Manoj Kumar Khokhar vs The State Of Rajasthan on 11 January, 2022

Author: B.V. Nagarathna

Bench: B.V. Nagarathna, M.R. Shah

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.36 OF 2022
(ARISING OUT OF SLP(CRL.) NO.4062 OF 2020)

MANOJ KUMAR KHOKHAR ….APPELLANT(S)

VERSUS

STATE OF RAJASTHAN & ANR. ….RESPONDENT(S)

JUDGMENT

NAGARATHNA J.

This appeal has been preferred by the informant-appellant assailing Order dated 7th May, 2020 passed by the High Court of Judicature of Rajasthan, at Jaipur, in S.B. Criminal Miscellaneous Bail Application No. 3601/2020, whereby bail has been granted to the accused who is the second respondent in the instant appeal, in connection with FIR No. 407/2019 Police Station Kalwar. Ram Swaroop Khokhar and is the person who lodged the First Information Report being FIR No. 407/2019 on 8 th December, 2019 for the offence of murder of his father, under Section 302 of the Indian Penal Code, 1980 (hereinafter referred to as "IPC" for the sake of brevity) against the second respondent-accused herein viz. Ram Narayan Jat.

3. The said FIR dated 8th December, 2019 had been lodged by the appellant herein between 23:00 hrs and 23:30 hrs in the night stating that earlier on that day, at about 16:00 hrs, his father, aged about 55 years, was attacked by the respondent-accused, at the Lalpura Pachar bus stand, with the intention of killing him. That the respondent-accused pinned the deceased to the ground, sat on his chest and forcefully strangled him, thereby causing his death. Some associates of the respondent-accused who were present at the spot of the incident, helped him in attacking and killing the deceased. The informant-appellant further stated in the FIR that there was a pre-existing rivalry

between the respondent-accused, his brothers namely, Arjun, Satyanarayn and Okramal and the deceased. That the deceased had previously informed the appellant and certain family members about such rivalry and had communicated that he was apprehensive about his safety owing to the same. That even on the day of the incident, the respondent-accused along with one of his brothers, Okramal had gone to the appellant's house in the morning and had abused the deceased. The report of the post-mortem examination conducted on 9th December, 2019 has recorded that the deceased had died as a result of "asphyxia due to ante mortem strangulation."

4. The respondent-accused was arrested in connection with the said FIR No. 407/2019 on 10 th December, 2019 and was sent to judicial custody. The respondent-accused remained under judicial custody for a period of nearly one year and five months till he was granted bail by the High Court vide impugned order.

5. A charge sheet was submitted by the police before the Court of the Additional Metropolitan Magistrate, Jaipur after conducting an investigation in relation to the aforesaid FIR. The Additional Metropolitan Magistrate by Order dated 12 th March, 2020 took cognizance of the offence and committed the case to the District and Sessions Court for trial and adjudication.

6. The respondent-accused had earlier preferred applications seeking bail, under Section 437 of the Code of Criminal Procedure, 1973 (for short, the "CrPC") before the Court of Additional Metropolitan Magistrate No.9, Jaipur Metropolitan, Jaipur, on two occasions. The same came to be rejected by orders dated 23rd January, 2020 and 6th March, 2020. The accused had also preferred a bail application under Section 439 of the CrPC which was rejected by the Additional Sessions Judge No.5, Jaipur Metropolitan by order dated 12 th March, 2020 having regard to the gravity of the offences alleged against the accused. The respondent-accused preferred another bail application before the High Court and by the impugned order dated 7th May, 2020, the High Court has enlarged him on bail. Being aggrieved by the grant of bail to the respondent-accused, the informant-appellant has preferred the instant appeal before this Court.

7. We have heard Sri. Basant R., learned Senior Counsel for the appellant and Sri. Aditya Kumar Choudhary, learned Counsel for respondent-accused and have perused the material on record.

