

A SHRI MAHADEV MEENA

v.

PRAVEEN RATHORE AND ANOTHER

(Criminal Appeal No. 1089 of 2021)

B SEPTEMBER 27, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND BV
NAGARATHNA, JJ.]**

- Penal Code, 1860– ss.302, 120B – Bail – Murder of*
- C *appellant's son – FIR inter alia alleged involvement of first respondent and his proximity with deceased's wife (co-accused) – Eventually, first respondent granted bail – On appeal, held: High Court was in error in allowing the application for bail – It ought to have had due regard to the seriousness and gravity of the crime – Deceased was employed with the Intelligence Bureau in New Delhi – First*
 - D *respondent being an employee of the Anti-Corruption Bureau at Jhalawar, the likelihood of the evidence being tampered with and of the witnesses being suborned cannot be discounted – Bail was granted to the co-accused on the ground that she had a child of eleven months with her in jail – This cannot be the basis to claim parity – A major role was attributed to first respondent in the murder of the deceased – Impugned order set aside.*

Allowing the appeal, the Court

- HELD:** 1. The order of the High Court contains serious infirmities. The High Court has noted that there was a delay in
- F *lodging the FIR. Prima facie, on 14 February 2018, the appellant furnished a written intimation to the SHO at PS Jhalawar Sadar recording the unnatural death of his son who had travelled from New Delhi to Jhalawar, upon the discovery of the body close to the railway tracks at around 8.30 pm. The initial intimation recorded that while there was no injury on the body, the nails of the hands and feet of the deceased were found to have turned blue and the death had occurred in suspicious circumstances. It was on the basis of this statement that on 15 February 2018, an unnatural death was recorded under Section 174 of the CrPC. The post-mortem report of 15 February 2018 indicates that the*
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cause of death would be determined once histopathological examination of the viscera is concluded. The report dated 10 March 2018, of the Department of Pathology at the Jhalawar Medical College & SRG Hospital showed congestion in the lungs and pulmonary edema. On 12 April 2018, the FIR was registered at PS Jhalawar Sadar. The FIR contains specific allegations against the first respondent in respect of (i) his proximity to the wife of the deceased; (ii) the deceased having objected to the first respondent visiting their marital home and directing him to cease doing so; and (iii) the call data records and WhatsApp messages exchanged between the first respondent, the deceased and the co-accused. While the initial report of the FSL, Jaipur, dated 4 May 2018, was negative for metallic poison, ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquillizers and insecticides, the report dated 25 October 2018 indicates that the remnants of the viscera samples had tested positive for the presence of Ketamine, anesthetic drug. The High Court ought to have had due regard to the seriousness and gravity of the crime. The deceased was employed with the Intelligence Bureau in New Delhi. The first respondent is an employee of the Anti-Corruption Bureau at Jhalawar. The material which has emerged during the course of investigation cannot simply be ignored or glossed over (as the High Court has done). The first respondent himself being an employee of the Anti-Corruption Bureau at Jhalawar, the likelihood of the evidence being tampered with and of the witnesses being suborned cannot be discounted. At this stage, when the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matters which would form the subject of the trial when evidence is adduced by the prosecution. Bail was granted to the co-accused primarily and substantially on the ground that she had a child of eleven months with her in jail. This cannot be the basis to a claim of parity on the part of the first respondent. The first respondent cannot claim parity with the co-accused since the allegations in the FIR and the material that has emerged from the investigation indicate that a major role has been attributed to him in the murder of the deceased. The High Court was in error in allowing the application for bail. The consideration that twenty-five witnesses out of seventy-six witnesses had been examined

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- A must equally be weighed with the seriousness of the crime, the role attributed to the first respondent and the likelihood of the evidence being tampered with if the first respondent were to remain on bail during the course of the trial. In this backdrop, it was wholly inappropriate for the High Court to proceed on the surmise that the police had “developed a case” that Ketamine was administered, after four months of the incident. The impugned order of the High Court is set aside. The first respondent shall surrender forthwith and be taken into custody. [Paras 12, 14, 15 and 16][223-D-H; 224-A-B; 226-D-H; 227-A-B]

- C CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1089 of 2021

From the Judgment and Order dated 12.02.2021 of the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Appeal No.85 of 2021.

