State Of Bihar vs Rajballav Prasad @ Rajballav Pd. Yadav @ ... on 24 November, 2016

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Bench: Abhay Manohar Sapre, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1141 OF 2016

STATE OF BIHAR	.....APPELLANT(S)
VERSUS	
RAJBALLAV PRASAD @ RAJBALLAV PD. YADAV @ RAJBALLABH YADAV	.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Respondent herein is facing trial in Mahila Police Station Case No. 15 of 2016, wherein he is charged for committing offences under Sections 376, 420/34, 366-A, 370, 370-A, 212, 120-B of the Indian Penal Code, Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short) as well as Sections 4, 5 and 6 of the Immoral Traffic Act, 1956. He is one of the co-accused in the said trial. FIR in this behalf was registered on the basis of written complaint of the prosecutrix Preeti Kumari (minor) on 09.02.2016. During investigation, the respondent was identified as the main accused having committed the rape on the said minor. However, since at that

time, he was allegedly absconding, the trial court issued process under Section 82 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) and thereafter on 27.07.2006 issued process under Section 83 against the respondent. At that stage, apprehending his imminent arrest, the respondent surrendered before the trial court on 10.03.2016 and was taken into custody. After conclusion of the investigation, chargesheet in the case was filed on 20.04.2016 and the charges were framed on 06.08.2016.

Pending trial, the respondent filed bail application before the learned Additional Sessions Judge which was heard and dismissed by the trial court vide order dated 30.05.2016. Obviously, dissatisfied with this dismissal order, the respondent approached the High Court for grant of bail which came up for hearing before the High Court on 27.07.2016. However, permission was sought to withdraw the said bail application and accepting this request, the bail petition was dismissed as withdrawn on 27.07.2016. Within three weeks thereafter i.e. on 19.08.2016, the respondent preferred another bail petition before the High Court. This time he has succeeded in his attempt as the High Court has, vide judgment dated 30.09.2016, directed release of the respondent on bail. Certain conditions are also imposed while granting this bail. It is the State which feels aggrieved by the impugned order granting bail to the respondent and has challenged this order in the present proceedings. Notice was issued in the SLP on 07.10.2016 for actual returnable date i.e. 17.10.2016. Thereafter, the material date of hearing is 08.11.2016 when the following order was passed:

> "We have heard learned counsel for the parties for some time.
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> In the instant case, the High Court has granted bail to the respondent herein during the pendency of the trial against the respondent who is facing the charges under Sections 376, 420/34, 366-A, 370, 370-A, 212, 120- B of the Indian Penal Code as well as the charges under Section 4, 6 and 8 of the POCSO Act, 2012. He is also facing trial for offences under Sections 4, 5 and 6 of the Immoral Traffic Act, 1956. The case is pending in the Court of Additional Sessions Judge-Ist-cum-Special Judge, Nalanda at Biharsharif. The deposition of the Prosecutrix is yet to be recorded. Without making any observation at this stage, we are of the opinion that in order to enable the Prosecutrix to give her statement fearlessly and without any pressure, it would be necessary that she deposes when the respondent is in custody. For this reason, we suspend the judgment and order dated 30th September, 2016 passed by the High Court granting bail to the respondent herein for a period of two weeks from the date the respondent is taken into custody to enable the Prosecutrix to give her evidence. We direct that the respondent shall surrender to the Trial Court tomorrow i.e. 09.11.2016 and would be taken into custody in the same manner he was facing incarceration before he was granted bail by the High Court, for a period of two weeks.
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> The Trial Court is impressed upon to start recording the evidence of the Prosecutrix immediately and endeavour to complete the same within the said period of two weeks.

We also hope and expect that the respondent shall not try to exert any pressure, directly or indirectly, upon the Prosecutrix or other prosecution witnesses.

List the matter for further directions on 23.11.2016. Dasti, in addition, is permitted." Pursuant to the aforesaid order, the respondent surrendered and period of two weeks expired yesterday i.e. on 23.11.2016 when this appeal was also finally heard. During this period, statement of prosecutrix has been recorded and she has been cross-examined as well.

