Sonu vs Sonu Yadav on 5 April, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1950, AIRONLINE 2021 SC 201

Author: D.Y. Chandrachud

Bench: M R Shah, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 377 of 2021
(Arising out of SLP (Crl) No 924 of 2021)

Sonu …

Versus

Sonu Yadav and Another …

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment and order dated 1 December 2020 of a Single Judge of the High Court of Judicature at Allahabad in Criminal Miscellaneous Bail Application No 17334 of 2020.

3 A First Information Report, FIR No 0076 of 2019, was registered on 9 February 2019 at Police Station Friends Colony, District Etawah for offences under Sections 498-A and 304-B of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act 1861. The First Information Report was registered on the complaint of the appellant, who is the brother of the deceased. The marriage

between the deceased and the first respondent was solemnized on 5 July 2018. It has been alleged in the FIR that at the time of the marriage, a cash amount of Rs 15 lakhs, a motor vehicle and other household articles were provided in dowry. It has been alleged that the first respondent and his parents were not satisfied with the amount of dowry and an amount of Rs 5 lakhs was being demanded. On 8 February 2019, it has been alleged that at about 8.45 pm, a phone call was received from a cell phone from the first respondent when the appellant was informed that if he wished to see his sister alive, an amount of Rs 5 lakhs should be arranged. It has been alleged that the phone was then disconnected. However, at 1.30 am on 9 February 2019, the appellant is alleged to have received a phone call requiring him to take away the dead body of his sister. The FIR records that the appellant together with the members of the family went to Etawah and found that the matrimonial home of the appellant's sister was locked. They came to know that her dead body had been kept at the district hospital. On these allegations, the First Information Report came to be registered at 11.49 am on 9 February 2019.

4 A charge-sheet has been submitted on 3 May 2019 for offences alleged under Sections 498-A and 304-B of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. The bail application filed by the first respondent was rejected by the Sessions Judge on 18 June 2019. The High Court was thereafter moved in a bail application under Section 439 of Code of Criminal Procedure 1973. After recording the rival submissions, the High Court allowed the application, observing thus:

> "Considering the entire facts and circumstances of the case, submissions of learned counsel for the parties and keeping in view the nature of offence, evidence, complicity of accused and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has made out a case for bail. The bail application is allowed."

5 We have heard Mr Vishal Yadav, learned counsel appearing on behalf of the appellant, Mr Ravinder Singh, learned senior counsel for the first respondent and Mr Sanjay Jain, learned counsel for the State of Uttar Pradesh have appeared in pursuance of the notice issued by this Court on 27 January 2021. 6 Mr Vishal Yadav, learned counsel appearing on behalf of the appellant submits that (i) the High Court has adduced absolutely no reasons for the grant of bail;

(ii) the submission before the High Court that the deceased was suffering from a mental illness is patently false and the so called medical prescription dated 1 January 2019 was issued by an Ayurvedic doctor about a month before the date of the incident on 1 January 2019; (iii) ex facie, the medical prescription would indicate that the deceased was not undergoing treatment for a mental condition; (iv) the death has taken place within a year of the marriage; and (v) having regard to the provisions of Section 304-B of the Indian Penal Code and the presumptions which arise under Sections 113-A and 113-B of the Evidence Act, there was no justification for the High Court to grant bail at the present stage.

7 On the other hand, Mr Ravindra Singh, learned senior counsel appearing on behalf of the first respondent has supported the view of the High Court, on the ground that (i) the High Court has

desisted from expressing any view on the merits which may impede the course of the trial; (ii) the statements which have been recorded during investigation would indicate that the death was as a result of hanging; (iii) there is no complicity whatsoever of the first respondent;

(iv) hence, it would be appropriate for this Court not to interfere with the order granting bail to the first respondent.

8 Mr Sanjay Jain, learned counsel appearing on behalf of the State of UP has submitted that an attempt has been made on behalf of the accused to improve upon the case in the course of the pleadings. He sought to demonstrate this by making a reference to paragraph 21 of the bail application filed before the High Court, in which it was denied that the mobile number from which the informant was alleged to have received the phone call demanding additional dowry was in any manner associated with the family or the near relatives of the accused. On the other hand, it has been pointed out that in paragraph 7 of the counter affidavit before this court, the specific case of the first respondent is that on 8 February 2019, when he was away from home to attend a marriage of a close friend, he had received a call at 8.45 pm from the same mobile number which is referred to in the FIR to the effect that his spouse has committed suicide. Hence, it has been submitted that there has been a clear attempt to improve upon the case which was set up in the application for bail filed before the High Court.

