

ANSAR AHMAD

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v.

STATE OF UTTAR PRADESH AND ANR.

(Criminal Appeal No. 1168 of 2023)

APRIL 18, 2023

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[SURYA KANT AND J. B. PARDIWALA, JJ.]

Bail – Bail applications filed by two respondents herein in a case crime u/ss.147, 148, 149, 307, 302, 120-B and 34 IPC and ss. 3 & 4 of Explosive Substances Act before the High Court was granted – It was alleged that appellant's son was killed in a contract killing – During the course of investigation, it was found that while one of the respondents was allegedly present at the spot at the time of occurrence, the other respondent was a part of the conspiracy hatched to eliminate victim-deceased – On appeal, held: The offences were serious in nature and the respondents were allegedly involved in a contract killing – Both respondents had a criminal record – There was a material to indicate the motive behind the murder – Earlier, both respondents were found guilty in a case u/s. 302 IPC – In the instant case, one of the eyewitness is yet to depose as a prosecution witness and it is expedient and is always in the interest of criminal justice system that the prayer for bail is considered after ensuring that the statements of the vital witnesses stand recorded and there is no likelihood of influencing or tampering their evidence – Series of orders passed by the trial Court also indicate that respondents were seeking exemption from personal appearance and trial was completely stalled – Taking into consideration all the relevant facts and circumstances, the High Court did not take into consideration the relevant material while granting bail to the private respondents – Appeals allowed – Orders of the High Court granting bail set aside.

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Ash Mohammad v. Shivraj Singh @ Lalla Babu and Another (2012) 9 SCC 446 : [2012] 7 SCR 584; Puran v. Rambilas and Another (2001) 6 SCC 338 : [2001] 3 SCR 432; Venkatesan Balsubramaniyan v. The Intelligence Officer, DRI Bangalore (2020) 13 SCALE 191 : [2020] SCR 942 – referred to.

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Case Law Reference

[2012] 7 SCR 584	referred to	Para 15
[2001] 3 SCR 432	referred to	Para 16
[2020] SCR 942	referred to	Para 17

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1168 of 2023.

From the Judgment and Order dated 23.09.2021 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in BN No. 624 of 2019.

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With

Criminal Appeal No. 1169 of 2023.

Siddharth Dave, Sr. Adv., Talha Abdul Rahman, Ms. Vidhi Thaker, M Shaz Khan, Ms. Gayatri Dahiya, Advs. for the Appellant.

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Sharan Thakur, A.A.G., Basant R, Sr. Adv., Rohit K. Singh, Siddharth Thakur, Mustafa Sajad, Divyesh Pratap Singh, Vikram Pratap Singh, Kavinessh Rm, Ms. Shivangi Singh, Ms. Ishita Bedi, Ms. Ranjana Singh, Ajay Prabu, Ms. Shivani Singh, S. R. Setia, K B Upadhyay, C P Pandey, S N Tripathi, Ms. Pinki Tiwari, Shailesh Tiwari, Advs. for the Respondents.

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The following Order of the Court was passed:

ORDER

1. Leave granted.

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2. The appellant seeks to assail two orders of even date i.e., 23.09.2021, passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow whereby the Bail Application No. 624 of 2019, filed by the respondent – Subhash Yadav, and Bail Application No. 4309 of 2019, filed by the respondent – Rajesh Vikram Singh, in Case Crime No. 17 of 2018 under Sections 147, 148, 149, 307, 302, 120-B/34 IPC and Sections 3/4 of the Explosive Substances Act, Police Station Jagdishpur, District Amethi were allowed and both the abovementioned respondents have been enlarged on regular bail.

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3. The allegations are that the appellant along with his son – Ashfaque Ahmad and his companions were present in front of Jagdishpur

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Branch of Vijaya Bank when the accused Vanshraj Yadav attacked Ashfaq Ahmad by throwing a grenade, and thereafter, Satai and other accused persons started indiscriminate firing due to which, Ashfaq Ahmad died on the spot and Razi Ahmad @ Manu received injuries. Two accused persons were caught hold on the spot with the help of public. One of them disclosed his name, Amit Chaubey S/o Vindhyaachal Chaubey, resident of Bihar while the second accused did not disclose his name. Two country made pistols, two magazines and one mobile phone were recovered from their possession. During the course of interrogation, accused – Amit Chaubey disclosed that the respondent (Rajesh Vikram Singh) and his brother had sent the accused persons for committing the murder of Ashfaq Ahmad. In the FIR, registered on the statement of the appellant, it is further mentioned that a sum of Rs. 2, 47, 700/- cash was recovered from the accused persons, who were caught by the public. It was alleged to be a case of contract killing.

