

MAUJI RAM

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v.

STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No.1150 of 2019)

JULY 29, 2019

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[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Code of Criminal Procedure, 1973:

s. 439 – Bail – In a murder case – Denied by Sessions Court – Allowed by High Court – Appeal to Supreme Court by complainant – Held: Though it may not be necessary to give categorical finding while granting or rejecting bail, yet it must appear from the order that court has applied its mind – In the present case High Court committed jurisdictional error as it did not assign any reason for granting the bail – In the facts of the case, it is not a fit case for grant of bail – Bail.

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Allowing the appeals, the Court

HELD: 1. Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution as also by the defence at that stage, yet it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application. It is unfortunate that neither the law laid down by this Court, nor the material filed by the prosecution was taken note of by the High Court while considering the grant of bail to the respondents. [Para 13] [325-C-D]

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2. The High Court committed jurisdictional error in passing the impugned order because the High Court did not assign any reason whatsoever as to on what grounds, even though of a *prima facie* nature, it considered just and proper to grant bail to the respondents. [Para 12] [325-B]

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3. Having perused the FIR and keeping in view the antecedents of the accused persons which are brought on record by the State in their counter affidavit and further keeping in view

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A the manner in which the offence under Section 302 IPC was committed, the Court is *prima facie* of the view that this is not a fit case for grant of bail to the accused persons. These factors were relevant while considering the bail application and, they were not taken into consideration. [Para 15] [325-F-G]

B 4. Taking into consideration the entire scenario of the case, this was not a fit case for grant of bail to the respondents (accused persons) by the High Court. The Sessions Judge, was, therefore, right in rejecting the bail applications filed by the respondents. [Para 17] [326-B]

C *Ajay Kumar Sharma v. State of U.P. & Ors.* (2005) 7 SCC 507 ; *Lokesh Singh v. State of U.P. & Anr.* (2008) 16 SCC 753 : [2008] 14 SCR 980 ; *Dataram Singh v. State of U.P. & Anr.* (2018) 3 SCC 22 : [2018] 1 SCR 882 – relied on.

D Case Law Reference

(2005) 7 SCC 507 relied on Para 13

[2008] 14 SCR 980 relied on Para 13

[2018] 1 SCR 882 relied on Para 13

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1150 of 2019

From the Judgment and Order dated 17.01.2019 of the High Court of Judicature at Allahabad in Crl. Misc. Bail Application No. 1859 of 2019

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With

Criminal Appeal Nos. 1151-1152, 1153-1156 of 2019.

G Rishi Malhotra, Adv. for the Appellant.

Jitendra Mohan Sharma, Sr. Adv., Ajit Sharma, Pranshu Kaushal, Mr. Sandeep Singh, Adnan Siddiqui, Suhit K. Sharma, Sarvesh Singh Baghel, Puny Garg, Advs. for the Respondents.

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The Judgment of the Court was delivered by

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ABHAY MANOHAR SAPRE, J.

1. Leave granted.

2. These appeals are directed against the orders dated 17.01.2019 in CRMBA No.1859 of 2019, dated 24.01.2019 in CRMBA No.3574/2019, dated 29.01.2019 in CRMBA No.3547/2019, dated 06.02.2019 in CRMBA No.4627/2019, dated 18.02.2019 in CRMBA No.6450/2019, dated 12.03.2019 in CRMBA No.10626 of 2019 and dated 26.03.2019 in CRMBA No.11793 of 2019 of the High Court of Judicature at Allahabad.

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3. A few facts need mention hereinbelow for the disposal of these appeals, which involve a short point.

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4. Respondent No.2 in all the appeals, namely, Subhash, Kartar, Sohit, Amarjeet, Soran Bhati, Lilu@Mahendra and Ashu @ Ashish (total-7), herein after collectively referred to as “respondents” are facing trial for commission of the offences punishable under Sections 147, 148, 149, 302, 120-B, 307, 323, 506 and 427 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) which arise out of Crime No. 608/2018 registered with P.S. Dadri, District Gautam Buddha Nagar (UP) pending in the Court of I/C Sessions Judge, Gautam Budh Nagar in BA No. 5808 of 2018-UPGB01-002290/2018, B.A. No.6097/2018-UPGB01-003006/2018, B.A. No.6295/2018-UPGB01-00 3536/2018, B.A. No.6738/2018-UPGB01-00 4693/2018 & B.A. No.6739/2018 UPGB01-00 4694/2018. These respondents were apprehended for committing the murder of one - Sumit Kumar - son of the appellant-Complainant.

