

[2021] 4 S.C.R. 95

SUDHA SINGH

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v.

THE STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 448 of 2021)

APRIL 23, 2021

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[S.A. BOBDE, CJI, A.S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]

Bail: Bail granted to accused arrested with respect to the offence punishable under s.3(1) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 – Accused alleged to be a contract killer and sharp shooter and allegedly murdered husband of the appellant in conspiracy with others – Previously he was prosecuted in 15 cases for serious offences including murder, attempt to murder and criminal conspiracy – High Court granted bail to the accused on liberal terms – Appeal by complainant – Held: High Court overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection – In cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question – High Court simply ignored the antecedents of the accused and the potential to repeat his acts by organising his criminal activities – High Court's order granting bail is set aside.

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Allowing the appeal, the Court

HELD: 1. The High Court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court to grant protection. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims. [Para 8] [97-H; 98-A-B]

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2. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail. [Para 12][99-B]

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- A *Neeru Yadav v. State of U.P. (2014) 16 SCC 508 : [2014] 12 SCR 453; Ash Mohammad v. Shiv Raj Singh (2012) 9 SCC 446 : [2012] 7 SCR 584; Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496 : [2010] 12 SCR 1165 – relied on.*

B	<u>Case Law Reference</u>	
	[2014] 12 SCR 453	relied on
	[2012] 7 SCR 584	relied on
	[2010] 12 SCR 1165	relied on

- C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 448 of 2021.

From the Judgment and Order dated 08.05.2020 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application No. 3623 of 2018.

- D Nirmal Kumar Ambastha, Ms. Ashmita Bisarya, Advs. for the Appellant.
Ms. Srishti Singh, Ajay Kumar Prajapati, Advs. for the Respondents.

- E The Judgment of the Court was delivered by

JUDGMENT

1. Leave granted.
2. This is a criminal appeal filed against the order of the Allahabad High Court granting bail to the accused who has been arrested with respect to the offence punishable under Section 3 (1) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986.
3. The appellant is the wife of a deceased victim namely Rajnarin Singh who has been allegedly murdered by the accused, who is Respondent No. 2 herein, in conspiracy with others. A First Information Report bearing Case Crime Number 200 of 2015, P.S.-Sodhari, Distt.- Azamgarh, was registered in that regard and a charge sheet for offences under Sections 120-B and 302 of the Indian Penal Code, 1860 and Sections 3 and 25 of the Arms Act, 1959 was filed against the accused. The accused is alleged to be a contract killer and a sharpshooter. In fact,
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previously, the accused has been prosecuted in fifteen cases for serious offences including murder, attempt to murder and criminal conspiracy. A

4. According to the prosecution, the accused along with other persons operate an organized crime gang in Azamgarh that allegedly commits offences punishable under Chapters 16, 17 and 22 of the Indian Penal Code. The very purpose of the gang is to make physical and financial gains by committing innumerable crimes of serious nature. It is also stated that this gang instills extreme fear and terror in the area where it operates thereby precluding persons from coming forward and lodging police complaints against its activities, or for that matter deposing in cases pertaining thereof. B

5. By the order impugned in this criminal appeal, the Allahabad High Court granted bail to the accused herein on very liberal terms, such as the execution of a personal bond to the satisfaction of the jail Authorities and the furnishing of sureties within a month of his release. The High court has simply ignored the antecedents of the accused and the potential to repeat his acts by organising his criminal activities. C

6. It is stated by the appellant, who is the wife of the deceased victim that the conduct of the accused during the trial of the case in Case No. 511 of 2016 has been one of non cooperation, by not cross examining the witnesses first, then praying for their recall and then threatening witnesses through his henchmen. In fact, the conduct of the accused impelled the Sessions court to direct the police to provide security in the court during the trial and provide security to the witnesses. D

7. It is also contended by the appellant that the grant of bail in a routine manner to gangsters, has had an adverse effect in the past, upon the law and order situation. The appellant cites the example of a person who was prosecuted in connection with 64 criminal cases which included cases of murders, offences of dacoity, criminal intimidation, extortion and offences under the UP-Gangster Act, etc., but who was released on bail. Ultimately, when a police team went to apprehend him in a case, allegedly 8 policemen were killed and many grievously injured. Therefore, the appellant contends that courts must be extremely careful in releasing of history sheeters who have been charged with serious offences like murder, rape or other kinds of bodily harms several times. F G

8. We find in this case that the high court has overlooked several aspects, such as the potential threat to witnesses, forcing the trial court H

- A to grant protection. It is needless to point out that in cases of this nature, it is important that courts do not enlarge an accused on bail with a blinkered vision by just taking into account only the parties before them and the incident in question. It is necessary for courts to consider the impact that release of such persons on bail will have on the witnesses yet to be examined and the innocent members of the family of the victim who might be the next victims.

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- C 9. This Court in *Neeru Yadav vs. State of U.P.*¹ held that when a stand was taken that the accused was a history sheeter, it was imperative for the High Courts to scrutinise every aspect and not capriciously record that the accused was entitled to be released on bail on the ground of parity.

- D 10. In *Ash Mohammad vs. Shiv Raj Singh*², this Court observed that when citizens were scared to lead a peaceful life and heinous offences were obstructions in the establishment of a well-ordered society, the courts play an even more important role, and the burden is heavy. It emphasized on the need to have a proper analysis of the criminal antecedents of the accused.

- E 11. In *Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another*³, it was held that this Court ordinarily would not interfere with a High Court's order granting or rejecting bail to an accused. Nonetheless, it was equally imperative for the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the ratio set by a catena of decisions of this Court. The factors laid down in the judgment were:

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- (i) Whether there was a prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of accusations;
- (iii) severity of the punishment in the event of a conviction;
- (iv) danger of the accused absconding or fleeing, if granted bail;
- (v) character, *behaviour, means, position and standing of the accused*;

¹ (2014) 16 SCC 508

² (2012) 9 SCC 446

³ (2010) 14 SCC 496

(vi) *likelihood of repetition of the offence;* A

(vii) reasonable apprehension of the witnesses being influenced;
and

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

12. There is no doubt that liberty is important, even that of a person charged with crime but it is important for the courts to recognise the potential threat to the life and liberty of victims/witnesses, if such accused is released on bail. B

13. We, therefore, allow the appeal and set aside the order of the Allahabad High Court granting bail to the accused.

Devika Gujral

Appeal allowed .