

DHARMESH @ DHARMENDRA @ DHAMO JAGDISHBHAI A
@ JAGABHAI BHAGUBHAI RATADIA & ANR.

v.

THE STATE OF GUJARAT
(Criminal Appeal No. 432 of 2021) B

JULY 07, 2021

[SANJAY KISHAN KAUL AND HEMANT GUPTA, JJ.]

Bail: Imposition of condition for bail – Free fight between two groups in Amreli resulting in death of two persons – Case against 13 persons – Appellants, arrayed as accused no.12 and 13, were arrested – By impugned order, they were granted bail – However, they were aggrieved by the condition imposed on them for bail requiring them to deposit Rs.2 lakhs before the trial court as compensation to victims – Held: In cases of offences against body, compensation to the victim should be a methodology for redemption – Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started – Such a compensation can hardly be determined at the stage of grant of bail – The direction contained in impugned order for deposit of compensation of Rs.2 lakhs for the legal heirs of the deceased is set aside – Specific allegation against the appellants was that they had beaten the complainant and the witnesses and not any of the deceased – Apart from the appellants, out of total 13 arrayed accused, 11 were released on bail by the High Court and/or Sessions Court – High Court in their cases, had imposed stringent conditions including an embargo from entering the geographical limits of Amreli and regularly marking presence before the police station amongst other conditions – In view of that, same terms and conditions imposed for grant of bail to the appellants – The direction for deposit of compensation of Rs.2 lakhs is substituted with the condition that the appellants will not enter the geographical limits of Amreli for a period of six months except for marking presence before the concerned police station and to attend the court proceedings – Appeal allowed. C
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Palaniappa Gounder v. State of Tamil Nadu & Ors.
[1977] 3 SCR 132 – referred to.

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Case Law Reference**[1977] 3 SCR 132****referred to****Para 12**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 432 of 2021.

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From the Judgment and Order dated 15.12.2020 of the High Court of Gujarat at Ahmedabad in R/Criminal Misc. Application No. 17566 of 2020.

Ms. Aastha Mehta, Tushar Gokani, Ms. Vishakha, Atul Kumar, Advs. for the Appellants.

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Aniruddha P. Mayee, Adv. for the Respondent.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

D 1. An unfortunate incident took place on 10.11.2019, which is alleged by the complainant to be caused by certain members of his caste providing assistance to the police which resulted in a free fight where the appellants herein were also present. Two persons succumbed to their injuries and an FIR was registered on 11.11.2019 with the Amreli Police Station against 13 persons, being CR No.I-94 of 2019 under Sections 302, 307, 324, 323, 506(2), 504, 143, 144, 147, 148, 149, 120B and 34 of the IPC as well as Section 135(ii) of the Gujarat Police Act. In pursuance of the investigations chargesheet was filed in the Court. A counter FIR was also filed on 11.11.2019, being I-95/2019 against the complainant and other witnesses under Sections 324, 323, 504, 506(2), 143, 144, 147, 148 and 149 of the IPC as well as Section 135(ii) of the Gujarat Police Act.

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2. The appellants before us were arrayed as Accused Nos.12 & 13 and were arrested on 11.11.2019. Upon applying for bail, in terms of the impugned judgment dated 15.12.2020, bail was granted to them. However, they are aggrieved by the condition imposed on them for bail, requiring them to deposit Rs.2 lakh each as compensation to the victims before the learned trial court within a period of three months.

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3. The narrow compass of the arguments before us rests on the absence of any provision in the Code of Criminal Procedure, 1908 (hereinafter referred to as the 'CrPC') entitling the Court to impose such a condition for payment of compensation for grant of bail. It is the

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submission of the learned counsel for the appellants that the High Court imposed this condition for bail in view of the “amended provisions” relating to victim compensation without referring to any specific provision. A

4. Learned counsel for the appellants took us through different provisions dealing with the aspect of compensation under the CrPC.

5. In respect of the aforesaid, the first provisions referred to was Section 357, which reads as under: B

“357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied- C

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court; D

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death; E

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto. F

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal. G

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A (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

B (4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

C (5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

(emphasis supplied)

D 6. In the aforesaid context it was pointed out that the essential requirements under this section are: (a) imposition of fine or sentence; (b) the aforesaid would naturally be at the time of passing of the judgment; (c) orders the whole or any part of the fine be recovered.

E 7. In the aforesaid scenario as per clause (d) of sub-section (1) of Section 357 of the CrPC the said amount could be utilised for payment of compensation for any loss or injury caused by the offence when such amount would be recoverable in a civil court.

F 8. This Court’s attention has also been invited to sub-section (3) of Section 357 CrPC, which again begins with “when the court imposes a sentence” and where a “fine does not form a part”, an accused may be asked to pay compensation when passing the judgment.

