Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav & Anr on 18 January, 2005

Equivalent citations: AIR 2005 SUPREME COURT 921, 2005 (2) SCC 42, 2005 AIR SCW 536, 2005 AIR - JHAR. H. C. R. 801, 2005 (27) ALLINDCAS 717, 2005 (1) JT 482, 2005 (1) CTC 783, 2005 ALL MR(CRI) 1030, 2005 (1) RAJCRIC 126, 2005 (1) SCALE 385, 2005 (1) SUPREME 285, 2005 SCC(CRI) 489, 2005 (2) ALL CJ 894, 2005 (1) SLT 496, 2005 (2) SRJ 33, 2005 (1) BLJR 194, (2005) 1 MARRILJ 185, (2004) 2 DMC 675, (2004) 2 HINDULR 671, (2005) 1 RAJ CRI C 111, (2004) 4 CURCRIR 96, (2004) 7 SUPREME 146, (2004) 5 CTC 201 (SC), (2004) 8 SCALE 341, 2005 ALLMR(CRI) 2045, (2004) 4 ALLCRILR 787, (2004) 4 CRIMES 113, (2005) 1 RECCRIR 66, (2006) SC CR R 1199, (2004) 4 RECCRIR 538, 2004 (13) SCC 300, (2004) 3 ALLCRIR 2819, (2004) 2 ALD(CRL) 970, (2004) 50 ALLCRIC 782, (2005) 1 ALLCRIR 715, (2005) 1 CURCRIR 59, (2005) 1 RECCRIR 703, (2005) 1 SCJ 467, (2005) 1 ORISSA LR 438, (2005) 1 BOMCR(CRI) 683, (2005) 2 GUJ LR 921, 2005 UJ(SC) 1 5, (2004) 23 ALLINDCAS 620 (SC), (2005) 1 CAL LJ 214, (2004) 3 CHANDCRIC 198, 2005 CHANDLR(CIV&CRI) 1, (2005) 30 OCR 455, (2005) 1 PAT LJR 439, (2005) 51 ALLCRIC 727, (2005) 2 BLJ 19, (2005) 1 CHANDCRIC 116, (2005) 28 ALLINDCAS 55 (PAT), (2005) 1 EASTCRIC 202, (2005) 3 GUJ LH 601, (2006) 1 MADLW(CRI) 341, (2005) 1 CRIMES 202, 2006 CRILR(SC&MP) 879, 2005 (1) ANDHLT(CRI) 272 SC, 2005 (2) ALD(CRL) 295, 2005 SCC (CRI) 218, (2004) 8 JT 116 (SC)

Bench: N.Santosh Hegde, S.B.Sinha, P.K.Balasubramanyan

CASE NO.:
Appeal (crl.) 1129 of 2004

PETITIONER:
Kalyan Chandra Sarkar

RESPONDENT:
Rajesh Ranjan @ Pappu Yadav & Anr.

DATE OF JUDGMENT: 18/01/2005

BENCH:
N.Santosh Hegde,S.B.Sinha & P.K.Balasubramanyan

JUDGMENT:

J U D G M E N T CRIMINAL MISC.PETITION NO.10422 OF 2004 IN CRIMINAL APPEAL NO.1129 OF 2004 With CRIMINAL APPEAL NO. 120 OF 2005 (Arising out of SLP (Crl) No. 4954 of 2004) SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted in SLP (Crl) No. 4954 of 2004.

These are two criminal appeals challenging an order dated 21-9-2004 made by the High Court of Judicature at Patna in Criminal Miscellaneous No. 9220 of 2004 which was an application filed by respondent no. 1 (hereinafter referred to as the respondent) seeking the grant of bail in Sessions Trial No. 976 of 1999 pending before the CBI court. In the said case the said respondent is charged for offences punishable under Sections 302 read with 34, 307 read with 34, 120-B, 302/307 IPC and Section 27 of the Arms Act. This application before the High Court for grant of bail was the 9th application in the series of applications filed by the said respondent for grant of bail. His earlier applications were either rejected by the High Court or when granted by the High Court were set aside by this Court. As a matter of fact, this court in two earlier appeals had set aside the orders of the High Court dated 6-9-2000 and 23-5-2003 granting bail to the said respondent. The said orders of this Court are since reported in the case of Union of India & Anr. vs. Rajesh Ranjan Alias Pappu Yadav 2004 7 SCC 539 (I) and in Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav & Anr. 2004 7 SCC 528 (II). It is also relevant to note that when his earlier applications were rejected by the High Court the appeals filed by the respondent were dismissed by this Court confirming the refusal of the bail.

