Nanha S/O Nabhan Kha vs State Of U.P. on 18 September, 1992

Equivalent citations: 1993CRILJ938

JUDGMENT

G.D. Dube, J.

1. In the third bail application moved by the petitioner for bail in case Crime No. 53 of 1989 under Section 302, IPC of P.S. Ganj, district Rampur Hon'ble N.L. Ganguli, J. has referred the following question to a larger Bench for an authoritative pronouncement:--

> "Whether an accused is entitled to be released on bail on the ground of parity by moving a second or third bail application in a circumstance that at a later date a co-accused of the same criminal case with a similar role was granted bail by the another Hon'ble Judge before whom without disclosing the fact that the bail application of another co- accused with similar role had already been rejected, by another Bench, bail was granted."

2. The short facts relevant for the decision of the aforesaid question are as under:--

> A first information report was lodged against Iqbal, Dildar Kha, Khursheed and Nanha at 11-10 a.m. on 9-10-1989 in the above mentioned police station. Khursheed and Dildar had moved application No. 1865 of 1991 for bail. This application was rejected by Hon'ble V.N. Mehrotra, J. Nanha also moved first bail application which was rejected on 7-12-1991. The second application moved by Khursheed, Dildar and Nanha were rejected. Khusheed was granted bail on the ground of age in the third attempt.

3. In the third bail application moved on behalf of Dildar, bail was granted by Hon'ble V.N. Mehrotra, J. Thereafter, Iqbal Husain Khan was also granted bail by Hon'ble B.P. Singh, J.A. Prayer was made that the applicant be also granted bail on the ground of parity. The Hon'ble single Judge referred to two judgments of this Court, namely, Shobharamv. State of U.P. 1992(29) All Crl. Cases 59 and Sayed Khan v. State of U.P. 1990 All Crl. Cases 1908. The Hon'ble Judge is of the view that the aforesaid two decisions are taking contrary view about parity in granting of bail and this matter should be set up at rest by a pronouncement of a larger Bench.

4. We have heard the learned counsel for the applicant and the learned A.G.A.

5. It was argued by learned counsel for the applicant that formerly this Court had been granting bail on the ground of parity. In this connection, our attention was drawn to Ram Roop v. State of U.P. 1987 UP Crl. Rulings 30. In this case, it was observed that as a co-accused having role similar to the

applicant in that case was granted bail, the applicant should also be granted bail.

6. The next case, in which reliance was placed, is Sobha Ram v. State of U.P. 1992 All Crl. Cases 59. In this case, Hon'ble V.N. Mehrotra, J. had observed that it was not at all obligatory upon the counsel of an applicant accused to indicate that the application of a co-accused had been rejected. The Hon'ble Judge had referred to Ali Husain v. State of U.P., 1990 UP Crl. Reports 93 in which Hon'ble S.K. Dhaon, J. had placed reliance on Kalloo v. State of U.P. 1989 AWC 65. In Kalloo's case the desirability of consistency in matter of sentence was considered. It is not applicable to the matter of bail.

7. Learned counsel had also placed reliance on Sanwal Das Gupta v. State of U.P. 1986 (23) Alld. Crl. Cases 79 in which Hon'ble D.N. Jha, J. had observed that where a bail was granted to a co-accused, then the Magistrate can in view of maintaining parity admit the co-accused to bail provided he offers himself to be bailed out.

7A. Hadi v. State of U.P. 1986 (23) All Crl. Cases 390 was also cited by learned counsel for applicant. This is a very short judgment of Hon'ble P. Dayal, J. In this case, the applicant was bailed out on the ground that the co-accused had been bailed out earlier. The facts of the case have not been stated in the judgment. Hence it is not of much help to the applicant.

8. Our attention was drawn to Kesho Ram v. State of Assam : AIR 1978 SC 1095 : (1978 Cri LJ 844). In this case, the offence was alleged against the applicant falling under Section 5(2) of the Prevention of Corruption Act. The bail was granted by the Sessions Judge, but it was cancelled by the High Court mainly for the reason that the appellant had simultaneously moved for bail in Sessions Court as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. The Supreme Court observed that the refusal for bail is not an indirect process of punishing the accused before he is convicted. The Supreme Court, had allowed the appellant to continue on bail granted by the Sessions Court.

