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2022 LiveLaw (SC) 376

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

N.V. RAMANA; CJI., SURYA KANT; J., HIMA KOHLI; J.

18.04.2022

CRIMINAL APPEAL NO.632 of 2022 [Arising out of Special Leave Petition (Crl.) No. 2640 of 2022]

Jagjeet Singh & Ors *VERSUS* **Ashish Mishra @ Monu & Anr.**

Code of Criminal Procedure, 1973; Section 2 (wa) - Victim's right to be heard - A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He / She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision - Where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. *(Para 24,25)*

Code of Criminal Procedure, 1973; Section 2 (wa) - 'Victim' and 'complainant / informant' - It is not always necessary that the complainant / informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony. *(Para 24)*

Code of Criminal Procedure, 1973; Section 439 - Bail - A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail - This discretion is not unfettered - bail must be granted after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner. *(Para 28)*

Code of Criminal Procedure, 1973; Section 439 - Bail - Principles that a Court must bear in mind while deciding an application for grant of bail discussed- A court should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine prima facie issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. *(Para 30-33)*

Code of Criminal Procedure, 1973; Section 154 - First Information Report - A F.I.R. cannot be treated as an encyclopedia of events. *(Para 36)*

Code of Criminal Procedure, 1973; Section 439 - Bail - No accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of

incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution. *(Para 40)*

Summary: Appeal against bail granted by Allahabad HC to murder accused - Allowed -This Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Accused of his legitimate right to seek enlargement on bail on relevant considerations.

(Arising out of impugned final judgment and order dated 10-02-2022 in CRMBA No.13762/2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow)

For Petitioner(s): Mr. Dushyant Dave, Sr.Adv. Mr. Prashant Bhushan, AOR Mr. Rahul Gupta, Adv. Mohd. Amaan, Adv. Mr. Shashank Singh, Adv. Ms. Alice Raj, Adv. Ms. Neha Sangwan, Adv.

For Respondent(s): Mr. Ranjit Kumar, Sr.Adv. Mr. Mahesh Jethmalani, Sr.Adv. Ms. Ruchira Goel, Adv.

J U D G M E N T

Surya Kant, J:

Leave Granted.

2. The challenge is laid to an order dated 10.02.2022 passed by the High Court of Judicature at Allahabad, Lucknow bench, whereby Respondent No.1 (hereinafter" Respondent -Accused"), has been enlarged on bail in a case under Sections 147, 148, 149, 302, 307, 326 read with Sections 34 and 120B of the Indian Penal Code, 1860 (herein -after" IPC"), as well as Sections 3, 25 and 30 of the Arms Act, 1959.

FACTS

3. In brief, it is alleged that several farmers had gathered in the Khairaitya village in Lakhimpur Kheri District on 29.09.2021, to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Indian Agricultural Acts of 2020. During this gathering, the farmers objected to certain comments made by Mr. Ajay Mishra @ Teni, Union Minister of State for Home. In the course of the meeting, the farmers decided to organise a protest against Mr. Ajay Mishra in his ancestral village on 03.10.2021. Various farmers' organisations issued appeals to their members and supporters to participate in the demonstration, and pamphlets were also distributed.

4. On 03.10.2021, an annual Dangal (wrestling) competition was being organised by Ashish Mishra @ Monu, i.e., Respondent -Accused. The program was to be attended by Mr. Ajay Mishra, as well as Mr. Keshav Prasad Maurya, Deputy Chief Minister of the State of Uttar Pradesh, for whom a helipad was constructed in the playground of

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Maharaja Agrasen Inter College, Tikonia. A crowd of farmers started gathering near the helipad in the morning of 03.10.2021. The route of the Chief Guest was thus changed to take him by road. But the changed road route was also passing in front of the Maharaja Agrasen Inter College, where the protesting farmers had been gathering in large numbers. This led the authorities to take recourse to yet another alternative way to reach the Dangal venue.

5. In the meantime, some supporters of Respondent No.1, who were travelling by a car to the Dangal venue, were statedly attacked by certain farmers. The mirrors of their vehicle(s) were smashed. A hoarding board that displayed pictures of Mr. Ajay Mishra and the Respondent-Accused was also damaged. It is alleged that upon gathering knowledge of these events, coupled with the information that the route of the Chief Guest had to be changed because of the protesting farmers, Respondent-Accused became agitated. He, thereafter, is said to have conspired with his aides and confidants, and decided to teach the protesting farmers a lesson. Respondent No.1 and his aides, armed with weapons, left the Dangal venue in a Mahindra Thar SUV, a Fortuner vehicle and a Scorpio vehicle, and drove towards the farmers' protest site.

