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of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 513 OF 2023
 of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 2437 OF 2023
 of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 13404 OF 2023
 of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 16310 OF 2023

REPORTABLE

2024 INSC 438

**IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ of 2024

ARISING OUT OF PETITION FOR SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.513 OF 2023

AJWAR	....	APPELLANT
	Versus	
WASEEM AND ANOTHER	....	RESPONDENTS

ALONG WITH

CRIMINAL APPEAL NO. _____ of 2024

ARISING OUT OF PETITION FOR SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.2437 OF 2023

AJWAR	....	APPELLANT
	Versus	
NAZIM AND ANOTHER	....	RESPONDENTS

AND

CRIMINAL APPEAL NO. _____ of 2024

ARISING OUT OF PETITION FOR SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.13404 OF 2023

AJWAR	....	APPELLANT
	Versus	
ASLAM AND ANOTHER	....	RESPONDENTS

AND

CRIMINAL APPEAL NO. _____ of 2024

ARISING OUT OF PETITION FOR SPECIAL LEAVE TO APPEAL (CRIMINAL) NO.16310 OF 2023

AJWAR	....	APPELLANT
	Versus	
ABUBAKAR AND ANOTHER	....	RESPONDENTS

JUDGEMENT

HIMA KOHLI, J.

1. Leave granted.
2. The present appeals are directed against four different orders passed by the learned Single Judges of the High Court of Judicature at Allahabad on applications moved by Waseem (accused No. 7)¹, Nazim (accused No. 8)², Aslam (accused No. 2)³ and Abubakar (accused No.1)⁴ under Section 439 Code of Criminal Procedure, 1973⁵ for seeking regular bail in respect of Case Crime No.126 of 2020 registered at Police Station Mundali, District Meerut, Uttar Pradesh for offences punishable under Sections 147, 148, 149, 302, 307, 352 and 504 read with Section 34 of Indian Penal Code, 1860⁶. *Vide* orders dated 07th December, 2022, 13th February, 2023 and 02nd March, 2023 and 21st March, 2023 respectively, the applications filed by Waseem, Nazim, Aslam and Abubakar were allowed by different Benches of the High Court. Aggrieved by the said orders, the appellant-Complainant has approached this Court.

¹ Respondent No. 1 in Criminal Appeal arising out of SLP(Crl.) 513 of 2023

² Respondent No. 1 in Criminal Appeal arising out of SLP (Crl.) 2437 of 2023

³ Respondent No. 1 in Criminal Appeal arising out of SLP (Crl.) No. 13404 of 2023

⁴ Respondent No. 1 in Criminal Appeal arising out of SLP(Crl.) No. 16310 of 2023

⁵ Cr.P.C.

⁶ IPC

BRIEF FACTS

3. The relevant facts of the case, as recorded in a First Information Report⁷ registered on the complaint received from the appellant - complainant herein on 19th May, 2020, are that the incident in question had taken place on 19th May, 2020 at 7.30 in the evening when the appellant-complainant, his two sons, Abdul Khaliq and Abdul Majid with some other persons were sitting in the baithak of his house for breaking the fast (Roza Iftar) and preparing to offer prayers. The accused persons (10 in number, namely, Nazim, Abubakar, Waseem, Aslam, Gayyur, Nadeem, Hamid, Akram, Qadir and Danish) arrived at the spot and indiscriminately fired at the appellant and his two sons. Both the sons of the appellant died on the spot and his nephew, Asjad was seriously injured. The appellant-complainant has alleged that there was previous enmity between the parties due to which the accused persons had attacked him and his sons.

4. Pertinently, Niyaz Ahmed, father of Waseem (accused No. 7) was not named in the FIR. His role in the incident came up during the course of the investigation conducted by the police and based thereon, his name was added as a co-accused. On completion of the investigation, a chargesheet was submitted under Section 173 Cr.P.C. on 23rd June, 2020 against eight accused including Abubakar (accused No. 1), Niyaz Ahmad, Aslam (accused No.2) and Nazim (accused No. 8). Aslam is the nephew of Nazir and Nazim is

⁷ FIR

the cousin of Waseem, whose father, Niyaz Ahmad was enlarged on bail by the High Court, vide order dated 4th August 2022, which order was set aside by this Court on 30th September, 2022 in a Criminal Appeal⁸ filed by the appellant-complainant. Three other accused were not found to be involved in the offence and on conclusion of the investigation, no chargesheet was filed against them.