8. Learned Senior Counsel for the appellant submitted that the deceased had been elected in 2015 as the Deputy Sarpanch of Mandha Bhopawaspachar village, Jhotwara Tehsil, Jaipur, Rajasthan. That he was elected to such post despite opposition from the accused and his family. That the family of the accused exercised significant influence in the village and were trying to dissuade the deceased from contesting the election to the post of Sarpanch, to be held in February 2020. Owing to such political enmity, the respondent-accused along with his brothers Arjun, Satyanarayn and Okramal had gone to the appellant's house in the morning on 8th December, 2019 and abused the deceased and later on the same day, the deceased was killed. According to the appellant, the deceased was suffering from 54% permanent physical impairment of both his legs and had therefore been overpowered by the respondent-accused who had pinned him to the ground, sat on his chest and throttled his neck, resulting in his death.

9. Further it was urged that the High Court has not exercised its discretion judiciously in granting bail to the respondent□accused. That the High Court has not taken into consideration the gravity of the offence alleged and the grave manner in which the offence was committed against a person incapable of defending himself owing to physical impairment.

10. It was submitted that the factum of previous enmity between the family of the accused and the deceased has not been taken into consideration by the High Court in the context of the allegations against the accused with regard to the grant of bail. That the possibility of respondent□accused, a person exercising high political influence in Bhopawaspachar village, absconding or threatening the witnesses or the family of the deceased, thereby having a bearing on the trial, if released on bail could not be ruled out. That the police were initially reluctant to even register an FIR against the respondent□accused. In fact, the accused was arrested by the police on 10th December, 2019 only as a result of the protest (dharna) carried out by the family members of the deceased outside the police station. It was contended that the accused, being a very influential person in the village, could influence the course of trial by tampering with evidence and influencing the witnesses.

According to the learned Senior Counsel for the appellant, the High Court has not assigned reasons for grant of bail in the instant case wherein commission of a heinous crime has been alleged against the accused, for which, the accused, if convicted, could be sentenced to life imprisonment or even death penalty. That the High Court in a very cryptic order, de hors any reasoning has granted bail to the respondent□accused. It was urged that the grant of bail to the respondent□accused was contrary to the settled principles of law and the judgments of this Court. It was submitted on behalf of the appellant, who is the son of the deceased, that this appeal may be allowed by setting aside the impugned order.

11. In support of his submissions, learned Senior Counsel for the appellant placed reliance on certain decisions of this Court which shall be referred to later.

12. Per contra, Sri. Aditya Kumar Choudhary, learned counsel for respondent□accused submitted that the impugned order does not suffer from any infirmity warranting any interference by this Court. That the informant□appellant has narrated an untrue version of events in order to falsely implicate the accused. Existence of past enmity between the families of the deceased and the accused has been categorically denied. It has been stated that the two families maintained cordial relations, which fact is evidenced by the findings in the charge sheet dated 7 th February 2020, which records that the deceased and the respondent□accused belonged to the same village and they used to play cards together at the Lalpura bus stand every day since their retirement and there is no evidence which is suggestive of enmity between them. That the sudden scuffle between the deceased and the accused on 8th December, 2019 was an isolated incident and was not in connection with or in continuation of any pre□existing dispute between them.

It was further submitted that there was a considerable and unexplained delay by the informant□ appellant in lodging the FIR which is proof of the fact that the same was lodged as an afterthought and therefore does not bring out the true narration of facts. In support of his submission as to the false nature of the appellent's version of the incident, learned counsel for the respondent□accused

has relied on the statements of the eye-witnesses to the incident stating that there was a sudden scuffle between the deceased and the respondent-accused on the date of the incident and the accused throttled the neck of the deceased. After being separated, the deceased sat on a bench in the bus-stop but later became unconscious and was immediately taken to the hospital where he died. It has further been stated by an eye-witness, namely, Mangalchand that the brothers of accused were not present at the time of the incident.

Learned counsel for the respondent-accused referred to Niranjan Singh and Anr. vs. Prabhakar Rajaram Kharote and Ors, [1980] 2 SCC 559 to contend that a court deciding a bail application should avoid elaborate discussion on merits of the case as detailed discussion of facts at a pre-trial stage is bound to prejudice fair trial.

