

Ayub Khan
v.
The State of Rajasthan

(Criminal Appeal No. 5388 of 2024)

17 December 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Adverse observations were made against the appellant, a District and Sessions Judge of Rajasthan Judicial Service by the Rajasthan High Court. High Court observed that while rejecting the bail application, the appellant did not incorporate the details of the antecedents of the accused in the prescribed form in terms of the directions issued to the Trial Courts by the High Court in the case of Jugal Kishore vs. State of Rajasthan. Granting bail to the accused by the impugned order, High Court observed that non-compliance of the directions by the appellant, not only amounted to indiscipline but may also amount to contempt. Appellant sought quashing of the adverse directions issued against him.

Headnotes[†]

Adverse remarks/observations – Expunction of – Adverse remarks made against the appellant, a Judicial officer in a judicial order by the High Court:

Held: Principles to be followed while deciding a bail application are well settled – Constitutional Courts can lay down the principles governing the grant of bail or anticipatory bail but, cannot interfere with the discretion of Trial Courts by laying down the form in which an order should be passed while deciding bail applications – However, in the case of Jugal Kishore, the High Court made it mandatory for the Trial Courts to incorporate a chart containing details of the antecedents of the accused who applies for bail – The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him – In a given case, if the accused makes out a strong prima facie case, depending upon the fact situation and period of

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incarceration, the presence of antecedents may not be a ground to deny bail – There may be a case where a Court can grant bail only on the grounds of long incarceration – The presence of antecedents may not be relevant in such a case – No Constitutional Court can direct the Trial Courts to write orders on bail applications in a particular manner – Directions issued by the Rajasthan High Court in Jugal Kishore not binding – Non-compliance therewith by a judicial officer cannot be treated as an act of indiscipline or contempt – Furthermore, even assuming that the appellant was guilty of indiscipline, on the judicial side, the High Court ought not to have passed an order calling for an explanation from a judicial officer – The direction calling for an explanation from a judicial officer by a judicial order was inappropriate – Explanation of a judicial officer can be called for only on the administrative side – Eventually, the appellant had to tender an apology – The entire exercises done by the High Court while deciding a bail petition was not only unwarranted but illegal – Injustice has been done to the appellant by passing the orders – All adverse remarks/observations made against the appellant in the impugned order, expunged – Findings in the impugned order that the appellant indulged in disobedience of judicial instructions and indiscipline set aside – Observations/directions against the appellant in orders dated 4.04.23, 25.04.23 also set aside. [Paras 9, 10, 12-14, 16, 19]

Judiciary – Judicial officer – Explanation sought from a judicial officer by way of a judicial order, practice deprecated:

Held: Explanation of a judicial officer can be called for only on the administrative side – In the present case, the High Court ought to have shown restraint – High Court cannot damage the career of a judicial officer by passing such orders as he cannot defend himself when such orders are passed on the judicial side. [Paras 13, 18]

Case Law Cited

Jugal Kishore v. State of Rajasthan (2020) 4 RLW 3386; *Sonu Agnihotri v. Chandra Shekhar and Others*, 2024 SCC OnLine SC 3382 – referred to.

List of Acts

Penal Code, 1860; Arms Act, 1959.

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List of Keywords

Adverse remarks/observations; Expunction; Directions by Constitutional Court; quashing the adverse directions; Bail/Anticipatory bail; Rajasthan Judicial Service; District and Sessions Judge; Rajasthan High Court; Chart containing details of the antecedents of the accused in the prescribed tabular form/format; Indiscipline; Contempt; Principles governing the grant of bail/anticipatory bail; Discretion of Trial Courts; Directions issued by High Court not binding; Non-compliance by a judicial officer; Calling for an explanation from a judicial officer by a judicial order; Administrative side; Judicial side; Apology; Adverse remarks/observations expunged; No disobedience of judicial instructions.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5388 of 2024

From the Judgment and Order dated 05.05.2023 of the High Court of Judicature for Rajasthan at Jaipur in SBCRMBA No. 1800 of 2023

Appearances for Parties

Siddharth Luthra, Sr. Adv., Javed Khan, Ms. Vanya Gupta, Kushagra Raghuvanshi, Advs. for the Appellant.

