

Imran vs Mohammed Bhava on 22 April, 2022

Author: Krishna Murari

Bench: Hima Kohli, Krishna Murari, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.658 OF 2022
(arising out of S.L.P (CRL.) No. 27 OF 2022)

IMRAN ... APPELLANT (S)

VERSUS

Mr. MOHAMMED BHAVA & ANR ... RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 659 OF 2022
(arising out of S.L.P (CRL.) No. 1242 OF 2022)

IMRAN ... APPELLANT (S)

VERSUS

Mr. MOHAMMED MUSTHAFA & ANR ... RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

Leave granted

2. These two appeals are directed against the judgments and orders dated 08.02.2021 and 19.10.2020 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 6052/2020 and Criminal Petition No. 3902/2020 respectively. Respondent No. 1 herein, in the two petitions, namely Mohammed Bhava & Mohammed Musthafa, have been arrayed as Accused No. 6 and Accused No. 8 in FIR No. 38/2020 dated 05.06.2020. The said Respondents, along with eight other co-accused, have been charged for offences under sections 143, 147, 148, 341, 307, 302, 395 of Indian Penal Code (hereinafter referred as 'IPC'), read with section 149 of IPC. The High Court vide

orders impugned herein has allowed the anticipatory bail application and bail application respectively, of the two Respondents. Factual Matrix

3. The Appellant herein (original complainant) is the son of Abdul Lathif (deceased). On 05.06.20, initially, an FIR was registered under sections 143, 147, 148, 341, 307, 302, 395 IPC, read with section 149 of IPC. Post investigation, sections 114, 109 and 120B of IPC were also added in the charge sheet. The said FIR listed ten individuals as being accused for committing offences under the above said sections.

4. It is the case of the prosecution that Accused No. 1 - Davood Hakim, who had an enmity with C.W.2- one Badrul Muneer, hatched a conspiracy with all other accused to eliminate C.W.2. Pursuant to this common objective, Accused No. 2 to 10, came on a bike and car, attacked C.W.s 1(the Appellant), 2 (Badrul Muneer) and 3 (Hiyaz), with soda bottle and stones, and subsequently murdered the deceased -Abdul Lathif. The injured witnesses, the deceased and the appellant herein (complainant) are relatives. Badrul Muneer (C.W.2) being the son-in-law of the deceased – Abdul Latif. The detailed factual matrix is as follows:

5. On 05.06.20 at around 4.00 PM to 4.05 PM, as the Appellant along with other two C.Ws and deceased, was returning from HDFC Bank, Mulki Branch, when Accused No. 2 to 10 intercepted the car of C.W.2, Badrul Muneer. While Accused No. 2 and 3, started abusing Badrul Muneer and thereafter assaulted him and his son Hiyaz (C.W. 3) with a knife and wooden club, Accused No. 4 and 7 too joined in, and assaulted Badrul Muneer with a soda bottle and concrete stone respectively.

6. Upon seeing his son-in-law Badrul Muneer being brutally assaulted, the deceased- Abdul Lathif intervened. However, as the deceased intervened, Accused No. 6, Mohammed Bhava (Respondent No. 1 herein, in S.L.P (CRL.) No. 27 of 2022) pushed him. The said Accused No. 6 further stated that ‘this was not the only thing and that he would have more’. Resultantly, all other accused (including Musthafa, Accused No. 8 i.e., Respondent No. 1, in S.L.P (CRL.) No. 1242 of 2022) chased the deceased and assaulted him with their deadly weapons, as he fell down near the entrance of the bank, resulting in his death.

7. Subsequent to this incident, Accused No. 8 (Respondent No. 1, in S.L.P (CRL.) No. 1242 of 2022), filed a regular bail application which was rejected by the sessions court. Eventually investigation was also completed and a charge sheet was filed against all accused on the basis of witness statements, recovered articles, medical opinion, and FSL report.

8. Thereafter, Accused No. 6 (Respondent No. 1 herein, in S.L.P (CRL.) No. 27 of 2022) filed an anticipatory bail application before the sessions court, which was also rejected vide judgment dated 14.10.2020.

9. Aggrieved, both the Accused No. 6 and 8, preferred applications before the High Court which were allowed vide impugned judgments and orders dated 08.02.2021 and 19.10.2020, in Criminal Petition No. 6052/2020 and Criminal Petition No. 3902/2020 respectively.

10. Vide impugned judgments, the High Court observed that since other co-accused were also granted bail therefore relief sought by the Accused Respondents No. 1 herein, in the two petitions could be granted.

11. However, subsequently, the High Court vide its judgment and order dated 26.08.21 cancelled bails granted to all other accused present at the scene of offence i.e. Accused No. 2,3,4,7,9 & 10. This cancellation order has been upheld by this court vide order dated 20.10.21 in SLP (Crl.) No. 7586-7592 of 2021. Further, the regular bail granted to the prime accused i.e., Accused No. 1, by the High Court was also challenged before this court. This court vide final order dated 11.01.2022 allowed the appeal, and set aside the order of the High Court granting bail to Accused No. 1.