Further, learned counsel for the respondent-accused submitted that the investigation in relation to FIR No. 407/2019 is complete in all respects and charge sheet has been submitted. Therefore, there arises no question as to influencing any witness or tampering with the evidence. That the accused has deep roots in society and will therefore not attempt to abscond. Also, the accused has no criminal antecedents and the incident in question occurred as a result of a sudden scuffle and therefore, prima facie, offence under section 300 of the IPC has not been made out against the accused. Hence, the impugned order granting bail to the respondent-accused does not call for interference by this Court.

13. Having regard to the contention of Sri. Basant R., learned Senior Counsel for the informant-appellant that the impugned order granting bail to the respondent-accused is bereft of any reasoning and that such order is casual and cryptic, we extract the portion of the impugned order dated 7th May, 2020 passed by the High Court which is the "reasoning" of the Court for granting bail, as under:

> "I have considered the submissions and perused the challan papers and the post-mortem report, but without expressing any opinion on the merits and demerits of the case, I deem it appropriate to enlarge the accused-petitioner on bail.
>
> Therefore, this bail application is allowed and it is directed that accused-petitioner namely, Ram Narayan Jat S/o Shri Bhinva Ram shall be released on bail under section 439 Cr.P.C. in connection with aforesaid FIR, provided he furnishes a personal bond in the sum of Rs. 50,000/-together with one surety in the like amount to the satisfaction of the concerned Magistrate with the stipulation that he shall comply with all the conditions laid down under Section 437 (3) Cr.P.C."

14. Before proceeding further, it would be useful to refer to the judgments of this Court in the matter of granting bail to an accused as under:

> a) In Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh -(1978) 1 SCC 240, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial,

has laid down the key factors that have to be considered while granting bail, which are extracted as under:

"7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance."

b) In Prahlad Singh Bhati vs. NCT of Delhi & ORS – (2001) 4 SCC 280 this Court highlighted the aspects which are to be considered by a court while dealing with an application seeking bail. The same may be extracted as follows:

"The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing"

instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

c) This Court in Ram Govind Upadhyay vs. Sudarshan Singh – (2002) 3 SCC 598, speaking through Banerjee, J., emphasized that a court exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail cannot be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows:

"3. 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 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 to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

d) In Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr. – (2004) 7 SCC 528, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail.

e) In Prasanta Kumar Sarkar vs. Ashis Chaterjee □□(2010) 14 SCC 496 this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non□application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under:

"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."

f) Another factor which should guide the courts' decision in deciding a bail application is the period of custody.

However, as noted in Ash Mohammad vs. Shiv Raj Singh @ Lalla Bahu & Anr. – (2012) 9 SCC 446, the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the acused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail.

g) In Neeru Yadav vs. State of UP & Anr. – (2016) 15 SCC 422, after referring to a catena of judgments of this Court on the considerations to be placed at balance while deciding to grant bail, observed through Dipak Misra, J. (as His Lordship then was) in paragraphs 15 and 18 as under:

> "15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history□sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.
>
> xxx
>
> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances.

The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

h) In Anil Kumar Yadav vs. State (NCT of Delhi) – (2018) 12 SCC 129, this Court, while considering an appeal from an order of cancellation of bail, has spelt out some of the significant considerations of which a court must be mindful, in deciding whether to grant bail. In doing so, this Court has stated that while it is not possible to prescribe an exhaustive list of considerations which are to guide a court in deciding a bail application, the primary requisite of an order granting bail, is that it should result from judicious exercise of the court's discretion. The findings of this Court have been extracted as under:

> "17. While granting bail, the relevant considerations are: (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v)

likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court."

i) In Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana (Koli) and Ors., (2021) 6 SCC 230 this Court after referring to a catena of judgments emphasized on the need and importance of assigning reasons for the grant of bail. This Court categorically observed that a court granting bail could not obviate its duty to apply its judicial mind and indicate reasons as to why bail has been granted or refused. The observations of this Court have been extracted as under:

"35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties "do not press for a further reasoned order". The grant of bail is a matter which implicates the liberty of the Accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application Under Section 439 of the Code of Criminal Procedure would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the Accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the "respective parties do not press for further reasoned order". If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. Grant of bail Under Section 439 of the Code of Criminal Procedure is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail as in the case of any other discretion which is vested in a court as a judicial institution is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice."

