

Bhaskara Nand vs State Of Himachal Pradesh on 5 December, 2023

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr.MPM No.2653 of 2023 Reserved on: 21.11.2023 .

Date of Decision: 05th December 2023.

Bhaskara NandPetitioner Versus State of Himachal Pradesh ofRespondent Coram Hon'ble Mr Justice Rakesh Kainthla, Judge.

rt Whether approved for reporting? No. For the Petitioner : Mr. Sarthak Mehta, Legal Aid Counsel.

For the Respondent : Mr Parshant Sen, Deputy Advocate General with ASI Ram Lal P.S. Sunni District Shimla, H.P. Rakesh Kainthla, Judge The petitioner has filed the present petition for seeking regular bail. It has been asserted that the police registered an F.I.R. No. 37 of 2023, dated 30.06.2023, at Police Station Sunni, District Shimla, H.P. for the commission of offences punishable under Sections 452, 376, 511, 354(A), 342 and 506 of Indian Penal Code. The petitioner has been falsely implicated at the instance of someone, who is inimical to the petitioner. The petitioner was Whether reporters of the local papers may be allowed to see the judgment? Yes arrested on 01.07.2023. The Challan has been prepared and presented before the Court. The petitioner has deep roots in the society and he will not abscond. The petitioner shall join the .

investigation as and when called upon to do so. The petitioner will abide by all the terms and conditions, which may be imposed by the Court upon him. Therefore, it was prayed that the present of petition be allowed and the petitioner be released on bail.

2. A status report was filed by the State asserting that the victim was taking her cow to the cowshed on 29.06.2023 at around rt 7:00 p.m. The petitioner came to the cowshed, bolted the door and raped the prosecutrix. The prosecutrix. shouted for help, on which Som Lata came to the spot. The petitioner ran away from the spot on seeing her. Other persons came to the spot subsequently. The police registered the F.I.R. and conducted the investigation. The petitioner absconded and could only be arrested on 01.07.2023. The petitioner showed the cowshed. F.I.R.

No. 37 of 2019 dated 31.07.2019 and F.I.R. No.58 of 2020, dated 11.07.2020 were registered against the petitioner. As per the report of analysis, saliva was detected on the shirt of the victim.

The matter is now listed for recording of the evidence of prosecution witnesses on 20.12.2023. The petitioner would indulge in similar offences as he has a criminal history. The petitioner would intimidate the witnesses in case he is released on bail; therefore, it was prayed that the present petition be .

dismissed.

3. I have Mr. Sarthak Mehta, Legal Aid Counsel for the petitioner and Mr. Parshant Sen, learned Deputy Advocate of General, for the respondent.

4. Mr Sarthak Metha, learned Legal Aid Counsel for the rt petitioner submitted that there is no evidence to connect the petitioner with the commission of the crime. No injury was found on the person of the victim, which falsifies her version. He has relied upon the judgment of the High Court of Calcutta in Sambhu Dass vs State of West Bengal & Anr, C.R.A 750 of 2019 decided on 07 th April 2023, in support of his submission.

5. Mr. Parshant Sen, learned Deputy Advocate General submitted that the petitioner had committed a heinous offence.

He entered into the cowshed of the victim and raped her. The absence of injury does not rule out the commission of the rape.

Therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the rival submissions at the bar and have gone through the record carefully.

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7. The parameters for granting bail were considered by the Hon'ble Supreme Court in Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 SCC OnLine SC 1059, wherein it was observed as under:-

"12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of .

there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

13. We may also profitably refer to a decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528 where the parameters of to be taken into consideration for the grant of bail by the Courts has been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail;

they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688] .

and Puran v. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)"

8. A similar view was taken in State of Haryana vs Dharamraj 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

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(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'

9. The present case has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

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10. The victim stated that the petitioner entered into her cowshed and raped her. It was submitted that injuries are absent, rt therefore, the testimony of the victim cannot be relied upon. This submission is not acceptable. It was laid down by Hon'ble Supreme Court in Phool Singh Vs State of Madhya Pradesh 2022 (2) SCC 74, that ordinarily testimony of a rape witness has to be accepted as correct. It was held in State of M.P vs. Pritam AIR 2018 SC4242, that the testimony of the victim cannot be doubted in the absence of the injuries. Similarly, it was held in Santosh Vs State, 2010 (5) SCC 445, that absence of injury on a woman is not a ground to reverse the conviction of the rape. It was held in Radhu vs State 2007 (12) SCC 67, that the absence of any injury does not falsify the version of the prosecution regarding the rape nor does it suggest consent. Therefore, no advantage can be derived from the absence of the injuries.

