

A MANNO LAL JAISWAL

v.

THE STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 97 of 2022)

B JANUARY 25, 2022

**[M. R. SHAH AND SANJIV KHANNA, JJ.]**

- Code of Criminal Procedure, 1973 – ss. 439 and 161 – Bail – Grant of – Appellant lodged FIR against the respondents-accused for murder of his son – Respondents-accused applied for bail – Sessions Courts rejected the said bail applications – High Court granted bail to respondents – Appellant approached this court and submitted that – (i) High Court erroneously noted that the accused persons were not named in the FIR and that the statement of witnesses u/s. 161 Cr.PC were recoded after inordinate delay; (ii) High Court have not considered the gravity of the offence committed by the accused persons and have not considered that the offence was committed u/s. 149; (iii) No reasons were assigned and the decision was passed mechanically and without application of mind – Held: Accused persons were named in the FIR and the statements u/s. 161 Cr.PC. were recorded on the very same day – High Court had applied wrong facts in granting of bail – When accused were charged u/s. 149 and when their presence was established, adding the fact that they were part of the unlawful assembly, the individual role of accused is not relevant – High court have not adverted to the gravity and nature of offence and no reasons were assigned while granting the bail – High Court have granted bail mechanically and on application of wrong facts – Judgement of High Court is quashed and set aside – Respondents directed to surrender forthwith – Penal Code, 1860 – ss. 147, 148, 149, 323, 504, 506, 302, 307 and 34.*

G **Allowing the appeals, the Court**

**HELD:1. The fact that all the accused persons were named in the FIR and even the statements of relevant witnesses under Section 161 Cr.PC were recorded on the very day, on applying the wrong facts, the High Court has released respective**

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respondents No.2-accused on bail. The High Court has noted the submissions made on behalf of the accused, which has been accepted by the High Court that the accused were not named in the FIR and that their names were disclosed during investigation and that the statements of the witnesses under Section 161 Cr.PC were recorded at a later stage/belatedly. The aforesaid are factually incorrect. Even the counsel appearing on behalf of the accused has submitted that it was not the case on behalf of the accused that they were not named in the FIR and/or that the statements of the witnesses under Section 161 Cr.PC were recorded belatedly and/or at a later stage. Therefore, it appears that the High Court has granted the bail to respective respondents No.2 in such serious offences in which one person was killed mechanically and without applying the correct facts. [Para 8.1][995-F-H; 996-A]

2. The High Court has noted the submissions made on behalf of the accused that role attributed to respective respondents No.2 that using the wicket as weapon it is difficult to decipher at that stage that the accused have caused fatal injury over the person. When the accused were charged for the offences punishable under Section 149 of the IPC also and when their presence has been established and it is stated that they were part of the unlawful assembly, the individual role and/or overt act by the individual accused is not significant and/or relevant. Even otherwise the order(s) passed by the High Court releasing respective respondents No.2 on bail in such serious offences in which one person was killed is unsustainable. The High Court has not adverted to the gravity and nature of the offences at all. Even no reasons are assigned by the High Court. [Para 8.2, 8.3][996-C-E]

3. Even otherwise, the High Court has also not considered the relevant considerations while grant of bail as observed and held by this Court in the case of *Anil Kumar Yadav* case. In the said decision, it is observed and held by this Court that while granting bail, the relevant considerations are (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and

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- A **(iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.** From the impugned judgment(s) and order(s), it appears that the High Court has not at all adverted to the relevant facts and/or considerations while granting bail. [Para 9][996-G-H; 997-A]
- B *Anil Kumar Yadav Vs. State (NCT of Delhi) and another;*  
**(2018) 12 SCC 129; [2017] 11 SCR 979 4.4 – relied on.**

**Case Law Reference**

- C **[2017] 11 SCR 979                          relied on                          Para 4.4**  
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 97 of 2022.  
From the Judgment and Order dated 06.10.2020 of the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application No.6294 of 2020.
- D      With  
Criminal Appeal No. 98 of 2022.
- E      Vijay Kumar Shukla, Varinder Kumar Sharma, Ms. Nupur Shukla, Shantanu L Sharma, J. K. Verma, Advs. for the Appellant.  
Ardhendumauli Kumar Prasad, AAG, Ms. Alka Sinha, Anuvrat Sharma, Krishna M. Singh, Rajiv Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

- F      **M. R. SHAH, J.**
- G      1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) dated 06.10.2020 passed by the High Court of Judicature at Allahabad in Criminal Misc. Bail Application Nos. 6294 of 2020 and 7992 of 2020 by which the High Court has released respective respondents No.2 herein on bail in connection with Case Crime No.203 of 2019 for the offences punishable under Sections 147, 148, 149, 323, 504, 506, 302, 307 and 34 of the IPC, P.S. Barhaj, District Deoria, the original informant/complainant – father of the deceased has preferred the present appeals.