PROCEEDINGS AFTER FILING OF CHARGESHEET

5. After the chargesheet was filed, the case was committed to the Sessions Court and was registered as Sessions Trial No.574 of 2020. The same is pending trial before the Court of the Additional Sessions Judge, Court 15, Meerut. Charges were framed and twenty witnesses have been cited by the prosecution. Out of the said list of witnesses, seven are eyewitnesses. The trial has commenced. Four eyewitnesses have been examined so far. Three eyewitnesses are yet to be examined. The statement of the appellant-complainant (PW-1) and three other eyewitnesses (PW-2, PW-3 and PW-4) have been recorded. The prime witnesses have elaborated the role of the respondents herein, i.e., Waseem (A-7), Nazim (A-8), Aslam (A-2) and Abubakar (A-1). Two more witnesses were summoned for examination on 7th May, 2024.

⁸ Criminal Appeal No.1722 of 2022

REASONS FOR SETTING ASIDE THE EARLIER BAIL ORDER GRANTED BY THE HIGH COURT IN FAVOUR OF WASEEM

6. Earlier hereto, Waseem(A-7) was granted bail by the High Court *vide* order dated 22nd August 2022⁹. The said order was challenged by the appellant-complainant before this Court¹⁰. *Vide* order dated 14th October, 2022, this Court cancelled the bail granted to Waseem observing that it was apparent from a perusal of the order dated 22nd August, 2022 passed by the High Court that Waseem was granted bail on the basis of a co-ordinate Bench granting bail to his father, Niyaz Ahmad, *vide* order dated 4th August, 2022. Since the order passed in favour of Niyaz Ahmad was set aside by this Court *vide* order dated 30th September, 2022, the bail application filed by Waseem before the High Court was restored for fresh consideration and expeditious disposal, preferably within a period of one month from the date of receipt of the copy of the said order. It is expedient to extract below the relevant part of the order dated 30th September, 2022¹¹, passed by a Division Bench of this Court [of which one of us (Hima Kohli, J) was a member], overturning the order passed by the High Court granting bail in favour of Niyaz Ahmad:

“9. At the outset, it needs to be noted that this Court has had occasion to peruse a succession of orders by the same Judge of the High Court of Judicature at Allahabad (which were challenged in Special Leave Petitions before this Court) containing identical reasons as recorded above for the grant of bail. As a matter of fact, in the counter affidavit, which has been filed by the first respondent, the fact that similar orders have been passed by the Single Judge has been relied upon though with the submission that the first respondent should not be penalized for the High Court’s failure to

⁹ Criminal Misc. Bail Application No.26740 of 2022

¹⁰ Criminal Appeal No. 1784 of 2022

¹¹ Criminal Appeal No.1722 of 2022 (Ajwar Vs. Niyaz Ahmad and Anr.).

record adequate reasons. The first respondent in the course of his counter affidavit states as follows:

“...In fact, the present case is not the only case, in which so called reasons are not assigned by the Hon’ble High Court while granting bail. There are many other cases also in which the same or similar orders were passed by the Hon’ble High Court and perhaps will be passed in future, as well. Therefore, the Respondent No.1 may not be penalized for something on which he has no control at all and it is the judicial discretion of the Hon’ble High Court to give reasons or not to give reasons while granting bail...”