9. Learned counsel for the applicant had urged that the view of Hon'ble K.K. Chaubey, J. in Sayed Khan v. State of U.P. 1990 All Crl. Cases 98 does not lay down the correct law. It was urged that it is not at all obligatory upon an accused applicant to state in his application that the application of a co-accused has been rejected previously. He is only liable to disclose all the facts relating to his case as to why he should be enlarged on bail. He cannot be saddled with any other responsibility nor can be punished for not disclosing the facts of rejection.

10. In Sayed Khan's case the case of Ashok Kumar v. State of Punjab, AIR 1977 SC 109 : (1977 Cri LJ 164) has been referred. In this case, appellant Ashok Kumar and his two brothers Kewal Krishna and Dharam Pal were charged before the Sessions Judge for the offence of intentionally causing the death of one Dharam Pal. On trial the Sessions Judge accepted the prosecution case and convicted Ashok Kumar under Section 302, IPC. Dharam Pal and Kewal Krishna were, however, convicted and sentenced to ten years rigorous imprisonment and a fine of Rs. 1,000/- under Section 326 read with Section 34, IPC. Kewal Krishna and Dharampal were further convicted and sentenced to two years R.I. under Section 324 read with Section 34, IPC. The three accused preferred appeal against the

order before the High Court. The High Court acquitted Dharam Pal, but maintained the conviction of other two appellants, namely, Ashok Kumar and Kewal Krishna. The sentence of life imprisonment imposed on Ashok Kumar was maintained, but in regard to Kewal Krishan the High Court reduced the sentence to two years. Ashok Kumar and Kewal Krishna preferred a petition for Special Leave before the Supreme Court. Ashok Kumar succeeded in obtaining Special Leave, but the petition of Kewal Krishna was rejected. In the above circumstances, the-Supreme Court observed (at page 166 of Cri LJ):

> "The appellant would also be constructively guilty for the other injuries caused to the deceased, since it is apparent from the prosecution evidence that the appellant, Kewal Krishna and the unidentified assailant attacked the deceased in pursuance of a common intention shared by all of them. The common intention, according to the learned Sessions Judge and the the High Court, was to cause grievous hurt to the deceased and it was on this footing that the learned Sessions Judge and the High Court convicted Kewal Krishan of the offence under Section 326 read with Section 34. We very much doubt whether the learned Sessions Judge and the High Court were right in taking the view that the common intention of the three assailants was merely to cause grievous hurt to the deceased.
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> As many as four injuries were inflicted on the deceased by knives and out of them, one was on the head and three were on the chest. Having regard to the weapons used by the three assailants, the number of injuries caused by them and the vital parts of the body on which the injuries were inflicted, it does appear that the common intention of the assailants was to cause the death of the deceased and Kewal Krishna could, therefore, have been convicted under Section 302 read with Section 34. But unfortunately the State has not been vigilant in enforcement of the criminal law and regrettably it has not preferred an appeal against the acquittal of Kewal Krishna under Section 302 read with Section 34, with the result that his conviction under Section 326 read with Section 34 must stand. And if that be so, consistency compels us to reach the conclusion that the appellant also must, on the same basis, be convicted under Section 326 read with Section 34 instead of Section 302, read with Section 34."

11. The case of Ashok Kurnar is a peculiar case. The observations of the Supreme Court cannot be applied to bail matters. Mostly at the time of consideration of bail the trial has not started and even investigations are not over. In several cases, the Supreme Court has laid down the broad consideration which should weigh with the Court, while granting bail. In Mohan Singh v. Union Territory, AIR 1978 SC 1095 : (1978 Cri LJ 844) itself the Supreme Court has observed that refusal of bail is not an indirect process of punishing an accused person before he is convicted. 'This is a confusion regarding rationale of bail', the Supreme Court remarked. In this case the Supreme Court had referred to Gurcharan Singh v. State (Delhi Administration) AIR 1978 SC 179: (1978 Cri LJ 129), where it has explained the rationale of bail. After discussing the scope of Section 437 and 439 of Cr. P.C. the Supreme Court observed (at pages 135 & 136):

> "S. 439(1), Cr. P.C. of the New Code, on the other hand, confers special powers on the High Court or the Court of Sessions in respect of bail. Unlike under Section 439(1) there is no ban imposed under Section 439(1), Cr. P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circum-, stances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr. P.C. of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 439(1) and Section 439(1), Cr. P.C, of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and witnesses; the likelihood, of the accused; fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out."

