Union Of India vs Mrityunjay Kumar Singh @ Mrityunjay @ ... on 10 May, 2024

Author: Aravind Kumar

Bench: Aravind Kumar, Pamidighantam Sri Narasimha

2024 INSC 404 Non

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. of 2024
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.
(@ DIARY NO.27308 OF 2023)

UNION OF INDIA …APPELLANT(S)

VERSUS

MRITYUNJAY KUMAR SINGH @
MRITYUNJAY @ SONU SINGH …RESPONDENT(S

JUDGEMENT

Aravind Kumar, J.

1. Heard. Delay Condoned. Leave granted.

2. The Union of India is questioning the order dated 30.01.2023 whereunder the respondent has been directed to be enlarged on bail on terms and conditions stipulated thereunder by setting aside the order dated 18.11.2021 passed by the Special Judge, NIA, Ranchi.

3. The gist of the prosecution case is that on 22.11.2019, at about 8.00 PM, the patrolling party of Chandwa Police Station during their routine patrol had stopped at Lukuiya More where the banned terrorist organization CPI (Moist) had fired indiscriminately at them resulting in the death of four (4) police personnel. It is the further case of the prosecution that arms and ammunitions were also looted from martyred police personnel by raising slogans and thereafter the moist fled away. One of

the home guards namely, Dinesh Ram, who escaped unhurt had rushed to Chandwa Police Station and lodged a complaint resulting in FIR No.158 of 2019 being registered against 18 named and few unknown persons.

4. The Central Government directed the National Investigating Agency (for short 'NIA') to take up investigation and as such the FIR No.158 of 2019 was re-registered as RC No.25 of 2020 for the offences under Sections 147, 148, 149, 452, 302, 353 and 379 of Indian Penal Code, 1860 (for short 'IPC') read with Section 27 of the Arms Act, 1959, under Section 17 (i) and (ii) of Criminal Law (Amendment) Act and Section 10, 13, 17 and 18 of Unlawful Activities (Prevention) Act, 1967 (for short 'UAP Act')

5. The NIA submitted the supplementary chargesheet against 34 persons including the respondent for the offences punishable under Sections 120(B), 121, 121(A), 122, 147, 148, 149, 302, 307, 353, 395, 396 and 427 of IPC and under Sections 10, 13, 16, 17, 18, 20, 21, 38, 39 and 40 of UAP Act and under Sections 25(1B)(a), 26, 27 and 35 of the Arms Act.

6. The first respondent being apprehended sought for being enlarged on bail by filing a regular bail application before the Special Judge, NIA, Ranchi. After hearing both the parties, the learned Special Judge rejected the bail application vide order dated 18.11.2021.

7. Being aggrieved by the rejection of the bail application, the respondent herein preferred a separate criminal appeal under Section 21 of NIA Act, 2008 before the High Court of Jharkhand, Ranchi. The High Court by the impugned order dated 30.01.2023 allowed the appeal and ordered for the respondent herein for being enlarged on bail subject to conditions stipulated thereunder. Hence, this appeal is preferred by Union of India.

8. We have heard the arguments of Shri K.M Nataraj, Additional Solicitor General of India appearing for the appellant and Shri Siddharth Luthra, learned Senior Counsel appearing for the respondent. It is the contention of Shri K.M Nataraj, Additional Solicitor General of India, that the respondent was a key partner of a construction firm M/s Santosh Construction and was closely associated with Regional Commander of CPI-Maoist Ravindra Ganjhu (A-14) and provided financial as well as logistics support for the terrorist activities. It is further contended that respondent has been in conspiracy with the cadres of CPI (Moist) and he had been supporting them not only by giving financial aid to the proscribed terrorist organization but also by managing the terrorist fund through showing dubious entries and investments in his company/firm's accounts. He has also submitted that the respondent is an active supporter and sympathizer of the proscribed terrorist organization and is directly connected to the incident which led to the killing of four (4) police personnel of the Jharkhand Police. Taking this Court to the materials on record, he contended that the search at the house of the respondent had yielded in recovering unaccounted cash amounting to Rs.2.64 crores for which there was no plausible explanation.

