

SEEMANT KUMAR SINGH

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v.

MAHESH PS & ORS.

(Criminal Appeal No. 872 of 2023)

MARCH 21, 2023

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**[KRISHNA MURARI AND
AHSANUDDIN AMANULLAH, JJ.]**

Bail – Adverse remarks – Expunction of – During the pendency of bail proceedings of respondent no.1, the High Court made adverse remarks against the appellants, who had no lis in the proceedings – Further, the High Court issued direction for seeking reports against appellant no.2 during the bail proceedings – On appeal, held – Remarks made by High Court against appellant no.2 are unreasonable and without justification as appellant no.2 has no personal involvement in the case – No evidence against appellant no.2 has been analysed and no opportunity has been given to him to explain himself – Also, appellant no.3 is not a party to the bail proceedings, it was unreasonable to pass adverse remarks – Further, the direction issued by the high Court to seek reports against the appellant no.2 during bail proceedings of respondent no .1 is liable to be set aside as no opportunity of hearing was given to appellant no .2 and the High Court must have confined itself to the issues relevant to it for the purposes of deciding the bail of respondent no.1 – Adverse remarks passed by the High Court against the appellants expunged and order of High Court quashed.

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Allowing the appeals, the Court

HELD:1. As far as the Appellant No.2 is concerned, the remarks made by the High Court against him seem to be unreasonable and without justification. The Appellant No.2 is merely a government employee of the department that is conducting the investigation and has no personal involvement with the case. The Appellant No. 2 is not an accused and has nothing to do with the transaction of the crime, let alone the bail proceedings. No evidence against him has been analyzed by the court and no opportunity has been given to him to explain himself, however, scathing and egregious remarks have still been passed

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- A against him. In such a scenario, this Court finds that the remarks passed by the High Court to be unfair and not in the interest of justice. [Para 18][594-A-B]
2. In so far as the Appellant No. 3 is concerned, even though he is an accused in the alleged crime, however, what must not be forgotten is the fact that he does not have any *lis* in the bail proceedings, as the same was exclusive to Respondent No.1. In such a scenario, where Appellant No.3 was not party to the ongoing bail proceedings, this Court finds it to be extremely unreasonable for the High Court to pass such adverse remarks against him. When no allegations were made against Appellant No.3, and the presumption of innocence is still functional in the favor of the Appellant No.3, this Court finds it to be a gross abuse of the process of law to pass such adverse remarks against him, as such remarks do not just cause injury to his reputation, but also has the potential to cause great prejudice to his actual trial.
- D [Paras 19, 20][594-C-F]
3. The High Court during the bail proceedings of a third party are manifestly arbitrary and unjust, and the High Court must have confined itself to the issues relevant to it for the purposes of deciding the bail of the Respondent No.1. A court of bail, especially in cases where the bail is sought for by a third party, is not a court that has all the relevant information to pass an order on the merits of an unconnected party, and such an order, if passed, has the potential to cause great harm to the said party without them being afforded an actual and meaningful opportunity to defend themselves. It is a well settled principle of law that any party, when being accused of an illegal act, must be given an opportunity to be fairly heard. This opportunity to be meaningfully heard however has not been afforded to the Appellant No.2. [Para 25][596-E-G]
- G *Niranjan Patnaik v. Sashibhusan Kar (1986) 2 SCC 569 : [1986] 2 SCR 470; State of M.P. v. Nandlal Jaiswal (1986) 4 SCC 566 : [1987] 1 SCR 1; Election Commission of India v. M. R. Vijaybhaskar (2021) 9 SCC 770; RBI v. Cooperative Bank Deposit A/C HR. Sha (2010) 15 SCC 85 : [2010] 9 SCR 1107; State Represented by Inspector of Police v. M. Murugesan &*
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Anr. (2020) 15 SCC 251 : [2020] 2 SCR 553; State of Punjab v. Davinder Pal Singh Bhullar and Others (2011) 14 SCC 770 : [2011] 15 SCR 540 – relied on.

