

GIRRAJ

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v.

KIRANPAL AND ANR ETC

(Criminal Appeal Nos. 286-290 of 2021)

MARCH 08, 2021

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

Bail:

Grant of bail – By High Court – To the five respondent-accused charged under provisions of IPC and Arms Act – On the ground of parity with the co-accused who was already granted bail by the High Court – Appeal to Supreme Court seeking cancellation of bail – Held: The bail granted by High Court to the co-accused was cancelled by Supreme Court – Since the bail granted to the present respondent-accused was on the ground of parity, their bail also liable to be cancelled – However, the respondents are granted one more opportunity to apply for bail before High Court, subject to their surrendering pursuant to the present order cancelling their bail.

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Allowing the appeals, the Court

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HELD: 1. *Ex facie*, the orders of the High Court would indicate that the only basis for claiming bail in the present batch of cases was by placing reliance on the order granting bail to the co-accused. Since bail has been granted to all the respondent-accused who have claimed parity on the basis of the order granting bail to the co-accused, there can be no manner of doubt that the cancellation of bail by this Court that was granted to the co-accused by High Court, must have a similar consequence insofar as the grant of bail to the remaining five accused is concerned. The orders passed by the High Court granting bail to the five respondent-accused shall stand cancelled. [Paras 14, 18(i)] [236-A-B; 237-B-C]

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*Panchanan Mishra vs. Digambar Mishra (2005) 3 SCC
143 : [2005] 1 SCR 484 – referred to.*

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A **2. Nonetheless, in order to ensure fairness to the co-accused, who are the respondents in these proceedings, it would be appropriate to furnish them an opportunity to apply for bail before the High Court, conditional on their surrendering in pursuance of the present order cancelling their bail. [Para 18] [237-A-B]**

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Case Law Reference

[2005] 1 SCR 484

referred to

Para 12

CRIMINAL APPELLATE JURISDICTION:
Criminal Appeal Nos. 286-290 of 2021

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From the Judgment and Order dated 17.09.2020 of the High Court of Judicature at Allahabad in Criminal Misc. Bail Application No. 22538 of 2020, Final Impugned order dated 22.09.2020 in Criminal Misc. Bail Application No. 15449, 14816, 14951, 15255 of 2020

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Rajiv Garg, T. L. Garg, Advs. for the Appellant.

Vinod Diwakar, AAG, Rajul Bhargava, Sr. Adv., Sarvesh Singh Baghel, Sandeep Singh, B.N. Dubey, Ms. Shivranjani Ralawata, Kartikeya Bhargava, Advs. for the Respondents.

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The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. Permission to file the Special Leave Petitions granted.

2. Leave granted.

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3. A batch of five Special Leave Petitions (SLP) under Article 136 of the Constitution has arisen from the orders passed by the High Court of Judicature at Allahabad granting bail to the five respondent-accused, namely:

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(i) Kiranpal;

(ii) Sundar;

(iii) Rakesh;

(iv) Satish; and

(v) Dharmendra.