9 At the present stage, certain basic aspects need to be noted. It is not in dispute that the first respondent was married to the sister of the appellant on 5 July 2018. She died on 8 February 2019, within a year of the marriage. There are specific allegations in the First Information Report in regard to the demand of dowry, as well as in regard to a phone call being received from the accused in close proximity to the death of the sister of the appellant when a demand for additional amounts of money was made. The submission in support of bail recorded by the High Court was that the sister of the appellant was undergoing treatment for a mental illness. In this context, it is material to note that in paragraph 22 of the bail application, the plea was that the deceased was “suffering from severe headache and was mentally disturbed since the past nine months” and that she was taken to a doctor by the first respondent. A copy of the medical prescription, which has been submitted before this Court, would prima facie indicate that there was no serious ailment. The medical prescription of the Ayurvedic doctor and the remedies prescribed belie such a claim. Prima facie, there are serious allegations in the FIR in regard to the harassment suffered by the deceased in close proximity to her death over demands for dowry by the accused. In view of the provisions of Section 304-B of the Indian Penal Code, as well as the presumption which arises under Section 113-B of the Evidence Act, the High Court was clearly not justified in granting bail. 10 The order of the High Court granting bail contains absolutely no reasons at all.

While it is true that at the time of considering an application for bail the High Court would not be required to launch into a detailed enquiry into the facts which have to be determined in the course of trial, equally an application of mind by the High Court to the rival submissions is necessary. The High Court has merely recorded the submissions and in the extract which we have reproduced earlier proceeded to grant bail without any evaluation of the rival submissions. In this context, it would be worthwhile to reproduce the principle which has been formulated in the two-Judge Bench

decision of this Court in Brij Nandan Jaiswal vs. Munna alias Munna Jaiswal (2009) 1 SCC 678 where the Court observed thus:

> "It is now a settled law that the complainant can always question the order granting bail if the said order is not validly passed. It is not as if once a bail is granted by any court, the only way is to get it cancelled on account of its misuse. The bail order can be tested on merit also. In our opinion, therefore, the complainant could question the merits of the order granting bail. However, we find from the order that no reasons were given by the learned Judge while granting the bail and it seems to have been granted almost mechanically without considering the pros and cons of the matter. While granting bail, particularly in serious cases like murder some reasons justifying the grant are necessary."

11 In the earlier part of this judgment, we have extracted the lone sentence in the order of the High Court which is intended to display some semblance of reasoning for justifying the grant of bail. The sentence which we have extracted earlier contains an omnibus amalgam of (i) "the entire facts and circumstances of the case"; (ii) "submissions of learned Counsel for the parties"; (iii) "the nature of offence"; (iv) "evidence"; and (v) "complicity of accused". This is followed by an observation that the "applicant has made out a case for bail", "without expressing any opinion on the merits of the case". This does not constitute the kind of reasoning which is expected of a judicial order. The High Court cannot be oblivious, in a case such as the present, of the seriousness of the alleged offence, where a woman has met an unnatural end within a year of marriage. The seriousness of the alleged offence has to be evaluated in the backdrop of the allegation that she was being harassed for dowry; and that a telephone call was received from the accused in close-proximity to the time of death, making a demand. There are specific allegations of harassment against the accused on the ground of dowry. An order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application of mind by the judge who is deciding an application under Section 439 of the CrPC must emerge from the quality of the reasoning which is embodied in the order granting bail. While the reasons may be brief, it is the quality of the reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained judicial mind. We are constrained to make these observations because the reasons indicated in the judgment of the High Court in this case are becoming increasingly familiar in matters which come to this Court. It is time that such a practice is discontinued and that the reasons in support of orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice. 12 For the above reasons, we are of the view that the order of the High Court granting bail without due application of mind to the relevant facts and circumstances as well to the provisions of the law requires the interference of this Court.

13 We accordingly allow the appeal and set aside the impugned judgment and order of the Single Judge of the Allahabad High Court dated 1 December 2020 granting bail to the first respondent. The grant of bail to the first respondent shall accordingly stand set aside and the first respondent shall surrender forthwith. We, however, clarify that the observations contained in the present order are

confined to the issue of bail and shall not affect the merits of the trial. 14 Pending applications, if any, stand disposed of.

……..J. [Dr Dhananjaya Y Chandrachud] .....J. [M R Shah] New Delhi;

April 5, 2021 CKB