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AMINUDDIN

v.

STATE OF UTTAR PRADESH AND ANOTHER

(Criminal Appeal No. 317 of 2021)

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March 15, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

C *Constitution of India: Arts. 136, 21 – Invocation of jurisdiction under – In a matter involving serious offence of murder, grant of bail by High Court – On appeal, held: Undoubtedly, the protection of personal liberty u/Art. 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts – Equally, in a matter involving serious offence of murder, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account – High Court failed to notice relevant considerations and the settled principles while granting bail – Thus, the order of the High Court set aside – Code of Criminal Procedure, 1973 – s. 438.*

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Allowing the appeal, the Court

HELD: There can be no manner of doubt that the protection of personal liberty under Article 21 of the Constitution of India, is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious offence of murder has taken place, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account. Having regard to the settled principles which govern the grant of bail in a matter involving a serious offence in a case such as the present, the order of the High Court does not clearly pass muster. In granting bail, the High Court failed to notice relevant considerations which ought to have been, but have not been taken into account. Thus, the impugned judgment and order of the High Court is set aside. [Paras 8, 9][268-A-D]

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Mahipal vs Rajesh Kumar (2020) 2 SCC 118 – referred to.

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Case Law Reference

(2020) 2 SCC 118 Referred to Para 7

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.317 of 2021

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From the Judgment and Order dated 25.02.2020 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No.6083 of 2020.

Anilendra Pandey, Wahid Hussain, Ms. Suchita Dixit, Ms. Priya Kashyap, Madhusudan, Sandeep, Ashwani Kumar, Advs. for the Appellant.

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Ms. Bansuri Swaraj, Ms. Maniya Hasija, Shashank Shekhar Singh, Anand Dilip Landge, Advs. for the Respondents.

The Judgment of the Court was delivered by

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DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. Invoking the jurisdiction of this Court under Article 136 of the Constitution, the informant at whose behest FIR No 438 of 2019 was registered on 10 July 2019 at Police Station Kasganj, District Kasganj, U.P., has moved this Court aggrieved by the order of the learned Single Judge dated 25 February 2020 granting bail to the second respondent.

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3. Briefly stated, the First Information Report was registered at the behest of the appellant who is the father of the deceased. The FIR states that on 10 July 2019 at about 5.15 pm, the son of the appellant was proceeding for the purpose of milking the cattle, at which stage, seven persons residing on the same street attacked him with knives, as a result of which he sustained serious injuries and died on the spot. A postmortem report was conducted at 1 am on 11 July 2019. As many as eight ante mortem injuries were detected. The statement of the appellant was recorded on 11 July 2019. After the arrest of one of the accused, Imran, on 11 July 2019, the Investigating Officer is stated to have made efforts between 12 and 27 July 2019 to apprehend the other accused, but the remaining accused were absconding. On 30 July 2019, a non-bailable

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A warrant was issued. On 2 August 2019, a proclamation was issued under Section 82 of the Code of Criminal Procedure 1973. Among the other accused, the second respondent surrendered before the court on 29 August 2019. On 31 October 2019, the application for bail moved on behalf of the second respondent was rejected by the Sessions Judge, Kasganj. The learned Sessions Judge observed thus:

B “The applicant is nominated in the FIR. There is direct charge of the murder of the son of the applicant with knives. In the Post Mortem Report the cause of death of the deceased is due to Anti-Mortem injuries and shocked. There are 8 injuries mentioned in the Post Mortem Report. Hence in my opinion in view of the entire facts, heinous crime offence, and circumstances, the accused is not liable to be released on bail. Hence the bail application has been got dismissed.”

C 4. Thereafter, the High Court was moved in Criminal Miscellaneous Bail Application No 6083 of 2020. The High Court by its order dated 25 February 2020 directed that the second respondent be enlarged on bail.

D 5. Mr Anilendra Pandey, learned counsel appearing on behalf of the appellant submits that the only reason why the High Court was persuaded to grant bail was “the larger mandate of Article 21 of the Constitution of India”. It has been submitted that the High Court has not indicated any other reason and has completely ignored the seriousness of the offence, the nature of the injuries and the involvement, prima facie, of the accused, who are residing in the same locality who are named in the FIR.

E 6. Pursuant to the notice that was issued by this Court on 18 December 2020, the State of U.P. has entered appearance through Ms Bansuri Swaraj, learned counsel. A counter affidavit has been filed. The State has supported the contention of the appellant. On 19 February 2021, after service was completed, time was granted both to the State as well as to the counsel for the second respondent to file a counter affidavit. Though a counter affidavit has been filed by the State of UP, no counter has been filed on behalf of the second respondent. A letter has been circulated on behalf of the second respondent seeking a further adjournment. However, having due regard to the fact that the appellant seeks to challenge an order of the High Court granting bail to the second respondent in a serious offence involving the murder of the son of the appellant, we see no reason to grant any further adjournment having

regard to the fact that sufficient time has already been granted on 19 February 2021. A

7. The circumstances would indicate that a brutal murder has been committed of the son of the appellant. The postmortem report would indicate as many as eight ante mortem injuries. The offence is alleged to have taken place in broad day light. The First Information Report being Case Crime No 438 of 2019 was registered at about 2108 hours, within a period of four hours of the incident which is alleged to have taken place at 1715 hours on the same day. After the investigation was completed, the charge-sheet has been submitted before the competent court under Section 173 of the Code of Criminal Procedure 1973. In several judgments of this Court, the need for the High Court to adduce reasons while granting bail has been underscored. At this stage, we may advert to the recent decision in *Mahipal vs Rajesh Kumar*¹, which was relied on by Ms Bansuri Swaraj, learned counsel for the State of UP. Speaking for a two-Judge Bench, one of us (Justice D Y Chandrachud, J) observed: B C

“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. D E F

27. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court.” G

8. In the present case, the High Court has merely observed that bail was being granted after considering the submissions and having re-

¹(2020) 2 SCC 118

- A gard to the “larger mandate of Article 21”. There can be no manner of doubt that the protection of personal liberty under Article 21 is a constitutional value which has to be respected by the High Court, as indeed by all courts. Equally, in a matter such as the present, where a serious offence of murder has taken place, the liberty of the accused has to be necessarily balanced with the public interest in the administration of criminal justice system which requires that a person who is accused of a crime is held to account. Having regard to the settled principles which govern the grant of bail in a matter involving a serious offence in a case such as the present, we are of the view that the order of the High Court does not clearly pass muster. No case for the grant of bail is made out. In
- B granting bail, the High Court has failed to notice relevant considerations which ought to have been, but have not been taken into account.
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9. In the above circumstances, we allow the appeal and set aside the impugned judgment and order of the High Court dated 25 February 2020. As a consequence of this order, the second respondent shall surrender forthwith.

10. Pending applications, if any, stand disposed of.