On 19-8-2000 charges were framed against the respondent and others under Sections 302 read with 34, 307 read with 34, 120-B, 302/307 IPC and Section 27 of the Arms Act which is not challenged.

After rejection of four bail applications earlier, the respondent filed a 5th application Crl. Miscellaneous 24068 of 2002 which came to be allowed by the High Court on the sole ground that since the respondent accused was under detention for more than one year, he should be released on bail without going into any other aspect of the case. On 6th of September, 2000 an appeal filed against the said grant of bail came to be allowed by this Court on 25th of July, 2001 on the ground that High Court while granting the bail did not keep in mind the requirement of Section 437(1) (i) of Cr. P.C., however, by the said order this Court held if any fresh application is made by the accused same shall be decided in accordance with law. This case is since reported in the case of Union of India & Anr. vs. Rajesh Ranjan Alias Pappu Yadav (supra I).

Taking advantage of the said observations of this Court the respondent-accused herein made another application for grant of bail on 5-11-2001 which was the sixth application for bail, said application came to be dismissed by the High Court. On 5-11-2001 a SLP filed against the said order of dismissal came to be dismissed by this Court on 7-12-2001.

The 7th bail application next filed by the accused-respondent also came to be dismissed by the High Court. A SLP filed against the said dismissal was also dismissed by this Court as per its order in SLP

(Crl) No. 1645/2002 on 20-5-2002.

On 23-9-2002 the accused-respondent moved the 8th bail application which came to be allowed by the High Court by its order dated 23-5-2003 solely on the ground that the accused-respondent had undergone incarceration for a period of 3 years and that there was no likelihood of the trial being concluded in the near future and appeal filed against the said grant of bail came to be allowed on the ground that the High Court could not have allowed the bail application on the sole ground of delay in the conclusion of the trial without taking into consideration the allegation made by the prosecution in regard to the existence of the prima facie case, gravity of offence, and the allegation of tempering with the witness by threat and inducement when on bail. This Court held since the above factors go to the root of the right of the accused to seek bail, non consideration of the same and grant of bail solely on the ground of long incarceration vitiated the order of the High Court granting bail. This Court also observed that though an accused had a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has duty to consider the reasons and grounds on which the earlier bail applications were rejected and in such cases the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier applications. This Court in that order also found fault with the High Court for not recording any fresh grounds while granting bail and for not taking into consideration the basis on which earlier bail applications were rejected. The court also emphasised in the said order that ignoring the earlier orders of this Court is violative of the principle of binding nature of the judgments of the superior court rendered in a lis between the same parties, and noted that such approach of the High Court in effect amounts to ignoring or over-ruling and thus rendering ineffective the principles enunciated in the earlier orders especially of the superior courts. On that basis, the appeal of the complainant challenging the grant of bail came to be allowed canceling the bail granted to the respondent. This order of this Court is since reported in the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav & Anr. (supra II). Barely 11 days after the said order of this Court in Kalyan Chandra Sarkar vs. Rajesh Ranjan Alia Pappu Yadav & Anr. (II) (supra) i.e. on 23rd March, 2004 a fresh 9th bail application was filed by the respondent without there being any change in the factual situation which came to be allowed by the High Court by its order dated 21st September, 2004 which is the subject matter of the above noted two Criminal Appeals.

When first of these appeals namely Crl. Appeal No. 1129 of 2004 came up for preliminary hearing on 24th of September, 2004, this Court issued notice in the SLP as well as in the application for suspending the bail granted by the High Court. After service of notice the respondent put in appearance in that appeal and this Court on 1st of October, 2004, after hearing the parties granted leave and stayed the impugned order granting bail by the High Court with a direction that the respondent should surrender and he should be taken into custody forthwith, consequently the respondent is in custody now.