6. When the farmers were returning to their homes after their protest was over, Respondent-Accused along with his associates who were in the aforesaid three vehicles, allegedly drove into the crowd of the returning farmers and hit them with an intention to kill. Resultantly, many farmers and other persons were crushed by the vehicles. The Thar vehicle was eventually stopped. Respondent No.1 and his coaccused Sumit Jaiswal then stepped out of the Thar and escaped by running towards a nearby sugarcane field while taking cover by firing their weapons.

7. As a consequence of this incident, four farmers, one journalist, the driver of the Thar VehicleHariom, and two others, were killed. Nearly ten farmers suffered major and minor injuries.

8. In the early hours of 04.10.2021, FIR no. 219 of 2021 was registered on the complaint of the Appellant No.1, i.e, Jagjeet Singh, at Police Station Tikonia against Respondent No.1 and 1520 unknown persons, for causing the death of four farmers. It was alleged that Respondent No.1 along with his accomplices drove into the crowd of protesting farmers and crushed them. It was further alleged that one Sukhvinder Singh died on the spot due to a fire arm injury. Another FIR[1] was registered by Sumit Jaiswal against unknown persons and protesting farmers for having killed four persons, including the journalist Raman Kashyap, the driver of the Thar vehicleHariom and two other supporters of the Respondent-Accused.

[1] FIR No. 220 of 2021 was registered under Sections 147, 323, 324, 336 and 302 of the IPC.

9. Meanwhile, a PIL was filed in this Court expressing serious concerns regarding the fairness of the investigation into the incidents of 03.10.2021. This Court, on 17.11.2021, reconstituted the SIT and new members were inducted to carry out the

investigation. Justice (Retd.) Rakesh Kumar Jain, a former Judge of the Punjab and Haryana High Court, was appointed to monitor the investigation. The reconstituted SIT filed a chargesheet on 03.01.2022, wherein, the Respondent-Accused was found to be the main perpetrator of the events that took place on 03.10.2021.

10. The Accused-Respondent moved an application for bail before the High Court of Judicature at Allahabad, Lucknow Bench. Vide the impugned order dated 10.02.2022 (corrected on 14.02.2022), the High Court allowed the application and granted regular bail to the Respondent-Accused. The relief was primarily granted on four counts. *Firstly*, the Court held that the primary allegation against the Respondent-Accused was of firing his weapon and causing gunshot injuries, but neither the inquest reports nor the injury reports revealed any firearm injury, therefore, the High Court opined that the present case was one of "***accident by hitting with the vehicle***". *Secondly*, the allegation that he provoked the driver of the car could not be sustained since the driver along with two others, who were in the vehicle, were killed by the protesters. *Thirdly*, it was noted that the Respondent-Accused had joined the investigation. *Fourthly*, the charge sheet had been filed.

11. Discontented with the order of the High Court, the aggrieved 'victims' are before us.

CONTENTIONS

12. Shri Dushyant Dave, learned Senior Counsel on behalf of the Appellants vehemently contended that the High Court had erred in overlooking several important aspects, and instead placed undue weightage on issues such as the absence of any fire arm injury. Relying upon the decision of this in Court in the case of ***Mahipal v. Rajesh Kumar & Anr.***[2], it was canvassed that the High Court had disregarded well-established principles that govern the Court's discretion at the time of granting bail. It was further pressed that the bail order was passed in a mechanical manner with non-application of mind, rendering it illegal and liable to be set aside. The learned Senior Counsel also pointed out that during the course of the online proceedings, counsel for the Complainant/victims were disconnected, and were not heard by the High Court. It was stated that their application for rehearing the bail application was also not considered by the High Court. Learned Senior Counsel also drew our attention to FIR No. 46 of 2022, which was filed by one Diljot Singh, a witness to the incident of 03.10.2021. The said witness therein claimed that on 10.03.2022, he was threatened and attacked by the supporters of the Respondent-Accused. Alternatively, emphasis was placed on judgment of this Court in ***Alister Anthony Pariera v. State of Maharashtra***[3], to highlight that if an act of rash and negligent driving was preceded by real intention on the part of the wrong doer to cause death, then a charge under section 302 IPC may be attracted.

[2] (2020) 2 SCC 118 ¶ 12 & 13

3 (2012) 2 SCC 648 ¶ 47

13. On the other hand, Shri Ranjit Kumar, learned Senior Counsel appearing on behalf of the Respondent No.1, vigorously defended the judgment of the High Court. It was submitted that given the allegations made in FIR No. 219 of 2021, the High Court was bound to *prima facie* consider the issue of bullet injuries. He further asserted that the Respondent-Accused was never in the Thar vehicle and was instead at the Dangal venue. Lastly, learned Senior Counsel argued that in the event that this Court was to set aside the impugned order and cancel the bail, the Respondent accused would be left without any remedy and it would be nearly impossible for him to be released on bail till the conclusion of trial.