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5. The respondents (accused persons) after they were apprehended applied for grant of bail before the Sessions Court in the aforementioned trial. The Sessions Judge by order dated 20.11.2018 in BA No. 5808 of 2018-UPGB01-002290/2018, B.A. No.6097/2018-UPGB01-003006/2018, order dated 22.11.2018 in B.A. No.6295/2018-UPGB01-00 3536/2018 and order dated 08.01.2019 in B.A. No.6738/2018-UPGB01-00 4693/2018 & B.A. No.6739/2018 UPGB01-00 4694/2018 rejected the bail applications of the respondents.

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6. The respondents felt aggrieved by the rejection of their bail applications and filed the bail applications under Section 439 of the

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A Criminal Procedure Code, 1973 (hereinafter referred to as “the Code”) in the High Court of Allahabad. By impugned orders, the High Court allowed the bail applications and accordingly directed release of the respondents on bail on their furnishing security and bail bonds to the satisfaction of the Sessions Judge.

B 7. It is against these orders of the High Court, the father of the deceased has felt aggrieved and filed these appeals questioning the legality and correctness of the impugned orders.

8. So far as the State is concerned, they have supported the appellant by filing counter affidavit. The respondents (accused persons) are also served and duly represented.

C 9. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in granting bail to the respondents (accused).

D 10. Heard learned counsel for the parties.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals and while setting aside the impugned orders dismiss the bail applications filed by the respondents (accused persons). The impugned order reads as under:

E **“Considering the facts and circumstances of the case and without expressing any opinion on the merits of the case, I find it a fit case for bail.**

F **Let the applicant Subhash involved in Case Crime No.608 of 2018 under Sections 147, 148, 149, 323, 506, 427, 307, 302, 120B IPC, P.S. Dadri, District Gautam Budh Nagar 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 with the following conditions:**

G **1. The applicant will not tamper with the evidence.**

2. He shall not pressurize/intimidate the prosecution witnesses and shall cooperate with the trial.

H **3. He shall appear on each and every date fixed by the trial court unless personal appearance is exempted by the court concerned.**

In case of breach of any conditions mentioned above, the trial court shall be at liberty to cancel the bail of the applicant.” A

12. In our considered opinion, the High Court committed jurisdictional error in passing the impugned order because while passing the impugned order, the High Court did not assign any reason whatsoever as to on what grounds, even though of a *prima facie* nature, it considered just and proper to grant bail to the respondents. B

13. Time and again this Court has emphasized the need for assigning the reasons while granting bail (see **Ajay Kumar Sharma vs. State of U.P. & Ors.**, (2005) 7 SCC 507, **Lokesh Singh vs. State of U.P. & Anr.**, (2008) 16 SCC 753 & **Dataram Singh vs. State of U.P. & Anr.**, (2018) 3 SCC 22). Though it may not be necessary to give categorical finding while granting or rejecting the bail for want of full evidence adduced by the prosecution as also by the defence at that stage yet it must appear from a perusal of the order that the Court has applied its mind to the relevant facts in the light of the material filed by the prosecution at the time of consideration of bail application. It is unfortunate that neither the law laid down by this Court, nor the material filed by the prosecution was taken note of by the High Court while considering the grant of bail to the respondents. C D

14. We have perused the petitions with annexures, the counter affidavit with annexures filed by the State and also by the accused persons. E

15. Having perused the FIR and keeping in view the antecedents of the accused persons which are brought on record by the State in their counter affidavit and further keeping in view the manner in which the offence under Section 302 IPC was committed, we are *prima facie* of the view that this is not a fit case for grant of bail to the accused persons (respondent No.2 herein in all the appeals). These factors were relevant while considering the bail application and, in our view, they were not taken into consideration. F G

16. Learned counsel for the respondents (accused persons) vehemently opposed the appeals and urged that having regard to the totality of the facts and circumstances emerging from the record of the case and the fact that the respondents (accused persons) have not H

- A violated any condition of grant of bail till date, this Court should not interfere in the impugned orders granting bail to the respondents.

17. We do not agree with this submission. In our view, taking into consideration the entire scenario of the case, this was not a fit case for grant of bail to the respondents (accused persons) by the High Court.

- B The Sessions Judge, in our opinion, was, therefore, right in rejecting the bail applications filed by the respondents.

18. In the light of the foregoing discussion, the appeals succeed and are hereby allowed. Impugned orders are set aside. The bail applications filed by the respondents (accused persons) are dismissed.

- C 19. As a consequence thereof, the respondents (accused persons) in all the appeals are directed to surrender in the concerned Sessions Court for being taken into custody as under trial.

20. We, however, make it clear that the Sessions Judge will decide the trial strictly in accordance with law on its merits expeditiously without

- D being influenced by any observation made in this order.