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4. The circumstances which have led to the registration of the first information report¹ being Case Crime No 414 of 2019 against the accused under Sections 147, 148, 149, 302, 307, 323, 342 and 508 of the Indian Penal Code 1860 at Police Station Rabupura, District Gautam Budh Nagar may be adverted to briefly. The appellant who is the original complainant had two sons, Gajendra aged 34 years and Akash aged 22 years, who were killed in the course of an incident which took place on 29 November 2019. Two other persons, Sunil and Jeetu, out of the four others present along with the deceased, are alleged to have been seriously injured in the course of the incident. The FIR was lodged on 30 November 2019 at 1743 hours against eight accused persons, five of which are before this Court in these proceedings. The FIR refers to the fact that there was an enmity between the accused and the complainant and his sons due to “party politics”. The FIR mentions an earlier incident on 24 October 2019, when five of the accused (Sundar, Dharmendra, Monu, Kiranpal and Ompal) had attacked Akash at Chambe in Mirzapur with an intent to kill him. Akash had allegedly sustained a head injury after being assaulted with an iron rod and a fire-arm injury in respect of which a first information report was lodged. Two of the accused (Rakesh and Satish) had also allegedly assaulted the appellant’s sons in the morning of 29 November 2019 and threatened them with death. The incident concerning the present case is alleged to have taken place at night, on 29 November 2019. One of the deceased, Gajendra, the son of the appellant, was conducting a gym and after closing his establishment, he was proceeding in his vehicle from village Rabupura to village Rampur Bangar together with Akash, who was in another vehicle. Two other persons, Sunil and Deepak are alleged to have been in a third vehicle. Jeetu and Subhash were proceeding in a fourth vehicle. When these persons reached a particular spot at around 8:30 pm, their passage was found to be blocked by a bullock cart. The eight accused were allegedly present at the spot armed with rifles, guns and country-made pistols for an ambush. They are alleged to have surrounded the four vehicles with an intention of assaulting the appellant’s sons. Accused Mulla is alleged to have fired with his rifle at Gajendra, while accused Bhupan is alleged to have fired with his rifle at Akash. Both Gajendra and Akash were killed on the spot. Sunil and Deepak who were in the third vehicle are alleged to have got down after seeing the occurrence. Jeetu and Subash also came out of the fourth vehicle. Among the injured were Sunil and

¹ “FIR”

- A Jeetu. After the FIR was lodged, all the respondent-accused were arrested on 6 December 2019.

5. Pursuant to the registration of the FIR, the investigation by the police was completed and a charge sheet was filed on 09 February 2020 under Sections 147, 148, 149, 307, 323, 326, 341 and 506 of the Indian

- B Penal Code 1860 against all the accused and under Section 27 and 30 of the Arms Act against accused Sunder and Mulla.

6. The details of the impugned orders passed by the HC granting bail to the respondent-accused are as follows:

| | | |
|---|----------------------------|--|
| C | Kiranpal | By order dated 17 September 2020 in Criminal Miscellaneous Bail Application No 22538 of 2020 |
| | Sundar | By order dated 22 September 2020 in Criminal Miscellaneous Bail Application No 15449 of 2020 |
| D | Rakesh, Satish, Dharmendra | By common order dated 22 September 2020 in Criminal Miscellaneous Bail Application Nos 14816 of 2020, 14951 of 2020 and 15255 of 2020, respectively. |

7. Apart from these five accused, another co-accused Narendra (who is not a respondent in this batch of SLPs), was granted bail by the High Court in Criminal Miscellaneous Bail Application No. 14060 of 2020 by an order dated 05 August 2020.

8. At this stage, it is necessary to note that while seeking bail before the High Court in Criminal Miscellaneous Bail Application No 22538 of 2020, Kiranpal had relied upon the order of the High Court granting bail to co-accused Narendra by the above order dated 5 August 2020 in Criminal Miscellaneous Bail Application No 14060 of 2020. Similarly, in Criminal Miscellaneous Bail Application No 15449 of 2020, Sundar had also relied upon the order passed on 5 August 2020 granting bail to Narendra. While granting bail, the High Court, in its orders dated 17 September 2020 and 22 September 2020, extracted the earlier order by which bail was granted to Narendra. In fact, the High Court observed as follows:

“Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties, **the fact that co-accused having identical role have already been released on bail by this Court**, without expressing any

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opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed.”(emphasis supplied) A

9. The High Court adverted to the fact that “co-accused having identical role have already been released on bail by this Court”. Similarly, while granting bail to Rakesh, Satish and Dharmendra, the High Court, by its order dated 22 September 2020, specifically relied upon the earlier orders by which bail was granted to co-accused Narendra and Kiranpal. B

10. The above narration of facts makes it abundantly clear that the first order granting bail dated 5 August 2020 was in the case of co-accused Narendra. All the other accused while claiming the grant of bail had specifically relied upon the order passed in the case of Narendra and sought bail on the basis of parity. Following the principle of parity, the High Court enlarged them on bail. C

