

Laxman Prasad Pandey vs The State Of Uttar Pradesh on 11 December, 2021

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Bench: A.S. Bopanna, Dhananjaya Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1551 OF 2021
(Arising out of SLP(Criminal) No.3285/2021)

Laxman Prasad PandeyAppellant(s)
Versus

The State of Uttar Pradesh & Anr. Respondent(s)

WITH

CRL.APPEAL NO. 1558 OF 2021 @ SLP(Crl) No.6611/2021

CRL.APPEAL NO. 1557 OF 2021 @ SLP(Crl) No.6569/2021

CRL.APPEAL NO. 1552 OF 2021 @ SLP(Crl) No.3226/2021

CRL.APPEAL NOS. 1554-1555 OF 2021 @ SLP(Crl) No.5605-
5606/2021

CRL.APPEAL NO. 1553 OF 2021 @ SLP(Crl) No.5539/2021

CRL.APPEAL NO. 1556 OF 2021 @ SLP(Crl) No.6061/2021

JUDGMENT

A.S. Bopanna,J.

1. The three appeals of the first set, all titled Laxman Prasad Pandey vs. State of Uttar Pradesh & Ors. bearing Criminal Appeal No.1551/2021 (arising out of SLP (Crl.) No.3285/2021); Criminal Appeal No.1554□1555/2021 (arising out of SLP (Crl.) Nos.5605□5606/2021) and Criminal Appeal No.1553/2021 (arising out of SLP (Crl.) No. 5539/2021) arise against the orders dated 16.03.2021, 17.12.2020 and 19.03.2021 and 26.07.2021 passed by the learned Single Judge of the High Court of

Judicature of Allahabad, Lucknow Bench, Lucknow in Bail Application No.1694 of 2021, Bail Application No.9559 of 2020, Bail Application No. 11 of 2021 and Bail Application No.3876 of 2021. The accused in the above said cases are Anjani Kumar Shukla, Rahul @ Monu Tiwari and Raj Kumar Maurya.

2. The second set of four appeals, titled Laxman Prasad Pandey vs. State of Uttar Pradesh & Anr. bearing Criminal Appeal No.1556/2021 (arising out of SLP (Crl.) No.6061/ 2021); Vishnu Prasad Pandey vs. State of U.P. & Anr.; Criminal Appeal No.1552/2021 (arising out of SLP (Crl.) No.3226/2021; Subhash Saini and Pramod Prasad Pandey vs. State of U.P. & Anr.; Criminal Appeal No.1558/2021 (arising out of SLP (Crl.) No.6611/2021) and Ratnakar Dwivedi and Vikas Chandra Mishra vs. State of U.P. & Anr.; Criminal Appeal No.1557/2021 (arising out of SLP (Crl.) No.6569/2021) arise against the separate orders, all dated 23.03.2021 passed by the High Court of Allahabad, Lucknow Bench, Lucknow in A.B. No.5003 of 2020, A.B No.276 of 2021 and A.B. No.5370 of 2020 respectively.

3. In the first set of three appeals, the complainant Laxman Prasad Pandey has assailed the orders passed by the learned Single Judge of the High Court enlarging the accused on bail, in case relating to FIR No.406 of 2020. In the second set of four appeals, the appellants therein have assailed the order passed by the learned Single Judge dismissing the petitions filed by them seeking grant of anticipatory bail in case bearing FIR No.407 of 2020. The above noted two sets of cases were tagged, heard together and are therefore being disposed of by this common judgment, since the issue in these appeals pertain to the same incident which is alleged to have occurred on 08.05.2020 within the jurisdiction of the Kotwali City Police Station, Pratapgarh District, Uttar Pradesh.