j) Recently in Bhoopendra Singh vs. State of Rajasthan & Anr. (Criminal Appeal No. 1279 of 2021), this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail. i.e. this Court distinguished between setting aside a perverse order granting bail vis□a□vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting Mahipal vs. Rajesh Kumar □(2020) 2 SCC 118, this Court observed as under:

"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."

k) Learned counsel for the accused□respondent has relied upon the decision of this Court in Myakala Dharmarajam and Ors. vs. The State of Telangana and Ors. – (2020) 2 SCC 743 to contend that elaborate reasons need not be assigned for the grant of bail. What is of essence is that the record of the case ought to have been perused by the court granting bail. The facts of the said case are that a complaint was lodged against fifteen persons for offences under Sections 148, 120B, 302 read with Section 149 of the Indian Penal Code, 1860. The accused therein moved an application seeking bail before the Principal Sessions Judge, who, after perusal of the case diary, statements of witnesses and other connected records, released the accused on bail through an order which did not elaborately discuss the material on record.

The High Court cancelled the bail bond on the ground that the Principal Sessions Judge had not discussed the material on record in the order granting bail. In an appeal preferred by the accused before this Court, the order granting bail was restored and the following observations were made as to the duty of the court to record reasons and discuss the material on record before granting bail:

"10. Having perused the law laid down by this Court on the scope of the power to be exercised in the matter of cancellation of bails, it is necessary to examine whether the order passed by the Sessions Court granting bail is perverse and suffers from infirmities which has resulted in the miscarriage of justice. No doubt, the Sessions Court did not discuss the material on record in detail, but there is an indication from the orders by which bail was granted that the entire material was perused before grant of bail. It is not the case of either the complainant□Respondent No. 2 or the State that irrelevant considerations have been taken into account by the Sessions Court while granting bail to the Appellants. The order of the Sessions Court by which the bail was granted to the Appellants cannot be termed as perverse as the Sessions

Court was conscious of the fact that the investigation was completed and there was no likelihood of the Appellant tampering with the evidence.

11. The petition filed for cancellation of bail is both on the grounds of illegality of the order passed by the Sessions Court and the conduct of the Appellants subsequent to their release after bail was granted. The complaint filed by one Bojja Ravinder to the Commissioner of Police, Karimnagar is placed on record by Respondent No. 2. It is stated in the complaint that the Appellants were roaming freely in the village and threatening witnesses. We have perused the complaint and found that the allegations made therein are vague. There is no mention about which Accused out of the 15 indulged in acts of holding out threats to the witnesses or made an attempt to tamper with the evidence.

12. After considering the submissions made on behalf of the parties and examining the material on record, we are of the opinion that the High Court was not right in cancelling the bail of the Appellants. The orders passed by the Sessions Judge granting bail cannot be termed as perverse. The complaint alleging that the Appellants were influencing witnesses is vague and is without any details regarding the involvement of the Appellants in threatening the witnesses. Therefore, the Appeals are allowed and the judgment of the High Court is set aside." However, we are of the view that the said decision is not applicable to the facts of the instant case for the following reasons:

Firstly, this Court in the aforecited decision restored the order granting bail to the accused on the ground that although no discussion was made by the Sessions Court as to the material on record, in the order granting bail, it was apparent in the order of the Sessions Court whereby bail was granted, that the decision to grant bail was arrived at after perusal of the entire material on record. While the material may not have been specifically referred to, the order granting bail was indicative of the fact that it had been arrived at after thorough consideration thereof.

However, in the instant case, no such indication can be observed in the impugned orders of the High Court which would be suggestive of the fact that the material on record was perused before deciding to grant bail.

Secondly, the case referred to by the accused concerned an offence which was allegedly committed by fifteen persons. The complainant therein had not specifically assigned roles to each of such fifteen persons. It was thus found that the allegations being vague, no prima facie case could be made out, justifying the grant of bail to the accused therein. However, in the instant case, only one accused has been named by the appellant□informant and the role attributed to him is specific. Therefore, the facts of the case relied upon, being significantly different from the one before us, we find that the judgment relied upon by the learned counsel for the respondent□ accused would be of no assistance to his case.

l) The most recent judgment of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is in the case of Brijmani Devi vs. Pappu Kumar and Anr. – Criminal Appeal No. 1663/2021 disposed of on 17th December, 2021, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order of the High Court granting bail to the accused, observed as follows:

"While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence/s alleged against an accused."

