

MEENA DEVI

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v.

THE STATE OF U.P. AND ANOTHER

(Criminal Appeal No. 808 of 2022)

MAY 13, 2022

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[DR. D. Y. CHANDRACHUD AND
HIMA KOHLI, JJ.]

Code of Criminal Procedure, 1973: s 439 – Bail – Grant/ cancellation of – When – Held: Power of the High Court u/s. 439 is wide – Exercise of the said discretionary powers vested in the Court when considering grant of bail ought to be in a judicious manner and not as a matter of course – If an order is passed without proper application of mind or in contravention of directions of this court, it would be susceptible to interference – When it comes to assessing an application seeking cancellation of bail, the appellate court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief – On facts, the impugned order enlarging the accused on bail is cryptic and non-speaking demonstrated non-application of mind – High Court erred in not offering any reason, good, bad or indifferent and mechanically recorded the submissions – Thus, looking at the gravity of the offence committed by the respondent no.2 u/s. 302 and the award of life imprisonment, and also having regards to his criminal antecedents that he is a hardened criminal with several cases registered against him, the bail is cancelled.

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Disposing of the appeal, the Court

HELD: 1.1 The power to grant bail under Section 439 of the Code of Criminal Procedure, 1973 is wide ranging. Nonetheless, the exercise of the said discretionary powers vested in the Court when considering grant of bail, ought to be in a judicious manner and not as a matter of course. [Para 16][32-D]

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1.2 Ordinarily, this Court would refrain from interfering with an order passed by the High Court, either granting or rejecting

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A the relief of bail to an accused. However, wherever it is noticed that such a discretion has been exercised by the High Court without proper application of mind or in contravention of the directions issued by this Court, such an order shall be susceptible to interference. [Para 17][33-D-E]

B 1.3 The considerations that weigh with the appellate court when called upon to examine the correctness of an order granting bail is not on the same footing when it comes to examining an application moved for cancellation of bail. The yardstick for testing the correctness of an order granting bail is whether the court below has exercised its discretion in an improper or arbitrary manner thereby vitiating the said order. When it comes to assessing an application seeking cancellation of bail, the appellate court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief. [Para 21][36-C-D]

D 1.4 A glance at the impugned order passed by the High Court is to state the least, cryptic and non-speaking, amply demonstrating non-application of mind. The High Court appears to have shut its eyes to the common submissions that the respondent No.2 is a hardened criminal with several cases registered against him. List of cases registered against the accused reveals that he has faced/is still facing trial in the thirty-seven cases registered against him under the IPC, Arms Act, 1959, Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, U.P. Control of Goondas Act, 1970, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc., where the offences are grave in nature. [Para 24][39-D-F]

G 1.5 In the past decade, six cases more have been registered against the respondent No.2, The list that has been furnished to this Court by the respondent No.1-State, does not mention eleven cases that had been mentioned in the list of cases pending against the respondent no.2. If the said cases are added to the current list of thirty-seven criminal cases registered against the accused, the number of criminal cases registered against the him would swell to fifty. [Para 27][42-G-H; 43-A]

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1.6 The High Court failed to factor in the relevant material before passing an order enlarging the respondent No.2 on bail. The High Court also seriously erred in not offering any reason, good, bad or indifferent, for exercising its discretion in favour of the said respondent. There is no reference made to any particular element that persuaded the High Court to pass the impugned order granting bail to the respondent No.2. Mechanically recording the submissions made by the counsel for the accused and the complainant and noting the protest of the counsel for the State and thereafter proceeding to release the respondent No.2 on bail by pre-fixing the operative para of the order with the words “in view of the aforesaid”, can hardly reflect application of judicial mind by the Court. As an appellate court, this Court is completely at seas to discern the factors that have weighed with the High Court to enlarge the respondent No.2 on bail. [Para 28][43-B-D]

1.7 Looking at the gravity of the offence committed by the respondent No. 2 under Section 302 IPC for which he has been convicted by the trial court and awarded a sentence of life imprisonment and noting that the period of custody undergone by him is only for nine months and further, having regard to his criminal antecedents, the impugned order passed by the High Court is quashed and set aside. The bail bonds of the respondent No.2 are cancelled and he is directed to surrender forthwith. [Para 32][44-G-H; 45-A]