4. The brief facts to be noted for the purpose of disposal of these appeals indicate that Laxman Prasad Pandey had reported with a complaint to the jurisdictional Police on 09.05.2020 at 16:30 hours about the incident. The same was registered in FIR No.406 of 2020. In the said complaint, he had alleged that he along with his brother Ram Prasad Pandey, Subhash Saini, Surendra Tiwari and others went to the plot situated in Marut Nagar where Sarvesh Tiwari, Anand Tiwari @ Vivek and others named in the complaint along with certain other unknown persons were present. Complainant went there to seek return of the money he had given earlier to Sarvesh Tiwari. It is alleged that Sarvesh Tiwari and others were armed with repeater, pistol and rifle. When the complainant reached there, he and his associates were asked to sit on the chairs. The complainant at that point asked for return of his money. At that stage Aditya Singh @ Major and the other persons named in the complaint exhorted to attack the complainant and his associates by shouting "Mar Dalo Salo Ko". The said Aditya Singh and Monu are alleged to have caught hold of the appellants' brother and snatched his licensed pistol, while Sarvesh Tiwari, Anand Tiwari, Anjani Shukla and others who were armed with weapons started firing on the complainant and his brother. They ran helter-skelter and in the melee, appellant's brother □ Ram Prasad Pandey fell down since he suffered firearm injuries. His brother was taken to the District Hospital, from where he was referred to Allahabad Swaroop Rani Hospital when he breathed his last during the treatment. In that light, the FIR was registered against the persons named therein which include the private respondents in the first set of the three appeals, under Sections 147, 148, 149, 307, 302, 188 and 120B IPC and Section 27/30 of Arms Act. It is in the said proceedings, the accused Anjani Kumar Shukla, Rahul @

Monu Tiwari and Raj Kumar Maurya had filed petitions under Section 439 Cr.PC seeking grant of bail. The same being allowed by the High Court, the complainant is before this Court seeking that the order be set aside.

5. In respect of the same incident alleged to have occurred on 08.05.2020 yet another FIR bearing No.407 of 2020 was registered based on the complaint lodged by Sarvesh Tiwari on 12.05.2020 at 16:14 hours. In the said complaint, it was stated by Sarvesh Tiwari that he is a resident of Sagra Village and he works as a property dealer in Ranjitpur Chilbila. He has alleged that on 08.05.2020, the brokers of the land belonging to Ram Prasad Pandey, Laxman Prasad Pandey, Vishnu Pandey being accompanied with the others named in the complaint and being armed with illegal weapons came there. Due to previous enmity, with the intention to kill them started indiscrete firing on the complainant and the others present. His cousin brother Anand Tiwari and also Rahul Tiwari @ Monu and Anjani Shukla sustained gunshot injuries and fell to the ground. The attacking party had presumed them to be dead and went away abusing them. In that view, the complainant sought action against them. The said crime No.407 of 2020 was registered under Section 147, 148, 149, 307 IPC. In the second set of appeals relating to the said FIR No.407 of 2020, the persons accused therein namely Laxman Prasad Pandey, Vishnu Prasad Pandey, Subhash Saini, Pramod Pandey, Ratnakar Dwivedi and Vikas Chandra Mishra filed petitions before the High Court under Section 438 of IPC seeking grant of anticipatory bail which came to be rejected. The rejection of the anticipatory bail by the learned Single Judge is assailed in the second set of appeals.

6. As already indicated, since all the above noted appeals arise out of the same alleged incident dated 08.05.2020 and the nature of consideration would be the same in all these cases, they are considered together.

7. We have heard Mr. Sidharth Luthra, learned senior counsel along with Ms. Sakshi Kakkar, learned counsel for the appellants, Mr. V.K. Shukla, learned senior counsel for the State of U.P. and Mr. Sameer Kumar, learned counsel for the private respondents in all these appeals.

