Ajwar vs Niyaj Ahmad on 30 September, 2022

Author: D.Y. Chandrachud

Bench: Hima Kohli, Dhananjaya Y Chandrachud

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1722 of 2022
(Arising out of SLP (Crl) No. 8139 of 2022)

Ajwar … Appe

Versus

Niyaj Ahmad & Anr. … Responden

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 A Single Judge of the High Court of Judicature at Allahabad, by an order dated 4 August 2022, directed the release of the first respondent on bail in connection with Case Crime No 126 of 2020 registered at Police Station Mundali, District Meerut, Uttar Pradesh for offences punishable under Sections 147, 148, 149, 302, 307, 352 and 504 read with Section 34 of the Indian Penal Code 18601. 3 The First Information Report was registered on 19 May 2020 on the basis of the complaint of the appellant against ten accused persons, 1 "IPC" namely, Nazim, Abubakar, Waseem, Aslam, Gayyur, Nadeem, Hamid, Akram, Kadir and Danish. The allegation in the FIR is that at around 7.30 pm on the same day, the accused who had prior enmity with the parties discriminately fired at the appellant and his sons and, as a result, two sons of the appellant, Abdul Khaliq and Abdul Majid sustained bullet injuries. Abdul Khaliq died on the spot, while Abdul Majid died on the way to the hospital. The appellant's nephew is alleged to have been seriously injured during the course of the incident.

4 The postmortem report of the deceased, Abdul Khaliq, indicates that he had received one fire arm injury in the head and the cause of the death was cranio-cerebral damage as a result of an ante mortem firearm injury. The postmortem report of Abdul Majid indicates that he had sustained one firearm entry wound in the abdomen and one corresponding exit wound and the cause of death was due to shock and hemorrhage caused by the ante mortem firearm injury. 5 Though the first respondent was not named in the FIR, his role is alleged to have emerged during the course of the

investigation. In the statement of the appellant under Section 161 of the Code of Criminal Procedure Code 1973 2, he was put to question on why first respondent was not named as an accused in the first information 2 "CrPC" report, to which the appellant responded as follows:

> "I have got written the complaint by Saleem (scribe of the FIR) orally and told him the name of Niyaz Ahmad. Niyaz Ahmad was also involved in the occurrence" 6 After the investigation was completed, a charge-sheet was submitted under Section 173 CrPC on 23 June 2020 against the accused, including the first respondent, for offences punishable under Sections 147, 148, 149, 352, 302, 307 and 504 read with Section 34 of IPC. The charge-sheet was submitted against eight accused, seven of whom were named in the FIR, while the name of the first respondent was added later. Three other accused were not found to be involved after investigation and thus, charge sheet was not filed against them.
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> 7 Cognizance has been taken and the case has been committed to the Sessions Court where it has been registered as Sessions Trial No 574 of 2020 which is pending in the court of the Additional Sessions Judge, Court No 15, Meerut. Charges have been framed. The evidence of the informant, PW 1, has been recorded. During the course of the deposition, PW 1 has adverted to the role of the first respondent. The first bail application filed by the first respondent was dismissed on 29 July 2021 because it was not pressed. The second application for bail filed by the first respondent was dismissed by the Sessions Court on 16 December 2021 in view of the seriousness of the offence and the fact that there is prior enmity between the factions The appellant moved the High Court under Section 482 of CrPC for expeditious conclusion of the trial. By an order dated 7 May 2022, the High Court directed the Sessions Court to conclude the trial expeditiously, preferably within a period of six months. The first respondent moved the High Court for grant of bail which has resulted in the impugned order dated 4 August 2022.
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> 8 While granting bail, the Single Judge of the High Court has observed as follows:
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> "Having heard the submissions of learned counsel of both sides, nature of accusation and severity of punishment in case of conviction, nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformative theory of punishment. and considering larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of Dataram Singh v. State of U.P. and another, (2018) 3 sec 22, without expressing any view on the merits of the case, I find it to be a case of bail.
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> Considering the facts and circumstances of the case, I find it to be a fit case for bail." 9 At the outset, it needs to be noted that this Court has had occasion to peruse a succession of orders by the same Judge of the High Court of Judicature at Allahabad (which were challenged in Special leave Petitions before this Court) containing identical reasons as recorded above for the grant of bail. As a matter of fact, in the

> counter affidavit, which has been filed by the first respondent, the fact that similar orders have been passed by the Single Judge has been relied upon though with the submission that the first respondent should not be penalized for the High Court's failure to record adequate reasons.

The first respondent in the course of his counter affidavit states as follows:

> "...In fact, the present case is not the only case, in which so called reasons are not assigned by the Hon'ble High Court while granting bail. There are many other cases also in which the same or similar orders were passed by the Hon'ble High Court and perhaps will be passed in future, as well. Therefore, the Respondent No.1 may not be penalized for something on which he has no control at all and it is the judicial discretion of the Hon'ble High Court to give reasons or not to give reasons while granting bail..." 10 The manner in which the Single Judge of the High Court has disposed of the application for bail is unsatisfactory. In determining as to whether bail should be granted in a matter involving a serious criminal offence, the Court is duty bound to consider:
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> (i) The seriousness and gravity of the crime;
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> (ii) The role attributed to the accused;
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> (iii) The likelihood of the witnesses being tampered with if bail is granted;
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> (iv) The likelihood of the accused not being available for trial if bail is granted; and
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> (v) The criminal antecedents of the accused.