- 10 The manner in which the Single Judge of the High Court has disposed of the application for bail is unsatisfactory. In determining as to whether bail should be granted in a matter involving a serious criminal offence, the Court is duty bound to consider:
 - (i) The seriousness and gravity of the crime;
 - (ii) The role attributed to the accused;
 - (iii) The likelihood of the witnesses being tampered with if bail is granted;
 - (iv) The likelihood of the accused not being available for trial if bail is granted; and
 - (v) The criminal antecedents of the accused.
- 11 In successive orders, the Single Judge of the High Court granted bail containing the same sentence, purportedly of reasons. Merely recording that the Court has had regard to the nature of the accusation, the severity of the punishment in the case of conviction, the nature of supporting evidence, prima facie satisfaction of the Court in support of the charge, reformatory theory of punishment and the larger mandate of Article 21 is not a satisfactory method for the simple reason that the facts of the case have to be considered. Moreover, not all the circumstances referred to above will weigh in the same direction. The duty to consider the circumstances of the case cannot be obviated by setting down legal formulations.”

7. This Court noted that as the order granting bail in favour of Niyaz Ahmad had been set aside, the subsequent order passed by the High Court on 22nd August, 2022, granting regular bail in favour of the accused Waseem could not be sustained. As a result, the appeal preferred by the appellant-complainant was allowed and the order granting bail in favour of Waseem(A-7) was set aside with a direction issued to the High Court to consider the matter afresh. It is on the basis of the said directions that the impugned order has been

passed. The factors that have persuaded the learned Single Judge of the High Court to allow the application filed by the accused, Waseem are encapsulated in the following para :

“Considering the overall facts and circumstances, the nature of allegation, the gravity of offence, the severity of the punishment, the evidence appearing against the accused, submission of learned counsel for the parties, considering the law laid down in the case of Lakshmi Singh and others vs. State of Bihar and Others, Babu Ram and Others vs. State of Punjab and Amarjeet Singh vs. State of Haryana, this Court thinks that eleven accused persons are said to have assaulted the complainant side after indiscriminate firing in which only three persons had sustained injuries on their persons, who later on, died in the hospital from the side of the complainant and the accused side had also received serious injuries, accused Niyaj Ahmad has also suffered gun shot injury in the incident and the injuries sustained by the accused side has not been explained by the prosecution. They ought to have been explained by the prosecution and since it seems that there is a cross version of the incident and it is very difficult to ascertain at this stage who was the aggressor and it will be decided at the stage of trial after taking evidence from both the sides; but without expressing any opinion on merits, this Court finds it to be a fit case for bail.”

ARGUMENTS ON BEHALF OF THE APPELLANT-COMPLAINANT

8. Appearing for the appellant-complainant, Mr. Shreeyash U. Lalit and Mr. Ansar Ahmad Chaudhary, learned counsel submitted that this is a case of double murder of two young sons of the appellant-complainant at the hands of the accused persons who harboured previous enmity against him and his family members. Waseem (A-7) was arrested on 27th May, 2020. The other accused persons were arrested on different dates. After their arrest, the police conducted a search of the respondents and recovered five illegal country-made pistols, seven live cartridges and five used cartridges from the possession of Aslam (A-2). A specific role has been attributed to each of the four respondents herein that resulted in the death of the appellant's two sons and serious injuries to his nephew. All the four respondents herein were named in the FIR, besides the

other co-accused. During the course of investigation, the statements of eleven independent witnesses were recorded under Section 161 Cr.P.C. wherein an active role has been attributed to all the four respondents. Later on, the appellant-complainant entered the witness box and appeared as PW-1. He has reiterated the role played by the respondents herein in committing the offence. Two other independent eye witnesses, namely, Abdullah (PW-2), Asjad (PW-3) and Fahimuddin (PW-4) have supported the testimony of the appellant (PW-1).

9. Learned counsel for the appellant-complainant further states that the High Court has completely overlooked the fact that the respondents-accused parties were the aggressors who had forcibly entered the house of the appellant-complainant and indiscriminately fired at him, his sons and other persons who had gathered at his house to break the fast. They have criminal antecedents and several cases are registered against them. Even before completion of a period of six months granted by the High Court, by an earlier order dated 7th April, 2022 passed on an application moved by the appellant-complainant under Section 482 Cr.P.C for issuing directions to the trial Court to complete the trial in a definite period, the High Court has proceeded to grant bail in favour of Waseem on the grounds of parity with his father; similar orders have been passed in favour of Nazim¹², Aslam¹³ and Abubakar¹⁴. It has also been pointed out that from the side of the

¹² *vide* order dated 13th February, 2023

¹³ *vide* order dated 2nd March, 2023

¹⁴ *Vide* order dated 21st March, 2023

accused persons, a cross case was registered¹⁵ on the basis of an application moved under Section 156(3) of the Cr.P.C. The matter was investigated and the police filed its final report. The Magistrate directed fresh investigation, which was followed by a second final report. Yet again, the Magistrate passed an order on 18th November, 2022 directing further investigation and the said case was reopened. A closure report was subsequently submitted which was placed before the Magistrate on 5th August, 2023 and is pending final orders.

