Rajesh Ranjan Yadav @ Pappu Yadav vs Cbi Through Its Director on 16 November, 2006

Equivalent citations: AIR 2007 SUPREME COURT 451, 2007 (1) SCC 70, 2006 AIR SCW 5853, 2007 (1) AIR JHAR R 761, (2007) 1 CHANDCRIC 154, (2006) 48 ALLINDCAS 1 (SC), 2006 (11) SCALE 551, 2007 CRILR(SC&MP) 51, 2007 (1) SCC(CRI) 254, (2007) 1 JCC 726 (SC), (2007) 36 OCR 183, 2006 (48) ALLINDCAS 1, 2007 (1) JCC 726, (2007) 2 ALLCRIR 1815, (2007) 1 WLC(SC)CVL 221, (2007) 1 CRIMES 25, (2007) 1 PAT LJR 34, (2007) 1 RECCRIR 166, (2007) 1 CURCRIR 59, (2007) 1 JLJR 34, (2007) 1 ALLCRILR 637, (2006) 8 SUPREME 874, (2006) 11 SCALE 551, 2007 CRILR(SC MAH GUJ) 51, 2007 CHANDLR(CIV&CRI) 21, (2008) 1 RAJ LW 708, (2007) 1 MADLW(CRI) 348, (2007) 2 MAD LJ(CRI) 849, (2007) 57 ALLCRIC 258

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Bench: S.B. Sinha, Markandey Katju

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           CASE NO.:
Appeal (crl.)  1172 of 2006

PETITIONER:
Rajesh Ranjan Yadav @ Pappu Yadav

RESPONDENT:
CBI through its Director

DATE OF JUDGMENT: 16/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
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J U D G M E N T (Arising out of Special Leave Petition (Criminal) No. 2327 of 2006) MARKANDEY KATJU, J.

Leave granted.

This appeal under Article 136 of the Constitution of India has been filed against the impugned judgment and order dated 27.4.2006 of the Patna High Court by which the appellant's application for bail has been dismissed, but with the following observations:

> "Since the petitioner has actually remained in custody in connection with the present case for about 5 years and 7 months as per submission on behalf of petitioner, hence, considering the spirit of the last order of the Apex Court dated 3.10.05, the trial court is directed to hold trial at least for about three days in a week on an average so that the examination of prosecution witnesses may be concluded without any delay preferably within three months. Thereafter, the court shall ask the defence to submit the list of its wi5tnesses and make efforts to conclude the trial expeditiously, preferably within six months. If the trial cannot conclude within the aforesaid period of six months from today, the petitioner would be at liberty to renew his pray for bail.
>
> With this observation, this application for bail is dismissed at this stage."

The appellant is an accused in a case under Sections 302/34/120B IPC read with Section 27 of the Arms Act. The appellant's bail application had been rejected earlier on several occasions by the High Court as well as by this Court. The last order of this Court dated 3.10.2005 states as under:

> "Having heard the learned senior counsel appearing for the petitioner, we are of the opinion that the application for bail may not be entertained at this stage. The special leave petition is dismissed. However, we would request the learned Sessions Judge to expedite the trial. If the trial is not completed within a period of six months from today, it would be open to the petitioner to renew the bail application. Learned Sessions Judge may consider the desirability of directing the CBI to examine the important witnesses at an early date and preferably within a period of four months."

We have been informed that now all the prosecution witnesses have been examined and cross-examined, and only the defence witnesses have to be examined.

Shri R.K. Jain, learned senior counsel appearing for the appellant stated that 60/70 defence witnesses are proposed to be examined and some more defence witnesses on behalf of other accused are to be examined. Hence, he submitted that it would take a long time to examine these witnesses. He submitted that the appellant has been in jail for more than six years and hence he should be released on bail. Learned counsel also submitted that if ultimately the appellant is found innocent by the trial court, he would have undergone a long period of incarceration in jail which would be violative of Article 21 of the Constitution.

The appellant is a 4th term Member of Parliament (Lok Sabha) and learned counsel for the appellant has submitted that as per the material on record there appears to be no prima facie evidence that the appellant is guilty of the charges of offence.

Learned counsel for the appellant relied on the decision of this Court in Babu Singh & Ors vs. State of Uttar Pradesh AIR 1978 SC 527. In paragraph 8 of the said judgment it was observed as under:

> "Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Art. 21 that the crucial power to negate it is a

> great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by 'law'. The last four words of Art. 21 are the life of that human right."

