

Somesh Chaurasia vs State Of M.P. on 22 July, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3563, AIR ONLINE 2021 SC 364

Author: D.Y. Chandrachud

Bench: Hrishikesh Roy, Dhananjaya Y Chandrachud

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos 590-591 of 2021
@ SLP (Crl) Nos. 4998-4999 of 2021

Somesh Chaurasia

.... Ap

Versus

State of M.P. & Anr.

.... Resp

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 This appeal arises from an order by a Division Bench of the High Court of Madhya Pradesh dated 23 July 2019. The High Court declined to entertain two applications – IA 6837 of 2019 filed by the State Date: 2021.07.22 17:22:47 IST of Madhya Pradesh and IA 5781 of 2019 filed by the appellant - seeking a Reason:

revocation of the suspension of sentence and bail granted to the second respondent.

2 The second respondent has been convicted of an offence punishable under Section 302 of the Indian Penal Code (“IPC”) and sentenced to suffer imprisonment for life. By an order dated 3 February 2016, the High Court directed that the sentence shall, during the pendency of the appeal, remain suspended under the provisions of Section 389(1) of the Code of Criminal Procedure 1973 (“CrPC”). 3 Two applications were moved before the Division Bench of the High Court (IA 6837 of

2019 and IA 5781 of 2019) for cancellation of bail and revocation of the order dated 3 February 2016 suspending the sentence of the second respondent. These applications for bail were filed by the appellant and by the State of Madhya Pradesh. The appellant sought cancellation of bail on the ground that after the sentence was suspended, FIR No 143 of 2019 was registered against the second respondent at Police Station Hata, District, Damoh, in which he is implicated in the murder of the appellant's father. The State of Madhya Pradesh sought cancellation of bail on the ground that:

- (i) The second respondent has two other convictions against him on a charge of murder;
- (ii) The second respondent has been convicted of another crime for offences punishable under Section 399 and 402 of the IPC and Section 25 (1) (1B)(a) of the Arms Act; and
- (iii) An FIR has been registered at the behest of the appellant alleging that the second respondent is involved in the murder of his father during the period when he was on bail.

4 The application for cancellation of bail which was moved by the State of Madhya Pradesh sets out the criminal antecedents of the second respondent. Paragraph 8 reads as follows:

“8. At this stage, it would be relevant to detail the three convictions suffered by the appellant. The same are detailed hereunder:

(a) It is submitted that in the first crime, the appellant committed the murder of the deceased Rajendra Pathak on 13.10.1998 who was going on his scooter and was confronted by the appellant and co-accused Chandu Thakur who were coming on a motorcycle from the opposite direction. At the relevant point of time the appellant Govind Singh fired through Katta on the deceased Rajendra Pathak which hit the deceased on his chest. After receiving the said shot the deceased ran to save his life and on noticing the same co-

accused Chandu Thakur fired a shot which hit the deceased on his back. The deceased Rajendra Pathak succumbed to the said injuries. Based on the said incident, session trial was instituted and appellant was convicted for the murder of Rajendra Pathak and sentenced to life imprisonment by judgment dated 30.09.2008. It is thereafter Cr.A No.2353/2008 was filed by the appellant before this Hon'ble Court. It is also relevant to mention herein that the similarity of the present case with a case relating to deceased Rajendra Pathak is that the deceased in the present case Pappu @Ramakant Pathak and Kailash Pathak were all belonging to the same family.

(b) It is submitted that in the second crime, the appellant along with others committed the murder of Munna Vishwakarma. Based on the said incident, Sessions Trial No. 113/2005 was instituted and the appellant was convicted for the murder of Munna vide Judgment dated 27.10.2015. It is thereafter, Criminal Appeal No. 3108/2015 was filed by the appellant before this Hon'ble Court.

(c) To put it differently, it can thus be seen that the appellant committed two crimes punishable under Section 302 IPC on the same date i.e. 11.5.2004 viz. the present case in which Ramakant Pathak and Kailash Pathak were killed and Munna Vishwakarma in respect to which Criminal Appeal No. 3108/2015 is pending.

(d) It would also be relevant to mention herein that the appellant committed another crime for offences punishable under Section 399 and 402 of the Indian Penal Code and Section 25 (1) (1B)(a) of the Arms Act. In the said case too, the appellant was convicted and thereafter filed a Criminal Appeal No. 1984 /2011, in which case also his sentence was suspended. It is thus clear that the appellant has been a serious threat to the society and that has been continuously committing criminal offences.” Paragraph 10 contains a reference to the FIR lodged on 15 March 2019 at the behest of the appellant alleging that the second respondent has committed the murder of his father:

“10 It is also relevant to mention herein that after grant of bail in the said criminal appeals, the appellant has again committed murder of one Devendra Chaurasiva on 15.03.2019 and an F.I.R. to that respect has been registered against the appellant on 15.03.2019 itself for offences punishable U/s 294, 323, 324, 307, 147, 148, 149, 506 of I.P.C. Pertinently, since the deceased died after registration of F.I.R., offence U/s 302 has been added in the present crime. Copy of the F.I.R dated 15.03.2019 bearing crime No. 143/2019 is filed herewith as ANNEXURE-R/1.”

