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BHURI BAI

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No.1972 of 2022)

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NOVEMBER 11, 2022

[DINESH MAHESHWARI AND SUDHANSU DHULIA, JJ.]

- Code of Criminal Procedure, 1973: s. 439(2) – Cancellation of bail – Power of – Held: Power of cancellation of bail should be exercised with extreme care and circumspection – Such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail – Very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted – Unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with*
- C – *Cancellation is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case – On facts, it had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her, thus, the order setting aside the bail granted to the appellant cannot be approved, and is set aside.*

Allowing the appeal, the Court

- HELD:** 1.1 **In the peculiar circumstances of the case, particularly for the fact that the deceased left a minor child and none except the appellant was available in the family to look after the child, it is equally difficult to say that the appellant has been an absconder or a fugitive who had been intentionally running away from the process of law. The challenge thrown at the relevant time by Covid-19 pandemic also remains a factor which cannot be ignored altogether. Further, the fact that the appellant is a lady in 55 years of age cannot be ignored. [Para 16][196-B-C]**
- F – **1.2 The order passed by the First Additional Sessions Judge, though had not been explicit on all the surrounding factors but then, the facts were indeed taken into consideration that two of**

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the co-accused were granted pre-arrest bail whereas the other co-accused person, husband of the appellant, was granted regular bail. In the given set of facts and circumstances, if the trial court was satisfied that the appellant was entitled to be given the concession of bail while putting her to specific terms and conditions, the order so passed had neither been suffering from any fundamental error nor there was any other material factor for which the bail granted to the appellant was to be annulled. Even if the High Court had its reservations in the order so passed by the trial court granting bail to the appellant, particularly when the fact of long absence of the appellant was not adverted to, it was yet required to be taken note of by the High Court that the power being exercised was not that of a regular appeal or revision but, it was that of cancellation of bail under Section 439(2) CrPC. [Para 17, 18][196-D-G]

1.3 It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC. [Para 19][196-G-H]

1.4 It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. Power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the trial court in its order granting bail. Thus, in totality of the circumstances, the order impugned setting aside the bail granted to the appellant cannot be approved. The

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- A **impugned order passed by the High Court is set aside and the order passed by the First Additional Sessions Judge is restored. [Para 20-22][196-H; 197-A-D]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1972 of 2022.

- B From the Judgment and Order dated 10.02.2022 of the High Court of Madhya Pradesh Bench at Gwalior (M.P.) in MCRC No. 46653/2021.

Shishir Kumar Saxena, Praveen Swarup, Advs. for the Appellant.

- C Yashraj Singh Bundela, Rajesh K. Singh, Gopal Jha, Umesh Kumar Yadav, Advs. for the Respondent.

The Judgment of the Court was delivered by

DINESH MAHESHWARI, J.

- D Leave granted.

2. This appeal is directed against the judgment and order dated 10.02.2022, as passed by the High Court of Madhya Pradesh at Gwalior Bench in M.Cr.C. No. 46653/2021, that was registered under Section 439(2) of the Code of Criminal Procedure, 1973 ('CrPC'), for *suo motu* powers exercised by the High Court in its order dated 07.09.2021 passed in M.Cr.C. No. 41406/2021.

3. By the order impugned, the High Court has proceeded to cancel the bail granted to the appellant by the First Additional Sessions Judge, Jaura, District Morena, in the order dated 05.08.2021, as passed in Bail Application No. 357/2021.

- F 4. Briefly put, the relevant background aspects of the matter are as follows:

G The appellant is one of the accused persons in the case arising from FIR No. 96/2020 for offences under Sections 304B, 498A read with Section 34 of the Indian Penal Code, 1860 ('IPC') and Sections 3/4 of the Dowry Prohibition Act, 1961. The accusations have been that the deceased, who was married to the son of the appellant, was being subjected to physical and mental tortures for demand of dowry after the marriage and ultimately, on 11.09.2020, she died by hanging under unusual circumstances; and a suicide note in the handwriting of the deceased

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was found, implicating her husband and in-laws, including the present A appellant—the mother-in-law.