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11. The police have specifically stated in the status report that the petitioner has criminal antecedents and F.I.R. No. 37 of 2019 and 58 of 2020 were registered against him. It was submitted that no conviction has been recorded and mere of registration of the F.I.R. is not sufficient to deny bail. This submission is not acceptable. It was held in *Dataram Singh vs. State of U.P.* (2018) 3 SCC 22 that while granting bail, a Judge must consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. In *Neeru Yadav vs. State of U.P.* (2015) 16 SCC 422 many FIRs were registered against the accused.

The bail was granted to him by the High Court. Hon'ble Supreme Court held that keeping in view the criminal history of the accused; he was not entitled to bail. It was observed:

"9. On a perusal of the aforesaid list, it is quite vivid that respondent no.2 is a history-sheeter and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of the doubt to name him a "history-sheeter".

15. This being the position of law, it is clear as the cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove are not minor offences so that he is not to be .

retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of the imagination, can be regarded as jejune. Such cases do create thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kinds of accused persons to be at large and, therefore, the emphasis is on the exercise of discretion judiciously and not in a whimsical manner.

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12. The law regarding the relevance of the criminal history of the accused while considering the bail application was rt considered by this Court exhaustively in *Prem Singh vs. State of H.P.* 2020 (1) Shim. L.C. 476, wherein it was observed:-

"9. In *Ravinder Singh @ Ravi Pavar v. State of Gujarat*, (2013) 12 SCC 446, Supreme Court observed:

"24. In para 5 of the rejoinder affidavit, the State has highlighted that A-2 is a "habitual offender" and there are 22 cases pending against him in various police stations. It is also mentioned in the counter affidavit that during the period while he was granted temporary bail by the High Court, he indulged in an offence of theft and a case was registered against him vide I-C.R. No. 92 of 2011 under Section 379 of IPC

by the Vasad Police Station for which he was arrested on 10.08.2011 and later enlarged on bail. It is also brought to our notice that respondent A-2, while on regular bail, was arrested on 13.09.2012 in Vadodara city in connection with Javaharnagar Police Station crime registered vide I-C.R. No. 94 of 2012 under Sections 407, 408 and 120B and later on he was released on bail.

25. Taking note of all these aspects, his antecedents, the gravity and nature of the offence, loss of human lives, the impact on the social fabric of the society, and his continuous involvement in criminal activities while .

on bail, we are satisfied that respondent (A-2) does not deserve to continue to remain on bail."

10. In *State of Maharashtra v. Pappu @ Suresh Budharmal Kalani*, (2014) 11 SCC 244, the Supreme Court holds:

"14. It is not in dispute that in spite of being acquitted in some of the cases, still there are 15 cases in which a trial is pending against the respondent, out of which of two cases are under Sections 302 read with 120B, IPC. In the present case also, initially along with charges under Sections 302/120B, IPC offences punishable under TADA were also charged against the respondent but later on, the TADA charges were withdrawn. Though we are not inclined to go into the matter in detail at present to interfere in the order passed by the High Court, taking into consideration the peculiar facts and circumstances of the case, we are inclined to interfere and cancel the bail granted by the High Court."

11. In *Chandrakeshwar Prasad @ Chandu Babu v. State of Bihar*, (2016) 9 SCC 443, the Supreme Court holds:

"13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved charges in the concerned cases, and the charges pending adjudication against the respondent-accused and further balancing the considerations of individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.

14. Judged on the entire conspectus of the attendant facts and circumstances and considering the stage of the present case before the trial court where the charge sheet has already been submitted, together .

with pending proceedings against the respondent-

accused as on date, and his recorded antecedents in the various decisions of this Court, we are thus unable to sustain the impugned order of the High Court granting bail to him."

12. In *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422, the Supreme Court, rejected the bail granted by the High Court, of by holding as follows:

"9. On a perusal of the aforesaid list, it is quite vivid that respondent No. 2 is a historysheeter and is involved in heinous offences. Having stated the facts rt and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.