5 By its order dated 23 July 2019, the High Court declined to entertain the application for revocation of the suspension of sentence/ grant of bail. The grounds which weighed with the High Court appear in the following extract:

“...we are of the considered opinion that I.A.No.6837/2019 & I.A.No.5781/2019 can be disposed of as per the statement made at bar by Shri Ajay Gupta, Additional Advocate General for the State that the State Government is further investigating the issue on an application filed on behalf of appellant Govind Singh inter alia stating that he has been falsely implicated. We, therefore, direct that the investigation may be completed as far as possible within three months but not later than 90 days. On completion of the investigation, if the appellant is found involved in commission of the crime, he be immediately taken into custody and the procedure as prescribed be followed. It is also observed that neither appellant Govind Singh shall threaten nor influence the witnesses and the complainant side.”

6 After notice was issued in these proceedings on 18 November 2020, counsel for the State of Madhya Pradesh was granted an adjournment on 11 January 2021 to file a counter affidavit. In the meantime, on 12 February 2021, counsel for the appellant apprised this Court of the fact that on 8 January 2021, the Additional Sessions Judge (“ASJ”) at Aurangabad, issued summons to the second respondent under Section 319 of the CrPC in the course of the sessions trial arising out of the charge sheet filed in FIR 143 of 2019. The Court was apprised that though a warrant of arrest has been issued against the second respondent, he was resisting arrest. The order of the ASJ summoning the second respondent to stand trial has been placed on the record.

7 Subsequently, when the proceedings were listed before this Court on 12 March 2021, the Court took note of an order dated 8 January 2021 passed by the ASJ, Hata District, Damoh in Sessions Trial No 30 of 2019 (Addl. No. 143 of 2019). 8 The order dated 8 January 2021 passed by the ASJ specifically refers to the criminal record of the second respondent, and is extracted below:

“Details of criminal records of accused Govind Singh are accordingly:-

PS-Damoh Dehat S.No. Crime Case No. Under Sections

1. 150/93 147, 148, 149, 302, 34 of IPC.
2. 173/94 393, 365, 34 of IPC.
3. 169/04 395, 396, 397, of IPC.
4. 170/04 147, 148, 149, 302, 324 of Arms Act.
5. 414/06 399, 402 of IPC, and under section 25/27 Arms Act.
6. 68/07 364, 34 of IPC.
7. 390/07 384 of IPC.
8. S.No. 01/10 Under section 3(2) of the MP Protection Act, 1980.
9. S.No. 02/19 Under section 3(2) of the MP Protection Act, 1980.
10. S.No. 08/19 Under section 110 Jaa.fau.
11. S.No. 160/19 Under section 107, 116 (3) Jaa.fau.
12. 203/95 396, 386, 365 of IPC.
13. 241/96 384, 34 of IPC.
14. 44/99 384 of IPC.
15. 168/2000 341, 294, 506B, 34 of IPC.
16. 80/04 307, 34 of IPC.
17. 171/04 394 of IPC.
18. S.No. 01/13 Under section 6 of the MP Protection Act, 1980.

19. S.No. 01/19 Under section 3(2) of the MP Protection Act, 1980.

20. S.No. 07/19 Under section 110 jaa faa.

21. S.No. 159/19 Under section 107, 116(3) jaa faa.

PS-Patharia, Damoh

22. 56/92 294, 323, 34 of IPC, under section 3(1-10) SC ST Act.

23. 93/92 436, 34 of IPC, under section 3(1-10) SC ST Act.

24. 31/10 147, 341, 307, 506 of IPC.

25. 157/93 295, 397 of IPC.

26. 169/90 294, 506, 427 of IPC.

PS-Kotwali Damoh

27. 578/98 307, 302, 34, 120 of IPC and Arms Act.

28. 214/16 147, 452, 294, 506, 34 of IPC.” The ASJ provided reasons in his order for taking steps in pursuance of the provisions of Section 319 of CrPC to arraign the second respondent as an accused. 9 Thereafter, in his order dated 8 February 2021, the ASJ noted that though he was taking action in compliance with the directions of this Court for ensuring service on the second respondent, the process of the court was being obstructed. The ASJ expressed a serious apprehension that the accused and the Superintendent of Police (“SP”), Damoh had colluded with the subordinates of the latter “to frame serious charges” against the judge. The accused, the trial judge noted, is a “highly influential political person” and though false allegations had been made against the judge for transfer of the case, the application for transfer had been dismissed by the District Judge. The relevant extract from the order dated 8 February 2021 reads as follows:

“The action in this case is being taken in compliance with the directions given by Hon. Supreme Court expeditiously. But accused persons are highly influential political persons and have raised false allegations against me and made application for transfer of case before Hon. District Judge which was found false and Hon. District Judge had dismissed the application with cost and being contemptuous. But like accused persons, now Police Superintendent Damoh had connived with his subordinates and made false and fabricated pressure on me. From the above such acts it is clear and I am confident that accused persons with Police Superintendent Damoh had colluded with his subordinates to frame serious charges against me in future or any unpleasant incident can be done with me.”