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<u>Case law reference</u>		
[1986] 2 SCR 470	relied on	Para 15
[1987] 1 SCR 1	relied on	Para 15
(2021) 9 SCC 770	relied on	Para 17
[2010] 9 SCR 1107	relied on	Para 22
[2020] 2 SCR 553	relied on	Para 23
[2011] 15 SCR 540	relied on	Para 24

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 872 of 2023.

From the Judgment and Order dated 07.07.2022 of the High Court of Karnataka at Bengaluru in CRLP No. 4909 of 2022.

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With

Criminal Appeal Nos. 873 and 874 of 2023.

Nikhil Goel, A.A.G, Ranjit Kumar, Amit Kumar, Sr. Advs., Avijit Mani Tripathi, Shaurya Sahay, Mrs. Rekha Bakshi, Shubhranshu Padhi, Vishal Banshal, Ms. Rajeshwari Shankar, Niroop Sukrithy, Ovias Moh., Ms. Anand Sanjay M. Nuli, Suraj Kaushik, Dharm Singh, S. Shiva Swaroop, M/s. Nuli & Nuli, Advs. for the Appellant.

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K.M. Nataraj, ASG, Raghavendra S. Srivatsa, Venkita Subramoniam T. R., Likhi Chand Bonsle, Ms. Komal Mundhar, Advs. for the Respondents.

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The Judgment of the Court was delivered by

KRISHNA MURARI, J.

Leave granted.

2. The present three Appeals are directed against the interim order dated 07.07.2022 passed by the High Court of Karnataka at Bengaluru, (hereinafter referred to as “**High Court**”) in Criminal Petition No. 4909 of 2022, whereby adverse remarks were made by the Ld. Single Judge of the High Court against the Appellants, and a direction was issued to the CBI, mandating them to investigate the past records of one of the Appellants.

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- A 3. The Appellant in SLP (CRL.) No. 6253 of 2022 (hereinafter referred to as **Appellant No. 1**), is the State of Karnataka and the Appellant in SLP No. 6572 of 2022, one Mr. Seemant Kumar (hereinafter referred to as **Appellant No. 2**), is a senior IPS officer with 26 years of service, and is currently the Additional Director General of Police, Anti-Corruption Bureau. The Appellant in SLP (Crl) 6573 of 2022, one Mr. J. Manjunath (hereinafter referred to as **Appellant No. 3**), is the District Collector for the city of Bangalore. The Respondent Mahesh PS (hereinafter referred to as **Respondent No.1**) .
- B 4. Briefly, the facts relevant for the present appeals are that during the pendency of bail proceedings of Respondent No.1, who is a police officer alleged to have taken a bribe, the High Court vide impugned interim order dated 07.07.2022 made adverse remarks against the Appellants, who had no *lis* in the above-mentioned bail proceedings.
- C 5. On 20.05.2022, an FIR was registered under Section 7(a) of the Prevention Of Corruption Act against the Respondent No.1 herein, D for allegedly demanding a bribe from the informant. The respondent no.1 was subsequently taken into custody.
- E 6. The respondent No.1 then filed a bail application under Section 439 Cr.PC in the High Court. Notice was issued by the High Court in the said case, and on 22.06.2022, during the bail proceedings, the High Court issued an oral summons against the Appellants herein seeking their appearance in court. It is important to note that the Appellant 1 and Appellant 2 are not arraigned as accused persons in the said case and have no connection with the bail proceedings.
- F 7. During the same bail proceedings, on 04.07.2022, the High Court made adverse remarks against the Appellants herein. These remarks made by the High Court were widely reported in the media and caused injury to the reputation of the Appellants.
- G 8. Subsequently, on 07.07.2022, the High Court while making further adverse remarks against the Appellants, also directed the CBI to place a report of the past investigations conducted against the Appellant No. 2, without giving an opportunity to the Appellant No.2 to be heard.
- H 9. It is however important to note that Appellant No.3 stands on a slightly different footing from the other Appellants, in so far as that the Appellant No.3, after the initial investigation, was arrayed as an Accused in the abovementioned case. In the same breath however, it must also

be kept in mind that the Appellant No.3, even though is an accused in the said alleged crime, was not a party to the abovementioned bail proceedings in the High Court. A