Mr. Gopal Subramaniam, learned senior counsel appearing for the appellant submitted that since other witnesses remained to be examined are also material witnesses, it was necessary, in the interest of justice, that respondent remains in jail during the period of trial. He, therefore, impressed the Court to hear the appeal on merits as according to the appellant, in the facts and circumstances of this case, bail order should not have been passed by the High Court and it has committed grave illegality in passing such an order. In view thereof, we heard the matter finally and both the sides advanced detailed submissions. It was argued by Mr. Subramaniam that the impugned judgment was perverse as it did not take into consideration relevant factors which needed to be kept in mind while deciding as to whether bail is to be granted or not, even though such relevant factors were taken note of. It was further submitted that the High Court started its discussion by observing that presumption of innocence would continue to run in favour of the accused (respondent herein) until the guilt is brought home. Thereafter, it discussed the merits of the case. In the process, as per the appellant, the Court failed to satisfactorily address the pivotal and relevant considerations for grant/refusal of the bail, namely, whether the respondent was likely to influence the witnesses or the trial in case he is released on bail pending trial or whether the respondent was likely to abscond and not available for trial. The learned senior counsel argued that having regard to the background of this case, it could clearly be discerned that there was reasonable apprehension that there was a likelihood intimidating and coercing the witnesses by the respondent as not only respondent was an influential person, being MLA of the area in question, but had in fact, made such attempts in the past. Complaints were made by the prosecutrix and family members. It was also pointed out that the Court also failed to notice that on an earlier occasion, to secure his attendance, process under Section 82 of Cr.P.C. had to be initiated. Another submission of learned senior counsel was that when the first bail application was dismissed by the High Court hardly three weeks ago i.e. on 27.07.2016, there was no change in the circumstances from that date till the filing of the second bail application on 19.08.2016 in which the impugned order has been passed. Learned senior counsel also pointed out that bail application of co-accused had been refused by the High Court on 20.08.2016 and while doing so, High Court had directed to conclude the trial in terms of POCSO Act without unnecessary delay, on day to day basis.

All these aspects, according to the appellant, are conveniently bypassed by the High Court, thereby making the order vulnerable to challenge. Few judgments were cited in support of the proposition that in such a situation, this Court can interdict with the order of grant of bail.

It may also be pointed out at this stage that in the special leave petition, another ground taken to challenge the impugned order is that when earlier application was dismissed by a particular Judge of the High Court on 27.07.2016, as per the directives of this Court, second application should also have to be listed before the same Judge. However, the second application was taken by the Chief Justice himself wherein the impugned order has been passed rather than assigning it to the Judge who had passed the order on 27.07.2016. However, Mr. Subramaniam did not press this ground too hard, except submitting that propriety demanded that matter is posted before the same Judge who had passed the order on 27.07.2016 before whom the first bail application had come up for hearing.

Mr. Dushyant Dave, learned senior counsel appearing for the respondent, made a passionate plea that this special leave petition is required to be dismissed only on the ground that the appellant has taken a false plea regarding assigning bail application by the said Court to itself, rather than sending it to the same Judge who had heard first bail application. He pointed out that in the impugned order itself, it has been observed that since no decision on merit of the first bail application was taken which was dismissed as withdrawn by order dated 27.07.2016, there was no legal impediment in proceedings with the second bail application and more pertinently statement of Additional Advocate General who appeared on behalf of the State in the High Court was specifically recorded to the effect that he had no objection to the consideration of the bail of the respondent by the said Court. It is only after recording this that the bail application was taken up for hearing and order was passed. It was, thus, submitted that the State, which was supposed to act more responsibly than an individual person, had not come to the Court with clean hands and tried to prejudice this Court by suppressing the aforesaid fact while taking such a plea. Reference was made to the judgment of this Court in Rajabhai Abdul Rehman Munshi v. Vasudev Dhanjibhai Mody[1] and it was pleaded that this conduct of the appellant/State warranted that the petition be not entertained.