During the pendency of the above criminal appeal filed by the complainant, the Investigating Agency namely the (CBI) has also filed another special leave petition challenging the order of the High Court granting bail to the respondent in which we have granted leave today.

Brief facts necessary for the disposal of these Crl. Appeals are as follows :-

Deceased Ajit Sarkar was then a MLA from Purnia constituency in State of Bihar. It is the prosecution case that there was enmity between the respondent and the said Ajit Sarkar because of their political differences. It is alleged on 14th of January, 1998 said Ajit Sarkar was returning in his official car with three others after attending a Panchayat, when some of the accused (not including the respondent) followed the car of said Ajit Sarkar on two motorbikes and attacked Ajit Sarkar and his companions with sophisticated weapons consequent to which said Ajit Sarkar and his companions Asfaq Alam, Hamender Sharma died and one Ramesh Oraon was seriously injured. Though the complaint in this regard was registered with the jurisdictional police at the instance of the brother of the deceased who is one of the appellant herein, the said police did not conduct proper investigation, hence, the case was transferred to the CBI which registered a fresh case.

During the course of investigation CBI found that in view of the political rivalry between the deceased and the respondent, the latter entered into a criminal conspiracy with the other co-accused to eliminate said Ajit Sarkar and pursuant to the said conspiracy, on 12-6-1998 the respondent herein held a meeting with the co-accused Harish Chaudhary and others in Siliguri. It is also alleged by the Investigating Agency that the respondent instructed some of the co- accused to falsify certain records to create an alibi for himself and Harish Chaudhary for their absence from the place and the time of proposed attack and the respondent left for New Delhi from Bagdogra. The prosecution also alleges that later on the respondent instructed the other co-accused Rajan Tiwari from Delhi over the phone to eliminate Ajit Sarkar by all means and he also assured the said Rajan Tiwari that he would provide the required firearms through co-accused Harish Chaudhary. It is pursuant to the said assurance, the prosecution alleges that on the date of the incident i.e. on 14-6-1998 at about 4.30 p.m. said Rajan Tiwari armed with an AK-47 rifle, Harish Choudhary with a .455 revolver and another accused armed with .38 revolver waylaid the car in which Ajit Sarkar was traveling at a place near Ankur Hotel in Subhash Nagar and attacked them, because of which three person including Ajit Sarkar died and his bodyguard Ramesh Oraon suffered serious injuries. Based on the investigation so conducted some of the accused-persons including the respondent were arrested and a charge-sheet was filed before the Additional Sessions Judge, XI at Patna in Sessions Trial No. 976 of 1999.

The respondent so arrested, as stated above, has since been making numerous bail application last of which as stated above has been allowed, which is the subject matter of these appeals.

In these appeals Shri Amrender Saran, learned Additional Solicitor General appearing for the CBI and Shri Vijay Hansaria, senior advocate appearing for the complainant, Kalyan Chandra Sarkar have argued that entertainment of the 9th bail

application by the High Court on the very same grounds as those urged in the earlier petitions without there being any new facts or grounds amounts to an abuse of the process of the court and is in derogation of the earlier orders passed by this Court. It is contended on behalf of the appellants that in the earlier proceedings all points available to the accused have been urged and have been negatived by the High Court while rejecting the application for grant of bail and confirmed by this Court and whenever erroneously the bail was granted this Court had interfered by setting aside the grant of such bail. Therefore, in the absence of any new or fresh ground, it was not open to the High Court to have reconsidered the same material and overruled the earlier findings of the court in the guise of considering afresh the existence of a prima facie case. It is also submitted that the existence of a prima facie case was one of the questions considered in many of the earlier orders of the High Court as well as of this Court, and the same having been found against the respondent, the High Court by the impugned order could not have reviewed those findings without there being any fresh material. It is also pointed out that the present application for grant of bail was filed within 11 days of the last order of this Court in the second case referred to hereinabove setting aside the grant of bail and during these 11 days nothing new had transpired to give rise to a fresh ground nor any fresh ground as such has been pleaded. In the second of the judgment of this Court referred hereinabove this Court had given findings as to the existence of a prima facie case which finding could not have been interfered with by the High Court in the impugned order. It was further argued that the question of admissibility of the retracted confession and its evidentiary value have also been taken note of by this Court in the second of the cases referred to hereinabove apart from the earlier orders of the High Court and having taken note of the same the High Court as well as this Court had felt there was sufficient material to come to the conclusion that there was a prima facie case against the respondent.