- D Ms. Chitrangda Rastravara, Manvendra Singh Rathore, Dashrath Singh, Ms. Manisha Chava, Ms. Ameya Thanvi for Gp. Capt. Karan Singh Bhati, Advs. for the Appellant.

Siddartha Dave, Sr. Adv., Rishi Matoliya, Ms. Sumati Sharma, Ms. Vidhi Thaker, Vinod Khandal, Ms. Iti Jain, Pradeep Matoliya, E Ashutosh Shekhar Paarcha, Milind Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

- F 1. This appeal arises from a judgment dated 12 February 2021, of a Single Judge of the High Court of Judicature for Rajasthan at the Bench at Jaipur by which the first respondent has been enlarged on bail. The appellant is the father of the deceased at whose behest the first information report¹ was registered.

- G 2. The appellant’s son was a Senior Technical Officer with the Intelligence Bureau in New Delhi. On 21 January, 2011, he got married to Anita Meena, who is a co-accused implicated in his murder. The couple had two young children aged 6 years and 4 months. The relationship of the couple is alleged to have encountered difficulties. On 14 February 2018, the deceased travelled from New Delhi to

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Ramgajmandi from where he boarded a train at 1800 hours for Jhalawar where his home was situated. Between 7: 30 and 8.00pm, the appellant received a phone call that his son had been found in an unconscious state near Railway Crossing Puliya and was declared brought dead at the hospital. On 14 February 2018, the appellant submitted a written intimation to the SHO Jhalawar on the basis of which, Merg Report No.04/2018 was registered by the police. On 15 February 2018, the post-mortem was conducted by a Medical Board constituted by the Medical Superintendent of BRS Hospital, which reported that the right lung, liver, spleen and kidneys were congested. The remarks of the Medical Officer indicated that the viscera was preserved for chemical and histopathological examination and a final opinion regarding the cause of death would be furnished after receiving those reports. On the same day, an unnatural death was registered under the provisions of Section 174 of the Code of Criminal Procedure, 1973² with UD No.0004/2018 at the instance of the appellant. On 28 February 2018, samples of the viscera obtained during the post-mortem were sent to the Medical College Jhalawar and Forensic Science Laboratory³, Jaipur, for examination.

3. On 5 March 2018, the appellant submitted an application to the Superintendent of Police, Jhalawar for the registration of an FIR. No action having been taken on the basis of the application, the appellant submitted a written complaint on 9 March 2018 to the CJM, Jhalawar, who ordered an investigation. On 10 March 2018, the histopathological report was received from the Department of Pathology, Jhalawar Medical College and SRG Hospital which indicated that the lungs of the deceased showed signs of congestion and pulmonary edema. On 12 April 2018, FIR No.69/2018 was registered by PS Jhalawar Sadar under Sections 302 and 120B of the Indian Penal Code⁴. The contents of the FIR, which was registered at the behest of the appellant, indicate that:

- (i) The appellant's son married Anita Meena on 21 January 2011;
- (ii) Six months after his marriage, the appellant's son was selected for appointment with the Intelligence Bureau while his spouse was working as a teacher with the Panchayat Samiti;

² “CrPC”

³ “FSL”

⁴ “IPC”

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- A (iii) Together, the deceased and his spouse had purchased a house at Jhalawar behind Jhalawar's housing board colony through the first respondent who was working with the Anti-Corruption Bureau in Jhalawar;
- B (iv) The couple had two children aged 6 years and 4 months;
- B (v) The deceased had proceeded to Ramganjmandi on 14 February 2018, and thereafter for Jhalawar by train. Between 7.30 and 8.00pm, his body was found about 30 meters away from the railway crossing culvert. The house of the deceased is behind a housing board colony, which is about 500 meters away from the railway station. The body was taken by his brother-in-law to Jhalawar SRG Hospital where he was brought dead;
- C (vi) The homicidal death of the appellant's son had occurred as a result of a conspiracy to murder him and previously on 5 January 2018, an attempt had been made to kill him while he was on his way from Jhalawar to Ramganjmandi;
- D (vii) While the first respondent was working as a constable in the Anti-Corruption Bureau, Jhalawar, his wife was working in a school together with the wife of the deceased. About two months prior to the incident, the deceased had called upon the first respondent not to visit their house anymore;
- E (viii) After the death of the appellant's son, the first respondent was not present either in the hospital or during the cremation;
- F (ix) The arrival of the deceased from Delhi to Jhalawar was within the knowledge of his wife and the first respondent, which would be evident from the call data records;
- F (x) The first respondent was present at every hour when the wife of the deceased delivered a child and he had developed close relations with her;
- G (xi) The body had been planted by killing the deceased at some other place under a conspiracy and the murder has been committed using a special method; and
- H (xii) The first respondent had been an active participant in the case involving the murder of the deceased.

