



AFR
Reserve

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 28882 of 2008

Petitioner :- Amarnath Yadav

Respondent :- State Of U.P.

Petitioner Counsel :- Kamal Krishna

Respondent Counsel :- Govt. Advocate

Hon'ble Vijay Kumar Verma, J.

By means of this application under Section 439 of the Code of Criminal Procedure (in short 'the Cr.P.C. '), prayer for bail has been made on behalf of the applicant Amar Nath Yadav s/o Sukhu Yadav, who is facing trial in S.T. No. 143 of 2008 (State vs. Amar Nath Yadav & others) arising out of Case Crime No. 60 of 2008 under Sections 302, 307, 506 I.P.C., P.S. Chunar, District Mirzapur.

2. An FIR was lodged by the complainant Vijay Kumar Yadav on 31.01.2008 at 8.20 p.m. at P.S. Kotwali Chunar (Mirzapur) at case crime No. 60 of 2008 with the allegations that on 30.01.2008 at about 08.30 p.m., the accused Amar Nath Yadav (applicant herein), Gulab Yadav and Pyare Lal Yadav, all sons of Sukhoo Yadav, r/o Saraiya Sikandarpur, P.S. Chunar and one unknown person fired on Jawahar Yadav (father of the complainant), thereby causing injuries to him. Further case of the prosecution is that as a result of the injuries sustained by Jawahar Yadav in the said incident, he died in the hospital during treatment on 03.03.2008.

3. I have heard arguments at length of Sri P.K. Singh,

Advocate, appearing for the applicant and AGA for the State.

4. The first and foremost submission made by learned counsel for the applicant was that in the FIR as well as in the statement of the complainant Vijay Kumar recorded in S.T. No. 143 of 2008, general allegations of firing was assigned to all the accused persons named in the FIR and since the co-accused Pyare Lal has been granted bail by another Bench of this Court vide order dated 01.05.2008 passed in CrI. Misc. Bail Application No. 11984 of 2008, hence the applicant is also entitled to be released on bail on the basis of the principle of parity.

5. On merit, it was submitted by learned counsel for the applicant that although, specific role of firing on the deceased was assigned to the applicant Amar Nath Yadav in the statement of the complainant Vijay Kumar Yadav recorded under section 161 Cr.P.C., but neither in the FIR, nor in the statement of the complainant recorded in S.T. No. 143 of 2008, no specific role has been assigned to the applicant and hence on this ground he deserves bail, because it can not be said that the applicant was the author of fatal injuries sustained by the deceased. For this submission, my attention was drawn towards the statement (annexure SA-1 to the 2nd supplementary affidavit) of the complainant Vijay Kumar recorded as P.W.1 in S.T. No. 143 of 2008. It was also submitted by learned counsel in this context that according to the injury report (annexure-3), the deceased

had sustained two injuries caused by firearms, but neither in the FIR, nor in the statement of the complainant recorded in S.T. No. 143 of 2008, it is stated that the shot fired by applicant had hit the deceased and hence on granting bail to the identically placed co-accused Pyare Lal, the applicant also should be released on bail.

6. Further submission made by learned counsel was that the incident of causing injuries to the deceased is said to have occurred on 30.01.2008 at about 8.30 p.m., but the FIR was lodged after about 24 hours, which is fatal to the prosecution case, because no satisfactory explanation has been furnished by the prosecution for the delay in lodging the FIR.

7. It was also submitted by learned counsel that the applicant had attended the court of Additional Sessions Judge Fast Track Court -II Mirzapur on 31.01.2008 in S.T. No. 69 of 1998 (State vs. Sukhoo and others) and on this ground also, the applicant deserves bail, because after causing injuries to the deceased in the intervening night of 30/31.01.2008, the applicant in ordinary course would have absconded and he would not have attended the court on 31.01.2008. For this submission, my attention was drawn towards copy of the order-sheet of S.T. No. 69 of 1998 (annexure-6), which bears the thumb impression of Amar Nath Yadav (applicant) showing his presence in court on 31.01.2008.

