

RAMESH BHAVAN RATHOD

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v.

VISHANBHAI HIRABHAI MAKWANA MAKWANA (KOLI) & ANR.

(Criminal Appeal No 422 of 2021)

APRIL 20, 2021

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**[DR. DHANANJAY CHANDRACHUD AND  
M. R. SHAH, JJ.]**

*Code of Criminal Procedure, 1973:*

*s. 439 – Special powers of High Court or Court of Session regarding bail – On facts, six persons implicated in five homicidal deaths – Grant of bail by High Court – Correctness of – Held: Nature of the offence, its gravity is a circumstance which has an important bearing on the grant of bail – On facts, while granting bail to the six accused, the High Court committed serious mistake by failing to recognize material aspects of the case, rendering the orders of the High Court vulnerable to assault on the ground of perversity – High Court failed to look into the seriousness and gravity of the offences – FIR lodged adverts to the murder of five persons on the side of the informant in the course of the incident as a result of which offences punishable under Penal Code, Arms Act and Gujarat Police Act, were alleged – FIR specifically refers to the presence of the accused persons and that they had all come to the scene of offence with weapons – Plain reading of the cross FIR indicates both the presence of the accused and the execution of their plan to assault the side of the informant with the weapons in their possession – High Court overlooked the cross FIR and the implications of its content – Thus, the order granting bail to accused persons having failed to pass muster under the law, set aside.*

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*s. 439 – Bail – Grant of – Application of principle of parity – Held: In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance – Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient, but individual role attributed to each accused must be considered.*

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*s. 439 – Grant of bail under – Recording of reasons – Held: Grant of bail u/s. 439 is a matter involving the exercise of judicial*

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A *discretion – Judicial discretion in granting or refusing bail is not unstructured – Duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner – Recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice.*

B *s. 439 – Bail – Grant of, by High Court – Order passed by the Judge observing that the order granting bail to the concerned accused not be treated as a precedent to claim bail on the basis of parity in any other case – Correctness of – Held: Said observation is inappropriate and erroneous – Whether parity can be claimed by any other accused on the basis of the order granting bail to concerned accused ought not to have been pre-judged by the Single Judge who was dealing only with the application for the grant of bail to the accused concerned – Whether an order granting bail is a precedent on grounds of parity is a matter for future adjudication if and when bail application is moved on the grounds of parity on behalf of the accused.*

C *s. 439 – Bail – Grant of, by High Court – Observations of the High Court in succession of orders that the counsel for the parties “do not press for a further reasoned order” – Correctness of – Held: Observations of the High Court is disapproved – Consent of parties cannot obviate the duty of the High Court to apply a judicial mind and indicate its reasons why it has either granted or refused bail – Outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other.*

D **Allowing the appeals, the Court**

E **HELD: 1.1 The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing on**

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whether bail should be granted. The orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences and to the severity of the punishment in the event of conviction. [Paras 20, 22][36-F-H; 37-A; 38-G-H; 39-A] A

*Ram Govind Upadhyay v. Sudharshan Singh* (2002) 3 SCC 598; [2002] 2 SCR 526; *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496 : [2010] 12 SCR 1165 – referred to B

1.2 The High Court by its two orders granted bail to A-10 and A-15. Parity was sought with A-13 to whom bail was granted on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to A-16 on the ground that he was armed with a wooden stick and on the ground that A-10, A-15 and A-13 who were armed with sticks had been granted bail. The High Court evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court proceeded on the basis of parity on a simplistic assessment, which cannot pass muster under the law. [Para 23][39-D-H] C D E

*Neeru Yadav v. State of U.P.* (2014) 16 SCC 508: [2014] 12 SCR 453 – referred to F

1.3 It is evident that essentially the only order which contains a semblance of reasoning is the order dated 22 October 2020 granting bail to A-13. As a matter of fact, the submissions which have been made on behalf of the accused substantially dwell on the same line of logic in justifying the grant of bail on the ground that in the subsequent statement dated 3 June 2020 of the informant, the genesis and details of the incident which took place on 9 May 2020 as elaborated in the FIR have undergone a substantial change. [Para 26][40-G-H] G

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A       **1.4 In granting bail to the six accused, the High Court committed a serious mistake by failing to recognize material aspects of the case, rendering the orders of the High Court vulnerable to assail on the ground of perversity. The first circumstance which should have weighed with the High Court but which has been glossed over is the seriousness and gravity of the offences. The FIR which has been lodged on 9 May 2020 adverts to the murder of five persons on the side of the informant in the course of the incident as a result of which offences punishable under Sections 302, 143, 144, 147, 148, 149, 341, 384, 120B, 506(2) r/w Section 34 of the Penal Code were alleged. This is apart from the invocation of the provisions of Sections 25(1-b) A, 27 and 29 of the Arms Act and Section 135 of the Gujarat Police Act. The FIR specifically refers to the presence of the accused A-6, A-13, A-16, A-15, A-10 and A-17. It states that the accused had all come to the scene of offence with pistols, dhariyas and knives. A-6 and two others had fired from their rifles. Some of these accused-A-6, A-13, A-16, A- 15, A-10 and A-17 are alleged to have assaulted with dhariyas and lathis over the head and body of victims. All of them were rushed to the Government Hospital where they were pronounced dead. [Para 27][41-A-C; D-F]**

E       **1.5 Four days after the FIR was lodged by the informant on 9 May 2020, a cross FIR was lodged by A-6. This FIR contains a narration of the pre-existing dispute over land and to an incident which had taken place on 7 May 2020. A reading of the cross FIR indicates that an intent on the part of the accused to launch an assault on the deceased; the manner in which their pre-meditated design was sought to be achieved by assaulting the deceased persons. With the contents of the cross FIR as they stand, it was impossible for any judicial mind, while adjudicating upon the applications for the grant of bail, to gloss over the presence of the accused at the scene of occurrence, the accused being armed with weapons and their intent to assault them; and the actual incident, resulting in five homicidal deaths. [Paras 28-30][41-F-G; 42-C-D; E-G]**

H       **1.6 The Post Mortem reports which have been produced on the record indicate the extensive nature of the bodily injuries which were sustained by each of the five deceased persons. It is true that in the FIR it was alleged that the deceased were fired upon as a result of which they fell to the ground whereas, in the**

subsequent statement, it has been stated that the injuries were sustained as a result of dhariyas and sticks. Whether the deaths occurred as a result of bullet wounds or otherwise can make no difference on whether a case for the grant of bail was made out once a plain reading of the cross FIR indicates both the presence of the accused and the execution of their plan to assault the side of the informant with the weapons which were in the possession of the accused. The High Court in its first order was persuaded to grant bail on the specious ground that the details of the incident as they appeared in the subsequent statement of the informant are at variance with the FIR. These are matters of trial. The High Court has, however, clearly overlooked the cross FIR and the implications of the content of the FIR on the basic issue as to whether bail should be granted. It is also important to note that the presence of women on the side of the accused is a fact which is noted in the cross FIR itself. [Para 31][42-G-H; 43-A-D]

1.7 There has been a manifest failure of the High Court to advert to material circumstances, especially the narration of the incident as it appears in the cross FIR. Above all, the High Court has completely ignored the gravity and seriousness of the offence which resulted in five homicidal deaths. This is clearly a case where the orders passed by the High Court suffered from a clear perversity. [Para 32][43-E-F]