Ram Govind Upadhyay v. Sudarshan Singh And Others (2002) 3 SCC 598 : [2002] 2 SCR 526; Mahipal v. Rajesh Kumar Alias Polia and Another (2020) 2 SCC 118 : [2019] 14 SCR 529; Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496 : [2010] 12 SCR 1165; Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav and Another (2004) 7 SCC 528; Narendra K. Amin (Dr.) v. State of Gujarat and Another (2008) 13 SCC 584 : [2008] 6 SCR 1149; Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and Another (2012) 4 SCC 134 : [2012] 3 SCR 278; Abdul Basit Alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another (2014) 10 SCC

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- A **754 : [2014] 10 SCR 571; Neeru Yadav v. State of Uttar Pradesh and Another (2014) 16 SCC 508 : [2014] 12 SCR 453; Anil Kumar Yadav v. State (NCT of Delhi) and Another (2018) 12 SCC 129 : [2017] 11 SCR 195; Mahipal v. Rajesh Kumar alias Polia and Another (2020) 2 SCC 118 : [2019] 14 SCR 529; Jagjeet Singh and Others v. Ashish Mishra Alias Monu and Another (2022) SCC Online SC 453; Ms. Y. v. State of Rajasthan and Another (2022) SCC OnLine SC 458; Ms. P. v. State of Madhya Pradesh and Another Criminal Appeal No.740 of 2022 decided on 05.05.2022; Prakash Kadam and Others v. Ramprasad Vishwanath Gupta and Another (2011) 6 SCC 189 : [2011] 6 SCR 800; Imran v. Mohammed Bhava and Another 2022 SCC Online SC 496; Ash Mohammad v. Shiv Raj Singh alias Lalla Babu And Another (2012) 9 SCC 446 : [2012] 7 SCR 584; Puran v. Rambilas (2001) 6 SCC 338 : [2001] 3 SCR 432 - referred to.**
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Case Law Reference

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|---|--------------------|-------------|-----------------|
| | [2002] 2 SCR 526 | referred to | Para 16 |
| | [2019] 14 SCR 529 | referred to | Para 18 |
| E | [2010] 12 SCR 1165 | referred to | Para 19 |
| | (2004) 7 SCC 528 | referred to | Paras 20 and 30 |
| | [2008] 6 SCR 1149 | referred to | Para 20 |
| F | [2012] 3 SCR 278 | referred to | Para 20 |
| | [2014] 10 SCR 571 | referred to | Para 20 |
| | [2014] 12 SCR 453 | referred to | Para 20 |
| | [2017] 11 SCR 195 | referred to | Para 20 |
| G | [2019] 14 SCR 529 | referred to | Para 20 |
| | [2011] 6 SCR 800 | referred to | Para 21 |
| | [2014] 12 SCR 453 | referred to | Para 22 |
| | [2012] 7 SCR 584 | referred to | Para 26 |
| H | [2001] 3 SCR 432 | referred to | Para 29 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 808 of 2022. A

Arising Out of Petition for Special Leave To Appeal (Criminal) No. 5102 of 2019.

From the Judgment and Order dated 19.09.2018 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application Nos. 609 and 610 of 2018. B

Ms. Abha R. Sharma, Ankit Mishra, Advs. for the Appellant.

Sanjay Kumar Tyagi, Gautam Kumar, Prabhat Kumar Rai, Ajay Kumar Pandey, Mrs. Revathy Raghavan, Ms. Divya Singhvi, Advs. for the Respondents. C

The Judgment of the Court was delivered by

HIMA KOHLI, J.

1. Leave granted. D

2. This appeal is directed against the order dated 19th September, 2018 passed by the learned Single Judge of the High Court of Allahabad in Criminal Miscellaneous Bail Application No. 609 of 2018 whereunder the application filed by the respondent No. 2 under Section 439 of the Criminal Procedure Code¹ was allowed and he was enlarged on bail subject to certain conditions stipulated therein. The original complainant, wife of the deceased has preferred this appeal by way of special leave against the said order before this Court. E

3. Initially, petitions for special leave to appeal were filed against two respondents namely, Shivraj Singh alias Lalla Babu [respondent No. 2] and Sonu [respondent No. 3]. However, by an order dated 2nd July, 2019, the petition qua the respondent No. 3 was dismissed and notice was issued in respect of the second respondent while taking note of the fact that vide judgment dated 20th December, 2012, passed by this Court in Criminal Appeal No. 1416 of 2012, bail granted to the said respondent had been cancelled. As a result, Petition for Special Leave to Appeal (Crl.) No. 5103 of 2019 filed by the respondent No. 3 was disposed of. F G

4. On the basis of a complaint made by Smt. Meena Devi, wife of the deceased, FIR No. 173 of 2012 was registered at P.S. Civil Lines, District Badaun for the offence punishable under Section 302 of the

¹ For short 'the Cr.P.C.'