14. Shri Mahesh Jethmalani, learned Senior Counsel appearing for Respondent No.2, i.e., State of Uttar Pradesh, at the outset argued that a bail hearing should not be converted into a mini trail. He urged that the Court ought to consider three basic parameters at the time of deciding bail(i) the possibility of tampering with evidence; (ii) whether the accused would be a flight risk; & (iii) the nature of the offense. With respect to the first consideration, it was highlighted that the State Government, under the ambit of the Witness Protection Scheme, 2018, had provided adequate security, including armed personnel, to all the 'victims' and witnesses. It was explained that the State was regularly following up with the witnesses and that the possibility of the accused tampering with any witness, was narrow. Learned Senior Counsel further submitted that given the local roots of the Respondent-Accused, he could not be considered as a flight risk. Shri Jethmalani, however, stated that the nature of the offense in the present case was grave. He clarified that the State had vehemently opposed the bail application before the High Court and in no manner, does it deviate from its previous stand.

ANALYSIS

15. Having heard learned Senior Counsels for the parties at considerable length, we find that the following questions fall for our consideration:

A. Whether a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") is entitled to be heard at the stage of adjudication of bail application of an accused?

B. Whether the High Court overlooked the relevant considerations while passing the impugned order granting bail to the Respondent-Accused?; and

C. If so, whether the High Court's order dated 10.02.2022 is palpably illegal and warrants interference by this Court?

A. Victim's right to be heard:

16. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' — the *de facto* sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish 'crime' had surreptitiously turned its back on the 'victim', the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.

17. Internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, which was adopted vide the United Nations General Assembly Resolution 40/34, was a landmark in boosting the provictim movement. The Declaration defined a 'victim' as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the 'victim'. Other international bodies, such as the European Union, also took great strides in granting and protecting the rights of 'victims' through various Covenants[4].

[4] The position of a victim in the framework of Criminal Law and Procedure, Council of Europe Committee of Ministers to Member States, 1985; Strengthening victim's right in the EU communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Reasons, European Union, 2011; Proposal for a Directive of the European Parliament and of the Council establishing "Minimum Standards on the Rights, Support and Protection of Victims of Crime, European Union, 2011.

18. Amongst other nations, the United States of America had also made two enactments on the subject i.e. (i) The Victims of Crime Act, 1984 under which legal assistance is granted to the crimevictims; and (ii) The Victims' Rights and Restitution Act of 1990. This was followed by meaningful amendments, repeal and insertion of new provisions in both the Statutes through an Act passed by the House of Representatives as well as the Senate. In Australia, the Legislature has enacted South Australia Victims of Crime Act, 2001. While in Canada there is the Canadian Victims Bill of Rights. Most of these legislations have defined the 'victim' of a crime liberally and have conferred varied rights on such victims.

19. On the domestic front, recent amendments to the Cr.P.C. have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost

confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative "***to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more***".

20. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted the Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a 'victim' under Section 2 (wa) but also statutorily recognised various rights of such victims at different stages of trial.

21. It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression 'victim' which "***means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir***"

22. This Court, in ***Mallikarjun Kodagali (Dead) v. State of Karnataka & Ors***[5], while dealing with questions regarding a victim's right to file an appeal under section 372 of Cr.P.C, observed that there was need to give adequate representation to victims in criminal proceedings. The Court therein affirmed the victim's right to file an appeal against an order of acquittal. In ***Mallikarjun Kodagali***, though the Court was primarily concerned with a different legal issue, it will be fruitful in the present context to take note of some of the observations made therein:

[5] (2019) 2 SCC 752, ¶ 3 & 8

"3. What follows in a trial is often secondary victimisation through repeated appearances in court in a hostile or a semihostile environment in the courtroom. Till sometime back, secondary victimisation was in the form of aggressive and intimidating crossexamination, but a more humane interpretation of the provisions of the Evidence Act, 1872 has made the trial a little less uncomfortable for the victim of an offence, particularly the victim of a sexual crime. In this regard, the judiciary has been proactive in ensuring that the rights of victims are addressed, but a lot more needs to be done. Today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both. [Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202]……

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8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard."

(Emphasis Supplied)

23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a *brutum fulmen*. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime.