No doubt, there may be some substance in the aforesaid plea of Mr. Dave having regard to the fact that the Principal Additional Advocate General had himself stated before the High Court that the State had no objection for the consideration of the bail of the respondent by the concerned Court. In this backdrop, the State is not justified in challenging the order on the ground that the matter should not have been dealt with by the Chief Justice but should have been marked to the Judge who passed order on 27.07.2016 in the first bail application. May be, because of this reason, this ground of challenge is not pressed seriously by Mr. Subramaniam. In any case, we are of the opinion that in the facts and circumstances of the present case, we are not persuaded by the argument of Mr. Dave that consequence thereof should be to dismiss the special leave petition. There are at least two reasons for this observation, which are as follows:

> (i) Statement of Principal Additional Advocate General that the State had no objection for the consideration of the bail application by the said Court has been recorded in the beginning of the order itself and, therefore, question of suppression thereof does not arise. This fact was known to this Court when the SLP was

entertained and notice was issued.

Therefore, the question of misleading the Court on this count does not arise.

(ii) More importantly, the primary reason for issuing the notice in the SLP was that this Court wanted to examine, on merits, as to whether discretion exercised by the High Court under the given circumstances is appropriately exercised and it was a fit case for grant of bail to the respondent, who is an under trial. We are concerned with a criminal trial and the foremost consideration in the mind of this Court is that the trial is conducted fairly. These sentiments of the Court were expressed to Mr. Dave at the time of hearing itself.

Mr. Dave, thus, argued the case on merits also with a fervent plea that once the bail is granted by the High Court, this Court should not interfere with the discretion exercised by the High Court. It was argued that the respondent had valid reasons to file the second bail application inasmuch as in the meantime charges were framed on 06.08.2016, which is material change of circumstance.

Refuting the averments of Mr. Subramaniam, Mr. Dave further argued that after the grant of bail, the respondent had not abused the same in any manner whatsoever and there was no material that he has tried to influence the witnesses or tried to temper with the records and the observations of the High Court in this behalf in the impugned order were perfectly justified. He further submitted that once it is found that High Court had applied its mind by passing a detailed order and granted bail, such an exercise of discretion should not be interfered with by this Court in exercise of powers under Article 136 of the Constitution. In support of this proposition, he referred to many judgments gist whereof is as under:

> (i) State (Delhi Administration) v. Sanjay Gandhi[2] "13. Rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. The fact that prosecution witnesses have turned hostile cannot by itself justify the inference that the accused has won them over..."
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> (ii) Bhagirathsinh v. State of Gujarat[3] "7. In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge.

One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very

cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

(iii) Bihar Legal Support Society v. Chief Justice of India and another[4] "3. The question whether special leave petitions against refusal of bail or anticipatory bail should be listed immediately or not is a question within the administrative jurisdiction of the Chief Justice and we cannot give any direction in that behalf. But, we may point out that every petitioner who files a special leave petition against (sic refusal) of bail or anticipatory bail has an opportunity of mentioning his case before the learned Chief Justice in his administrative capacity for urgent listing and wherever a case deserves urgent listing, the Chief Justice makes an appropriate order for urgent listing. It may, however, be pointed out that this Court was never intended to be a regular court of appeal against orders made by the High Court or the sessions court or the Magistrates. It was created as an Apex Court for the purpose of laying down the law for the entire country and extraordinary jurisdiction for granting special leave was conferred upon it under Article 136 of the Constitution so that it could interfere whenever it found that law was not correctly enunciated by the lower courts or tribunals and it was necessary to pronounce the correct law on the subject. This extraordinary jurisdiction could also be availed by the Apex Court for the purpose of correcting grave miscarriage of justice, but such cases would be exceptional by their very nature...".

We have given our earnest consideration to the submissions of the counsel on either side.