5. The prayer of the appellant for grant of pre-arrest bail was rejected by the Sessions Court on 18.10.2020. However, thereafter, the High Court granted pre-arrest bail to the sister-in-law of the deceased on 02.11.2020 and then, the Trial Court granted pre-arrest bail to the brother-in-law of the deceased on 18.11.2020. It is also noticed that on behalf of the appellant, twice over attempts were again made to seek pre-arrest bail but the applications moved in that regard, being M.Cr.C. No. 48592/2020 and M.Cr.C. No. 7199/2021, were dismissed as withdrawn, respectively on 11.12.2020 and 16.02.2021. Ultimately, the charge-sheet was filed on 13.12.2020. Until that time, the appellant was not apprehended and it was mentioned in the charge-sheet that she was absconding. B

6. In relation to this case, husband of the appellant was also arrested, who was granted regular bail on 23.11.2020. However, the appellant surrendered only on 16.07.2021; and a supplementary chargesheet was also filed on 02.08.2021. C

7. Thereafter, the regular bail application (No. 357/2021) moved on behalf of the appellant was considered by the First Additional Sessions Judge, Jaura, District Morena and was allowed on 05.08.2021, essentially with reference to the facts pertaining to the grant of pre- arrest bail to two of the co-accused persons and regular bail to the other co-accused—husband of the appellant. D

8. When the record stood thus, with grant of bail to the co-accused persons including the appellant, the son of the appellant (husband of the deceased) moved a second application for bail before the High Court, being M.Cr.C. No. 41406/2021. The said application was considered by the High Court on 07.09.2021 and one of the submissions made before the High Court had been that the previous bail application of the said accused was rejected on the ground that his mother (the present appellant) was absconding. It was sought to be contended on behalf of the said appellant that his mother had surrendered on 16.07.2021 and was granted bail by the aforesaid order dated 05.08.2021. E

9. The High Court proceeded to examine the said order dated 05.08.2021 and took exception against the same, for the reason that the Trial Court had not adverted to a relevant fact that the present appellant F

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- A was absconding and was arrested only on 16.07.2021. Though, with reference to the nature of accusations, the High Court proceeded to reject the bail plea of the son of the appellant (husband of the deceased) but at the same time, ordered a separate case to be registered while issuing notice to the present appellant to show-cause as to why the bail order dated 05.08.2021 be not recalled. Hence, the said *suo motu* case bearing No. 46653/2021 came to be registered and finally came to be decided by the impugned order dated 10.02.2022.

- 10. In the impugned order dated 10.02.2022, the High Court took note of the allegations and the fact that the appellant was arrested only on 16.07.2021 i.e., approximately ten months after the death of the deceased and seven months after filing of the charge-sheet against co-accused persons; and in fact, she surrendered only after her husband was granted bail. A submission was made before the High Court on behalf of the appellant that all the members of the family were either on run or were in jail and it was left to the appellant to look after the minor child of the deceased and, therefore, she surrendered only after her husband was released, when she could hand over the child to him. The High Court was not impressed with this submission for the reason that no such fact was mentioned in the application seeking bail, as filed before the Sessions Court.

- E 11. The High Court, in the impugned order, also took note of the fact that its directions for ensuring service of notice were not adequately complied with and then, even the requisite explanation was not forthcoming and hence, the Director General of Police was required to file his affidavit of explanation. The High Court reproduced all the contents of the affidavit filed by the Director General of Police as regards the steps taken in the matter and other corrective steps being taken on the administrative side.

- G 12. Having taken note of the assurance stated by the learned Advocate General in the matter for taking corrective steps in the department, the High Court reverted to the facts of the present case and referred to a decision of this Court in the case of *Manoj Kumar Khokhar v. State of Rajasthan* (Criminal Appeal No.36/2022) as regards the parameters in exercise of power for granting bail. Having reproduced a few passages from the said decision, the High Court stated its conclusion that in the light of the said judgment, the bail granted to the present appellant could not be given a stamp of judicial approval. Thus, the High

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Court proceeded to set aside the order dated 05.08.2021 and thereby, A
cancelled the bail granted to the appellant.

