

# Anil Kumar Alias Neelu vs State Of Himachal Pradesh on 9 September, 2019

**Author: Anoop Chitkara**

**Bench: Anoop Chitkara**

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1609 of 2019

Reserved on : 06.09.2019.

Date of Decision : September 9 , 2019

Anil Kumar alias Neelu

...Petitioner.

Versus

State of Himachal Pradesh

r

...Respondent.

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?1 No.

For the petitioner : Mr. R.L. Chaudhary and Mr. H.R. Sidhu,  
Advocates, for the petitioner.

For the respondent : Mr. Nand Lal Thakur, Additional Advocate

General, for the respondent.

Anoop Chitkara, Judge.

For possessing 6.71 grams of heroin, the petitioner, who is under arrest, on being arraigned as an accused in FIR Number 47 of 2019, dated 26.4.2019, registered under Sections 21, 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (herein after referred as the "NDPS Act"), in the file of Police Station Bhoranj, Distt. Hamirpur, H.P., disclosing non-bailable offences, has

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come up before this Court under Section 439 Cr.PC, seeking regular bail.

2. The status report has been filed. I have seen the status

report(s) as well as the police file to the extent it was necessary for

deciding the present petition, and the same stands returned to the police official. I have heard Sh. R.L. Chaudhary, learned counsel for

the petitioner and Sh. Nand Lal Thakur, learned Additional Advocate General for the respondent/State.

#### FACTS

3. The gist of the First Information Report and the investigation is as follows:

On 25.4.2019, the police party headed by SHO Kulwant

Singh was on patrolling duty in vehicle No. HP-22A-7844.

When the police party reached a place know as Jahu, then a flying squad/SST had already erected a police check post at

that place. When SHO reached a place called Bam-Check,

there he found vehicle No. HP-62-3715, Alto white coloured car, parked near Pravasi Basti (colony of migrants). In the said car, five persons were sitting. On seeing the police party,

the driver immediately fled the car towards Bhamla. On this conduct, suspicion aroused in the mind of the SHO and the police party immediately started chasing the said car. At a

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place near Jahu-Pull, at around 5.30 p.m., the car was overtaken and made to stop. Three persons from the car ran away

and absconded. Two persons in the car were nabbed, one person who had absconded was also nabbed by the police

party while chasing them. However, the remaining two persons could not be nabbed and they successfully ran away.

These three persons were detained and named the absconder as Sushil Kumar and Rajinder Kumar. The police party brought these three tendered persons alongwith Alto car to

SST Naka point where they met the Incharge of SST Prince Thakur. Prince Thakur, was exercising the power of magistrate

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during the elections. A photographer was also present at that  
spot and he was associated as a witness alongwith Prince

Thakur. On inquiry, the driver of the car named himself Anil

Kumar @ Sanju S/o Rikhi Chand and other two persons  
named themselves as Kartar Singh @ Taru S/o Besari Ram

and Anil Kumar @ Neelu S/o Ramesh Kumar (petitioner  
herein).

In the search of the vehicle from dashboard an  
electrical scale and one polythene packet containing white  
coloured substance was found. On its opening, powder was  
detected and on the basis of experience, it was prima facie

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found to be Heroin (Chitta). Thereafter, on inquiry, all the three  
above said persons were apprehended and termed it as

Chitta. After that drug detection kit was brought from Police

Station Bhoranj by making a phone call. At 6.45 p.m., the

drug detection kit and scale were received at the spot. On  
conducting primary test with the help of drug detection kit, it

turned positive. The weight of the contraband was found to be  
6.71 grams. After that the Investigating Officer completed the  
procedural requirement under NDPS Act and under Cr.PC.

The above said contraband was sent to FSL, Junga,  
which gave the following opinion:-

" The exhibit stated as hereoin is a sample of  
Diacetyl morphine (Heroin)."

Thereafter, the other procedural formalities were completed

and the aforesaid F.I.R. came to be registered.