10. It was next argued by learned counsel for the appellant-complainant that the respondents have been deliberately delaying conclusion of the trial on one pretext or the other. He submitted that this conduct of the respondents was adversely commented upon by the Additional Sessions Judge, Court No.15, Meerut in his order dated 23rd August, 2022¹⁶, wherein it was observed that five dates were taken by the accused but they failed to cross-examine the appellant – complainant and the accused were cautioned that if the cross-examination would not be completed, then their right to cross-examine him would be closed. To delay the trial, the co-accused, Niyaz Ahmad filed a transfer petition before the Sessions Court, requesting that the trial be conducted by some other Additional Sessions Judge, on the plea of bias. This application was rejected *vide* order dated 7th December, 2022. The order dated 07th December, 2022 was unsuccessfully challenged before the

¹⁵ Case Crime No.361/2020

¹⁶ Session Case No. 1126 of 2020

High Court and *vide* order dated 08th February, 2023, the Transfer Application¹⁷ of Niyaz Ahmed was dismissed. It was observed that the trial was at the initial stage and several applications were being moved before the trial Court for lingering the trial. Yet again, as a strategy, the counsel engaged by four accused persons withdrew his power of attorney, stating that his clients weren't co-operating with him. When the Sessions Court closed their right to cross-examine PW-2 *vide* order dated 14th March, 2023, Nazim Ali approached the High Court¹⁸. *Vide* order dated 16th May, 2023, the High Court allowed the said application subject to costs of ₹ 10,000/- (Rupees Ten Thousand only) payable to PW-2 and permitted his cross examination.

11. As for the subsequent conduct of the respondents, it was pointed out that after being released on bail, one of the prime eyewitnesses, Abdullah (PW-2) was sought to be intimidated by them and their supporters. Abdullah (PW-2) filed a complaint on 21st March, 2023 which was registered as an FIR¹⁹, wherein it was alleged that five accused persons i.e. three respondents herein (Waseem, Nazim and Aslam) and the co-accused, Hamid and Ayyub had threatened him in open Court. After he left the Court premises, he was thrashed by them. On an application moved by PW-2, he was extended protection by the Court. Subsequently, the police filed a closure report in respect of the captioned FIR, but

¹⁷ Transfer Application (Crl.) No. 688 of 2022

¹⁸ Application No. 18195 of 2023

¹⁹ FIR No.0095 dated 22nd March, 2023

the learned Magistrate passed an order on 7th July, 2023, directing further investigation in the matter.

12. Lastly, it has been contended that none of the respondents have clean antecedents, which is apparent from the counter affidavit filed by the respondent No.2 – State of Uttar Pradesh, which aspect has been lost sight of by the High Court while granting bail in their favour.

13. In support of their submission that individual facts of the case are relevant factors that must be considered by the court while considering a bail application under Section 439 Cr.P.C., learned counsel for the appellants cited the decisions of this Court in **Mahipal vs. Rajesh Kumar @ Polia and Another**²⁰, **Ajvar vs. Niyaj Ahmad and Another**²¹, **Jagjeet Singh and Others vs. Ashish Mishra**²², **Deepak Yadav vs. State of Uttar Pradesh and Another**²³ and **P vs. State of Madhya Pradesh and Another**²⁴ urging that the accused herein have been in custody for less than three years and were not entitled to any relief by way of bail. Reliance has been placed on **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and Another**²⁵. **Kumer Singh vs. State of Rajasthan and Another**²⁶, **Yashpal Singh vs. State of Uttar Pradesh and Another**²⁷ and **Manno Lal Jaiswal vs.**

²⁰ (2020) 2 SCC 118

²¹ 2022 SCC OnLine SC 1403

²² (2022) 9 SCC 321

²³ (2022) 8 SCC 559

²⁴ (2022) 15 SCR 211

²⁵ (2004) 7 SCC 528

²⁶ 2021 SCC OnLine SC 511

²⁷ (2023) SCC Online SC 347

State of Uttar Pradesh and Another²⁸ have been cited to urge that at the stage of considering an application for being released on regular bail, the individual role of each accused is not required to be considered when they were allegedly a part of an unlawful assembly and charged with offences punishable under Section 149 IPC.