24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

25. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in Special Acts like the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that; *First*, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged; *Second,* where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

26. Adverting to the case at hand, we are constrained to express our disappointment with the manner in which the High Court has failed to acknowledge the right of the victims. It is worth mentioning that, the complainant in FIR No. 219 of 2021, as well

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as the present Appellants, are close relatives of the farmers who have lost their lives in the incident dated 03.10.2021. The specific stance taken by learned Senior Counsel for the Appellants that the Counsel for the 'victims' had got disconnected from the online proceedings and could not make effective submissions before the High Court has not been controverted by the Respondents. Thereafter, an application seeking a rehearing on the ground that the 'victims' could not participate in the proceedings was also moved but it appears that the same was not considered by the High Court while granting bail to the Respondent-Accused.

27. We, therefore, answer question (A) in the affirmative, and hold that in the present case, the 'victims' have been denied a fair and effective hearing at the time of granting bail to the Respondent-Accused.

B. Whether the High Court overlooked relevant considerations:

28. We may, at the outset, clarify that power to grant bail under Section 439 of Cr.P.C., is one of wide amplitude. A High Court or a Sessions Court, as the case may be, are bestowed with considerable discretion while deciding an application for bail. But, as has been held by this Court on multiple occasions, this discretion is not unfettered. On the contrary, the High Court or the Sessions Court must grant bail after the application of a judicial mind, following wellestablished principles, and not in a cryptic or mechanical manner.

29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse[6], or is founded upon irrelevant materials adding vulnerability to the order granting bail[7], an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of ***Kanwar Singh Meena v. State of Rajasthan***[8], wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and *prima facie* material against the accused were ignored. It was held that:

[6] Puran v. Rambilas & Anr., (2001) 6 SCC 338, ¶10

[7] Narendra K. Amin (Dr.) v. State of Gujarat & Anr., (2008) 13 SCC 584, ¶ 25

[8] (2012) 12 SCC 180, ¶ 10

"10….Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial…. ***The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.***

Such orders are against the wellrecognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

(Emphasis Supplied)

30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.***[9], after taking into account several precedents, elucidated the following:

[9] (2010) 14 SCC 496, ¶ 9 & 10

“9…However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

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

(ii) nature and gravity of the accusation;

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

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

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

(vi) likelihood of the offence being repeated;

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

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

(Emphasis Supplied)

31. The Court in ***Prasanta Kumar Sarkar*** went on to note:

“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 nonapplication of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)

“13. … Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

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(Emphasis Supplied)

32. The aforestated principles have been affirmed and restated in a number of subsequent decisions, including in the recent judgments of ***Neeru Yadav v. State of U.P. & Anr.***[10], ***Anil Kumar Yadav v. State (NCT of Delhi) & Anr.***,[11] and ***Mahipal v. Rajesh Kumar & Anr.***[12].

[10] (2014) 16 SCC 508, ¶ 11

[11] (2018) 12 SCC 129, ¶ 17 & 18

[12] (2020) 2 SCC 118, ¶ 13

33. Before dealing with the case at hand, we may, at the cost of repetition, emphasise that a Court while deciding an application for bail, should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. While a Court may examine *prima facie* issues, including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable. It is thus deemed appropriate to outrightly clarify that neither have we considered the merits of the case nor are we inclined to comment on the evidence collected by the SIT in the present case.

34. We may now briefly note the holding of the High Court as is manifest from paragraph 25 of the impugned order which reads as follows:

"Considering the facts and circumstances of the case in toto, it is evidence that as per the F.I.R., role of firing was assigned to the applicant for killing the protestors, but during the course of investigation, no such firearm injuries were found either on the body of any of the deceased or on the body of any injured person. Thereafter, the prosecution alleged that the applicant provoked the driver of the vehicle for crushing the protestors, however, the driver along with two others, who were in the vehicle, has been killed by the protestors. It is further evidence that during the course of investigation, notice was issued to the applicant and he appeared before the Investigation Officer. It is also evidence that charge sheet has already been filed. In such circumstances, this Court is of the view that the applicant is entitled to be released on bail."

35. We find ourselves in agreement with the learned Senior Counsel for the Appellants that the High Court has completely lost sight of the principles enumerated above, which conventionally govern a Court's discretion when deciding the question whether or not to grant bail. Instead of looking into aspects such as the nature and gravity of the offence; severity of the punishment in the event of conviction; circumstances which are peculiar to the accused or victims; likelihood of the accused fleeing; likelihood of tampering with the evidence and witnesses and the impact that his release may have on the trial and the society at large; the High Court has adopted a myopic view of the evidence on the record and proceeded to decide the case on merits.