F 9. It is, thus, submitted that it is clear from a plain reading of Section 357 that such compensation can only arise after the conclusion of trial *albeit*, of course, the same being a matter of discretion. Thus, without a full-fledged trial there cannot be a sentence and, thus, there cannot be any such compensation.

G 10. The other provision referred to is Section 235(2) of the CrPC. Section 235 CrPC reads as under:

“235. Judgment of acquittal or conviction.

H (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.”

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(emphasis supplied)

11. It is submitted that a Judge has to hear an accused on the question of sentence, which would also support the plea as per the scheme of the Act that the sentence must precede grant of compensation.

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12. It is in the aforesaid context that this Court had opined in *Palaniappa Gounder v. State of Tamil Nadu & Ors.*¹ that a court must take into account the nature of the crime, the injury suffered, the justness of the claim, the capacity to pay and other relevant circumstances in fixing the amount of fine or compensation. These aspects would be considered only after giving an opportunity to the person convicted to hear him out on these aspects and that would naturally be post the conviction. The grant of bail, it was contended, would only be as we say, even if charges are framed, a *prima facie* view based on the principle of not unnecessarily keeping a person in custody.

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13. Learned counsel also referred to the provisions of Section 250(1) of the CrPC, which reads as under:

“250. Compensation for accusation without reasonable cause.

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(1) If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are

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¹ 1977 SCR (3) 132

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A more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.”

(emphasis supplied)

B 14. The aforesaid provision comes also at the same stage *albeit* where an accused is acquitted to award compensation if the Court is satisfied that there was no reasonable ground for making the accusation against him. This is, of course, in a contra scenario.

C 15. One further aspect pointed out by learned counsel for the appellant is that the inadequacy of compensation is appealable under Section 372 of the CrPC, which would naturally imply that a conclusion has been reached on imposition of sentence and/or fine. The condition for award of damages as a condition for bail would not be appealable.

D 16. We called upon learned counsel for the State to address submissions in this regard but she was not able to portray a picture against what has been placed before us by the learned counsel for the appellants and, really cannot be so. In our view the objective is clear that in cases of offences against body, compensation to the victim should be a methodology for redemption. Similarly, to prevent unnecessary harassment, compensation has been provided where meaningless criminal proceedings had been started. Such a compensation can hardly be determined at the stage of grant of bail.

E 17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there are cases of offences against property or otherwise but that cannot be a compensation to be deposited and disbursed as if that grant has to take place as a condition of the person being enlarged on bail.

F 18. Once we come to the aforesaid conclusion, the direction contained in the impugned order for deposit of compensation of Rs.2 lakh for the legal heirs of the deceased naturally cannot be sustained and has to be logically set aside.

G 19. We also consider it appropriate not only to consider the aforesaid aspects but also whether bail should be granted to the appellants, and if so, on what terms and conditions. This is also recorded at the time of issuance of notice.

H 20. In the aforesaid context, learned counsel for the appellants contended that the specific allegations against the two appellants as

Accused Nos. 12 & 13 is that they had beaten the complainant and the witnesses and not any of the deceased. It was a case of free fight between two groups where each alleges the other to be the aggressor. Not only that, the other accused Nos. 3, 9, 10 & 6 had been granted bail without imposing the aforesaid condition. In case of these accused, specific roles related to (a) blows being given with wooden sticks and iron pipes with a shout to kill, (b) blow with the stick to the complainant and witnesses and (c) the allegation of forwarding a Whatsapp recording to create animosity between the two groups. Apart from these four accused, it was urged that out of total 13 arrayed accused, 11 had been released on bail by the High Court and/or Sessions Court. The High Court had imposed stringent conditions including an embargo from entering the geographical limits of Amreli and regularly marking presence before the police station amongst other conditions. Learned counsel for the appellants claims parity with those orders and submits that the appellants may be imposed with the same conditions even though their role was much less than the other accused persons.

21. Learned counsel for the State, once again, cannot dispute the role of the appellants *vis-à-vis* the role of the other accused, who had been enlarged on bail on the aforesaid terms and conditions.

22. In view of the aforesaid, we consider it appropriate to impose the same terms and conditions for grant of bail upon the appellants and set aside condition (f) of the bail requiring the appellants to deposit Rs.2 lakh each towards compensation to the victims before the trial court and the consequential orders for disbursement. This condition is instead to be substituted with the condition that the appellants will not enter the geographical limits of Amreli for a period of six (6) months except for marking presence before the concerned police station and to attend the court proceedings.

23. The appeal is accordingly allowed in the aforesaid terms leaving the parties to bear their own costs.