10. In *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598, it has been clearly laid down that the grant of bail though involves the exercise of the discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi*, (2001) 4 SCC 280, and thereafter the court proceeded to state the following principles:-

"(a) While granting bail the court has to keep in mind not only the nature of the accusations but the severity of the punishment if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of .

there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the of court in support of the charge.

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

11. It is a well-settled principle of law that while dealing with an application for a grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature

of the accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for the apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See Chaman Lal v. State of U.P., (2004) 7 SCC 525]

12. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a catena of judgments on that point. The Court proceeded to enumerate the factors: -

"9. ... among other circumstances, the factors .

[which are] to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

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(iii) severity of the punishment in the event of conviction;

(iv) the danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail."

13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases does not retain an individual character. It, on occasion and in certain offences, accentuates and causes harm to society. The victim may be an individual, but in the ultimate eventuate, it is the society, which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself.

He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to society; and that is why Edmund Burke, the great English thinker, almost two centuries and a

decade .

back eloquently spoke thus: -

"Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and of presumption; in proportion, as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. rt Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters [Alfred Howard, The Beauties of Burke (T. Davison, London) 109]."

13. In Krishna @ Kiran Versus State of H.P. Cr. MP (Main) no.

2212 of 2019, decided on 06.01.2020, this Court found that the petitioner was earlier involved in the possession of Ganja and was not held entitled to bail. Similarly, in the State of Bihar Versus Rajballav Prasad (2017) 2 SCC 178, the Hon'ble Supreme Court held that when the petitioner was involved in the commission of similar offences, it was a relevant consideration. The fact that the criminal antecedents of the accused are relevant was also laid down in Arnav Manoranjan Goswami Versus State of Maharashtra AIR 2021 SC 1 wherein it was held:

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"57. While considering an application for the grant of bail under Article 226 in a suitable case, the High Court must consider the settled factors, which emerge from the precedents of this Court. These factors can be summarized as follows:

(i) The nature of the alleged offence, the nature of the accusation and the severity of the punishment in of the case of a conviction;

(ii) Whether there exists a reasonable apprehension of the accused tampering with the witnesses or being a threat to the complainant or the witnesses; rt

(iii) The possibility of securing the presence of the accused at the trial or the likelihood of the accused fleeing from justice;

(iv) The antecedents of and circumstances which are peculiar to the accused;

(v) Whether prima facie the ingredients of the offence are made out, on the basis of the allegations as they stand, in the FIR; and

(vi) The significant interests of the public or the State and other similar considerations.

58. These principles have evolved over a period of time and emanate from the following (among other) decisions:

Prahlad Singh Bhati vs. NCT, Delhi, (2001) 4 SCC 280; Ram Govind Upadhyay vs. Sudarshan Singh, (2002) 3 SCC 598; State of UP vs. Amarmani Tripathi, (2005) 8 SCC 21; Prasanta Kumar Sarkar vs. Ashis Chatterjee, (2010) 14 SCC 496; Sanjay Chandra vs. CBI, (2012) 1 SCC 40; and P. Chidambaram vs. Central Bureau of Investigation[Criminal Appeal No. 1605 of 2019 decided on 22 October 2019].

14. It was held in State of Maharashtra v. Sitaram Popat Vetal, (2004) 7 SCC 521: 2004 SCC (Cri) 1971: 2004 SCC OnLine SC 932 that antecedents of the petitioner cannot be ignored while .

considering his bail application. It was held at page 524:

"9. The High Court has lightly brushed aside the factum of recovery of the weapons and identification at the test identification parade. Its conclusion that political rivalry has a double-edged effect was based on surmises without of any material before it to show that a false case had been foisted because of political rivalry. Further, the antecedents of the present respondents though noticed were also lightly brushed aside on the ground that they were not of the recent past. Even though criminal antecedents are always not determinative of the question whether bail is to be granted, yet their relevance cannot be totally ignored. It was submitted that the accused Sitaram Vetal is not appearing in court on the date fixed. If that is really so, it is open to the trial court to take such action as is available to be taken in law."