4. On 9 May 2018, FSL report 285/2018 dated 4 May 2018, was A received from the FSL, Jaipur, stating:

“RESULT OF EXAMINATION

On chemical examination, portions of viscera (1-5) and blood sample (6) from three packets marked A, B and C respectively gave negative tests for metallic poisons, ethyl and methyl alcohol, cyanide, alkaloids, Barbiturates, tranquilizers and insecticides.” B

5. Based on an analysis of the call details records, co-accused Shahrukh Khan was arrested on 19 June 2018. The first respondent was found to be absconding. It is alleged that the call data records show that on the date of the incident the accused persons were in communication with each other. During the course of the investigation, it was allegedly revealed by Sharukh Khan that the death of the deceased had occurred by injecting him with ketamine, anesthetic drug. A report of the Medical Board, constituted by the police, dated 19 June 2018 was called. The relevant extracts are reproduced below: D

“Q. No. 4- Can (sic) use this injection for any criminal purpose? If yes, How?

Ans. No. 4- The possibility of criminal use of this injection cannot be ruled out. The person can be sedated by this injection, which reduces his or her ability to resist. E

Q. No. 6- Whether giving heavy dose of Ketamine Injection can cause Lungs congestion and pulmonary edema or not?

Ans. No. 6- Lungs congestion & pulmonary edema is possible if a person has hypoxia or asphyxia by giving heavy dose of Ketamine Injection.” F

6. During the course of the investigation, statements were recorded under Section 161 CrPC, including the statement of (i) Chotmal Kashyap dated 22 June 2018; and (ii) Manohar Rathore dated 12 August 2018.

7. The first of these statements was of a resident of Jhalawar who claims to have seen the deceased disembarking at the railway station and going towards the road of the housing board. While coming out of the station, he allegedly saw the first respondent along with two other persons in a Ford Figo vehicle. According to him, the first respondent stepped out of the vehicle and went towards the same road. The second G

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- A statement under Section 161 CrPC is of a relative of the first respondent whose services were being used as a driver by the first respondent. He has narrated certain events which took place on 3 May 2018, 9 May 2018 and 14 June 2018, when the first respondent is alleged to have visited the FSL at Jaipur.
- B 8. Apart from the statements under Section 161 CrPC, on 23 June 2018, a recovery was made at the behest of co-accused Santosh Nirmal of a personal diary stored in a bag in the Operation Theatre Store at the Orthopedic Hospital, Jhalawar. The diary is apparently printed of the year 2010. It is alleged to contain telephone numbers of several persons including the first respondent against the date 15 January, while against the date of 16 January, it records that injections of two ketamine vials 10 ml/500mg had been handed over to the first respondent. Santosh Nirmal, who worked as an Assistant in the Trauma Centre, Jhalawar, was arrested on 21 June 2018. On 24 June 2018, a vial of ketamine and syringe were alleged to have been discovered in consequence of information received from accused Shahrukh Khan. The wife of the deceased was arrested on 25 June 2018, while co-accused Farhan Khan was arrested on 28 June 2018. The mobile phone of the wife of the deceased was seized and it showed that she had been in constant touch with the first respondent after the death of her husband. The first respondent was arrested on 18 August 2018. It is alleged that on 19 August 2018, the police recovered an empty vial of ketamine, a syringe, mobile cover and a pair of glasses (spectacles) belonging to the deceased in consequence of the information furnished by the first respondent under Section 27 of the Indian Evidence Act 1872. On 25 October 2018, a report of the State FSL at Jaipur was submitted indicating that the samples of remnants containing viscera had tested positive for the presence of the drug, Ketamine.
- G 9. On 2 September 2018, a charge sheet was submitted for offences under Sections 302, 364, 201 and 120B of the IPC and under Section 3(2)(v), SC/ST Act, against the first respondent and four other co-accused, namely, (i) Anita Meena, (ii) Shahrukh Khan, (iii) Farhan Khan and (iv) Santosh Nirmal. The application for bail filed by the first respondent was dismissed by a Single Judge of the High Court on 26 February 2019. The co-accused Anita Meena was granted bail on 4 June 2019. The High Court noted that she had a child of eleven months and due to her incarceration, her child was also confined with her in the jail.