8. Next submission made by learned counsel for the

applicant was that although the deceased had died after more than one month from the date of incident, but neither any dying declaration nor his statement was recorded under section 161 Cr.P.C., which shows that the deceased had not recognized the assailants and it was for this reason that his statement was not recorded.

9. It was further submitted by learned counsel for the applicant that the deceased in injured condition was carried to the hospital by Chhotey Lal and not by the complainant Vijay Kumar, which shows that the complainant was not present at the time of alleged incident and it was for this reason that his father Jawahar Lal in injured condition was carried to hospital by Chhotey Lal. In support of this submission, my attention was drawn towards the injury report (annexure-3) of Heritage Hospital, Varanasi, in which it is mentioned that the injured Jawahar Yadav was brought to hospital by Chhotey Lal Yadav, who has been shown as his brother.

10. Next submission made by learned counsel was that the motive as alleged in the FIR is very weak. It was also submitted in this context that statement of the deceased had already been recorded in the session trial, which was pending between the parties and hence there was no occasion for the applicant and other accused to commit his murder. It was further submitted in this very context that the accused persons have

been acquitted in S.T. No. 69 of 1998, vide judgment dated 05.12.2008 and on this ground, the alleged motive is falsified. For this submission, my attention was drawn towards the copy of the judgment dated 05.12.2008 of S.T.No. 69 of 1998 (State vs. Sukhoo & others), which has been filed with supplementary affidavit dated 20.12.2008.

11. It was also submitted by the learned counsel that the applicant languishing is in jail since 15.02.2008, and hence on the basis of long detention period in jail, he is entitled for bail, as due to delay in trial his fundamental right of speedy trial envisaged under Article 21 of the Constitution of India is being violated.

12. The bail application was vehemently opposed by learned AGA contending that the role of firing has been assigned to the applicant and other accused persons named in the FIR and since the deceased had died as a result of injuries caused by firearm in the alleged incident, hence in this heinous crime, the applicant should not be released on bail.

13. It was further submitted by learned AGA that litigation between the parties was going on prior to the incident and hence there was strong motive for the applicant and his brothers to eliminate the deceased.

14. Regarding delay in lodging the FIR, it was submitted by learned AGA that the deceased had sustained very serious injuries and since he was carried to Haritage Hospital Varanasi for better

treatment, where he was admitted, hence the delay in lodging the FIR would not be fatal, because the complainant remained busy after the incident in getting his father admitted in the hospital. About mentioning the name of Chhotey Lal Yadav in the injury report (annexure-3), it was submitted by learned AGA that after the incident some persons had arrived at the place of incident, who helped the complainant in carrying the deceased in injured condition to the hospital and if the name of Chhotey Lal Yadav (brother of deceased) has been noted in the injury report as the person, who carried the injured Jawahar Yadav to Haritage Hospital, it cannot be said on this ground that the complainant was not present at the time of incident. It was also submitted by learned AGA that the statement of the complainant has been recorded in trial court in S.T.No. 143 of 2008, in which he has fully supported the case of prosecution and his presence at the time of incident is fully established on the basis of his statement recorded on oath in trial court.

15. Regarding the thumb impression of the applicant Amar Nath Yadav on the order sheet dated 31.01.2008 of S.T. No. 69 of 1998 and his alleged presence in the court of Additional Session Judge/ FTC-II Mirzapur on that date, it was submitted by learned AGA that merely on this ground, the presence of applicant at the place of incident cannot be doubted, because his complicity in the incident has been fully established on the basis of the statement of complainant recorded in trial court as P.W.1 in S.T.No. 143 of 2008.

16. On the point of granting bail to the applicant on the basis of the principle of parity, it was vehemently contended by learned AGA that parity cannot be the sole ground for bail and hence this Bench is not bound to admit the applicant to bail on the basis of the order dated 01.05.2008 passed by another Bench of this Court on the bail application of co-accused Pyare Lal in CrI. Misc. Bail Application No. 11984 of 2008, whereby he (co-accused Pyare Lal) has been released on bail.

17. Having given my thoughtful consideration to the submissions made by learned counsel for the parties. I entirely agree with the contention of learned AGA that parity cannot be the sole ground for bail.