The learned counsel appearing for the appellants have taken serious exception to the manner in which the High Court has chosen to ignore the findings of this Court while canceling the bail in the earlier case. The said learned counsel also pointed out the various activities of the accused during his incarceration as well as during the short periods when he was out on bail which showed that he was interfering with the course of investigation and was threatening witnesses and that this accused had no respect for law. On that basis, it was argued that he is not entitled for the grant of bail.

Shri R.K. Jain, learned senior counsel appearing for the respondent-accused countered the above arguments addressed on behalf of the appellants by contending that right to liberty was a fundamental right of a person under Article 21 of the Constitution of India and that right could be curtailed only by a procedure known to law and if that procedure established by law is not followed by the courts while refusing to grant bail, it is open to the aggrieved person to challenge and re-challenge the same before an appropriate forum. He contended that since principle of res-judicata or estoppel does not apply to criminal jurisprudence, there is no bar for an accused person to make successive bail applications and re-urge the questions which might have been urged earlier and negatived by the court. Therefore, it is open to a court considering the grant of a fresh

bail application to re- appreciate the material on record and come to a different conclusion even though the same has been rendered by a superior court. In other words the rule of finality does not apply to bail petitions. He further submitted that the courts below while considering the evidentiary value of the retracted confession in the earlier bail applications did not really appreciate the true legal position in law and as enunciated by this Court in Hari Charan Kurmi & Jogia Hajam vs. State of Bihar AIR 1964, SC 1184, which had laid down that a retracted confession is a weak type of evidence. The learned counsel argued that in the present case apart from the retracted confession of one of the co- accused there is no supporting or corroborative evidence available for the prosecution, hence it is crystal clear that the prosecution has failed to establish a prima facie case. The learned counsel also contended that the material available on record in this case against the first respondent is not even sufficient for framing charges (even though charge framed is not challenged). Commenting on the order of this Court in the second of the cases (supra) he contended that this court has not given a finding that there is a prima facie case against the respondent-accused, nor has it dealt with the question of the evidentiary value of the retracted confession. Hence, the High Court was justified in going into these aspects of the case and coming to the conclusion that the prosecution case does not establish a prima facie case against the respondent accused. He also placed reliance on various judgments which were cited before the High Court in support of his arguments. Then placing reliance on the judgment of this Court in the case of Bhagirathsinh s/o Mahipat Singh Judeja vs. State of Gujarat 1984 1 SCC 284 the learned counsel submitted that existence of prima facie case is a sine-qua-non for refusal of bail and even if such a prima facie case is existing still it is well open to the accused persons to seek bail on other grounds but if there is no prima facie case made out from the prosecution material then the question of looking into the other grounds for grant of bail does not arise since lack of prima facie case by itself is sufficient to grant bail. He pointed out from the impugned judgment that the evidence of the other prosecution witnesses does not implicate the respondent-accused, therefore, the High Court was justified in granting the bail and this Court entertaining an appeal against the grant of bail should bear in mind that, ordinarily, this Court does not interfere with the orders either granting or refusing to grant bail under Article 136 of the Constitution. For this proposition also reliance is placed in the above cited judgment of Bhagirathsinh (supra).

It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so. The

principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been convassed earlier would not be permitted to be re- agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

The decisions given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country.

Next question in this case is: whether in the earlier proceedings, Courts including this Court, had given a finding in regard to the existence of prima facie case against the respondent or not ?. If so, has the respondent brought on record any fresh material either factual or legal so as to empower the High Court to reconsider the earlier orders ?

While the learned counsel for the appellants contend that the two grounds which the High Court considered as relevant for enlarging the respondent on bail have already been considered by the High Court as well as by this Court in the previous proceedings, the learned counsel for the respondent contends that neither this Court nor the High Court in the previous proceedings has given any finding on the two issues which were considered by the High Court in the impugned order.

Therefore, we will examine whether the two issues namely (A) the existence of the prima facie case against the accused and (B) the evidentiary value of retracted confession ; have been considered by the High Court as well as by this Court in the previous proceedings or not.