- A Indian Penal Code². It was stated by the appellant/complainant that when she and her husband, Narain Singh were returning home on a motorcycle in the evening of 16th June, 2012, after having visited Badaun where he was to appear in the Court in a case pending trial against the respondent No. 2 herein, four out of the five accused persons came in a Jeep, intercepted them and started firing gunshots at Narain Singh on point
- B blank range. Though the complainant's brother, Sanjeev Kumar Singh accompanied by one Hari Singh, who were following the deceased and his wife, had tried to save him and take him to the District Hospital, he succumbed to the injuries on route. The complainant stated that the dispute between the parties related to the ownership of a school namely, Janta
- C Junior High School, Madhukar Police Station, Tehsil Shahbad, where her husband was employed as the Head Master. Earlier, on 13th December, 2011, the same set of the accused persons had abducted her husband from Asafpur Railway Station, Faizganj, Behata. Respondent No. 2 who claimed ownership of the aforesaid school was instrumental in the said abduction. A case relating to the said abduction
- D was pending trial in a Court in Badaun where the deceased was the prime witness. While in detention in jail at Badaun, respondent No. 2 had hatched a conspiracy with four co-accused persons and planned to eliminate the deceased against whom he bore a grudge of having deposed against him as a witness in the kidnapping case.
- E 5. After the investigation was complete in FIR No.173 of 2012, the respondent No.2 was charged with the offence under Section 302 read with 149 and 120B IPC. Charges were framed against him and the co-accused persons on 3rd January, 2014. During the trial, respondent No.2 was admitted to bail. Vide common judgment dated 6th January,
- F 2018, the Sessions Court held the respondent No. 2 and the other co-accused persons as guilty for the offence under Section 302 read with Sections 149 and 120B IPC. Respondent No.2 was sentenced to undergo life imprisonment. Resultantly, bail granted to the respondent No. 2 and three other co-accused was cancelled.
- G 6. The role of the respondent No. 2 in having hatched a conspiracy with the other co-accused persons of shooting down the deceased, has been elaborately dealt with in paras 53 to 55 of the judgment dated 6th January, 2018 passed by the Learned Additional Sessions Judge, Badaun wherein the testimonies of the three eye witnesses namely,

H ² For short 'the IPC'

P.W.-1, the appellant/complainant herein, P.W.-2, Sanjeev Kumar Singh (brother of the complainant) and P.W.-3, Hari Singh who was accompanying P.W.-2, were considered extensively and it was observed that there was a past history of enmity between the deceased and the respondent No.2 relating to the management of the school. The deceased had even lodged a complaint of his attempted abduction against the respondent No.2. Respondent No. 2 had also got FIR Nos. 343/2003 registered against the deceased under Sections 420, 468, 469 and 471 IPC and the latter was even arrested by the police in the said case. Reference was also made by the trial Court to a letter sent by the respondent No. 2 from jail, threatening to eliminate the deceased. Thus motive to eliminate the deceased due to the past grudge was established against the respondent No. 2 who was indicated in the crime alongwith the other co-accused who were closely related to him.

7. Aggrieved by the judgment of conviction and order of sentence passed by the trial Court, respondent No. 2 herein and the other accused persons preferred appeals before the High Court, registered as Criminal Appeal Nos. 609 and 610 of 2018. Accompanying the said appeals, were applications moved by them for grant of regular bail. In the impugned order, the High Court has recorded the following submissions made by the learned counsel for the respondent No.2 :-

“The contention of counsel for the appellant is that the appellant was on bail during the trial and he has not abused or misused the liberty of bail granted to him. However, he has a criminal history of 28 cases including the present two cases which have been explained in paragraph 36. The further contention is that if the prosecution story is believed to be true in toto, the only role assigned to the appellant is of hatching a conspiracy. The further contention is that the role of conspiracy has also been assigned only after the letter was received after three days of the incident and that is also a photostat copy. The original letter has not seen the day of light. There is no explanation regarding the original letter.”