9. He would contend that there are other three (3) cases registered against the respondent which would suffice to reject the bail in the instant case relying upon the letter dated 15.12.2023 written by the father of the complainant in the case No.225 of 2023 addressed to the State Police alleging that

the respondent and his associates are threatening the life of the complainant and pressurizing him to withdraw the case and hence there is every likelihood of the witnesses in the instant case also being threatened therefore he seeks for allowing of the appeal and setting aside the order of the High Court. He would further contend that the respondent is an influential person and would make all attempts to threaten or influence witnesses and there is every likelihood that he may succeed in his attempts if he continues to have the benefit of the bail. He would also submit that respondent is an influential and a person with criminal history and having close ties with many gangsters and criminals apart from the top cadres CPI-Maoist, as such there is every likelihood for the respondent to tamper with the evidence and influence the witnesses. Hence, he prays for the appeal being allowed and impugned order being set aside.

10. Shri Siddharth Luthra, learned Senior Counsel appearing for the respondent, by supporting the impugned order contends that the High Court has rightly set aside the order of the Special Judge by granting bail to the respondent conditionally way back on 30.01.2023 and even after lapse of more than 1 year and 3 months, there being no allegation on the conditions of bail having been violated, itself is a good ground for non-interference with the order of bail granted by the High Court. Elaborating his submissions, he would contend that the prosecution is seeking for the impugned order being set aside essentially on the ground that respondent is involved in three (3) cases apart from the case registered by NIA. He would further submit that the case registered by Chandwa PS in Case No.99 of 2014 has resulted in acquittal and in the case No.108 of 2015, the respondent has been enlarged on bail by the High Court of Jharkhand. Lastly, in the case No.4 of 2020, the respondent has been granted anticipatory bail by the High Court of Jharkhand and as such the purported criminal antecedent did not sway in the mind of High Court while considering the prayer for grant of bail. Even otherwise the pendency of three (3) other cases would have no bearing for the continuation of the order of bail granted in favour of the respondent. Hence, he has prayed for rejection of the appeal.

11. Having heard learned Counsel for the parties and on perusal of the entire material on record including the additional affidavits filed and the counter/reply filed thereto by the respondent, it would emerge from the records, by the impugned order High Court had scrutinized the entire material on record and has recorded a finding that name of the respondent did not figure in the initial FIR registered or in the statements of witnesses and most of the statements disclosed the absence of the respondent's name being taken or any overt act being attributed against the respondent.

12. It is well settled law that an accused cannot be detained under the guise of punishing him by presuming the guilt and in Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281, it has been held:

> "8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on

the assumption of his guilt." The broad probability of accused being involved in the committing of the offence alleged will have to be seen. This Court in NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 has held:

23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well.

Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is "not guilty" of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guilty" of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima facie" true. By its very nature, the expression "prima facie true" would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie true", as compared to the opinion of the accused "not guilty" of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.

Nevertheless, we may take guidance from the exposition in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] , wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail. In paras 36 to 38, the Court observed thus : (SCC pp. 316-17) "36. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

37. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. ... What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea." And again in paras 44 to 48, the Court observed : (SCC pp. 318-

20) "44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

47. In Kalyan Chandra Sarkar v. Rajesh Ranjan [Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528 :

> 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537- 38, para 18) '18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in Puran v. Rambilas [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para
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> 8) "8. ... Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. ... That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated." We respectfully agree with the above dictum of this Court.

We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.'

48. In Jayendra Saraswathi Swamigal v. State of T.N. [Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13 : 2005 SCC (Cri) 481] this Court observed : (SCC pp. 21-22, para 16) '16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh [State v. Jagjit Singh, (1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (UT of Delhi) [Gurcharan Singh v. State (UT of Delhi), (1978) 1 SCC 118 : 1978 SCC (Cri) 41] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at

the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case.'"