ARGUMENTS ADVANCED ON BEHALF OF THE ACCUSED-RESPONDENTS

14. The present petitions have been strongly opposed by Mr. Siddharth Luthra, Senior Advocate appearing for the accused-respondents Waseem, Nazim and Aslam and Mr. Sitab Ali Chaudhary, learned counsel for the accused-respondent Abubakar. Learned counsel submitted that any delay in completing the trial cannot be attributed to the respondents and the adjournments referred to by the learned trial judge in the order dated 23rd August 2022 were not on account of the respondents. In fact, the prosecution witness was available only on two dates for his cross-examination and only one date was taken by the accused, Niyaz Ahmed on medical grounds. He submitted that accused Waseem did not misuse the liberty granted to him by the High Court *vide* order dated 22nd August, 2022 and when his bail order was set aside by this Court on 14th October, 2022 and remanded back to the High Court for passing a reasoned order, he had surrendered on time. The allegation that the respondents are involved in several other cases is also refuted by learned counsel stating that the accused Waseem is involved in only one other case²⁹ besides the present one, where he is on bail. The co-accused Nazim is also similarly stated

²⁸ (2022) 15 SCC 248

²⁹ Crime Case No. 214 of 2016 under Section 147, 148, 149, 307, 342, 323, 308 IPC, P.S. Mundali, Meerut

to be involved in one other case, i.e. the captioned case along with Waseem, besides the present case (namely Criminal Case no. 214 of 2016) where he has been released on bail. As for the accused Aslam, it is stated that besides the present case, he is involved in CC No. 214/16³⁰, CC No. 129/20³¹ and CC No. 95/23³². The accused Abubakar is involved in one other case²⁸ besides the present one.

15. Learned counsel submitted that the appellant-complainant himself is a well-known criminal of the area, having several cases registered against him as also his two sons. The criminal history of the appellant-complaint and his two deceased sons, Abdul Majid and Abdul Khaliq have been detailed in paras 19 to 21 of the counter affidavit. As per the respondents, the appellant-complainant is involved in 10 criminal cases and his two deceased sons, Abdul Majid was involved in 21 criminal cases and Abdul Khaliq was involved in 2 cases.

16. Next, contending that bail once granted cannot be cancelled until there are supervening circumstances and in the present case there are no such circumstances that require setting aside of the impugned orders, learned counsel for the respondents supported the impugned orders and requested that the present appeals be dismissed. It was additionally submitted that even when the accused Waseem was released on bail, he

³⁰ Under Sections 147/148/149/342/323/308 IPC, P.S. Mundali District Meerut.

³¹ Under Sections 3/25 Arms Act IPC, P.S. Mundali District Meerut.

³² Under Section 504/506 IPC, P.S. Civil Lines District Meerut.

had abided by the conditions of bail imposed on him and did not misuse the liberty in any manner.

17. On merits, learned counsel for the respondents submitted that there was previous enmity between the parties; that three persons had been falsely introduced in the FIR against whom no case was made out and after investigation, their names were dropped from the chargesheet; that the prime eye-witnesses (PW-1, 2, 3 and 4) are related to the deceased being their father/uncle/cousin, etc. Several loopholes in the prosecution version were sought to be highlighted by the learned counsel for the respondents relating to conducting the inquest of the deceased Abdul Majid, the difference in the time between reporting the crime that took place on 19th May, 2020, at 2030 hours as against the time when the investigation had allegedly started (1818 hours); the alleged manipulation in the Medico Legal Reports of the injured, Asjad; the role of Asjad (nephew of the appellant-complainant) who had allegedly called twice on the mobile phone of Abubakar (brother of the accused, Waseem) which fact could be verified from the CDR details of the mobile phone and showed that the injured Asjad was the aggressor who had threatened to kill Waseem's brother. It was also contended that the appellant-complainant and 15 other persons with him were present at the mosque and not at his residence, as recorded in the chargesheet and they were the ones who had badly assaulted Waseem's brother, entered his residence and thrashed his family members. Aggrieved by the same, when Waseem's mother (Ms. Saeeda Begum) had filed a Complaint Case on 07th July, 2020 before the