1.8 In the order of the High Court granting bail to A-13, there was a reference to the submission of the Public Prosecutor to the criminal antecedents of A-13 bearing on previous FIRs registered against him in 2017 and 2019. This aspect bearing on the criminal antecedents of A-13 was not considered in the reasons which have been adduced by the Single Judge. That apart, the ground on which A-13 was granted bail is that in the subsequent statement dated 3 June 2020, the overt act which was attributed in the FIR was found to be missing. Having said this, the Judge observed that the order shall not be treated as a precedent to claim bail on the basis of parity in any other case. The said observation of the Single Judge is disapproved. Whether parity can be claimed by any other accused on the basis of the order granting bail to A-13 ought not to have been pre-judged by the Single Judge who was dealing only with the application for the grant of bail to A-13. The observation that the grant of bail to

- A A-13 shall not be considered as a precedent for any other person who is accused in the FIR on grounds of parity does not constitute judicially appropriate reasoning. Whether an order granting a bail is a precedent on grounds of parity is a matter for future adjudication if and when an application for bail is moved on the grounds of parity on behalf of another accused. In the event that
- B parity is claimed in such a case thereafter, it is for that court before whom parity is claimed to determine whether a case for the grant of bail on reasons of parity is made out. In other words, the observations of the Single Judge are inappropriate and erroneous. Bail was thereafter granted to A-10 and A-15 on the ground of
- C parity as claimed with the order granting bail to A-13. The Single Judge observed that the Additional Public Prosecutor had not made any point of distinction. Subsequently, parity was the basis on which bail was sought in the case of A-16. While granting bail the Single Judge observed that parties did not press for further reasoned orders. A similar observation is contained in the order
- D of the Single Judge granting bail to A-17. The order of the High Court granting bail to A-6 again contains the same statement. The observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties “do not press for a further reasoned order”, is disapproved.
- E [Paras 33-34][43-F-G, H; 4-A-D, E-H; 45-A]

*Ash Mohammad v. Shiv Raj Singh* (2012) 9 SCC 446:  
[2012] 7 SCR 584 – referred to

- 1.9 The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 of the CrPC would not launch upon a detailed evaluation of the facts on merits since a criminal
- F trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its
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reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. Thus, the manner in which a succession of orders in the present batch of cases has recorded that counsel for the “respective parties do not press for further reasoned order” are disapproved. If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny. [Para 35] [45-A-F]

1.10 Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail as in the case of any other discretion which is vested in a court as a judicial institution is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. [Para 36] [45-F-G]

*Chaman Lal v. State of U.P.* (2004) 7 SCC 525: [ 2004]  
3 Suppl. SCR 584 – referred to

1.11 As regards the application for bail of A-6, the High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration the facts of the case; the nature of allegations; gravity of offences; and the role attributed to the accused. As a matter of fact there was no discussion or analysis of circumstances at all. This lone sentence in the order of the Single Judge leaves a Court before which the order granting bail is challenged, completely without guidance on the considerations which weighed with the High Court in granting bail. In deciding whether or not to grant bail the High Court is not at a stage where it adjudicates upon guilt. This is to be analyzed

- A during the course of criminal trial where evidence has been recorded. But surely, the order of the High Court must indicate some reasons why the Court has either granted or denied bail. The Sessions Judges in the instant case have indicated their reasons for the ultimate conclusion. This unfortunately was not observed in the order of the High Court. There is no question
- B now of ordering a remand to the High Court in the case of A-6 since the question of bail has been argued fully before this Court. Moreover, the case of A-6 has been considered together with the entire batch of cases in which bail has been granted initially in the case of A-13, which has been followed on the grounds of parity in
- C the case of the other accused. [Paras 37-38][46-C-H; 47-G-H; 48-A-B]

*Sonu v. Sonu Yadav* Crl Appeal No. 377 of 2021, decided on 5.4. 2021 – relied on.

- D 1.12 The orders granting bail to the respondent-accused A-6, A-10, A-13, A-15, A-16 and A-17 suffer from a clear perversity. The orders of the High Court are set aside. All the said accused are directed to surrender forthwith. [Paras 41- 42][51-C-D, F-G]

- E *Sanjay Chandra v. Central Bureau of Investigation* 2012 (1) SCC 40; *Mahipal v. Rajesh Kumar Alias Polia* (2020) 2 SCC 118; *Prabhakar Tewari v. State of U.P.* [2020] 11 SCC 648; *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598; [2002] 2 SCR 526; *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496; [2010] 12 SCR 1165; *The State of Kerala v. Mahesh Criminal Appeal*
- F No 343 of 2021 decided on 19.03.2021 – referred to

#### Case Law Reference

- |   |                         |             |            |
|---|-------------------------|-------------|------------|
|   | [2011] 13 SCR 309       | referred to | Para 9, 18 |
|   | [2002] 2 SCR 526        | referred to | Para 20    |
| G | [2010] 12 SCR 1165      | referred to | Para 21    |
|   | [2014] 12 SCR 453       | referred to | Para 22    |
|   | [2012] 7 SCR 584        | referred to | Para 33    |
|   | [2004] 3 Suppl. SCR 584 | referred to | Para 36    |

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[2012] 1 SCC 40	referred to	Para 39	A
(2020) 2 SCC 118	referred to	Para 39	
(2020) 11 SCC 648	referred to	Para 39	
[2002] 2 SCR 526	referred to	Para 40	
[2010] 12 SCR 1165	referred to	Para 40	B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 422 of 2021

From the Judgment and Order dated 21.12.2020 of the High Court  
of Gujarat at Ahmedabad in R/Criminal Misc. Application No. 19382 of  
2020.

With

Criminal Appeal Nos. 423, 426, 424-425 And 427 of 2021

J.S. Attri, Sr., Adv., Nikhil Goel, Ms. Naveen Goel, Dushyant Sarna,  
Vinay Mathew, Aniruddha P Mayee, Haresh Raichura, Ms. Saroj  
Raichura, Kalp Raichura, Ram Bhadauria, Purvish Jitendra Malkan, Ms.  
Dharita Purvish Malkan, Jitendra M. Malkan, Ms. Deepa Gorasia, Alok  
Kumar, Ms. Neha Ambashtha, Ms. Nandini Chhabra, Ms. Bhavna Sarkar,  
Advs. for the Respondents.

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

1. This batch of five appeals arises from orders of the High Court  
of Gujarat granting bail, under Section 439 of the Code of Criminal  
Procedure 1973<sup>1</sup>, to six persons who have been implicated in five homicidal  
deaths.

2. A First Information Report (“**FIR**”) being CR No  
11993005200314 was registered on 9 May 2020 at Police Station Aadesar,  
District East Kachchh - Gandhidham for offences under Sections 302,  
143, 144, 147, 148, 149, 341, 384, 120B, 506(2) and 34 of the Indian  
Penal Code, Sections 25(1-b) A, 27 and 29 of the Arms Act and Section  
135 of the Gujarat Police Act. The appellant - Ramesh Bhavan Rathod -  
is the informant on whose statement, the FIR was registered at 1930  
hours in respect of an incident which took place at 1300 hours. The  
incident took place in village Hamirpur which is at a distance of 20 kms  
from the police station. The incident which led to the commission of five

<sup>1</sup> “CrPC”

A murders had its genesis in a land dispute. The informant alleged that he and his brother Pethabhai had gone to their farm at 6:00 am. At 1 pm, the informant, Pethabhai and his brother-in-law Akhabhai were returning home in a Scorpio vehicle with five other persons. When the vehicle reached the untarred road passing through the farm of Lakha Hira Koli and Kanji Bijal Koli, these two persons came out along with Lakha Hira Koli. Lakha Koli dashed his tractor on the front portion of the Scorpio vehicle. Kanji Koli parked his tractor on the rear side of the Scorpio, behind which another Sumo vehicle came to be stationed. The Scorpio and its occupants were waylaid. As the informant and others attempted to run away from the scene, he saw the homicidal incident which he describes in the following terms:

“..At that time I saw that Dhama Ghela Koli, Devendrsinh alias Lalubha Ghelubha Vaghela, Vishan Hira Koli, Bharat Mamu Koli, Dilip Mamu Koli, Ramshi Hira Koli, Pravin Hira Koli, Bhaghubha Hasubha Vaghela, Mohansang Umedasng Vaghela and Vanraj Karsan Koli and Dinesh Karsan Koli all come with weapons Pistol, Dhariya, Knife from the thorny fence nearby, in which Dhama Gela Koli and Devendrasinh alias Lalubha Gelubha Vaghela and Visan Hira Koli and Bharat Mamu Koli had fired rounds from Rifles in their hand targeting Akhabhai and others at that time. Akhabhai Jeshangbhai Umat my Brother Pethabhai Bhavanbhai Rathod and Amara Jeshang Umat and Lalji Akhabhai Umat and Vela Panchabhai Umat injured due to firing and laying on land and that time Lakha Hira Koli’s Wife, Kanji Bijal Koli’s Wife Lakhman Bijal Koli’s Wife and Dhama Ghela Koli’s Wife and Vishan Hira Koli’s Wife also come there, their name is I do not know, and Visan Hira Kofi talk with Akhabhai that why you are cultivating my father and grand father’s land that is our land we also said before that this land you do not cultivate so today your life is over. This was said by Visan Hira Koli and thereafter Dilip Mamu Koli, Ramshi Hira Kofi, Bhaghubha Hasubha Vaghela Mohansang Umedsang Vaghela and Prabhu Ghela Koli, with Dhariya in their hands and in the hands Pravin Hira Koli, Siddhraisinh Bhaghubha Vaghela, Kheta Parbat Koli, Vanraj Karsan Koli, and Dinesh Karsan Kofi with Lathi (Wooden Stick) and all together assaulted blindly with Dhariya & Lathi over the head and body of Akhabhai Jeshangbhai Umat and my brother Pethabhai Bhavanbhai Rathod and Amara Jeshang Umat and Lalji Akhabhai Umat and Vela Panchabhai Umat and

those people when assaulted that time all five are shouting “save save” but those people are in large gathering so I cannot go near so I cannot save those five those because they will kill me so I ran away from and I go to my Village...” A

3. The incident resulted in the death of five persons. Among the twenty-two accused are Vishan Heera Koli (A-6), Pravin Heera Koli (A-10), Sidhdhrajsinh Bhagubha Vaghela (A-13), Kheta Parbat Koli (A-15), Vanraj Karshan Koli (A-16) and Dinesh Karshan Akhiyani (Koli) (A-17). The post-mortem was conducted on 10 May 2020. A panchnama is alleged to have been conducted at the scene of offence on the next day, i.e. on 10 May 2020, resulting in the recovery of, *inter alia*, two country made guns, two indigenous counterfeit guns, four dhariyas and one wooden stick. B C

4. On 13 May 2020, a cross FIR was registered at the behest of Vishan Heera Makwana (Koli) being FIR No 11993005200315 at Police Station Aadesar. The informant in the cross FIR claims to be an original resident of village Hamirpar and is presently residing at Village Anjar. The FIR states that after the lockdown had been declared on 25 March 2020, the informant had left Anjar to go to village Hamirpar. About fifteen years ago certain agricultural land had been sold to another person, who subsequently gave it for cultivation to Akhabhai. Akhabhai was refusing to give the fields for cultivation to the informant as a result of which a quarrel had taken place on 7 May 2020. The informant’s motor cycle had been taken away by the police. The issue had been settled at the intervention of persons belonging to the community and no complaint was filed. According to the cross FIR on 9 May 2020, the informant Vishan sent his nephew to the Police Station together with Akhabhai to retrieve the motor cycle. The cross FIR narrates Vishan’s version of the incident which took place on 9 May 2020 in the following terms: D E F

“..We have decide to kill Akhabhai hence I myself along with my Brother Lakhbhai Hira Koli, Dinesh Karshan Koli, and Lalubha Ghelubha Vaghela sat in Ritz Car and proceeded towards Bhimasar at the time I was driving the said Car and I tried to dash the said Car with Akhabhai and tried to kill him. But Akhabhai ran away nearby and we came to our field (Wadi) There after around 12’0 Clock noon Akhabhai ring me on my mobile phone and said that why you have tried to dashed by car of Lalubha. I have given false reply that I am sitting on my field (Wadi) I am not involved. G H

A Akhabhai told me we are coming to you field (Wadi) for quarrel  
 be ready for quarrel at that time I myself along with my brother  
 Lakha Hira Koli, Ramsi Koli, Pravin, Dhama Gela Koli,  
 Devendrasinh, Iliyas Lalubha Vaghela, Bharat Mamu Koli, Dilip  
 Mamu Koli, Bhagubha Hansubha Vaghela, and his son Monsang  
 Umedsang Vaghela, Prabhu Gela Koli, Kheta Parbar Koli, Vanraj  
 B Karshan Koli, Dinesh Darshan Koli were present their I have told  
 this fact to them that Jeseng Umat along with his men are coming  
 at our wadi for quarreling with us so we all armed with weapons  
 we came near by our field's boundary and we all are become  
 ready for quarrel and sat nearby Lakhman Bijal's field and that  
 C time white color jeep came that at about place near about wadi  
 Ramesh Bhavan Rathod come down for jeep along with dhariya  
 in his hand, Akhabhai came down with his gun, Akhabhai abused  
 me "I have pride to save" at that time Ramesh Bhavan Rathod  
 given blow with dhariya I have tried to save myself and I have  
 D lifted up my left hand so dhariya blow caused injury in my left  
 hand I have fallen down on earth and blood coming out for my left  
 hand at the time Akhabhai given blow of gun on my brother namely  
 Ramsi on his hand- at that time Akha son Lalji - Amra Jeseng  
 Umat - Vela Pancha Umat - Petha Bhavan Rathod - Akhabhai's  
 younger son Dharmendra - Papu Gabha Umat, came down from  
 E jeep and tried to attack on me at that time my brother Pravin  
 Dhama Gela Koli, Devendrasinh, Iliyas Lalubha Vaghela, Bharat  
 Mamu Koli, Dilip Mamu Koli, Bhagubha Hansubha Vaghela, and  
 his son Mohansang Umedsang Vaghela, Prabhu Gela Koli, Kheta  
 Parbat Koli, Vanraj Karsan Koli, Dinesh Karsan Koli, came along  
 F with the arms at that time Akho and his person's tried to ran away  
 with the Scorpio jeep. My brother namely Lakhabhai dashed that  
 jeep by tractor at that time my another cousin brother Kanji Bijal  
 came with the another tractor and Lakhman Bijal came with the  
 sumo jeep and dashed with the jeep of Akhabhai. At that time our  
 ladies came down during quarrel Ramesh Bhavan Rathod- Papu  
 Gabha Umat - Akhabhai Son Dharmendra ran away at that time  
 G the our persons who came there assaulted with the dhariya and  
 lakdi's on Akhabhai- Velabhai-Pethabhai-Amrabhai And Lalji and  
 this quarrel i have been injured..."

