

Naresh Kumar Mangla vs Anita Agarwal on 17 December, 2020

Equivalent citations: AIR 2021 SUPREME COURT 277, AIRONLINE 2020 SC 892

Author: D.Y. Chandrachud

Bench: Indira Banerjee, Indu Malhotra, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos.872-873 of 2020
Arising out of SLP (Crl.) Nos. 4935-4936 of 2020

Dr Naresh Kumar Mangla

...Ap

Versus

Smt. Anita Agarwal & Ors. Etc.

...Respon

JUDGMENT

Dr Dhananjaya Y Chandrachud, J A. Background B. Submissions of Counsel C. Cancellation of Anticipatory Bail D. Transfer of further investigation to the CBI 18:28:32 IST Reason:

E. Summation

PART A

1 Leave granted

A Background

2 Applications for anticipatory bail under Section 438 of the Code of Criminal

Procedure 1973 ("CrPC") were filed by four out of five persons who have been named as accused in Case Crime No. 0623 of 2020 registered at Police Station Tajganj, District Agra under Sections 498A, 304-B, 323, 506 and 313 of the Indian Penal Code ("IPC") and Sections 3/4 of the Dowry Prohibition Act, 1961. The husband of the deceased¹ is in custody. The applicants for anticipatory bail are the parents-in-law², brother-in-law³ and sister-in-law⁴ of the deceased. A Single Judge of the High Court of Judicature at Allahabad allowed the applications and granted them anticipatory bail. The father of the deceased is in appeal. ³ The marriage between the deceased (Deepti) and Sumit Agarwal took place on 3 November 2014. On 7 August 2020, the appellant lodged a complaint which was registered as a First Information Report ("FIR") under Section 154 of the CrPC. The FIR, inter alia, records that Deepti was a doctor and the appellant spent an amount in excess of Rs.1.50 crores for conducting the marriage. It is alleged that even thereafter, Sumit, his parents, brother-in-law and sister-in-law misbehaved with the deceased on account of dowry. The deceased, it is alleged, was pressurized to bring money. The FIR alleges that the appellant had paid money on several A-1 A-2 and A-3 A-4 A-5 PART A occasions by cheque to the in-laws of the deceased. On account of the demand for dowry, it was alleged that she was severely assaulted in 2017 and the injuries were medically examined at the Government Hospital in Vrindavan. In the meantime, Deepti suffered miscarriages on two occasions and ultimately, adopted a daughter. As regards the incident which eventually led to the unnatural death by the alleged suicide of Deepti, the FIR records that:

"About 18-19 days ago, all the abovementioned family members of her in-laws badly beaten up Dipti on account of dowry and threatened her that if she informed the family of her parents, she will have to face the consequences. On 03.08.2020, in the morning, Dr S. C. Agarwal telephonically threatened the applicant and demanded the money, and also threatened that either I should fulfill the demand, otherwise, I will be responsible for whatever happens in future. The same day in the afternoon at 3:09 PM and thereafter at 5:31 PM in the evening, Dipti told the applicant and the wife of the applicant about beating up done by them about 18-19 days ago and regarding taking advice by all the people and about threat to her life. At the time, the applicant was in Faridabad and he told her about coming to Agra in the night itself.

However, before the applicant could reach in the evening on the same day these dowry greedy people killed Dipti in [xxx] for non-receipt of dowry and non-fulfilment of the demands, and admitted Dipti in their hospital itself in the almost dead condition, in order to save themselves, but she was not allowed any treatment with the intention of killing her. In order to save the life of Dipti, the applicant took her away to the Sarvodaya hospital Faridabad for treatment, at the earliest, in the morning itself, where Dipti died yesterday on 06.08.2020 during treatment. These people have also taken possession of the entire money which was earned by Dipti. Dipti has been killed by Sumit, S.C. Agarwal, Mrs Anita, Amit and Tulika, for dowry with cruel behavior. We performed the last rites of Dipti in Kosi. Since we were busy in the treatment and performing the last rites of Dipti, the

applicant has come for filing the report.” PART A 4 The spouse of the deceased—who is also a doctor by profession, was taken into custody on 7 August 2020. On 10 August 2020, the four respondents (A-2 to A-

5) sought anticipatory bail before the Sessions Court, Agra⁵. By an order dated 21 August 2020, the Sessions Judge, Agra declined anticipatory bail. After adverting to the submission of the accused that a suicide note which was allegedly left behind by the deceased did not contain any allegation of harassment for dowry and the deceased was a partner and investor in the Agra Medical and Cardiac Super Specialty Hospital set up by her father-in-law, the Sessions Judge observed:

“On the other hand, the documents have been filed on behalf of the complainant side, in which it has been shown that the money was transferred to different transactions. The photocopy of the application dated 01.10.2017 submitted by the deceased to the SHO, Kosikalan, District Mathura, has also been filed, in which it is mentioned about beating up of the deceased by Dr Amit Agarwal, Tulika Agarwal and Anita Agarwal and pushing her down through the stairs with the intention of killing her, and it has been mentioned that she suffered considerable injuries in it. It has also been stated in it that all this has happened at the instance of her father-in-law S.C. Agarwal, who has asked her to bring Rs. 20 lakhs from the family of her parents. In addition, the photocopy of the injury report of the deceased dated 02.10.2017 of the additional district joint hospital, Brindaban has also been filed.”