12. In Sayed Khan's case, Hon'ble K. K. Chaubey, J. had considered the case of Babu Singh v. State of U.P., AIR 1978 SC 527 : (1978 Cri LJ 651). In this case the Supreme Court had observed that in case the bail application of an accused had been rejected and the second application for bail was moved it was held that the previous order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different consideration. Gama v. State of U.P. 1987 Crl. Law Journal 749 and Surat Bahera v. State of Orissa, 1988 Crl. Law Journal 1508 were also referred wherein it was held that successive bail applications are not barred.

13. Hon'ble K.K. Chaubey, J. had also referred to Sitaram v. State, 1981 (18) ACC 182, which has been relied by learned A.G.A. in support of his case that parity cannot be the sole consideration for bail. Hon'ble K.K. Chaubey, J. had extracted the following observations from the said judgment:--

> "The claims of the principle of consistency and demand for parity by the accused, however, are not compelling one's and one cannot override the judges contrary view on the case before him if even awareness of the desirability of consistency fails to move his view. In other words this is only a factor to be considered and not a governing consideration. This is clear from the Supreme Court decision in Ashok Kumar's case (supra) also where the court declined to follow the principle in the matter of sentence."

14. Before proceeding about the desirability of parity in the matter of granting bail it would be better to draw our attention to the exact meaning of parity. In Chambers English Hindi Dictionary 1981 the word "parity" has been stated to mean 'twai', 'sTHspft'. 'WTPTHT', '^MCII', 'a^^Mai', 'w*r, '^rr^w

and 'WT ^MflT1. In New Lexicon Webster's Dictionary 1987 Edition, the word "parity" has been stated to mean 'equality in status', 'values' etc.

15. In 'Shorter Oxford English Dicton-ary' 1936 'parity' has been stated to mean, 'The state or condition of being equal or on a level, Equality, Equality of rank or Status'.

16. Thus the word 'parity' connotes a state when a person is placed on the same footing as the other person. We have to examine as to how far this alleged principle of parity can be invoked in the matter of bail.

17. Learned counsel for the applicant has cited a case in State v. Captain Jagjit Singh, AIR 1962 SC 252 : (1962 (1) Cri LJ 215). In this case, an argument had been advanced before the Supreme Court that as two accused had been enlarged on bail the respondent should also be released. Jagjit Singh was a Captain in the Army. At the time of his arrest, he was employed in a delegation in India of a French Company. The two other accused were employed in the Ministry of Defence and Army Head Quarters. It was alleged that they, in conspiracy, had passed on official secrets to a foreign agency. Jagjit Singh's application for bail was rejected by the Sessions Judge. Thereupon, this accused moved an applicaton before the High Court under Section 498 of the Criminal P. C. (1898). The main contention of applicant before the High Court was that on the facts desclosed the case came under Section 5 of Official Secrets Act which is bailable and not under Section 3 of the Act which is not bailable. The High Court was of the view that it was not possible to go into the question wheher Section 3 or 5 applied. However, taking the view that two other co-accused had been granted bail, the High Court granted bail to the accused Jagjit Singh. The State went in appeal against this order.

18. While considering the argument whether Jagjit Singh should be also granted bail, when two other persons prosecuted along with him were granted bail, the Supreme Court observed at page 217 :

> "It is true that two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order; but the case of the respondent is obviously distinguishable from their case inasmuch as the prosecution case is that it is the respondent who is in touch with the foreign agency and not the other two persons prosecuted along with him. The fact that the respondent may not abscond is not by itself sufficient to induce the court to grant him bail in a case of this nature."