5. Vishan was arrested on 18 May 2020. A further statement of  
 the informant in the original FIR dated 9 May 2020 was recorded on 3  
 H June 2020. After investigation, the charge-sheet was submitted by the

investigating officer against Vishan and twenty-two co-accused. On 31 August 2020, an application for interim bail moved by Vishan on medical grounds was rejected by the Sessions Judge, Bhachau, Kachchh taking note of the fact that the accused had produced fake documents for the purpose of obtaining bail. An application seeking regular bail under Section 439 of the CrPC was rejected by the Additional Sessions Judge, Bhachau on 4 December 2020. A B

6. Among the twenty-two accused, who are named in the charge-sheet, these proceedings arise out of the applications for bail which were moved before the High Court on behalf of the six persons namely:

Vishan Heera Koli	-	Accused no.6	C
Pravin Heera Koli	-	Accused no.10	
Sidhdhrajsinh Bhagubha Vaghela	-	Accused no.13	D
Kheta Parbat Koli	-	Accused no.15	
Vanraj Karshan Koli	-	Accused no.16	
Dinesh Karshan Akhiyani (Koli)	-	Accused no.17	

7. The orders passed by the High Court granting bail to the above persons are tabulated below:

At this stage, it is necessary to note that A-10 and A-15 were both granted bail on 21 December 2020 on the basis of parity claimed on the basis of the order dated 22 October 2020 granting bail to A-13. The orders dated 19 January 2021 granting bail to A-16 and to A-17 on 20 January 2021 are also based on parity. E

8. Chronologically, the first order of the High Court granting bail was to Sidhdhrajsinh Bhagubha Vaghela (A-13) on 22 October 2020. The High Court observed thus: F

Sl No.	Name of the accused	Accused No.	Date of order	G
1	Vishan Heera Koli	6	21 December 2020	
2	Pravin Heera Koli	10	21 December 2020	
3	Sidhdhrajsinh Bhagubha Vaghela	13	22 October 2020	
4	Kheta Parbat Koli	15	21 December 2020	
5	Vanraj Karshan Koli	16	19 January 2021	
6	Dinesh Karshan Akhiyani (Koli)	17	20 January 2021	

“14. Having considered the rival submissions and having gone through the materials on record, it appears that though the name of the applicant and is shown in the FIR for the alleged offences punishable under Sections 302, 143, 144, 147, 148, 149, 341, 384, H

A 120B, 506 and 34 of the I.P.C., offence punishable under Section 25(1-b)A, 27 and 29 of the Arms Act and Section 135 of the Gujarat Police Act, for the incident which took place on 9th May 2020, on perusal of the charge-sheet papers, it appears that the complainant in the subsequent statement dated 3<sup>rd</sup> June 2020, which has been recorded after 25 days from the date of incident, the overt tact which was attributed in the FIR, is missing. Though the complainant has stated that the applicant was present, but no role is attributed in the subsequent statement, which was recorded on 3<sup>rd</sup> June, 2020, wherein the details with regard to chronology of events which took place at the place of the incident on 9th May 2020 is in effect substituted by the complainant in the additional statement dated 3<sup>rd</sup> June 2020 by narrating altogether different details. At this juncture, this Court is not going into the details of the incident as it may affect the trial at the later point of time. Suffice is to say prima facie appears that the applicant has been involved in alleged offences due to pending proceedings of the previous offences and enmity with the complainant side...”

9. In addition, the Single Judge observed that:

- (i) The accused was in jail since 19 May 2020;
- (ii) The charge-sheet had been filed after investigation; and
- (iii) The trial was likely to take time as 110 witnesses were to be examined.

Reliance was placed on the decision of this Court in **Sanjay Chandra v. Central Bureau of Investigation**<sup>2</sup>. The orders granting bail to A-10 and A-15 (21 December 2020); to A-16 (19 January 2021); and to A-17 (20 January 2021) are based on parity.

10. The main accused, Vishan (A-6) was granted bail on 21 December 2020. The reasons adduced by the Single Judge of the High Court are contained in paragraphs 7, 8 and 9 of the order which reads thus:

“7. Having heard the learned advocates for the parties and perusing the material placed on record and taking into consideration the facts of the case, nature of allegations, gravity of offences, role attributed to the accused, without discussing the evidence in detail,

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<sup>2</sup> 2012 (1) SCC 40

this Court is of the opinion that this is a fit case to exercise the discretion and enlarge the applicant on regular bail. A

8. Looking to the overall facts and circumstances of the present case, I am inclined to consider the case of the applicant.

9. This Court has also taken into consideration the law laid down by the Hon'ble Apex Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**, reported in [2012] 1 SCC 40." B

11. The allegations against all the accused in the present batch of appeals arise out of the same incident. All the appeals have hence been heard together.

12. Mr Vinay Navare, Senior Counsel and Ms Jaikriti S Jadeja, Counsel have appeared in support of the appeals, all of which had been filed by the informant. Mr Nikhil Goel, Counsel appeared on behalf of the respondent-accused. In pursuance of the notice issued on 5 February 2021, Mr Aniruddha P Mayee has entered appearance on behalf of the State of Gujarat. Insofar as the accused are concerned, the position before the Court as recorded in the order dated 5 April 2021 reads thus: C

"SLP (Crl) 790/2021	- sole accused represented by Mr Nikhil Goel	
SLP (Crl) 1245/2021	- sole accused – no appearance entered despite service	
SLP (Crl) 1246-47/2021	- two accused represented by Mr Purvish Malkan and Mr Nikhil Goel	E
SLP (Crl) 1248/2021	- sole accused – no appearance entered despite service	
SLP (Crl) 1249/2021	- sole accused represented by Mr J S Atri, instructed by Mr Haresh Raichura"	F

Since in two of the Special Leave Petitions namely Special Leave Petition (Crl) Nos. 1245 and 1248 of 2021, no appearance had been entered on behalf of the accused despite service of notice, this Court by its order dated 5 April 2021 requested Mr Nikhil Goel to represent them. We appreciate the able assistance which has been rendered by Mr Nikhil Goel as an officer of the Court who has acted as an *amicus curiae* for the two unrepresented accused as well. G

13. Mr Vinay Navare, learned Senior Counsel appearing on behalf of the appellant – informant submits that the primary basis on which the H

- A first order granting bail was passed by the High Court in the case of Sidhdhraisinh Bhagubha Vaghela (A-13) on 22 October 2020 is that while the FIR was registered on 9 May 2020, the statement of the informant was recorded on 3 June 2020, in which there have been substantial changes in the genesis of the incident including the nature of the weapons. While the allegation in the FIR is that Vishan (A-6) fired several rounds from a rifle together with other persons, the subsequent statement would indicate that the injuries had been caused not as a result of the use of firearms but by a sharp weapon. The following submissions have been urged:
- B
- (i) The cross FIR lodged by Vishan (A-6) on 13 May 2020 indicates that an incident had taken place on 9 May 2020;
- C
- (ii) During the course of the incident, five homicidal deaths resulted on the side of the informant (of the FIR dated 9 May 2020);
- (iii) The cross FIR lodged on 13 May 2020 contains a reference to:
- D
- a. The accused being armed with weapons;
- b. Pre-meditation on the part of the accused to waylay and assault the side of the informant; and
- c. The assault being committed by the accused as the deceased were attempting to flee after their vehicle had been cornered by two tractors belonging to the side of the accused.
- E
- (iv) The presence of the accused and the role attributed to them has been spelt out not only in the FIR but it is evident from the cross FIR which was subsequently registered on 13 May 2020 at the behest of Vishan (A-6);
- F
- (v) The cross FIR which sets out the version of the accused would indicate that the accused were the aggressors; and
- (vi) Whether the five deaths were caused as a result of firearm injuries (as alleged in the FIR dated 9 May 2020) or due to dhariyas (as alleged in the statement recorded on 3 June 2020) is not relevant at this stage. The presence of the accused, the pre-meditation on their part, the assault committed on persons belonging to the side of the informant and the resultant five homicidal deaths which form the genesis of the incident should be sufficient to deny bail.
- G
- H



14. On the above premises, it has been urged that the High Court has committed a grievous error in granting bail in the first instance on 22 October 2020 and in following the earlier order on the basis of parity. Moreover, it has been submitted that the order granting bail to Vishan (A-6), who is the main accused, on 21 December 2020 does not contain any reasons whatsoever. It was urged that while granting bail, the Chief Justice has merely observed that the Advocates who appeared on behalf of the respective parties “do not press for further reasoned order”. This, it was urged, is an anathema to criminal jurisprudence. The High Court while exercising its jurisdiction under Section 439, is required to apply its mind objectively and indicate reasons for the grant of bail. This duty cannot be obviated, it was urged, by recording that the Counsel for the parties did not press for “a further reasoned order”.