Court of the Additional Magistrate-I, Meerut, an order was passed directing the police to register an FIR³³ against 15 persons. A closure report was filed by the local police but the Judicial Magistrate did not accept the same and has directed further investigation in the matter.

18. Learned counsel for the respondents submitted that the real reason behind the dispute between the appellant-complainant and his family members and the accused and his family members related to political rivalry as the appellant-complainant had lost the election for the post of Village Pradhan and then proceeded to falsely implicate the accused persons.

19. Learned counsel argued that where there are two bullet injuries, one each to the two deceased by three assailants, there is a possibility of over-implication of the accused persons. Finally, an assurance has sought to be extended to this Court that the respondents will not abscond as they are permanent residents of the village and they shall continue cooperating for timely completion of the trial.

20. Mr. Sarvesh Singh Baghel, learned counsel appearing for the respondent No. 2 – State of Uttar Pradesh has filed a counter affidavit³⁴ supporting the case of the appellant-complainant and stating *inter alia* that the High Court did not consider the fact that the present case involves a serious offence. There are accounts of eye-witnesses that have categorically specified the role of the accused-respondents and that there was a definite

³³ Case Crime No. 361 of 2020 under Section 147, 148, 149, 452, 323, 307, 34, 504 and 506 of IPC

³⁴ In Special Leave Petition (Crl.) No. 513 of 2023

motive to commit the offence and injuries were caused intentionally that had resulted in the death of the two deceased persons. It was further submitted that there is a likelihood of the accused persons influencing the trial and threatening the eye-witnesses.

QUESTION INVOLVED

21. We have heard learned counsels for the parties, carefully examined the records and the impugned orders. The short question that falls for our consideration is whether the High Court was justified in exercising jurisdiction under Section 439(1) of the Cr.P.C for granting regular bail in favour of the respondents in the facts and circumstances of the present case.

FIRST ROUND OF LITIGATION

22. As noted above, this is the third time that the appellant-complainant has approached this Court for relief. Earlier hereto, aggrieved by the order dated 4th of August, 2022, passed by the learned Single Judge of High Court of judicature at Allahabad, directing release of Niyaz Ahmad (father of the accused, Waseem) in connection with the very same case, the appellant-complainant had filed an appeal³⁵. Noting that successive orders were being passed by the same judge of the High Court mentioning identical reasons as stated in the order dated 4th August, 2022, this Court had expressed its dissatisfaction and opined that merely setting down legal formulations cannot be a ground for granting bail and that due application of mind was not apparent in the facts of the case that reveals the seriousness and gravity of the offence. As a result, the order dated 14th August, 2022, enlarging Niyaz

³⁵ Criminal Appeal No. 1722 of 2022 arising out of SLP(Crl.) No. 8139 of 2022)

Ahmad on bail was set aside and the appeal preferred by the appellant-complainant was allowed.

SECOND ROUND OF LITIGATION

23. The second round of litigation took place when the appellant-complainant approached this Court being aggrieved by an order dated 22nd August, 2022, passed by learned Single Judge of the High Court admitting the accused Waseem to bail in the same case³⁶. Since bail was granted in favour of the accused Waseem on parity with his father, Niyaz Ahmad and the said order³⁷ was subsequently set aside by this Court on 30th September, 2022, the appeal preferred by the appellant-complainant³⁸ was allowed and the application for bail filed by the accused Waseem was restored to be decided afresh by the High Court.