19. The above case itself indicates that the Supreme Court had not accepted the contention of learned counsel for Captain Jagjit Singh that as the two co-accused had been released, then the High Court was right in releasing Captain Jagjit Singh also on the ground of parity. The Supreme Court had considered the case of Jagjit Singh and after coming to the conclusion that his case stood on a different footing even though he was a member of conspiracy, a great responsibility lay upon him in the matter of divulgence of official secrets. The Supreme Court had cancelled the bail granted by the High Court.

20. Both A.G.A. and learned Counsel for the applicant have relied upon Sunder Lal v. State of U.P.> 1983 AWC 148 : (1983 Cri LJ 736). In this case, the facts were that a report was lodged by one Sant Ram against five persons including one Sunder Lal. The Investigating Officer submitted charge-sheet and thereafter the Judicial Magistrate committed the applicant along with others to the Sessions Judge. The applicant Sunder Lal was in jail at the time the case was committed to the court of session. In pursuance of the committal order a custody warrant was issued against the applicant. In this case, the detention order of the applicant had challenged as being illegal. In the end, it was also argued that other co-accused had been admitted to bail, the applicant should also be granted bail. The Full Bench observed :

> "The learned counsel only pointed out that by reason of fact that other co-accused had been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant bail who is involved in a triple murder case."

21. The above case of Sunder Lal does not help the applicant in any manner. However, this shows that a Full Bench of this Court has laid down the law that the argument of parity alone would not be sufficient to enlarge an applicant on bail.

22. From the cases discussed above, we find that parity alone had not been considered as a ground for release on bail. A Full Bench of this Court as well as the Supreme Court had refused to release an applicant on bail simply because the other co-accused had been released on bail. In the cases of Captain Jagjit Singh and Sunder Lal, the Supreme Court and High Court examined the case of each applicant on its own footing, even though co-accused had been released on bail.

23. On an examination of the cases cited before us, I am of opinion that the case of an accused has to be examined individually. Simply because the co-accused has been granted bail cannot be the sole criteria for granting bail to an accused. Even at the stage of second or third bail the court has to examine whether on facts the case of the applicant before the Court is distinguishable from other released co-accused and the role played by the applicant is such which may disentitle him to bail. The norms laid down by the Supreme Court in Gurcharan Singh's case, viz:

> (i) the nature and gravity of the circumstances in which offence is committed;
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> (ii) the position and the status of the accused with reference to the victim and witnesses;
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> (iii) the likelihood of;
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> (a) the accused fleeing from justice;
>
> (b) of repeating the offence

(c) of jeopardising his own life being faced with grim prospect of possible conviction in the case;

(d) of tampering the witnesses.

(iv) the history of the case as well as of its investigation; and

(v) other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out, have to be considered even at the time of consideration of bail at a subsequent stage of second or third application. I have stated the above norms even at the risk of repetition even though they have been quoted earlier.

24. My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the ' applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail. As regards the second part of the referred question my answer is that it is not at all necessary for an accused to state in his application that the application of a co-accused had been rejected previously.

25. The record of this case be sent expeditiously to the single Bench with the above answers for disposal of the bail application.

VIRENDRA SARAN J.:~ 26. I have perused the judgment of brother G.D. Dube, J. I would like to give my own views and reasons for our conclusion in answering the question referred to the Bench.

27. In the third Criminal Misc. Bail Application in Crime No. 53 of 1989, under Section 302, I.P.C. of P.S. Ganj, | District Rampur, Hon'ble N.L. Ganguly, J. has referred the following question to a larger Bench:--

"Whether an accused is entitled to be released on bail on the ground of parity by moving a second or third bail application in a circumstance that at a later date a co-accused of the same criminal case with a similar role was granted bail by another Hon'ble Judge before whom without disclosing the fact that the bail application of another co-accused with similar role has already been rejected by another Bench, bail was granted."