As stated above, prior to the impugned order, 8 attempts made by the respondent-accused to seek bail have proved futile. The learned counsel for the appellants have contended that in almost all the proceedings when the bail was refused the court had considered the existence of prima facie case and have given a finding in this regard. But it is not necessary for us to go into all those orders, it will be sufficient if we can find any such finding in any one of those cases for the purpose of disposal of this question.

In the order of the High Court dated 5th November, 2001 in Crl. Misc. No. 22243 of 2001, it is seen that an argument was addressed on behalf of the respondent that except the statement of Rajan Tiwari, a co-accused, there is no other material against him and since the confession of co- accused cannot be used as substantive evidence and there being no other material on record there is no possibility of his conviction in the case. Therefore, he should be enlarged on bail. It was also argued by the counsel for the respondent that confessional statement made before the Metropolitan Magistrate, Delhi was later retracted and while recording the confessional statement the concerned Magistrate did not observe the required formalities envisaged in Section 164 of the Criminal Procedure Code. It was also argued that the maker of the confession Rajan Tiwari was brought from custody, hence the Magistrate erred in recording the confessional statement without observing the necessary formalities. Therefore, the so called confessional statement must be ignored for the purpose of finding out the existence of a prima facie case. The said learned counsel also argued that, at any rate, confession of co-accused not being a substantive piece of evidence, it can only be used in aid of other evidence and there being no such other evidence the confessional statement by itself cannot lead to conviction. The learned counsel for the respondent-accused in that proceedings had relied upon on number of judgments of this Court in support of his contention as could be seen from the said order of the High Court. Having noticed the said argument, the High Court recorded its findings as follows :-

> "None of the abovesaid decisions, in my opinion, is of any help to the petitioner for the simple reason that all of them were rendered after trial. In the instant case the evidence is yet to see the light of the day. While the principles laid down in those cases about the nature of the confessional statement and the safeguards contained in section 164 Cr.P.C. are unexceptionable, for the purpose of section 437 (1)(i) of the Code what the court has to see is whether there are reasonable grounds to believe that the accused has been guilty of an offence punishable with death and imprisonment for life. Where circumstances exist which provide grounds to believe the guilt of the person the Court is not required to speculate as to quantum and nature of the evidence which would be led by the prosecution at the stage of trial".

Bearing in mind the above principle and some judgments of this Court the High Court in that petition held :-

> "The confession which Rajan Tiwari made is no doubt a statement of a co-accused but it is an inclupatory statement and cannot be ignored for the purpose of bail. In fact, as per his statement he is one of the assailants. There is nothing on the record to suggest that he made the confessional statement under Section 164 Cr.P.C. before the Metropolitan magistrate under any threat or coercion. Whether the safeguards envisaged in section 164 Cr. P.C. were observed or not is a matter of evidence which is still to come".

From the above it is also noticed that apart from discussing prima facie case, the court also noted that the confession was retracted. The court also noticed the material available on record indicating the motive for the crime and the proximity of the first respondent-accused with one of the accused

Rajan Tiwari who made the confessional statement. After considering all the above material the court recorded a finding as follows :-

> "I have little doubt in my mind that the materials on record in the case diary do constitute prima facie case. In fact, after the framing of charges, which has not been challenged by the petitioner, there can be little doubt about prima facie case against and, therefore, considering the matter from the angle of section 437(1)(i) of the Criminal Procedure Code the petitioner does not deserve bail". (Emphasis supplied) From the above facts recorded in the said judgment of the High Court, it is clear that that court took into consideration the evidentiary value of the retracted confession and the existence of prima facie case. Therefore, in our opinion, the learned counsel for the first respondent was factually in error in contending that the High Court in any of the previous proceedings did not go into the question of the existence of prima facie case or the legality and the evidentiary value of the retracted confession of Rajan Tiwari.
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> Apart from the observations made by the High Court in the above said petition even this Court in its judgment reported in Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav and Anr (II) had observed in regard to the existence of prima facie case as follows:-
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> "The next argument of the learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.
>
> From the above, it is clear that this Court negatived the argument of the respondent about the existence of a prima facie case. There is thus no merit in the argument that the existence or non-existence of a prima facie case was not taken into consideration by this Court.
>
> Probably this argument is built on the following observations of this Court extracted herein below :

"From the High Court order, we do not find this as a ground for granting bail."