8. The said bail application was vehemently opposed by the learned counsel who appeared for the appellant/complainant herein and made the following submissions before the High Court:-

“The learned counsel for the complainant submitted that the appellant is a hardened criminal but he does not dispute the

A fact that the only role assigned to the appellant is that of hatching a conspiracy and that too from a jail. The appellant is hereby restrained to approach the complainant or his family members to threaten them. If threat is extended to the complainant or his family members, liberty is given to the complainant to move a bail cancellation application before this Court.”

B 9. After noting the submissions of learned counsel for the respondent No. 2 and counsel for the complainant and recording that the learned counsel for the State had also opposed the prayer for bail, the High Court proceeded to pass the following order: -

C “In view of the aforesaid, let the appellant - Shivraj Singh alias Lalla Babu convicted and sentenced in S.T. No. 523 of 2013 arising out of Case Crime No. 605 of 2012 under Section 302/149, 120B IPC, Police State Civil Lines, District Badaun be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned.”

D 10. Assailing the impugned order, Ms. Abha R. Sharma, learned counsel appearing for the appellant/complainant has submitted that the High Court failed to offer any reasons for exercising its discretion in favour of the respondent No.2 and granting him bail; that there was sufficient evidence brought on record before the trial Court which would leave no manner of doubt that the appellant’s husband had been shot dead in broad daylight on account of a conspiracy hatched by the respondent No.2 with the co-accused persons who were closely related to him, while he was still in jail; that the deceased had suffered six firearm injuries at the hands of the other co-accused persons who had acted specifically on the instructions of the respondent No.2; that the High Court has overlooked the fact that the respondent No. 2 is a history-sheeter who is involved in several criminal cases; that the trial Court having held the respondent No. 2 as guilty for the offence under Section 302 read with 149 IPC, there was sufficient material on record for declining him the relief of bail. Lastly, learned counsel for the appellant/complainant handed over a copy of FIR No.517 of 2019 registered at P.S. Shahabad District Rampur against the respondent No. 2 and four others stating that he had extended a threat to one of the eye witnesses in the case namely, Hari Singh [P.W. 3] on 24th November, 2019 when he was going with his wife to the local market and he was warned not to appear and depose against respondent No.2 in the abduction case of the deceased Narain Singh, that was pending trial.

11. Respondent No.1-State has filed a counter affidavit and an additional affidavit supporting the present appeals by way of special leave. Mr. Sanjay Kumar Tyagi, learned counsel for the State has pointed out that the impugned order is a cryptic one and unsustainable as the High Court has failed to consider the nature of the accusations levelled against the respondent No.2, the gravity of the crime and the severity of the punishment imposed upon him and the fact that there is reasonable apprehension to the life of the appellant and the other eye witnesses. Learned counsel alluded to a case registered against the respondent No.2 at P.S. Shahbad, District Rampur, under Sections 364 and 506 IPC bearing FIR No. 450 of 2019 and stated that the bail application moved by him in the said case was rejected by the court of the learned Additional Sessions Judge, Badaun, taking note of the fact that he is a history-sheeter and involved in a number of criminal cases. Thereafter, respondent No. 2 had filed Bail Application No. 28461 of 2011 before the High Court and vide order dated 26th April, 2012, he was enlarged on bail. Aggrieved by the aforesaid order, Ash Mohammed, the complainant in the said case, had filed Criminal Appeal No.1456 of 2012 before this Court which was allowed vide order dated 20th September, 2012 and the bail granted to the respondent No. 2 was cancelled.

12. With the additional affidavit filed by the respondent No.1-State, in terms of the order dated 16th March, 2022, dilating upon the criminal antecedents of the respondent No.2 described in the counter affidavit as a hardened criminal with 25 criminal cases of serious nature registered against him in different police stations of different districts in the State of Uttar Pradesh, a tabulated statement of 37 criminal cases registered against the said respondent in different districts across the State of Uttar Pradesh has been filed. Learned State counsel has thus urged that bail granted in favour of the respondent No.2 ought to be cancelled forthwith.

13. On the other hand, Ms. Revathy Raghavan, learned counsel appearing for the respondent No. 2 seeks to defend the impugned order stating that the same has been passed being mindful of his advanced age and the fact that he is suffering from several old age ailments. She submitted that there are no special supervening circumstances that would justify cancellation of the bail granted to the respondent No.2 who had fully cooperated during the trial. She further stated that from out of the list of 37 criminal cases registered against the respondent No.2, as

A furnished by the respondent No.1 – State, he has been acquitted in quite a few and some are still pending trial and that he has a good case on merits even in the pending appeal where he has been extended the benefit of bail by virtue of the impugned order. Therefore, the discretion exercised by the High Court in favour of the respondent No. 2 does not deserve any interference.