15. A similar view was taken in Ramesh Bhavan Rathod v.

Vishanbhai Hirabhai Makwana, (2021) 6 SCC 230: (2021) 2 SCC (Cri) 722: 2021 SCC OnLine SC 335, wherein it was held at page 250:-

"36. There is another aspect of this batch of cases which it is necessary to note. In the order of the High Court dated 22-10-2020 [Siddhrajsinh Bhagubha Vaghela v. State of Gujarat, 2020 SCC OnLine Guj 2985] granting bail to Siddhrajsinh (A-13), there was a reference to the submission of the Public Prosecutor to the criminal antecedents of A-13 bearing on previous FIRs registered against him in 2017 and 2019. This aspect bearing on the criminal antecedents of A-13 has not been considered in the reasons which have been adduced by the Single Judge. In Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446 : (2012) 3 SCC (Cri) 1172], this Court has held that criminal antecedents of the accused must be weighed for the purpose of granting bail. That apart, it is .

important to note that the ground on which A-13 was granted bail is that in the subsequent statement dated 3-6- 2020, the overt act which was attributed in the FIR was found to be missing. Having said this, the learned Judge observed that the order shall not be treated as a precedent to claim bail on the basis of parity in any other case.

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40. However having said that, in the case at hand, it is manifestly incorrect on the part of the High Court to have granted bail to Respondent 2/accused without taking into consideration the relevant facts and circumstances and rt appropriate evidence which proved that Respondent 2/accused has been charged with a serious offence.

41. Grant of bail to Respondent 2/accused only on the basis of parity shows that the impugned order passed by the High Court suffers from the vice of non-application of mind rendering it unsustainable. The High Court has not taken into consideration the criminal history of Respondent 2/accused, the nature of the crime, material evidence available, involvement of Respondent 2/accused in the said crime and recovery of weapon from his possession.

16. Similar is the judgment passed in Sunil Kumar v. State of Bihar, (2022) 3 SCC 245: (2022) 1 SCC (Cri) 603: 2022 SCC OnLine SC 88, wherein it was observed at page 252:-

"16. Even the High Court has also not at all considered the criminal antecedents of Respondent 2-accused. Though it was pointed out on behalf of the informant that the accused is involved in two cases and that the appellant (informant) was restrained from proceeding further in earlier cases pending against the accused, the High Court has simply brushed aside the same and has not considered the same at all. The High Court has noted the submission on behalf of the accused that one other accused -- Shashi Bhushan Bhagat has been released on bail. However, the High Court .

has not at all considered whether the case of Shashi Bhushan Bhagat is similar to that of Respondent 2-accused Ramawatar Bhagat or not. It appears that the High Court has passed the order mechanically and in a most perfunctory manner."

17. This position was reiterated in Manoj Kumar Khokhar of v. State of Rajasthan, (2022) 3 SCC 501: 2022 SCC OnLine SC 30 at page 513, wherein it was observed:-

rt "25. Another factor which should guide the court's decision in deciding a bail application is the period of custody.

However, as noted in Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446: (2012) 3 SCC (Cri) 1172], the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the

circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to the individual liberty of the accused seeking bail. "

18. Similar is the judgment in Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497: (2022) 2 SCC (Cri) 170: 2021 SCC OnLine SC 1280, wherein, it was observed at page 505:-

"21. In Gudikanti Narasimhulu [GudikantiNarasimhulu v. Public Prosecutor, A.P. High Court, (1978) 1 SCC 240: 1978 SCC (Cri) 115], Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to be considered while granting bail which are extracted as under : (SCC p. 244, paras 7-9) "7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is .

pertinent. The punishment to which the party may be liable if convicted or conviction is confirmed also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [Patrick Devlin: The Criminal Prosecution of in England, (London) 1960, p. 75 -- Mod. Law Rev. *ibid.*, p. 54]

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record -- particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance."

22. Prahlad Singh Bhati v. State (NCT of Delhi) [Prahlaad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674] is a case wherein this Court proceeded to state the following principles which are to be considered while granting bail:

"4. ... (a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a .

threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

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(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail." (Ram Govind Upadhyay case [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688], SCC p. 602, para 4)

23. This Court in Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598:

2002 SCC (Cri) 688], speaking through Banerjee, J., observed as under : (SCC p. 602, para 3) "3. Grant of bail though being a discretionary order

-- but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course.

Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail -- the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on .

the factual matrix of the matter."