Taking advantage of the above sentence in that order of ours, the learned counsel contended that this Court had also accepted the fact that the High Court in its previous orders had not considered the question of the existence of a prima facie case. With respect to the learned counsel we think that this sentence of ours is being relied upon out of context. In the 8th bail application made by the respondent, the High Court, of course, did not go into the question of prima facie case but allowed the application of the respondent solely on the ground of long incarceration. It is in that context when an argument was addressed before us that there existed no prima facie case as could be seen from the impugned order therein, that we observed that the non existence of prima facie case was not the ground on which the bail was granted. This comment of ours does not refer to or apply to the earlier bail applications in which a finding was given by the High Court as to the existence of a prima facie case to which we have already referred to herein above and have also extracted a portion of one such order which clearly shows that the existence of prima facie case has been dealt with by the High Court at least in one of the earlier orders and there being no change in the fact situation that prima facie case could not have disappeared when subsequent applications came up for hearing.

In the above factual background, we will now consider whether the High Court by the impugned order was justified in reconsidering the findings already recorded by this Court and the High Court in the earlier orders.

It is already noticed that the impugned order is pursuant to an application for grant of bail made by the respondent within 11 days of the order made by this Court in second of the appeals referred to hereinabove. It is also an admitted fact that during these 11 days no fresh material had come into existence nor has been pleaded by the respondent in the present application for bail before the High Court. A perusal of the impugned order clearly shows that the High Court proceeded to reconsider the very same two questions namely the existence of a prima facie case and the evidentiary value of retracted confession and by substituting its subjective satisfaction practically over ruled the findings of this Court as well as that of the High Court recorded in the earlier orders, without even discussing these findings and as if the case was being argued and considered by the Court for the first time even though the previous orders of this Court as well as that of the High Court were on record. This reconsideration and recording of a new finding was without there being any fresh factual or legal basis.

In our opinion, as contended by the learned counsel for the appellants the approach of the High Court in the impugned order to say the least was irresponsible, contrary to records and law.

Thus in our opinion the question of prima facie case and admissibility as well as the evidentiary value of retracted confession having already been considered by the High Court and this Court in the previous proceedings same could not have been made as the basis by the High Court in the impugned order to grant bail without there being fresh material. We are also of the opinion that the learned counsel for the respondent was in error when he contended that these two questions have not been decided by the High Court or by this Court in the earlier orders.

The learned counsel for the respondent-accused then strongly relied on a recent judgment of this Court in the case of Jayendra Saraswathi Swamigal vs. State of Tamil Nadu, Crl. A. No. 44 of 2005 dated 10th January, 2005 wherein this Court considering an application for grant of bail by the appellant therein came to the prima facie conclusion on the facts of that case as follows :-

> "No worthwhile prima facie evidence apart from the alleged confession have been brought to our notice to show that the petitioner along with A-2 and A-4 was party to a conspiracy."

The learned counsel for the respondent accused also pointed out from the said order, that in that case the court considered the judgment reported in Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav and Anr (II). (supra) and contended that the said judgment did not accept the correctness of the decision in Kalyan Chandra vs. Rajesh Ranjan Alias Pappu Yadav.

The learned counsel for the respondent further contended that this Court in Jayendra Saraswathi's case (supra) having not agreed with the law laid down in Kalyan Chandra Sarkar (II) ought to have overruled the said judgment in Kalyan Chandra Sarkar (II). We consider this as an argument of desperation. In Kalyan Chandra Sarkar II there has been no declaration of any law made as such. This Court only applied the requirement of Section 437(1)(i) of Cr.P.C. to the facts of the case and came to the conclusion that there was prima facie case against the respondent, hence, cancelled his bail. Nor has this Court in the case of Jayendra Saraswathi (supra) made any declaration of law. In that case also based on the facts of that case, this Court came to the conclusion that the prosecution had not established a prima facie case as against the accused in that case. It is while considering the judgment of this Court in Kalyan Chandra Sarkar (II) this Court in the case of Jayendra Saraswathi observed:

> "The observations made therein cannot have general application so as to apply in every case including the present one wherein the court is hearing the matter for the first time."