15. The submissions urged by Mr Vinay Navare, Senior Counsel have been supported during the course of her submissions by Ms Jaikriti S Jadeja. Learned counsel, in addition, adverted to the following circumstances:

- (i) The registration of three prior FIRs against Sidhdhrajsinh Bhagubha Vaghela (A-13);
- (ii) The observation of the High Court while granting bail that the order would not be treated as precedent in any other case on grounds of parity; and
- (iii) The grant of bail on the basis of parity alone to Vanraj Karshan Koli (A-16), Kheta Parbat Koli (A-15), Pravin Heera Koli (A-10) and Dinesh Karshan Akhiyani (Koli) (A-17).

16. Mr Aniruddha P Mayee, learned Counsel appearing on behalf of the State of Gujarat has supported the submissions of the appellant in the challenge to the orders granting bail on the following grounds:

- (i) The grant of bail by the High court to the six accused persons in this batch is not justified having regard to the following circumstances:
  - a. The main accused Vishan (A-6) was a resident of Anjar and had come to Hamirpur;
  - b. There was an earlier incident which had taken place involving an altercation with the deceased Akhabhai;

- A c. A compromise was arrived at in the course of the dispute with the intervention of the community;
- d. As the cross FIR by Vishan (A-6) narrates, on 9 May 2020- the conduct of the accused was pre-meditated;
- B e. The incident took place at 1:00 pm when the side of the informant (in the FIR dated 9 May 2020) was returning from their fields for lunch when they were waylaid and obstructed by vehicles of the accused both at the front and the rear;
- C f. The side of the accused had collected 22 persons for executing a pre-meditated design to assault the group of the informant with deadly weapons;
- g. Whether or not the rifles had been fired, the panchnama notes the recovery of the weapons;
- D h. Both Vishan (A-6) and Sidhdhraisinh Bhagubha Vaghela (A-13) have criminal antecedents, there being earlier FIRs registered against them;
- i. The Sessions Judge noted that A-6 had even attempted to obtain bail on medical grounds on the basis of a false identity; and
- E j. The complicity of the accused, their intent, presence and role are amply supported by the cross FIR.

17. Mr Nikhil Goel, learned Counsel appearing on behalf of the accused has on the other hand supported the orders of the High Court granting bail on the following submissions:

- F (i) The FIR which arises out of the incident of 9 May 2020 implicates as many as 22 persons;
- (ii) Accused 18-22, who are women, were granted bail, which is not the subject matter of challenge;
- G (iii) Eleven accused are still in jail of whom eight persons are alleged to have wielded sharp-edged weapons there;
- (iv) The charge sheet which has been submitted after investigation names 110 witnesses;
- H (v) A charge sheet has been submitted in the cross-FIR as well;

- (vi) There was a free fight in the course of the incident on 9 May 2020 resulting in injuries on the side of the accused and five deaths on the side of the informant; A
  - (vii) The genesis of the incident, as narrated in the FIR registered on 9 May 2020, has been substantially altered in the course of the statement of the informant recorded on 3 June 2020; B
  - (viii) The FIR made no reference to a free fight between the two groups or to the injuries which were caused to the accused;
  - (ix) The post-mortem reports of 10 May 2020 would belie the allegation that the deaths were caused as a result of gunshot injury; C
  - (x) An attempt was made to improve upon the allegations in the FIR in a subsequent statement of the informant on 3 June 2020 to ensure that the allegations in regard to the weapons used in causing the injuries are made consistent with the post-mortem reports which indicate the use of sharp-edged weapons; D
  - (xi) The allegation in the FIR is that five persons on the side of the informant were hit by bullets and were lying on the land which is belied by the Post Mortem reports not indicating gunshot injuries; and E
  - (xii) The nature of the incident is sought to be altered in the statement which was recorded on 3 June 2020. The earlier version which refers to gunshot injuries is replaced with *dhariya* injuries and by the attempted use of fire arms. F
- In summation, it has been urged on behalf of the accused that
- (i) The presence of the accused at the scene of offence on 9 May 2020 is established by the cross FIR;
  - (ii) The Post Mortem reports would demonstrate that all the injuries were sustained by the deceased with sharp edged weapons and not as a result of fire arms or sticks; G
  - (iii) There are three versions of the incident, which are contained in the FIR, the subsequent statement and the H

- A cross FIR. A charge sheet has also been submitted after the investigation of the cross FIR;
- (iv) As many as twenty-two persons have been roped in;
- (v) While the Sessions Judge had noticed the improvement which was made in the subsequent statement, bail was denied only on the basis of the presence of the accused; and
- B
- (vi) In the event that this Court holds that adequate reasons have not been adduced in the order dated 21 December 2020 granting bail to A-6 an order of remand may be warranted.
- C

18. The submissions of Mr Nikhil Goel have been buttressed by Mr J S Atri, Senior Counsel by placing reliance on the decision in **Sanjay Chandra v. Central Bureau of Investigation**<sup>3</sup>. Learned Senior Counsel specifically highlighted that the subsequent statement dated 3 June 2020 has materially altered the genesis as well as the details of the incident. Similar submissions have been urged by Mr Purvish Jitendra Malkan, learned Counsel appearing on behalf of some of the accused by submitting that

D

- (i) This is a case involving an ‘over implication’;
- E
- (ii) The absence of blood marks on the clothes of Kheta Parbat Koli (A-15) and on the stick is a pointer to his innocence; and
- (iii) It was the complainant’s side which had committed the initial act of aggression.

F 19. The rival submissions now fall for analysis.

20. The first aspect of the case which stares in the face is the singular absence in the judgment of the High Court to the nature and gravity of the crime. The incident which took place on 9 May 2020 resulted in five homicidal deaths. The nature of the offence is a circumstance which has an important bearing on the grant of bail. The orders of the High Court are conspicuous in the absence of any awareness or elaboration of the serious nature of the offence. The perversity lies in the failure of the High Court to consider an important circumstance which has a bearing

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H <sup>3</sup> 2012 (1) SCC 40

on whether bail should be granted. In the two-judge Bench decision of this Court in **Ram Govind Upadhyay v. Sudharshan Singh**<sup>4</sup> the nature of the crime was recorded as “one of the basic considerations” which has a bearing on the grant or denial of bail. The considerations which govern the grant of bail were elucidated in the judgment of this Court without attaching an exhaustive nature or character to them. This emerges from the following extract: A  
B

“4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being: C

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

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

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

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

This Court further laid down the standard for overturning an order granting bail in the following terms: G

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained.”