#### REASONING

4. Keeping in view the quantity of contraband, I am of the  
considered view that the judicial custody of the petitioner is not going  
to serve any purpose whatsoever and I am inclined to grant him bail

on the following grounds:

(a) As per the FIR, the substance involved in is Heroin, mentioned at Sr. No. 56 of the Notification, issued under

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Section 2(viia) and (xxiia) of NDPS Act, specifying small and commercial quantities of drugs and psychotropic substances.

(b) The quantity of drug involved is 6.71 grams (heroin), which is less than Commercial Quantity but greater than Small

Quantity. As such the rigors of Section 37 of NDPS Act shall not apply in the present case. Resultantly, the present case

has to be treated like any other case of grant of bail in a penal offence.

(c) As per the status report, there are two cases under the NDPS Act against the bail petitioner Anil Kumar @ Neelu. However, the prosecution has not provided any further details of such cases and whether it pertains to small or intermediate

quantity has also not been disclosed. The fact that the bail

petitioner was on bail in those cases would raise a

presumption that such cases were not involving commercial  
quantify of contraband under the NDPS Act.

(d) The petitioner is in judicial custody since 26.4.2019.

(e) The investigation is complete and challan already  
stands filed in the court of competent jurisdiction.

(f) The petitioner is a permanent resident of the address  
mentioned in the memo of parties. Therefore, his presence  
can always be secured.

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(g) I am satisfied that no purpose will be served if the bail  
petitioner is sent to judicial custody.

(h) I am of the considered view that, prima facie, petitioner  
has made out a case for grant of bail. His custodial



interrogation is not required at all.

5. Learned counsel for the petitioner has relied upon the

decision rendered by a Three Judge Bench of the Supreme Court in

Ayub @ Pappukhan Nawabkhan Pathan vs. S.N. Sinha & another,

(1990) 4 SCC 552, wherein it has been held as under:

"5. ... ..

It is submitted that in the instant case except Crime No. 96/90 there is no other case pending and the other two

crimes which are referred to in the grounds ended in acquittal and the definition of 'dangerous person' in S. 2(c)

does not include cases under the Prohibition Act. Therefore the detenu is not a habitual offender so as to

come within the meaning of 'dangerous person'. We find considerable force in this submission. We have gone

through the entire record. The learned Counsel appearing for the State could not place any material from which it can be inferred that the petitioner was a habitual offender. No doubt a lengthy counter is filed in which it is repeatedly averred in general that the detenu was indulging in prejudicial activities but as already mentioned, only Crime No. 96/ 90 is pending investigation and from this alone we cannot infer that the petitioner is a 'dangerous person'

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within the meaning of S. 2(c) of the Act. To satisfy ourselves we have also carefully perused the FIR in Crime

No. 96/90 and the complaint annexed to the same. The

main allegation against the detenu was that he, out of sudden excitement, fired the revolver and as a result of

which one Mehbub Khan received injury on his leg and again he fired a shot into the air and that he and his associates were moving around in a jeep threatening the

people in the area. But in the order passed by the learned Sessions Judge on 13-3-90 while releasing the petitioner on bail, it is noted that the said Mehbub Khan had no fire-

arm injury at all and as a matter of fact, the public

prosecutor conceded the same. The learned Sessions Judge has also noted that no medical evidence is produced to prove that anyone was injured during the

alleged occurrence, if such is the only crime pending in which the detenu is alleged to have participated, it can be

no stretch of imagination be said that he comes within the meaning of 'dangerous person' and the conclusions drawn

by the detaining authority are bereft of sufficient material as required under S. 2(c) of the Act. This betrays non-

application of mind by the detaining authority. Consequently, the grounds on which the detention order is passed are irrelevant and non-existing. These are the reasons which weighed with us for not upholding the detention."

6. On the following proposition of law, which was referred to a larger Bench for an authoritative pronouncement:

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"Whether an accused is entitled to be released on bail on the ground of parity by moving a second or third bail application in a circumstance that at a later date a co-

accused of the same criminal case with a similar role was

granted bail by the another Hon'ble Judge before whom without disclosing the fact that the bail application of another co- accused with similar role had already been rejected, by another Bench, bail was granted."

the Division Bench of the Allahabad High Court in Nanha vs. State of U.P., 1993 Cri. L.J. 938, has held as under:

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

Chaubey, J. had extracted the following observations from the said

judgment:--

"The claims of the principle of consistency and demand for parity by the accused, however, are not compelling one's and one

cannot override the judges contrary view on the case before him if even awareness of the desirability of consistency fails to move his view. In other words this is only a factor to be considered and not

a governing consideration. This is clear from the Supreme Court

decision in Ashok Kumar's case (supra) also where the court declined to follow the principle in the matter of sentence."