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2. That the appellant herein lodged an FIR against respective respondents No.2 and others for the offences punishable under Sections 147, 148, 149, 323, 504, 506, 302, 307 and 34 of the IPC for murder of his son. Respective respondents No.2 – accused applied to release them on bail before the learned Sessions Courts/Additional Sessions Judge, Deoria. By detailed judgment(s) and order(s) dated 19.11.2019 and 22.01.2020, the learned Sessions Courts rejected the said bail applications after perusing the case dairy and other documents. The learned Sessions Courts observed that the accused persons are named in the FIR and it has been alleged that all the accused persons with a common intention attacked the deceased by sword, hockey, stick and rod and killed the son of the complainant. The learned Sessions Court noted that in the statement of witnesses recorded under Section 161 Cr.PC the relevant witnesses have given evidence in support of the incident. That thereafter respective respondents No.2 approached the High Court by way of present applications under Section 439 Cr.PC to release them on bail. By the impugned judgment(s) and order(s), the High Court applied the wrong facts (which has been demonstrated hereinbelow) and has released respective respondents No.2 on bail.

3. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the High Court releasing respective respondents No.2 on bail, the original complainant – father of the deceased has preferred the present appeals.

4. Shri Vijay Kumar Shukla learned counsel appearing on behalf of the appellant – complainant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in releasing respective respondents No.2 on bail.

4.1 It is vehemently submitted by Shri Vijay Kumar Shukla learned counsel appearing on behalf of the appellant that while releasing respective respondents No.2 on bail, the High Court has applied the wrong facts. It is submitted that the High Court in the impugned judgment(s) and order(s) has noted that the accused were not named in the FIR, but their names have figured up during investigation. It is submitted that aforesaid is factually incorrect. It is submitted that respective respondents No.2 were named in the FIR right from the beginning. It is submitted that it was not the case on behalf of the accused that they were not named in the FIR and that their names were figured up during investigation. It is submitted that even the respective learned

- A Sessions Courts while rejecting the bail applications have specifically noted that the accused were named in the FIR.
- 4.2 It is further submitted by learned counsel appearing on behalf of the appellant that the High Court has noted that the statement of the witnesses under Section 161 Cr.PC were recorded after inordinate delay of more than 20 days. It is submitted that the same is factually incorrect.
- B It is submitted that as such the statements of the relevant witnesses under Section 161 Cr.PC were recorded on the very day of the incident.
- 4.3 It is submitted that while releasing the accused on bail the High Court has not taken into consideration the gravity and the nature of offences committed by the accused. It is submitted that the High Court has not at all noted and/or considered that the offence alleged was under Section 149 of the IPC also and therefore when it was found that all the accused persons with a common intention attacked the deceased by sword, hockey, stick and rod and killed the son of the complainant, the individual role played by each accused is insignificant and not a relevant consideration at all.
- 4.4 It is further submitted that even otherwise as such except noting the submissions made on behalf of the accused as well as by learned Public Prosecutor and thereafter making the general observations that keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and without expressing any opinion on merits of the case, the accused has made out a fit case for bail, no further reasons are assigned. It is submitted that therefore the order(s) passed by the High Court releasing respective respondents No.2 – accused have been passed mechanically and without proper application of mind and without considering the relevant considerations of grant of bail as held by this Court in the case of **Anil Kumar Yadav Vs. State (NCT of Delhi) and another; (2018) 12 SCC 129** are not at all adhered to and/or considered.
5. Shri Ardhendumauli Kumar Prasad, learned AAG appearing on behalf of the State has supported the appellant. It is submitted that in such grave offences under Sections 302, 147, 148, 149 of the IPC, the High Court ought not to have released the respective respondents No.2 on bail.
6. The present appeals are opposed by Shri Krishna M. Singh, learned counsel appearing on behalf of the accused – respective respondents No.2.

6.1 It is submitted that as such it was never the case on behalf of the accused that they were not named in the FIR and/or that the statements of the witnesses under Section 161 Cr.PC were recorded at a later stage/belatedly. He has taken us to the relevant averments made in the bail applications.