PRESENT ROUND OF LITIGATION

24. The third and present round of litigation has commenced on four orders passed by learned Single Judges of the High Court, impugned herein in respect of the four accused respondents. The first order dated 07th December, 2022 enlarging the accused Waseem on bail, was passed on merits. The subsequent three orders dated 13th February, 2023, 02nd March, 2023 and 21st March, 2023, granting bail in favour of Nazim, Aslam and Abubakar respectively, are on grounds of parity.

³⁶ Criminal Misc. Bail Application No. 26740 of 2022

³⁷ Order dated 4th August, 2022 by the High Court

³⁸ Criminal Appeal no. 1784 of 2022 arising out of SLP(Crl.) 9342 of 2022

POST MORTEM REPORT OF THE TWO DECEASED PERSONS, SONS OF THE APPELLANT-COMPLAINANT

25. We may note that the post mortem report of the deceased, Abdul Khaliq shows that he had received one firearm injury in his head and the cause of his death was cranio-cerebral damage as a result of ante-mortem firearm injury which was sufficient to cause death in ordinary course of nature. The post mortem report of the deceased, Abdul Majid showed that he had sustained one firearm entry wound in the abdomen and one exit wound corresponding to each other and the cause of his death was shock and hemorrhage as a result of ante-mortem firearm injury. The injury report of the injured, Asjad (nephew of the appellant-complainant) showed that he had sustained a lacerated wound on the skull and bruises and abrasion on other parts of his body. All the three respondents herein have been named in the FIR alongwith five other accused. The appellant-complainant being the informant, had reiterated the events narrated in the FIR in his statement recorded on 20th of May, 2020 under Section 161 Cr.P.C. After the chargesheet was submitted in Court on 23rd June, 2020, cognizance of the offence was taken and the case was committed to the Sessions Court for trial. So far, deposition of four eye-witnesses have been recorded (**PW 1, 2, 3 and 4**) and all of them have attributed a role to the accused respondents.

RELEVANT PARAMETERS FOR GRANTING BAIL

26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the

accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail.

(Refer: Chaman Lal v. State of U.P. and Another³⁹; Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Another(supra); Masroor v. State of Uttar Pradesh and Another⁴⁰; Prasanta Kumar Sarkar v. Ashis Chatterjee and Another⁴¹; Neeru Yadav v. State of Uttar Pradesh and Another⁴² ; Anil Kumar Yadav v. State (NCT of Delhi) and Another⁴³; Mahipal v. Rajesh Kumar @ Polia and Another(supra).

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an

³⁹ (2004) 7 SCC 525

⁴⁰ (2009) 14 SCC 286

⁴¹ (2010) 14 SCC 496

⁴² (2014) 16 SCC 508

⁴³ (2018) 12 SCC 129

order. In ***P v. State of Madhya Pradesh and Another(supra)*** decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

“24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237] . To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court.”

CONSIDERATIONS FOR SETTING ASIDE BAIL ORDERS

28. The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a *prima facie* case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.

29. In **Jagjeet Singh** (supra), a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr.P.C is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (**Also refer: Puran v. Ram Bilas and Another**⁴⁴; **Narendra K. Amin (Dr.) v. State of Gujarat and Another**⁴⁵)

DISCUSSION

30. Keeping in mind the aforesaid parameters, we may now proceed to examine the pleas taken by the parties so as to decide as to whether the impugned orders can be sustained or not. On a careful consideration of the entire records, we are inclined to agree with submission made by learned counsel for the appellant-complainant that the impugned orders are unjustified and suffer from grave infirmity. The primary factor that has swayed the learned Single Judge of the High Court in granting bail to the accused Waseem is that even though the prosecution version is that 11 accused persons had assaulted the appellant-complainant and members of his family on indiscriminate firing taking place, only

⁴⁴ (2001) 6 SCC 338

⁴⁵ (2008) 13 SCC 584

three persons had sustained injuries and two had expired on the side of the appellant-complainant. At the same time, serious injuries were also received on the side of the accused which could not be explained by the prosecution. In the case of the accused Nazim, the High Court observed that there was no distinction between the role attributed to him and the co-accused Waseem and that the injuries suffered on the side of the respondent had not been explained by the prosecution. The High Court has also gone on to observe that the investigation conducted by the police was one-sided and the case set up by the accused side was ignored. In the case of Aslam, his bail application was allowed and learned Single Judge observed that there is a cross-version of the incident inasmuch as the accused side had also received serious injuries which were not satisfactorily explained by the prosecution. In the case of Abubakar, noting that the co-accused Aslam was granted bail by a coordinate Bench and the case of Abubakar was similar to that of Aslam, he was granted the benefit of bail on grounds of parity.