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36. The High Court has taken into account several irrelevant considerations, whilst simultaneously ignoring judicial precedents and established parameters for grant of bail. It has been ruled on numerous occasions that a F.I.R. cannot be treated as an encyclopaedia of events. While the allegations in the F.I.R., that the accused used his firearm and the subsequent post mortem and injury reports may have some limited bearing, there was no legal necessity to give undue weightage to the same. Moreover, the observations on merits of a case when the trial has yet to commence, are likely to have an impact on the outcome of the trial proceedings.

37. Keeping all these factors cumulatively in mind, we have no difficulty in answering question (B) also in the affirmative. It is held that the order under challenge does not conform to the relevant considerations.

C. Whether interference is warranted by this Court:

38. As a natural and consequential corollary to the findings under questions (A) & (B) above, the impugned order of the High Court dated 10.2.2022 (as corrected on 14.2.2022) cannot be sustained and has to be set aside. Ordered accordingly.

39. As a sequel thereto, bail bonds of the respondent/accused are cancelled and he is directed to surrender within a week.

40. Having held so, we cannot be oblivious to what has been urged on behalf of the Respondent-Accused that cancellation of bail by this Court is likely to be construed as an indefinite foreclosure of his right to seek bail. It is not necessary to dwell upon the wealth of case law which, regardless of the stringent provisions in a penal law or the gravity of the offence, has time and again recognised the legitimacy of seeking liberty from incarceration. To put it differently, no accused can be subjected to unending detention pending trial, especially when the law presumes him to be innocent until proven guilty. Even where statutory provisions expressly bar the grant of bail, such as in cases under the Unlawful Activities (Prevention) Act, 1967, this Court has expressly ruled that after a reasonably long period of incarceration, or for any other valid reason, such stringent provisions will melt down, and cannot be measured over and above the right of liberty guaranteed under Article 21 of the Constitution (*See* ***Union of India v. K.A. Najeeb, (2021) 3 SCC 713, ¶ 15 & 17***).

41. We are, thus, of the view that this Court on account of the factors like (i) irrelevant considerations having impacted the impugned order granting bail; (ii) the High Court exceeding its jurisdiction by touching upon the merits of the case; (iii) denial of victims' right to participate in the proceedings; and (iv) the tearing hurry shown by the High Court in entertaining or granting bail to the respondent/accused; can rightfully cancel the bail, without depriving the Respondent-Accused of his legitimate right to seek enlargement on bail on relevant considerations.

42. We are thus inclined to allay the apprehension in the mind of learned Senior Counsel for the Respondent-Accused that the cancellation of bail by this Court shall amount to denial bail to the Respondent-Accused till conclusion of the trial.

43. This Court is tasked with ensuring that neither the right of an accused to seek bail pending trial is expropriated, nor the 'victim' or the State are denuded of their right to oppose such a prayer. In a situation like this, and with a view to balance the competing rights, this Court has been invariably remanding the matter(s) back to the High Court for a fresh consideration.[13] We are also of the considered view that ends of justice would be adequately met by remitting this case to the High Court for a fresh adjudication of the bail application of the Respondent-Accused, in a fair, impartial and dispassionate manner, and keeping in view the settled parameters which have been elaborated in paragraphs 30 & 31 of this order.

[13] Naresh Pal Singh v. Raj Karan and Anr, (1999) 9 SCC 104, ¶2; Brij Nandan Jaiswal v. Munna alias Munna Jaiswal & Anr, (2009) 1 SCC 678, ¶ 12 & 13; Hari Om Yadav v. Dinesh Singh Jaat & Anr, 2013 SCC Online SC 610, ¶ 6.

44. Needless to say that the bail application shall be decided on merits and after giving adequate opportunity of hearing to the victims as well. If the victims are unable to engage the services of a private counsel, it shall be obligatory upon the High Court to provide them a legal aid counsel with adequate experience in criminal law, at the State's expense.

45. Lastly, in furtherance of the order of this court dated 26.10.2021 in Writ Petition (Criminal) No. 426/2021, and keeping in mind the allegations of the Appellants with respect to the incident dated 10.03.2022, we deem it appropriate to observe that if the afore-stated incident, has happened in the manner as alleged, the same should serve as an awakening call to the State authorities to reinforce adequate protection for the life, liberty, and properties of the eye/injured witnesses, as well as for the families of the deceased.

CONCLUSION

46. We set aside the impugned order dated 10.02.2022 (corrected on 14.2.2022) and remit the matter back to the High Court. Respondent No.1 shall surrender and be taken into custody as already directed in paragraph 39 above. We have not expressed any opinion either on facts or merits, and all questions of law are left open for the High Court to consider and decide. The High Court shall decide the bail application afresh expeditiously, and preferably within a period of three months. The appeal is disposed of in the above terms.

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