10 Adverting to these developments, this Court took serious note of the anguish expressed by the ASJ on 8 February 2021 and noted in its order dated 12 March 2021 that:

“8. The order of the learned Additional Sessions Judge dated 8 February 2021 indicates that he is being pressurized by the Superintendent of Police, Damoh, who, together with his subordinates, is attempting to pressurize the judicial officer.

The judicial officer has expressed the apprehension that the accused who are “highly influential political persons” have raised false allegations against him and applied for transfer of the pending case which was dismissed by the District Judge after it was found to be false. The learned Additional Sessions Judge has apprehended that he may be subjected to an “unpleasant incident” in the future.” 11 The order of this Court dated 12 March 2021 took note of the fact that:

(i) Despite the registration of an FIR on 15 March 2019 where the appellant had alleged that the second respondent was complicit in the murder of his father no steps were being taken by the investigating authorities to arrest him;

(ii) In this backdrop, it was the ASJ who was constrained to issue summons to the second respondent under Section 319 of the CrPC to face trial;

(iii) Despite the issuance of warrants against him, the second respondent continued to abscond; and

(iv) It had been stated during the course of the proceedings that the spouse of the second respondent is an MLA and “all possible steps are, therefore, being adopted to shield the second respondent from the coercive arm of the law”.

Taking note of the apprehension expressed by the ASJ that he was being targeted, this Court observed:

“10. We take serious note of the manner in which the Additional Sessions Judge, Hata who is in charge of the criminal case has been harassed by the law enforcement machinery in Damoh. We have no reason to disbelieve a judicial officer who has made an impassioned plea that he was being pressurized as a result of his orders under Section 319 of the CrPC. The State which had moved the High Court for cancellation of the bail which was granted to the second respondent as an incident of the suspension of sentence on 3 February 2016, has failed to apprehend the second respondent who continues to evade arrest. A warrant of arrest was issued against the second respondent. Mr Saurabh Mishra, Additional Advocate General appearing for the State, states that a proclamation has been issued against the second respondent under Section 82 of the CrPC on 4 March 2021 with an award of Rs 10,000. Yet the second respondent continues to evade arrest. The rule of law must be preserved.”

12 In this backdrop, the Director General of Police (“DGP”) of Madhya Pradesh was directed “to immediately ensure the arrest of the second respondent and report compliance by filing a personal affidavit in this Court”. The DGP was also directed to enquire into the allegations levelled by the second respondent against the SP by the ASJ in his order dated 8 February 2021.

13 Notice was issued to the SP, Damoh.

14 In pursuance of the order dated 12 March 2021, the DGP filed an affidavit stating that despite efforts to secure the presence of the second respondent, the police were unable to apprehend and arrest him. The affidavit provided the following details:

(i) After the ASJ by his order dated 8 January 2021, arraigned the second respondent as an accused, an arrest warrant was issued against him. Steps were taken by the Damoh Police to arrest the second respondent from 8 January 2021. However, the second respondent was absconding and evading arrest. As a result, an award of Rs. 10,000 was announced for giving information on the whereabouts of the accused;

(ii) The DGP directed the formation of a “special team” under the Additional Superintendent of Police (“ASP”), Damoh, to arrest the second respondent to comply with this Court’s order dated 12 March 2021. The Special Task Force, Bhopal (“STF”) was also tasked to apprehend the accused. The affidavit details the steps taken by Damoh police and the STF;

(iii) Provision of security was made for the ASJ Hata; and

(iv) An enquiry into the allegations levelled by the ASJ against the SP in his order dated 8 February 2021 was entrusted to the Additional Director General of Police (“ADGP”), STF, Police headquarters, Bhopal.

15 Finding the explanation provided by the DGP for the failure of the police to arrest the second respondent to be unacceptable, this Court in its order dated 26 March 2021 observed:

“2 We find the affidavit of the Director General of Police to be completely unacceptable. It defies reason as to how an accused who is the spouse of a sitting Member of the Legislative Assembly has not been arrested despite being arraigned in pursuance of the provisions of Section 319 of the Code of Criminal Procedure 1973 to face trial for an offence under Section 302 of the Indian Penal Code 1860. An effort is being made to shield the accused from the due process of criminal law. The Court was informed that earlier, the accused was even given security by the police though it is stated by Counsel for the State that it is now withdrawn.”

16 Accordingly, the DGP was directed to ensure that the previous order of this Court dated 12 March 2021 is complied with, failing which this Court would be constrained to take coercive steps in accordance with law. At that stage, this Court was also apprised by counsel for the appellant that

though the second respondent had been summoned under Section 319 of the CrPC to face trial for an offence punishable under Section 302, he continued to abscond. On the other hand, security had been provided to him by the State of Madhya Pradesh. Accordingly, a further affidavit was directed to be filed by the DGP stating:

- (i) The date on which and the cause on the basis of which security was granted to the accused;
- (ii) Whether the security continues to be provided as on date; and
- (iii) If the answer to (ii) above is in the negative, the date on which the security was withdrawn.