13. In challenge to the order so passed by the High Court, learned counsel for the appellant has argued that the High Court has taken a too stern a view of the matter but has not considered that there was no question of the appellant absconding or running away from the process of law, which could be seen from the facts that successively, the applications seeking pre-arrest bail were moved on her behalf. It has also been submitted that the appellant could not surrender earlier under the force of circumstances when the other members of the family were either in custody or were on run and that the appellant was the only responsible person to look after the minor child left by the deceased; and all this was coupled with the adversities created by Covid-19 pandemic. Learned counsel would submit that in the given circumstances, the appellant surrendered before the Court after her husband was granted bail and in the distressed condition of the family, her omission to surrender earlier could not have been regarded as an act of absconson. Learned counsel would also submit that in the circumstances of the case, even the allegations pertaining to the offences under Section 304B IPC are wanting in support by cogent material and in any case, when the Trial Court had granted bail to the appellant, being elderly lady in 55 years of age and when other accused persons, except the husband of the deceased, had also been granted such concession, there was no justification for cancelling the bail already granted. B
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14. Learned counsel appearing for the respondent-State has duly opposed with the submissions that the Sessions Court had been unjustified in granting bail to the appellant, and in the given set of circumstances, when the appellant was not traceable even until filing of the first charge-sheet on 13.12.2020, the view as taken by the High Court cannot be said to be wholly unjustified so as to call for interference, more particularly looking into the nature of accusations. It has been submitted that the Trial Court had granted bail to the appellant in a rather mechanical manner without considering the material on record and, therefore, the High Court has been justified in disapproving the order so passed by the Trial Court. F
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15. We have given anxious consideration to the rival submissions and have examined the material placed on record with reference to the law applicable.

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- A 16. In this matter, where daughter-in-law of the appellant died by committing suicide and with reference to the material on record, charge-sheet for serious offence including Section 304B IPC has been filed, unavailability of the appellant to all the processes of law until 16.07.2021 (the date of surrender/arrest) cannot be appreciated. However, in the peculiar circumstances of the case, particularly for the fact that the deceased left a minor child and none except the appellant was available in the family to look after the child, it is equally difficult to say that the appellant has been an absconder or a fugitive who had been intentionally running away from the process of law. The challenge thrown at the relevant time by Covid-19 pandemic also remains a factor which cannot be ignored altogether. Further, the fact that the appellant is a lady in 55 years of age cannot be ignored, particularly when examining the question of grant of regular bail.
- B 17. The order dated 05.08.2021 as passed by the learned First Additional Sessions Judge, Jaura, District Morena, though had not been explicit on all the surrounding factors but then, the facts were indeed taken into consideration that two of the co-accused were granted pre-arrest bail whereas the other co-accused person, husband of the appellant, was granted regular bail. In the given set of facts and circumstances, if the Trial Court was satisfied that the appellant was entitled to be given the concession of bail while putting her to specific terms and conditions, the order so passed had neither been suffering from any fundamental error nor there was any other material factor for which the bail granted to the appellant was to be annulled.
- C 18. In our view, even if the High Court had its reservations in the order so passed by the Trial Court granting bail to the appellant, particularly when the fact of long absence of the appellant was not adverted to, it was yet required to be taken note of by the High Court that the power being exercised was not that of a regular appeal or revision but, it was that of cancellation of bail under Section 439(2) CrPC.
- D 19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under Section 439(2) CrPC.
- E 20. It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation

of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under Section 439(2) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail.

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21. In totality of the circumstances, we are unable to approve the order impugned setting aside the bail granted to the appellant.

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22. Accordingly, and in view of the above, this appeal succeeds and is allowed; the impugned order dated 10.02.2022 as passed by the High Court is set aside and the order dated 05.08.2021 as passed by the First Additional Sessions Judge, Jaura, District Morena is restored.

23. It goes without saying that this order shall have no bearing on the merit consideration of the matter by the Trial Court.

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24. All pending applications stand disposed of.

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Nidhi Jain

Appeal allowed.