24. A priori, the exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

13. In the teeth of the afore stated position of law when we turn our attention to the facts on hand it would not detain us for too long to accept the plea of the respondent or in other words reject the contention of the appellant for reasons more than one, firstly, the grounds on which the respondent has been ordered to be enlarged on bail by the High Court came to be passed way back on 30.01.2023 whereunder conditions as stipulated therein has been imposed. It is not the case of the prosecution that any of the condition so stipulated has been violated or there has been infraction of any of the condition so imposed. In the absence of their being a strong prima facie case on the conditions of the bail having been violated, it would not be appropriate for the said order being reversed or set aside after a lapse of fifteen (15) months. It would be apposite to take note of the principles enunciated by this Court in this regard and we desist from reiterating laid position of law and it would suffice to note the principles enunciated in this regard.

In the case of Himanshu Sharma v. State of Madhya Pradesh, 2024 SCC OnLine SC 187 this court has held that considerations for grant of bail and cancellation of bails are different and if conditions of bail is flouted or the accused had misused the liberty granted or bail was granted in ignorance of statutory provisions or bail was obtained by playing fraud then bail granted to the accused can be cancelled.

14. During the course of the arguments as already noticed herein above Shri K.M Nataraj, Additional Solicitor General of India, has vehemently contended that order granting the bail has to be set-aside, essentially on the ground that the respondent is involved in three (3) other cases namely:

> "a) Crime No. 99/14 dated 19.09.2014, registered for offences under sections 364, 302, 201 & 34 of IPC. (State Police).
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> b) Crime No. 108/15 dated 15.06.2015, registered under sections 302, 120B and 34 of IPC, Sec. 27 of Arms Act 1959. (State Police)
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> c) Respondent (accused) is also accused in a case being investigated by NIA i.e. RC-38/2020/NIA/DLI dated 03.11.2020 arising out of Chandwa PS, District Latehar (JH) case number 04/2020 dated 05.01.2020"

15. As rightly contended by Shri Siddharth Luthra, learned Senior Counsel appearing for respondent, in the first case afore-mentioned the respondent has been acquitted by judgment dated

07.09.2015 (Annexure R-11). In so far as the cases at Serial No.2 and 3 (supra), the respondent has been enlarged on bail vide orders dated 10.07.2020 (Annexure R-12) and order dated 10.07.2020. In yet another case registered by Chandwa PS Case No.225 of 2023 the respondent has been enlarged on anticipatory bail in ABP No.426 of 2023.

16. The afore-stated facts when seen cumulatively, it would reflect that respondent having been enlarged on bail conditionally and the conditions so stipulated having not been violated and undisputedly the appellant-state having not sought for cancellation of the bail till date would be the prime reason for us not to entertain this appeal. In fact, the apprehension of the Union of India that respondent is likely to pose threat to the witnesses and there was a threat posed to the complainant, Mr. Sanjay Kumar Tiwari, would not be a ground to set aside the impugned order enlarging the respondent on bail in as much in the case referred against the respondent for the said offence he has been granted bail. That apart we are of the considered view that there are no other overwhelming material on record to set aside the order granting bail which out weighs the liberty granted by the High Court under the impugned order.

17. Hence, we are of the considered view that interference is not warranted. However, to allay the apprehension of the prosecution it would suffice to observe that the prosecution would be at liberty to seek for cancellation of the bail in the event any of the conditions being violated by the respondent and in the event of such an application being filed we see no reason as to why said application would not be considered on its own merits by the jurisdictional court independently and without being influenced by its earlier observations. We also make it expressly clear that the observations made under the impugned order would be restricted to the consideration of the prayer for bail and the jurisdictional court without being influenced by any of the observation shall proceed to adjudicate the case on merits after trial. Subject to the above observations, the appeal stands dismissed.

.....J. (Pamidighantam Sri Narasimha) .....J. (Aravind Kumar) New Delhi, May 10, 2024