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14. We have given our thoughtful consideration to the rival submissions of learned counsel for the appellant – complainant, respondent No.1 – State and the respondent No. 2 – accused and have carefully examined the record.

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15. This Court is called upon to decide as to whether the High Court has rightly exercised the power conferred under Section 439 of the Cr.P.C for granting bail in favour of the respondent No. 2 in the given facts of the case.

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16. It cannot be gainsaid that the power to grant bail under Section 439 Cr.P.C. is wide ranging. Nonetheless, it has been consistently emphasized in several judicial verdicts that exercise of the said discretionary powers vested in the Court when considering grant of bail, ought to be in a judicious manner and not as a matter of course. In **Ram Govind Upadhyay v. Sudarshan Singh And Others**³, a Division Bench of this Court had laid down the following guiding principles while exercising the power to grant bail:-

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“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..... 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.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The consideration being:

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³ (2002) 3 SCC 598,

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations. A

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail. B

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge. C

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.” D

17. Holding as above, the Court went on to consider the guiding factors when called upon to assess the validity of an order passed by the High Court granting bail and has opined that ordinarily, this Court would refrain from interfering with an order passed by the High Court, either granting or rejecting the relief of bail to an accused. However, wherever it is noticed that such a discretion has been exercised by the High Court without proper application of mind or in contravention of the directions issued by this Court, such an order shall be susceptible to interference. E

18. In a recent decision, authored by one of us (Dr. D.Y. Chandrachud, J.) in *Mahipal v. Rajesh Kumar alias Polia And Another*⁴, a case where the offence committed was under Section 302 of the IPC, trial was pending before the Sessions Court and the bail application filed by the respondent was rejected by the learned Additional Sessions Judge but was subsequently allowed by the High Court, the following pertinent observations have been made : F

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No G

⁴(2020) 2 SCC 118

- A straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused.
- B That is a matter for trial. However, the Court is required to examine whether there is a *prima facie* or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be
- C slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

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- D 14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to
- E factor, amongst other things, a *prima facie* view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the
- F protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant
- G bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a *prima facie* or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding.”
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19. In *Prasanta Kumar Sarkar v. Ashis Chatterjee And Another*⁵, where the accused was facing trial for an offence punishable under Section 302 of the IPC and though his persistent bail applications were rejected by the trial Court, the High Court had granted him bail, which order was set aside by a Division Bench of this Court, the following guidelines were enunciated for assessing the correctness of an order passed by the High Court while granting bail:

“9.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.”

20. The aforesaid principles have been underscored in several decisions rendered by this Court including *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Another*⁶, *Narendra K. Amin (Dr.) v. State of Gujarat and Another*⁷, *Dipak Shubhashchandra*

⁵ (2010) 14 SCC 496

⁶ (2004) 7 SCC 528

⁷ (2008) 13 SCC 584

- A *Mehta v. Central Bureau of Investigation and Another*⁸, *Abdul Basit alias Raju and Others v. Mohd. Abdul Kadir Chaudhary and Another*⁹, *Neeru Yadav v. State of Uttar Pradesh and Another*¹⁰, *Anil Kumar Yadav v. State (NCT of Delhi) and Another*¹¹, *Mahipal v. Rajesh Kumar alias Polia and Another*¹², and as recently as in *Jagjeet Singh and Others v. Ashish Mishra alias Monu and Another*¹³, *Ms. Y. v. State of Rajasthan and Another*¹⁴ and *Ms. P. v. State of Madhya Pradesh and Another*¹⁵.

21. At the cost of repetition, it may be highlighted that the considerations that weigh with the Appellate Court when called upon to examine the correctness of an order granting bail is not on the same footing when it comes to examining an application moved for cancellation of bail. The yardstick for testing the correctness of an order granting bail is whether the court below has exercised its discretion in an improper or arbitrary manner thereby vitiating the said order. When it comes to assessing an application seeking cancellation of bail, the Appellate Court looks out for, amongst others, supervening circumstances or any violation of the conditions of bail imposed on the person who has been accorded such a relief. In this context, we may profitably cite the decision of a Division Bench of this Court in *Prakash Kadam and Others v. Ramprasad Vishwanath Gupta and Another*¹⁶, where it was held thus :

- E “18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the *same* court which granted bail is approached for cancelling the bail. It will not apply when the order granting bail is appealed against before an appellate/Revisional Court.