18. The matter of granting bail on the ground of principle of parity has been considered in several decisions of this Court and Hon'ble Apex Court. The Full Bench of this Court in Sunder Lal Vs. State 1983 Cr. L.J. 736 did not accept this proposition, which will be evident from the following observations in para 15 of the report:-

“The learned Single Judge since has referred the while case for decision by the Full Bench, we called upon the learned Counsel for the applicant to argue the case on merits. The learned Counsel only pointed out that by reasons of fact that other co-accused has been admitted to bail the applicant should also be granted bail. This argument alone would not be

sufficient for admitting the applicant to bail who is involved in a triple murder case....”

19. This question was again examined by the Division Bench of this Court in ***Nanha Vs. State 1993 Cr L J 938***, where after consideration of several earlier decisions on the point including ***Sunder Lal*** (supra), the Hon'ble Judges constituting the Bench gave separate opinions. Hon'ble G.D. Dubey, J. held as follows in para 24 of the reports;

“..... My answer to the points referred to us is that parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail application of the co-accused whose bail had been earlier rejected are allowed and co-accused is released on bail. Even then the Court has to satisfy itself that, on consideration of more material placed, further developments in the investigations or otherwise and other different considerations, there are sufficient grounds for releasing the applicant on bail. If on examination of a given case, it transpires that the case of the applicant before the Court is identically similar to the accused on facts and circumstances who has been bailed out, then the desirability of consistency will require that such an accused should be also released on bail.”

20. *Hon'ble Virendra Saran, J. held as follows in para 61 of the reports:*

21.My answer to the points referred to is that if on examination of a given case it transpires that the case of the applicant before Court is identical, similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused should also be released on bail (Exceptional cases as discussed above apart).....”

22. This shows that there was no unanimity between the two Judges constituting the Bench and according to Hon'ble G.D. Dube, J. parity cannot be the sole ground for granting bail to a co-accused.”

23. The Hon'ble M. Katju, J., as His Lordship then was, declined to grant bail on the ground of parity and referred the matter to larger Bench in ***Chander @ Chandra Vs. State of U.P. 1997 (34) ACC 311***. The matter came up for consideration before a Division Bench. While deciding the said reference in ***Chander @ Chandra Vs. State of U.P. (1998 U.P. Cr.R. 263)*** the Division Bench held that:-

“ a Judge is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains

reasons, if the same has been passed in flagrant violation of well settled principle and ignores to take into consideration the relevant facts essential for granting bail.”

24. It is further held by the Division Bench in ***Chander @ Chandra Vs. State of U.P. (1998 U.P. Cr.R. 263)*** that if bail has been granted in flagrant violation of well settled principles, the order granting bail would not be in accordance with law. Such order can never form the basis for a claim founded on parity. The following observations made by the Bench in Para 17 of the report are also worth mentioning:-

“The grant of bail is not a mechanical act and principle of consistency cannot be extended to repeating a wrong order. If the order granting bail to an identically placed co-accused has been passed in flagrant violation of well settled principle, it will be open to the Judge to reject the bail application of the applicant before him as no Judge is obliged to pass orders against his conscience merely to maintain consistency.”

25. In this connection it will be useful to notice the observations made by the Hon'ble Apex Court, where the claim was made on the ground that a similar order had been passed by a statutory authority in favour of another person. In ***Chandigarh Administration Vs. Jagjit Singh AIR 1995 SC 705***, it was held as follows in para-8 of the reports:

“..... if the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal and unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order.”

“..... The illegal/unwarranted action must be corrected, if it can be done according to law-indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition.

“..... Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.”

26. Again in ***Secretary Jaipur Development Authority V. Daulatmal Jain, 1997(1) SCC 35***, it was observed as follows in para-24 of the reports:

“Article 14 proceeds on the premises that a citizen had legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such persons cannot be

discriminated to deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously, no.”