10. Through the present Appeals filed before this court, the Appellants seek for the remarks made by the High Court against them to be expunged. B

QUESTIONS PERTAINING TO THE PRESENT APPEALS

11. At the very outset, we would like to clarify that in the present appeals, we are only concerned with the adverse remarks made by the High Court against the appellants and the subsequent directions issued to the counsel of CBI against the Appellant No.2. The substantive prayer for bail sought for by the respondent No.1 is not being entertained by this court at the present, and the proceedings for the same are ongoing in the High Court. C

12. In the aftermath of the aforesaid proceedings, this court is now tasked with answering two questions in the present Appeals. D

I. *Whether the adverse remarks made by the High Court against the appellants during the bail proceedings of the respondent No. 1 is liable to be expunged?*

II. *Whether the direction issued by the High Court to seek for reports against the Appellant No.2 during the bail proceedings of the respondent no.1 is liable to be set aside?* E

ANALYSIS

ISSUE I-Whether the adverse remarks made by the High Court during the bail proceedings of the respondent No.1 is liable to be expunged? F

13. The High Court, on 04.07.2022 and 07.07.2022, on two separate occasions, during the bail proceedings of the Respondent No.1, made adverse remarks against the Appellants herein, which is said to have caused great harm to their reputation. Due to the proceedings being broadcasted on the High Court's YouTube channel, the said comments have received wide publicity, and several media and news outlets have picked up on those comments and reported the same. G

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- A 14. It is to be noted that bail proceedings, unlike a full criminal trial, are burdened with the task of only forming a *prima facie* view on the merits of the case. In such a circumstance when the evidence is not fully analyzed, and a presumption of innocence is still operational in favour of the accused, the courts must then be extremely cautious in passing adverse remarks against the accused. This becomes especially important in cases where the party against whom the remarks are passed do not have a *lis* in the said proceedings, for such comments, especially if passed by constitutional courts, can cause great injury to the reputation of the parties at the receiving end of such remarks. This burden of caution on the courts has been held in a catena of judgments by this Court.
 - B 15. In the case of *Niranjan Patnaik v. Sashibhusan Kar*¹, this Court, while examining certain remarks made by a High Court stated that the courts, while passing adverse remarks, must be extremely careful and must resort to passing such remarks only if it is necessary to come to fair conclusion in order to meet the ends of justice. The relevant paragraph of the said judgment is being extracted herein:

"In expressing their opinions, Judges and Magistrates must be guided by consideration of justice, fair play and restraint, (...) the judges should not normally depart from sobriety, moderation and reserve and harsh or disparaging remarks are not to be made against the parties or authorities unless it is really necessary for the decision of the case as integral part thereof"
 - C 16. In the case of *State of M.P. v. Nandlal Jaiswal*², wherein this court was examining certain disparaging remarks made by the High Court against the State officials held that judges, must refrain from passing adverse remarks, as the same can cause great mischief and might become an antithesis to the ends of achieving justice. The relevant observations from the aforesaid judgment is being reproduced herein:

"We may observe in conclusion that Judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and
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- H ¹(1986) 2 SCC 569
H ²(1986) 4 SCC 566

disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice. Here, in the present case, the observations made and strictures passed by B.M. Lal, J. were totally unjustified and unwarranted and they ought not to have been made. A

17. Further, In the case of **Election Commission of India v. M.R. Vijaybhaskar³**, while examining certain adverse remarks made by the High Court, held that judges must exercise extreme caution while passing remarks in court that may susceptible to misinterpretation. The relevant paragraph of the judgment is being produced hereunder:

"Having said that, we must emphasise the need for Judges to exercise caution in off-the-cuff remarks in open court, which may be susceptible to misinterpretation. Language, both on the Bench and in judgments, must comport with judicial propriety. Language is an important instrument of a judicial process which is sensitive to constitutional values. Judicial language is a window to a conscience sensitive to constitutional ethos. Bereft of its understated balance, language risks losing its symbolism as a protector of human dignity. The power of judicial review is entrusted to the High Courts under the Constitution. So high is its pedestal that it constitutes a part of the basic features of the Constitution. Yet responsibility bears a direct co-relationship with the nature and dimensions of the entrustment of power. A degree of caution and circumspection by the High Court would have allayed a grievance of the nature that has been urged in the present case. All that needs to be clarified is that the oral observations during the course of the hearing have passed with the moment and do not constitute a part of the record. The EC has a track record of being an independent constitutional body which shoulders a significant burden in ensuring the sanctity of electoral democracy. We hope the matter can rest with a sense of balance which we have attempted to bring." F G

18. In light of the aforesaid decisions, as far as the Appellant No.2 is concerned, the remarks made by the High Court against him

- A seem to be unreasonable and without justification. The Appellant No.2 is merely a government employee of the department that is conducting the investigation and has no personal involvement with the case. The Appellant No. 2 is not an accused and has nothing to do with the transaction of the crime, let alone the bail proceedings. No evidence against him has been analyzed by the court and no opportunity has been given to him to explain himself, however, scathing and egregious remarks have still been passed against him. In such a scenario, we find the remarks passed by the High Court to be unfair and not in the interest of justice.
- B 19. In so far as the Appellant No. 3 is concerned, even though he is an accused in the alleged crime, however, what must not be forgotten is the fact that he does not have any *lis* in the bail proceedings, as the same was exclusive to Respondent No.1. In such a scenario, where Appellant No.3 was not party to the ongoing bail proceedings, we find it to be extremely unreasonable for the High Court to pass such adverse remarks against him.
- C 20. In the bail proceedings of Respondent No.1, because the Appellant No.3 was not a party, he did not have the opportunity to place his submissions on record for the court to peruse the same. No specific allegations against Appellant No.3 were made before the High Court, since the bail proceedings, and the submissions of the counsels in furtherance of the said bail proceedings, were only limited to Respondent No.1. In this context, when no allegations were made against Appellant No.3, and the presumption of innocence is still functional in the favor of the Appellant No.3, we find it to be a gross abuse of the process of law to pass such adverse remarks against him, as such remarks do not just cause injury to his reputation, but also has the potential to cause great prejudice to his actual trial.

ISSUE II-Whether the direction issued by the High Court to seek for reports against the Appellant No.2 during the bail proceedings of the respondent no.1 is liable to be set aside?

- G 21. As has been mentioned above, the Appellant No.2, who is merely an employee of the institution that is handling the investigation of the alleged crime, had no *lis* in the abovementioned bail proceedings. The High Court vide an oral summons directed the presence of the Appellant No.2, to which he complied. After being summoned, the High Court, without allowing the Appellant No.2 a chance to be heard, and
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without going through the proper procedure, issued a direction to the counsel of CBI to place reports against the Appellant No.2. At the sake of repetition, it must be kept in mind that all of this had happened within Section 439 Cr.PC proceedings, and that too against a person unconnected to the accused.