14. Before proceeding about the desirability of parity in the matter of granting bail it would be better to draw our attention to the exact meaning of parity. In Chambers English Hindi Dictionary 1981 the word "parity" has been stated to mean 'samta', 'barabari', 'samaanta', 'mulyata', 'anurupta', 'saamya', 'saadayashya' and 'sam mulyata'. In New Lexicon Webster's Dictionary 1987 Edition, the word "parity" has been stated to mean 'equality in status', 'values' etc.

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

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

17. Learned counsel for the applicant has cited a case in State v. Captain Jagjit Singh, AIR 1962 SC 252 : (1962 (1) Cri LJ 215). In this case, an argument had been advanced before the Supreme Court that as

two accused had been enlarged on bail the respondent should also be released. Jagjit Singh was a Captain in the Army. At the time of his arrest, he was employed in a delegation in India of a French Company. The two

other accused were employed in the Ministry of Defence and Army Head

Quarters. It was alleged that they, in conspiracy, had passed on official secrets to a foreign agency. Jagjit Singh's application for bail was rejected by the Sessions Judge. Thereupon, this accused moved an application

before the High Court under Section 498 of the Criminal P. C. (1898). The main contention of applicant before the High Court was that on the facts disclosed the case came under Section 5 of Official Secrets Act which is

bailable and not under Section 3 of the Act which is not bailable. The High

Court was of the view that it was not possible to go into the question whether Section 3 or 5 applied. However, taking the view that two other co-accused had been granted bail, the High Court granted bail to the

accused Jagjit Singh. The State went in appeal against this order.

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

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

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respondent may not abscond is not by itself sufficient to induce the court to grant him bail in a case of this nature."

19. The above case itself indicates that the Supreme Court had not

accepted the contention of learned counsel for Captain Jagjit Singh that as

the two co-accused had been released, then the High Court was right in releasing Captain Jagjit Singh also on the ground of parity. The Supreme

Court had considered the case of Jagjit Singh and after coming to the conclusion that his case stood on a different footing even though he was a member of conspiracy, a great responsibility lay upon him in the matter of divulgence of official secrets. The Supreme Court had cancelled the bail

granted by the High Court.

20. Both A.G.A. and learned Counsel for the applicant have relied upon *Sunder Lal v. State of U.P.* 1983 AWC 148 : (1983 Cri LJ 736). In this

case, the facts were that a report was lodged by one Sant Ram against

five persons including one Sunder Lal. The Investigating Officer submitted charge-sheet and thereafter the Judicial Magistrate committed the applicant along with others to the Sessions Judge. The applicant Sunder

Lal was in jail at the time the case was committed to the court of session. In pursuance of the committal order a custody warrant was issued against the applicant. In this case, the detention order of the applicant had

challenged as being illegal. In the end, it was also argued that other co-

accused had been admitted to bail, the applicant should also be granted bail. The Full Bench observed :

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

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

22. From the cases discussed above, we find that parity alone had not been considered as a ground for release on bail. A Full Bench of this Court as well as the Supreme Court had refused to release an applicant on bail

simply because the other co-accused had been released on bail. In the cases of Captain Jagjit Singh and Sunder Lal, the Supreme Court and High Court examined the case of each applicant on its own footing, even

though co-accused had been released on bail.