28. It would appear that a First. Information Report was lodged against four persons, namely, Iqbal, Dildar Khan, Khursheed and Nanha on 9-10-1989 at P.S. Ganj, District Rampur. Khursheed and Dildar moved bail application No. 1865 of 1991 in this Court. This application was rejected by the

Hon'ble V.N. Mehrotra J. The second bail application was moved by Khursheed and Dildar but was again rejected. Khursheed again applied for bail a third time and was granted bail on the ground of age. Third bail application was filed by Dildar vide Criminal Misc. Bail Application No. 722 of 1992 and Hon'ble V. N. Mehrotra, J. granted him bail on 31-3-1992 with the following order :-

> "This is third bail application by the applicant; his earlier two applications have been rejected by me on merits. Heard-counsel for the applicant arid learned A.G.A. as well as perused affidavit and supplementary affidavit filed along with documents. After consideration of all the materials placed before me I am of the view that the bail may be granted to the applicant. Let applicant Dildar, involved in case Crime No. 355 of 1989 under Section 302, I.P.C., P.S. Ganj, Rampur be released on bail on his executing a personal bond and furnishing two sureties, each in the like amount, to the satisfaction of C.J.M. Rampur."

29. Co-accused Iqbal Khan also applied for bail and was granted bail by Hon'ble B.P. Singh J. by his order dated 23-4-1992 in Criminal Misc. Bail Application No. 13613 of 1992.

30. The order passed by Mr. Justice B.P. Singh reads thus:--

> "Heard. Co-accused Dildar Khan was granted bail on 31st March 1992. The case of the applicant appears to be similar.
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> Let the applicant Iqbal Hussain Khan involved in crime No. 355 of 1989 under Section 302, I.P.C., P.S. Ganj, Rampur be released on bail provided he furnishes a personal bond and sureties to the satisfaction of C.J.M., Rampur."

31. The applicant Nanha's first bail application being Criminal Misc. Bail Application No. 6013 of 1991 was rejected on 6-5-1991 by Hon'ble Mr. Justice N. L. Ganguly. His second bail application, being Criminal Misc. Bail Application No. 11017 of 1991, was again rejected by the same Hon'ble Judge on 9-12-1991.

32. After grant of bail to co-accused Dildar Khan and Iqbal Hussain Khan by the two Hon'ble Judges Nahna again filed a third bail application and it was urged that on the ground of parity Nanha should also be granted bail.

33. The bail application came up before Hon'ble Mr. Justice N. L. Ganguly who has referred the case to a larger Bench to decide the question which has been mentioned above.

34. Counsel on either side have been heard at length.

35. The question for consideration is whether if bail is granted to one co-accused the other co-accused whose case stands on the same footing is entitled to bail.

36. The argument of the learned State Counsel is that it is open to different Judges to reject or grant bail to accused even if their cases stand on same footing. I am unable to persuade myself to accept this submission of the learned State Counsel. The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. If the argument of the learned State Counsel is carried further it would mean that even the same Judge while deciding bail application moved by several accused, whose cases stand on the same footing, is free to reject or grant bail to any one or more of them at his whim. Such a course would be wholly arbitrary.

37. The public, whose interests all judicial and quasi-judicial authorities ultimately have to serve, will get a poor impression of a court which delivers contrary decisions on identical facts. Hence for the sake of judicial uniformity and non-discrimination it is essential that if the High Court granted bail to one co-accused it should also grant bail to another co-accused whose case stands on the same footing. Alexis de Toqueville remarked that a man's passion for equality is greater than his desire for liberty.

38. The preamble of the Constitution states that the people of India gave to themselves the Constitution to secure to all its citizens amongst other things "Equality of status and opportunity."Thus the principle of equality was regarded as one of the basic attributes of Indian Citizenship.

39. In a recent case of Shri Lekha Vidyar-thi v. State of U.P., AIR 1991 SC 537 (para 21) the Supreme Court laid down:--

> "We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity. Contrary to the professed ideals in the preamble."

40. Since judicial activity is one kind of State activity it must be held, as laid down in Shri Lakha Vidharthi's case, that courts cannot discriminate. In para 25 of the decisions the Hon'ble Supreme Court quoted with approval Wade's Administrative Law which states:--

> "The whole conception of unfettered dis-cretion is inappropriate to a public authority which possesses power solely in order that it may use them for the public good."