5 The Sessions Judge noted that besides naming the accused specifically, there were also allegations against the four respondents in the FIR of torturing the deceased and of making demands for dowry. On 9 September 2020, non-bailable warrants were issued against the four accused. Applications for anticipatory bail Anticipatory bail application nos. 241/242 of 2020 PART A were filed on their behalf before the High Court⁶. On 22 September 2020, a learned Single Judge, after noting the submissions, posted the applications for anticipatory bail for “further hearing” on 28 September 2020 and protected the accused against arrest in the interim. On 28 September 2020, another Single Judge of the High Court before whom the application was listed noted the fact that the earlier order dated 22 September 2020 had posted the application for “further hearing” and directed the registry to process the listing of the proceedings accordingly. Eventually, anticipatory bail has been granted by the order of the High Court dated 29 September 2020. The reasons on the basis of which the High Court proceeded to grant anticipatory bail are contained in paragraph 20 of the judgment of the High Court which is extracted below:

“20. Having heard the learned counsel for applicants, learned A.G.A. and the learned counsel for the informant and the undisputed position which has emerged from the record as noted above, the fact of the matter is that the applicants are the father-in-law, mother-in-law, Jeth and Jethani of deceased. Secondly, the husband of the deceased is already in jail. Thirdly, the F.I.R. is not to be treated as an encyclopedia of prosecution case but must reflect the basic prosecution case. When judged in the light of above, the F.I.R. prima facie appears to be engineered to implicate the applicants. There is no co-relation in between the various allegations

leveled in the F.I.R. The allegations made are general in nature and no specific role has been assigned to any of the above named applicants regarding the alleged demand of dowry. From the perusal of the material on record, particularly the income-tax returns it cannot be said that the applicants are not of sufficient means. The absence of any external injury on the body of the deceased, clearly denotes the bonafide (sic) of applicants.” Criminal Misc Anticipatory Bail Application Nos. 5457/5460 of 2020 PART B

6 Notice was issued on the Special Leave Petitions on 27 October 2020. In pursuance of the order, the State of Uttar Pradesh has entered appearance and is represented by Shri Vimlesh Kumar Shukla, Senior Counsel and Mr Vishnu Shankar Jain as Counsel. The respondent-accused are represented by Mr Sidharth Luthra and Mr R Basant, Senior Counsel. Counter affidavits and written submissions have been filed.

B Submissions of Counsel

7 Assailing the grant of anticipatory bail, Mr Shekhar Naphade, Senior Counsel representing the Appellant, submitted that:

(i) Though specific allegations have been leveled in the FIR that the

deceased has been killed, which indicates the commission of a cognizable offence, there has been no investigation by the police of whether the death was homicidal and she was murdered;

(ii) The Sessions Judge, while denying anticipatory bail, made a specific reference to the transfer of moneys by the deceased into the account of her father-in-law. As a matter of fact, between 19 November 2015 and 15 December 2018, an amount of Rs.50.53 lacs was transferred by the parents of the deceased (of which an amount of Rs.15 lacs has been paid directly by a family friend to the father-in-law of the deceased), the rest being transferred into her account. The amount of Rs 15 lakhs was repaid by the informant on 17 December 2019 to the person who had lent the PART B moneys. Between 4 December 2015 and 1 March 2017, the deceased transferred an amount of Rs.24 lacs by bank transfer from her account to the account of her father-in-law. Details of these payments are as follows:

C. AMOUNT TRANSFERRED FROM DECEASED TO R-5 FOR INVESTMENT [PG. K, SLP] S. Date Amount Purpose Pages Corresponding No (Counter) same entry in A2's Balance Sheet @ Pg (Counter) 04.12.2015 2,00,000 Building 274 180

1. Construction Investment 02.06.2016 2,00,000 Building 275 183 (Received next

2. Construction day i.e 03.06.2016) Investment 30.06.2016 5,00,000 Building 275 184

3. Construction Investment 01.03.2017 15,00,000 Building 277 187

4. Construction Investment Total 24,00,000

(iii) The deceased was an anesthetist and was working in the family run nursing home of the respondent-accused. She died within 5 years and 8 months of her marriage. There are specific allegations in the FIR of an incident which took place on 1 October 2017 when the deceased was assaulted by her mother-in-law and by the elder brother of her husband (brother-in-law of the deceased) and his spouse (sister-in-law of the deceased); at the instance of her father-in-law, which led to the filing of a complaint with the SHO, Police Station Kosi Kalan, District Mathura on 1 October 2017. The medical report of the examination of the deceased shows the presence of five injuries which have been attributed to be PART B caused by a hard and blunt object; The complaint was not pursued to save the marriage of the deceased;