Learned counsel for the appellant then relied on the decision of this Court in Kashmira Singh vs. State of Punjab 1977(4) SCC 291. In paragraph 2 of the said decision it was observed as under:

> "It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal to be such a person who had already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

Learned counsel for the appellant then relied on the decision of this Court in Bhagirathsinh vs. State of Gujarat 1984 (1) SCC 284, Shaheen Welfare Association vs. Union of India & Ors. 1996(2) SCC 616, Joginder Kumar vs. State of U.P. & Ors. 1994(4) SCC 260 etc. In our opinion none of the aforesaid decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.

As observed by this Court in State of U.P. vs. Amarmani Tripathi 2005(8) SCC 21, vide paragraph 18:

> "It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had

committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [2001(4) SCC 280] and Gurcharan Singh v. State (Delhi Admn.[(1978(1) SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004(7) SCC 528 pp. 535-36, para 11]:

"11. The law in regard to grant or refusal of bail is very settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh 2002(3) SCC 598 and Puran v. Rambilas 2001 (6) SCC 338).

This Court also in specific terms held that (SCC pp.536- 37, para 14):

"The condition laid down under Section 437 (1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration

> (three years in this case) by itself would not entitled the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

(emphasis supplied) The above decisions have referred to the decision of this Court in the appellant's own case Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & anr. 2004(7) SCC 528 in which it was clearly held that the mere fact that the accused has undergone a long period of incarceration by itself would not entitle him to be enlarged on bail.

It may further be mentioned that in another case of the appellant Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & anr. 2005(3) SCC 284 where he sought bail, it was observed by this Court as under:

> "In the normal course one would have expected an accused whose bail has been cancelled and who was intending to make an application for grant of bail to behave in a manner not to give any room for the prosecution to contend that he has been misusing the facilities available to him in law while he is in jail. But it seems, it is not the attitude of the respondent.
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> Immediately after cancellation of bail by this Court the respondent had moved a fresh application before the High Court for grant of bail which came to be allowed by the order of the High Court dated 21-9-2004 and pursuant to the said order of bail the respondent came to be released from jail. The said order of the High Court granting bail was challenged before this Court by the complainant and the investigating agency (CBI) but what happened in between is worth noticing. On 26-9-2004 when the respondent was out of jail because of the bail granted by the High Court, he instead of getting himself treated for the ailment which he was complaining of, it is alleged that he was hosting a party for his co-prisoners in the jail late in the night of that day. While the authorities in the reports submitted pursuant to the directions issued by this Court did not admit that a party was given by the accused on 26-9-2004 they did admit that between 9.30 p.m. to 10.00 p.m. on that night the respondent did unauthorizedly visit the jail contrary to all restrictions on the entry to the jail under the Jail Manual. A complaint in regard to this unauthorized entry of the respondent to the prohibited areas of the jail premises is registered and based on the direction issued by the High Court of Patna, an investigation is going on in this regard and some of the jail authorities have been transferred.
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> On 1-10-2004 this Court while entertaining the appeal of the complaint against the grant of bail by the High Court directed the respondent to surrender to custody forthwith. Consequent to which he was taken back to custody.

It has also come on record that while in judicial custody the respondent was using cell phone which was seized from him and he was closely interacting with hardcore criminals who were undergoing jail sentence or are undertrial prisoners.

Respondent 1 while in judicial custody has been accused of hatching a conspiracy to murder one Dimple Mehta in relation whereto a first information report being Purnea Sadar PS Case No. 159 of 2004 has been lodged on 28-9-2004 under Sections 302/120-B/34 IPC and Section 27 of the Arms Act.

It appears from the order-sheet dated 25-2-2003 of the Court of Additional Sessions Judge, XI Patna that the informant Shri Kalyan Chandra Sarkar had been given threats by veteran criminals and, thus, the Senior SP of Patna as well as SP was directed to make proper security arrangement for him and his family members.