17 A further affidavit dated 3 April 2021 was filed by the DGP in compliance with this Court's order dated 26 March 2021 explaining that:

- (i) Pursuant to the steps taken by the Damoh Police and the STF, the second respondent was arrested from a bus stand in Bhind District on 28 March 2021. The second respondent was presently in the judicial custody at Sub-

Jail, Hata District, Damoh; and

- (ii) The SP had recommended grant of security to the second respondent in view of his enmity with several persons and his political background. On the basis of the recommendation, the second respondent was provided security of one officer on 11 July 2020. This was ratified by State Security Committee on 25 September 2020. The security was withdrawn on 9 January 2021. 18 On 6 April 2021, another affidavit was filed by the DGP detailing the reasons for grant of security to the second respondent. The affidavit stated that:

- (i) Smt. Rambai Govind Singh, who is an MLA, made an application dated 3 July 2020 for providing security to her spouse (the second respondent) "on the basis of his political background and enmity with several persons";
- (ii) A security officer was detailed to the second respondent on 11 July 2020;
- (iii) A threat assessment report was sought from the SP who recommended grant of security on 24 September 2020. The recommendation of the SP was ratified by the State Security Committee on 25 September 2020;
- (iv) Thereafter, a final order for grant of security was passed on 7 October 2020; and
- (v) The ASP by an order dated 10 January 2021 directed the removal of the security provided to the second respondent on the issuance of a warrant of arrest by the ASJ on 8 January 2021.

19 Mr Varun Thakur, learned counsel appearing on behalf of the appellant has, during the course of his submissions, outlined the basis on which cancellation of bail granted pursuant to the order suspending sentence is sought. Learned counsel urged that the second respondent has been implicated in a serious offence punishable under section 302 of the Penal Code after he was enlarged on bail. It has been urged that the sequence of events indicates that despite the order under Section 319 of the CrPC, the second respondent evaded the due course of law despite a warrant against him and a proclamation. It has been submitted that the investigating authorities were complicit in this and continued to protect the second respondent whose spouse is an MLA. Despite the order of this court, the DGP reported initially that the second respondent could not be apprehended. The state had provided security to him despite the conviction of an offence under Section 302. The order of the ASJ is a clear indicator of the police attempting to pressurize the trial judge. Hence a cancellation of bail is warranted. 20 These submissions have been contested on behalf of the State and its authorities by Mr Saurabh Mishra, learned Additional Advocate General. Mr Mishra submitted that the following sequence of events may be borne in mind:

(i) 15 March 2019 – an FIR was registered against certain accused including the second respondent;

(ii) 13 June 2019 – a chargesheet was submitted to the competent court.

Though, the second respondent was named as an accused in the FIR, the charge sheet did not name the second respondent as further investigation was pending against him under Section 173(8) of the CrPC;

(iii) 23 July 2019 – the impugned order was passed by the High Court;

(iv) 7 September 2019 – a closure report was submitted before the competent court absolving the second respondent;

(v) 24 March 2020 – a new government was formed in the State of MP following a floor test in the legislative assembly on 18 March 2020; and

(vi) 8 January 2021 – an application was filed by the appellant under Section 319 of the CrPC for the issuance of summons to the second respondent to face trial. The State did not oppose the application.

It was urged on behalf of the State that there is no substance in the charge of collusion since as a matter of fact, the State had not opposed the application under Section 319 of the CrPC.

21 The second limb of the submission is that pursuant to the directions issued by this Court on 12 March 2021, an enquiry was conducted by the ADGP and STF, Bhopal. The ADGP in his report dated 22 March 2021 to the DGP stated that no substance was found in the observations of the ASJ in his order dated 8 February 2021. The conclusions in the enquiry indicate:

“24. Upon analyzing the whole incident the following conclusions are drawn :

(a) Ms. Bhawna Dangi, SDOP, had joined her new posting, 6 days prior to appearance before Hon'ble Court and it was her first field posting.

(b) Ms. Bhawna Dangi, SDOP informed the incident with herself in the court to her senior officers.

(c) Superintendent of Police, Damoh, immediately apprised of the incident happened with Ms. Bhawna Dangi to the senior most Judge of the District i.e. Hon'ble District and Session Judge, Damoh on 06.02.21.

(d) For coordination at the district level between judiciary and executive, the District and Additional Session Judge and Superintendent of Police remain in touch. Under the same protocol, the Superintendent of Police informed about the incident to the District and Session Judge.

(e) During the enquiry, the Hon'ble Additional Session Judge, Hata and both the JMFC, Hata were contacted but they showed their inability to give any statement unless permitted by the Hon'ble High Court of Jabalpur. In this context on 17.03.21 an application was filed before the Hon'ble Registrar General, Madhya Pradesh High Court, Jabalpur.

(f) The application dated 12.02.21 filed by Ms. Bhawna Dangi is pending in the office of Hon'ble Registrar General, Madhya Pradesh High Court, Jabalpur and only after its inquiry any comment can be given on the application filed by SOOP, Ms. Dangi.

