2022 INSC 57

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 70 OF 2022

Ishwarji Nagaji Mali …Appellant

Versus

State of Gujarat and another …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned order dated 30.07.2021 passed by the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 9390 of 2021, by which the High Court has directed to release respondent no.2 (accused) on bail in connection with FIR registered at C.R. No. I – 11195008201056 of 2020 with Bhildi Police Station for the offences punishable under Sections 302, 120(B), 114, 304A of the IPC and under Sections 177, 184 & 134 of

the Motor Vehicles Act, the father of the deceased has preferred the present appeal.

2. The incident in question took place on the morning of 26.12.2020 at 7:00 a.m. when respondent no.2 herein along with his wife, Daxaben (deceased) left their home in Deesa to visit Hanumanji Temple at Gela village and on their way at around 07:00 a.m. while they were walking, the deceased was hit by a speeding four-wheeler (while coloured Swift Desire) from behind and which immediately fled away. That one Sevantibhai Ranchhodji Tank, cousin of respondent no.2 lodged the FIR against unknown persons initially for the offences punishable under Sections 304A IPC and Sections 177, 184 & 134 of the Motor Vehicles Act on the basis of the story narrated by respondent no.2 that his wife was accidentally hit by a speeding car when they were walking together.

2.1 That during the course of the investigation and considering the statements of the witnesses recorded during the course of the investigation and making analysis of the call details between respondent no.2 and his friend Kirtikumar Kanaji, it was revealed that respondent no.2 hatched a criminal conspiracy along with the other co-accused to kill his wife by giving Rs. 2 lakhs to the driver of the Swift Car for hitting the deceased from her back and planned to treat the offence as an accident in collusion with each other. An application was made by the

Investigating Officer to add the offences punishable under Sections 302, 120(B) and 114 of the IPC. By order dated 6.2.2021, the learned Magistrate permitted the Investigating Officer to also add the aforesaid offences against the accused. Thereafter on conclusion of the detailed investigation and after recording the statements of as many as 40 persons/witnesses and having obtained the call details between respondent no.2 and the co-accused, respondent no.2 and other co-accused have been charged for the offences punishable under Sections 302, 120(B) and 114 of the IPC.

2.2 That respondent no.2 filed a regular bail application before the learned Sessions Court. By a detailed order dated 19.05.2021, the learned Additional Sessions Judge, Deodar rejected the said bail application. That thereafter, respondent no.2 filed a Criminal Miscellaneous Application No. 9390 of 2021 before the High Court of Gujarat at Ahmedabad under Section 439 Cr.P.C. for regular bail.

By the impugned judgment and order, the learned Single Judge of the High Court has allowed the said application and has directed to release respondent no.2 on bail by observing in clauses (iv) and (v) of paragraph 4 as under and without adverting to the material collected during the course of the investigation and without considering the seriousness of the offence and the criminal conspiracy hatched by

respondent no.2 to kill his wife for monetary benefits. The observations made in clauses (iv) and (v) of paragraph 4 read as under:

> "(iv) At the end of the submissions, it appears that the prosecution case rests on circumstantial evidence and therefore, it is not legal and proper to deny bail to the present applicant on such weak piece of evidence.
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> (v) The applicant has deep root in the society, no apprehension as to flee away or escape trial or tampering with the evidence/witnesses is expressed."

Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge of the High Court directing to release respondent no.2 on bail, the father of the deceased has preferred the present appeal.

3. Shri Pradhuman Gohil, learned Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in releasing respondent no.2 on bail.

3.1 It is vehemently submitted that while releasing respondent no.2 on bail, the High Court has not adverted to any of the material collected during the course of the investigation which are the part of the charge sheet and that the nature and gravity of the offence.

3.2 It is submitted that the High Court, as such, has not assigned any reasons except that it is a case of circumstantial evidence which can be said to be a weak piece of evidence.

3.3 It is submitted that the impugned order passed by the High Court releasing respondent no.2 on bail is contrary to the law laid down by this Court in the case of *Ramesh Bhavan Rathod v. Vishanbhai Hirabhai Makwana (Koli) and others, reported in (2021) 6 SCC 630*, as well as the recent decision of this Court in the case of *Bhoopendra Singh v. State of Rajasthan & another (Criminal Appeal No. 1279 of 2021, decided on 29.10.2021)* and decision of this Court in the case of *Mahipal v. Rajesh Kumar, reported in (2020) 2 SCC 118*.