23. On an examination of the cases cited before us, I am of opinion that the case of an accused has to be examined individually. Simply because

the co-accused has been granted bail cannot be the sole criteria for granting bail to an accused. Even at the stage of second or third bail the court has to examine whether on facts the case of the applicant before the

Court is distinguishable from other released co-accused and the role

played by the applicant is such which may disentitle him to bail. The norms laid down by the Supreme Court in Gurcharan Singh's case, viz:

- (i) the nature and gravity of the circumstances in which offence is committed;

- (ii) the position and the status of the accused with reference to the victim and witnesses;

- (iii) the likelihood of;

- (a) the accused fleeing from justice;

- (b) of repeating the offence

- (c) of jeopardising his own life being faced with grim prospect of



possible conviction in the case;  
(d) of tampering the witnesses.  
(iv) the history of the case as well as of its investigation; and

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

24. My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused

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whose bail application had been earlier rejected are allowed and co-accused is released on bail. Even then the court has to satisfy itself that, on consideration of more materials placed, further developments in the

investigations or otherwise and other different considerations, there are sufficient grounds for releasing the ' applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the court is

identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail. As regards the second part of

the referred question my answer is that it is not at all necessary for an accused to state in his application that the application of a co-accused had been rejected previously.

25.

The record of this case be sent expeditiously to the single Bench

with the above answers for disposal of the bail application.

VIRENDRA SARAN J.:-

26. I have perused the judgment of brother G.D. Dube, J. I would like to

give my own views and reasons for our conclusion in answering the question referred to the Bench.

27. In the third Criminal Misc. Bail Application in Crime No. 53 of 1989,

under Section 302, I.P.C. of P.S. Ganj, | District Rampur, Hon'ble N.L.

Ganguly, J. has referred the following question to a larger Bench:--

"Whether an accused is entitled to be released on bail on the ground of parity by moving a second or third bail application in

a circumstance that at a later date a co-accused of the same criminal case with a similar role was granted bail by another Hon'ble Judge before whom without disclosing the fact that the bail application of another co-accused with similar role has already been rejected by another Bench, bail was granted."

28 It would appear that a First. Information Report was lodged against four persons, namely, Iqbal, Dildar Khan, Khursheed and Nanha on 9-10-1989 at P.S. Ganj, District Rampur. Khursheed and Dildar moved bail

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application No. 1865 of 1991 in this Court. This application was rejected by the Hon'ble V.N. Mehrotra J. The second bail application was moved by Khursheed and Dildar but was again rejected. Khursheed again applied

for bail a third time and was granted bail on the ground of age. Third bail application was filed by Dildar vide Criminal Misc. Bail Application No. 722 of 1992 and Hon'ble V. N. Mehrotra, J. granted him bail on 31-3-1992 with

the following order :-

"This is third bail application by the applicant; his earlier two applications have been rejected by me on merits. Heard-counsel for the applicant and learned A.G.A. as well as

perused affidavit and supplementary affidavit filed along with documents. After consideration of all the materials placed before me I am of the view that the bail may be granted to the applicant.

Let applicant Dildar, involved in case Crime No. 355 of 1989 under Section 302, I.P.C., P.S. Ganj, Rampur be released on bail on his executing a personal bond and furnishing two sureties, each in the like amount, to the satisfaction of C.J.M. Rampur."

29. Co-accused Iqbal Khan also applied for bail and was granted bail by Hon'ble B.P. Singh J. by his order dated 23-4-1992 in Criminal Misc.

Bail Application No. 13613 of 1992.

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

"Heard. Co-accused Dildar Khan was granted bail on 31st March 1992. The case of the applicant appears to be similar.

Let the applicant Iqbal Hussain Khan involved in crime No. 355 of 1989 under Section 302, I.P.C., P.S. Ganj, Rampur be released on bail provided he furnishes a personal bond and sureties to the satisfaction of C.J.M., Rampur."

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

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Bail Application No. 11017 of 1991, was again rejected by the same Hon'ble Judge on 9-12-1991.

32. After grant of bail to co-accused Dildar Khan and Iqbal Hussain

Khan by the two Hon'ble Judges Nahna again filed a third bail application and it was urged that on the ground of parity Nanha should also be granted bail.

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

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

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

is entitled to bail.

36. The argument of the learned State Counsel is that it is open to different Judges to reject or grant bail to accused even if their cases stand on same footing. I am unable to persuade myself to accept this

submission of the learned State Counsel. The High Court is one Court and each Judge is not a separate High Court. It will be unfortunate if the High Court delivers inconsistent verdicts on identical facts. If the argument of

the learned State Counsel is carried further it would mean that even the

same Judge while deciding bail application moved by several accused, whose cases stand on the same footing, is free to reject or grant bail to any one or more of them at his whim. Such a course would be wholly

arbitrary.