27. In Special Leave Petition No. 4059 of 2000: ***Rakesh Kumar Pandey Vs. Munni Singh @ Mata Bux Singh and another***, decided on 12.3.2001, the Hon'ble Apex Court strongly denounced the order of the High Court granting bail to the co-accused on the ground of parity in a heinous offence and while cancelling the bail granted by the High Court it observed that:-

“The High Court on being moved, has considered the application for bail and without bearing in mind the relevant materials on record as well as the gravity of offence released the accused-respondents on bail, since the co-accused, who had been ascribed similar role, had been granted bail earlier.”

28. The Apex Court in the aforesaid law report has further

observed:-

“Suffice it to say that for a serious charge where three murders have been committed in broad day light, the High Court has not applied its mind to the relevant materials, and merely because some of the co-accused, whom similar role has been ascribed, have been released on bail earlier, have granted bail to the present accused respondents. It is true that State normally should have moved this Court against the order in question, but at the same time the power of this Court cannot be fettered merely because the State has not moved, particularly in a case like this, where our conscience is totally shocked to see the manner in which the High Court has exercised its power for release on bail of the accused respondents. We are not expressing any opinion on the merits of the matter as it may prejudice the accused in trial. But we have no doubt in our mind that the impugned order passed by the High Court suffers from gross illegality and is an order on total non-application of mind and the judgement of this Court referred to earlier analysing the provisions of sub-section (2) of section 439 cannot be of any use as we are not exercising power under sub-section (2) of section 439 Cr.P.C.”

29. In the case of **Salim Vs. State of U.P. 2003 ALL. L. J. 625**, this Court has held that parity can not be the sole ground for bail.

30. Again in the case of **Zubair Vs. State of U.P. 2005(52) ACC 205**, this Court observed that there is no absolute hidebound rule that bail must necessarily be granted to the co-accused, where another co-accused has been granted bail.

31. The matter of granting bail on the principle of parity was considered by this Court in **Satyendra Singh Vs. State of U.P. 1996 A. Cr. R.867** also. The following observations made in para 16 of the report at page 871 are worth mentioning:-

“The orders granting, refusing or cancelling bail are orders of interlocutory nature. It is true that discretion in passing interim orders should be exercised judicially but rule of parity is not applicable in all the cases, where one or more accused have been granted bail or similar role has been assigned inasmuch as bail is granted on the totality of facts and circumstances of a case. Parity can not be a sole ground and is one of the grounds for consideration of the question of bail. Some of the circumstances have been enumerated in the Supreme Court Decision in Gur Charan Singh Vs. State (Delhi Administration), AIR 1978 SC 179.

32. Although the Hon'ble Apex Court has granted bail

making reference of the principle of parity in ***Izrahul Haq Abdul Hamid Shaikh and Anr. Vs. State of Gujarat 2009 (3) JT 385*** and in ***Fida Hussain Bohra Vs. State of Maharashtra 2009 (2) JIC 312 (SC)***, the order of granting anticipatory bail by the Sessions Judge was maintained after setting aside the order of High Court cancelling the bail granted by Sessions Judge and in this case also, reference of principle of parity has been made, but in both these case, merit of the case was also considered by the Hon'ble Apex Court. Hence, in my opinion, both these cases can not be said to be the authority to hold that parity is sole ground for granting bail in all cases. It is nowhere held as a binding precedent in these cases that if bail has been granted by one Judge to any accused, then another Judge is also bound to grant bail to other similarly placed accused in all cases on the basis of the principle of parity without considering the merit. It is well settled that a judgement of a Court is only an authority for what it actually decides and not what logically follows from it and judgement of the Court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute. The Hon'ble Apex Court has held in ***Deepak Bajaj vs. State of Maharashtra & another AIR 2009 SC 628*** that it is well settled that a judgment of a Court is not to be read mechanically as a Euclid's Theorem nor as if it was a statute.

33. On the subject of precedents, Lord Halsbury, L.C. said in *Quinn vs. Leathern*, 1901 AC 495:-

“Now before discussing the case of Allen vs. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all”.

34. In ***Ambica Quarry Works vs. State of Gujarat & others (1987) 1 SCC 213*** (vide paragraph 18) the Hon'ble Apex Court observed:-

“The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it.”