Ms. Sansriti Pathak, A.A.G., Vishal Meghwal, Milind Kumar, Aman Prasad, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Abhay S. Oka, J.

1. Leave granted.

FACTUAL ASPECT

2. The appellant is a District and Sessions Judge of Rajasthan Judicial Service. The appellant joined the judicial service in the year 1993. The appellant has filed the present appeal for limited purposes of striking down observations made in the impugned order against him and for quashing the adverse directions issued against him. The appellant

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decided a bail application filed by an accused who was charged with offences punishable under Section 307 read with Section 34 of the Indian Penal Code (for short, 'IPC') and Sections 3, 3/25 and 5/25 of the Arms Act, 1959. The appellant rejected the bail application. Therefore, the accused filed a bail application before the High Court. The impugned order has been passed on the bail application. By the impugned order, bail has been granted to the accused. While granting bail, adverse observations have been made by the High Court against the appellant. Certain directions have been issued which affect the appellant.

3. In the case of ***Jugal Kishore vs. State of Rajasthan***,¹ Rajasthan High Court issued directions to the Trial Courts, which were to be implemented while deciding bail applications. The directions were contained in paragraphs 9, 10 and 11 of the decision. Paragraphs nos. 9 to 11 read thus:

“9. Thus, this Court directs that all learned trial courts shall, while allowing or disallowing any regular/ anticipatory bail application of any accused person, give the complete details of the antecedents, if any, and also record that there are no antecedents of the accused person in case of none being there. If there are antecedents of the accused, then the complete details of the antecedents i.e. FIR Number(s) & Case Number(s), Section(s), date(s), status and date of arrest & release on any previous occasion, if any, in the chart form shall be prepared and incorporated in the learned trial courts’ order, while granting or dismissing the bail application.

10. This order shall be conveyed by the Registry of this Court to all learned District & Sessions Judges of the State, who shall ensure the immediate implementation of this order amongst all the judicial officers and all courts in their respective jurisdiction, which are hearing the bail applications. The detailed antecedents report in aforesaid format so provided in the trial courts’ order shall be the requirement for disposal of any

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bail application in State of Rajasthan. It is also directed that the learned Public Prosecutors all over the State shall call for the antecedents report well in advance in every case of bail, so as to enable the courts to have a definite and correct information regarding previous criminal antecedents of the accused. A certified copy of this order be also sent by the Registry to the Director of the Prosecution Department of the State for necessary compliance, amongst the learned Public Prosecutors all over the State of Rajasthan.

11. The Registry of this Hon'ble Court shall ensure compliance of this order, in its letter and spirit, and submit such compliance before this Court on 05.01.2021."

(underline supplied)

4. While dismissing the bail application by order dated 20th December 2022, the appellant did not incorporate the details of the antecedents of the accused in the prescribed tabular form in terms of the directions in paragraph 9 quoted above. He merely mentioned in the order that there were 10 criminal cases registered against the accused at different police stations. Therefore, the learned Single Judge of the High Court passed an order dated 4th April 2023 observing that since the directions issued by the High Court in the case of **Jugal Kishore**¹ were not complied with by the appellant, it not only amounts to indiscipline but may also amount to contempt. Therefore, the learned Judge directed that a copy of the said order be forwarded to the appellant and his explanation be called for within five days. Accordingly, the appellant submitted his explanation dated 6th April 2023, in which he accepted that the directions in paragraph 9 of the decision have not been complied with. The appellant stated that this omission happened due to excessive work pressure. He assured the High Court that he would follow directions in paragraph 9 of the said decision.
5. The matter did not end there. Even after the appellant submitted his explanation, by order dated 25th April 2023, the learned Single Judge of Rajasthan High Court directed the appellant to send a list of the total number of bail applications he disposed of during February 2023 and submit copies of the orders. The High Court also directed the appellant to submit a report stating whether the directions in paragraph

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9 of the aforesaid judgment were followed while passing orders. The appellant complied with the directions by submitting a report dated 3rd May 2023. After that, the impugned order dated 5th May 2023 was passed. In paragraph no. 9 of the impugned order, the learned Single Judge of Rajasthan High Court observed thus:

“9. Non-compliance of the judicial and administrative orders of this Court by the Sessions Judge himself was a serious matter, on which a judicial order dated 04.04.2023 was passed and a direction was given to obtain explanation, in pursuance of which in its letter dated 06.04.23, it was mentioned that the winter vacations were about to start soon on 20.12.2022 and due to excessive work, the details of pending criminal cases against the accused could not be recorded in the prescribed format and it was also mentioned that “in disposal of all bails, the list of pending cases against the accused in the orders of the Hon’ble Court in the bail order is recorded in accordance with the principles enunciated in Jugal Kishore Vs. State of Rajasthan.”

6. In paragraph 10, the learned Single Judge referred to the report submitted by the appellant pursuant to the order dated 25th April 2023. It was observed that even in the bail orders passed in February 2023 by the appellant, compliance with the directions was not made. Paragraphs 11 and 12 of the impugned order read thus:

“11. It is clear from the above discussion that despite being on an important post like Sessions Judge, **the concerned Presiding Officer did not follow the judicial or administrative instructions of this Court and on being asked for explanation, took different contradictory and contrary defences at different times. An attempt has been made to mislead this Court and judicial time of this Court has been unnecessarily spent on this account. In the above circumstances, this matter is related to the disobedience of judicial instructions and judicial indiscipline, therefore a serious matter and it is necessary to bring this fact to the notice of the Honorable Chief Justice for necessary action in relation to the concerned Presiding Officer.**

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12. Therefore, according to the opinion and instructions expressed in para no. 08 and 11 of this order, the Registrar General of this court is directed to immediately submit a copy of this order with relevant documents and explanations to the Hon'ble Chief Justice.”

(emphasis added)

SUBMISSIONS

7. The learned senior counsel appearing for the appellant invited our attention to the judgment and order dated 18th June 2021 passed by the learned Single Judge of the Rajasthan High Court in S.B. Criminal Misc. Interim Bail Application No.6821/2021 (Gagandeep @ Goldy v. State of Rajasthan). In paragraph no.13 of the said order, the learned Single Judge issued similar directions, which were issued in paragraph no.9 of the decision in the case of **Jugal Kishore**,¹ with more elaboration. He pointed out that by order dated 20th February 2023 of this Court in Criminal Appeal arising out of SLP (Crl.) No. 11675-11676 of 2022, by which a direction for erasing paragraphs nos. 13 to 18 of the order dated 18th June 2021 was issued. Notwithstanding the order of this Court dated 20th February 2023, the High Court committed illegality in insisting on compliance with the directions issued in the case of **Jugal Kishore**.¹ He submitted that the High Court ought not to have issued a direction virtually laying down in what manner orders should be passed by the Trial Courts while deciding every bail application, directing that the antecedents of the accused should be incorporated in the order in a particular tabular format. He submitted that the High Court cannot interfere with the judicial discretion of the Session Judges by instructing them to pass orders by incorporating information about the antecedents of the accused in a particular format. He submitted that as far as the strictures passed against the appellant are concerned, the law has been laid down by this Court in the case of **Sonu Agnihotri vs. Chandra Shekhar and Others**.² He urged that unwarranted strictures passed by the learned Single Judge may adversely affect the judicial career of the appellant. The learned counsel appearing for the State has assisted the Court.

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8. We have already quoted the directions issued by the High Court in the case of ***Jugal Kishore***.¹ The gist of the directions issued is summarised as follows:
 - i. The Trial Courts shall, while allowing or disallowing any regular or anticipatory bail application must incorporate complete details of the antecedents of the accused, if any, in the order;
 - ii. The Trial Court shall record that there are no antecedents in case none are there; and
 - iii. If antecedents exist, the same shall be incorporated in the tabular form containing details mentioned in the judgment.
9. The principles to be followed while deciding on a bail application are well settled. If Trial Courts commit errors while deciding bail applications, the same can always be corrected on the judicial side by the Courts, which are higher in the judicial hierarchy. The Constitutional Courts can lay down the principles governing the grant of bail or anticipatory bail. However, the Constitutional Courts cannot interfere with the discretion of our Trial Courts by laying down the form in which an order should be passed while deciding bail applications. What the High Court has done in paragraph 9 in the decision in the case of ***Jugal Kishore***¹ is that it has made it mandatory for the Trial Courts to incorporate a chart containing details of the antecedents of the accused who applies for bail.
10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong *prima facie* case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents. In such cases, the question of incorporating details of antecedents in a tabular form does not arise. If the directions in the case of ***Jugal Kishore***¹ are to be strictly implemented, the Court may have to adjourn the