⁸ (2012) 4 SCC 134

⁹ (2014) 10 SCC 754

G ¹⁰ (2014) 16 SCC 508

¹¹ (2018) 12 SCC 129

¹² (2020) 2 SCC 118

¹³ (2022) SCC online SC 453

¹⁴ 2022 SCC OnLine SC 458

¹⁵ Criminal Appeal No.740 of 2022 (arising out of SLP (Crl.) No. 3564 of 2022) decided on 05.05.2022.

H ¹⁶ (2011) 6 SCC 189

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail.” A

22. The aforesaid principles guiding the grant of bail have been restated in *Neeru Yadav v. State of Uttar Pradesh And Another*¹⁷, in the following words: B

“12. We have referred to certain principles to be kept in mind while granting bail, as has been laid down by this Court from time to time. It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court.” C D E

23. In a recent decision of a three Judge Bench of this Court in *Imran v. Mohammed Bhava and Another*¹⁸ it has been held as follows: F

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 v. State of Punjab* 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 G

¹⁷ (2014) 16 SCC 508

¹⁸ 2022 SCC Online SC 496

A relevant material available on record, gravity of the offence or its societal impact. It was thus observed:—

B “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 v. State of Haryana* observed that:

C “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 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.”

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

E 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.

G 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...”

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MEENA DEVI v. THE STATE OF U.P. AND ANOTHER
[HIMA KOHLI, J.]

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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.

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24. Coming back to the case in hand, a glance at the impugned order passed by the High Court is to state the least, cryptic and non-speaking, amply demonstrating non-application of mind. The High Court appears to have shut its eyes to the common submissions made by learned counsel for the appellant/complainant and the counsel for the State that the respondent No.2 is a hardened criminal with several cases registered against him. Enclosed with the additional affidavit filed by the respondent No. 1- State, is a list of cases registered against the respondent No. 2 which reveals that he has faced/is still facing trial in the following thirty-seven cases registered against him under the IPC, The Arms Act, 1959, The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, The U.P. Control of Goondas Act, 1970, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc., where the offences are grave in nature:-

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S. No.	Crime No. & P.S.	District	Versus	Section	Court	Status
1.	270/86, P.S. Shahbad	Rampur	Shivraj Singh @ Lallababu	25 Arms Act	Judicial Magistrate	Sentence to the sentence already undergone
2.	271/86 P.S. Shahbad	Rampur	-do- -do-	395, 397, 339 IPC	F.T.C. – 2, Rampur	Acquitted
3.	187/88 P.S. Shahbad	Rampur	-do-	3(1) Gangster Act	Additional District Judge, Rampur	Acquitted

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A	4.	201/92	Rampur	-do-	302 IPC	F.T.C. – 2, Rampur	Acquitted
	5.	189/95 P.S. Shahbad	Rampur	-do-	342/ 323/ 355/ 504/ 506	J.M	Acquitted
	6.	184/96 P.S. Shahbad	Rampur	-do-	3/4 Gunda Act	A.D.M.	Closed
B	7.	485/98 P.S. Shahbad	Rampur	-do-	323/506 IPC & 3(1)/10 S.C.S.T. Act	A.D.J.-2	Acquitted
	8.	185/96 P.S. Shahbad	Rampur	-do-	147/148/148/307 IPC	F.T.C.-2	Acquitted
C	9.	281/99 P.S. Shahbad	Rampur	-do-	3/4 Gunda Act	A.D.M	Acquitted
	10.	493/98 P.S. Shahbad	Rampur	-do-	420/467/ 468/504/506 IPC	A.C.J.M. – 2	Closed
	11.	628A/05 P.S. Shahbad	Rampur	-do-	452/352/504/506 IPC	J.M.	Pending
D	12.	626/05 P.S. Shahbad	Rampur	-do-	307/504/506 IPC	F.T.C. – 2	Acquitted
	13.	363/06 P.S. Shahbad	Rampur	-do-	3/4 Gunda Act	A.D.M.	Acquitted
E	14.	12171/08 P.S. Shahbad	Rampur	-do-	147/148/283/34 IPC & 6 United Act	A.C.J.M. – 2	Closed
	15.	670/09 P.S. Shahbad	Rampur	-do-	3(1) Gangster Act	A.D.J.-5	Stay from the High Court
	16.	1207/09 P.S. Shahbad	Rampur	-do-	448/380 IPC	J.M.	Pending
F	17.	507/11 P.S. Shahbad	Rampur	-do-	147/506 IPC	J.M.	Acquitted
	18.	537/11 P.S. Shahbad	Rampur	-do-	147/48/149 IPC	F.T.C.-1	Acquitted
G	19.	538/11 P.S. Shahbad	Rampur	-do-	147/148/307/353/149/ 506 IPC & 7 Criminal law Amendment Aaw	F.T.C.-1	Acquitted
	20.	313/91 P.S. Shahbad	Rampur	-do-	447/325/504/506 IPC & 3(1)/10 S.C/ S.T. Act	J.M.	F.R. Filed
	21.	391/99 P.S. Shahbad	Rampur	-do-	448/379/504/506 IPC & 3(1)/10 S.C.S.T. Act	A.D.J.-4	Acquitted
H	22.	137/88 P.S. Shahbad	Rampur	-do-	323/324/325 IPC & 3(1)/10 S.C.S.T. Act	A.D.J.-4	Acquitted