3.4 It is submitted that in the present case during the course of the investigation, it has been revealed that respondent no.2 was in financial difficulty; he got insurance accidental policy in the joint names of himself and his wife of Rs. 60 lakhs on 29.09.2020. It is submitted that thereafter he (respondent no.2 herein) hatched the criminal conspiracy with the other co-accused to kill her wife to get the monetary benefits and ultimately killed his wife on 26.12.2020.

3.5 It is submitted that during the course of the investigation, the Investigating Officer has collected ample material to complete the chain of events. It is submitted that the Investigating Officer has collected the

call details between respondent no.2 and co-accused Kirtikumar Kanaji and the co-accused driver of the Swift Car and it has been found that all the three were in touch with each other and they talked between 4:22 a.m. to 6:25 a.m. on the date of the incident and thereafter the deceased was hit by the co-accused Maheshbhai at 7:00 a.m. It is submitted that therefore the High Court ought not to have release respondent no.2 on bail.

4. Ms. Archana Pathak Dave, learned counsel appearing on behalf of the State of Gujarat has supported the appellant. It is submitted that looking to the nature and gravity of the offence committed by respondent no.2, the High Court ought not to have released respondent no.2 on bail. It is submitted that after a detailed investigation, respondent no.2 and the other co-accused have been charge-sheeted for the offences under Sections 302 and 120(B) IPC for having hatched the criminal conspiracy and killed the wife of respondent no.2 for monetary benefits.

5. Ms. Neelam Singh, learned Advocate appearing on behalf of respondent no.2 while opposing the present appeal has submitted that as investigation has been completed and charge-sheet has been filed and the custodial interrogation of respondent no.2 is not required and therefore the High Court has not committed any error in releasing

respondent no.2 on bail, more particularly when the prosecution case rests on circumstantial evidence.

6. We have heard the learned counsel for the respective parties at length. We have gone through the impugned judgment and order passed by the High Court releasing respondent no.2 on bail. Except making observations in clauses (iv) and (v) of paragraph 4, reproduced hereinabove, no further reasons have been assigned by the High Court while releasing respondent no.2 on bail. Even the High Court has not at all adverted to the material collected during the course of the investigation. The High Court has not at all considered the material/evidence collected during the course of the investigation even prima facie and has directed to release respondent no.2 in such a serious offence of hatching conspiracy to kill his wife, by simply observing that as it is a case of circumstantial evidence, which is a weak piece of evidence, it is not legal and proper to deny bail to respondent no.2. Merely because the prosecution case rests on circumstantial evidence cannot be a ground to release the accused on bail, if during the course of the investigation the evidence/material has been collected and prima facie the complete chain of events is established. As observed hereinabove, while releasing respondent no.2 on bail, the learned Single Judge of the High Court has not at all adverted to and/or considered any

of the material/evidence collected during the course of the investigation, which is a part of the charge-sheet.

7. One another reason given by the High Court to release respondent no.2 on bail is that the accused has deep root in the society and no apprehension as to flee away or escape trial or tampering with the evidence/witnesses is expressed. In a case of committing the offence under Section 302 read with 120B IPC and in a case of hatching conspiracy to kill his wife and looking to the seriousness of the offence, the aforesaid can hardly be a ground to release the accused on bail.

8. At this stage, few decisions of this Court on grant of bail are required to be referred to.

a) In ***Gudikanti Narasimhulu & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh*** **-- (1978) 1 SCC 240**, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of liberty of a person under trial, has laid down the key factors that have to be considered while granting bail, which are extracted as under:

> "7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.
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> 8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

> 9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance."

b) In ***Prahlad Singh Bhati vs. NCT of Delhi & ORS*** **– (2001) 4 SCC 280** this Court highlighted the aspects which are to be considered by a court while dealing with an application seeking bail. The same may be extracted as follows:

> "The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behavior, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge."