(iv) The police were informed of the incident of hanging of the victim at 1930 hours on 3 August 2020. The investigating team however reached the site only on 4 August 2020 at 1130 and at 1330 hours prepared an inventory of articles recovered from the scene. It is alleged that the suicide note is missing from the list and finds a mention only in a General Diary entry at 2356 hours. In the charge-sheet which has eventually been filed on 5 November 2020, the recovery panchnama of the suicide note does not find mention. The suicide note is not in the handwriting of the deceased;

(v) The FIR contains a specific allegation that on 3 August 2020 the informant had received a telephone call from the father-in-law of the deceased demanding money and that on the same day in the afternoon at 3:09 pm and 5:31 pm the deceased spoke to the informant and his wife and informed them that she had been assaulted about 18 or 19 days earlier and of the threat to her life. The appellant told his daughter that he was in Faridabad and would reach Agra on the same night but before he could do so the deceased had allegedly been killed. The FIR alleges that the in-laws of the deceased had taken away the entire money which was earned by her as a doctor;

(vi) The applications for anticipatory bail filed by the respondent-accused were dismissed by the Sessions Judge on 21 August 2020. A non-bailable warrant was issued on 9 September 2020. In spite of the dismissal of the PART B applications for anticipatory bail and the specific allegation that Deepti had been killed, only her spouse was taken in for custodial interrogation and the alleged murder has not been investigated. Though until 22 September 2020, the other accused were not protected from arrest, no effort was made by the police to trace them in the interim;

(vii) A charge-sheet dated 24 October 2020 was submitted to the competent court on 5 November 2020 hastily, without proper investigation of the crime;

(viii) The order of the High Court cannot pass muster on the basis of the law which has been laid down by this Court in the following decisions:

(i) (2001) 6 SCC 338; Puran vs Ramvilas

(ii) (2005) 8 SCC 21; State of U.P. vs Amarmani Tripathi

(iii) (2012) 4 SCC 379; Jaiprakash Singh vs State of Bihar

(iv) (2016) 15 SCC 422; Neeru Yadav vs State of U.P.

(v) (2020) 5 SCC 1; Sushila Agarwal vs NCT of Delhi

(vi) (1997) 7 SCC 187; State vs Anil Sharma and

(vii) (2005) 4 SCC 303; Adri Narayan Das vs State of West Bengal 8 Opposing the above submissions, Mr Sidharth Luthra, Senior Counsel submitted that:

(i) The deceased and her husband commenced living separately from 12 October 2018;

(ii) The post mortem report indicates that the death occurred as a result of suicide by hanging. The absence of bodily injuries would displace the allegation that the in-laws are involved in the murder of the deceased;

PART B

(iii) An amount of Rs.16.01 lacs received by the deceased in her bank account from the family of the informant between 4 December 2015 and 25 March 2017, has been converted into fixed deposit receipts in the State Bank of India. While the deceased has transferred an amount of Rs.24 lacs from her account to her father-in-law between 4 December 2015 and 1 March 2017, this was as a part of the investment towards the construction of a hospital. As a part of the family understanding, the father-in-law intended to set up a separate hospital for the deceased and her husband and to give the management of the earlier hospital to both of them. Hence, in order to set up Sapphire Hospital, a limited liability partnership by the name of M/s Agra Medical and Cardiac Super Specialty, LLP was formed on 28 December 2016 with five partners including the deceased and her spouse who had a share each of 35%. Investments were being made by all partners to establish Sapphire Hospital and the total investment by the father-in-law was in the amount of Rs.1.12 crores; and

(iv) Several transfers of funds have been made to the deceased from the two hospitals, besides which amounts have been paid by the father-in-law to the deceased and her spouse for the purchase of property in their joint names. Details of these transactions have been furnished in the following terms:

(a) Rs.27.25 lacs paid to the deceased by M/s Agra Medical and Cardiac Research Centre between 2015-16 and 2017-18;

PART B

(b) Rs.61.79 lacs paid to the deceased by Sapphire Hospital (M/s Agra Medical and Cardiac Super Specialty LLP) between 2017-18 and 2019- 20;

(c) Rs.66.73 lacs paid by the father-in-law to the deceased and her spouse on 9 September 2019 and 21 September 2019 for the purchase of property; and

(d) Rs.15 lacs paid to the deceased from the account of the LLP for the purchase of two plots.