35. In ***Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd. (2003) 2 SCC 111*** (vide paragraph 59, the Hon'ble Apex Court observed:-

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision”.

36. As held in ***Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another (AIR 2004 SC 4778)***, a decision cannot be relied on without disclosing the factual situation.

In the same judgment the Hon'ble Apex Court also observed:-

“Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision of which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgment. They interpret words of statutes: their words are not to be interpreted as statutes”.

(Emphasis supplied)

37. In ***London Graving Dock Co. Ltd. vs. Horton (1951 AC 737 at page 761)***, Lord Mac Dermot observed:-

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes,

J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge”.

38. In **Home Office vs. Dorset Yacht Co. (1970 (2) All ER 294)** Lord Reid Said, “Lord Atkin's speech..... is not to be treated as if it was a statute definition: it will require qualification in new circumstances, **Megarry, J. in (1971) 1 WLR 1062**, observed:

“One must not, of course, construe even a reserved judgment of Russell, J. as if it were an Act of Parliament”.

39. In **Herringion vs. British Railways Board (1972 (2) WLR 537)** Lord Morris said:

“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lords Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In

deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which said of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the said branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it”.

(Emphasis supplied)

40. The same view was taken by the Hon'ble Apex Court in ***Sarva Shramik Sanghatana (K.V.), Mumbai vs. State of Maharashtra & Ors. AIR 2008 SC 946*** and in ***Government of Karnataka & Ors. Vs. Gowramma & Ors. AIR 2008 SC 863***.

41. In view of the observations made in aforesaid decisions, I am of the considered opinion that on granting bail by one bench to any accused, another bench is not under obligation to grant bail to similarly placed co-accused on the basis of the principle of parity without considering the merit. As held by Division Bench of this court in ***Chander @ chandra Vs. State of U.P. (supra)***, if the order granting bail to an identically placed co-accused has been passed in flagrant violation of well settled principle, then another Judge is not bound to release the similarly placed accused on bail and it is open to him to reject the bail application before him, as no judge is obliged to pass orders against his conscience merely to

maintain consistency. Therefore, in present case also, merely on the basis of the principle of parity, the applicant cannot be released on bail and bail application of the applicant has to be considered on merit.

42. The applicant is named in the FIR and role of firing has been assigned to him also along with other accused persons. Although specific role of firing on the deceased was attributed to the applicant Amar Nath in the statement of the complainant Vijay Kumar Yadav recorded under section 161 Cr.PC., but even keeping in view the general role of firing assigned to all the accused persons in the FIR and statement of the complainant Vijay Kumar recorded in trial court in S.T. No. 143 of 2008 and having regard to the aforesaid submissions made by learned counsel for the parties, but without expressing any opinion about merit of the case, in this heinous crime of taking away the life of an innocent person without any lawful excuse, the applicant does not deserve bail.

43. In my considered opinion, on the basis of the long incarceration in jail also, the applicant can not be admitted to bail in this heinous crime. In this context, reference may be made to the case of ***Pramod Kumar Saxena vs. Union of India and others 2008 (63) ACC 115***, in which the Hon'ble Apex Court has held that mere long period of incarceration in jail would not be per-se illegal. If the accused has committed offence, he has to remain behind bars. Such detention in jail even as an under trial prisoner would

not be violative of Article 21 of the Constitution.

44. Consequently, the bail application is hereby rejected.

45. The trial court concerned is directed to conclude the trial of the applicant and other accused persons within a period of six months avoiding unnecessary adjournments and applying the provisions of Section 309 Cr.P.C.

46. SSP Mirzapur also is directed to depute special messenger to procure the attendance of rest witnesses after obtaining their summons from the court concerned and it must be ensured that all the rest witnesses are produced in sessions trial No. 143 of 2008 without causing any delay.

47. Sessions Judge Mirzapur will also ensure that trial of the accused persons is concluded within aforesaid period.

48. The office is directed to send a copy of this order within a week to the trial court concerned, Sessions Judge and SSP Mirzapur for necessary action.

vk. updh.

Dtd: 13th October, 2009.