It is probably based on the above observations of this Court in the case of Jayendra Saraswathi (supra) that the learned counsel was emboldened to submit that the court in Jayendra Saraswathi's case having stated so ought to have overruled the judgment in Kalyan Chandra Sarkar II (supra). Whether the judgment in Kalyan Chandra Sarkar II ought to have been overruled or not by the Bench which delivered Jayendra Saraswathi's judgment, we are not competent to say, but certainly we are competent to say what actually the court stated in the said judgment of Jayendra Saraswathi and what the court has done in that case. In the said case of Jayendra Saraswathi, the court only distinguished Kalyan Chandra Sarkar II (supra). While doing so they observed:

> "The case of Kalyan Chandra Sardar (supra) was decided on its own peculiar facts where the accused had made 7 applications for bail before the High Court, all of which were rejected except the 5th one which order was also set aside in appeal before this Court. The 8th bail application of the accused was granted by the High Court which order was subject matter of challenge before this Court. The

observations made therein cannot have general application so as to apply in every case including the present one wherein the court is hearing the matter for the first time."

In our humble opinion, in the case of Jayendra Saraswathi (supra), this Court only distinguished the facts of that case from the facts of the present case in hand and the question of overruling a judgment on facts does not arise unless, of course, the court is sitting in appeal over the judgment sought to be distinguished. This Court in Kalyan Chandra Sarkar II (supra) decided the said case on the facts of that case only, so the question of the said case being overruled in another case does not arise. It is clear from the perusal of Jayendra Saraswathi's case as well as Kalyan Chandra Sarkar II (Supra) that both the cases have been decided by this Court on their individual facts only.

While deciding the cases on facts, more so in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case (See: Pandurang and Anr. vs. State of Hyderabad (1955 1 SCR 1083). It is also a well established principle that while considering the ratio laid down in one case, the court will have to bear in mind that every judgement must be read as applicable to the particular facts proved or assumed to be true. Since the generality of expressions which may be found therein are not intended to be expositions of the whole of the law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. A case is only an authority for what it actually decides, and not what logically follows from it. See :-

(1) Quinn vs. Leathem (1901) AC 495

(2) State of Orissa vs. Sudhansu Sekhar Misra
(AIR 1968 SC 647)

(3) Ambica Quarry Works Vs. State of Gujarat (AIR 1987 SC 1073) Bearing the above jurisprudential principle in mind if we examine the case of Jayendra Saraswathi (supra) it is clear that it was a case which was decided on the facts of that case and that the court did not overrule the judgment of this court in the case of Kalyan Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav and Anr. (II) (supra) even by implication but it only distinguished the case on facts. Therefore, in our opinion, that judgment is of no assistance to the respondent accused in this case.

The learned counsel for the appellant had pointed out that there are nearly 44 more witness to be examined by the prosecution and the past conduct of the accused as found by courts below very clearly shows that if he is released on bail he would certainly threaten the witnesses and tamper with the evidence which according to the learned counsel is clear from the fact that a number of witnesses have already turned hostile, many of them during the period when the accused was let on bail. Therefore, releasing the respondent-accused would not be in the larger interests of justice. We agree with this argument.

It is also pointed out that in addition to the retracted confession of the accused Rajan Tiwari the evidence already brought on record clearly shows that there has been a test identification parade of the assailants and also other materials have been brought on record to show that one of the assailants of Ajit Sarkar was closely known to the respondent and there have been telephonic conversation to and from the telephone registered in the name of the respondent which according to the learned counsel would go a long way in establishing the prosecution case.

It is not necessary for us to weigh the evidence at this stage since we have already come to the conclusion that the prosecution on the basis of the material available on record has established a prima facie case against the accused and we are also of the opinion that the conduct of the respondent-accused as brought on record clearly indicates that enlarging the said accused on bail would impede the progress of the trial.

For the reasons recorded hereinabove we are of the considered opinion that the High Court was totally in error in allowing the bail application of the respondent by the impugned order. We allow this appeal, quash the impugned order of the High Court and dismiss the bail application made by the respondent in Criminal Miscellaneous File No. 9220 of 2004 on the file of the High Court of Judicature at Patna.