8. The learned senior counsel for the appellants has taken us through the contents of FIR No.406 of 2020 and in that light has pointed out to the post-mortem report dated 09.05.2020 wherein the contents reveal that Ram Prasad Pandey, the deceased brother of the complainant had suffered external injuries such as, wound caused by firearm. In that light, it is contended that when the case registered against the accused is for the grave offences which include the offence under Section 302 IPC and the provisions of the Arms Act, the learned Single Judge ought to have appropriately recorded his satisfaction before exercising the discretion to enlarge on bail. It is contended that in the instant case, the learned Single Judge except referring to the rival contention has not analysed the same for recording his satisfaction. Observations of a general nature is made and ordered to enlarge the accused on bail. It is contended that such consideration is contrary to the position of law enunciated by this Court in the case of Mahipal vs. Rajesh Kumar @ Polia & Anr. (2020) 2 SCC 118. The learned counsel had also made detailed reference to the other material on record to contend that the order to enlarge the accused on bail, in FIR No.406 of 2020 is liable to be set aside.

9. Insofar as the appeals filed by the accused in case relating to FIR No.407 of 2020 Mr. Sidharth Luthra, learned senior counsel appearing for the appellants therein contended that the said complaint is filed only as a counter blast. It was an afterthought and filed as late as on 12.05.2020. Though in the FIR the alleged offence is registered under Section 307 IPC as well, the medical certificate relating to Anand Tiwari who is stated to be injured as per the complainant, has suffered only simple injuries caused due to hard and blunt object. In such event, when the persons named in the said FIR are available to cooperate in the investigation, the petition filed by them seeking anticipatory bail ought to have been appropriately considered by the learned Single Judge and anticipatory bail ought to have been granted. It is further contended that the receipts dated 28.05.2018 and 29.06.2018 would indicate that Sarvesh Tiwari had received a sum of Rs.3,00,000/-(Rupees three lakhs) from Laxman Prasad Pandey which was to be returned. He and his brother were attacked when they legitimately sought return of the money. In that circumstance, Sarvesh Tiwari and others named in FIR No.406 of 2020 are the aggressors. In such event, there is no reason to deny the appellants the benefit of anticipatory bail sought by the appellants.

10. The learned counsel for the private respondents with reference to the counter-affidavit filed on their behalf sought to contend that the learned Single Judge having taken note of the contentions relating to the case in FIR No.406 of 2020 and also the period of incarceration had granted bail to the accused which is justified. It is contended that when the learned Single Judge has exercised the discretion, the same would not call for interference.

11. Mr. V.K. Shukla, learned senior counsel for the State, with reference to the factual aspects has contended that though two FIRs are registered, as evident, the matter relates to the same incident dated 08.05.2020 where there has been a group clash by using firearms which resulted in indiscriminate firing. As such, in either case the accused in both the set of cases are not entitled to be released on bail. The learned counsel has also referred to the criminal history of the persons involved. It is contended that the investigation in the case relating to FIR No.407 of 2020 could not be concluded as the accused did not cooperate after obtaining interim protection in the appeal seeking anticipatory bail. Further, the injured person is still undergoing treatment. Hence, the learned counsel seeks that the bail granted to the accused in Crime No.406 of 2020 be cancelled and the appeals relating to FIR No.407 of 2020 be dismissed.

12. In the above backdrop, a perusal of the order dated 16.03.2021 in the proceedings relating to FIR No.406 of 2020 in Bail Application No.1694 of 2021 indicates that the learned Judge though has taken note of details of the incident and the contention of the learned counsel for the parties, has not analysed the same to record the satisfaction to enlarge the accused on bail. The ultimate reason and conclusion adopted by the learned Single Judge reads as hereunder: "Considering the facts and circumstances of the case, and also considering the nature of allegations, arguments advanced by learned counsel for the parties, the period for which he is in jail and without expressing any opinion on merits of the case, I find it to be a fit case for enlarging the applicant on bail." The nature of consideration is similar in the order dated 17.12.2020 and 26.07.2021 passed in Bail Application Nos.9559 of 2020 and 3876 of 2021 relating to the other two accused in FIR No.406 of 2020.