We may observe at the outset that we are conscious of the limitations which bind us while entertaining a plea against grant of bail by the lower court, that too, which is a superior court like High Court. It is expected that once the discretion is exercised by the High Court on relevant considerations and bail is granted, this Court would normally not interfere with such a discretion, unless it is found that the discretion itself is exercised on extraneous considerations and/or the relevant factors which need to be taken into account while exercising such a discretion are ignored or bypassed. In the judgments relied upon by the learned counsel for the respondent, which have already been noticed above, this Court mentioned the considerations which are to be kept in mind while examining as to whether order of bail granted by the court below was justified. There have to be very cogent and overwhelming circumstances that are necessary to interfere with the discretion in granting the bail. These material considerations are also spelled out in the aforesaid judgments, viz. whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with the evidence. We have kept these very considerations in mind while examining the correctness of the impugned order.

We may also, at this stage, refer to the judgment in the case of Puran v. Rambilas & Anr.[5], wherein principles while dealing with application for bail as well as petition for cancellation of bail were

delineated and elaborated. Insofar as entertainment of application for bail is concerned, the Court pointed out that reasons must be recorded while granting the bail, but without discussion of merits and demerits of evidence. It was clarified that discussing evidence is totally different from giving reasons for a decision. This Court also pointed out that where order granting bail was passed by ignoring material evidence on record and without giving reasons, it would be perverse and contrary to the principles of law. Such an order would itself provide a ground for moving an application for cancellation of bail. This ground for cancellation, the Court held, is different from the ground that the accused misconducted himself or some new facts call for cancellation.

The present case falls in the former category as the appellant is not seeking cancellation of bail on the ground that the respondent misconducted himself after the grant of bail or new facts have emerged which warrant cancellation of bail. That would be a case where conduct or events based grant of bail are to be examined and considered. On the other hand, when order of grant of bail is challenged on the ground that grant of bail itself is given contrary to principles of law, while undertaking the judicial review of such an order, it needs to be examined as to whether there was arbitrary or wrong exercise of jurisdiction by the Court granting bail. If that be so, this Court has power to correct the same.

Keeping in view the aforesaid consideration, we proceed to discuss this matter.

It is a matter of record that when FIR was registered against the respondent and on the basis of investigation he was sought to be arrested, the respondent had avoided the said arrest. So much so, the prosecution was compelled to file an application under Section 82 of Cr.P.C. before the trial court and the trial court even initiated the process under Section 83 of Cr.P.C. At that stage only that the respondent surrendered before the trial court and was arrested.

The respondent's application was dismissed by the Additional Sessions Judge vide orders dated 30.05.2016. While passing this order of rejection, the trial court was persuaded by the submission of the Prosecutor that direct and specific allegations had been levelled against the respondent of committing rape upon the victim minor girl and he was identified by the victim during the course of investigation while he was walking in the P.O. House. It was also noted that prayer for bail of co-accused Sandeep Suman @ Pushpanjay had already been rejected and the case of the respondent was on graver footing and also that the respondent had a long criminal diary, as would be evident from the Case Diary produced before the Court.

It has also come on record that the prosecutrix had her family members made representations claiming that the respondent is threatening the family members of the prosecutrix. So much so, having regard to several complaints of intimidation of witnesses made on behalf of the prosecutrix and her family members, the State administration has deputed a force of 1+4 for the safety and security of the prosecutrix and her family.

In spite of the aforesaid material on record, the High Court has made casual and cryptic remarks that there is no material showing that the accused had interfered with the trial by tampering evidence. On the other hand, it has discussed the merits of the case/evidence which was not called

for at this stage. No doubt, in a particular case if it appears to the court that the case foisted against the accused is totally false, that may become a relevant factor while considering the bail application. However, it can be said at this stage that the present case falls in this category. That would be a matter of trial. Therefore, the paramount consideration should have been as is pointed out above, whether there are any chances of the accused person fleeing from justice or reasonable apprehension that the accused person would tamper with the evidence/trial if released on bail. These aspects are not dealt with by the High Court appropriately and with the seriousness they deserved. This constitutes a sufficient reason for interfering with the exercise of discretion by the High Court.