24. In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977], this Court observed in para 11 as under : (SCC pp.

535-36) "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should of exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly, where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non- application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598:

2002 SCC (Cri) 688] and Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338: 2001 SCC (Cri) 1124] .)"

25. Gobarbhai Naranbhai Singala v. State of Gujarat [Gobarbhai Naranbhai Singala v. State of Gujarat, (2008) 3 SCC 775 : (2008) 2 SCC (Cri) 743], is a case which concerns the cancellation of bail by this Court in a petition filed .

under Article 136 of the Constitution of India. In the said case reliance was placed on Panchanan Mishra v. Digambar Mishra [Panchanan Mishra v. Digambar Mishra, (2005) 3 SCC 143: 2005 SCC (Cri) 660] wherein in para 13 it was observed as under : (Panchanan Mishra case [Panchanan Mishra v. Digambar Mishra, (2005) 3 SCC 143: 2005 SCC (Cri) 660], SCC pp. 147-48) of "13. ... The object underlying the cancellation of bail is to protect a fair trial and secure justice being done to society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in rt the heinous crime ... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation."

26. Further on referring to the State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21:

2005 SCC (Cri) 1960 (2)], this Court in Gobarbhai Naranbhai Singala case [Gobarbhai Naranbhai Singala v. State of Gujarat, (2008) 3 SCC 775 : (2008) 2 SCC (Cri) 743] noted the facts of the case therein to the effect that the respondent therein had been named in ten other criminal cases in the last 25 years or so, out of which five cases were under Section 307 IPC for attempt to murder and another under Section 302 IPC for committing murder. That in most of the cases he was acquitted for want of sufficient evidence. Without saying anything further this Court noted that the High Court in the said case completely ignored the general principle for grant of bail in a heinous crime of commission of murder in which the sentence if convicted, is death or life imprisonment.

28. This Court in *Ash Mohammad v. Shiv Raj Singh* [*Ash Mohammad v. Shiv Raj Singh*, (2012) 9 SCC 446: (2012) 3 SCC .

(Cri) 1172], observed that though the period of custody is a relevant factor, the same has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents. That these are to be weighed in the scale of collective cry and desire and that societal concern has to be kept in view in juxtaposition to individual liberty, was underlined.

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29. In *Neeru Yadav v. State of U.P.* [*Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422: (2016) 4 SCC (Cri) 647], after referring to a catena of judgments of this Court on the consideration of factors for grant of bail observed through *rt Dipak Misra, J.* (as His Lordship then was) in paras 15 and 18 as under : (SCC pp. 429-30) "15. This being the position of law, it is clear as a cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune.

Such cases do create thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kinds of accused persons to be at large and, therefore, the emphasis is on the exercise of discretion judiciously and not in a whimsical manner.

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result .

is the lancing of the impugned order [*Budhpal v. State of U.P.*, 2014 SCC OnLine All 14815]."

30. In *Anil Kumar Yadav v. State (NCT of Delhi)* [*Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129: (2018) 3 SCC (Cri) 425], this Court has spelt out some of the significant considerations which must be placed in the balance in deciding whether to grant bail : (SCC p. 138, para 17) of "17. While granting bail, the relevant considerations are (i) the nature of seriousness of the offence; (ii) the character of the evidence and circumstances which are peculiar to the accused; and (iii) the likelihood of the *rt* accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion

by the Court."

19. It was observed in Jaibunisha v. Meharban, (2022) 5 SCC 465: 2022 SCC OnLine SC 58 that the period of custody has to be weighed with criminal antecedent. It was observed at page 478:-

"21.6. Another factor which should guide the court's decision in deciding a bail application is the period of custody. However, as noted in Ash Mohammad v. Shiv Raj Singh [Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446:

(2012) 3 SCC (Cri) 1172], the period of custody has to be weighed simultaneously with the totality of the circumstances and the criminal antecedents of the accused, if any. Further, the circumstances which may justify the grant of bail are to be considered in the larger context of the societal concern involved in releasing an accused, in juxtaposition to individual liberty of the accused seeking bail."

20. Therefore, it is apparent from the judgment of this .

Court as well as the judgments of the Hon'ble Supreme Court, that the criminal antecedents are important factors, which cannot be ignored while deciding the bail petition. Therefore, keeping in view the nature of the act and the criminal antecedents, the of petitioner is not entitled to be released on bail, hence, the present petition fails and the same is dismissed.

rt

21. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla) Judge 05th , December, 2023 (Ravinder)