41. The Supreme Court went on to say that this principle applies not only to executive functions but also to judicial functions.

42. The High Court also performs sovereign functions and cannot discriminate with persons similarly situated.

43. In a democracy the judiciary, like any other State organ, is under scrutiny of the public and rightly so because the people are the ultimate masters of the country and all State organs are meant to serve the people. Hence the people will feel disappointed and dismayed if courts give contrary

decisions of the same facts.

44. In this connection a reference may be made to the decision of the Supreme Court in Beer Bajranj Kumar v. State of Bihar, AIR 1987 SC 1345 in which the Supreme Court had set aside the order of the Patna High Court, dismissing the writ petition when on identical facts another writ petition had earlier been admitted. The same view was expressed in another case of Sushil Chandra Pandey v. New Victoria Mills, 1982 UPLBEC 211. These decisions lend support to the view I am taking. In Been Bajranj Kumar's case (supra) the Supreme Court observed :

> "This, therefore, creates a very anomalous position and there is a clear possibility of two contrary judgments being rendered in the same case by the High Court."

45. In a very recent case of Har Dayal Singh v. State of Punjab, reported in 1992 (4) JT(SC) 353: (AIR 1992 SC 1871) the Hon'ble Supreme Court has held that when the High Court had acquitted four accused giving reasons to discard testimony of certain witnesses the parity of reasoning should have been extended to the fifth accused also. The Supreme Court, therefore, allowed the appeal and acquitted the fifth accused as well.

46. In the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, AIR 1991 SC 101 : (1991 Lab 1C 91) the Supreme Court observed at page 173 :--

> "There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is all the more improper and undesirable to expose the precious rights like rights like the right of life, liberty and property to the vageries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy the high seats of power."

47. In his referring order the learned single Judge has referred to two conflicting views one is of Hon'ble K. K. Chaubey, J., in the case of Said Khan v. State of U.P., 1989 Allahabad Criminal Cases 98 and the other is Sobha Ram v. State of U.P., 1992 Allahabad Criminal Cases 59.

48. In the case of Said Khan (supra) Mr. Justice K.K. Chaubey held that the principle of consistency or demand for parity is only a factor to be considered and not a governing consideration.

49. In the light of the discussion made in the preceding paragraphs, the view expressed by K.K. Chaubey, J. does not hold ground. Judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all it is settled law that judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the public. Hence for the sake of uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same footing. If the contrary course is adopted the public will loose confidence in the administration of justice.

50. In his judgment K.K. Chaubey, J. has placed reliance on the case of Ashok Kumar v. State of Punjab, AIR 1977 SC 109 : (W77 Cri LJ 164) in Ashok Kumar's case, Ashok Kumar along with Dharmpal and Kewal Krishna were prosecuted for murder and all of them were assigned the role of causing knife injuries. The Sessions Judge convicted and sentenced Ashok Kumar under Section 302/34, I.P.C. to Imprisonment for Life while the other two were convicted and sentenced under Section 326/34, I. P. C. to ten years' R. I. On appeal the High Court dismissed the appeal of Ashok Kumar, Kewal Krishna's sentence under Section 326/34, I.P.C. was reduced from ten years' to two years' R.I. and Dharmpal was acquitted. The Supreme Court was of the view that all the three accused had shared common intention to commit murder punishable under Section 302/34, I.P.C. The Supreme Court disagreed with the view taken by the Sessions Judge and the High Court but to uphold the principle of consistency the Supreme Court convicted Ashok Kumar under Section 326/34, I.P.C. instead of Section 302/34, I.P.C. The Supreme Court observed:--

> "And if that be so, consistency compels us to reach a conclusion that the appellant also must, on the same basis, be convicted under Section 326 read with Section 34 instead of Section 302 read with Section 34."