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hearing of the bail applications to enable the prosecutor to submit the details in the prescribed tabular format.

11. When the prosecution places on record material showing antecedents of the accused, and if the Court concludes that looking at the facts of the case and the nature of antecedents, the accused should be denied bail on the ground of antecedents, it is not necessary for the Court to incorporate all the details of the antecedents as required by paragraph 9 of the decision in the case of **Jugal Kishore**.¹ The Court may only refer to the nature of the offences registered against the accused by referring to penal provisions under which the accused has been charged.
12. In a given case, if necessary, the court can incorporate a chart as directed in paragraph 9 while deciding a bail application. However, if a High Court directs that in every bail order, a chart should be incorporated in a particular format, it will amount to interference with the discretion conferred on the Trial Courts. Therefore, in our view, what is observed in paragraph 9 of the decision in the case of **Jugal Kishore**¹ cannot be construed as mandatory directions to our Criminal Courts. At the highest, it can be taken as a suggestion which need not be implemented in every case. No Constitutional Court can direct the Trial Courts to write orders on bail applications in a particular manner. One Judge of a Constitutional Court may be of the view that Trial courts should use a particular format. The other Judge may be of the view that another format is better.
13. The matter does not rest here. In the order dated 4th April 2023 passed in the same bail petition in which the impugned order has been passed, it was observed that the directions issued in paragraph 9 have been disregarded by the appellant. The High Court went to the extent of observing that the act of disregarding direction contained in paragraph 9 of the decision in the case of **Jugal Kishore**¹ is not only indiscipline but is a serious matter which may amount to contempt. Therefore, an explanation of the appellant was called for. We fail to understand how the appellant committed acts of indiscipline or contempt by not following the suggestion incorporated in paragraph 9. Secondly, even assuming that the appellant was guilty of indiscipline, on the judicial side, the High Court ought not to have passed an order calling for an explanation from a judicial officer. The direction of calling for an explanation from a judicial officer by a judicial order

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was inappropriate. Explanation of a judicial officer can be called for only on the administrative side. The High Court carried the matter further. By order dated 25th April 2023, the High Court directed the appellant to send a list of the total number of bail applications he disposed of in February 2023, along with copies of the orders passed by him. He was also directed to submit a report on whether directions contained in the case of **Jugal Kishore**¹ were followed by him. The appellant was forced to give a reply and was left with no choice but to tender an apology by submitting the reply. With the utmost respect to the High Court, undertaking such an exercise was a waste of precious judicial time of the High Court which has a huge pendency.

14. What the High Court has done while deciding a bail petition in a case where bail was denied by the appellant as a Session Judge was completely uncalled for. The entire exercises done by the High Court right from issuing directions in the case of **Jugal Kishore**¹ and passing orders dated 4th April 2023, 25th April 2023 and the impugned order by which the High Court found fault with the appellant was not only unwarranted but illegal.
15. As noted earlier, in the judgment and order dated 18th June 2021 in S.B. Criminal Misc. Interim Bail Application No.6821/2021, in paragraphs 13 to 16 and in particular paragraph 15, similar directions were issued which are issued in the case of **Jugal Kishore**,¹ and by order dated 20th February 2023, the said directions have been set aside by this Court in Special Leave Petition (Crl.) Nos.11675-11676 of 2022 (**Rajasthan High Court v. State of Rajasthan and Anr.**).
16. Therefore, to conclude, we hold that the directions issued in paragraphs 9 and 10 of the decision of the Rajasthan High Court in the case of **Jugal Kishore**¹ cannot be said to be binding directions. At the highest, the same shall be treated as suggestions made by the High Court. Non compliance with what is observed in paragraphs 9 and 10 of the said decision by a judicial officer cannot be treated as an act of indiscipline or contempt.
17. Injustice has been done to the appellant by passing the orders which we have referred to above. Before we part with this judgment, we may refer to a decision of this Court in the case of **Sonu Agnihotri**.² In paragraphs nos. 15 and 16, this Court held thus:

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“15. The Courts higher in the judicial hierarchy are invested with appellate or revisional jurisdiction to correct the errors committed by the courts that are judicially subordinate to it. The High Court has jurisdiction under Article 227 of the Constitution of India and Section 482 of the CrPC to correct the errors committed by the courts which are judicially subordinate to it. We must hasten to add that no court can be called a “subordinate court”. Here, we refer to “subordinate” courts only in the context of appellate, revisional or supervisory jurisdiction. **The superior courts exercising such powers can set aside erroneous orders and expunge uncalled and unwarranted observations. While doing so, the superior courts can legitimately criticise the orders passed by the Trial Courts or the Appellate Courts by giving reasons. There can be criticism of the errors committed, in some cases, by using strong language. However, such observations must always be in the context of errors in the impugned orders. While doing so, the courts have to show restraint, and adverse comments on the personal conduct and calibre of the Judicial Officer should be avoided. There is a difference between criticising erroneous orders and criticising a Judicial Officer. The first part is permissible. The second category of criticism should best be avoided. The reasons are already explained by this Court in *Re: ‘K’, A Judicial Officer*. There are five reasons given in paragraph 15 of the decision why judicial officers should not be condemned unheard. As observed in the decision, the High Court Judges, after noticing improper conduct on the part of the Judicial Officer, can always invite the attention of the Chief Justice on the administrative side to such conduct. Whenever action is proposed against a judicial officer on the administrative side, he gets the full opportunity to clarify and explain his position. But if such personal adverse observations are made in a judgment, the Judicial Officer’s career gets adversely affected.**

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16. The Judges are human beings. All human beings are prone to committing mistakes. To err is human. Almost all courts in our country are overburdened. In the year 2002, in the case of “*All India Judges’ Association (3) v. Union of India*”, this Court passed an order directing that within five years, an endeavour should be made to increase the judge-to-population ratio in our trial judiciary to 50 per million. However, till the year 2024, we have not even reached the ratio of 25 per million. Meanwhile, the population and litigation have substantially increased. The Judges have to work under stress. As stated earlier, every Judge, irrespective of his post and status, is likely to commit errors. In a given case, after writing several sound judgments, a judge may commit an error in one judgment due to the pressure of work or otherwise. As stated earlier, the higher court can always correct the error. However, while doing so, if strictures are passed personally against a Judicial Officer, it causes prejudice to the Judicial Officer, apart from the embarrassment involved. We must remember that when we sit in constitutional courts, even we are prone to making mistakes. Therefore, personal criticism of Judges or recording findings on the conduct of Judges in judgments must be avoided.”

(emphasis supplied)

18. The High Court ought to have shown restraint. The High Court cannot damage the career of a judicial officer by passing such orders. The reason is that he cannot defend himself when such orders are passed on the judicial side.
19. Hence, we pass the following order:
 - i. All adverse remarks/observations in the impugned order dated 5th May 2023 made against the appellant, stand expunged. The findings contained in paragraph 11 of the impugned order holding that the appellant has indulged in disobedience of judicial instructions and indiscipline are set aside and the direction to place the case before the Chief Justice is also set aside;
 - ii. The observations made against the appellant in orders dated 4th April 2023, 25th April 2023 and directions issued thereunder

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to the appellant are set aside. We clarify that in view of what we have held earlier, the adverse remarks and observations made against the appellant in the aforesaid orders cannot be the basis for taking any action against the appellant on the administrative side;

- iii. A copy of this judgment shall be forwarded to the Registrar General of the High Court of Rajasthan who shall place the same before the Hon'ble Chief Justice of the said Court on administrative side.
- iv. Appeal is allowed on the above terms.

Result of the case: Appeal allowed.

[†]Headnotes prepared by: Divya Pandey