4. During the course of investigation, it was found that while one of the respondents (Subhash Yadav) was allegedly present at the spot at the time of occurrence, the other respondent (Rajesh Vikram Singh) was a part of the conspiracy hatched to eliminate Ashfaq Ahmad. The motive behind elimination of Ashfaq Ahmad was that his father-in-law was a witness in another criminal case registered against Rajesh Vikram Singh under Section 302 IPC in which the above-named respondent was eventually convicted.

5. One of the accused, who allegedly participated in the occurrence, namely, Satish Kumar @ Satai applied for his bail and the High Court vide an order dated 03.09.2021 rejected his prayer observing as follows:

“Considering the rival submissions of learned counsel for the parties and going through the contents of the F.I.R., injury report of the applicant, ante mortem injury of the deceased and the medico legal report of the injured Razi as well as the contents of the F.I.R. No. 168 of 2018 lodged by the wife of the applicant and also considering the criminal antecedent so the applicant, I am of the view that no case is made out for grant of bail to the applicant. Accordingly, the bail application is rejected.”

6. It appears that during the pendency of the above-stated bail application, the respondents (Subhash Yadav and Rajesh Vikram Singh)

A also moved the High Court for their enlargement on bail. In the case of Subhash Yadav, it was categorically pointed out before the High Court that he was involved in at least 14 criminal cases and was already a convict under Section 302 IPC. While on bail in that case, he was found involved in the murder of Ashfaque Ahmad, in the bail application of the respondent - Rajesh Vikram Singh, the High Court was apprised of the
B fact that there are 26 criminal cases registered against him, of course, in some of which, he has already been acquitted and in a few cases, he was on bail. In one of the cases – Crime No. 229/2004, under Section 302 IPC etc., he was convicted and in Criminal Appeal No. 497/2008, his conviction and sentence were suspended.

C 7. The High Court briefly narrated the prosecution case and after noticing the contentions from both sides, concluded that “considering the rival submissions of learned counsel for parties and going through the contents of FIR, relevant part of the case diary as discussed above, I am of the opinion that the applicant is entitled to be released on bail.”

D 8. The complainant, who is the father of the deceased, being aggrieved by the grant of bail to the private respondents, is before this Court.

E 9. We have heard learned Senior counsel appearing on behalf of the appellant, the learned Senior counsel appearing on behalf of the private respondents as well as learned Additional Advocate General appearing on behalf of the State of Uttar Pradesh.

F 10. There cannot be any quarrel with the submission advanced by Mr. R. Basant, the learned Senior Counsel appearing for one of the private respondents that the Court while granting bail is not required to give detailed reasons touching the merits or de-merits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking
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- (i) The nature of the accusation weighing in the gravity and severity of the offence;
- (ii) The severity of punishment;

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- (iii) The position or status of the accused, i.e. whether the accused can exercise influence on the victim and the witnesses or not; A
- (iv) Likelihood of accused to approach or try to approach the victims/witnesses;
- (v) Likelihood of accused absconding from proceedings; B
- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail; C
- (ix) The *prima facie* satisfaction of the court in support of the charge including frivolity of the charge;
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence. D

We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, would be required to be kept in mind while granting or refusing bail to an accused. It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC, as the case may be. E

11. We are of the view that in the case in hand, several important factors ought to have been kept in mind by the learned High Court while considering the prayer of the respondents for their enlargement on regular bail. The murder of Ashfaq Ahmad took place in broad day light. The occurrence has been witnessed by the appellant and two more eye witnesses. Two of the accused were nabbed at the spot. It was apparently a case of contract killing. There is material to indicate the motive behind the commission of gruesome murder of Ashfaq Ahmad. Both the respondents have chequered criminal record and it is difficult to accept their sweeping statement that all the cases registered against them are politically motivated. Suffice to take notice at this stage that earlier both the respondents have been found guilty in a case under Section 302 IPC and while on bail, they have been *prima facie* found involved in the instant case. If that is true, it is a clear case of misuse of the concession H

A of bail granted to them in the earlier case. We find it difficult as to why
the reasons assigned by the High Court a few days before its order
dated 03.09.2021, passed in the case of Satish Kumar @ Satai, were
found distinguishable in the case of the private respondents except that
Satish Kumar @ Satai was physically involved in the commission of
murder and was allegedly one of the accused who fired at the deceased.