6.2 It is submitted that however, when the role attributed to respective respondents No.2 is that they used the wicket and nothing is on record that they used any deadly weapon and/or caused the injury on the vital part of the body of the deceased, the High Court has not committed any error in releasing respective respondents No.2 on bail more particularly when respective respondents No.2 – accused were in jail since 26.08.2019 and 05.09.2020, respectively and that accused have no criminal antecedents.

7. We have heard learned counsel appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that respective respondents No.2 and other accused are charge-sheeted for the offences punishable under Sections 147, 148, 149, 323, 504, 506, 302, 307 and 34 of the IPC. That as per the case of the complainant and the prosecution all the accused including respective respondents No.2 herein with a common intention attacked the deceased by sword, hockey, stick and rod and killed the son of the complainant. As per the post mortem report, five injuries were found on the body of the deceased and fracture in the occipital region of head in right side and presence of hematoma in brain was found.

8.1 Despite the fact that all the accused persons were named in the FIR and even the statements of relevant witnesses under Section 161 Cr.PC were recorded on the very day, on applying the wrong facts, the High Court has released respective respondents No.2 on bail. The High Court has noted the submissions made on behalf of the accused, which has been accepted by the High Court that the accused were not named in the FIR and that their names were disclosed during investigation and that the statements of the witnesses under Section 161 Cr.PC were recorded at a later stage/belatedly. The aforesaid are factually incorrect. Even the learned counsel appearing on behalf of the accused has submitted that it was not the case on behalf of the accused that they were not named in the FIR and/or that the statements of the witnesses under Section 161 Cr.PC were recorded belatedly and/or at a later stage.

- A Therefore, it appears that the High Court has granted the bail to respective respondents No.2 in such serious offences in which one person was killed mechanically and without applying the correct facts.

8.2 Even otherwise the High Court has not at all appreciated the fact that all the accused were charged for the offences punishable under

- B Sections 147, 148 and 149 also along with Section 302 of the IPC and as noted by the learned Sessions Court vide order dated 19.11.2019 that all the accused persons with a common intention attacked the deceased – Sumit Jaiswal by deadly weapons like sword, hockey, stick and rod. The High Court has noted the submissions made on behalf of the accused C that role attributed to respective respondents No.2 that using the wicket as weapon it is difficult to decipher at that stage that the accused have caused fatal injury over the person. When the accused were charged for the offences punishable under Section 149 of the IPC also and when their presence has been established and it is stated that they were part of the unlawful assembly, the individual role and/or overt act by the individual D accused is not significant and/or relevant.

8.3 Even otherwise the order(s) passed by the High Court releasing respective respondents No.2 on bail in such serious offences in which one person was killed is unsustainable. The High Court has not adverted to the gravity and nature of the offences at all. Even no reasons are E assigned by the High Court except observing in one paragraph as under:-

“The submissions made by learned counsel for the applicant, prima facie, quite appealing and convincing for the purpose of bail only.

- F Keeping in view the nature of the offence, evidence, complicity of the accused, submissions of the learned counsel for the parties and without expressing any opinion on merits of the case, I am of the view that the applicant has made out a fit case for bail.”

The aforesaid can hardly be said to be assigning the reasons.

9. Even otherwise, the High Court has also not considered the G relevant considerations while grant of bail as observed and held by this Court in the case of **Anil Kumar Yadav** (supra). In the said decision, it is observed and held by this Court that while granting bail, the relevant considerations are (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact H that his release may make on the prosecution witnesses, its impact on

the society; and (v) likelihood of his tampering. From the impugned judgment(s) and order(s), it appears that the High Court has not at all adverted to the relevant facts and/or considerations while granting bail. At the cost of repetition, it is observed that the High Court has released respective respondents No.2 on bail mechanically and on applying the wrong facts which even as per the accused were not their cases. The impugned judgment(s) and order(s) releasing respective respondents No.2 on bail are unsustainable both on facts as well as on law.

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10. In view of the above and for the reasons stated above the present appeals succeed. The impugned judgment(s) and order(s) passed by the High Court releasing respective respondents No.2 on bail are hereby quashed and set aside. Now respondent No.2 – Pradyumn alias Pradumn alias Deepak Gupta in Criminal Appeal No.97 of 2022 and respondent No.2 - Shalu in Criminal Appeal No.98 of 2022 to surrender forthwith. However, it is observed that the observations made in the present order be confined for the purpose of deciding the bail only and the learned Trial Court shall proceed with the trial and decide the same in accordance with law and on the basis of the evidences led by both the sides. The present appeals are accordingly allowed.

Ankit Gyan

Appeals allowed.

(Assisted by : Arsh Choudhary, LCRA)