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A Special Leave Petition filed against the order granting bail to the co-accused (Anita Meena) on the above ground was dismissed by this Court on 6 September 2019. On 5 August 2020 and 23 November 2020, the High Court dismissed the application for bail filed by the first respondent as withdrawn. The Special Judge SC/ST Act (Prevention of Atrocities) Cases, Jhalawar dismissed the bail application filed by the first respondent on 19 December 2020. Eventually, by the impugned order dated 12 February 2021, the Single Judge has allowed the application for bail. In allowing the application, the High Court has relied upon the following circumstances:

- (i) The appellant was in custody for a period of two and a half years; C
- (ii) Out of seventy-six witnesses only twenty-five have been examined;
- (iii) There was a delay in lodging the FIR;
- (iv) While the initial FSL report did not contain any reference to the use of the Ketamine, it was after four months that police had developed a case that Ketamine was administered to the deceased; and D
- (v) The co-accused had been enlarged on bail. E

10. Ms Chitrangda Rastravara, learned Counsel appearing on behalf of the appellant submitted that there has been a serious error on the part of the High Court in enlarging the first respondent on bail. Learned Counsel submitted that:

- (i) There was no delay on the part of the appellant in lodging the written intimation about the unnatural death of his son immediately after the incident on 14 February 2018; F
- (ii) On 15 February 2018, a report of an unnatural death was registered under the provisions of Section 174 of the CrPC;
- (iii) The police initially failed to register the FIR and it was only on 12 April, 2018 that FIR 69/2018 was registered at PS Jhalabad Sadar; G
- (iv) The charge sheet has been filed after investigation and though the case ultimately rests on circumstantial evidence, H

- A there is sufficient material on record, at this stage, to indicate the involvement of the first respondent;
- (v) The FSL report indicates the presence of the drug Ketamine while even the earlier report which has been brought on record demonstrates pulmonary edema in the lungs of the deceased, which was a likely consequence of the administration of Ketamine;
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- (vi) The High Court in granting bail has failed to notice the seriousness and gravity of the crime involving the murder of the appellant's son, who was employed with the Intelligence Bureau in New Delhi;
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- (vii) The first respondent is a constable employed with the Anti-Corruption Bureau at Jhalawar. There is every likelihood of the evidence being tampered with if the first respondent is enlarged on bail; and
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- (viii) The circumstances which weighed with the High Court in granting bail to the co-accused Anita Meena, namely, that she had an infant of eleven months would demonstrate that bail was granted in special circumstance. The first respondent who is a prime accused cannot claim parity.
- E 11. On the other hand, Mr Siddhartha Dave, learned Senior Counsel, appearing on behalf of the first respondent submitted that:
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- (i) At this stage when the court is dealing with the grant of bail, there is no material on record to implicate the first respondent, where the case of the prosecution would rest on circumstantial evidence;
- (ii) The recovery of the diary of co-accused Santosh Nirmal regarding the handing over of the Ketamine vial to the first respondent would be inadmissible in evidence against the first respondent;
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- (iii) The recoveries which have been made over six months after the date of the incident, after the arrest of the first respondent on 18 August 2018, from a public place would have to be discounted;
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- (iv) The initial FSL report did not contain a reference to the presence of Ketamine while it is only in a subsequent FSL report that traces of the drug have been noticed. The burden would lie on the prosecution to explain the circumstances in which this fact emerged belatedly in the report dated 25 October 2018 nearly eight months after the date of incident; A
- (v) The statement given by Chotmal Kashyap under Section 161 of the CrPC does not disclose that the deceased and the first respondent were last seen together. Further, Chotmal Kashyap has made a profession out of appearing as witness in many cases; and C
- (vi) The first respondent should be enlarged on bail on the ground of parity with the co-accused.