51. Thus the Supreme Court upheld the principle of consistency K.K. Chaubey, J. has relied on the observation of the Supreme Court to the effect that Kewal Krishna had been let of on a ridiculously light sentence of two years' Rigorous Imprisonment and the Supreme Court observed that it would pass proper sentence incase of Ashok Kumar. This observation, according to K.K. Chaubey, J. runs contrary to the principle of consistency. It is noteworthy that the Supreme Court released Ashok Kumar on the period of sentence already undergone by him which was six years and ten months. It is to be noted that the Supreme Court did not specify the period of sentence other than what had been awarded to Kewal Krishna. In a subsequent case of Kallu v. State, 1989 A.W.C. 65, the Supreme Court has specifically upheld the principle of consistency even in the matter of sentence. In Kallu's case (supra) two separate special leave petitions were filed by different accused against the same judgment of the High Court. One of the petition was dismissed by one Bench but the other special leave petition which was heard by another Bench, was partly allowed and the sentence was reduced from seven years' R.I. to three years' R.I. The Supreme Court reviewed its earlier order of dismissal of the first special leave petition and reduced the sentence from 7 years' R.I. to three years' R.I. Thus accused whose cases stand on the same footing are entitled to equal treatment. In Ajai Hasia v. Khalid Muzib Sehravardi, 1981 (2) SCR 79 : (AIR 1981 SC 487) the Supreme Court held that equality is directly opposed to arbitrariness. In a more recent case of Miss. Mohini Jain, reported in 1992 (4) JT(SC) 292: (AIR 1992 SC 1858) the Supreme Court after considering large number of cases quoted with approval the following passage from the case of Ajai Hasia at page 1866:--

> Unfortunately in early stages of evolution of our Constitutional Law Article 14 came to be identified with the doctrine of classification... In Royappa v. State of Tamil Nadu this Court laid bare a new dimension of Article 14 and pointed out that article has highly activist magnitude and it embodies a guarantee against arbitrariness."

52. Even though Article 14 may not apply to judicial pronouncements it would be highly illogical to canvass that the courts of law would insist that the legislature and executive should pursue the path

of equality as envisaged under Article 14 but themselves pass orders creating inequality.

53. There are large number of cases of this Court in which the question of parity in the matters of bail has been considered earlier and the weight of judicial authority is in favour of the principle of parity being followed. In the case of Hadi v. State, 1986 Allahabad Criminal Cases 390 Hon'ble Parmeshwari Dayal, J. bailed out the accused on the ground that co-accused had been bailed out earlier. In another case of Sanwal Das Gupta v. State of U.P., 1986 Allahabad Criminal Cases 79, D.N. Jha, J. observed that where bail was granted to a co-accused then even the Magistrate can admit co-accused to maintain parity. In the case of Ram Roop v. State of U.P. 1987 Criminal Rulings 30, this Court observed that a co-accused having similar role having been granted bail another co-accused should also be granted bail. In the case of Ali Hussain v. State of U.P., 1990 U.P. Criminal Rulings 93, Hon'ble S.K. Dhaon, J. placed reliance on the Supreme Court's case of Kallu (supra) and granted bail on the ground of parity. In a unreported decision of this Court in Criminal Misc. Bail Application No. 1360 of 1987 Rai Munna v. State of U.P. Hon'ble G.P. Mathur, J. granted bail on the ground of parity though the Hon'ble Judge clearly observed that he was still of the opinion that the applicant was not entitled to bail on merits, but, however, as his case was not distinguishable from the case of co-accused the bail was granted on the ground of parity. In his judgment in Sobha Ram's case (supra) Hon'ble V.N. Mehrotra, J. has considered some more unreported decisions of this Court in which bail has been granted on the ground of parity. I respectfully agree with the view of Hon'ble V.N. Mehrotra, J.

54. The learned counsel for the applicant has also placed reliance on the case of Mohan Singh v. Union Territory, AIR 1978 SC 1095: (1978 Cri LJ 844) wherein the Supreme Court observed that the refusal of bail is not an indirect process of punishing the accused before he is convicted. This case does not throw any light on the question of parity. The second case cited by the learned counsel for the applicant also referred in Said Khan's case (supra) is Babu Singh v. State of U.P., reported in AIR 1978 SC 527 : (1978 Cri LJ 651). This case also is not on the point because the Supreme Court only held that order refusing an application for bail does not unnecessarily preclude, another, on a later occasion giving more material further developments and different considerations. The case may help the applicant only to the extent that further development in the case at hand is that co-accused has been granted bail.

