

PURAN MAL

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v.

STATE OF HARYANA & ANR.

(Criminal Appeal No. 398 of 2022)

MARCH 10, 2022

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**[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]**

*Code of Criminal Procedure, 1973 – s.439 – Bail – Respondent no.2 was accused of offence u/s.302, IPC – Bail denied by Trial Court – Granted by High Court – On appeal by complainant, held: When the Trial Court has dismissed the bail application (in the present case it was dismissed twice), the High Court while taking a view different from the Trial Court ought to give some cogent and valid reasons for grant of bail – Nature of offence in the present case is very grave – Fact that the son (accused no.1) of the respondent no.2 had stabbed the deceased in his presence is prima facie clear from the material available and the CCTV footage filed before High Court – Details of the phone calls made between the respondent no.2 and his son are also on record – All these factors not considered by High Court – Further, there are allegations that the family of the deceased had been threatened on behalf of respondent no.2 – Order passed by the High Court granting bail to respondent no.2 is quashed – Penal Code, 1860 – s.302.*

*Criminal Law – Bail – Grant/rejection of – Guiding principles – Discussed.*

*Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote & Ors. (1980) 2 SCC 559 : [1980] 3 SCR 15; Ram Govind Upadhyay vs. Sudarshan Singh and Ors. (2002) 3 SCC 598 : [2002] 2 SCR 526; Jaibunisha vs. Meharban & Anr. (2022) SCC OnLine SC 58; Brijmani Devi vs. Pappu Kumar & Anr. (2021) SCC Online SC 1280]; X vs. State of Telangana and Anr. (2018) 16 SCC 511 : [2018] 4 SCR 466; Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr. (2004) 7 SCC 528 : 2004 (3) JT 442; Prabhakar Tewari vs. State of Uttar Pradesh and Anr. (2020) 11 SCC 648 : 2020 (2)*

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- A      *JT 72; State of U.P. through CBI vs. Amarmani Tripathi (2005) 8 SCC 21 : [2005] 3 Suppl. SCR 454 – relied on.*

**Case Law Reference**

B	[1980] 3 SCR 15	relied on	Para 10
	[2002] 2 SCR 526	relied on	Para 10
	[2018] 4 SCR 466	relied on	Para 11
	[2005] 3 Suppl. SCR 454	relied on	Para 13

- C      CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 398 of 2022.

From the Judgment and Order dated 17.11.2020 of the High Court of Punjab and Haryana, at Chandigarh in CRM-M No. 37527 of 2020.

R. Basant, Sr. Adv., Ishaan George, Advs. for the appellant.

- D      Anil Kaushik, Addl. AG, Ms. Anju Kaushik, Vishwa Pal Singh, Shishir Mathur, Viresh B. Saharya, Akshat Agarwal, Advs. for the respondents.

The following Order of the Court was passed:

E      **ORDER**

1. Leave granted.
2. The respondent no. 2 (Mahesh Kumar) is an accused in a case for offence under Section 302 of the Indian Penal Code, 1860 (for short ‘IPC’). The bail application of the respondent no. 2 was rejected by the Trial Court on two occasions. Thereafter, the High Court has allowed the bail application of the respondent no. 2. The complainant has filed this appeal by way of special leave petition questioning legality of the order granting bail to the respondent no.2.
3. In brief, the facts of the case are that the deceased, who was the brother of the complainant/appellant, had received fatal injuries and died between the night intervening 16/17.06.2020.
4. The submission of the learned counsel for the appellant seeking, in substance, cancellation of the order granting bail is that there was a long standing rivalry between the deceased and the respondent no. 2 and on 16.06.2020 evening itself there was a scuffle between the two in

which the deceased had received injuries and he had lodged a complaint in his own handwriting with the police station at 08.00 p.m. (which was registered subsequently on the next date). After lodging FIR, the deceased had gone to the hospital for treatment. It is contended that the respondent no. 2 also reached the hospital and according to the appellant, the call records would show that he called his son to the hospital who then attacked the deceased with knife causing grievous injuries on account of which the deceased expired. It is further submitted that in this background the bail applications of the respondent no. 2 were twice rejected by the Trial Court and the High Court has granted the bail without considering these aspects and without assigning any cogent reasons. It is also submitted that after being released on bail there are allegations against the respondent no. 2 threatening the family members of the deceased. It is also contended that the charges have now been framed against the respondent no. 2 under Section 302 read with Section 120B of the IPC.

5. Mr. Anil Kaushik, learned Additional Advocate General appearing for the State of Haryana has supported the case of the appellant and submitted that when twice the bail has been rejected by the Trial Court with detailed reasons, the High Court ought to have given proper reasons for granting bail and could not have passed the order without assigning such reasons.

