

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2843 OF 2024
(ARISING OUT OF SLP(CRL) NO. 7546 OF 2024)

THE STATE OF JHARKHAND

....APPELLANT

VERSUS

ANIL GANJHU

....RESPONDENT

ORDER

1. Leave granted.
2. The sole respondent (accused) though served with the notice issued by this Court has chosen not to remain present before this Court either in-person or through an advocate and oppose this appeal.
3. This appeal is at the instance of the State of Jharkhand being aggrieved with the order passed by the High Court of Jharkhand at Ranchi dated 26th April, 2023, releasing the respondent herein on bail in connection with the First Information Report registered with the Police Station, Katkamsandi District, Hazaribagh *vide* Crime Register No. 29 of 2016 dated 28th February, 2016 for the offences punishable under Sections 302, 364, 201 read with Section 34 of the Indian Penal Code, 1860 (for short, the “**IPC**”).
4. The FIR referred to above was lodged by the sister of the deceased.

5. It is the case of the prosecution that the respondent (accused) is one of the members of an extremist organization by the name TPC, operating in the State of Jharkhand.
6. On the fateful day of the incident, the deceased was forcefully picked up from his house by the respondent and other co-accused, and couple of days thereafter, his dead body was recovered.
7. We have heard the learned counsel appearing for the State of Jharkhand.
8. It was pointed out that the police was able to arrest all the accused persons involved in the commission of the alleged crime except the respondent herein who went absconding. It was also pointed out that after almost seven years from the date of the registration of the FIR, the police was able to apprehend the respondent herein.
9. According to the learned counsel appearing for the appellant State, the impugned order of bail passed by the High Court could be said to be a non-speaking order, and that too in connection with the offence of a gruesome murder.
10. Learned counsel submitted that the impugned order passed by the High Court deserves to be set aside and the bail granted to the respondent (accused) be cancelled.
11. On 16th May, 2024, this Court passed the following order:
 - “1. *Delay condoned.*
 2. *This petition is at the instance of the State of Jharkhand being dissatisfied with the order passed by the High Court of Jharkhand at Ranchi releasing the respondent (accused) on bail in connection with PS Case No 29 of 2016 corresponding to GR Case No 611 of 2016 registered for the offence of murder.*

3. *The order passed by the High Court is so slip shod that we are unable to understand anything, more particularly as to what actually weighed with the High Court in releasing the accused on bail and that too in connection with an offence of murder. The genesis of the occurrence has also not been stated in the impugned order. What are the exact nature of allegations against the accused is also not stated.*
4. *We are thoroughly disappointed with the manner in which the High Court dealt with the bail application.*
5. *Issue notice, returnable on 9 July 2024.*
6. *Dasti, in addition, is permitted.”*

12. Essentially, this Court is required to analyse whether there was a valid exercise of the power conferred by Section 439 of the Code of Criminal Procedure, 1973 (for short, the “CrPC”) to grant bail. The power to grant bail under Section 439 CrPC is of a wide amplitude. But it is well settled that though the grant of bail involves the exercise of the discretionary power of the court, it has to be exercised in a judicious manner and not as a matter of course.

13. This Court in ***Mahipal v. Rajesh Kumar @ Polia & Another*** reported in 2019 INSC 1325, speaking through one of us D.Y. Chandrachud, CJI had the occasion to explain in details and that too very eruditely the principles of grant of bail in serious offences like murder. We quote the relevant observations as under:

“12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess

an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. The principles that guide this Court in assessing the correctness of an order passed by the High Court granting bail were succinctly laid down by this Court in Prasanta Kumar Sarkar v Ashis Chatterjee [(2010) 14 SCC 496]. In that case, the accused was facing trial for an offence punishable under Section 302 of the Penal Code. Several bail applications filed by the accused were dismissed by the Additional Chief Judicial Magistrate. The High Court in turn allowed the bail application filed by the accused. Setting aside the order of the High Court, Justice DK Jain, speaking for a two judge Bench of this Court held:

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

...

12. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...*”

14. *The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case by case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding. ... ”*

14. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record.

15. The order of the High Court in the present case reads thus:

“Heard both the counsels.