11 In successive orders, the Single Judge of the High Court granted bail containing the same sentence, purportedly of reasons. Merely recording that the Court has had regard to the nature of the accusation, the severity of the punishment in the case of conviction, the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformative theory of punishment and the larger mandate of Article 21 is not a satisfactory method for the simple reason that the facts of the case have to be considered. Moreover, not all the circumstances referred to above will weigh in the same direction. The duty to consider the circumstances of the case cannot be obviated by setting down legal formulations. 12 In Mahipal v. Rajesh Kumar 3, a two-Judge Bench observed:

> "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 3 (2020) 2 SCC 118 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.

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the nonapplication of mind which may require the intervention of this Court." In Aminuddin v. State of Uttar Pradesh 4, a two-Judge Bench of this Court of which allowed the appeal filed against the judgment of the High Court granting bail. The Single Judge of the Allahabad High Court had disposed the bail application with the same reasoning as extracted above in this case. The following observations were made on the reasoning of the High Court :

"8. In the present case, the High Court has merely observed that bail was being granted after considering the submissions and having regard to the "larger mandate of Article 21". There can be no manner of doubt that the protection of personal liberty under Article 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious offence of murder has taken place, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account."

13 At the stage of deciding as to whether or not to grant bail, the Court 4 Criminal Appeal No. 317 of 2021 is not expected to write an elaborate or detailed judgment.

However, the reasons in support of an order granting or refusing bail must emerge from the record and must show a due application of mind by the Judge to the facts of the case. An over-burdened docket is no justification for formulaic justice. We, therefore, disapprove of the manner in which the Single Judge of the High Court of Judicature at Allahabad has been dealing with applications for bail.

14 In the above facts, we would have considered remanding the proceedings back to the High Court. However, during the course of hearing, elaborate submissions have been addressed before this Court on whether or not the grant of bail was justified. 15 Certain significant aspects which bear on the issue as to whether bail ought to be granted in the facts of the present case need to be elaborated after considering the submissions of the counsel appearing on behalf of the rival parties.

16 On behalf of the appellant, it has been submitted that:

(i) Two sons of the appellant have been murdered in the course of the incident;

(ii) The role of the first respondent has emerged during the course of the statements which were recorded under Section 161 CrPC;

(iii) In the course of his deposition, the appellant as PW1 has specifically adverted to the role of the first respondent in the course of the incident;

(iv) Having due regard to the nature and gravity of the offence, there is no justification for the grant of bail, particularly when the role of the first respondent has been adverted to not only by the appellant but by other witnesses in the course of their statements recorded under Section 161 CrPC in the counter case filed by the wife of the first respondent FIR in Case Crime No 361 of 2020; and

(v) Though the trial was expedited by the High Court, by its order dated 7 April 2022, repeated adjournments have been sought by the first respondent to avoid an expeditious trial, to which a reference has been made by the Trial Court in an order dated 23 August 2022. The first respondent is avoiding the trial.

17 Supporting the submissions of the appellant, it has been urged on behalf of the State of Uttar Pradesh that, in the present case, the High Court has erred in granting bail without having due regard to the following circumstances, namely:

(i) The nature and gravity of the crime;

(ii) The role attributed to the first respondent in the deposition of PW 1 and even prior thereto in the statements which were recorded during the course of the investigation;

(iii) The recovery made of five country made pistols;

(iv) The postmortem reports which indicate that the death was caused due to gun-shot injuries suffered in the head and abdomen, respectively; and

(v) The criminal antecedents of the first respondent. 18 On behalf of the first respondent, it has been submitted that:

(i) A cross case was sought to be registered at the behest of the wife of the first respondent;

(ii) Eventually, an FIR in Case Crime No 361 of 2020 was registered on 21 November 2020, inter alia, for offences punishable under Sections 147, 148, 149, 452, 323, 307, 504 and 506 read with Section 34 of IPC;

(iii) The FIR was registered on the directions of the Judicial Magistrate;

(iv) A closure report was submitted by the Police on two occasions.

The Magistrate by an order dated 31 August 2021 declined to accept the closure report and directed further investigation; and

(v) The first respondent suffered a gun-shot injury during the course of the incident and the injury report would support the cross case which has been registered on the information provided by his wife.

19 The High Court has failed to notice the facts bearing on the seriousness and gravity of the offence. The incident has led to the murder of two sons of the appellant as a result of firearm injuries. The name of the first respondent has clearly emerged during the course of the investigation in the statement recorded under Section 161 of CrPC. As a matter of fact, the cross case alleging that the first respondent was injured during the course of the investigation would indicate prima facie, his presence at the scene of the incident. Once the role of the first respondent has emerged during the course of the investigation, followed by the filing of a charge-sheet, we are clearly of the view that no case for the grant of bail was made out before the High Court. The first respondent has undergone about two years and two months of custody. That apart, the Additional Sessions Judge at Meerut in his order dated 23 August 2022 adverted to the fact that the first respondent upon being granted bail has consistently remained absent from the trial and has sought repeated adjournments as a result of which the cross-examination of the witnesses has remained to be concluded. As a result, it is evident that the first respondent upon being released on bail has failed to cooperate in the expeditious disposal of the trial despite the directions given by the High Court in its order dated 7 April 2022. He is evading the conclusion of the trial.

20 We accordingly allow the appeal and set aside the impugned order of the Single Judge dated 4 August 2022 enlarging the first respondent on bail.

21 The first respondent is granted two weeks' time to surrender. 22 We also clarify that any observations made in the order shall not affect the merits of the trial.

23 Pending application, if any, stands disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hima Kohli] New Delhi;

September 30, 2022

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