6. Per contra, Mr. Shishir Mathur, learned counsel for respondent no. 2 has submitted that the High Court has considered the discrepancies with regard to the role assigned to the respondent no. 2 in the FIR and the statement of the complainant and has also considered the CCTV footage which was filed before the High Court and then granted bail.

7. We have heard Mr. R. Basant, learned senior counsel for the appellant, Mr. Anil Kaushik, learned Additional Advocate General appearing for the State/respondent no.1, as well as Mr. Shishir Mathur, learned counsel for the respondent no. 2 (accused) and perused the record.

8. What we notice from the impugned order is that the High Court, while granting bail, has only made the following observations and passed the order for grant of bail:

“As per the FIR, the petitioner had allegedly caught hold of the left hand of the deceased and Manish and Piyush @ Passu had inflicted knife blows upon the deceased, whereas the complainant

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- A got his supplementary statement recorded by improving his version that the petitioner and Deepak had come running and asked the boy to kill him (deceased) and ensure that he might not survive. The petitioner has been in custody since 18.07.2020. Trial of the case would take time to conclude. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.”
- B 9. It is settled law that when the Trial Court has dismissed the bail application (and in the present case it has been dismissed twice), what is expected from the High Court, while taking a view different from that of the Trial Court, some cogent and valid reasons ought to have been given for grant of bail. The nature of offence in the present case is very grave.
- C The fact that the son of the respondent no. 2 had stabbed the deceased in the presence of the respondent no. 2 is *prima facie* clear from the materials available before this Court and the CCTV footage which was filed before the High Court. The details of the phone calls made between the respondent no. 2 (accused no. 2) and his son (accused no. 1) are
- D also on record. All these factors ought to have been considered by the High Court while passing the impugned order, which has not been done in the present case.
- E 10. Though an order for grant or rejection of plea for bail is a discretionary remedy, several decisions of this Court have been cited before us, which discusses the principles guiding this field of law. In **Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote & Ors.** [(1980) 2 SCC 559], it has been held that at that stage, Court should be satisfied of a *prima-facie* case and detailed examination of evidence is not necessary for considering this question. In **Ram Govind Upadhyay vs. Sudarshan Singhand Ors.** [(2002) 3 SCC 598], this Court opined that once the High Court refuses bail, to consider such plea and grant of bail subsequently must be supported by reasons.
- F 11. In the judgment of a Coordinate Bench in the case of **Jaibunisha vs. Meharban & Anr.** [(2022) SCC OnLine SC 58] and Criminal Appeal No.227 of 2022 (**Sabir vs. Bhoora & Nadeem & Anr.**) decided on 15<sup>th</sup> February, 2022 by this very Bench, the need of a bail order in serious offences to be supported by reason was emphasised. Same view was taken by a Coordinate Bench in the case of **Brijmani Devi vs. Pappu Kumar & Anr.** [(2021) SCC Online SC 1280]. This question had been dealt with in the case of **X vs. State of Telangana and Anr.** [(2018) 16 SCC 511].

12. In the present case, however, there were earlier two rejection orders by the Court of Session but the High Court had granted bail under Section 439 of the Code of Criminal Procedure, 1973 the first time its jurisdiction was invoked under that provision. In the case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Anr.** [(2004) 7 SCC 528], gravity of the offence alleged has been held to be an important factor for considering the question of grant of bail.

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13. Judgments in the cases of **Prabhakar Tewari vs. State of Uttar Pradesh and Anr.** [(2020) 11 SCC 648] and **State of U.P. through CBI vs. Amarmani Tripathi** [(2005) 8 SCC 21] deal with the question of considering orders of the High Court granting bail by this Court at the appellate stage. In **Prabhakar Tewari** (in which one of us, Aniruddha Bose J. was a party), bail order by the High Court was sustained as it was found by this Court that there was no error in exercise of discretion by the High Court in granting bail to the accused persons. The offence, though, was grave and serious and involved Section 302 of IPC. In the case of **Amarmani Tripathi** (supra), post-release conduct of the accused was considered. A Coordinate Bench of this Court found that the High Court had practically failed to take into consideration voluminous materials collected by the investigating agency. In that perspective, the order granting bail to the accused was set aside.

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14. In the facts of the present case we have taken into consideration the seriousness of the offence as well as the conduct of the respondent no. 2. We also find that the respondent no. 2 in a serious case like this remained in prison only for about four months before bail was granted. There are allegations that the family of the deceased had been threatened on behalf of the respondent no. 2. We have taken into consideration the ratio of different authorities cited by the learned counsel for the parties and are of the opinion that the order passed by the High Court granting bail to the respondent no. 2 is liable to be set aside.

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15. Accordingly, for the reasons given above, we allow this appeal and quash the order of the High Court dated 17.11.2020.

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16. No orders as to costs.

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Divya Pandey

Appeal allowed.

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