2023INSC767

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO.3482 OF 2023

XXX ...PETITIONER (S)

VERSUS

UNION TERRITORY OF ANDAMAN & NICOBAR ISLANDS & ANR. ...RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CRL.)No.5192 OF 2023

WITH

SPECIAL LEAVE PETITION (CRL.)No.5131 OF 2023

AND WITH

SPECIAL LEAVE PETITION (CRL.)No.5099 OF 2023

J U D G M E N T

VIKRAM NATH, J.

1. Special leave to appeal Criminal No. 3482 of 2023 has been filed by the victim (redacted as XXX) assailing the correctness of the order

dated 20th February, 2023 passed by the Calcutta High Court Circuit Bench at Port Blair granting bail to respondent no. 2 (Jitendra Narain), Ex-Chief Secretary of Andaman and Nicobar Islands for offences u/s 376(D)/ 228A/ 506/ 120B of the Indian Penal Code, 1860[1]. Special Leave Petition (Crl.) No. 5099 of 2023 has been preferred by the State/Union Territory of Andaman and Nicobar Islands for the same relief as claimed in Special Leave to Appeal (Crl.) No. 3482 of 2023. Further Special Leave Petition (Crl.) No. 5131 of 2023 has been filed by the State/Union Territory of Andaman and Nicobar Islands assailing the correctness of the order dated 22nd February, 2023 passed by the Calcutta High Court granting bail to the sole respondent (Sandeep Singh alias Rinku), co-accused arising out of the same FIR. Lastly, Special Leave Petition (Crl.)No. 5192 of 2023 has been filed by State-Union Territory of Andaman and Nicobar Islands assailing the order dated 22nd February, 2023 granting bail

[1] IPC

to sole respondent (Rishishwar Lal Rishi) another co-accused from the same FIR. The orders dated 22nd February, 2023 are primarily based on the ground of parity as bail has been granted to the alleged main accused Jitendra Narain on 20th February 2023.

2. We have heard learned counsels for the victim-petitioner, the State-Union Territory of Andaman and Nicobar Islands and the three accused/respondents.

3. As the main order has been passed in the case of Jitendra Narain on 20th February, 2023, at the outset, the same is being referred to. The Division Bench of the High Court considered the brief facts and thereafter noted that any reference made on the submissions relating to the evidence collected during investigation and the various pleas raised on behalf of the accused, could materially affect the trial, and accordingly, did not deal with the same. The High Court specifically noted this aspect in the following words:

> "We do not want to discuss all these materials in detail because that may influence the trial and

> merit of the case and it has also potency to prejudice the accused and in some manner to the prosecution also."

4. The High Court further noted that as the accused Jitendra Narain, an IAS officer has already been transferred to Delhi, if some stringent conditions are put, the petitioner (Respondent No.2 herein) would not be in a position to influence any of the witnesses in the Islands. The Division Bench also noticed that Jitendra Narain being in service, there would be no chance of him absconding. The Court further noticed that there was no material to impress that in case he was released, he would influence the witnesses or there would be any danger of justice being thwarted. On such considerations, the Division Bench proceeded to grant bail, subject to the following five conditions being imposed in addition to the terms and conditions that would be imposed by the Chief Judicial Magistrate:

> "1) The petitioner shall not visit the Andaman & Nicobar Islands except for the purpose of

attending the trial on proper receipt of notice from the Trial Court.

2) He shall not keep any contact with any person or official of these Islands by Phone or by any other mode of communication during the currency of this order.

3) He shall not threaten, induce or coerce any witness of the case in any manner. Whatsoever, during the currency of this order by any means of communication.

4) He shall not leave the Union of India except on the permission by the competent authority of the Union of India on urgent official work.

5) The petitioner through his counsel shall submit his Passport before the Trial Court during the currency of the trial and in case of his official visit to outside, the Passport can be handed over to him by the Trial Court on proper application, being filed to that effect."