12. The order of the High Court contains serious infirmities. The High Court has noted that there was a delay in lodging the FIR. Prima facie, the narration of facts in the earlier part of the judgment would indicate that on 14 February 2018, the appellant furnished a written intimation to the SHO at PS Jhalawar Sadar recording the unnatural death of his son who had travelled from New Delhi to Jhalawar, upon the discovery of the body close to the railway tracks at around 8.30 pm. The initial intimation recorded that while there was no injury on the body, the nails of the hands and feet of the deceased were found to have turned blue and the death had occurred in suspicious circumstances. It was on the basis of this statement that on 15 February 2018, an unnatural death was recorded under Section 174 of the CrPC. The post-mortem report of 15 February 2018 indicates that the cause of death would be determined once histopathological examination of the viscera is concluded. The report dated 10 March 2018, of the Department of Pathology at the Jhalawar Medical College & SRG Hospital showed congestion in the lungs and pulmonary edema. On 12 April 2018, the FIR was registered at PS Jhalawar Sadar. The FIR contains specific allegations against the first respondent in respect of (i) his proximity to the wife of the deceased; (ii) the deceased having objected to the first respondent visiting their marital home and directing him to cease doing so; and (iii) the call data records and WhatsApp messages exchanged between the first respondent, the deceased and the co-accused Anita Meena. While the initial report of the FSL, Jaipur, dated 4 May 2018, was negative for metallic poison, H

- A ethyl and methyl alcohol, cyanide, alkaloids, barbiturates, tranquillizers and insecticides, the report dated 25 October 2018 indicates that the remnants of the viscera samples had tested positive for the presence of Ketamine, anesthetic drug.

13. Having analyzed *prima facie* the circumstances in which the offence was committed and the nature of the allegations, it will be useful to refer to the precedents of this Court governing the grant of bail. A two-judge Bench of this Court in **Ram Govind Upadhyay v. Sudharshan Singh**⁵ has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. This Court has observed:

- C “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 considerations being:

D (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.

E (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.

F (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.

G (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.”

This Court has further elucidated on the power of the court to interfere with an order of bail in the following terms:

H ⁵(2002) 3 SCC 598

“3. Grant of bail though being a discretionary order — but, A 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.”

The above principles have been reiterated by a two judge Bench of this Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee⁶**: B

“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; D

(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; E

(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; F and

(viii) danger, of course, of justice being thwarted by grant of bail.

[internal citation omitted]”

In **Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana⁷**, a two judge Bench of this Court of which one of us (Justice DY Chandrachud) was a part, has held that the High Court while granting

⁶(2010) 14 SCC 496

⁷ 2021 (6) SCC 230

A bail must focus on the role of the accused in deciding the aspect of parity. This Court observed:

“26....The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon the role of the accused. Merely observing that another

B accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The C High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.”

D 14. The High Court ought to have had due regard to the seriousness and gravity of the crime. The deceased was employed with the Intelligence Bureau in New Delhi. The first respondent is an employee of the Anti-Corruption Bureau at Jhalawar. The material which has emerged during the course of investigation cannot simply be ignored or glossed over (as the High Court has done). The first respondent himself being an employee of the Anti-Corruption Bureau at Jhalawar, the likelihood of the evidence being tampered with and of the witnesses

E being suborned cannot be discounted. At this stage, when the Court is called upon to evaluate whether a case for the grant of bail has been made out, it is inappropriate to enter upon matters which would form the subject of the trial when evidence is adduced by the prosecution. Bail was granted to the co-accused Anita Meena primarily and substantially on the ground that she had a child of eleven months with her in jail. This

F cannot be the basis to a claim of parity on the part of the first respondent. The first respondent cannot claim parity with the co-accused since the allegations in the FIR and the material that has emerged from the investigation indicate that a major role has been attributed to him in the murder of the deceased.

G 15. For the above reasons, we have come to the conclusion that the High Court was in error in allowing the application for bail. The consideration that twenty-five witnesses out of seventy-six witnesses had been examined must equally be weighed with the seriousness of the crime, the role attributed to the first respondent and the likelihood of the H evidence being tampered with if the first respondent were to remain on

bail during the course of the trial. In this backdrop, it was wholly A inappropriate for the High Court to proceed on the surmise that the police had “developed a case” that Ketamine was administered, after four months of the incident.

16. For the above reasons, we allow the appeal and set aside the impugned order of the High Court dated 12 February, 2021 enlarging the first respondent on bail. As a consequence, the first respondent shall B surrender forthwith and be taken into custody.

17. All observations in this judgment are for the purpose of the present case and will not have a bearing on the final outcome of the trial.

18. Pending application(s), if any, stand disposed of. C

Divya Pandey

Appeal allowed.