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<sup>4</sup> (2002) 3 SCC 598

A 21. The principles governing the grant of bail were reiterated by a two judge Bench in **Prasanta Kumar Sarkar v. Ashis Chatterjee**<sup>5</sup>:

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

- C (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
  - (ii) nature and gravity of the accusation;
  - (iii) severity of the punishment in the event of conviction;
  - D (iv) danger of the accused absconding or fleeing, if released on bail;
  - (v) character, behaviour, means, position and standing of the accused;
  - (vi) likelihood of the offence being repeated;
  - E (vii) reasonable apprehension of the witnesses being influenced; and
  - (viii) danger, of course, of justice being thwarted by grant of bail.
- [internal citation omitted]”

F Explicating the power of this Court to set aside an order granting bail, this Court held:

G “10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...”

22. We are constrained to observe that the orders passed by the High Court granting bail fail to pass muster under the law. They are oblivious to, and innocent of, the nature and gravity of the alleged offences

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H <sup>5</sup> (2010) 14 SCC 496

and to the severity of the punishment in the event of conviction. In **Neeru Yadav v. State of U.P.**<sup>6</sup>, this Court has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail. This Court observed:

“17. Coming to the case at hand, it is found that when a stand was taken that the 2nd Respondent was a history sheeted, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the 2nd Respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non-application of mind. That apart, as a matter of fact it has been brought on record that the 2nd Respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this Court would tantamount to travesty of justice, and accordingly we set it aside.”

23. Another aspect of the case which needs emphasis is the manner in which the High Court has applied the principle of parity. By its two orders both dated 21 December 2020, the High Court granted bail to Pravin Koli (A-10) and Kheta Parbat Koli (A-15). Parity was sought with Sidhdhraisinh Bhagubha Vaghela (A-13) to whom bail was granted on 22 October 2020 on the ground (as the High Court recorded) that he was “assigned similar role of armed with stick (sic)”. Again, bail was granted to Vanraj Koli (A-16) on the ground that he was armed with a wooden stick and on the ground that Pravin (A-10), Kheta (A-15) and Sidhdhraisinh (A-13) who were armed with sticks had been granted bail. The High Court has evidently misunderstood the central aspect of what is meant by parity. Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The High Court has proceeded on the basis of parity on a simplistic assessment as noted above, which again cannot pass muster under the law.

<sup>6</sup> (2014) 16 SCC 508

A 24. The narration of facts in the earlier part of this judgement would indicate that on 22 October 2020, a Single Judge of the High Court granted bail to Sidhdhrajsinh (A-13). The Single Judge noted that the name of A-13 is shown in the FIR for the incident which took place on 9 May 2020. The circumstance which weighed with the Single Judge was that the informant in the subsequent statement which was recorded  
B twenty-five days after the FIR on 3 June 2020, does not advert to overt act which was attributed in the FIR; though the presence of A-13 is shown, no specific role is attributed to him in the subsequent statement. Observing that the details in regard to the chronology of events which took place on 9 May 2020 “is in effect substituted” in the subsequent  
C statement dated 3 June 2020, the High Court held that it appears that A-13 was roped in due to the pendency of previous proceedings and enmity with the side of the informant. Holding that this was sufficient to grant bail, the learned Judge observed:

D **“15. Learned Advocates appearing on behalf of the respective parties do not press for further reasoned order.”**  
(emphasis supplied)

E 25. The order which was passed on 22 October 2020 in the case of A-13 was relied upon, on grounds of parity, in the case of Pravin (A-10) and Kheta (A-15), by orders of a Single Judge of the High Court, dated 21 December 2020. In the case of Vishan (A-6), bail was granted  
F on 21 December 2020 by the Single Judge who had passed orders dated 22 October 2020 in the case of A-10 and A-15. The only reasons which have been indicated in the order of the Single Judge is that bail was being granted taking into consideration the facts of the case, the nature of the allegations, gravity of offences and role attributed to the accused. Thereafter, by an order dated 19 January 2021 bail was granted to Vanraj (A-16) purely on the basis of parity. On 20 January 2021, the order granting bail to Vanraj (A-16) was followed in the case of Dinesh (A-17) on the ground of parity.

G 26. From the above conspectus of facts, it is evident that essentially the only order which contains a semblance of reasoning is the order dated 22 October 2020 granting bail to A-13. As a matter of fact, the submissions which have been made on behalf of the accused substantially dwell on the same line of logic in justifying the grant of bail on the ground that in the subsequent statement dated 3 June 2020 of the informant, the genesis and details of the incident which took place on 9 May 2020 as elaborated  
H in the FIR have undergone a substantial change.



27. In granting bail to the six accused, the High Court has committed a serious mistake by failing to recognize material aspects of the case, rendering the orders of the High Court vulnerable to assail on the ground of perversity. The first circumstance which should have weighed with the High Court but which has been glossed over is the seriousness and gravity of the offences. The FIR which has been lodged on 9 May 2020 adverts to the murder of five persons on the side of the informant in the course of the incident as a result of which offences punishable under Sections 302, 143, 144, 147, 148, 149, 341, 384, 120B, 506(2) read with Section 34 of the Indian Penal Code were alleged. This is apart from the invocation of the provisions of Sections 25(1-b) A, 27 and 29 of the Arms Act and Section 135 of the Gujarat Police Act. The FIR which was lodged on 9 May 2020 notes that the incident took place at 1:00 pm. A group of persons from the side of the informant, including the deceased, were returning home at about 1:00 pm. The genesis of the incident is that the path of their vehicle was blocked both from the front and the rear by tractors of the accused. The FIR specifically refers to the presence of the accused Vishan (A-6), Sidhdhrajsinh Bhagubha Vaghela (A-13), Vanraj Karshan Koli (A-16), Kheta Parbat Koli (A-15), Pravin Heera Koli (A-10) and Dinesh Karshan Akhiyani (Koli) (A-17). It states that the accused had all come to the scene of offence with pistols, dhariyas and knives and that initially Vishan (A-6) and two others had fired from their rifles as a result of which five persons fell to the ground. Some of these accused – Vishan (A-6), Sidhdhrajsinh (A-13), Vanraj (A-16), Kheta (A-15), Pravin (A-10) and Dinesh (A-17) are alleged to have assaulted with dhariyas and lathis over the head and body of Akhabhai, Pethabhai, Amara, Lalji and Vela. All of them were rushed to the Government Hospital where they were pronounced dead.

28. Four days after the FIR was lodged by the informant on 9 May 2020, a cross FIR was lodged by Vishan (A-6). This FIR contains a narration of the pre-existing dispute over land and to an incident which had taken place on 7 May 2020 which was resolved with the intervention of the community. The cross FIR dated 13 May 2020 stated that Vishan (A-6) sent his nephew together with Akhabhai to the police station to retrieve his motorcycle. The cross FIR specifically states that the side of the accused had decided to kill Akhabhai and in pursuance of this design he proceeded in his vehicle together with his brother and some of the other accused and tried to kill Akhabhai by dashing his car against him. The translation of the actual intent in the cross FIR is questioned by Mr

- A Nikhil Goel by submitting that correctly translated from Gujarati, the intent would be to assault and not to kill. Be that as it may, the cross FIR indicates the presence of all these accused and of their being armed with weapons to assault the deceased. A-6, in fact, states that in the course of the incident which took place, he was assaulted on his hand with a dhariya.
- B The cross FIR contains a narration of how Akhabhai and the others tried to run away from the scene but were way-laid and assaulted. The cross FIR also then states that several women from the side of the accused came to the scene of occurrence.