Contentions made by the Appellant

12. The aggrieved complainant herein, inter-alia, contends that the High Court vide impugned orders has erred in not considering the gravity of the offences, and has overlooked the version of eye-witnesses, and other material available on record. Therefore, vide impugned orders, the High Court has brushed aside prima-facie vital material on record available against both the Respondents herein, i.e. Accused No. 6 and 8. Both the accused had instigated and participated in the commission of a heinous crime and therefore were not entitled to any discretionary relief at all.

13. It is further contended that the impugned orders suffer from non-application of mind to the extent that the court below failed to consider the gravity and nature of offence, committed by both the accused Respondents herein. The High Court thus erred in not considering that granting bail to both the accused, who are involved in a premeditated murder case, would pose significant threat to all prosecution witnesses.

14. The Appellant further emphasizes upon the judgment of this Court in Ram Govind Upadhyay Vs. Sudarshan Singh and Others 1 wherein it has been observed that grant of bail though discretionary, calls for exercise of such discretion in a judicious manner.

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. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the

1. (2002) 3 SCC 598 matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

15. Lastly, it is also contended that all the remaining accused, i.e., Accused No. 1,2,3,4,5,7,9 & 10, whose bails were subsequently cancelled by the High Court and this Court, have not surrendered as

yet. On the contrary, they have been threatening the appellant as well as other eye-witnesses involved in the trial.

Contentions made by Accused No 6: Respondent No. 1 in S.L.P (Crl.) No. 27 of 2022

16. Accused No.6 contends that the Appellant is well aware that the said accused actually had no role in the offence, and that he was named in the FIR merely out of personal animosity. That the said accused, was merely trying to separate the people involved in the act. However, upon his failure to do so, he simply moved away from the group.

17. It is further contended that this court in case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.2, has reiterated that the basic rule behind bail jurisprudence is to grant bail and not jail. That there is no material on record to suggest that the present accused participated in the commission of the alleged offence. Even the allegation of instigation is hollow and cannot be proved.

Contentions made by Accused No 8: Respondent No. 1 in S.L.P (Crl.) No. 1242 of 2022

18. Accused No.8 contends that his name was only added to the FIR by way of a subsequent statement made by the appellant under section 161 Cr.P.C. and that the appellant herein, has merely become tool at the hands of CW-2 i.e. Badrul Muneer and his family.

2. (2021) 2 SCC 427

19. It is further contended that the Appellant has made omnibus and sweeping allegations against the answering respondent in the present SLP which are contrary to the material on record.

20. The accused Respondent has further referred to various judgments of this court to emphasize that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail. It is also stated that bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it inconducive to allow fair trial.

(See Daulat Ram and Others v. State of Haryana (1995) 1 SCC 349, State (Delhi Admn) v. Sanjay Gandhi (1978) 2 SCC 411, Kashmira Singh v. Duman Singh (1996) 4 SCC 693, CBI v. Subramani Gopalkrishnan (2011) 5 SCC 296, X v. State of Telangana (2020) 16 SCC 511) Analysis

21. Having perused the relevant facts and contentions made by the Appellant and the Respondents herein, in our considered opinion, the key issue which requires determination in the instant case is whether the High Court has exercised its discretion in a mechanical manner i.e., whether the impugned orders of the High Court have over-looked established principles, while exercising discretion to enlarge both the accused on bail.

22. Before we undertake an analysis of the nature of material available against the accused Respondents, it is pertinent to address the contention raised by Accused No. 8 emphasizing that cogent and overwhelming circumstances are necessary for an order directing cancellation of bail.

Further, cancellation of bail is contingent upon supervening circumstances which might render it difficult to hold a fair trial.

23. Indeed, it is a well-established principle that once bail has been granted it would require overwhelming circumstances for its cancellation. However, this Court in its judgment in *Vipan Kumar Dhir Vs. State of Punjab and Anr.* 3 has also reiterated, that while conventionally, certain supervening circumstances impeding fair trial must develop after granting bail to an accused, for its cancellation by a superior court, bail, can also be revoked by a superior court, when the previous court granting bail has ignored relevant material available on record, gravity of the offence or its societal impact. It was thus observed:-

“9. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non conducive to fair trial, making it necessary to cancel the bail. This Court in *Daulat Ram and Others Vs. State of Haryana* observed that:

“Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent

3. 2021 SCC OnLine SC 854 and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) 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. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, 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 the trial.”

10. These principles have been reiterated time and again, more recently by a 3 Judge Bench of this Court in *X Vs. State of Telangana and Another*.

11. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system...”