(v) An amount of Rs.30.80 lacs is invested in the name of the deceased inter alia in the form of FDRs, bank balances, PPF and in an RD account.

(vi) Three immovable properties valued at about Rs.1.4 crores are jointly owned by the deceased and her spouse;

(vii) The alleged incident on 1 October 2017 is a fabrication since the brother-

in-law and sister-in-law of the deceased had travelled to Mumbai on those days;

(viii) The suicide note, which has been forwarded to the forensic science laboratory, indicates that the deceased was in a depressed mental state due to her miscarriages;

(ix) The recovery of the suicide note is evidenced by the recovery memos drawn up by the police; and PART B

(x) The applicants have co-operated in the course of the investigation and their statements have been recorded before the charge-sheet was filed on 5 November 2020.

9 Supporting the above submissions, Mr R Basant, Senior Counsel submits that Dr SC Agarwal (A-2) is a senior medical practitioner based in Agra. He and his spouse (A-3) have two sons who are doctors by profession, namely A-1 and A-4. A- 1 was the spouse of the deceased while A-4 and A-5 are spouses. Two hospitals were set up by A-2 with the object of ensuring separate establishments for his sons, A-1 and A-4. Supporting the grant of anticipatory bail by the High Court, Mr Basant submitted that:

(i) The tenor of the suicide note indicates that the deceased was suffering from mental depression as a result of successive miscarriages and she had, in fact, adopted a girl child in June 2018;

(ii) On 12 October 2018, the deceased and her spouse set up a separate residence for themselves;

(iii) The deceased had drawn salary from both the hospitals which have been set up by her father-in-law. A-2 had transferred money to A-1 and the deceased to enable them to buy immovable property in their joint names;

and

(iv) After the deceased attempted to commit suicide on 3 August 2020, she was rushed to the family run nursing home run by her father-in-law. The police reached the scene of the incident on the evening of 3 August 2020, PART B though no FIR was registered until 7 August 2020. Articles were recovered on 3 and 4 August 2020. The suicide note was recovered on 3 August 2020. It was deposited in the malkhana on 4 August 2020, as reflected in Entry 85 of the General Diary. The deceased was subsequently removed to another hospital by her father, the appellant. On 5 August 2020, the suicide note was extensively published in the local newspapers in spite of which the complaint does not indicate that it is fabricated. The suicide note, it has been submitted, contains no reference to harassment on account of dowry.

10 The State of Uttar Pradesh has filed a counter affidavit in these proceedings through Harish Chandra Tamta working in the Circle Office (Deputy Superintendent of Police), District Agra. The Counter Affidavit contains the following statements:

“9. It is relevant to mention that High Court has not taken into consideration the bodily injury sustained by deceased Dipti in the year 2017 and the contents of FIR lodged by her with the police station.

10. It is relevant to mention that on 2.8.2020 Sumit Agarwal (husband) and Anita Agarwal (mother-in-law) of the deceased through mobile call made at 9.30 a.m demanded dowry and had asked that serious consequences will follow if money was not paid.

10. Dr. Dipti suffered two (sic) abortions due to the ill-treatment given by her husband and in-laws.

11. There is no explanation for the injuries found on the body of deceased.

12. The medical report and the facts revealed that deceased has been killed.

PART B

13. It is the case of continuous demand of dowry, causing torture and victimization of the deceased and the deceased has herself stated in the FIR lodged in the year 2017 about the demand of dowry by her husband and in-laws.

14. It is also clear that the story of suicide due to frustration and adopting a child by the deceased are fictitious and baseless. The alleged suicide note is not in the handwriting of(sic) Dr. Dipti. The said document is false, fabricated and has been prepared by the accused persons and they are guilty of committing of offence u/s 468 & 471 of IPC.

15. That Respondent-State is also relying upon the law laid down by this Hon'ble Court. In case of Lavesha vs State (NCT of Delhi) reported in 2012 (8) SCC 730, particularly in paragraphs 8,12 and 18 of this judgment.” 11 On the basis of the above averments, the State has supported the appellant in assailing the correctness of the order granting anticipatory bail. Significantly, on the specific query of the Court as to whether any investigation has been carried out on the allegation that Deepti was murdered, Mr Vimlesh Kumar Shukla, learned Senior Counsel has answered in the negative. On the alleged suicide note, learned Senior Counsel submitted that it was initially returned back by the FSL in the absence of adequate material for comparing the hand writing and it has now been re-submitted by the Investigating Officer with necessary supporting material to the FSL, whose report is awaited.