The learned counsel for the petitioner has submitted that the petitioner is innocent and has committed no offence as alleged. The learned counsel has further submitted that the allegations made against the petitioner in the FIR are entirely false and he has been implicated in this case merely on the basis of suspicion. Nothing has been recovered from the possession of the petitioner. The petitioner has no concern with any extremist's organization and he is not a member of any extremist organization. The learned counsel has further submitted that co-accused, namely, Nitesh Kumar Yadav in BA No. 7449 of 2017, Kabir Ji @ Kishor Ganjhu @ Saryu Ganjhu @ Sarju Ganjhu @ Kabir Ganjhu @ Kishor Ganjhu in BA No. 2420 of 2021 have been granted bail by different Benches of this Court vide orders dated 25.11.2017 and 08.03.2021 respectively, therefore, he seeks parity. Moreover, the petitioner is in custody since 25.01.2023. Therefore, petitioner may be released on bail.

Learned APP, appearing on behalf of the State, has vehemently opposed the bail application of the petitioner but does not dispute the cited bail orders.

*Having gone through the records of the case and the arguments advanced by the learned counsel for both the sides, present petitioner, named above, is ordered to be released on bail on executing bail bonds of Rs. 20,000/- (Rupees Twenty Thousand only) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Hazaribagh in connection with Katkamsandi P.S. Case No. 29 of 2016, corresponding to GR Case No. 611 of 2016, subject to the conditions that (i) the petitioner shall report to the concerned police station on last Saturday of every month between 1:00 PM and 5:00 PM in the next twelve months, failing which his bail bonds shall be cancelled. Any exemption to such attendance shall be done so after direction from the learned Court below, and (ii) the petitioner shall also remain present on each and every date of trial before the learned Court below unless dispensed with by the learned Court below.
(Ratnaker Bhendra, J.)”*

16. Thus, from the aforesaid, it is evident that the High Court failed to assign any reasons for the exercise of its discretion in favour of the respondent (accused), knowing fully well that he is involved in a serious offence like murder and was absconding for

couple of years. Where an order refusing or granting bail does not furnish the reasons that inform the decision, there is a presumption of the non-application of mind which may require the intervention of this Court.

17. In the aforesaid context, we may refer to some of the relevant observations made by this Court in **Mahipal** (supra), as regards the duty of the Court to record reasons for its exercise of discretionary power. We quote the relevant observations as under:

“22. There is another reason why the judgment of the learned Single Judge has fallen into error. It is a sound exercise of judicial discipline for an order granting or rejecting bail to record the reasons which have weighed with the court for the exercise of its discretionary power. In the present case, the assessment by the High Court is essentially contained in a single paragraph which reads:

“4. Considering the contentions put-forth by the counsel for the petitioner and taking into account the facts and circumstances of the case and without expressing opinion on the merits of the case, this court deems it just and proper to enlarge the petitioner on bail.”

23. Merely recording —having perused the record and —on the facts and circumstances of the case does not sub-serve the purpose of a reasoned judicial order. It is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interests of the criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.”

18. In such circumstances referred to above, we are of the view that we should set aside the order passed by the High Court, releasing the respondent (accused) on bail and remit the matter to the High Court for fresh consideration in accordance with law more particularly keeping in mind the observations made by this Court in the present order.
19. The appeal succeeds and is hereby allowed.
20. The impugned order passed by the High Court is set aside.
21. The Bail Application No. 2863 of 2023 is restored to its original file.
22. The High Court shall hear the accused as well as the State and pass a fresh order in accordance with law within a period of ten days from the date of receipt of this order.

.....CJI.
(Dr. Dhananjaya Y. Chandrachud)

.....J.
(J. B. Pardiwala)

.....J.
(Manoj Misra)

New Delhi
9th July, 2024

ITEM NO.45

COURT NO.1

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.7546/2024

(Arising out of impugned final judgment and order dated 26-04-2023 in BA No.2863/2023 passed by the High Court of Jharkhand at Ranchi)

THE STATE OF JHARKHAND

Petitioner(s)

VERSUS

ANIL GANJHU

Respondent(s)

(With IA No.109428/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.109429/2024 - EXEMPTION FROM FILING O.T.)

Date : 09-07-2024 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Saiyad Uruj Abbas, AAG
Mr. Farrukh Rashid, Adv.
Mr. Jayant Mohan, AOR
Ms. Meenakshi Chatterjee, Adv.
Ms. Adya Shree Dutta, Adv.
Mr. Abhishek Yadav, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

- 2 The appeal is allowed in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar

(Signed order is placed on the file)