24. Earlier also this Court, in case of Ram Govind Upadhyay Vs. Sudarshan Singh and Others⁴ has observed:

“9.Undoubtedly, considerations applicable to the grant of bail and considerations for cancellation of such an order of

4. (2002) 3 SCC 598 bail are independent and do not overlap each other, but in the event of non- consideration of considerations relevant for the purpose of grant of bail and in the event an earlier order of rejection available on the records, it is a duty incumbent on to the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago....”

25. Similarly, in the case of Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr.⁵, it has been observed:

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor (supra), a Division Bench of this Court, of which one of us (D.K. Jain,

5. (2010) 14 SCC 496 J.) was a member, observed as follows: "Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence." (2005) 8 SCC 21 (2001) 4 SCC 280 (2002) 3 SCC 598 (See also: State of Maharashtra Vs. Ritesh⁵; Panchanan Mishra Vs. Digambar Mishra & Ors.⁶; Vijay Kumar Vs. Narendra & Ors.⁷; Anwari Begum Vs. Sher Mohammad & Anr⁸)”

26. Thus, while considering cancellation of bail already granted by a lower court, would indeed require significant scrutiny at the instance of superior court, however, bail when granted can always be revoked if the relevant material on record, gravity of the offence or its societal impact have not been considered by the lower court. In such instances, where bail is granted in a mechanical manner, the order granting bail is liable to be set aside. Moreover, the decisions cited herein above, enumerate certain basic principles which must be borne in mind when deciding upon an application for grant of bail. Thus, while each case has its own unique factual matrix, which assumes a significant role in determination of bail matters, grant of bail must also be exercised by having regard to the above-mentioned well-settled principles.

27. Coming to the instant factual matrix, having gone through the impugned orders passed by the High Court granting bail to Accused No. 6 and Accused No. 8, the two accused Respondents herein, we find the High Court has mainly released them on the ground that there were no prima-facie materials available against them and that no specific overt-act had been attributed to them.

28. However, a perusal of the charge sheet and other material available on record, particularly the statements of all the eye-witnesses, clearly indicates that Accused No. 2 to 10 on the basis of a conspiracy hatched by Accused No. 1, had assaulted CW-2 (Badrul Munner), and CW-3 (Hiyaz). Subsequently, upon seeing the Badrul Munner and Hiyaz, being brutally assaulted by the said Accused No. 2 to 10, as the deceased Abdul Lathif intervened, he was chased down by all the said accused, and murdered.

29. Here it becomes pertinent to mention that the statement of more than fifteen witnesses suggests that all the accused had assaulted the said injured witnesses and deceased, Abdul Lathif pursuant to a common object. Furthermore, medical opinion and Forensic Science Laboratory (FSL) report also corroborate the weapons used by the accused, as mentioned by the witnesses in their statements.

30. As far as attribution of specific acts against the accused Respondents is concerned, it becomes amply clear from the statement of all the witnesses that Accused No. 6 and 8 have indeed participated in assaulting the deceased. Furthermore, as the accused group continued its assault, Accused No. 6, instigated them by saying that this wasn't enough. Thereafter, as perused from the statement of the complainant/appellant herein, Accused No. 8 who came on a motorcycle had also brutally beaten the deceased with a wooden stick. In addition to these statements, there is enough evidence to indicate that a heinous offence was committed in furtherance of a common objective, and therefore the accused Respondents should not have been enlarged on bail.

31. The High Court while granting bail to the accused Respondents, thus failed to consider the nature of accusations and relevant evidentiary material against them.

32. This court in the case of Neeru Yadav Vs. State of U.P. & Anr.,⁶ has also reiterated that:

“11. It is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of

tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge.”

6. (2016) 15 SCC 422

33. Applying the ratio of the decisions of this court referred to above to the facts of the case in hand, we have no hesitation in observing that the High Court erred in not considering the basic principles for grant of bail, well established by various judicial pronouncements. The High Court lost sight of the fact that there exists sufficient material against the accused Respondents herein, so as to establish a prima facie case against them.

34. Another important fact to be taken note of is that initially, bail granted to Accused No. 2,3,4,7,9 & 10 by the High Court was cancelled by the High Court itself. The said order has been confirmed by this Court vide order dated 20.10.2021 in SLP (Crl.) No. 7586-7592 of 2021. The bail granted to Accused No. 1, has also been cancelled by this Court vide order dated 11.02.2022 in Criminal Appeal No. 79/2022.

35. In view of the above facts and for the reasons stated herein above, impugned orders dated 08.02.2021 and 19.10.2020 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 6052/2020 and Criminal Petition No. 3902/2020, releasing the Accused No. 6 and 8 on bail, are set aside. Respondents-accused are directed to surrender before the trial court within a period of two weeks from today failing which they shall be taken into police custody for the said purpose.

36. The observations made herein are limited to present proceedings and would not be construed as expression of any opinion by us, on the merit of the case.

37. As a result, the appeals stand allowed on the aforesaid terms.

.....CJI.

(N.V. RAMANA)J. (KRISHNA MURARI)J. (HIMA KOHLI) NEW DELHI;

APRIL 22, 2022