29. A reading of the cross FIR which was lodged by Vishanbhai (A-6) on 13 May 2020 indicates:

- C
- (i) An intent on the part of the accused to launch an assault on the deceased;
  - (ii) The manner in which their pre-meditated design was sought to be achieved by assaulting Akhabhai and the other deceased persons;
- D
- (iii) An effort was made by Akhabhai and the other deceased to run away but this was prevented in the course of the assault; and
  - (iv) The accused had come armed with weapons to execute their intent.

- E 30. In other words with the contents of the cross FIR as they stand, it was impossible for any judicial mind, while adjudicating upon the applications for the grant of bail, to gloss over:

- (i) The presence of the accused at the scene of occurrence on 9 May 2020;
- F
- (ii) The accused being armed with weapons to accost Akhabhai and the other persons accompanying him;
  - (iii) The intent to assault them; and
  - (iv) The actual incident in the course of which Akhabhai and four other persons of his group were waylaid and assaulted,
- G resulting in five homicidal deaths.

31. The Post Mortem reports which have been produced on the record indicate the extensive nature of the bodily injuries which were sustained by each of the five deceased persons. It is true that in the FIR dated 9 May 2020, it was alleged that the deceased were fired upon as a
- H result of which they fell to the ground whereas, in the statement dated 3

June 2020, it has been stated that the injuries were sustained as a result of dhariyas and sticks. Whether the deaths occurred as a result of bullet wounds or otherwise can make no difference on whether a case for the grant of bail was made out once a plain reading of the cross FIR indicates both the presence of the accused and the execution of their plan to assault the side of the informant with the weapons which were in the possession of the accused. The High Court in its first order dated 22 October 2020 was persuaded to grant bail on the specious ground that the details of the incident as they appeared in the subsequent statement of the informant dated 3 June 2020 are at variance with the FIR dated 9 May 2020. These are matters of trial. The High Court has, however, clearly overlooked the cross FIR dated 13 May 2020 lodged by A-6 and the implications of the content of the FIR on the basic issue as to whether bail should be granted. As a matter of fact, it is also important to note that the presence of women on the side of the accused is a fact which is noted in the cross FIR itself. Bail having been granted to A-18 to A-22 has not been the subject matter of the challenge in these proceedings. Hence, it is not necessary to dwell on that aspect any further. It is important for the purpose of evaluating this batch of cases at the present stage to also note the invocation of the provisions of the Section 149 of the Indian Penal Code.

32. Our analysis above would therefore lead to the conclusion that there has been a manifest failure of the High Court to advert to material circumstances, especially the narration of the incident as it appears in the cross FIR which was lodged on 13 May 2020. Above all, the High Court has completely ignored the gravity and seriousness of the offence which resulted in five homicidal deaths. This is clearly a case where the orders passed by the High Court suffered from a clear perversity.

33. There is another aspect of this batch of cases which it is necessary to note. In the order of the High Court dated 22 October 2020 granting bail to Sidhdhrajsinh (A-13), there was a reference to the submission of the Public Prosecutor to the criminal antecedents of A-13 bearing on previous FIRs registered against him in 2017 and 2019. This aspect bearing on the criminal antecedents of A-13 has not been considered in the reasons which have been adduced by the Single Judge. In **Ash Mohammad v. Shiv Raj Singh**<sup>7</sup>, this Court has held that criminal antecedents of the accused must be weighed for the purpose of granting bail. That apart, it is important to note that the ground on which A-13 was

<sup>7</sup> (2012) 9 SCC 446

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

34. We are left unimpressed with and disapprove of the above  
B observation of the Single Judge. Whether parity can be claimed by any other accused on the basis of the order granting bail to A-13 ought not to have been pre-judged by the Single Judge who was dealing only with the application for the grant of bail to A-13. The observation that the grant of bail to A-13 shall not be considered as a precedent for any other person  
C who is accused in the FIR on grounds of parity does not constitute judicially appropriate reasoning. Whether an order granting a bail is a precedent on grounds of parity is a matter for future adjudication if and when an application for bail is moved on the grounds of parity on behalf of another accused. In the event that parity is claimed in such a case thereafter, it is for that court before whom parity is claimed to determine whether a case  
D for the grant of bail on reasons of parity is made out. In other words, the observations of the Single Judge which have been noticed above are inappropriate and erroneous. Moreover, as observed above in para 23, even while considering the ground of parity not only the weapon, but individual role attributed to each accused must be considered. We have dwelt on this aspect of the matter in order to ensure that the position in  
E law is corrected in terms as explained above. As we have noted earlier, bail was thereafter granted to Pravin (A-10) and Kheta (A-15) by orders dated 21 December 2020 on the ground of parity as claimed with the order dated 22 October 2020. The Single Judge observed that the Additional Public Prosecutor had not made any point of distinction. Subsequently,  
F parity was the basis on which bail was sought in the case of Vanraj (A-16) who was granted bail on 19 January 2021. While granting bail, the Single Judge observed that:

“the learned advocates appearing on behalf of the respective parties do not press for further reasoned orders”

G A similar observation is contained in the order dated 20 January 2021 of the Single Judge granting bail to Dinesh (A-17). Finally on this aspect we would also advert to the order of the High Court dated 21 December 2020 granting bail to Vishan (A-6) which again contains a statement that the “advocates appearing on behalf of the respective parties  
H do not press for a further reasoned order”.

35. We disapprove of the observations of the High Court in a succession of orders in the present case recording that the Counsel for the parties “do not press for a further reasoned order”. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under Section 439 of the CrPC would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest. We must, therefore, disapprove of the manner in which a succession of orders in the present batch of cases has recorded that counsel for the “respective parties do not press for further reasoned order”. If this is a euphemism for not recording adequate reasons, this kind of a formula cannot shield the order from judicial scrutiny.

36. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in **Chaman Lal v. State of U.P.**<sup>8</sup> in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed:

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<sup>8</sup> (2004) 7 SCC 525

A “8. Even on a cursory perusal the High Court’s order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

B 9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence...”

C 37. We are also constrained to record our disapproval of the manner in which the application for bail of Vishan (A-6) was disposed of. The High Court sought to support its decision to grant bail by stating that it had perused the material on record and was granting bail “without discussing the evidence in detail” taking into consideration:

- D (1) The facts of the case;  
(2) The nature of allegations;  
(3) Gravity of offences; and  
E (4) Role attributed to the accused.