PART C

C Cancellation of Anticipatory Bail

12 The rival submissions will now be considered. The appellant, who is the father

of the deceased, lodged a complaint on 7 August 2020 on the basis of which FIR No. 0623 of 2020 was registered at Police Station Tajganj in the District of Agra. The FIR contains the following allegations:

(i) The marriage of the deceased to A-1, the son of A-2 took place on 3 November 2014;

(ii) The deceased was a qualified doctor by profession;

(iii) An amount of Rs.1.5 crores was spent on the occasion of her marriage;

(iv) A-1 to A-5 were dissatisfied with the moneys brought by the bride and she was pressurized to bring an amount of Rs. 1 crore;

(v) The appellant paid money by cheque to the groom's family in the interest of the domestic happiness of his daughter;

(vi) There was an incident in 2017 when the deceased was assaulted by her in-laws. Injuries were suffered by her, as revealed during the course of a medical examination at the Government Hospital in Vrindavan;

(vii) The deceased suffered two miscarriages and had adopted a girl child;

(viii) There was continued harassment of the deceased and of the child whom she had adopted;

(ix) About 18 or 19 days before the incident on 3 August 2020, the deceased had been assaulted by the accused persons on account of dowry and threatened with consequences if she informed her family;

PART C

(x) There was a telephone call on 3 August 2020 by A-2 to the appellant-

complainant for demanding money and threatening him with consequences;

(xi) The deceased made telephone calls at 3:09 PM and at 5:31 PM on 3 August 2020 to her parents when she revealed being assaulted in the recent past and of the threat to her life;

(xii) By the time the appellant travelled from Faridabad to Agra he found that his daughter had been killed for non-fulfillment of the demand for dowry;

(xiii) The appellant removed the deceased to Sarvodaya hospital at Faridabad for treatment where she died on 6 August 2020;

(xiv) The FIR was lodged after the last rites were performed;

(xv) The accused had taken possession of the moneys which were earned by the deceased; and (xvi) The daughter of the appellant had been killed for dowry. 13 The police were informed of the commission of cognizable offences. They were duty bound to investigate. One of the principal aspects which weighed with the Sessions Judge while denying anticipatory bail on 21 August 2020 was the fact that the informant's side had filed documents indicating the transfer of moneys under different transactions. Besides this, the Sessions Judge also relied on the letter dated 1 October 2017 addressed by the deceased to the SHO, Kosi Kalan, District Mathura, specifically complaining that she had been assaulted by A-3, A-4 and A-5 as a consequence of which she had suffered injuries. The Sessions Judge noted PART C that it has been alleged that this had happened at the behest of her father-in-law, A-

2. Besides the contents of the FIR, the Single Judge of the High Court was duly apprised of the fact that though the deceased had been assaulted in 2017, the informant had not proceeded against the spouse of the deceased and the other members of his family, simply to save the marriage. The Single Judge, while analyzing the rival submissions, noted that

(i) The applicants for bail are the father-in-law, mother-in-law, brother-in-law and sister-in-law;

(ii) The spouse of the deceased is in custody; and

(iii) The FIR is not to be treated as “an encyclopedia of the prosecution’s case but must reflect the basic prosecution case.” Having recorded the above premises, the Single Judge held that (a) “the FIR prima facie appears to be engineered to implicate the applicants”; (b) “there is no co- relation in between the various allegations leveled in the FIR”; and (c) the allegations “are general in nature” with no specific role being assigned to the accused. ¹⁴ We have prefaced this analysis by a reference to the FIR. There is no cogent basis for the Single Judge to have arrived at any of the three prima facie findings. The informant had suffered a loss of his own daughter due to an unnatural death in close proximity to the lodging of his complaint. The FIR contains a reference to the previous incident of October 2017, to the demands for dowry, payments of money in cheque by the informant to the groom’s family and the telephone calls received by the informant from the father-in-law of the deceased and later from the deceased in PART C close proximity to the incident, on the same day that she died. The FIR contains specific allegations against the accused, commencing with the incident of October 2017. Whether such an incident, as reported by the deceased to the police on 1 October 2017 did take place, leading to her suffering injuries which were examined at the Government Hospital, is a matter for investigation. How the learned Single Judge could have concluded – in the face of specific allegations in the FIR and the reference by the Sessions Judge to money transactions - that the FIR prima facie has been “engineered to implicate the accused” defies reasonable explanation. Similar is the case with the finding that “there is no co-relation between the allegations leveled in the FIR.” A reading of the FIR would reveal that the finding of the Single Judge that the allegations “are general without assigning a specific role to the accused” is contrary to the record. The Single Judge observed, from the income tax returns of the accused, that “it cannot be said that they are not of sufficient means”. The Single Judge has erred in drawing this inference without a full investigation by the investigating arm of the state. Mr Luthra has sought to rely on the payment of monies to the deceased by the two hospital establishments, the transfer of funds for the purchase of properties and the joint ownership of properties. The trail of monies alleged to be received by the deceased for her professional work is a matter to be investigated. Similarly, the transfer of monies by the deceased to her father-in-law and the nexus, if any, with the funds which she had received from her parents is a matter for serious investigation. The death was unnatural which took place within seven years of the marriage. The alleged phone calls received by the informant from some of the accused and by the deceased on the day when she was PART C found to be hanging are matters which required to be probed. The alleged absence of an external injury on the body of the deceased is a matter for investigation. The approach of the High Court is casual. The surmises which are contained in the reasons recorded by the High Court have no basis in the materials with which it was confronted. The observation of the High Court that no specific role is assigned in the FIR to the accused is based on a misreading of the FIR. The entire approach of the High Court is flawed. It is contrary to the record and, as we shall now explain, contrary to settled principles of law governing the exercise of discretion on the grant of anticipatory bail in a case involving the alleged commission of a serious offence. ¹⁵ It is a well settled principle of law that the setting aside of an “unjustified, illegal or perverse order” granting bail is distinct from the cancellation of bail on the ground of the supervening misconduct of the accused or because some new facts have emerged, requiring cancellation. In *Puran vs. Ramvilas*⁷, this Court has held that where an order granting bail ignores material on record or if a perverse order granting bail is passed in a heinous crime without furnishing reasons, the interests of justice may require that the order be set aside and bail be cancelled. The recording of no reasons is one end of the spectrum. The other