25. It is proved from the facts came in inquiry that the Superintendent of Police has endorsed the grievance of his subordinate to his senior officers which is a part of his duty. No evidence of Superintendent of Police intention in connivance with accuseds to level false charges is found out.” Based on the above report, it has been submitted that the SDOP had joined at her new place of posting on 31 January 2021. On 6 February 2021, she appeared before the ASJ and explained the efforts which were made to arrest the second respondent. It is alleged that the ASJ was not satisfied with the explanation and had made her stand in the court for over four hours and had insulted her. The SDOP had expressed her desire to the ASP to resign from service. This incident was narrated by the ASP to the JMFC, Hata who has attempted to sort out the matter. Subsequently, the SDOP had submitted a complaint to the High Court and had met the Registrar General on 12 February 2021. The order dated 8 February 2021 was made known for the first time when it was published in the newspapers on 20 February 2021.

22 In this context, it has been submitted that the enquiry against the SP has been conducted in pursuance of the orders of this Court and no substance has been found in the allegations leveled by the judicial officer. 23 The report of the ADGP states that though the ASP had denied communicating to the JMFC that, “it is an order of the ... Superintendent of Police that the

Magistrate ...of Hata should be informed that SDOP Dangi is disturbed, she is resigning, Sonkar Sahab to show some leniency”, he had communicated with the JMFC “to maintain better coordination between the Hon’ble Court and the Executive” on his own accord. The relevant extract of the report is as follows:

“21. In this entire incident, the Additional Superintendent of Police, Damoh communicated with the Hon’ble JMFC’s, Hata to maintain the better coordination between the Hon’ble Court and the Executive. During his statement, Addl.

Superintendent of Police admitted some comments mentioned in the order sheet and denied some other comments. In his statement, the Additional Superintendent of Police, absolutely denied some references came in between the Hon’ble JMFC, Hata about the Superintendent of Police, Damoh. He further states that Superintendent of Police, Damoh didn’t instruct him to communicate with JMFC, Hata. He had discussed the matter with both the Hon’ble JMFCs’ on his own to maintain better coordination between the parties.”

24 Mr Sidharth Luthra, learned senior counsel appearing on behalf of the SP submitted that on 6 February 2021, the SDOP had made a complaint about being humiliated by the judicial officer in court and the SP had informed the District and Sessions Judge about the incident on the same date. On 7 February 2021, the Registrar General of the High Court was informed on phone. On 8 February 2021, the ASJ passed an order expressing his apprehension that he was being targeted in the discharge of his duties. However, on the same day, the ASJ addressed a communication to the SP making no such allegations. On 12 February 2021, the Registrar General of the High Court was furnished with the application of the SDOP and met her. The order dated 8 February 2021, it has been submitted, was published in the newspapers on 20 February 2021. In this backdrop, Mr Luthra urged that there is no substance in the allegation which have been leveled against the SP.

25 Mr Shakeel Ahmed, learned Counsel appearing on behalf of the second respondent has submitted that no adverse order may be passed against the second respondent. At this stage, it may be necessary to note that an application for bail was moved before this Court on behalf of the second respondent in IA No 50800 of 2021 in SLP (Crl) Diary No 21783 of 2020. On 1 June 2021, the following order was passed by this Court:

“1 After arguing the application for bail, the learned counsel appearing on behalf of the applicant (the second respondent in the Special Leave Petitions) seeks the permission of the Court to withdraw the application for bail.

2 The application for bail is accordingly dismissed as withdrawn.” The IA was accordingly dismissed as withdrawn.

26 Before we deal with the rival contentions, it is necessary at the outset to advert to the correctness of the order passed by the High Court on 23 July 2019. FIR No 143 of 2019 was registered on 15 March 2019 for offences under Sections 294, 323, 324, 307, 147, 148, 149 and 506 of the IPC against

several accused including the second respondent. It was alleged in the FIR that the accused had assaulted the victim, Devendra Chaurasia, by rods and sticks. The injured victim having succumbed to his injuries, an offence under Section 302 was added. Among other accused, the FIR named the second respondent. On 13 June 2019, a charge sheet was filed before the competent court, which did not name the second respondent. Investigation under Section 173(8) of the CrPC was kept pending against the second respondent.

27 In another case, the second respondent was convicted under Section 302 by the Sessions Court on 27 October 2015 against which he had filed Criminal Appeal No 3107 of 2015 before the High Court. During the pendency of the appeal, the sentence was suspended on 3 February 2016. In view of the allegation that the second respondent had committed offence of murder when his sentence was suspended, the State government filed an application before the High Court for the revocation of the order suspending the sentence/ granting bail to the second respondent. Another application was filed by the appellant. The High Court disposed of the two applications by noting the statements of the Additional Advocate General that the State government is further investigating the application filed by the second respondent stating that he has been falsely implicated. The High Court directed that the investigation may be completed as far as possible within three months but not later, and if upon investigation the second respondent is involved in the commission of the crime, he should be taken into custody immediately and "the procedure as prescribed be followed".