11. Now, the order granting bail to Narendra was the subject matter of Criminal Appeal No 852 of 2020 before this court, arising out of Special Leave Petition (Criminal) No 5537 of 2020 (**Girraj v Narendra @ Munder and Another**). By the judgment and order of this Court dated 11 December 2020, the order granting bail to Narendra was set aside. Paragraphs 8, 9 and 10 of the judgment of this Court read as follows: D

“8 While analyzing the rival submissions, we must at the outset note the considerations which weighed with the High Court. The High Court has basically adverted to the following reasons: E

- (i) The first respondent has no criminal history;
- (ii) Indiscriminate firing is stated to have been made by all the accused including the first respondent upon Jeetu and the two deceased and hence it cannot be determined who has caused the injuries; F
- (iii) Taking into consideration the quantum of punishment, nature of offence and period of detention, the case was found fit for grant of bail. G

9 The last of the observations above, is an omnibus observation. The serious nature of the offence and the quantum of punishment would, as explained hereafter, militate against the grant of bail in the facts of the present case. As a matter of fact, it is evident from the earlier part of the observations of the High Court which H

- A have been extracted above, that the Court did notice the fact that it is alleged that there was indiscriminate firing by the side of the accused including the first respondent. The attention of the court has been drawn to the fact that in the statement of one of the injured, Jeetu, it has been specifically stated that the first
- B respondent was among those who had fired at the deceased and Jeetu. Above all, the High Court has completely ignored the circumstance that in terms of the allegations in the FIR, there was an unlawful assembly and it is as a consequence of this that the provisions of Section 149 have been attracted.
- C 10. A serious offence has taken place involving the death of two sons of the appellant. Though, the High Court has referred to the nature of the offence, it has failed to notice that the seriousness of the offence in the present case would militate against the grant of bail in a case such as the present, where there are not only
- D specific allegations in the FIR, but the statement of one of the injured witnesses. The High Court has also ignored the allegation of enmity between the two groups on account of party politics, which have allegedly translated into instances of threats and assault of appellant's sons as discussed above. Moreover, the submission of the first respondent that the failure of the police to register an
- E FIR at the behest of the accused led them to file an application under Section 156(3) CrPC, is clearly indicative of the fact that prima facie at this stage, the presence of the first respondent cannot reasonably be doubted. In his counter affidavit, the first respondent had, in fact, sought to explain his presence by stating that he was merely passing from the place."
- F 12. This Court indicated the following reasons for coming to the conclusion that the grant of bail to Narendra was contrary to the settled legal principles, including the decision of this Court in **Panchanan Mishra v Digambar Mishra**²:
- G "12 Having regard to the conspectus of facts and our analysis above, we are clearly of the view that in granting bail, the High Court has led itself to be governed by several circumstances which are extraneous to the proper exercise of discretion under Section 439 of the CrPC. Merely observing that there was indiscriminate

H ² (2005) 3 SCC 143

firing and it was difficult to ascertain as to who had caused the injury is manifestly an erroneous approach to the issue for two reasons. First, as the material at this stage indicates, there are specific allegations against the first respondent. Second, if as alleged, the first respondent was a member of an unlawful assembly, the provisions of Section 149 would stand attracted. In this backdrop, having regard to the fact that a serious offence of murder has taken place allegedly motivated by previous enmity on account of party politics, leading to the death of both the sons of the appellant, we are of the view that the High Court was in error in granting bail to the first respondent. The High Court having granted bail for reasons which are extraneous to the exercise of the discretion under Section 439 CrPC, we are constrained to interfere in the exercise of our jurisdiction under Article 136 of the Constitution to cancel the bail of the first respondent”