c) This Court in ***Ram Govind Upadhyay vs. Sudarshan Singh*** **– (2002) 3 SCC 598,** speaking through Banerjee, J., emphasized that a court

exercising discretion in matters of bail, has to undertake the same judiciously. In highlighting that bail cannot be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows:

> "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. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

d) In ***Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav & Anr.*** **– (2004) 7 SCC 528**, this Court held that although it is established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, the court is required to indicate the prima facie reasons justifying the grant of bail.

e) In ***Prasanta Kumar Sarkar vs. Ashis Chaterjee*** **-- (2010) 14 SCC 496** this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be

set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under:

> "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: (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."

f) In ***Neeru Yadav vs. State of UP & Anr.*** **– (2016) 15 SCC 422,** after referring to a catena of judgments of this Court on the considerations to be placed at balance while deciding to grant bail, it is observed in paragraphs 15 and 18 as under:

> "15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the

> emphasis is on exercise of discretion judiciously and not in a whimsical manner.
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> x x x
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> 18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order."

8.1 In ***Anil Kumar Yadav vs. State (NCT of Delhi)*** **– (2018) 12 SCC 129**, it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering.

8.2 Emphasizing on giving brief reasons while granting bail, it is observed by this Court in the case of *Ramesh Bhavan Rathod (supra)* that though 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 Cr.P.C. would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. It is further observed that however 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. It is observed 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 and the rights of the victims and their families are at stake as well and therefore while granting bail, the Court has to apply a judicial mind and record brief reasons for the purpose of deciding whether or not to grant bail. It is further observed by this Court in the aforesaid decision in paragraph 36 as under:

> "36. Grant of bail Under Section 439 of the Code of Criminal Procedure 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."

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the present case, the impugned order passed by the High Court directing to release respondent no.2 herein on bail is unsustainable both, on law as well as on facts. Whatever reasons are given by the High Court are not germane. As observed hereinabove, the High Court has not at all adverted to the relevant material/evidence collected during the course of the investigation, which are the part of the

charge-sheet. During the course of the investigation and even as per the charge-sheet it is alleged that for the monetary benefits, respondent no.2 hatched a criminal conspiracy with other co-accused to kill his wife and tried to make out an accidental case. During the course of the investigation, it has been revealed that respondent no.2 took the accidental insurance policy jointly with his wife on 29.09.2020 of Rs. 60 lakhs. The date of the offence is 26.12.2020 at 7:00 a.m. During the course of the investigation and from the call details, it has been revealed that respondent no.2 was in constant touch on phone with the other co-accused from 4:22 a.m. to 6:25 a.m. on 26.12.2020. During the course of the investigation and as per the charge-sheet, according to the prosecution, as a part of the conspiracy, respondent no.2 – Lalitbhai Ganpatji Tank took his wife to Hanumanji Temple on foot and as he got the chance in the way, he made phone call to the co-accused Kirtikumar Kanaji to finalise the plan. Kirtikumar Kanaji made phone call to another co-accused Mahesh (driver of the Swift Car) and thereafter the co-accused Mahesh hit the deceased Daxaben by the said car and committed murder from the back side so as to consider it as an accidental death. During all these times, all the accused were in touch on phone calls. Therefore, looking to the seriousness of the offence and looking to the nature and gravity of the offence committed by respondent no.2, the High Court ought not to have released respondent no.2 on bail.

While releasing respondent no.2 on bail, the High Court has not at all considered the parameters to be considered while releasing the accused on bail and that too in a serious offence of murder and hatching conspiracy to kill his wife. The impugned order passed by the High Court releasing respondent no.2 cannot be sustained and the same deserves to be quashed and set aside.

10. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and order dated 30.07.2021 passed by the learned Single Judge of the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 9390/2021, releasing respondent no.2 herein on bail is hereby quashed and set aside. Since, we have quashed and set aside the impugned order releasing respondent no.2 herein on bail, respondent no.2 is directed to surrender before the concerned Court/Jail authorities, within a period of one week from today. However, it is observed that the observations made in this judgment are for the purpose of deciding the question of bail only and the trial Court shall proceed with the trial of the case and decide the same in accordance with law and on the basis of the evidence led by both sides.

…….J.
[M.R. SHAH]

NEW DELHI;
JANUARY 18, 2022.

……..J.
[SANJIV KHANNA]