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

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remarked that a man's passion for equality is greater than his desire for liberty.

38. The preamble of the Constitution states that the people of India

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

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

"We have no doubt that the Constitution does not envisage or

permit unfairness or unreasonableness in State actions in any sphere of its activity. Contrary to the professed ideals in the preamble." (The emphasis is mine).

40 Since judicial activity is one kind of State activity it must be held, as laid down in Shri Lakha Vidharthi's case, that courts cannot discriminate.

In para 25 of the decisions the Hon'ble Supreme Court quoted with approval Wade's Administrative Law which states:--

"The whole conception of unfettered discretion is inappropriate

to a public authority which possesses power solely in order that it may use them for the public good."

41. The Supreme Court went on to say that this principle applies not

only to executive functions but also to judicial functions.

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

43. In a democracy the judiciary, like any other State organ, is under

scrutiny of the public and rightly so because the people are the ultimate masters of the country and all State organs are meant to serve the people. Hence the people will feel disappointed and dismayed if courts give contrary decisions of the same facts.

44. In this connection a reference may be made to the decision of the Supreme Court in *Beer Bajranj Kumar v. State of Bihar*, AIR 1987 SC 1345 in which the Supreme Court had set aside the order of the Patna High Court, dismissing the writ petition when on identical facts another writ

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petition had earlier been admitted. The same view was expressed in another case of *Sushil Chandra Pandey v. New Victoria Mills*, 1982 UPLBEC 211. These decisions lend support to the view I am taking. In

Been Bajranj Kumar's case (supra) the Supreme Court observed :

"This, therefore, creates a very anomalous position and there is a clear possibility of two contrary judgments being rendered in

the same case by the High Court."

45. In a very recent case of *Har Dayal Singh v. State of Punjab*, reported in 1992 (4) JT(SC) 353: (AIR 1992 SC 1871) the Hon'ble

Supreme Court has held that when the High Court had acquitted four accused giving reasons to discard testimony of certain witnesses the parity of reasoning should have been extended to the fifth accused also. The Supreme Court, therefore, allowed the appeal and acquitted the fifth accused as well.

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

observed at page 173 :--

"There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however, high placed they may be. It is

all the more improper and undesirable to expose the precious rights like rights like the right of life, liberty and property to the

vageries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy the high seats of power."

47. In his referring order the learned single Judge has referred to two

conflicting views one is of Hon'ble K. K. Chaubey, J., in the case of Said Khan v. State of U.P., 1989 Allahabad Criminal Cases 98 and the other is Sobha Ram v. State of U.P., 1992 Allahabad Criminal Cases 59.

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

49. In the light of the discussion made in the preceding paragraphs, the view expressed by K.K. Chaubey, J. does not hold ground. Judicial

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consistency is a sound principle and it cannot be thrown to the winds by the individual view of judges. After all it is settled law that judicial discretion cannot be arbitrarily exercised. Moreover high aspirations of the public



from the courts will sink to depths or despair if contrary decisions are given on identical facts. All judicial and quasi-judicial authorities have not only to serve the public but also to create confidence in the minds of the

public. Hence for the sake of uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same footing. If the contrary course is

adopted the public will lose confidence in the administration of justice. 50. In his judgment K.K. Chaubey, J. has placed reliance on the case of Ashok Kumar v. State of Punjab, AIR 1977 SC 109 : (W77 Cri LJ 164) in

Ashok Kumar's case, Ashok Kumar along with Dharmpal and Kewal

Krishna were prosecuted for murder and all of them were assigned the role of causing knife injuries. The Sessions Judge convicted and sentenced Ashok Kumar under Section 302/34, I.P.C. to Imprisonment for

Life while the other two were convicted and sentenced under Section 326/34, I. P. C. to ten years' R. I. On appeal the High Court dismissed the appeal of Ashok Kumar, Kewal Krishna's sentence under Section 326/34,