end of the domain for interference with an order granting anticipatory bail (into which the present case settles) is where the reasons are contrary to the material on record and hence found to suffer from perversity.

(2001) 6 SCC 338 PART C 16 The facts which must be borne in mind while considering an application for the grant of anticipatory bail have been elucidated in the decision of this Court in *Siddharam Satlingappa Mhetre vs. State of Maharashtra* 8 and several other decisions. The factors to be considered include:

“112. [...]

- (i) the nature and gravity of the accusation and the exact role of the accused;
- (ii) the antecedents of the applicant including whether the accused has previously undergone imprisonment on a conviction by a court in respect of a cognizable offence;
- (iii) the possibility of the applicant fleeing from justice;
- (iv) the likelihood of the accused repeating similar or other offences;
- (v) whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;
- (vi) the impact of the grant of anticipatory bail particularly in cases of magnitude affecting a large number of people;
- (vii) The court must carefully evaluate the entire material against the accused. The court must also clearly comprehend the exact role of the accused in the case.

Cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should be considered with even greater care and caution because overimplication in such cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(2011) 1 SCC 694 PART C

(ix) the reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

(x) frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.” Adverting to the above observations, in *Jai Prakash Singh vs State of Bihar*⁹, this Court held:

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons... Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been roped in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* [(2007) 4 SCC 434 : (2007) 2 SCC (Cri) 345] , *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* [(2008) 1 SCC 213 : (2008) 1 SCC (Cri) 176] and *Union of India v. Padam Narain Aggarwal* [(2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1] .)” (2012) 4 SCC 379 PART C 17 In the recent decision of the Constitution Bench in *Sushila Aggarwal vs State (NCT of Delhi)*,¹⁰ the considerations which ought to weigh with the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusions of the Court indicate that:

“92.1... The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonably apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed.

92.3...While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it.

Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”¹⁸ The Constitution Bench has reiterated that the correctness of an order granting bail is subject to assessment by an appellate or superior court and it may be set aside on the ground that the Court granting bail did not consider material (2020) 5 SCC 1 PART C facts or crucial

circumstances. A two judge Bench of this Court, in *Kanwar Singh Meena vs. State of Rajasthan*¹¹, noted that:

“10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Session regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel (2012) 12 SCC 180 PART C such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.” (emphasis supplied) Recently, this Court in *Myakala Dharmarajam vs. The State of Telangana* ¹² reiterated the above principles and stated:

“9. It is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the Accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the Accused, the High Court or the Sessions Court would be justified in cancelling the bail.”

19 It is apposite to mention here the distinction between the considerations which guide the grant of anticipatory bail and regular bail. In *Pokar Ram vs. State of Rajasthan* 13 , while setting aside an order granting anticipatory bail, this Court observed:

“5. Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. Three situations in which the question of granting or refusing to grant bail would arise, materially and substantially (2020) 2 SCC 743 (1985) 2 SCC 597 PART C differ from each other and the relevant considerations on which the courts would exercise its discretion, one way or the other, are substantially different from each other. This is necessary to be stated because the learned Judge in the High Court unfortunately fell into an error in mixing up all the considerations, as if all the three become relevant in the present situation.