28 On 7 September 2019, the police filed a closure report in relation to the second respondent before the competent court in FIR No 143 of 2019 dated 15 March 2019. An application under Section 319 of the CrPC was filed before the ASJ for summoning the second respondent. By an order dated 8 January 2021, the application was allowed and the second respondent was arraigned as an accused. A warrant of arrest was issued against the second respondent. Despite the issuance of the warrant of arrest and a proclamation, the second respondent was not arrested. The order of this Court dated 12 March 2021 speaks for itself. 29 The High Court by its impugned order dated 23 July 2019 allowed the second respondent, who allegedly committed murder during the period when his sentence was suspended, to continue on bail until his claim that he was being falsely implicated was first investigated in ninety days. In adopting such a procedure, the High Court has clearly transgressed into an unusual domain. The High Court has in effect stultified the administration of criminal justice. 30 Section 389 (1) 1 of the CrPC allows the court to release a convicted person on bail. The second proviso to Section 389 (1) of CrPC provides that where a convicted person has been released on bail, it is open to the public prosecutor to file an application for the cancellation of bail. However, the grant of bail post-conviction is governed by well-defined procedures and parameters. The factors that govern the grant of suspension of sentence under Section 389 (1) have been discussed by this "Section 389. Suspension of sentence pending the appeal; release of Appellant on bail.--(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor

for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.” Court (speaking through Justice Kurian Joseph) in *Atul Tripathi vs. State of U.P.* 2 in the following terms:

“It may be seen that there is a marked difference between the procedure for consideration of bail under Section 439, which is pre conviction stage and Section 389 Code of Criminal Procedure, which is post-conviction stage. In case of Section 439, the Code provides that only notice to the public prosecutor unless impractical be given before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Sessions or where the punishment for the offence is imprisonment for life; whereas in the case of post-conviction bail under Section 389 Code of Criminal Procedure, where the conviction in respect of a serious offence having punishment with death or life imprisonment or imprisonment for a term not less than ten years, it is mandatory that the appellate court gives an opportunity to the public prosecutor for showing cause in writing against such release.

15. Service of a copy of the appeal and application for bail on the public prosecutor by the Appellant will not satisfy the requirement of first proviso to Section 389 Code of Criminal Procedure. The appellate court may even without hearing the public prosecutor, decline to grant bail. However, in case the appellate court is inclined to consider the release of the convict on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the Appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, gravity of the offence, age, criminal antecedents of the convict, impact on public confidence in the justice delivery system, etc. Despite such an opportunity being granted to the public prosecutor, in case no cause is shown in writing, the appellate court shall record that the State has not filed any objection in writing. This procedure is intended to ensure transparency, to ensure that there is no allegation of collusion and to ensure that the court is properly assisted by the State with true and correct facts with regard to the (2014) 9 SCC 177 relevant considerations for grant of bail in respect of serious offences, at the post conviction stage.”

31 This Court in *Ramji Prasad vs. Rattan Kumar Jaiswal and Anr.* 3 has observed that in cases involving conviction under Section 302 of the IPC, the sentence should be suspended only in exceptional cases. 32 In *Masood Ali Khan vs. State of U.P. and Ors.* 4, this Court has held that the mere fact that the accused, who were on bail during the period of trial, did not misuse their liberty is not a sufficient reason for the grant of suspension of sentence post-conviction. This Court by placing reliance on *Vijay Kumar vs Narendra* 5 reiterated that all the relevant factors including “nature of accusation made against the accused, the manner in which the crime was alleged to have been

committed, the gravity of the offence, desirability of releasing the accused on bail after they have committed the serious offence of murder” must be looked into. 33 The High Court had suspended the sentence. We are not in these proceedings called upon to consider whether the order of the High Court granting a suspension of sentence was valid in the first place.

34 There are distinct doctrinal concepts in criminal law namely (i) the grant of bail before trial or, what is described as the ‘pre-conviction’ stage; (ii) setting aside an order granting bail when the principles which must weigh in the decision on whether bail should be granted have been overlooked or wrongly applied; (iii) the post- (2002) 9 SCC 366 (2009) 3 SCC 492 (2002) 9 SCC 364 conviction suspension of sentence under the provisions of Section 389(1); and (iv) the cancellation of bail on the ground of supervening events, such as the conduct of the accused during the period of bail, vitiating the continuance of bail. 35 The present case falls in the last of the above genres where bail was sought to be cancelled on the ground that the second respondent was implicated in an offence under section 302 during the period when his sentence was suspended. 36 This Court in *Abdul Basit vs. Abdul Kadir Choudhary*⁶, while discussing the powers of the High Court to cancel bail granted to an accused under Section 439 (2) of the CrPC, has observed that typically the following conduct of the accused would result in the cancellation of bail – (i) misuse of liberty by engaging in similar criminal activity; (ii) interference with the course of investigation; (iii) tampering of evidence or witnesses; (iv) threatening of witnesses or engaging in similar activities which would hinder the investigation; (v) possibility of fleeing to another country; (vi) attempts to become scarce by becoming unavailable for investigation or going underground; and