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12. The other important factor is that Razi Ahmad @ Manu is one
of the eye witnesses. He is yet to depose as a prosecution witness.
Though not as a general rule but it is expedient and is always in the
interest of criminal justice system that the prayer for bail is considered
after ensuring that the statements of the vital witnesses stand recorded
and there is no likelihood of influencing or tampering their evidence.

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13. The appellant has also placed on record the copies of orders
passed by the Trial Court on various dates after the release of private
respondents on bail by the High Court. The order dated 15.03.2022
suggests that the respondent – Subhash Yadav was absent from trial
and non-bailable warrants were issued against him. There are series of
subsequent orders to indicate that both the respondents have been seeking
exemption from personal appearance and thus the trial has been
completely stalled. Learned Additional Advocate General informs that
till date, only one witness has been examined. It is the solemn duty of the
Court to ensure that while extending the protection of liberty to an accused
within the meaning of Article 21 of the Constitution, the interest of the
prosecution is equally protected and the concession of bail should not be
allowed to be misused to the prejudice of the prosecution of the victim.

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14. Mr. Basant, the learned Senior counsel appearing for one of
the accused vehemently submitted that very cogent and overwhelming
circumstances are necessary for cancellation of bail. Bail once granted
should only be cancelled if it comes to the notice of the Court that the
accused has misused the liberty granted to him by the Court. According
to Mr. Basant, there are no supervening circumstances warranting
cancellation of bail granted by the High Court.

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15. We are not at all impressed by the aforesaid submission of
Mr. Basant as it is well settled position of law that cancellation of bail is
not limited to the occurrence of any supervening circumstances. In Ash
Mohammad vs. Shivraj Singh @ Lalla Babu and Another, reported in
(2012) 9 SCC 446, this Court has observed that there is no defined

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universal rule that applies in every single case. Hence, it is not the law that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of an abuse of bail. The Court before whom the order of grant of bail is challenged is empowered to critically analyse the soundness of the bail order. The Court must be wary of a plea for cancellation of bail order vs. a plea challenging the order for grant of bail. Although on the face of it, both situations seem to be the same yet, the grounds of contention for both are completely different. Let's understand the different conditions in both the situations.

16. In an application for cancellation of bail, the court ordinarily looks for supervening circumstances as discussed above. Whereas in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. The illegality of due process is questioned on account of improper or arbitrary exercise of discretion by the court while granting bail. So, the crux of the matter is that once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if there is any illegality in the order, or can apply for cancellation of bail if there is no illegality in the order but a question of misuse of bail by the accused. In Puran v. Rambilas and another, reported in 2001 (6) SCC 338, this Court has observed, "The concept of setting aside as unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself, are because of some supervening circumstances warranting such cancellation"

17. The above principle has been reiterated in the case of Venkatesan Balsubramaniyan vs. The Intelligence Officer, DRI Bangalore (Cr. Appeal No. 801 of 2020), reported in (2020) 13 Scale 191 wherein this Court observed that a default bail illegally or erroneously granted under Section 167(2) CrPC can be cancelled under Section 439(2) CrPC.

18. Taking into consideration all these facts and circumstances but without expressing any views on the merits of the ongoing trial, we are satisfied that the High Court did not take into consideration the relevant material while granting bail to the private respondents. It may be true that an accused cannot be permitted to be languished in jail indefinitely but the Courts while considering the bail application need to wait for the appropriate stage where such a relief can be granted without any adverse

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- A impact on the prosecution case. That stage is yet to reach in the present trial as some of the crucial eye witnesses are yet to depose.

19. For the reasons aforestated, the appeals are allowed, the impugned orders dated 23.09.2021, passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Bail Application No. 624 of 2019 and Bail Application No. 4309 of 2019, granting regular bail to the private respondents, are hereby set aside and both the respondents are directed to surrender before the Trial Court forthwith, failing which coercive action shall be taken against them.
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20. However, the respondents shall be at liberty to apply for bail after examination of all the eye witnesses or other material witnesses. Any such application shall be considered as per its own merit without being influenced by the observations made hereinabove.
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21. The Trial Court is directed to decide the case expeditiously and make an endeavour to conclude the trial within one year.

- D 22. As a sequel thereto, pending interlocutory applications also stand disposed of.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals allowed.