I.P.C. was reduced from ten years' to two years' R.I. and Dharmpal was

acquitted. The Supreme Court was of the view that all the three accused had shared common intention to commit murder punishable under Section 302/34, I.P.C. The Supreme Court disagreed with the view taken by the

Sessions Judge and the High Court but to uphold the principle of consistency the Supreme Court convicted Ashok Kumar under Section 326/34, I.P.C. instead of Section 302/34, I.P.C. The Supreme Court observed:--

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

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51. Thus the Supreme Court upheld the principle of consistency K.K. Chaubey, J. has relied on the observation of the Supreme Court to the effect that Kewal Krishna had been let of on a ridiculously light sentence of

two years' Rigorous Imprisonment and the Supreme Court observed that it would pass proper sentence in case of Ashok Kumar. This observation, according to K.K. Chaubey, J. runs contrary to the principle of consistency.

It is noteworthy that the Supreme Court released Ashok Kumar on the period of sentence already undergone by him which was six years and ten months. It is to be noted that the Supreme Court did not specify the period

of sentence other than what had been awarded to Kewal Krishna. In a subsequent case of Kallu v. State, 1989 A.W.C. 65, the Supreme Court has specifically upheld the principle of consistency even in the matter of

sentence. In Kallu's case (supra) two separate special leave petitions were filed by different accused against the same judgment of the High Court. One of the petition was dismissed by one Bench but the other special leave petition which was heard by another Bench, was partly allowed and

the sentence was reduced from seven years' R.I. to three years' R.I. The Supreme Court reviewed its earlier order of dismissal of the first special leave petition and reduced the sentence from 7 years' R.I. to three years'

R.I. Thus accused whose cases stand on the same footing are entitled to

equal treatment. In *Ajai Hasia v. Khalid Muzib Sehravardi*, 1981 (2) SCR 79 : (AIR 1981 SC 487) the Supreme Court held that equality is directly opposed to arbitrariness. In a more recent case of *Miss. Mohini Jain*,

reported in 1992 (4) JT(SC) 292: (AIR 1992 SC 1858) the Supreme Court after considering large number of cases quoted with approval the following passage from the case of *Ajai Hasia* at page 1866:--

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

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

envisaged under Article 14 but themselves pass orders creating inequality.

53. There are large number of cases of this Court in which the question of parity in the matters of bail has been considered earlier and the weight

of judicial authority is in favour of the principle of parity being followed. In the case of Hadi v. State, 1986 Allahabad Criminal Cases 390 Hon'ble Parmeshwari Dayal, J. bailed out the accused on the ground that co-

accused had been bailed out earlier. In another case of Sanwal Das Gupta v. State of U.P., 1986 Allahabad Criminal Cases 79, D.N. Jha, J. observed that where bail was granted to a co-accused then even the Magistrate can

admit co-accused to maintain parity. In the case of Ram Roop v. State of

U.P. 1987 Criminal Rulings 30, this Court observed that a co-accused having similar role having been granted bail another co-accused should also be granted bail. In the case of Ali Hussain v. State of U.P., 1990 U.P.

Criminal Rulings 93, Hon'ble S.K. Dhaon, J. placed reliance on the Supreme Court's case of Kallu (supra) and granted bail on the ground of parity. In a unreported decision of this Court in Criminal Misc. Bail

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Mathur, J. granted bail on the ground of parity though the Hon'ble Judge clearly observed that he was still of the opinion that the applicant was not entitled to bail on merits, but, however, as his case was not distinguishable

from the case of co-accused the bail was granted on the ground of parity. In his judgment in Sobha Ram's case (supra) Hon'ble V.N. Mehrotra, J.

has considered some more unreported decisions of this Court in which bail has been granted on the ground of parity. I respectfully agree with the view of Hon'ble V.N. Mehrotra, J.

