AFR
Reserve

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4787 of 2009

Petitioner :- Nahar Singh
Respondent :- State Of U.P.
Petitioner Counsel :- Arvind Singh,Kamal Mishra
Respondent Counsel :- Govt. Advocate,Rajul Bhargava

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Hon'ble Vijay Kumar Verma, J.

"Whether on granting bail by one bench to any accused, another bench also is under obligation to grant bail to the similarly placed co-accused on the basis of the principle of parity without considering the merit", is the main point that falls for consideration in this bail application under Section 439 the Code of Criminal Procedure (in short 'the Cr.P.C.'), in which prayer for bail has been made on behalf of the applicant Nahar Singh s/o Padam Singh, who is facing trial in S.T. No. 623 of 2007 (State vs. Nahar Singh & others) arising out of Case Crime No. 519 of 2007 under Sections 147, 148, 149, 302, 307, 452, 504, 506/34 I.P.C., P.S. Goverdhan, District Mathura.

2. An FIR was lodged by Smt. Maya, wife of deceased Satyapal Singh, on 04.08.2007 at P.S. Goverdhan, District Mathura, impleading Nahar Singh (applicant herein), Mahak Singh, Charan Singh, Bhishma, Sundar, Veer Singh, Karan Singh, Narayan, Ajab Singh, Kavita and Premwati as accused. The allegations made in the FIR, in brief, are that when on 04.08.2007 at about 10.30 a.m.,

Satyapal Singh (husband of the complainant), Smt. Gora (daughter-in-law of the complainant), and Kumari Kavita daughter of Vijay, were coming on the tractor carrying the grass, the accused Nahar Singh armed with country made pistol, Mahak Singh having axe, Charan Singh and Sundar armed with country made pistols, Bhisam having *peti* of cartridges, Veer Singh armed with gun, Karan Singh having *danda*, Narayan having *farsa*, Ajab Singh having *saria*, Babita having *lathi* and Smt. Premwati having *danda* surrounded the tractor, and Nahar Singh fired from country made pistol, which hit Satya Pal Singh (husband of complainant). Other accused having firearms also fired on the husband of complainant. On hearing hue and cry, the complainant Maya, her *Devar* Vinay and *Devarani* reached on the place of incident, on which the accused Nahar Singh and Sundar fired from country made pistols on Vinay. Due to the injuries sustained by Satyapal and Vinay, they both died instantaneously. Smt. Sukhdeyee (wife of deceased Vinay) and complainant Smt. Maya also sustained injuries.

3. I have heard arguments at length of Sri G.S. Chaturvedi, learned senior Advocate, appearing for the applicant, Sri Rajul Bhargav, Advocate, representing the complainant and AGA for the State.

4. The first and foremost submission made by learned counsel for the applicant was that similarly placed co-accused Veer Singh has been granted bail by another bench of this Court

vide order dated 16.12.2008, passed in Crl. Misc. Bail Application No. 33587 of 2008, and hence on the basis of principle of parity, the applicant also is entitled to be released on bail. The contention of learned counsel for the applicant was that according to the FIR and statements of witnesses, all the accused persons, who were armed with firearms, had fired on the deceased Satya Pal Singh and Vinay and since the role of applicant and co-accused Veer Singh was identical, hence to maintain consistency and on the basis of the principle of parity, the applicant also should be released on bail.

5. On the matter of granting bail to the applicant on the basis of the principle of parity, it was vehemently contended by learned counsel for the complainant and AGA that parity cannot be the sole ground for bail and hence the applicant should not be released on bail on the basis of bail order dated 16.12.2008 passed on the bail application of co-accused Veer Singh by another Bench of this Court. It was also contended by learned AGA that order dated 16.12.2008 on the bail application of co-accused Veer Singh has been passed in flagrant violation of well settled principle, hence this Bench is not bound to grant bail to the applicant Nahar Singh on the ground of parity. For this submission, reliance has been placed on ***Chandar @ Chandra vs State of U.P. 1998 UP Cr. 263.***

6. Having given my thoughtful consideration to the

submissions made by learned counsel for the parties on the matter of granting bail on the basis of the principle of parity, I entirely agree with the submission of learned counsel for the complainant and AGA that parity cannot be the sole ground for bail.

7. 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...."***

8. 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."

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

10. .....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).....”***

11. 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.”

12. 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.”***

13. 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."***

14. 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."

15. 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."***

16. 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."***

17. 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.“

18. 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.

19. 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.

20. 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.***

21. 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.

22. 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".

23. 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."

24. 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".

25. As held in ***Bharat Petrolieum 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)

26. 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".*

27. 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".*

28. 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:*
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> *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)

29. 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***.

30. 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 place 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.

31. On merit, it was submitted by learned counsel for the applicant that the witnesses had not sustained firearm injuries and hence, their presence at the place of incident is doubtful.

32. Next submission made by learned senior counsel appearing for the applicant was that in addition to the applicant Nahar Singh, who is alleged to be armed with country made pistol, the co-accused Charan Singh, Sundar and Veer Singh also were having firearms and since all the accused persons having fire arms are said to have fired indiscriminately on the deceased persons, hence it cannot be said that the applicant alone was the author of fatal injuries caused to the deceased and hence on this ground also, the applicant deserves bail.

33. It was also submitted by learned counsel that the applicant is languishing in jail since 04.08.2007 and on the basis of long detention period in jail, he deserves bail now, as due to delay in trial, his fundamental right of speedy trial envisaged under Article 21 of the Constitution is being violated.

34. The bail application was vehemently opposed by learned counsel for the complainant and AGA contending that specific role of firing has been attributed to the applicant Nahar Singh in addition to other accused persons having firearm and hence in this heinous crime of taking away the life of two innocent persons without any lawful excuse, the applicant should not be released on bail.

35. It was also submitted by learned counsel for the complainant that Smt. Sukhdeyee, wife of deceased Vinay and Smt. Maya (complainant) also had sustained injuries in the same

incident, hence their presence at the place of incident cannot be doubtful. For this submission, my attention was drawn towards injury reports (annexure SA-1 and SA 02 to the supplementary affidavit dated 28.07.2009).

36. I have gone through the entire case diary and other material on record. There is sufficient prima facie evidence to show that the applicant Nahar Singh also had fired on the deceased persons by country made pistol. Annexure-2 to the bail application is the copy of post mortem report of the dead body of deceased Satyapal, which shows that as many as six firearm wounds of entry in addition to blackening in an area of 7x5cm. On right side of forehead (ante mortem injury no.1) and exit wounds were found on his person at the time of post mortem examination. The post mortem report (paper No. 22) of the dead body of deceased Vinay shows that two ante mortem firearm wound of entry having their corresponding exit wounds were found on his person in addition to the ante mortem lacerated wounds. Both the deceased persons died due to shock and haemorrhage as a result of ante mortem injuries. The complainant Smt. Maya has been examined in trial court in S.T. No. 623 of 2007, Annexure-7 to the supplementary affidavit is the copy of statement of Smt. Maya, from which also, prima facie involvement of applicant Nahar Singh in the alleged incident by firing from country made pistol is established. Therefore, having regard to all these facts and keeping in view the nature of

offence alleged to have been committed by the accused persons, in this heinous crime of broad day light double murder, the applicant does not deserves bail.

37. 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.

38. Consequently, the bail application is hereby rejected.

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

40.SSP Mathura 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 witnesses are produced in sessions trial No. 623 of 2007 without causing any delay.

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

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

vk. updh.
Dtd: 16th September, 2009.