6. The decision of the Constitution Bench in *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565 : 1980 SCC (Cri) 561] clearly lays down that “the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest”. Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. A direction under Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1) or confinement. In para 31, Chandrachud, C.J. clearly demarcated the distinction between the relevant considerations while examining an application for anticipatory bail and an application for bail after arrest in the course of investigation. Says the learned Chief Justice that in regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. It was observed that “it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond”. Some of the relevant considerations which govern the discretion, noticed therein are “the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and „the larger interests of the public or the State , are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail”. A caution was voiced that “in the evaluation of the consideration whether the applicant is likely to PART C abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it.” Judged in the light of the above principles, the judgment of the Single Judge of the High Court of Judicature at Allahabad is

unsustainable. The FIR contains a recital of allegations bearing on the role of the accused in demanding dowry, of the prior incidents of assault and the payment of moneys by cheque to the in-laws of the deceased. The FIR has referred to the telephone calls which were received both from the father-in-law of the deceased on the morning of 3 August 2020 and from the deceased on two occasions on the same day- a few hours before her body was found. The grant of anticipatory bail in such a serious offence would operate to obstruct the investigation. The FIR by a father who has suffered the death of his daughter in these circumstances cannot be regarded as “engineered” to falsely implicate the spouse of the deceased and his family. We hasten to add that our observations at this stage are prima facie in nature, and nothing that we have said should be construed as a determination on the merits of the case which will be adjudicated at the trial.

PART D

D Transfer of further investigation to the CBI

20 The investigation by the UP Police in the present case leaves much to be

desired. We have already extracted in the earlier part of this judgment, the contents of the counter affidavit which have been filed on behalf of the Deputy Superintendent of Police, Agra. The contents of the counter affidavit are at a material divergence with the contents of the charge-sheet filed on 5 November 2020. During the course of the hearing, this Court has been specifically informed by learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, that no investigation was conducted into the allegation in the FIR that the deceased had been murdered. Though much was sought to be made out of the alleged suicide note, at this stage it needs to be emphasised that its authenticity has been seriously disputed by the appellant. As the learned Senior Counsel for the State of Uttar Pradesh informed the Court, the forensic science laboratory referred the matter back in the absence of adequate material to assess the genuineness of the suicide note and upon re-submission, a report is awaited.

Within a couple of days of the death of Deepti, the alleged suicide note found its way into the newspapers in Agra. This is in fact a circumstance relied upon by the learned Counsel for the accused when they submit that despite the publicity given to the suicide note, the FIR does not impugn its authenticity. The sequence in this case appears to follow familiar patterns. Immediate publicity was given to the alleged suicide note. These examples are now becoming familiar. Selective disclosures to the media affect the rights of the accused in some cases and the rights of victims PART D families in others. The media does have a legitimate stake in fair reporting. But events such as what has happened in this case show how the selective divulging of information, including the disclosure of material which may eventually form a crucial part of the evidentiary record at the criminal trial, can be used to derail the administration of criminal justice. The investigating officer

has a duty to investigate when information about the commission of a cognizable offence is brought to their attention. Unfortunately, this role is being compromised by the manner in which selective leaks take place in the public realm. This is not fair to the accused because it pulls the rug below the presumption of innocence. It is not fair to the victims of crime, if they have survived the crime, and where they have not, to their families. Neither the victims nor their families have a platform to answer the publication of lurid details about their lives and circumstances. Having said this, we prima facie reject the insinuation that the FIR had not doubted or referenced the suicide note, despite its publication in the news media. The daughter of the appellant had died in mysterious circumstances. The family had completed the last rites. To expect that they should be scouring the pages of the print and electronic media before reporting the crime is a mockery of the human condition. The apprehension of the appellant that A-2 and his family have a prominent social status in Agra and may have used their position in society to thwart a proper investigation cannot be regarded to be unjustified.

21 In the backdrop of what has been stated above and the serious deficiencies in the investigation, we have during the hearing, made all the counsel aware of the PART D possibility of this court referring the case for further investigation to the CBI. The court must enter upon the prospect of such a course of action with circumspection for two reasons. First, this court has repeatedly observed that the power which is vested in a superior court to transfer the investigation to another agency, such as the CBI, must be wielded with caution. In a recent judgement of this Court, *Arnab Goswami vs. Union of India* 14 , one of us (Dr. Justice D Y Chandrachud) had interpreted the rationale underpinning the circumspection in the following terms:

“44. In assessing the contention for the transfer of the investigation to the CBI, we have factored into the decision- making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to the CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court to transfer an investigation to the CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances” comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of WP (CrI) 130 of 2020, decided on 19 May 2020 PART D and submissions urged by the petitioner, we find that no case of the nature which falls

within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.” (emphasis supplied)

22 Second, in the facts of this case, the charge-sheet which is dated 24 October 2020 has been submitted to the competent court on 5 November 2020. The submission of the charge-sheet does not oust the jurisdiction of a superior court, when as in the present case, the investigation is tainted and there is a real likelihood of justice being deflected. In *Vinay Tyagi vs Irshad*¹⁵, a two judge Bench of this Court, speaking through Justice Swatanter Kumar, has held:

“43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.” (emphasis supplied) The court held that wherever a charge-sheet has been submitted to the court, even this Court would not ordinarily reopen the investigation especially by entrusting it to (2013) 5 SCC 762 PART D a specialized agency. However, in a proper case, when the Court feels that the investigation by the police has not been in the proper perspective and that in order to do complete justice, where the facts of the case demand that the investigation be handed over to a specialized agency, a superior court is not bereft of the authority to do so. (*Disha v. State of Gujarat* [(2011) 13 SCC 337: (2012) 2 SCC (Cri) 628] and *Rubabbuddin Sheikh v. State of Gujarat* [(2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006]) In *Pooja Pal vs Union of India*¹⁶, a two judge Bench of this Court, speaking through Justice Amitava Roy, observed that there was no embargo on this Court to transfer an investigation to the CBI after submission of the charge-sheet in the following terms-

“79. The precedential ordainment against absolute prohibition for assignment of investigation to any impartial agency like CBI, submission of the charge-sheet by the normal investigating agency in law notwithstanding, albeit in an exceptional fact situation warranting such initiative, in order to secure a fair, honest and complete investigation and to consolidate the confidence of the victim(s) and the public in general in the justice administering mechanism, is thus unquestionably absolute and hallowed by time. Such a measure, however, can by no means be a matter of course or routine but has to be essentially adopted in order to live up to and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike.....

81. The judicially propounded propositions on the aspects of essentiality and justifiability for assignment of further investigation or reinvestigation to an independent investigating agency like CBI, whether or not the probe into a criminal offence by the local/State Police is pending or (2016) 3

SCC 135 PART D completed, irrespective of as well, the pendency of the resultant trial have concretised over the years, applicability whereof, however, is contingent on the factual setting involved and the desideratum for vigilant, sensitised and even-handed justice to the parties.

83..... Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge- sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties.” Similarly, in *Dharam Pal vs State of Haryana*¹⁷, a two judge Bench of this Court, speaking through Justice Dipak Mishra (as the learned Chief Justice then was), upheld the power of this Court to transfer an investigation to the CBI, irrespective of the stage of the trial. It held:

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25.If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the (2016) 4 SCC 160 PART D matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic....” 23 Having regard to the circumstances which have emerged on the record, which have been adverted to in the earlier part of the judgment, we are of the view that it is necessary to entrust a further investigation of the case to the CBI in exercise of the powers of this Court under Article 142 of the Constitution. The conduct of the investigating authorities from the stage of arriving at the scene of occurrence to the filing of the charge-sheet do not inspire confidence in the robustness of the process.

A perusal of the charge-sheet evinces a perfunctory rendition of the investigating authorities duty by a bare reference to the facts and the presumption under Section 304B of the IPC when the death occurs within seven years of the marriage. The stance taken by the Deputy Superintendent of Police in the Counter Affidavit, filed a few days after forwarding the charge-sheet, travels beyond the scope of the investigation recorded in the charge-sheet with respect to the veracity of the suicide note, medical examination of injuries and the past miscarriages of the deceased. Critical facts of the money trail between the deceased, her father (the informant), and the accused; and the call history

of A2, the informant and the deceased are unexplored. No attempt at custodial interrogation of the applicants was made between the issuance of non-bailable warrants on 9 September 2020 and interim protection from arrest by the High Court granted on 22 September 2020. As noted above, upon questioning during the hearing, the Counsel for the State answered that PART E no investigation on the allegation of murder had been conducted. It would indeed be a travesty if this Court were to ignore the glaring deficiencies in the investigation conducted so far, irrespective of the stage of the proceedings or the nature of the question before this Court. The status of the accused as propertied and wealthy persons of influence in Agra and the conduct of the investigation thus far diminishes this Court's faith in directing a further investigation by the same authorities. The cause of justice would not be served if the Court were to confine the scope of its examination to the wisdom of granting anticipatory bail and ignore the possibility of a trial being concluded on the basis of a deficient investigation at best or a biased one at worst.

24 Mr K M Nataraj, Additional Solicitor General of India has appeared in these proceedings with Mr Arvind Kumar Sharma, and stated that the CBI would abide by the orders of this Court.

E Summation

25 We accordingly allow the appeal and issue the following directions:

(i) The order passed by the Single Judge of the High Court of Judicature

at Allahabad allowing the applications for anticipatory bail by the respondents-accused shall stand set aside and the bail granted to them shall stand cancelled; and PART E

(ii) The CBI is directed to conduct a further investigation of the case arising out of case Crime No. 0623 of 2020 registered at Police Station Tajganj, District Agra, dated 7 August 2020.

26 The appeals are disposed of in the above terms.

27 Pending application(s), if any, stand disposed of.

.....J [Dr Dhananjaya Y Chandrachud]
.....J [Indu Malhotra]J
[Indira Banerjee] New Delhi;

December 17, 2020.