55. The learned counsel for the applicant cited the case of State v. Capt. Jagjeet Singh, AIR 1962 SC 253 : (1962 (1) Cri LJ 215). This case has no bearing on the question to be decided in the instant case. In the said case the Supreme Court had cancelled the bail of one of the accused and had held that his case was distinguishable. The Supreme Court made the following observation at p. 217:

> "It is true that two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order, but the case of the respondent is obviously distinguishable from their case inasmuch as the prosecution case is that it is respondent who is in touch with the foreign agency and not the other two persons prosecuted along with him."

56. A Full Bench decision of this Court in the case of Sunder Lai v. State, 1983 A. W.C. 148 : (1983 Cri LJ 736) was also cited at the Bar. In this case the question referred to the larger Bench was regarding the illegality of remand orders under Sections. 167, 209, 309 of the Criminal P. C. the Full Bench came to the conclusion that there was no infirmity in the orders of remand and hence on that ground bail could not be granted. In the Full Bench case the question of equality in the matter of granting bail had neither been raised nor adjudicated upon. It appears that at the fag end of the argument the learned Counsel had prayed that bail may be granted to the applicant in that case because other co-accused had been admitted to bail. The Full Bench rightly rejected the argument because merely if one accused is granted bail all accused cannot be released on bail unless they are able to satisfy that their cases stand on identical footing. The relevant portion of para 14 of the judgment of the Full Bench staties:--

> "Learned counsel only pointed out that by reasons of fact that other co-accused had been admitted to bail the applicant should also be granted bail. This argument alone would not be sufficient for admitting the applicant to bail who is involved in a triple murder case."

57. The word 'alone' is of significance.

58. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status (See Shorter Oxford English Dictionary 1936 Ed.). In other words it means being placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. The case of Cap. Jagjeet Singh (supra) is an illustration wherein the Supreme Court distinguished the case of Capt. Jagjeet Singh on the ground that he was in touch with foreign agency and leaking out secrets. The Supreme Court in the case of Gur Charan Singh v. Delhi Administration, AIR 1978 SC 179 : (1978 Cri LJ 129) laid down that the considerations for grant of bail are inter alia the position and status of the accused with reference to the victim and the witnesses; likelihood of the accused; fleeing from justice; of repeating offence; of jeopardising his own life, being faced with grim prospect of possible conviction in the case; of tampering with witnesses; and the like. These are additional factors which are to be judged in the case of individual accused and it may make the cases of different accused distinguishable from each accused. At the same time if there is no real distinction between the individual case of accused the principle of parity comes into play and if bail is granted to one accused it should also be granted to the other accused whose case stands on identical footing.

59. None the less the principle of grant of bail on parity cannot be allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically. There may be case which may require an exception; where a judge may not simply take a different view from the judge who granted bail earlier to a co-accused but where the conscience of the judge revolts in granting bail. In such a situation the judge may choose to depart from the rule recording his reasons. However, such cases would be very few.

60. As regards the second part of the referred question whether it is duty of the co-accused to disclose in his bail application the fact that on an earlier occasion the bail application of another co-accused in the same case has been rejected. The prior rejection of the bail application of one of the accused cannot preclude the court from granting bail to another accused whose case has not been considered at the earlier occasion. The accused who comes up with the prayer for bail and who had no opportunity of being heard or placing material before the court at the time when the bail of another accused was heard and rejected, cannot be prejudiced in any other manner by such rejection. Hence it is not necessary for the accused to disclose in his application that the bail has already been refused to another accused earlier.

61. My answer to the points referred to is that if on examination of a given case it transpires that the case of the applicant before court is identical, similar to the accused, on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail. (Exceptional cases as discussed above apart). As regards the second part of the question, answer is that it is not at all necessary for an accused to state in his bail application that the bail application of a co-accused has been rejected previously.

62. The record of this case be sent ex-peditiously to the learned single Judge with the above answers for the disposal of the bail application.