.C. 284. These need not be dealt with separately as they are of no assistance in a case of this nature where bail has been cancelled for very cogent and correct reasons.
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> Our view is supported by the principles laid down in the case of Gurcharan Singh & Others, etc. vs. State (Delhi Administration) reported in 1978 (1) S.C.C. 118. In this case it has been held, by this Court, that under Section 439(2), the approach should be whether the order granting bail was vitiated by any serious infirmity for which it was right and proper for the High Court, in the interest of justice, to interfere. Mr. Lalit next submitted that a third party cannot move a Petition for cancellation of the bail. He submitted that in this case the Prosecution has not moved for cancellation of the bail. He pointed out that the father of the deceased had moved for cancellation of

the bail. He relied upon the cases of Simranjit Singh Mann vs. Union of India and another reported in AIR 1993 S.C. 280 and Janata Dal, etc. etc. vs. H.S. Chowdhary and others, etc. etc. reported in 1991 (3) S.C.C. 356. Both these cases dealt with Petitions under Article 32 of the Constitution of India whereunder a total stranger challenged the conviction and sentence of the accused. This Court held that neither under the provisions of the Criminal Procedure Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. It was held that the Petitioner, who was a total stranger, had no 'locus standi' to challenge the conviction and the sentence awarded to the convicts in a Petition under Article 32. The principle laid down in these cases have no application to the facts of the present case. In this case the application for cancellation of bail is not by a total stranger but it is by the father of the deceased. In this behalf the ratio laid down in the case of R. Rathinam vs. State by DSP, District Crime Branch, Madurai District, Madurai and anr. reported in 2000 (2) S.C.C. 391, needs to be seen. In this case Bail had been granted to certain persons. A group of practising advocates presented petitions before Chief Justice of the High Court seeking initiation of suo motu proceedings for cancellation of bail. The Chief Justice placed the petitions before a Division Bench. The Division Bench refused to exercise the suo motu powers on the ground that the petition submitted by the advocates was not maintainable. This Court held that the frame of sub-section (2) of Section 439 indicates that it is a power conferred on the Courts mentioned therein. It was held that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a Public Prosecutor moves by a petition. It was held that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. It was held that the said power could also be exercised suo motu by the High Court.

It was held that, therefore, any member of the public, whether he belongs to any particular profession or otherwise could move the High Court to remind it of the need to exercise its power suo motu. It was held that there was no barrier either in Section 439 of the Criminal Procedure Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. It was held that if the High Court considered that there was no need to cancel the bail then it could dismiss the Petition. It was held that it was always open to the High Court to cancel the bail if it felt that there were sufficient enough reasons for doing so. Mr. Lalit next relied upon the authorities in the cases of Usmanbhai Dawoodbhai Memon and Ors. vs. State of Gujarat reported in 1988(2) S.C.C. 271, Amar Nath and others vs. State of Haryana and others reported in AIR 1977 S.C. 2185 and M/s. India Pipe Fitting Co. vs. Fakruddin M.A. Baker and another reported in AIR 1978 S.C. 45. Relying on these he submitted that an order granting bail was an interlocutory order, and the High Court could not exercise powers under Section 482 of the Criminal Procedure Code and thus could not cancel Bail. Mr. Lalit submitted that Section 439 of the Criminal Procedure Code gives the power of cancellation of bail both to the Sessions Court and the High Court. He submitted that thus the High Court and Sessions Court were co-ordinate Courts under this Section. He submitted that the High Court could not thus sit in Appeal or Revision over an Order of the Court of Sessions. He submitted that under Section 439(2), it is only the orders of the Magistrate, which

could be set aside by the High Court or the Court of Sessions.

We see no substance in this submission. In the hierarchy of Courts, the High Court is the Superior Court. A restrictive interpretation which would have effect of nullifying Section 439(2) cannot be given. When Section 439(2) grants to the High Court the power to cancel bail, it necessarily follows that such powers can be exercised also in respect of Orders passed by the Court of Sessions. Of course cancellation of bail has to be on principles set out hereinabove and only in appropriate cases. Further, even if it is an interlocutory order, the High Court's inherent jurisdiction under Section 482 is not affected by the provisions of Section 397 (3) of the Code of Criminal Procedure. That the High Court may refuse to exercise its jurisdiction under Section 482 on the basis of self-imposed restriction is a different aspect. It cannot be denied that for securing the ends of justice, the High Court can interfere with the order which causes miscarriage of justice or is palpably illegal or is unjustified. [Re. Madhu Limaye v. State of Maharasthra (1977) 4 SCC 551 and Krishnan and Another v. Krishnaveni and Another (1997) 4 SCC 241].

In this case, as indicated above, bail has been cancelled for very valid and cogent reasons Accordingly we see no substance in these Appeals. The same stand dismissed. There will be no order as to costs.