31. In our opinion, the High Court has completely lost sight of the principles that conventionally govern a Court's discretion at the time of deciding whether bail ought to be granted or not. The High Court has ignored the fact that the appellant-complainant has stuck to his version as recorded in the FIR and that even after entering the witness-box, the appellant-complainant and three eyewitnesses have specified the roles of the accused-respondents in the entire incident. The High Court has also overlooked the fact that the respondents have previous criminal history details whereof have been furnished by the

Counsel for the State of UP. It is worthwhile to note that the accused Nazim was granted bail in FIR No. 214 of 2016 on 10th January, 2017 and while on bail, he is alleged to have committed a double murder of the two sons of the appellant-complainant.

32. To top it all, while on bail, there have been allegations that three of the accused-respondents herein have threatened one of the key eye-witnesses, Abdullah (PW-2) in open Court, thrashed him and threatened to kill him in the Court premises. On his approaching the trial Court for police protection, appropriate orders were passed in his favour and an FIR got registered⁴⁶. Though the police had filed a closure report, dissatisfied with the same, the Magistrate has directed further investigation. The attempt to delay the trial on the part of the respondents has also surfaced from the records.

33. Furthermore and most importantly, the High Court has overlooked the period of custody of the respondents-accused for such a grave offence alleged to have been committed by them. As per the submission made by learned counsel for the State of UP, before being released on bail, the accused-Waseem had undergone custody for a period of about two years four months, the accused-Nazim for a period of two years eight months, the accused-Aslam for a period of about two years nine months and the accused Abubakar, for a period of two years ten months. In other words, all the accused-respondents have remained in custody for less than three years for such a serious offence of a double murder for which they have been charged.

⁴⁶ FIR No. 95 of 2023

34. Learned Counsel for the appellants and the State of UP have also informed this Court that in the cross-FIR filed by Smt. Saeeda Begum (w/o Niyaz Ahmad mother of Waseem) at the instance of the accused persons, a closure was filed by the police. *Vide* order dated 04th September, 2023, the Magistrate issued notice to the complainant in the cross-FIR. A protest petition has been filed by the complainant herein which is pending arguments. In the meantime, the appellant herein moved an application in the captioned case stating that though three affidavits (of Usman Ali, Alenbi and Farhana) were annexed with the protest petition to support the cross-complaint, on being examined, all three persons have denied having sworn the said affidavits. Accordingly, the appellant has filed an application under Section 340 Cr.P.C against the complainant in the cross-FIR which has been registered *vide* order dated 15th January, 2024 and is due to come up for arguments.

35. All the aforesaid factors when examined collectively, leave no manner of doubt that the respondents do not deserve the concession of bail. As a result, all the four impugned orders are quashed and set aside. The respondents are directed to surrender within two weeks from the date of passing of this order. It is, however, clarified that the observations made above are limited to examining the infirmities in the impugned orders and shall not be treated as an opinion on the merits of the matter which is still pending trial. It is also clarified that in the event of any new circumstances emerging, the respondents shall be entitled to apply for bail at a later stage.

CRL. APPEAL NO. of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 513 OF 2023
CRL. APPEAL NO. of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 2437 OF 2023
CRL. APPEAL NO. of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 13404 OF 2023
CRL. APPEAL NO. of 2024 @ SPECIAL LEAVE TO APPEAL (CRL.) NO. 16310 OF 2023

36. The appeals arising out of the petitions for special leave to appeal are disposed of on the above terms.

..... J.
[HIMA KOHLI]

..... J.
[AHSANUDDIN AMANULLAH]

**NEW DELHI,
MAY 17, 2024**