As a matter of fact there is no discussion or analysis of circumstances at all. This lone sentence in the order of the Single Judge leaves a Court before which the order granting bail is challenged, completely without guidance on the considerations which weighed with the High Court in granting bail. We appreciate that in deciding whether or not to grant bail the High Court is not at a stage where it adjudicates upon guilt. This is to be analyzed during the course of criminal trial where evidence has been recorded. But surely, the order of the High Court must indicate some reasons why the Court has either granted or denied bail. The Sessions Judges in the present case have indicated their reasons for the ultimate conclusion. This unfortunately has not been observed in the order of the High Court dated 21 December 2020. Dealing with a similar formulation as in the present case, this Court has held recently held as follows in **Sonu v. Sonu Yadav**<sup>9</sup>:

H <sup>9</sup> Criminal Appeal No. 377 of 2021, decided on 5 April 2021

“11. In the earlier part of this judgment, we have extracted the lone sentence in the order of the High Court which is intended to display some semblance of reasoning for justifying the grant of bail. The sentence which we have extracted earlier contains an omnibus amalgam of (i) “the entire facts and circumstances of the case”; (ii) “submissions of learned Counsel for the parties”; (iii) “the nature of offence”; (iv) “evidence”; and (v) “complicity of accused”. This is followed by an observation that the “applicant has made out a case for bail”, “without expressing any opinion on the merits of the case”. This does not constitute the kind of reasoning which is expected of a judicial order. The High Court cannot be oblivious, in a case such as the present, of the seriousness of the alleged offence, where a woman has met an unnatural end within a year of marriage. The seriousness of the alleged offence has to be evaluated in the backdrop of the allegation that she was being harassed for dowry; and that a telephone call was received from the accused in close-proximity to the time of death, making a demand. There are specific allegations of harassment against the accused on the ground of dowry. An order without reasons is fundamentally contrary to the norms which guide the judicial process. The administration of criminal justice by the High Court cannot be reduced to a mantra containing a recitation of general observations. That there has been a judicious application of mind by the judge who is deciding an application under Section 439 of the CrPC must emerge from the quality of the reasoning which is embodied in the order granting bail. While the reasons may be brief, it is the quality of the reasons which matters the most. That is because the reasons in a judicial order unravel the thought process of a trained judicial mind. We are constrained to make these observations because the reasons indicated in the judgment of the High Court in this case are becoming increasingly familiar in matters which come to this Court. It is time that such a practice is discontinued and that the reasons in support of orders granting bail comport with a judicial process which brings credibility to the administration of criminal justice.”

38. What has been observed in the above extract equally applies to the facts of the present case. There is no question now of ordering a remand to the High Court in the case of Vishan (A-6) since the question of bail has been argued fully before this Court. Moreover, the case of

- A Vishan (A-6) has been considered together with the entire batch of cases in which bail has been granted- initially on 22 October 2020 in the case of Sidhdharajsinh (A-13), which has been followed on the grounds of parity in the case of the other accused.

- B 39. The High Court has relied upon the decision of this Court in **Sanjay Chandra v. Central Bureau of Investigation**<sup>10</sup>. While considering the grant of bail in certain cases arising out of the 2G Spectrum Scam, this Court observed as follows:

- C “21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”
- D

Elaborating further, the Court held

- E “22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”
- F

- G At the same time, the Court recognized in paragraph 24 of its decision that:

“24. In the instant case, we have already noticed that the “pointing finger of accusation” against the appellants is “the seriousness of the charge”. The offences alleged are economic offences which

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H <sup>10</sup> 2012 (1) SCC 40



have resulted in loss to the State exchequer. Though, they contend A  
 that there is a possibility of the appellants tampering with the  
 witnesses, they have not placed any material in support of the  
 allegation. In our view, seriousness of the charge is, no doubt, one  
 of the relevant considerations while considering bail applications  
 but that is not the only test or the factor: the other factor that also B  
 requires to be taken note of is the punishment that could be imposed  
 after trial and conviction, both under the Penal Code and the  
 Prevention of Corruption Act. Otherwise, if the former is the only  
 test, we would not be balancing the constitutional rights but rather  
 “recalibrating the scales of justice”.”

In **Mahipal v. Rajesh Kumar Alias Polia**<sup>11</sup> this Court observed C  
 as follows:

“16. The considerations that guide the power of an appellate court  
 in assessing the correctness of an order granting bail stand on a  
 different footing from an assessment of an application for the  
 cancellation of bail. The correctness of an order granting bail is D  
 tested on the anvil of whether there was an improper or arbitrary  
 exercise of the discretion in the grant of bail. The test is whether  
 the order granting bail is perverse, illegal or unjustified. On the  
 other hand, an application for cancellation of bail is generally  
 examined on the anvil of the existence of supervening circumstances E  
 or violations of the conditions of bail by a person to whom bail has  
 been granted. In *Neeru Yadav v. State of U.P.* [*Neeru  
 Yadav v. State of U.P.*, (2014) 16 SCC 508 : (2015) 3 SCC (Cri)  
 527] , the accused was granted bail by the High Court [*Mitthan  
 Yadav v. State of U.P.*, 2014 SCC OnLine All 16031] . In an appeal  
 against the order [*Mitthan Yadav v. State of U.P.*, 2014 SCC F  
 OnLine All 16031] of the High Court, a two-Judge Bench of this  
 Court surveyed the precedent on the principles that guide the grant  
 of bail. Dipak Misra, J. (as the learned Chief Justice then was)  
 held: (*Neeru Yadav case* [*Neeru Yadav v. State of U.P.*, (2014)  
 16 SCC 508 : (2015) 3 SCC (Cri) 527] , SCC p. 513, para 12) G

“12. ... It is well settled in law that cancellation of bail after it  
 is granted because the accused has misconducted himself or  
 of some supervening circumstances warranting such  
 cancellation have occurred is in a different compartment

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<sup>11</sup> (2020) 2 SCC 118

A altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of, or bail is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court.”

In **Mahipal** (supra), this Court outlined the standards governing the setting aside of bail by this Court in the following terms:

D “17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record.”

E These two standards were reiterated in a recent decision of this Court in **Prabhakar Tewari v. State of U.P.**<sup>12</sup>.

F 40. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in **Ram Govind Upadhyay v. Sudarshan Singh**<sup>13</sup> and **Prasanta Kumar Sarkar v. Ashis Chatterjee**<sup>14</sup> (noted earlier). These decisions as well as the decision in **Sanjay Chandra** (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in **The State of Kerala v. Mahesh**<sup>15</sup> where the Court observed:

G “22...All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent

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<sup>12</sup> (2020) 11 SCC 648

<sup>13</sup> (2002) 3 SCC 598

<sup>14</sup> (2010) 14 SCC 496

H <sup>15</sup> Criminal Appeal No 343 of 2021

of involvement of the applicant for bail, in the offence alleged, A  
possibility of the applicant accused absconding or otherwise  
defeating or delaying the course of justice, reasonable apprehension  
of witnesses being threatened or influenced or of evidence being  
tempered with, and danger to the safety of the victim (if alive), the  
complainant, their relatives, friends or other witnesses....” B

Similarly, the Court held that the grant of bail by the High Court  
can be set aside, consistent with the precedents we have discussed above,  
when such grant is based on non-application of mind or is innocent of the  
relevant factors for such grant.

41. For the reasons which we have indicated above, we have come C  
to the conclusion that the orders granting bail to the respondent-accused  
Vishan Heera Koli (A-6), Pravin Heera Koli (A-10), Sidhdhrajsinh  
Bhagubha Vaghela (A-13), Kheta Parbat Koli (A-15), Vanraj Karshan  
Koli (A-16) and Dinesh Karshan Akhiyani (Koli) (A-17) suffer from a D  
clear perversity. We accordingly allow these appeals and set aside the  
following orders of the High Court:

Sl No.	Name of the accused	Accused No.	Date of order by the High Court	SLP No.
1	Vishan Heera Koli	6	21 December 2020	790 of 2021
2	Pravin Heera Koli	10	21 December 2020	1246-47 of 2021
3	Sidhdhrajsinh Bhagubha Vaghela	13	22 October 2020	1249 of 2021
4	Kheta Parbat Koli	15	21 December 2020	1246-47 of 2021
5	Vanraj Karshan Koli	16	19 January 2021	1248 of 2021
6	Dinesh Karshan Akhiyani (Koli)	17	20 January 2021	1245 of 2021

42. All the above accused are directed to surrender forthwith.  
The copy of the order shall be forwarded to the Sessions Judge to secure  
compliance forthwith. E

43. Pending application(s), if any, stand disposed of. F G