The High Court also ignored another vital aspect, namely, while rejecting the bail application of co-accused, the High Court had ordered expeditious, nay, day-to-day trial to ensure that the trial comes to an end most expeditiously. When order had already been passed to fast-track the trial, and the application for bail by co-accused Sandeep Suman @ Pushpanjay was also rejected, the High Court, while considering the bail application of the respondent, was supposed to take into consideration this material fact as well. Further, while making a general statement of law that the accused is innocent, till proved guilty, the provisions of Section 29 of POCSO Act have not been taken into consideration, which reads follows:

> "29. Presumption as to certain offence: Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved." Keeping in view all the aforesaid considerations in mind, we are of the opinion that it was not a fit case for grant of bail to the respondent at this stage and grave error is committed by the High Court in this behalf. We would like to reproduce following discussion from the judgment in the case of Kanwar Singh Meena v. State of Rajasthan & Anr.[6]:
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> "10...While cancelling bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved

in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this court are much wider, this court is equally guided by the above principles in the matter of grant or cancellation of bail.

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18. Taking an overall view of the matter, we are of the opinion that in the interest of justice, the impugned order granting bail to the accused deserves to be quashed and a direction needs to be given to the police to take the accused in custody..." As indicated by us in the beginning, prime consideration before us is to protect the fair trial and ensure that justice is done. This may happen only if the witnesses are able to depose without fear, freely and truthfully and this Court is convinced that in the present case, that can be ensured only if the respondent is not enlarged on bail. This importance of fair trial was emphasised in Panchanan Mishra v. Digambar Mishra & Ors.[7] while setting aside the order of the High Court granting bail in the following terms:

"13. We have given our careful consideration to the rival submissions made by the counsel appearing on either side. The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its purpose and significance to the greatest prejudice and the interest of the prosecution. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation." Such sentiments were expressed much earlier as well by the Court in Talab Haji Hussain v. Madhukar Purshottam Mondkar & Ors.[8] in the following manner:

"6...There can be no more important requirement of the ends of justice than the uninterrupted progress of a fair trial; and it is for the continuance of such a fair trial that the inherent powers of the High Courts are sought to be invoked by the prosecution in cases where it is alleged that accused persons, either by suborning or intimidating witnesses, are obstructing the smooth progress of a fair trial. Similarly, if an accused person who is released on bail jumps bail and attempts to run to a foreign country to escape the trial, that again would be a case where the exercise of the inherent power would be justified in order to compel the accused to submit to a fair trial and not to escape its consequences by taking advantage of the fact that he has been released on bail and by absconding to another country. In other words, if the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can be

effectively used against the accused person, in such a case the inherent power of the High Court can be legitimately invoked..." We are conscious of the fact that the respondent is only an under-trial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trail of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer. This is so beautifully captured by this Court in Masroor v. State of Uttar Pradesh & Anr.[9] in the following words:

"15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan [(1987) 2 SCC 684] are quite apposite: (SCC p. 691, para 6) "6... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution."" This very aspect of balancing of two interests has again been discussed lucidly in Neeru Yadav v. State of Uttar Pradesh & Anr.[10] in the following words:

"16. The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the second respondent? We are not oblivious of the fact that liberty is a priceless treasure for a human being. It is founded on the bedrock of the constitutional right and accentuated further on the human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilised society. It is

> a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilised. Deprivation of liberty of a person has enormous impact on his mind as well as body. A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law.
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> 17. Coming to the case at hand, it is found that when a stand was taken that the second respondent was a history-sheeter, it was imperative on the part of the High Court to scrutinise every aspect and not capriciously record that the second respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order [Mitthan Yadav v. State of U.P., Criminal Misc. Bail Application No. 31078 of 2014, decided on 22-9-

2014 (All)] clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the second respondent has been charge-sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside." In Ramesh & Ors. v. State of Haryana[11], which was decided only two days ago i.e. on 22.11.2016, this Court discussed the problem of witnesses turning hostile, and if that is for wrong reasons, observed that it affects the very fabric of criminal justice delivery system. We would like to reproduce following passages therefrom:

> "40. On the analysis of various cases, following reasons can be discerned which make witnesses retracting their statements before the Court and turning hostile:
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> "(i) Threat/intimidation.
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> (ii) Inducement by various means.
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> (iii) Use of muscle and money power by the accused.
>
> (iv) Use of Stock Witnesses.