(vii) being out of the reach of their surety. Similar considerations govern the cancellation of bail at the post-conviction stage under the second proviso to Section 389 (1) of the CrPC. This Court in *Pampapathy vs. State of Mysore*⁷, had held that the High Court had the power to revoke the suspension of sentence granted under sub-Sections (1) and (2) of Section 426 8 of the erstwhile Code of Criminal (2014) 10 SCC 754 1966 Supp SCR 477 “426. (1) Pending any appeal by a convicted person, the Appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond. Procedure, 1898 (“CrPC, 1898”) using its inherent powers under Section 561-A of the CrPC, 1898. The accused were alleged to have misused their liberty while their sentence was suspended. Sub-Sections (1) and (2) of Section 426 of the CrPC, 1898 are similar to Section 389 (1) of the present CrPC. It may be noted that in *Pamapathy* (supra), the issue of cancellation of bail of a convict, by taking recourse to Section 561-A of the CrPC, 1898, arose because the second proviso, which, now, has been added to sub-Section (1) of Section 389 CrPC, did not exist under the earlier legal framework. However, since the second proviso to sub-Section (1) of Section 389 CrPC., now, deals with the cancellation of bail, no inherent power, would be required for revocation of suspension of sentence and bail granted to a convicted person during the pendency of appeal at the appellate court. This Court in its order passed in *Ramesh Kumar Singh vs. Jhabbar Singh & Ors.*⁹, has held that if the accused misuses their liberty by committing other offences during the suspension of sentence under Section 389 (1) of the CrPC, they are not entitled to the privilege of being released on bail. In that case, the accused was convicted under Section 302 of the IPC for killing the father of the complainant and during the suspension of his sentence, when he was out on bail, he had committed the murder of the brothers of the complainant. This Court set aside

the bail that was granted to the accused by the High Court.

(2) The power conferred by this section on an appellate court may be exercised also by the High Court in the case of any appeal by a convicted person to a court subordinate thereto.” (2003) 10 SCC 195 37 The present case was a fit case for the cancellation of bail by the High Court. The narration in the earlier part of the judgment highlights the following facets:

(i) The registration of FIR 143 of 2019 implicating the second respondent in the murder of the appellant’s father during the period when the sentence of the second respondent was suspended after his conviction of a prior offence under Section 302.

(ii) The criminal antecedents of the second respondent;

(iii) The strong likelihood of the second respondent using his political clout to prevent a fair investigation of FIR 143 of 2019;

(iv) The truth in the apprehensions of the appellant having become evident by the abject failure of the police to properly investigate the FIR lodged against the second respondent on the allegation that he had committed the murder of the appellant’s father on 15 March 2019 after his sentence was suspended by the High Court;

(v) The submission of a closure report by the police against the second respondent absolving him;

(vi) The order of the ASJ dated 8 January 2021 summoning the second respondent under Section 319 of the CrPC;

(vii) The second respondent having evaded arrest despite the issuance of a warrant of arrest and a proclamation;

(viii) The failure of the law enforcement authorities to effectuate the arrest of the second respondent in spite of the order of this Court dated 12 March 2021;

(ix) The peremptory directions issued by this Court on 26 March 2021 requiring the DGP to take necessary steps for compliance with the previous order failing which the Court would be constrained to take coercive steps in accordance with law;

(x) The eventual arrest of the second respondent on 28 March 2021 ostensibly from a bus stand;

(xi) The apprehension expressed by the ASJ in his order dated 8 February 2021 that he was being targeted at the behest of a politically influential accused; and

(xii) The provision of security to the second respondent by the State government at the behest of his spouse who is an MLA despite a prior conviction under Section 302 of the IPC.

38 The High Court mis-applied itself to the legal principles which must govern such a case. The serious error by the High Court in its impugned order can be considered from two perspectives. First, the High Court by simply disposing of the IAs seeking cancellation of bail ignored material considerations which ought to have weighed in the decision. Some of the events which we have narrated above have undoubtedly transpired after the order of the High Court. However, taking the position as it stood when the High Court considered the issue, a clear case for cancellation of bail was established. The second aspect which is also of significance is the impact of the order of the High Court. The High Court was apprised of the fact that FIR No 143 of 2019 had been lodged against the second respondent. The investigation into the FIR had to proceed according to law. Instead, the High Court gave a period of ninety days to the police to enquire into the complaint of the second respondent that he was being targeted and allowed the police to thereafter proceed in accordance with law. This order had the effect of obstructing a fair investigation into the FIR at the behest of the accused despite the nature and gravity of the allegations against him. The events which have transpired since go to emphasize the fact that the High Court was in grievous error in passing its directions which were misused to defeat the investigation. The police submitted a closure report absolving the second respondent. Thereafter, despite the order under section 319, the second respondent evaded arrested in contravention of the warrant of arrest which was issued by the ASJ. The facts which have been narrated in the earlier part of this judgment indicate that the police have been complicit in shielding the second respondent. The criminal antecedents of the second respondent and the prior conviction on a charge of murder have been adverted to earlier. The second respondent, whose spouse is an MLA was provided security by the State. The DGP was sanguine in informing this court that the second respondent could not be arrested despite the directions issued by this Court. It was only after this Court issued a peremptory direction indicating recourse to the coercive arm of law that the second respondent was arrested, ostensibly from a bus-stand. The material on the record indicates that an effort has been made to shield the accused from the administration of criminal justice. The apprehensions expressed by the ASJ in his order dated 8 February 2021 of the machinations of a highly influential accused evading the process of law are amply borne out by the facts which have been revealed before this Court. There is no reasonable basis to doubt the anguish and concern of a judicial officer. That the state did not oppose the application under section 319 is a feeble attempt to justify the inaction of the police. Unfortunately, the High Court failed in its duty to ensure that the sanctity of the criminal justice process is preserved. This court has had to step in to ensure that the rule of law is preserved.