**MEENA DEVI v. THE STATE OF U.P. AND ANOTHER
[HIMA KOHLI, J.]**

41

23.	187/88 P.S. Shahbad	Rampur	-do-	3(1) Gangster Act	A.D.J.-5	Acquitted
24.	485/94 P.S. Shahbad	Rampur	-do-	147/148/324/504/506 IPC & 3(1)10 S.S .. T Act	A.D.J. – 2	Acquitted
25.	158/97 P.S. Shahbad	Rampur	-do-	3(1) Gunda Act	A.D.M.	Closed
26.	345/99 P.S. Shahbad	Rampur	-do-	147/148/149/325/307 IPC	J.M.	Final Report
27.	169/10 P.S. Shahbad	Rampur	-do-	147/323/504/506 IPC	J.M.	Acquitted
28.	841/11 P.S. Shahbad	Rampur	-do-	307/326 IPC	J.M.	Final report
29.	507/11 P.S. Shahbad	Rampur	-do-	147/506 IPC	J.M.	Acquitted
30.	623/05 P.S. Shahbad	Rampur	-do-	302 IPC	A.D.J. – 1	Life imprisonment
31.	380/19 P.S. Shahbad	Rampur	-do-	364/323/504/506 IPC	A.C.J.M. – 2	Final report for cancellation of crime
32.	450/19 P.S. Shahbad	Rampur	-do-	147/148/341/279/338/504/307/506 IPC	A.C.J.M. – 2	Final report for cancellation of crime
33.	499/19 P.S. Shahbad	Rampur	-do-	147/148/307/506 IPC	A.C.J.M. – 2	Pending investigation
34.	1031/2009 P.S. Shahbad	Rampur	State Vs. Munna Lal & Ors.	147/148/149/323/283/ 7-Act	A.C.J.M. – 2 District Rampur	Under trial
35.	3633/2016 P.S. Shahbad	Rampur	State Vs. Shivraj Singh	420/467/468 IPC	A.C.J.M. – 2	Under trial
36.	232/2012 P.S. Shahbad	Rampur	-State Vs. Bajraj Singh	3(1) Gangster Act	A.S.J. Gangster Rampur	Under trial
37.	195/2021 P.S. Shahbad	Rampur	State Vs. Sonu & Ors.	304/120-8 IPC	Special Judge/ S.C.S.T. Rampur	Under trial

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25. Even if one ignores eighteen cases, out of the aforesaid list of cases registered against the respondent No.2, fact remains that he is continuing to face trial in the remaining cases.

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26. In one such case, subject matter of Criminal Appeal No.770 of 2011 registered against the respondent No.2 for offences under Sections 364 and 506 IPC, the bail application moved by him was rejected by the learned Additional Sessions Judge, Rampur. When the respondent

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A No.2 moved a similar application before the High Court under Section 439 of the Cr.P.C., the same was allowed vide order dated 26th July, 2012. Aggrieved by the said order, the complainant therein, Ash Mohammed preferred an appeal before this Court registered as Criminal Appeal No.1456 of 2012. After taking into consideration the involvement of the respondent No.2 in several crimes, duly extracted in para 27 of the judgment in *Ash Mohammad v. Shiv Raj Singh alias Lalla Babu And Another*¹⁹, a Division Bench of this Court had questioned the propriety of the order granting bail to the respondent No.2, and had set aside the impugned order. Speaking for the Bench, Justice Dipak Misra (as the then Hon'ble Chief Justice was) held as under:

C “30. We may usefully state that when the citizens are scared to lead a peaceful life and this kind of offences usher in an impediment in establishment of orderly society, the duty of the court becomes more pronounced and the burden is heavy. There should have been proper analysis of the criminal antecedents. Needless to say, imposition of conditions is subsequent to the order admitting an accused to bail. The question should be posed whether the accused deserves to be enlarged on bail or not and only thereafter issue of imposing conditions would arise. We do not deny for a moment that period of custody is a relevant factor but simultaneously the totality of circumstances and the criminal antecedents are also to be weighed. They are to be weighed in the scale of collective cry and desire. The societal concern has to be kept in view in juxtaposition of individual liberty. Regard being had to the said parameter we are inclined to think that the social concern in the case at hand deserves to be given priority over lifting the restriction on liberty of the accused.”

F 27. It is also noteworthy that in the past decade, six cases more have been registered against the respondent No.2, as would be apparent from a comparison of the list forming a part of the order in the case of *Ash Mohammad (supra)* with the current list extracted above. It is also relevant to note that the list that has been furnished to this Court by the respondent No.1-State, does not mention eleven cases that had been mentioned in the list of cases pending against the respondent No.2 and extracted in para 27 of the order passed in *Ash Mohammad (supra)*, at Sr. Nos. 4, 12, 17 and 23 to 30. If the said cases are added to the current

H ¹⁹ (2012) 9 SCC 446

list of thirty-seven criminal cases registered against the respondent No.2, the number of criminal cases registered against the him would swell to fifty. A

28. In the above facts and circumstances, we are compelled to observe that the High Court has failed to factor in the relevant material before passing an order enlarging the respondent No.2 on bail. Not just that, the High Court has seriously erred in not offering any reason, good, bad or indifferent, for exercising its discretion in favour of the said respondent. There is no reference made to any particular element that has persuaded the High Court to pass the impugned order granting bail to the respondent No.2. Mechanically recording the submissions made by the learned counsel for the accused and the complainant and noting the protest of the learned counsel for the State and thereafter proceeding to release the respondent No.2 on bail by pre-fixing the operative para of the order with the words “*In view of the aforesaid*”, can hardly reflect application of judicial mind by the Court. As an Appellate Court, we are completely at seas to discern the factors that have weighed with the High Court to enlarge the respondent No.2 on bail. B C D

29. In ***Puran v. Rambilas***²⁰ pointing out the vice of arbitrariness in an unreasoned order, this Court held that: -

“8. ...Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case ha not to be undertaken. What the Additional Sessions Judge ad done in the order dated 11-9-2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.” E F

30. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav And Another***²¹ it was observed by this Court that: -

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and G

²⁰ (2001) 6 SCC 338

²¹ (2004) 7 SCC 528

A elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

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(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

C (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.”

31. Citing the aforesaid decision, in *Mahipal (supra)*, this Court has stressed the necessity of recording reasons for granting bail in offences that are non-bailable in nature in the following words: -

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“25. Merely recording “having perused the record” and “on the facts and circumstances of the case” does not subserve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the Judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty-bound to explain the basis on which they have arrived at a conclusion.”

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G 32. In the instant case, looking at the gravity of the offence committed by the respondent No. 2 under Section 302 of the IPC for which he has been convicted by the trial Court and awarded a sentence of life imprisonment and noting that the period of custody undergone by him is only for nine months and further, having regard to his criminal antecedents, we have no hesitation in quashing and setting aside the

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impugned order dated 19th September, 2018 passed by the High Court. A
The bail bonds of the respondent No.2 are cancelled and he is directed
to surrender forthwith. The appeal is disposed of in the above terms.

33. Before parting with the case, it is clarified that the present
judgment shall not be treated as an expression on the merits of the appeal
preferred by the respondent No.2 against the judgment dated 6th January, B
2018 passed by the Sessions Court, which is pending consideration before
the High Court. It is also clarified that this order shall also not preclude
the respondent No.2 from applying afresh for bail at a later stage, if any,
new circumstances are brought to light.

34. A copy of this judgment shall be forwarded to the High Court C
and the concerned Police Station for perusal and compliance.

Nidhi Jain
(Assisted by : Shashwat Jain, LCRA)

Appeal disposed of.