15. On the aspect of the duty to accord reasons for a decision arrived at by a court, or for that matter, even a quasi-judicial authority, it would be useful to refer to a judgment of this Court in Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors. – (2010) 9 SCC 496, wherein after referring to a number of judgments this Court summarised at paragraph 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

"(a) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(b) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(c) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(d) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(e) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(f) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(g) Insistence on reason is a requirement for both judicial accountability and transparency.

(h) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(j) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-

37)

(k) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

Though the aforesaid judgment was rendered in the context of a dismissal of a revision petition by a cryptic order by the National Consumer Disputes Redressal Commission, reliance could be placed on the said judgment on the need to give reasons while deciding a matter.

16. The Latin maxim "cessante ratione legis cessat ipsa lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself", is also apposite.

17. We have extracted the relevant portions of the impugned order above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when the case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in a conviction or, by contrast, in an acquittal while passing an order on an application for grant of bail. However, the Court deciding a bail application cannot completely divorce its decision from material aspects of

the case such as the allegations made against the accused; severity of the punishment if the allegations are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused.

18. Ultimately, the Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused on the one hand and ensuring purity of the trial of the case on the other.

19. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in Gurcharan Singh vs. State (Delhi Admn.) □1978 CriLJ 129, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima□facie case against the accused.

20. In view of the aforesaid discussion, we shall now consider the facts of the present case. The allegations against respondent□accused as well as the contentions raised at the Bar have been narrated in detail above. On a consideration of the same, the following aspects of the case would emerge:

a) The allegation against the respondent□accused is under section 302 of the IPC with regard to the murder of the deceased Ram Swaroop Khokhar, the father of the informant□appellant who was a disabled person. Thus, the offence alleged against the respondent□accused is of a grave nature.

b) The accusation against the accused is that he overpowered the deceased who was suffering from impairment of both his legs, pinned him to the ground, sat on him and throttled his neck. As per the postmortem report, the cause of death was ante□ mortem strangulation.

c) It is also the case of the appellant that the respondent□accused is a person exercising significant political influence in the Bhopawaspachar village and that owing to the same, the informant found it difficult to get an FIR registered against him. That the accused was arrested only following a protest outside a police station demanding his arrest. Thus, the possibility of the accused threatening or otherwise influencing the witnesses, if on bail, cannot be ruled out.

d) That the respondent□accused had earlier preferred applications seeking bail, under section 437 of the CrPC before the Court of the Additional Metropolitan Magistrate, Jaipur, on two occasions. The same came to be rejected by orders dated 23rd January, 2020 and 6th March, 2020. The accused had also preferred a bail application under section 439 of the CrPC which was rejected by the Additional Sessions Judge, Jaipur Metropolis by order dated 12 th March, 2020 having regard to the gravity of the offences alleged against the accused.

e) The High Court in the impugned order dated 7 th May, 2020 has not considered the aforestated aspects of the case in the context of the grant of bail.

21. Having considered the aforesaid facts of the present case in light of the judgments cited above, we do not think that this case is a fit case for grant of bail to the respondent□accused, having regard to the seriousness of the allegations against him. Strangely, the State of Rajasthan has not filed any appeal against the impugned order.

22. The High Court has lost sight of the aforesaid material aspects of the case and has, by a very cryptic and casual order, de hors coherent reasoning, granted bail to the accused. We find that the High Court was not right in allowing the application for bail filed by the respondent□accused. Hence the impugned order dated 7 th May, 2020 is set aside. The appeal is allowed.

23. The respondent accused is on bail. His bail bond stands cancelled and he is directed to surrender before the concerned jail authorities within a period of two weeks from today.

.....J M.R. SHAH .....J B.V. NAGARATHNA NEW DELHI;

11th JANUARY, 2022.