22. In the case of **RBI v. Cooperative Bank Deposit A/C HR. Sha⁴**, the Reserve Bank Of India challenged an order passed by the High Court during an application under section 439 of the CrPC, wherein directions were issued to the bank to distribute the money it recovered from the accused. This court, while examining these directions held that the High Court must have confined itself to the issues relevant for the purposes of deciding bail. The relevant observation of this Court is being extracted hereunder:

"We are of the opinion that the far-reaching consequences of the directions of the High Court are in a way beyond the scope of an application for bail filed by an accused under Section 439 of the Code of Criminal Procedure and the High Court, as much as anyone else, must stay confined to the issues relevant to the matter before it. It was thus not open to the High Court to pass orders which could affect the working of banks all over the country. It has been pointed out by Mr Basava Prabhu S. Patil, the learned Senior Counsel for the appellant that it is for this reason that Reserve Bank of India had filed this appeal."

23. In the case of **State Represented by Inspector of Police v. M. Murugesan & Anr⁵**, this Court held that in cases where a separate mechanism exists, the court under its inherent powers, especially in context of bail proceedings, cannot issue directions that are outside the purview of deciding the grant or rejection of bail. The relevant observations made by this court are being reproduced herein:

"We find that the learned Single Judge has collated data from the State and made it part of the order after the decision [of the bail application, as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the

⁴(2010) 15 SCC 85

⁵(2020) 15 SCC 251

- A *court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the court."*
- B 24. Further, in the case of *State of Punjab vs Davinder Pal Singh Bhullar and Others*⁶, where after deciding a criminal appeal, the High Court continued to pass orders with respect to other offenders in unconnected cases, this court held that such invocation of jurisdiction outside the purview of the main case at hand was unjust. The relevant paragraph of the said judgment is being produced herein:
- C *"An inherent power is not an omnibus for opening a Pandora's box, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation."*
- D 25. In light of the abovementioned facts, we are of the opinion that the actions of the High Court during the bail proceedings of a third party are manifestly arbitrary and unjust, and the High Court must have confined itself to the issues relevant to it for the purposes of deciding the bail of the Respondent No.1. A court of bail, especially in cases where the bail is sought for by a third party, is not a court that has all the relevant information to pass an order on the merits of an unconnected party, and such an order, if passed, has the potential to cause great harm to the said party without them being afforded an actual and meaningful opportunity to defend themselves. It is a well settled principle of law that any party, when being accused of an illegal act, must be given an opportunity to be fairly heard. This opportunity to be meaningfully heard however has not been afforded to the Appellant No.2, and hence we hold issue 2 in favour of the Appellant No.2.

CONCLUSION

- E 26. The legal system in general, and the judicial system in particular, has ushered into a new age of accessibility and transparency due to the
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adoption of virtual hearings and live telecasting of open court proceedings. These changes in the judiciary have ensured that the courts as redressal mechanisms have become more accessible to the common man than ever before. The limitations of physical infrastructure, that has constrained the courts to a physical location, has often been cited as one of the main roadblocks in the path towards access to justice. This roadblock, however, has now been cleared due to the availability of technology and the adoption of the same. This never before seen transparency in the judicial system, while it brings with it great benefits, it also attaches with it a stricter standard of responsibility on judges while conducting such court proceedings. Remarks passed in court, due to the live broadcasting of court proceedings, now have ramifications that are far reaching, and as can be seen in the present case, can cause great injury to the reputation of the parties involved. In such a circumstance, it is essential for the courts to be extremely cautious while passing adverse remarks against the parties involved, and must do so with proper justification, in the right forum, and only if it is necessary to meet the ends of justice.

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27. In light of the abovementioned discussions, not only are the adverse remarks passed by the High Court against the Appellants liable to be expunged, but the impugned interim order itself is liable to be quashed. Accordingly, the impugned order dated 07.07.2022 stands quashed.

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28. Further, in light of the previous order dated 18.07.2022 passed by this court, we presume that the bail proceedings of the Respondent No.1 stands concluded. However, since there is no indication of the outcome of the bail proceedings, if the same has not already been decided, we request the High Court to expeditiously conclude the bail proceedings in accordance with law on its own merits without being prejudiced or influenced by this judgment. Accordingly, the appeals stand allowed.

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Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals allowed.