13. The following table will indicate the position in regard to the grant of bail to all the accused in the case:

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| Chief Judicial Magistrate, Noida | Bail refused. 04.01.2020 – Kiranpal 06.01.2020 – Rakesh and Satish 07.01.2020 - Narendra 08.01.2020 – Bhupan, Dharmendra, Mulla and Sundar. |
| Addl Sessions Judge, Gautam Budh Nagar, U.P. | Considering the nature of the offence, being armed with gun, rifle, manner, no bail to be granted. 04.02.2020 - Kiranpal 07.02.2020 - Rakesh & Satish 10.02.2020 - Narendra 13.02.2020 - Bhupan & Dharmendra 24.02.2020 - Mulla & Sundar |
| High Court of Judicature at Allahabad | 05.08.2020 – Bail granted to Narendra as he has “ <i>no history and that indiscriminate fire is said to be have been made all, thereby cannot be determined as to who has caused the said injury.</i> ” 17.09.2020 - Bail granted to Kiranpal with same reasoning, ignoring the SLP filed on 04.09.2020 against the order dated 05.08.2020. 22.09.2020 – Bail granted to Sundar, Rakesh, Satish and Dharmendra by relying on the orders dated 05.08.2020 and 17.09.2020. |
| Supreme Court | 11.12.2020 – Cancelled the bail of Narendra |

A 14. Since bail has been granted to all the respondent-accused
who have claimed parity on the basis of the order granting bail to Narendra,
there can be no manner of doubt that the cancellation of bail that was
granted to Narendra must have a similar consequence insofar as the
grant of bail to the remaining five accused is concerned. The
circumstances in which bail that was granted to co-accused Narendra
B was cancelled have already been adverted to in the earlier part of this
order.

15. Mr Rajiv Garg, learned counsel appearing on behalf of the
appellant, submits that since the respondents had claimed parity on the
basis of the order which was passed in the case of Narendra, they must
necessarily now submit to the final order passed by this Court cancelling
C bail which was granted to co-accused Narendra. This submission has
been supported on behalf of the State by Mr Vinod Diwakar, learned
Additional Advocate General.

16. On the other hand, an effort has been made by Mr Rajul
D Bhargava, learned Senior Counsel appearing on behalf of the respondent-
accused to advert to certain circumstances which in his submissions
would distinguish the case of the respondent-accused. In particular,
reliance has been placed during the course of the submissions on the
information regarding the death of the appellant's sons which was
E furnished by the Kailash Hospital and by the Yatharth Hospital on 29
November 2019 to the Police Station. The submission is that the
information furnished by the hospitals adverts to the circumstances and
location at which the incident took place and that this is at variance as to
what was eventually recorded in the FIR which was registered at about
1743 hours on 30 November 2019.

F 17. We are unable to accede to the submission which was urged
on behalf of the respondent-accused in these proceedings. We are not
at this stage dealing a finding arrived at in the course of a criminal trial
on the basis of evidence. Serious offences are alleged to have been
committed in the course of the incident, leading up to the death of two
G sons of the informant and serious injuries to others.

18. *Ex facie*, the orders of the High Court would indicate that the
only basis for claiming bail in the present batch of cases was by placing
reliance on the order granting bail to the co-accused Narendra. The bail
which has been granted to Narendra has been cancelled by the order of
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this Court dated 11 December 2020. Nonetheless, in order to ensure fairness to the co-accused, who are the respondents in these proceedings, we are of the view that it would be appropriate to furnish them an opportunity to apply for bail before the High Court, conditional on their surrendering in pursuance of the order which we propose to pass cancelling their bail. We accordingly allow the present appeals in terms of the following directions:

- (i) In view of the order dated 11 December 2020 passed by this Court in Criminal Appeal No 852 of 2020 cancelling the bail which was granted to the co-accused Narendra and since bail was sought by the respondents on a footing of parity, the orders passed by the High Court granting bail to the five respondent – accused, namely, Kiranpal, Sundar, Rakesh, Satish and Dharmendra, shall stand cancelled;
- (ii) The respondent–accused shall surrender, as a consequence of the cancellation of bail forthwith;
- (iii) Conditional on the respondents’ surrendering within a period of 24 hours of the uploading of a copy of this order on the website of this Court, the respondents are granted liberty to move the High Court afresh for the grant of bail.

19. Pending application, if any, stands disposed of.