5. In the case of the two other co-accused Rishishwar Lal Rishi and Sandeep Singh alias Rinku, the Division Bench not only considered the order dated 20th February, 2023 granting bail to Jitendra Narain, the main accused, but also took into consideration the lesser role for offences u/s 354/ 376/120 B of the IPC alleged against them and granted bail imposing similar five conditions.

6. Learned counsel for the victim as also the State (petitioners) have drawn our attention to the material collected during the investigation. The Court has been taken through the Police Report submitted u/s 173(2) of the Code of Criminal Procedure, 1973 as also to specific instances and incriminating material against the accused.
7. On the other hand, learned counsel for the accused have pointed out the various inconsistencies, contradictions and deficiencies in investigation and the evidence collected to show the falsehood of the prosecution case.
8. As indicated hereinafter, and subject to what follows, but for entirely different reasons, we are in agreement with the ultimate view of the High Court. In this scenario, we consciously refrain from commenting upon the contentions put forth by learned counsel on both sides on the alleged inconsistencies, contradictions and/or deficiencies in the other side's case.
9. The law regarding the parameters or circumstances to be considered in granting bail or refusing bail are well laid out in series of

judgements of this Court, however, we have referred to a couple of them hereinafter.

10. A three judge Bench of this Court in **Jagjeet Singh** vs. **Ashish Mishra**[2], reiterated and approved the factors to be considered for grant of bail as was laid down in the case of **Prasanta Kumar Sarkar** vs. **Ashis Chatterjee**[3] in para 9 thereof:

> "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 face or reasonable ground to believe that the accused had committed the offence;
> (il) nature and gravity of the accusation;
> (ili) 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;
> (vil) reasonable apprehension of the witnesses being influenced; and
> (viii) danger, of course, of justice being thwarted by grant of bail.""

[2] (2022) 9 SCC 321
[3] (2010) 14 SCC 496

11. Having considered the matter and the applicable law, this Court notes that the decision of the Division Bench of the High Court of Calcutta (Circuit Bench, Port Blair) dated 20.02.2023 in CRM (DB)/1/2023 has neither dealt with the real issue, nor indicated reasons which are germane and, in our view, required consideration concerning the grant or rejection of bail.

12. Rather, the High Court examined issues, which ought not to have been the primary factors when considering the prayer for bail of respondent no. 2, especially what is recorded in the first two paragraphs at Page 4 of the Impugned Judgment. This could have entailed remand to the High Court for a discussion, even if short, on the merits of granting bail in the present facts and circumstances. However, we have independently considered the matter on merits after hearing learned counsel *in extenso*. Having done so, we do not find reason to interfere with the Impugned Judgments. At the

same time, the interest of justice must be preserved. In this light, we impose the following conditions in addition to those laid down by the High Court:

(A) The Trial Court shall proceed expeditiously with the case and without any undue adjournment(s), and;

(B) The accused-respondent shall render full cooperation in the trial, and;

(C) The accused-respondent shall not leave the territory of India. Condition No. 4 imposed by the High Court shall stand modified accordingly, and;

(D) Condition No. 5 imposed by the High Court is varied and shall now read as '*The Petitioner shall submit his Passport to the Trial Court. In case, the Petitioner holds more than one Passport (Diplomatic and/or Personal), the other Passport shall also be deposited with the Trial Court.*'

Any violation(s) of the terms and conditions stipulated supra and by the High Court would be grounds for cancellation of bail. The observations herein will not aid the accused nor impede the Petitioner or the Prosecution at trial.

13. The Petitioner fears for her and her family's safety. It is made clear that the onus of ensuring their safety is on the Union Territory Administration. Similarly, the Union Territory Police is put to notice in this regard. Insofar as the Petitioner claims that the Director-General of Police has not acted on her subsequent complaints seeking registration of First Information Reports against certain other persons, the Director-General is directed to examine the same and take an independent decision on what action, if any, is called for, in accordance with law, within ten days from today. In these peculiar facts, we grant liberty to the parties to apply in case of difficulty.

14. In view of the above discussion, the Special Leave Petitions fail and are hereby dismissed.

15. Pending applications, if any, stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI
AUGUST 24, 2023