13. In that background, a perusal of the decision rendered by a Two Judge Bench of this Court in Mahipal (supra) authored by Dr. Justice D.Y. Chandrachud reads as hereunder: □“24. 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 para which reads:

“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.”

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.”

14. While arriving at such conclusion in the case of Mahipal (supra), the Hon’ble Bench of this Court had inter alia referred to an earlier decision of this Court in Kalyan Chandra Sarkar vs. Rajesh Ranjan (2004) 7 SCC 528 wherein another Bench of this Court, authored by Justice Santosh Hegde had held as hereunder: □“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.”

15. In that background, reverting to the present facts, it is noticed that the conclusion recorded by the learned Single Judge extracted supra is almost verbatim similar to the portion which is extracted and disapproved by this Court in Mahipal’s case noted supra. It is noticed that with such sweeping observation made by the learned Single Judge, Anjani Kumar Shukla, Rahul @ Monu Tiwari and Raj Kumar Maurya the accused in FIR No.406 of 2020 have been ordered to be enlarged on bail though the charges thereunder are grave, which include Section 302 IPC and Section 27/30 of the Arms Act. The allegation is of indiscriminate firing which has also resulted in the death of Ram Prasad Pandey, the brother of the complainant. It is no doubt true, that the investigation has been carried out in the

said case and the chargesheet is stated to have been filed. Further, the fact that the said accused persons had spent 10, 7 and 4 months respectively in custody seems to have weighed with the Court which could not have been a mitigating factor when charges of such serious nature are to be tried. The details furnished by the learned senior counsel for the State would indicate that seven other cases are registered against one of the accused named Raj Kumar Maurya who is also alleged to be a part of the group of the accused in the instant case. In such circumstance, when the said persons are also stated to have been attacked by the rival group as alleged in the counter complaint of Sarvesh Tiwari in FIR No.407 of 2020 and the investigation is not yet complete in the said proceedings, it would not be appropriate for the said persons who were part of one group which had clashed against the other to be in a position to alter the nature of consideration when ultimately a composite investigation to complete the process in FIR No.407 of 2020 would also be necessary. Therefore, at the outset, when it is noted that Ram Prasad Pandey died due to firearm wound suffered by him and both the FIR No.406 of 2020 and FIR No.407 of 2020 referred to the indiscriminate use of firearm in the clash, the release of the accused in FIR No.406 of 2020 at this juncture was not justified, more particularly in a circumstance where the learned Single Judge has not recorded his satisfaction with regard to the specific details of the case and the reason for which each of the accused was entitled to be enlarged on bail. At this stage, in any event the role of each member in either group is not clear.

16. Similarly, the complaint lodged in FIR No.407 of 2020 discloses that the allegation made against the appellants in the second set of appeal is also of grave nature; to the effect that the accused persons were armed with illegal weapons and due to the previous enmity, they had come there with intention to kill the complainant and his associates. In that regard, it is alleged that the accused had indulged in indiscriminate firing on the complainant, his cousin brother Anand Tiwari, Rahul Tiwari, Anjani Shukla and that they fell down on sustaining gunshot injury. As against the said allegations, Mr. Sidharth Luthra, learned senior counsel for the said appellants while seeking to justify the prayer for grant of anticipatory bail has made strenuous attempt to contend that the said complaint is belated and lodged as a counter blast though there is no truth in the allegations. In that regard, in order to contend that Anand Tiwari had not suffered gunshot injury, has referred to the medical certificate wherein the opinion expressed is that the injuries which were shown to be lacerated wound are simple in nature caused due to hard and blunt object.