54. The learned counsel for the applicant has also placed reliance on the case of Mohan Singh v. Union Territory, AIR 1978 SC 1095: (1978 Cri LJ 844) wherein the Supreme Court observed that the refusal of bail is not an indirect process of punishing the accused before he is convicted. This case does not throw any light on the question of parity. The second case cited by the learned counsel for

the applicant also referred in Said Khan's .

case (supra) is Babu Singh v. State of U.P., reported in AIR 1978 SC 527 :

(1978 Cri LJ 651). This case also is not on the point because the Supreme Court only held that order refusing an application for bail does not unnecessarily preclude, another, on a later occasion giving more material further developments and different considerations. The case may help the applicant only to the extent that further development in the case at hand is that co-accused has been granted bail.

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

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

56 A Full Bench decision of this Court in the case of Sunder Lai v.

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

footing. The relevant portion of para 14 of the judgment of the Full Bench states:--

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

57. The word 'alone' is of significance.

58. The word 'parity' means the state or condition being equal or on a level; equality; equality of rank or status (See Shorter Oxford English Dictionary 1936 Ed.). In other words it means being

placed at the same footing. All the accused of a case always do not stand on the same footing. While considering bail of different accused the court has to find out whether they stand on the same footing or not. Even if role assigned to various accused is same yet they may stand on different footing. The case of Cap. Jagjeet Singh (supra) is an illustration wherein the Supreme Court distinguished the case of Capt. Jagjeet Singh on the ground that he was in touch with foreign agency and leaking out secrets. The Supreme Court in the case of Gur Charan Singh v. Delhi Administration, AIR 1978 SC 179 :

(1978 Cri LJ 129) laid down that the considerations for grant of bail are inter alia the position and status of the accused with reference to the victim and the witnesses; likelihood of the accused; fleeing from justice; of repeating offence; of jeopardising his own life, being faced with grim prospect of possible conviction in the case; of tampering with witnesses; and the like. These are additional factors which are to be judged in the case of individual accused and it may make the cases of different accused distinguishable from each accused. At the same time if there is no real distinction between the individual case of accused the principle of parity comes into play and if bail is granted to one accused it should also be granted to the other accused whose case stands on identical footing.

59. None the less the principle of grant of bail on parity cannot be .

allowed to be carried to an absurd or illogical conclusion so as to put a judge in a tight and straight jacket to grant bail automatically. There may be case which may require an exception; where a judge may not simply take a different view from the judge who granted bail earlier to a co- accused but where the conscience of the judge revolts in granting bail. In such a situation the judge may choose to depart from the rule recording his reasons. However, such cases would be very few.

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

7. In the result the present petition is allowed. The petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing personal bond in the sum of `50,000/- with two sureties in the like amount, to the satisfaction of the learned Special Judge/Sessions Judge or learned Additional Sessions Judge, Hamirpur, H.P.

8. This Court is granting the bail subject to the conditions mentioned herein. The petitioner undertakes to comply with all .

directions given in this order and the furnishing of bail bonds by the petitioner is acceptance of all such conditions:

- a) The petitioner shall neither influence nor try to control the investigating officer, in any manner whatsoever.
- b) The petitioner shall not hamper the investigation.
- c) The petitioner undertakes not to threaten or browbeat the complainant or to use any pressure tactics.
- d) The petitioner undertakes not to make any inducement threat or promise, directly or indirectly, to the investigating officer or any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- e) It is made clear that in case the petitioner is again found to have committed any offence under the NDPS Act, involving any quantity, be it even small quantity or any other serious offence where the sentence may extend to 10 years or more, then the present bail application shall automatically get cancelled. In that eventuality, State shall file an application for cancellation of bail, under Section 439 Cr.P.C., in this Court to get a formal order.

A Co-ordinate Bench of this Court in Cr.MP(M) No. 1349 of 2016, titled as Amrish Kamal & another .

vs. State of Himachal Pradesh, decided on 30th November, 2016, had also granted bail for an offence under Section 307 IPC by imposing very stringent conditions.

f) The petitioner undertakes to attend the trial.

9. The learned Additional Advocate General shall send a certified copy of this order to the Superintendent of Police, Hamirpur, to enable him to follow the application for cancellation of bail of the petitioner in case of re-arrest as directed in conditions of bail.

10. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the petitioner.

11. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

Petition stands allowed in the aforesaid terms. Copy dasti.

(Anoop Chitkara), Judge.

September 9 , 2019 (PK)