Para 3.12 of the report submitted by the Central Bureau of Investigation in response to this Court's order dated 2-12- 2004 is as under:

"3.12. Investigation further reveals that Shri Dipak Kumar Singh, IAS, the Inspector General of Prisons had on 1-11-2004, forwarded a report of the Special Branch dated 30-10-2004, that Shri Rajesh Ranjan @ Pappu Yadav was meeting several visitors in the Administrative Block of Beur Jail (not the specified meeting place for visitors to the jail) and more significantly, that several such visitors, who entered the jail under the pretext of meeting him (Shri Pappu Yadav) were actually meeting other dreaded hardcore criminals lodged in the jail. The Inspector General of Prisons had also urged the Jail Superintendent to allow interviews with prisoners in strict accordance with the provisions of the Jail Manual."

It is now beyond any controversy that such visits by a large number of persons inside the jail are in violation of the provisions of the Bihar Jail Manual and in particular Rules 623, 626-628 thereof. Even upon his election as a Member of Parliament from Madhepura Constituency he was not entitled to have such visitors having regard to the Special Rules for Division 1 Prisoners, Rule 1000 which permits interviews only once every fortnight and Rule 1001 which debars political matters being included in the conversation. These Rules also stand violated.

Thus the material recorded hereinabove shows that the respondent has absolutely no respect for rule of law nor is he in any manner afraid of the consequences of his unlawful acts. This is clear from the fact that some of the acts of the respondent recorded hereinabove have been committed even when his application for grant of bail is pending.

The material on record also shows that the jail authorities at Beur are not in a position to control the illegal activities of this respondent for whatever reasons they may be."

The above observations clearly imply that the appellant's conduct has been such that he does not deserve bail.

Learned counsel for the appellant further relied on the decision of this Court in Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra & anr. 2005 (5) SCC 294. In paragraph 35 of the said decision it was observed as under:

> "Presumption of innocence is a human right.(See Narendra Singh vs. State of M.P.,[(2004(10) SCC 699 para 31]. Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exists cogent grounds therefore. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of sub-section (4) of Section 21 must be given a proper meaning."

Learned counsel for the appellant has repeatedly referred to Article 21 of the Constitution and on that basis has submitted that the appellant should be released on bail particularly since he has already been imprisoned for more than six years.

We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, such as the interest of the society.

It has been stated that the appellant has been a Member of Parliament on four occasions. In our opinion, this is wholly irrelevant. The law is no respecter of persons, and is the same for every one.

A perusal of the FIR itself shows that it is a triple murder case, and the incident was committed in broad day light with sophisticated weapons. It is true that the appellant was not named in the FIR, but it has come in the statement before the Magistrate under Section 164 Cr.P.C. of one Ranjan Tiwari that he and other assailants had been hired by the appellant to commit this ghastly crime.

We are not inclined to comment on the veracity or otherwise of the statement of Ranjan Tiwari and other witnesses as it may influence the trial, but looking at the allegations against the appellant both in the statement of Ranjan Tiwari and other witnesses, we are of the opinion on the facts and circumstances of the case, that this is certainly not a case for grant of bail to the appellant, particularly since the prosecution witnesses have been examined and now the defence witnesses alone have to be examined. It would, in our opinion, be wholly inappropriate to grant bail when not only the investigation is over but even the trial is partly over, and the allegations against the appellant are serious.

The conduct of the appellant as noted in the decision in Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & anr. 2005(3) SCC 284 (quoted above), is also such that we are not inclined to exercise our discretion under Article 136 for granting bail to the appellant.

Learned Addl. Solicitor General, Shri Amarendra Sharan, submitted that the appellant himself was at least partly responsible for the delay in the conclusion of the trial because most of the prosecution witnesses were cross- examined by his counsel for several days, mostly be asking irrelevant questions, and this was deliberate dilatory tactics used for delaying the trial so that on that basis the appellant may pray for bail.

It is not necessary for us to go into this aspect of the matter because we have already noted above that this is certainly not a case for grant of bail to the appellant as the facts and circumstances of the case disclose.

Learned counsel for the appellant then submitted that since the appellant is not on bail, he cannot conduct his defence effectively. In our opinion if this argument is to be accepted, then logically in every case bail has to be granted. We cannot accept such a contention.

On the facts and circumstances of the case, we find no merit in this appeal. The appeal is accordingly dismissed. We, however, make it clear that no further application for bail will be considered in this case by any Court, as already a large number of bail applications have been rejected earlier, both by the High Court and this Court.

While we dismiss this appeal, we direct that the trial court shall ensure that the defence witnesses are examined on a day-to-day basis in accordance with a fixed time schedule so that the trial is completed as expeditiously as possible and the judgment is delivered soon thereafter. No costs.