17. Though such contention is put forth, we are unable to appreciate the same in favour of the said appellants to consider grant of anticipatory bail, for more than one reason. Firstly, the delay as alleged in filing the complaint would not be material at this stage since the ultimate reference is to the very same incident dated 08.05.2020. The allegation in the complaint dated 12.05.2020 is not relating to any other subsequent incident so as to deem it as a complaint filed as being in the nature of counter blast. Further, the very complaint registered at the behest of Laxman Prasad Pandey in FIR No.406 of 2020 would indicate that in his complaint, he has inter alia stated thus □“in the meanwhile, Aditya Singh and Monu caught hold of the appellants’ brother and thereby snatched his licensed pistol”. The said statement in his own complaint would indicate that the group including the complainant in FIR No.406 of 2020 who are the accused in FIR No.407 of 2020 and are seeking for grant of anticipatory bail were also armed with firearm when they had gone to the said spot where the incident occurred. If that be the position, it is too premature at this stage to arrive at any

conclusion as to which group was the aggressor and the manner in which the firing had erupted and also the weapons that were used. These are all matters to be looked into during the investigation of the pending complaint and for the purpose of framing charges and the consequent trial. In addition, though the injuries suffered by Anand Tiwari is contended to be a simple injury, the counter statement filed on behalf of the respondents, more particularly the State of Uttar Pradesh would indicate that one of the reasons given for incompleteness of the investigation is that the injured is still undergoing treatment which makes it obvious that he has suffered more than the simple injuries referred to by the learned counsel. Therefore, if all these aspects are kept in view, the allegations are of serious nature which would require a detailed investigation and recovery of weapons in the course of investigation which is yet to be completed. In that view, it is not a fit case where the appellants in the second set of appeal need to be protected by grant of anticipatory bail.

18. In the above background, in both the set of cases the composite consideration would be required in the further process of investigation, framing charges and trial. That apart, as noticed, one among the accused namely Raj Kumar Maurya who has a criminal history was also a part of one of the groups involved in the incident which occurred on 08.05.2020 and in that circumstance when the case has been registered under Section 302 and in the second FIR under Section 307, in addition to Section 149 IPC, in both the cases, the bail granted to the appellants in the first set of cases would not be justified. Further, as indicated supra, the appellants in the second set of cases would also not be entitled to grant of anticipatory bail, though it would be open to them to surrender and seek for regular bail on its own merits.

19. For all the afore^{stated} reasons, the following order: □

(i) The orders dated 16.03.2021, 17.12.2020 and 26.07.2021 passed by the learned Single Judge in Bail Applications No.1694/2021; 9559/2020 and 3876/2021 are set aside and the bail granted by the High Court is set aside.

(ii) The bail bonds executed by Anjani Kumar Shukla, Rahul @ Monu Tiwari and Raj Kumar Maurya shall stand cancelled and the said accused shall be taken to custody.

(iii) The Criminal Appeal No.1551/2021 @ SLP (Crl.) No.3285/2021; Criminal Appeal No.1554□ 1555/2021 @ SLP (Crl.) Nos.5605□5606/2021 and Criminal Appeal No.1553/2021 @ SLP (Crl.) No. 5539/2021) are allowed accordingly.

(iv) The Criminal Appeal No.1556/2021 @ SLP (Crl.) No.6061/ 2021; Criminal Appeal No.1552/2021 @ SLP (Crl.) No.3226/2021; Criminal Appeal No. 1558/2021 @ SLP (Crl.) No.6611/2021) and Criminal Appeal No.1557/2021 @ SLP (Crl.) No.6569/2021 seeking for an order of anticipatory bail are dismissed.

(v) The interim orders passed during the pendency of these proceedings shall stand dissolved.

(vi) It will be open for the appellants in Criminal Appeal Nos.1556/2021, 1552/2021, 1558/2021 and 1557/2021 to surrender and seek for regular bail which shall be considered on its own merits, in

accordance with law.

(vii) This order shall not be an impediment for the trial court or High Court to consider applications of any of the accused at the appropriate stage. All contentions in that regard are kept open. The observation herein shall not be considered as an expression of opinion on merits of the case.

(viii) Pending application, if any, shall stand disposed of.

..... J.

(DR. DHANANJAYA Y. CHANDRACHUD)J. (A.S. BOPANNA)
New Delhi, December 11, 2021