(v) Protracted Trials.

(vi) Hassles faced by the witnesses during investigation and trial.

(vii) Non-existence of any clear-cut legislation to check hostility of witness."

41. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: "witnesses are the eyes and ears of justice". When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in Zahira Habibullah's case as well.

42. Justifying the measures to be taken for witness protection to enable the witnesses to depose truthfully and without fear, Justice Malimath Committee Report on Reforms of Criminal Justice System, 2003 has remarked as under:

"11.3 Another major problem is about safety of witnesses and their family members who face danger at different stages. They are often threatened and the seriousness of the threat depends upon the type of the case and the background of the accused and his family. Many times crucial witnesses are threatened or injured prior to their testifying in the court. If the witness is still not amenable he may even be murdered. In such situations the witness will not come forward to give evidence unless he is assured of protection or is guaranteed anonymity of some form of physical disguise...Time has come for a comprehensive law being enacted for protection of the witness and members of his family."

43. Almost to similar effect are the observations of Law Commission of India in its 198th Report (Report on 'witness identity protection and witness protection programmes'), as can be seen from the following discussion therein:

"The reason is not far to seek. In the case of victims of terrorism and sexual offences against women and juveniles, we are dealing with a section of society consisting of very vulnerable people, be they victims or witnesses. The victims and witnesses are under fear of or danger to their lives or lives of their relations or to their property. It is obvious that in the case of serious offences under the Indian Penal code, 1860 and other special enactments, some of which we have referred to above, there are bound to be absolutely similar situations for victims and witnesses. While in the case of certain offences under special statutes such fear or danger to victims and witnesses

may be more common and pronounced, in the case of victims and witnesses involved or concerned with some serious offences, fear may be no less important. Obviously, if the trial in the case of special offences is to be fair both to the accused as well as to the victims/witnesses, then there is no reason as to why it should not be equally fair in the case of other general offences of serious nature falling under the Indian Penal Code, 1860. It is the fear or danger or rather the likelihood thereof that is common to both cases. That is why several general statutes in other countries provide for victim and witness protection." No doubt, the prosecutrix has already been examined. However, few other material witnesses, including father and sister of the prosecutrix, have yet to be examined. As per the records, threats were extended to the prosecutrix as well as her family members. Therefore, we feel that the High Court should not have granted bail to the respondent ignoring all the material and substantial aspects pointed out by us, which were the relevant considerations.

For the foregoing reasons, we allow this appeal thereby setting aside the order of the High Court. In case the respondent is already released, he shall surrender and/or taken into custody forthwith. In case he is still in jail, he will continue to remain in jail as a consequence of this judgment.

Before we part with, we make it clear that this Court has not expressed any observations on the merits of the case. Whether the respondent is guilty or not, of the charges framed against him, will be decided by the trial court on its own merits after analysing the evidence that surfaces on record during the trial.

.....J. (A.K. SIKRI) .....J. (ABHAY MANOHAR SAPRE) NEW DELHI;

NOVEMBER 24, 2016.

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[1] (1964) 3 SCR 480 [2] (1978) 2 SCC 411 [3] (1984) 1 SCC 284 [4] (1986) 4 SCC 767 [5] (2001) 6 SCC 338 [6] (2012) 12 SCC 180 [7] (2005) 3 SCC 143 [8] 1958 SCR 1226 [9] (2009) 14 SCC 286 [10] (2014) 16 SCC 508 [11] Criminal Appeal No. 2526 of 2014 decided on November 22, 2016