39 We accordingly order and direct that the order of the High Court dated 23 July 2019 shall stand set aside. IA Nos 6837 and 5781 of 2019 shall in the circumstances stand allowed. The bail granted to the second respondent shall stand cancelled. We also direct that the second respondent shall be moved under the directions of the DGP to another jail in Madhya Pradesh to ensure that the fair course of the criminal proceedings is not deflected.

40 During the course of this proceeding, an enquiry was directed to be made into the apprehensions expressed by the ASJ in his order dated 8 February 2021. An independent and impartial judiciary is the cornerstone of democracy. Judicial independence of the district judiciary is cardinal to the integrity of the entire system. The courts comprised in the district judiciary are the first point of interface with citizens. If the faith of the citizen in the administration of justice has to be preserved, it is to the district judiciary that attention must be focused as well as the ‘higher’ judiciary. Trial judges work amidst appalling conditions – a lack of infrastructure, inadequate protection, examples of judges being made targets when they stand up for what is right and sadly, a subservience to the administration of the High Court for transfers and postings which renders them vulnerable. The colonial mindset which pervades the treatment meted out to the district judiciary must change. It is only then that civil liberties for every stakeholder – be it the accused, the victims or civil society – will be meaningfully preserved in our trial courts which are the first line of defense for those who have been wronged.

41 The functioning of the judiciary as an independent institution is rooted in the concept of separation of powers. Individual judges must be able to adjudicate disputes in accordance with the law, unhindered by any other factors. Thus, “for that reason independence of judiciary is the independence of each and every judge”. The independence of individual judges also encompasses that they are independent of their judicial superiors and colleagues. 10 This Court in *Madras Bar Association v. Union of India & Anr.* 11 speaking through Justice L. Nageswara Rao has observed:

“29. Impartiality, independence, fairness and reasonableness in decision-making are the hallmarks of the judiciary. If “impartiality” is the soul of the judiciary, “independence” is the lifeblood of the judiciary. Without independence, impartiality cannot thrive. Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provides the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial. Its existence depends however not only on philosophical, ethical or moral aspects but also upon several mundane things—security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures M.P. Singh, *Securing the Independence of the Judiciary – The Indian Experience*, *Indiana International and Comparative Law Review* 10, No. 2 (2000): 245-292.

2021 SCC OnLine SC 463 within (from others in the judiciary) and without (from the executive). The independence of an individual Judge, that is, decisional independence; and independence of the judiciary as an institution or an organ of the State, that is, functional independence are the broad concepts of the principle of independence of the judiciary/ tribunal.” 42 Our Constitution specifically envisages the independence of the district judiciary. This is implicit in Article 50 of the Constitution which provides that the State must take steps to separate the judiciary from the executive in the public services of the State. The district judiciary operates under the administrative supervision of the High Court which must secure and enhance its independence from external influence and control. This compartmentalization of the judiciary and executive should not be breached by interfering with the personal decision-making of the judges and the conduct of court proceedings under them. 43 There is no gainsaying that the judiciary should be immune from

political pressures and considerations. A judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State.

44 India cannot have two parallel legal systems, “one for the rich and the resourceful and those who wield political power and influence and the other for the small men without resources and capabilities to obtain justice or fight injustice.” The existence of a dual legal system will only chip away the legitimacy of the law. The duty also falls on the State machinery to be committed to the rule of law and demonstrate its ability and willingness to follow the rules it itself makes, for its actions to not transgress into the domain of “governmental lawlessness”.¹² 45 At the same time, we believe that judges, while being undeterred in their commitment to follow the law and do justice, should be wary of launching into a diatribe against the State authorities without due care and reflection. 46 The apprehensions expressed by the ASJ should be duly enquired into by the High Court of Madhya Pradesh on its administrative side so that if they are found to be true, necessary action should be taken in order to secure the fair administration of justice. We have already taken note of the fact that the SDOP Hata had submitted a complaint to the Registrar General. The complaint by the SDOP as well the the order of the ASJ dated 8 February 2021 shall be placed before the Chief justice of the Madhya Pradesh High Court on the administrative side by the Registrar General within two weeks. The Chief Justice of the High Court of Madhya Pradesh is requested to cause an enquiry to be made on the administrative side so that an appropriate decision in that regard is taken. Having regard to this direction we are not expressing any views on the report which has been submitted by the ADGP and STF, Bhopal. The enquiry as directed above should be concluded expeditiously and preferably within a period of one month from the date of the receipt of a certified copy of this judgment. A copy of this order shall be communicated by the Registrar (Judicial) of this court to the Registrar General of the High Court for compliance. The appeals shall stand disposed of in the above terms.

Upendra Baxi, *The Crisis of Legitimation of Law in The Crisis of the Indian Legal System: Alternative Developments in Law* (Vikas Publishing House, 1982).

47 Pending application(s), if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hrishikesh Roy] New Delhi;

July 22, 2021